

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

October 22, 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
Chief of Police Paul Tiernan
Planner Michael J. Fortner

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 October 8, 2007

There being no additions or corrections to the minutes, they were approved as received.

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

A. Public

Dorothy Miller, 430 Orchard Road, speaking on behalf of the Coalition for Natural Stream Valleys, commented on the prospect of the Newark Housing Authority selling Cleveland Heights site, and the adjacent McKee's parkland. She discouraged paved parking lots on the site and encouraged retaining McKees Park and the riparian buffer forest along the creek. She presented a map that was provided to her many years ago that showed the various parklands in the nearby vicinity.

Ms. Miller also advised that she recently walked along the creek and was concerned that the understory next to the creek bank behind Paper Mill Falls had been cleared out. She also understood the riparian buffer forest was owned by the City and was to be retained. She encouraged when subdivisions were approved, that the City follow up on certain things that have been agreed upon. Mr. Funk advised that it was in the City's interest to gain more control along the creek behind Cleveland Heights.

Ms. Miller encouraged working with The Wild and Scenic River group to get advice on how the City might reforest the area such as grading it down to a scrub shrub and a grassland species. She concluded by telling Council they should never give up any City owned land along the creek.

4. Victoria Owen, 719 Lehigh Road, invited everyone to attend on November 11th, at 4:00 pm a commemoration of those who served in World War I. The event will be hosted by the VFW, the Newark Heritage Alliance, and the Friends of Newark.

5. **3-B. UNIVERSITY**

1. Administration

Rick Armitage provided a handout on building construction that occurred on campus during the summer and will continue into the fall. Council welcomed Mr. Armitage back because he had been absent from meetings during his recuperation from two knee replacements.

6. **3-B-2. STUDENT BODY REPRESENTATIVE**

Dan Greenland, 34 Prospect Avenue, Student Relations for Student Government representative, thanked Council for letting him know about the Conservation Advisory Commission (CAC) meeting held October 9th. He attended the meeting and learned there might be a new curbside recycling program in the next year or two. He also commented on the \$50,000 senior (University) gift given last year that was earmarked for recycling, in particular, recycling sites next to dorms. He questioned if that use would be a waste of money if the City changed its policy on recycling. Mr. Funk advised that because the City did not pick up the University's trash, that recycling effort would not be affected.

Mr. Greenland also noted that students for the environment, who were present, planned to petition the new UD administration for 8% of the energy used by the University to be wind powered, clean energy. Mr. Funk advised that the University was presently using between 1 and 2% renewable energy. He also noted the City wasn't paying any more for that electricity than what it paid for the power from the grid because the Susquehanna dam generated very inexpensive electricity.

7. **3-C. COUNCIL MEMBERS**

Mr. Markham complimented the New Castle County Band Festival held last Saturday. He was impressed with the University of Delaware band, which participated in the festival.

8. Mr. Markham complimented Mr. Pomeroy for the work he did on the establishment of the new electric rate tariff referred to as service classification "ED" "Economic Development which Council adopted at their last meeting.

9. Mr. Markham advised that on November 10th the Newark Downtown Partnership was sponsoring a clean up of Chapel Street and the west side of Cleveland Avenue. Twelve volunteers over the age of 18 were needed, and anyone interested should contact Maureen Feeney Roser at 366-7030.

10. Messrs. Athey, Pomeroy and Tuttle recognized Alice Van Veen from the City Secretary's Office who was awarded a municipal clerk training program scholarship from the Delaware League of Local Governments. They also recognized City Secretary Susan Lamblack who was awarded Clerk of the Year by the League.

11. Mr. Athey advised that the Friends of Newark would hold their Main Street Forum on February 13, 2008 rather than the previously reported November 10th date. The forum will be held at the Newark United Methodist Church on Main Street.

12. Mr. Athey commented on the resolution Council passed in the summer that encouraged DeIDOT to conduct a traffic calming analyses on S. College

Avenue. He reported that Heather Dunigan from WILMAPCO agreed to be an intermediary between DelDOT and the City regarding that project.

