

**CITY OF NEWARK  
DELAWARE  
COUNCIL MEETING MINUTES  
September 22, 2014**

Those present at 6:15 p.m.:

Presiding: Mayor Polly Sierer  
District 1, Mark Morehead (arrived 7:15 p.m.)  
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  
Deputy City Manager Andrew Haines  
Finance Director Lou Vitola  
Planning & Development Director Maureen Feeney Roser  
Planner/DNP Administrator Ricky Nietubicz

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**EXECUTIVE SESSION**

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(2) for the purpose of discussions on site acquisitions for publicly funded capital improvements.

Council entered into Executive Session at 6:15 p.m. and returned to the table at 6:52 p.m. Ms. Sierer announced that Council concluded its Executive Session and there was no action 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. RUCKLE, SECONDED BY MR. MARKHAM: TO REMOVE ITEM 5-B, REQUEST OF ASSADOLLAH PIRESTANI FOR THE MAJOR SUBDIVISION OF 1,774 ACRES TO EXTINGUISH THE LOT LINE BETWEEN TWO EXISTING PARCELS AND SUBDIVIDE TO CREATE FOUR SINGLE FAMILY RS ZONED LOTS, ONE OF WHICH WILL CONTAIN THE EXISTING HOME AT THE PROPERTY LOCATED AT 305 CAPITOL TRAIL.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO MOVE ITEMS 5-A, NEWARK NATURAL FOODS CO-OP, AND ITEM 5-C, LIFT ALCOHOL DEED RESTRICTION AT 76 E. MAIN STREET, BEFORE ITEM 1-A.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

4. 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**

A. Request of the Newark Natural Foods Co-Op For a Special Use Permit to Operate a Retail Food Store With More Than 5,000 Square Feet in Floor Area With an Eatery and Office Space at the Business Located at 230 East Main Street, Unit 209, Newark, Delaware

**02:00**

Ms. Sierer and Mr. Morehead recused themselves from the discussion as both were members of the Co-Op. Ms. Sierer relinquished the Chair to Deputy Mayor Markham for this discussion.

Will Hurd, 115 Lovett Avenue, chaired the Relocation Committee for the Newark Natural Food store. He made one correction in his letter where he talked about the 6,000 square feet – that number was just the grocery portion of the building and there is additional square footage that will be used as office and community meeting space. They currently rent 9,800 square feet. The relocation and expansion of the store will allow expanded offerings and continue to bring prices in line with the competition. The expansion was estimated to add 12 more full and part-time staff to the current staff of 38 and there is a robust benefits package for them.

There were no Council comments.

**Public Comments:**

Matthew Talley, former Newark resident, was the Board President of Newark Natural Foods Co-Op. He thanked Council for their consideration and hoped the relocation would allow them to better achieve their mission of providing a full service grocery and café to Newark residents at affordable prices.

Don DelCollo, District 4, was on the Board and the Treasurer of the Co-Op. He expected the Co-Op would become a keystone of the Newark Shopping Center and would help downtown Newark advance.

Catherine Ciferni, District 2, thanked the Co-Op for adding community rooms in the building to help with the difficulties of finding community meeting space in Newark.

Amy Roe, District 4, added that the Newark Shopping Center was directly on the Pomeroy bike line, was very accessible by bike and would be more accessible than their current location.

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

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: TO APPROVE THE SPECIAL USE PERMIT AS REQUESTED FOR NEWARK NATURAL FOODS CO-OP.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

Aye: Chapman, Gifford, Hadden, Markham, Ruckle

Nay: 0.

Recuse: Morehead, Sierer

**5. 5-C. REQUEST OF HAKUNA HOSPITALITY GROUP ON BEHALF OF FRATELLI ENTERPRISES INC. TO LIFT A DEED RESTRICTION AGAINST SERVING ALCOHOL OTHER THAN BEER AND WINE AT THE PROPERTY LOCATED AT 76 EAST MAIN STREET**

**10:05**

Ms. Feeney Roser presented the request from Hakuna Hospitality Group to lift the deed restriction against the sale of spirits at 76 East Main Street. The property was originally approved by Council in March 2003 for a mixed-use building with a 75 seat ground floor restaurant and apartments above. At that time Council had not yet adopted a special use permit as a way to monitor restaurants selling alcoholic beverages and sometimes deed restrictions were used to regulate the sale of alcohol at them. During the approval process for 76 E. Main Street the owner/restaurant operator agreed to sell only beer and wine at his restaurant. As a result the deed restriction prohibiting spirits from being sold there was recorded. When that restaurant closed it was leased by Hakuna Hospitality (current operators of Santa Fe Mexican Grill and Mi Ranchito Mexican store) for a new venture known as Del Pez Sea Mex. The request to lift the deed restrictions was reviewed by the City operating departments which had no objections to the request. This was not in conflict with the purposes of the Comp Plan and would not be detrimental to the health or safety of persons residing or working in the area. Therefore, staff recommended that Council consider lifting the deed restriction.

**Council Comments:**

Mr. Markham asked if there was a special use permit already in place on the property. Ms. Feeney Roser replied there was not since the restaurant site was approved prior to the City putting them in place and because it was governed by zoning and the restaurant use was not abandoned for more than a year, a special use permit was not

required. Mr. Markham's concern was that the restaurant would become another bar letting out at 2:00 a.m. Mr. Javier Acuna of Hakuna Hospitality Group explained Del Pez was a small, high end seafood restaurant that focused on quality and they have been selling beer and wine for several months. Lifting the deed restriction would not change anything with the operation of the business. The current hours were opening for brunch at 11:00 a.m. and closing at 11:00 p.m. and Mr. Acuna did not want to make a change.