13. Mr. Pomeroy thanked his wife and children for surprising him with a bouquet of balloons to celebrate his birthday.

14. Mr. Pomeroy encouraged everyone to attend the Halloween Parade on Sunday at 3:00 pm.

15. Mr. Pomeroy congratulated the City for supporting the mentoring program and the employees who were participating in the program.

16 Mr. Pomeroy advised that the Greater Newark Network was hosting a forum Thursday from 7 pm to 9 pm at the Embassy Suites. Anyone interested in attending should contact Mr. Pomeroy.

17 Mr. Pomeroy advised that he found it unbelievable to learn this week that DelDOT's repaving project for Elkton Road was pushed back until 2012 and 2014. The condition of the road has a serious impact on the people who travel it and the way in which commerce was transpired on that stretch of road, not to mention the overall safety conditions for emergency vehicles. He thought the City needed to register its disappointment to DelDOT and area legislators.

Mr. Funk suggested that the Elkton Road project be Council's main focus at their annual meeting with the legislators next January. He was also disappointed to hear that the portion of Elkton Road nearest the Maryland state line would be done first.

Mr. Clifton provided a brief reminder when Council Members were invited by Aetna Fire Company to ride down Elkton Road on a piece of fire apparatus. The purpose was to witness the ride due to the condition of the road and to put it in context of riding in an ambulance as an EMT or a patient and to imagine trying to put an IV in a patient's arm. They were told that in many cases the ambulance had to pull over to the side of the road to administer an IV. In some cases that could mean the difference between life and death.

Mr. Clifton was very discouraged with the 2012 and 2014 dates, and suggested that the Secretary of Transportation take the same ride to experience what over 45,000 cars per day experience on Elkton Road. With the City working to develop Elkton Road into a viable Main Street extension and trying to attract other businesses, he could only imagine what someone thought when they got off Exit 109 and drove through the gateway into the City from that part of town. Most people don't realize Elkton Road is a state road and assume that was how the City of Newark maintained its roads.

Mr. Pomeroy added that when they took that ride, the ride was smooth in Maryland and once you crossed the state line into Delaware, there was an incredible difference which was a bad reflection on Newark. He also agreed with Mr. Clifton that the condition of the road had a real effect on response time and the quality of public safety in Newark.

Mr. Markham suggested that a representative from Aetna be present at their meeting with the legislators.

Mr. Tuttle thought the economic development aspect could not be minimized. He noted that first impressions were the most important and in this situation, the first impression made to anybody coming into the City from the Maryland state line was the condition of Elkton Road. He encouraged Rick Armitage, as the representative from the University, to take back to the administration, the City's remorse at the state's current funding timetable because it was important to the University as well. He believed the impression one got when they entered the state on Elkton Road had an impact in terms of

recruiting students. He saw this as a good opportunity to jointly express how important it was for Elkton Road to be repaired.

18. Mr. Funk complimented the Police Department on the motorcycle report. He did not realize the helmet laws were different in Pennsylvania and Maryland. He thought Cpl. Davis' suggestions were excellent and provided a good analogy of what the City had and what it needed in this respect.

19. Mr. Funk advised that he attended the Main Street Mile and although there was not a very big crowd, it was a good beginning for this annual event. There were some complaints about the length of time Main Street was closed from people trying to get to their jobs or to doctor appointments. Mr. Clifton heard complaints from businesses that were upset that Main Street was closed for one hour and 20 minutes. Mr. Funk suggested looking into how to minimize that inconvenience next year.

20. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:**

- A. Request for an Extension of the Grandfathering for the Sale of Alcoholic Beverages for Consumption on the Premises at the Location of the Now Closed Tracks Restaurant, Located in the Multistory Commercial Building at 60 North College Avenue

Mark Sisk, Esquire, on behalf of the William and Marjorie Ruper Trust (the original property owner of 60 North College Avenue) and on behalf of La Tolteca Restaurant, asked for the extension of the grandfathering for the sale of alcoholic beverages for consumption at the site. Mr. Sisk advised that Nathaniel and Thelma Cedillo were present to answer questions regarding the operations of the La Tolteca restaurant which they have operated in the Newark Shopping Center for a number of years. They have had problems with the building and have much too much space (10,000+ sq. ft.) to operate their restaurant. When the Tracks restaurant became available, they saw an opportunity for their restaurant.

For the record, Mr. Sisk said this property used to be the Down Under Restaurant and the Ground-Floor Grill that catered primarily to a college trade that had repeated problems with the ABCC. In 2005, the facility was completely refurbished by Mr. Philip Reynolds and he opened an "adult" restaurant known as Tracks Restaurant. Unfortunately it was not able to attract enough business to survive and closed in April of 2006.

Mr. Sisk pointed out that La Tolteca had an established trade and believed they would take that trade to their new site. They agreed to operate within the same hours that Council approved for the Tracks restaurant. The site has adequate parking and La Tolteca thought most of their clients would drive to the restaurant. With regard to how La Tolteca would guarantee that the liquor license was for La Tolteca, Mr. Sisk claimed if the grandfathering was approved, it would be contingent upon La Tolteca operating the license and if for any reason La Tolteca did not make it, any other restaurant would have to come back to Council for approval.

Mr. Sisk claimed the closest La Tolteca came to live music was strolling mariachis, which was all acoustic. He noted that there has been a lot of talk about the ABCC imposing their 60/40 rule (60% food with 40% alcohol), and if a restaurant was under that, the ABCC had a right to sanction the restaurant. Typically, La Tolteca has done 75% food with 25% alcohol and they don't intend to change that. He explained how they would guarantee if Council permitted the move that the restaurant would stay a nice family restaurant. He claimed the ABCC would be at the restaurant within the next two months asking to see the ratios. He acknowledged that La Tolteca had one ABCC violation 2-1/2 years ago when a bartender did not card somebody properly, pled guilty, and paid the fine.

Mr. Sisk referred to a report dated May 21, 2007 that Cpt. Potts gave Council regarding 60 North College Avenue when there was another perspective tenant for the site. The report reflected 957 incidents at that address. Mr. Sisk pointed out that once Tracks was there, the incidents dropped to almost zero. He also noted that two tenants in the building supported La Tolteca. Letters from Campus Loft Company, LLC and Unique Impressions were provided to Council.

Mr. Sisk indicated that La Tolteca agreed to service hours of 11 am to 11 pm Monday through Saturday, and 11 am to 9 pm on Sunday. However, they might want to serve a Sunday brunch and perhaps open earlier on Sunday mornings (9 am). In conclusion, Mr. Sisk thought this was a good use of the property and it kept an existing business in the City.

Mr. Pomeroy asked why La Tolteca wanted to move to a location that has not been successful. Mr. Sisk said they believed they would bring their clientele with them to the new location. In the case of Tracks, they had no clientele because it was a new operation. Also, he reiterated the present facility in the Newark Shopping Center had some problems and much more space than they needed.

Mr. Clifton pointed out that in Cpt. Potts report the number of alcohol offenses could be skewed because they may not have been internal issues to the restaurant, rather external because it might be the location where someone may have been pulled over, i.e., for a DUI. There was a similar situation concerning Pat's Pizza on Elkton Road when the alcohol offenses at that location were given and it was later realized that they had nothing to do with the restaurant. Mr. Sisk acknowledged that no restaurant would have zero offenses.

Mr. Sisk clarified that the grandfathering of this property would run with the land. Therefore, another restaurant would have the right to open and sell alcohol at this site if La Tolteca did not succeed.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THIS ITEM BE LIFTED FROM THE TABLE.

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

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT THE RULES BE SUSPENDED TO HEAR FROM THE PUBLIC.