Mr. Ruckle recommended if the hours were extended that food be served up until that time.

Ms. Hadden confirmed there was currently an eight seat bar in the restaurant and there was no plan to increase the bar area.

Mr. Morehead asked if there were other restaurants with deed restrictions. Ms. Feeney Roser thought this was the last one that was done that way. Mr. Morehead asked Mr. Acuna the hours at Santa Fe. Mr. Acuna replied it was open from 10:00 a.m. until 1:00 a.m. on Thursday, Friday and Saturday. Mr. Morehead asked if he would be willing to restrict this to 11:00 p.m. Mr. Acuna said he would be more than happy to restrict until 11:00 p.m. As he said before their focus was not to say open later but during the holidays people stay longer and later, so that would restrict the way they do business.

**Public Comments:**

John Faraone, Esq. represented Fratelli Enterprises, owner of Cucina DiNapoli which previously occupied the site. Mr. Faraone filed the application for the removal of the restrictions and the Amendment of the Declaration. He was in favor of the request and agreed with Mr. Acuna's comments.

Brett Zingarelli, District 4, thought the restriction should be lifted and did not think they should be required to close at 11:00 p.m.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO LIFT THE DEED RESTRICTION AGAINST SERVING ALCOHOL OTHER THAN BEER AND WINE FOR THE PROPERTY LOCATED AT 76 EAST MAIN STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay: 0.

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

**26:41**

John Morgan, District 1, shared a prepared statement on revising the City's noise ordinance (*Comments attached*). Mr. Gifford asked if there were any towns that Mr. Morgan thought would be a good model for the City and Mr. Morgan stated that San Diego, CA, was one of the best he found.

Jeff Lawrence, District 3, expressed concerns about 1) clearing the Smart parking meters after a customer vacates a space, 2) defaulting to the maximum amount of money when a credit card is swiped and 3) lack of direction from Council as to whether the sensors should be used for enforcement. His preference was that any money remaining in the meter should be refunded to the customer who vacates the space.

Brett Zingarelli, District 4, did not think it was appropriate to clear the meters and disagreed with Mr. Herron's opinion that he did not believe it was a change in rates and that the amount of time was not regulated.

Amy Roe, District 4, stated the Community Development Block Grant agenda for the meeting on Wednesday was posted in the hallway but not on the City's website. She wanted the agenda put on the website with seven days notice and for that meeting to be changed. She received a copy of the contract as part of the Superior Court filing against The Data Centers, LLC, and noted the intention was for TDC to sell electricity to UD and was an issue to be reviewed. Ms. Roe disagreed with Mr. Herron's opinion on the parking meter rates.

Catherine Ciferni, District 2, pointed out on East Main Street the parking meters had a sticker on them that said “coins” and toward the center of Main Street it said “quarters” and it was clear what types of coins it would take. She would like the City to do a study for the next year to determine utilization on all the meters of coins vs. credit card and maybe make parking free in the summer.

**7. 1-B. ELECTED OFFICIALS**

**01:47:19**

Representative Paul Baumbach, 23<sup>rd</sup> District, thanked Mr. Coleman and the Public Works Department for their response and assistance with DelDOT on the roads. Mr. Baumbach thanked Council for approving the variance for the Newark Co-Op. He had discussed with Ms. Sierer an idea presented by a business owner, “Don’t Block the Box”, in order to address traffic gridlock on Main Street. He applauded Council’s efforts to have a task force look into the number of new rental units being constructed. He thanked Ms. Sierer for joining him in a conversation about homeless issues. Community coffees were held by Mr. Baumbach the first Wednesday of the month from 7:30 – 9:00 a.m. at Panera.

**8. 1-C. UNIVERSITY**

**45:46**

(1) Administration – Caitlin Olsen, University of Delaware Government Relations, reported there would be a Thought Leader Speaker Series on 9/29 where President Harker would discuss the Delaware Will Shine strategic plan initiative from 4:00-5:00 p.m. at the Center for the Arts. Parents and Family Weekend was 10/10 through 10/12 with comedian Joel McHale performing at the Bob Carpenter Center on Friday evening. UD’s Physical Therapy program hosts a Family Fun day on 10/19 from 11:00-5:00 to raise money for physical therapy research.

**9. 1-C-2. STUDENT BODY REPRESENTATIVE**

**48:04**

Lauren Mick, Governmental Affairs Senator – University Student Government Association, announced CNN Digital national political reporter Peter Hamby was coming to Mitchell Hall on 10/1 at 7:30 p.m. The Student Government Association had its first senate of the semester and inducted 15 new senators and voted in favor of a turbo vote initiative which gets students absentee ballots, many of whom are not from Delaware. The Blue Hens men’s soccer team was ranked #11 in the country.

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

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

**49:08**

Ms. Houck reported it was the 43<sup>rd</sup> annual Community Day and about 100 volunteers assist the Parks and Recreation Department every year for the event.

An economic development video was recently completed and aired at the International City Manager’s Association Conference. It would be launched tomorrow locally and within the State. The video was played for Council and the audience.