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

Mr. Markham asked if they would have a full liquor license to which Mr. Sisk answered yes. He questioned the ratio between wine/beer sales to liquor sales and was told by Mr. Funk that it was probably 50% beer, 20% wine and 30% liquor.

Although there was plenty of parking available on the site, Mr. Markham thought the restaurant was more situated for walk-up business. He questioned whether the owner had any concern with their customers following them to the new location and was told there were no concerns. With this property having so many problems with previous restaurants, Mr. Markham questioned what extra steps would be taken to make sure they did not over serve or serve to underage clientele. He was assured that ID's would be checked and staff has been trained through the ABCC.

Mr. Osborne expressed his concern with the track record at this location and the fact that if La Tolteca didn't succeed, the next restaurant would be permitted to sale alcoholic beverages. Mr. Funk believed the hours would not allow any restaurant to become a bar.

Mr. Markham asked what time La Tolteca's liquor license permitted them to operate their business and was told they were now permitted to operate until 1 am. Mr. Funk thought they would be taking over the license from Tracks, which was to 11 pm.

The chair opened the discussion to the public.

Frances Hart, 257 W. Main Street, Newark, was concerned about prior concessions to alcohol requests because they have proved to be negative for the City and University students. She pointed out that Shaggy's was a bar with an outside patio next to student dorms. Home Grown claimed they could not compete with other restaurants if they were not open until 1 am. She believed eventually La Tolteca would feel the same way and come back and ask for later hours that have always been granted to bars. She believed when they realized they were in a student area and alcohol was more important than food, they would be requesting later hours and their character would change.

Jean White, 103 Radcliffe Drive, thought that Council should not approve the grandfathering to continue to exist at this location. She clarified that none of her remarks were meant to reflect in anyway on La Tolteca. She further clarified that the alcohol license for Tracks was not renewed in June. Therefore, La Tolteca would have to get a 'transfer of location' license.

Ms. White pointed out that the current Code prohibited alcohol establishments next to residentially zoned properties and that should not be taken lightly. She claimed the reason grandfathering has been granted at this site was because the current Code went into effect after the Down Under was already there. She then distributed to Council a history of the site (from 1998 to 2005) which included a printout of all the violations for Maxwell T's and the Ground Floor.

Ms. White continued by saying that the Down Under, Maxwell T's, and the Ground Floor were problem establishments. Eventually Ground Floor surrendered their liquor license because of problems with the ABCC. Although Tracks was not a problem, she felt the location had a track record that showed in order to make the sales needed, a further emphasis on alcohol was necessary. The site has been vacant for 18 months and Ms. White pointed out that grandfathering was lost after 12 months. She acknowledged that Mr. Sisk sent a letter to the City four days before the 365-day limit and the City Solicitor opined Mr. Sisk had the right to solicit on behalf of his client. That being said, she reminded Council they had the right to turn this request down and urged Council to do so. She concluded by comparing this site to another problem site – the second floor of the Galleria which had similar problems with the Brickyard, then the Main Street Bar and Grill. That site received numerous extensions to the same grandfathering and was now under scrutiny of the ABCC. She also was concerned that this site was located next to the railroad tracks because alcohol and crossing train tracks didn't mix. In Ms. White's opinion, turning down this request would mean Council was putting the common good of the community above the request of a single business. However, if Council felt they should grant this request, she urged they grant it with no bar, a similar restriction on other restaurants on Main Street.

Jim Schofield, 2703 Bellows Court, Wilmington, DE, advised that he had a business and personal relationship with the owners of La Tolteca. Mr. Schofield works at PNC in the Newark Shopping Center and claimed the Cedillo's were excellent business people who handled themselves in a professional manner. He, too, has experienced problems with the PNC building, especially during heavy rainstorms where buckets were needed, so he understood what they were dealing with when they spoke about the condition of their present location. He concluded by saying that Mr. and Mrs. Cedillo were excellent people in the business.

Mr. Sisk added that Ms. White was correct about the liquor license. Mr. Cedillo would have to apply to the ABCC for a new license at this location and their application required a certificate of zoning generated by the City that would include the restrictions imposed by the City. With regard to the bar, he reminded Council that adults like to sit at a bar while they wait for their tables and some like to eat at the bar.

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

Mr. Clifton asked if there was a bar in La Tolteca and was told there was. He questioned the ratio of seats at the bar compared to the number of tables. Philip Reynolds, the former owner of Tracks, advised that the number of seats at the bar were 22 and 150 seats at tables. Mr. Clifton asked if they would agree to no happy hour and the answer was yes.

Mr. Pomeroy said he had no problem with La Tolteca, rather it was the location and its past history. He asked if they restrict a bar and La Tolteca moved out, would the next restaurant also be prohibited from having a bar.

Mr. Akin explained that the use goes with the land, but how a particular business owner configured his business in the interior was a matter of them getting approval by the ABCC as long as it met the City Code. If the applicant was willing to configure his business in a certain respect, either by limiting its hours or limiting the size of the bar, etc., that would only bind that applicant and would probably not bind a future holder of a liquor license at that facility.

Mr. Tuttle said if he were looking at the statistics of this site, he would have gone back 25 years, because that was how long his personal recollection was on this property. This has been a real problem site and not necessarily because of student misbehavior. When it was the Down Under, he claimed they wished they could get students to drink there because most of the people who got arrested were from Pennsylvania and Maryland. The parking lot across the street used to have the highest crime rate on campus when the Down Under operated. He thought La Tolteca would find that people would use that parking lot as well as the one on the site. Mr. Tuttle agreed with Ms. White's comments and looked at this as an opportunity to correct inconsistencies in the Zoning Code. A new business coming in today would not be allowed to get an alcohol license adjacent to residential property, and now they had the opportunity to fix the inconsistency. He noted there was no guarantee if they allowed the alcohol license to persist today that there wouldn't be a different business there in a few years.

Mr. Clifton appreciated Mr. Tuttle's perspective and agreed it has been a problematic property. That being said, the request for the extension began within the conclusion of the one-year statute of limitations. He also noted that some of the properties that Council crafted parameters for such as Santa Fe Grill, have not been a problem because of those parameters. He believed the ABCC and the Newark Police Department have been doing a great job controlling some of the problem properties. He also referred to Pat's Pizza who was now allowed to serve to 1 am and has proven not to be a problem. He acknowledged the track record at 60 N. College Avenue, but believed people changed and did not support using the history and saddling it to a new business. He questioned what kind of message they were sending to a business with a good track record if they turned this request down. He was confident the parameters set by Council protected the City and for those reasons he supported the request.

Mr. Markham asked if La Tolteca would be willing to do a probationary period and if there were a certain number of violations, they would have to come back to Council. Mr. Funk did not support a probationary period because the restaurant would spend hundreds of dollars moving their site to the new location. Mr. Funk also felt the hours of operation would control the situation. He also did

not think it would be fair to have a bar in the restaurant and not be allowed to sell alcohol.

Mr. Athey agreed with Mr. Clifton's comments, specifically, with the fact that La Tolteca was an established business with a good track record. He appreciated Mr. Tuttle's historic perspective, but thought this would be a good opportunity to fix the problem property.

Mr. Pomeroy said he had a real problem with the location and thought it was different than the Shaggy's location in that the geographic location contributed to the property. He thought the 22-seat bar equated to a bar scene. He did not believe the no happy hours and the hours of operations were contributing factors as to whether or not a location of this nature physically had a bar. He would be more comfortable with the request if it was dedicated to being a restaurant with no bar. He hoped the owners did not take his comments personally because the location has always been a problem.

Mr. Funk asked if the owners would agree to restrict the number of stools at the bar and the owners agreed to limit them to 12.