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

**55:22**

**Mr. Ruckle**

- Expressed thanks to the employees of the City for all they do and appreciated the low taxes for the services provided. He also thanked Council for their service to the City.
- Early morning pick up time for the dumpsters behind Bing’s Bakery was resolved.
- The issues with the buses on Tyre Avenue were addressed.
- Washington House had a safety area surrounding the building for the falling bricks.
- Attended and worked at Community Day for the Newark Charter School.
- Received a request for a stop sign to be moved at Witherspoon and Aylesboro.
- Met with 24<sup>th</sup> District State Representative Ed Osienski. A monthly meet and greet was planned at the Newark Senior Center to include constituents of Messrs. Ruckle and Osienski and District 5 County Council member Lisa Diller.
- Attended the Cecil County FOP crab feast and would like to start a fund raiser for Newark’s FOP.
- Attended the University of Delaware football game and looked forward to forming partnerships with UD.

### **Mr. Morehead**

- Council members attended the noise workshop last Monday which he thought was a positive event. He noted that UD was not mentioned during the workshop and passed on his appreciation to the administration for being a workable partner.
- A discussion was scheduled for next Monday at 7:00 p.m. to discuss storm water and the public was invited to attend and offer comments.

### **Mr. Markham**

- Taste of Newark was scheduled for 9/28.
- In regard to Ms. Ciferni's comments about unclear instructions on parking meters (coins vs. quarters), he felt this was a simple request to get fixed.
- Requested the date for when McKees solar park would be put into use.
- A solar workshop was scheduled in Dover for 10/1 from 10:00 a.m. – 3:00 p.m.

### **Mr. Chapman**

- Received a number of questions from constituents regarding repaving. Mr. Coleman was asked to provide details and share the information with Council members.

### **Mr. Gifford**

- Community Day was a very nice event and he thanked the volunteers and the Parks and Recreation Department.
- Thanked the police for quick response in handling recent crime in Arbour Park.
- Requested that Weekly Departmental Reports be available in an easier to get to location, perhaps through a link on the left side of the website.
- Asked for an update on the purchase of license plate cameras. Ms. Houck researched the purchase of the cameras in 2009, 2011 and 2013. A purchase order was issued for that in December 2013 for \$44,070 and she determined that was inappropriate and should have come to Council. Staff was directed to inquire about returning the cameras which were in the City's possession since mid-March and were paid for in April. They were not installed because of logistics for the installation.
- Asked about a DelDOT meeting regarding truck traffic on Route 4. Ms. Houck reported a meeting was planned in regard to the toll evasion and whether DelDOT would support enforcement by the City. There was concern about the statewide legality of what is local traffic. Mr. Herron reported the meeting was in the process of being scheduled.
- Regarding the parking meters, he asked when the City would be able to collect information on usage on Main Street and possibly be included with the monthly financial statement. Ms. Feeney Roser said staff should be able to do that now.

### **Ms. Hadden**

- Thanked staff for their good work in responding to her requests.
- She commended the City of Newark video presented at tonight's meeting.
- Thanked Dr. Morgan and expressed her intention to work only on the residential single family districts and nighttime noise ordinance and not expand it any farther.
- Attended the noise workshop and Community Day. She noted some vendors received parking tickets as a result of parking in metered spots at Pearson. They requested when next year's information goes out that it be made clear parking is free, but not at the metered spots in the Pearson lot.
- Enjoyed the Cecil County FOP fund raiser.
- In light of the number of robberies in District 4, she was working with the Police Department, and a crime workshop would be offered in the near future.
- The next meet and greet would be 10/2 at Pat's Pizzeria at 5:00 p.m.
- Suggested publishing the results of Council meetings in the Newark Post.

### **Ms. Sierer**

- Attended a ribbon cutting ceremony at Painting With a Twist at Suburban Plaza.
- Attended the Chimes 20<sup>th</sup> anniversary. Chimes employs many disadvantaged and disabled members of the community.
- Toured residential properties as part of the backyard habitat garden tour. She thanked Karen Barker and her husband Pat for heading the effort. Funds raised go to the Parks and Recreation Department. The City was named a National Wildlife Federation Certified Habitat Community thanks to Lori Athey, Karen Barker and others. Newark was the first in the State and a ceremony will be held on 10/9 at Handloff Park at 3:00 p.m.
- Toyota World on Cleveland Avenue hosted a grand opening.

- Attended a board meeting for Cherry Hill Manor to work on beautification projects at the entrance on Colonial Court.
- Tickets were on sale for the Taste of Newark at the Municipal building. The event was from 10:00 a.m.-3:00 p.m. on 9/28.

**13. 2. ITEMS NOT FINISHED AT PREVIOUS MEETING:**

- A. Resolution No. 14-\_\_: A Resolution Authorizing the City of Newark to Enter Into an Intergovernmental Cooperation Agreement and Authorizing Participation in the Delaware Valley Health Trust (*Postponed at the request of Council from the September 8, 2014 Council meeting.*)**

**1:16:14**

Mr. Haines provided an update since the last meeting when Mr. Chapman requested an audit from DVHT for Council to review. Representing Highmark were Ms. Cook, Ms. Eitl and Mr. Riley and from DVHT were Mr. Lee, Mr. Fallon and Mr. Beauchamp and Ms. Lynn.

**Council Comments:**

Mr. Ruckle asked if both plans would be available for employees to participate in. Mr. Haines reported the Employees Healthcare Committee voted for the DVHT option.

Mr. Markham was glad the cost-saving health plan was brought as an alternative.

Mr. Gifford asked if there was anything else from Highmark besides the two page response. Mr. Haines said there were copies of web portals used for member services.

**Public Comments:**

Margaret Eitl, Vice President of Sales and Client Management for Highmark reinforced what was in some of the communications. She noted this was a decision to leave a Delaware insurer that is a not for profit status organization. Highmark was doing a lot of work to curb increases going forward and were talking about coming in with an increase of 3.7% over last year which was 6 or 7 points under the trend for the marketplace. She had doubts about DVHT's long-term ability to manage costs. Highmark was moving to an outcome based reimbursement system intended to reduce costs by changing behavior within the provider community and with consumers. She asked the City to give serious consideration to making a change as they would be better served short and long term with Highmark.

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

Mr. Markham confirmed that the Employee Healthcare Committee voted unanimously for the DVHT proposal.

Mr. Chapman asked what percentage the proposed rate increase was from now if the City joined DVHT. According to Mr. Haines the DVHT model was approximately \$137,000 below than the Highmark model and was 3% lower on the dental which Highmark was not a part of - the ancillary lines were worked on with Mercer. In addition, a savings on commissions of 5-10% would be removed on the ancillary lines. Mr. Fallon, DVHT, confirmed their proposal represented a 3% reduction below the revised renewal from Highmark or about less than a 1% total increase over the current year premium. Mr. Fallon explained that they do not underwrite the risk of going in to a member joining the pool. Highmark had all the data that the administrative expense differential between the Trust and the commercial insurance company was significant. DVHT was confident that because of the administrative expense differential, they were able to provide the upfront reduction. The other point was that with a commercial market insurance the way the rate renewal was developed there were years where, for example, a 5% increase was received when no increase should have been received or the rates should have come down. The way the formula was developed, using trends of 17 months of midpoint to midpoint trend analysis, an 8-9% annual trend was taken and turned into 16%. Thus, rates were always inflated and there was no way to receive a return in excess premiums under the current commercial market health insurance program. There was no mechanism for returning the excess premium. With the Trust, the City would be joining a program with other public sector employers and there was a rate stabilization return, so excess premiums were returned to members to be used to offset future year increases. Mr. Chapman asked whether the expected rate increase (now less than 1% with the proposed DVHT plan) had changed from the last Council meeting. Mr. Fallon confirmed

it had based on the revised renewal in response to the final renewal that came from Highmark. Mr. Chapman asked if the less than 1% rate increase was a net result after rate savings returns expectations or was this an off-the-top less than 1% rate increase. Mr. Fallon said that rate was guaranteed for 12 months, it was a complete transfer of risk, it was not an individual, stand alone, self-funded where the City assumed additional risk for large claims and claim fluctuations. It was a fully insured equivalent rate that would provide the City with the same protection in terms of guaranteed costs as the fully insured commercial rate. Mr. Chapman confirmed this was a 24 month Trust Agreement with a 12 month understanding of the rate agreement. Mr. Fallon explained there was a utilization component to the rate but it was not unusual for DVHT members, especially those with 200 or more employees to receive increases that are in the low single digits. That was before plan changes or before the return of any rate stabilization credits. He added a year with a less than 1% increase in health insurance was not the norm but was not so far from what DVHT's larger members experience to be considered an anomaly. DVHT members were not required to go out to alternative carriers to negotiate against the Trust to make sure they were delivering the lowest possible rate renewals to them.

Mr. Morehead asked the percentage discussed at the last Council meeting. Mr. Haines said at the time of the document submission Mercer was providing a 10.54% renewal. Thursday before the Council meeting, but after the packet deadline, that renewal came in at 5.7% and then the updated renewal went down to 3.27%. Mr. Morehead questioned what the fee of potentially switching to DVHT would represent in a percentage basis over this year. Mr. Haines said it was 0.27%; Mr. Fallon added this was based off the illustrative renewal of 10.5% pending receipt of the renewal since at that time it was a preliminary renewal projection from Mercer. Further, this was 4% below the 10%, so a net increase of 6%. Mr. Morehead questioned the \$625,891 savings shown to the City in the PowerPoint presentation. Mr. Haines responded that margin was what was discussed with the updated renewal from Highmark the difference now stood at about \$137,000 and confirmed there were two movements since the last Council meeting. Mr. Fallon explained in preparing the timeline from the first meeting with the Committee, the renewal was not yet available. All DVHT had was the projected renewal so they based a proposal that was illustrative pending receipt of the renewal with the expectation that ultimately the 10.54% number would change. Most likely it would decrease since it was a conservative projection from Mercer. The first opportunity they had to review the actual renewal was after the last Council meeting. That was when DVHT provided what they considered their final proposal but in light of the additional changes, they revised that proposal.

Mr. Morehead remarked he never saw a company send letters without dating them and was surprised at Highmark for doing that several times.

Mr. Ruckle commented he did not realize it was a non-profit against a non-profit and had never heard of this before. He had been focused on costs and asked if this was a true apples-to-apples on service. Mr. Haines believed so although Highmark did not believe that was the correct analysis. Though they are both not for profit one was municipally owned and pooled and the Employee Committee views that as slightly different. Also the wellness piece was viewed as a value. The employee's choice of a PPO vs. an HMO stayed the same with the option to choose a doctor.