Mr. Osborne said he originally thought he would vote against the request because of the track record at this location. However, he heard a lot of positive things and because the restaurant had a good record in the City and would be responsible for their clients' behavior, he would support the request on that basis.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE GRANDFATHERING TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT 60 N. COLLEGE AVENUE BE GRANTED WITH THE FOLLOWING RESTRICTIONS:

1. NO HAPPY HOURS;
2. SERVICE HOURS OF 11 AM TO 11 PM MONDAY THROUGH SATURDAY, AND 9:00 AM TO 9 PM ON SUNDAYS; AND
3. NO MORE THAN 12 STOOLS PERMITTED AT THE BAR.

MOTION PASSED. VOTE: 6 to 1.

Aye – Osborne, Pomeroy, Funk, Clifton, Athey, Markham.

Nay – Tuttle.

21. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Contract 07-15, Curtis Paper Mill Smoke Stack Restoration

Ms. Houck summarized her memorandum to the City Manager, dated October 10, 2007, wherein she explained that this contract would complete restoration of the existing smoke stack at the former Curtis Paper Mill site. That would include the complete waterproofing of the restorative work, a new lightning protection system, restoration of the CURTIS name on all four sides, and its illumination after dark.

Ms. Houck recommended that Contract 07-15 be awarded to Jamison Masonry Restoration, LLC of Oreland, Pennsylvania, for the total cost of \$194,012. The funding for this project was available from the balance of the Police Department's Computer Aided Dispatch (CAD) equipment replacement funding as well as from a 2006 reserve balance, the 2007 capital project A0102, and 2008 capital project A0102.

Messrs. Funk, Athey, Clifton, and Pomeroy did not feel the City had the money to spend on this project at this time. Mr. Athey thought it was a lot of money to spend without knowing what would be done with this site in the future.

Mr. Luft advised that the contract could be deferred. However, this contract was a result of direction staff received after the workshop was held regarding this site.

A discussion followed regarding whether the smoke stack would be affected by the removal of the other buildings on the site. Ms. Houck assured that she knew of no reason for the smoke stack to fall over after the demolition of existing buildings. However, it would continue to deteriorate. She suggested that fencing be kept up around the smoke stack to discourage vandalism.

Mr. Funk claimed he sent another major contractor to look at the smoke stack to see if the restoration needed to be done now. The contractor thought it would remain standing for the next several years and the restoration could wait. Mr. Funk thought there wasn't much interest in the public for saving the smoke stack. Mr. Markham was concerned that the longer they waited, the more expensive the job would cost. Also, residents in this area have been waiting a long time for this site to get cleaned up. Ms. Houck advised that most of the people she talked to agreed with Council when they decided to keep the smoke stack. Mr. Markham said they also wanted to save the historic buildings and the water tower, but they were too deteriorated to save.

Mr. Pomeroy questioned whether the restoration could wait until Council decided what was going to happen with the site, and whether it would be more expensive the longer they waited. Ms. Houck said the restoration would always have to be done by a specialty contractor who did this kind of work, and they could come in as a sub for the contractor hired to do the whole project. Mr. Tuttle added that in terms of the timing of the restoration, it was really discretionary where other projects in the capital budget may not be discretionary depending on how much grant money the City would receive.

Mr. Markham asked that money be allocated in the near future since half of the money was already allocated.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT ALL BIDS BE REJECTED FOR CONTRACT 07-15, CURTIS PAPER MILL SMOKE STACK RESTORATION.

MOTION PASSED. VOTE: 6 to 1.

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

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

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. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-35.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 07-33)

23. 6-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. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-36.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 37-34)

24. 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.
None

25. 8. ORDINANCE FOR FIRST READING:

A. Bill 07-37 - An Ordinance Amending Ch. 2, Administration, Article IX, Personnel Rules, By Providing for New Management Employee Health & Dental Insurance Coverage, Term Life Insurance Coverage & Long-Term Disability Insurance Coverage Effective 1/1/2008

Ms. Lamblack read Bill 07-37 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-37.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 11/12/07)

26. 8-B. BILL 07-38 - AN ORDINANCE AMENDING CH. 23, PARADES & PUBLIC ASSEMBLIES BY REDEFINING A PRIVATE SOCIAL GATHERING & BY PROVIDING FOR REQUIRED FINES & EVICTION AFTER A SECOND OFFENSE