Ms. Hadden asked the employee groups that were represented in the meetings. Mr. Haines reported the Committee was comprised of all four employee sectors – the FOP Union, the AFSCME Union, the CWA Union as well as a representative from management. The other two members were the City Manager and the Finance Director.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT RESOLUTION NO. 14-\_\_ : A RESOLUTION AUTHORIZING THE CITY OF NEWARK TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT AND AUTHORIZING PARTICIPATION IN THE DELAWARE VALLEY HEALTH TRUST BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

14. 3. **SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff

1. 2014 Financial Policies and Procedures – Finance Director  
**Resolution No. 14-\_\_:** Adoption of Financial Policies and Procedures

**01:49:33**

Mr. Vitola reported the City's financial policies were last adopted in 2009. He recommended the policies be reviewed regularly going forward. The review process was open to the public on 5/5/14 at the Council workshop and most of the recommended changes redlined in the revised document were discussed then. The Reserve policies by fund consumed the largest portion of the document and were updated to relate them closer to the City's operations rather than generic standards and were tied to revenues. In a fiscal crisis, the City needed to continue operations including paying all debts, expenses and committed expenses, making contractual debt service payments and providing electric, water and sewer service to residents. Rather than basing reserve levels on revenues they were being based on expenditure levels. Based on the 2014 budgeted expenditures the Reserve policies as proposed call for target reserves of \$27.2 million, reduced from the \$33 million target discussed at the workshop. The minimum and maximum thresholds were not changed.

The cash management policy was updated to address collateralization and the need for stand-alone investment policy statements. Investment policy statements existed for the Pension Fund and the OPEB Fund. A clearer statement was needed for the Cash Reserve Fund and that work was underway and was separate from this policy. If policy called for them they would be brought to Council.

The Revenue policy was updated to clarify capital spending and post-employment expenditures cannot be ignored in the Revenue budget. To clarify operating transfers, the policy on operating transfers was not an actual change in procedure, it was a reflection of what was already done but the ratings agencies like to see that type of statement memorialized in the policies so that was added. The Expenditure policy was updated to include a statement about how the City should approach pension funding. Number 3 in the Expenditure policy was not discussed on 5/5 but was important to include in this document because it will give the actuarial consultants guidance they need to build the new pension valuation required with the GASB statement 67 and 68. The balance of the changes reflect word choice and housekeeping and do not change the intent of the policy.

**Council Comments:**

Mr. Markham was looking for an opportunity to do two things. In the overall policies the City Manager and Finance Director shall be charged but he wanted it to be clear that it was Council's oversight and final approval that had to be followed by the City Manager and the Finance Director. He suggested on page 1 adding "*With oversight and final approval of City Council, the City Manager and Finance Director shall be charged with the responsibility to ensure the financial objectives of these policies are maintained given the constraints of annual budget approvals.*"

Regarding page 2, item 2, "The City will actively support economic and industrial development recruitment, growth and retention efforts to provide for a solid revenue base", Mr. Markham suggested adding that large industrial development required an act of Council for approval. This could also include the University of Delaware, large connections to the grid, permits from DNREC, public safety, etc. Mr. Vitola felt this item did not transfer any authority or empower the City Manager or Finance Director to do anything without Council oversight. He suggested adding "the City will actively support revenue diversity" or striking item 2 altogether. Mr. Markham looked at this as a red flag if something came across Finance's desk since the Finance Director was being held to these policies. Mr. Ruckle supported striking it while Mr. Markham was looking to add to it. Mr. Chapman said the purpose of this document was as much Council guidelines as well as a marketing piece for debt instruments. He thought there was too much qualifier and quantifier in deciding what comes to Council or whose job it is to monitor. He did not want to complicate an attempt to simplify and update the financial policies. Mr. Chapman felt Mr. Markham's comments on item 2 might be better accomplished in another form but approved the first recommendation.

Mr. Morehead said Council needed to pay attention to the fact that there were policy statements all over the place. He supported being careful when saying this will be our policy. He did not like the wording “The City will actively support economic and industrial development...” with no qualifiers. He preferred “The City looks to diversify its revenue streams”. He thought the policy needed to be stated carefully. He asked if a two week delay would be a problem to get the document passed. Mr. Vitola pointed out it was already five years old and he wanted it to be budget relevant. He would follow it as revised with the exception of the reserve policies but it did not have a major impact on the budget. Mr. Morehead asked for more time to work with this important document.

Mr. Gifford was also concerned with item 2 and some other items and supported a delay. He requested Mr. Vitola to expand on item 4, “The City will establish user fees and charges for services, when feasible, at levels related to the total cost of providing the services. The City will review the fees and charges at intervals not to exceed two years to ensure such charges continue to support the cost of providing the services.” Mr. Gifford asked whether the City was just supporting the cost or was trying to match its fees with the service in some areas and should that item be revised. Mr. Vitola thought the user fees in item 4 could be clarified by specifying the General fund. It was important to note that the Proprietary funds generated a surplus used to support the General fund but the General fund was where fees were intended to offset the cost of the services.

Mr. Gifford addressed page 4, the Expenditure Policy, items 1 and 2. He asked where in the policy it discussed setting up new forms of revenue generation. Mr. Vitola referred to Revenue Policy item 1, “The City will strive to maintain a broad and diversified revenue base that will serve to distribute the burden of supporting City services and will protect the City from short-term fluctuations in any one revenue source.” On the expenditures Mr. Vitola thought it was pointing back to the recognition that funds were limited, so the City had to prioritize the items on which money was spent and core governmental services should be funded with the first dollars.

On Page 1, item 3, under the Revenue Policy, “The City will maintain collection systems and implement necessary enforcement strategies in an effort to collect revenues from all available sources...” Mr. Gifford felt the City was trying to find as much as possible and asked if that was from current revenue sources. Mr. Vitola said that was from current revenues and meant receivables could not be let go as it was a strain on paying residents and customers.

Mr. Vitola referred to Expenditure Policy item 6 “The City shall not budget revenues derived from infrequent and unanticipated transactions for ongoing expenses. Any such receipts shall be set aside...” and said Mr. Markham’s comment at the workshop that Council still had the authority to appropriate such funding if that is the case. He noted that was added based on that comment and it was in the policy.

Mr. Chapman asked if there were any other specific alterations to the form of the document presented by Mr. Vitola that should be discussed. Mr. Gifford said his only change was under the Revenue Policy, item 4, specifying that it was the General Fund. Mr. Vitola proposed the wording, “The City will establish *General Fund* user fees and charges for services, when feasible, at levels related to the total cost of providing the services.” The change was acceptable to Mr. Gifford.

**Public Comments:**

Amy Roe, District 4, referred to the historical cash balances with targeted levels and asked if those levels were going to change dramatically. Mr. Markham believed it was pegged at \$27.2 million. She wanted assurance about whether the new levels would impact utility rates in the foreseeable future. Mr. Vitola confirmed they would not. She was concerned about Revenue Policy item 2 and thought the intentions behind it were already encapsulated in item 1.

Catherine Ciferni, District 2, discussed item 2 and felt the underlying issue was not the financial policy but that Council should figure out how to reconnect and establish trust with the community to the level that the decisions made regarding industrial development would not proceed the same way in the future.

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

Mr. Morehead referred to the Expenditure Policy, page 4, item 1, and said the Finance Director put public safety first under basic and essential services provided by the City. Mr. Vitola mentioned that to highlight the importance of public safety but the wording "such as" implied this was not an all-exhaustive list and these three were equal and not in any particular order.

AMENDMENT BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO STRIKE REVENUE POLICY, ITEM 2, PAGE 2.

AMENDMENT PASSED. VOTE: 6 to 1.

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

AMENDMENT BY MR. GIFFORD, SECONDED BY MR. MARKHAM: (1) IN THE OPENING PARAGRAPH ON PAGE 1 ADDING, "WITH OVERSIGHT AND FINAL APPROVAL OF CITY COUNCIL BEFORE THE CITY MANAGER"; (2) ON PAGE 2, ITEM 4, ADDING "GENERAL FUND" AFTER "ESTABLISH" AND BEFORE "USER"; AND (3) ON PAGE 4 IN THE EXPENDITURE POLICY MOVE "PUBLIC SAFETY" FIRST AFTER "AS".

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: TO POSTPONE FURTHER ACTION ON THE RESOLUTION UNTIL IT COMES BACK TO COUNCIL WITH AMENDED WORDING AT THE 10/13/14 MEETING.  
MOTION FAILED. VOTE: 2 to 5.

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

MOTION BY MR. CHAPMAN, SECONDED BY MR. GIFFORD: TO APPROVE THE ADOPTION OF THE FINANCIAL POLICIES & PROCEDURES AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 1.

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

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

15. 4. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:** None
16. 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**
- A. Request of the Newark Natural Foods Co-Op For a Special Use Permit to Operate a Retail Food Store With More Than 5,000 Square Feet in Floor Area With an Eatery and Office Space at the Business Located at 230 East Main Street, Unit 209, Newark, Delaware

*(See Item 4)*

17. 5-C. **REQUEST OF HAKUNA HOSPITALITY GROUP ON BEHALF OF FRATELLI ENTERPRISES INC. TO LIFT A DEED RESTRICTION AGAINST SERVING ALCOHOL OTHER THAN BEER AND WINE AT THE PROPERTY LOCATED AT 76 EAST MAIN STREET**

*(See Item 5)*

18. 6. **ITEMS SUBMITTED FOR PUBLISHED AGENDA**
- A. **Council Members** – None
- B. **Others:** None
19. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS:** None

**20. 8. FINANCIAL STATEMENT:** (Ending August 31, 2014)

**2:25:06**

Mr. Vitola presented the unaudited financial statements for the first eight months of the year. On a citywide consolidated basis, the Operating surplus was \$4.4 million, about \$276,000 lower than the budgeted surplus, a minor improvement since July and not much changed in August. In Governmental funds, transfer tax receipts were strong for a second straight month. The Christina Mill complex was a large sale. July featured a large number of smaller transactions which was more encouraging and was a similar trend at this point during 2013. Most other Governmental fund revenue areas such as permits, property taxes, park fees, franchise taxes, interest income and grants and other revenues were exceeding or close to the budget. Court fines and parking meter revenue continue to be two trouble spots. On the expense side the variance to budget was \$464,000 driven by legal and contractual expenses in the Legislative Department, snow removal expenses and streets and parks from the beginning of the year and personnel expenses in Finance, IT and Legislative Departments. In the Enterprise funds the Electric fund was driving the positive Revenue variance. The mild summer pushed down volumes by about 9% for July and August with purchase volumes and costs moved down with sales volume. The price spikes that normally accompany high heat were avoided so the Electric margin was still ahead of budget and was not affected very much by reduced volume. Water and Sewer continue to track higher than the budget. Enterprise fund expenses improved in August and have normalized with the budget. The cash position at the end of August was \$27.4 million which consisted of less than \$100,000 in the Smart Meter accounts, \$6.3 million in Operating cash and \$21 million in the City's cash reserves.

Mr. Vitola reported at the 5/5 Financial Policies workshop changes were mentioned to debt authorization in the Charter which would require a Resolution of Council to send it to the State Legislature. He was working on a memo with support for changes in the Charter that were reviewed by the City's Bond Counsel and would be sending it for review. It was not budget dependent but mattered in terms of financing storm water in the budget.

**Council Comments:**

Mr. Gifford asked about the additional costs in the Legislative Department and whether more charges were coming in – Mr. Vitola would follow up with him but it was approximately \$145,000 over.

Mr. Markham asked if funds were expected to recover by the end of the year. Mr. Vitola said no, he did not expect a surplus as high as originally budgeted. For that reason he wanted to push some 2014 projects into 2015 and reallocate the project funding. Typically if the surplus number is met, projects that do not get finished carry forward to the next year and there is a reserve amount available to use on those projects. In this case for deferred projects, there will not be a reserve so they will have to be reapproved by Council. The list was attached to the June and July statements, and will be carried forward with the September statement. Mr. Markham requested an updated surplus number at the next meeting and asked if tax receipts were on track. Mr. Vitola said they should finish ahead of budget but cash collections are not where they were at this time last year. Mr. Markham asked where the bimonthly pay research stood. Mr. Vitola did not think it was promising as there were other hurdles that would offset it. The cash impact was negligible and he thought the review would be shelved. The way to overcome the issue where it appeared personnel expenses were suddenly over budget but it was because there were three pay periods was to seasonalize the expenses which was planned with the encumbrance issue. It was in the best interest of the Finance Department to process 26 pays a year rather than 24. Mr. Markham noted the SREC rate has not been negotiated for DEMEC. Mr. Vitola was meeting with DEMEC on Wednesday.

Mr. Morehead – on page 2 under Liabilities and Equities (specifically) asked what Rate Stabilization Reserve was. Mr. Vitola explained that was the \$1 million set aside at the end of 2013/beginning of 2014 as part of the financial policies. Part of the Electric budget reserve policy was different from the others in that it called for the establishment of such a reserve and that action had not been taken since 2009.

Mr. Chapman asked for more information about the lag in Smart Meter realization. Mr. Vitola said this referred to the credit enabled parking meter project that was delayed and caused the revenue shortfall. They were budgeted to be in service much sooner.

Mr. Chapman said earlier in the year Council asked for an update on the Smart Meter utility – an update on progress as to how that has been proceeding, the realization of actual numbers vs. forecast. Mr. Vitola said it would be part of the supplemental information in the back and it would be some time before official, concrete data was in from Honeywell’s measurement and verification team. It was done at the end of a one-year period. The project sign off was 7/23/14 and the one year guarantee period would start the first of the month after that date – 8/1/14 through 7/31/15 and then a sampling of meters would be taken back out of service and subjected to testing to make sure their accuracy levels were consistent. After that process the hard numbers would be available. In the meantime he planned to look at volume 2013 vs. 2014 and have an anecdotal understanding of the volume increase. Mr. Chapman asked Mr. Vitola to share with him the time frame beginning at the end of June and going through summer next year.

**Public Comments:**

Brett Zingarelli, District 4, referenced the Council meeting where purchase of a new transformer was approved and stated that the City cannot continue doing that within budget. He was not surprised the parking meters were not making anticipated revenue.

Amy Roe, District 4, asked if the budget overage amounts in utilities would be returned to the rate payer in the form of the RSA. Mr. Vitola confirmed it would and the recommendation was typically in October. At that point the amount would be known of the expected over collections and the rate reductions for the residents.

Catherine Ciferni, District 2, asked the reason for the lower revenue for the parking meters. Mr. Vitola said it was a time delay and the reports were as of 8/31/14. The negative variance should abate later in the year but would not recover the whole amount not collected from March (expected installation date) until the end of August when they were installed. Ms. Ciferni thought there was a significant decline in activity on Main Street which might be impacting parking revenue.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: TO RECEIVE THE FINANCIAL STATEMENT ENDING AUGUST 31, 2014.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay: 0.

**21. 9. APPROVAL OF CONSENT AGENDA**

- A. Appointment of Rebecca Powers to the Boards and Commissions Review Committee for the At-Large Position
- B. Receipt of Alderman’s Report – September 9, 2014
- C. Resignation of James Bowman From the District 2 Seat on the Planning Commission
- D. Appointment of Roberta Sullivan to the Boards and Commissions Review Committee for the District 4 Position
- E. Reappointment of John Wessells to the Conservation Advisory Commission District 2 Position For a Three Year Term to Expire March 15, 2017

**2:46:04**

Ms. Bensley read the Consent Agenda in its entirety.

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

MOTION PASSED. VOTE: 7 to 0.

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

Nay: 0.

**22. Meeting adjourned at 9:38 p.m.**

Renee K. Bensley  
Director of Legislative Services/City Secretary

## Public Comments by John Morgan (District 1) at the Newark City Council Meeting on September 22, 2014

This evening I would like to share with you some comments on revising our City's noise ordinance. I'd like to begin by expressing my appreciation to Marge Hadden and the rest of the members of Council for organizing the workshop on noise last Monday and the presentation by Mr. De Rocili, which I have described as a very good first step. Now it's important that Council and staff soon take further steps to close some of the outstanding loopholes and gaps in our City's noise ordinance.