Ms. Lamblack read Bill 07-38 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-38.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 11/12/07)

27. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. Discussion Selection Process for City Manager & City Secretary

City Manager's Position –

Mr. Clifton referred to the last meeting where Council discussed the process they would use for the selection of the City Manager. The question was whether to do it in house or hire an outside firm. He did not know whether it was worth the money to hire an outside firm. He advised that he reviewed the process when Mr. Luft was hired, and although it was a time consuming process, he did not feel it was insurmountable. He believed if they used staff wisely and prudently they could handle hiring the City Manager in house.

Mr. Pomeroy thought the situation “cried out for an outside perspective” and had nothing to do with the credibility or the ability to handle it by staff and Council. He thought this was one of the most important decisions Council may make because it affected the future direction the City would take. He believed using a professional who had the expertise and the contacts in the outside realm was the way to go even though it may elongate the process. He also believed objectivity was important and clarified that he did not mean internal staff would not be able to review applicants objectively. The outside third party perspective was the kind of fresh look that was warranted in this situation. He also thought it was a lot to ask of staff at this time. He thought a professional would help guide Council through the process and maybe make the process in the long run more stream lined. He had no problem naming an interim City Manager if the process took longer than expected.

Mr. Clifton thought they would have to appoint an interim City Manager. He questioned at what point would Council get involved if an outside firm was hired. For instance, if 80 applications were received, how many would Council review. Messrs. Pomeroy and Funk thought Council should look at the final five to ten applicants and narrow that number to maybe three and then make a decision.

Mr. Athey thought it would be Council's responsibility to write the RFP and perhaps a subcommittee of Council would review the applications. He agreed with Mr. Pomeroy that they needed to go external for the City Manager's position especially in light of the workload situation of current staff members. He brought up the fact that the cost would be about \$35,000 to \$40,000 and they would need to find that money in the budget. The only thing that made him a bit hesitant was if they hired a City Manager and he/she left after a couple of years, that would be a very expensive cost. Mr. Funk said a new City Manager would have to sign a contract.

Mr. Funk asked if anyone was concerned they might not attract quality applicants during the reservoir litigation. Mr. Clifton said he thought about that and believed if the City was in the initial phases of the litigation that might happen. However, since it has gone through the Court and would be appealed in Philadelphia and no more input or depositions would be needed, he did not think it would have an effect. On the other hand, if it was a deterrent to a candidate, then he did not think that candidate was a strong enough City Manager for Newark.

Mr. Markham said as a consultant he was a little bias with his opinion. He would go outside because if they went internally, it would require a lot of Council's time for guidance, choice, direction, etc. He did not think the reservoir litigation would be an issue in hiring a new City Manager because it was not their history or project.

Mr. Tuttle supported retaining professional external services to help with hiring a new City Manager. He hoped when they went through the process of hiring a consultant that they found someone who was well aware of what qualities Council was looking for in a new City Manager. He did not want a consultant who offered his/her perception of what would serve the City; rather the consultant had to mind Council and the community's feelings and look for the right qualities and attributes.

Mr. Osborne agreed with hiring an outside firm.

The chair opened the discussion to the public.

Ezra Temko, 42 Lynn Drive, suggested that community involvement in the process would be very important to talk about, and suggested when the last two or three candidates were narrowed down, that a public forum be held similar to what was done when the University was hiring a new president.

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

It was agreed that the City Manager's office would draft an RFP for Council to review at the next Council meeting.

City Secretary's Position -

Mr. Clifton said after talking with several people, the last time the position was open, it was opened internally before going outside. He thought it might be prudent to follow that same process. Mr. Funk said he supported promoting within and questioned why Cpt. Nefosky wasn't promoted when he was qualified. Mr. Luft said Cpt. Nefosky had the opportunity but he did not want the job. Mr. Funk said there was a qualified Deputy City Secretary so he didn't see any reason why she could not be promoted. Mr. Clifton said he supported opening up the position for anybody that was on board because there were several people who were well qualified for the job.