First, I want to say that we should not allow the perfect to be the enemy of the good, especially since no noise ordinance is ever perfect. We don't need to have year-round measurements of ambient noise performed on every street in Newark to address some of the outstanding issues that have come to light in the past 12 months.

I would suggest that following the lead of Councilwoman Hadden, all members of Council might purchase noise meters priced between \$50 and \$100, calibrate them against the City's noise meter in the 40 to 50 dB(A) range, and then make some measurements of ambient nighttime noise levels in single-family residential neighborhoods in their own districts. I believe such measurements are likely to confirm Councilwoman Hadden's conclusion that ambient noise levels late at night in single-family residential districts are typically around 40 dB(A).

I would also recommend that you use your noise meters to judge for yourself whether the continuous 50 dB(A) sound of mechanical equipment is something that you would want filling your neighborhood 24 hours per day for the rest of your life. If not, it should be obvious that our City's long-standing limit of 52 dB(A) for noise from stationary sources in single-family residential neighborhoods is too high, and that it should be lowered significantly. Whether it is also too high for noise from stationary sources in multi-family residential districts, especially those inhabited mainly by students, is a separate issue which can be addressed later.

As I said at last Monday's workshop, Prof. Carr Everbach's noise study in the Devon neighborhood established that it is usually very quiet, with dB(A) levels in the upper 30's, unless a high-speed train is passing by. This soundscape cannot adequately be described by hourly averages of decibels, as in our City's current noise ordinance. Rather, our City's code should be revised to indicate that ambient noise levels are defined by taking averages in the absence of noises emanating from moving sources, such as motor vehicles and trains and airplanes, which are regulated not by our City's noise ordinance but by state or federal law.

I agree with Councilman Markham's comment at last Monday's workshop that our City should adopt a 3-pronged approach to controlling noise, with estimation of the likely levels of noise from industrial facilities being made an essential part of permitting and zoning verification. As I said at the workshop, since detailed noise studies based on the manufacturers' specifications for pieces of equipment can apparently be done for around \$10,000 to \$20,000, any company which proposes to construct an industrial facility with stationary noise sources should be required to pay for such an analysis by a qualified acoustical engineering firm designated by the City of Newark. Indeed, such detailed noise studies are standard operating procedure for reputable companies that genuinely want to be good neighbors in a community. We don't need to require that such detailed studies be done when houses are being constructed in residential neighborhoods, but they should be done for projects in districts zoned commercial or industrial. And it should be made clear that the "neighborhood" of a facility in a commercial or industrial district does not stop at the edge of its own zoning

district, but rather includes the portions of any other districts in which the noises emitted from it might be audible.

Last fall, I was surprised to discover that our City's noise ordinance permitted our City Manager to issue unlimited waivers of noise restrictions in perpetuity, and I am glad that at its December 9 meeting Council responded by specifying that noise waivers could be issued for a maximum duration of 90 days and renewed at most twice, to accommodate noise from construction in the spring, summer, and autumn. I certainly don't mean to suggest that our City Manager would ever have issued a noise waiver in perpetuity for an industrial facility, but I would observe that in Cambridge, Massachusetts, a university town with light industrial facilities, year-long noise waivers have been issued repeatedly by the city government for large noisy ventilating units on a commercial building immediately adjacent to apartment buildings, whose inhabitants have difficulty sleeping in their bedrooms (see the attached documentation). In our town we surely don't want anything like that, especially involving continuous noise 24 hours per day. Hence I would recommend that there be added to our City's code a provision that any noise waiver for noise audible in residential districts be valid for at most 14 hours (typically 7 AM to 9 PM) in any 24-hour period, unless a more generous exemption has been approved by Council.

Large construction projects do not originate momentarily, but involve many months of advance planning. Hence there should be plenty of time for those who are seeking zoning variances or applying for building permits for large facilities to prepare a description of the likely levels of construction noise they will generate, especially at night. A company's plans for keeping levels of noise within acceptable levels should be part of the consideration of a project by our City's staff, and some opportunity should be provided for meaningful input by members of the public who work or reside within earshot of a construction project.

Since lawnmowers are quite noisy, our City's noise ordinance contains an exemption for their use between 7 AM and 9 PM as long as they are in good working order. Air conditioning units are another common source of recurrent but not continuous noise in residential districts both day and night. My own air conditioner emits noise of around 60 dB(A) two feet away from it at my property line, but it doesn't disturb my next-door neighbor since the noise from it decreases rapidly with distance and he has no windows on that side of his house, and anyway most people keep their windows closed and their own air conditioners running during the summer. Something should be done to exempt small air conditioners from the limits of our City's noise ordinance, provided that they are in good working order.

It's important to remember that official noise complaints about the usual sources of noise in single-family residential neighborhoods are few and far between, for several reasons. One is that neighbors usually first try to resolve a complaint about noise informally, before calling the police. Another is that our City's police can exercise their discretion in filing an official complaint. Hence we shouldn't have to worry about hypothetical problems resulting from lowering the maximum permitted noise level for nighttime noise from stationary sources from 52 dB(A) to around 40 dB(A) in single-family residential neighborhoods. And if some problems do arise unexpectedly, our City's noise ordinance can straightforwardly be revised to resolve them, probably by adding exemptions.