Mr. Markham did not see how this position was any different than the City Manager's position because it was just as important. He questioned why they would not hire a consultant to find the best-qualified candidate regardless where he/she was. Mr. Clifton agreed both positions were important.

Mr. Tuttle agreed they were both important but felt there was a real difference in terms of what they were looking for with the City Secretary. He claimed a lot has been said about institutional knowledge. When you hire a City Manager he thought they were looking for certain skills that might well translate from another municipality to Newark rather seamlessly. He thought the City Secretary was the keeper of many of the traditions of the government and he believed if there were people inside, whether it was in the City Secretary's Office or elsewhere in the City, they should look at them first before looking outside. In fact, he claimed if you looked around the state and saw how they filled vacancies in Dover and other City Secretary positions in significant cities in Delaware, they were typically internal promotions.

Mr. Pomeroy agreed it was reasonable and appropriate to look internally in an expedited fashion. He also agreed it was consistent with the way in which other organizations do it, and he believed someone from the inside could and would emerge.

28. 9-B. COMMITTEES, BOARDS & COMMISSIONS:

1. Recommendation from CD/RS Committee on Activities Proposed for 34th Year (July 1, 2008 – June 30, 2009) Community Development Block Grant & 2008 January 1, 2008 – December 31, 2008) Revenue Sharing Programs

Mr. Fortner explained that the Community Development Block Grant was a federal program through HUD to help low and moderate income families living in Newark. The Revenue Sharing program was funded through City funds and its purpose was to fund programs that benefited Newarkers as well as low and moderate-income families.

The programs recommended for funding totaled \$320,000 for Community Development funds and the 2008 Revenue Sharing program recommendations totaled \$57,740. A list of programs funded was included in Mr. Fortner's report to the City Manager, dated October 10, 2007. Also included in the report was a list of projects that did not receive funding and an explanation as to why they were not funded.

Mr. Clifton referred to the Cherry Hill Manor Maintenance Association request for \$150,000 to rehabilitate the private service alleys that was not funded. He asked if the service road in College Park was repaired with CBDG funds to which Mr. Fortner answered yes. However, he explained that the funding available today was a lot different than it was a few years ago when that was funded. There was now less funding and no longer any surplus. It was also noted that the Cherry Hill neighborhood was too small to use the U.S. Census data to show that at least 51% of the residents were low and moderate income.

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT COUNCIL APPROVE THE RECOMMENDED 34TH YEAR (JULY 1, 2008 – JUNE 30, 2009) COMMUNITY DEVELOPMENT BLOCK GRANT AND 2008 (JANUARY 1, 2008 – DECEMBER 31, 2006 REVENUE SHARING PROGRAMS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

29. **9-C. OTHERS:** None

30. **10. SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff:
1. Setting Date for Public Hearing of 2008 General Operating Budget

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE PUBLIC HEARING FOR THE 2008 GENERAL OPERATING BUDGET BE HELD NOVEMBER 26, 2007.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

31. **10-B. ALDERMAN'S REPORT**

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT DATED OCTOBER 16, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

32. 10-C. FINANCIAL STATEMENT

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE FINANCIAL STATEMENT ENDING SEPTEMBER 30, 2007 BE RECEIVED.

Mr. Funk asked if the City always had \$770,000 for legal fees in the budget or did that number get modified when the bills started to come in. Mr. McFarland said there was a budget for legal fees, which Council amended by \$75,000. It was also noted that the insurance company was suppose to be sharing the legal fees with respect to the reservoir litigation. To date, there has been no reimbursement from the insurance company.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

33. 10-D. REQUEST FOR EXECUTIVE SESSION RE PERSONNEL

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PERSONNEL.

Council entered into Executive Session at 9:53 pm and returned to the table at 10:03 pm. There was no action required by Council at this time.

34. Meeting adjourned at 10:04 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf