CITY OF NEWARK
DELAWARE

COUNCIL MEETING MINUTES

November 10, 2014

Those present at 7:00 p.m.:

Presiding:	Mayor Polly Sierer District 1, Mark Morehead District 2, Todd Ruckle District 3, Rob Gifford District 4, Margrit Hadden District 5, Luke Chapman District 6, A. Stuart Markham
Staff Members:	City Manager Carol Houck City Secretary Renee Bensley City Solicitor Bruce Herron Deputy City Manager Andrew Haines Finance Director Lou Vitola Planning & Development Director Maureen Feeney Roser Planning & Development Planner Ricky Nietubicz

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EXECUTIVE SESSION

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

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

Council entered into Executive Session at 6:15 p.m. and returned to the table at 6:54 p.m.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO APPROVE RESOLUTION OF THE EMPLOYEE ON-THE-JOB INJURY PERMANENT PARTIAL IMPAIRMENT CLAIM AS SET FORTH IN THE DEPUTY CITY MANAGER'S MEMO TO COUNCIL AND AS OUTLINED IN EXECUTIVE SESSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO AUTHORIZE THE EMPLOYEE DISABILITY PENSION BENEFIT AS SET FORTH IN THE DEPUTY CITY MANAGER'S MEMO TO COUNCIL AND AS OUTLINED IN EXECUTIVE SESSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance. Ms. Sierer recognized the veterans in the audience for their service to the country.

2. 1. <u>ITEMS NOT ON PUBLISHED AGENDA</u>:

A. Public

08:06

Nancy Willing, District 3, understood the lobbyist RFP was viewed by Council and she looked forward to seeing it. She was disappointed that several members of Council had not submitted nominations for Boards & Commissions. In regard to the nomination of Mr. Chadwick to the DNP she did not feel he was the best candidate.

John Morgan, District 1, discussed the appointments on the Consent Agenda of David Levandoski to the Board of Adjustment and Bob Chadwick to the Downtown Newark Partnership. He supported Mr. Gifford's proposal to create a separate item for Appointments to Boards and Commissions on the agenda. *(Comments attached)*

Lisa Hobert, District 2, asked where to find information about Council meetings. Ms. Bensley directed her to the City's website for agenda items.

Anne Maring, District 1, appreciated improvements to the City's website and suggested providing information to the public through text messages and voice messages. She said this could be accomplished by changes to the InformMe system. Ms. Maring questioned the timing of the water rate hike and recommended it be postponed until after there was more understanding about the budget. Mr. Gifford pointed out that the water rate increase was scheduled for a second reading and public hearing at the 11/24 meeting and Ms. Bensley explained since it was budget related it was scheduled for the same night as the budget. Ms. Houck reported the InformMe system was going through an overhaul with a meetings section being added and a major outreach planned.

Amy Roe, District 4, felt the City should correct the definition of neighborhood and the noise section of the Code. She emphasized the importance having an odd number on the Board of Adjustment so a clean decision could be appealed to Superior Court.

Carolyn Carter, District 5, expressed disappointment and a lack of trust in City government.

Ron Walker, District 4, urged Council not to appoint Mr. Chadwick to the Downtown Newark Partnership.

Donna Means, District 5, objected to the appointments of Mr. Levandoski to the Board of Adjustment and Mr. Chadwick to the Downtown Newark Partnership.

Len Schwartz, District 3, discussed net neutrality and felt Newark was uniquely qualified to offer municipal Internet because of the University connection, the City's geography and the existing City utility departments. He offered his assistance in investigating this opportunity. Mr. Markham agreed with the comments on net neutrality.

Helga Huntley, District 1, discussed a call made by her daycare center on Willa Road to NPD's non-emergency line to report that a resident on Firethorn Court had a large leaf fire burning. The NPD Dispatch employee was not sure the location was in the City and the response time was approximately 45 minutes after the fire burned out. Ms. Huntley recommended that all dispatcher familiarize themselves with a map of Newark and that complaints such as this one with significant risks be taken more seriously.

Natasha Ortega, District 5, thanked the Police Department for doing a great job on Halloween. She expressed concerns similar to Ms. Huntley regarding NPD Dispatch when reporting smoke and gunshots in Fairfield Crest.

Jen Wallace, District 3, requested that Mr. Chadwick's and Mr. Levandoski's appointments be removed from the Consent Agenda. She thought the Board of Adjustment should have alternate members.

Bonnie Meredith, District 3, asked why the City had not looked at the accessory use rezoning for the STAR Campus. She also referenced requests by residents to revoke the zoning verification for TDC which she felt were ignored by the City.

3. 1-B. ELECTED OFFICIALS:

01:27:13

State Representative Kowalko spoke about the importance of government transparency and public participation.

02:39:47

State Representative Paul Baumbach spoke regarding the proposed Rules of Procedure amendments. *(Comments attached)*

4. 1-C. UNIVERSITY

49:53

(1) Administration – Rick Deadwyler, University of Delaware Government Relations, highlighted items of interest. The UD Community Police Academy would be graduating candidates in the program. A University community town hall meeting was held to discuss the Delaware Will Shine strategic plan. Mr. Deadwyler introduced Kathleen Kerr, Executive Director - University Housing and Residence Life and Alan Brangman, Vice President – Facilities, Real Estate and Auxiliary Services who discussed plans to close the John Dickinson and Caesar Rodney Residence Hall complexes in May 2015 at the end of spring semester, eliminating the entire West Campus. Mr. Brangman reported the two complexes would officially close after commencement and after Alumni Weekend. Mr. Morehead clarified there were no plans for the property, the University currently had 7,400 beds on campus and there was a requirement for freshmen to live on campus unless they resided at home. Ms. Hadden noted some of her constituents used the path behind Rodney/Dickinson to cut through and she wanted to be sure the area was safe. Mr. Brangman reported camera security and UD Police Department patrols would be increased. Mr. Markham asked about demolition - Mr. Brangman said the University hoped if someone was interested in the property they would take it as is; thus, demolition would not occur immediately. Mr. Morehead asked about plans for the park area next to Rodney – Mr. Brangman said it was all part of the same complex and was unclear whether the area would be fenced. Regarding the parking lot by the Oaklands pool UD had an agreement with the pool operator so he did not think that parking lot would be fenced.

Mr. Brangman announced that information sessions would be held on 11/12 at 7:00 p.m. at Clayton Hall and on 11/13 at 2:00 p.m. in Trabant Theater on the future master plan for the STAR Campus.

5. 1-C-2. STUDENT BODY REPRESENTATIVE: None

6. 1-D. LOBBYIST: None

7. 1-E. CITY MANAGER

01:00:02

- Ms. Houck mentioned the new substation transformer at Phillips was energized and being tested and customers would be switched on in three weeks.
- Over 50 people made donations to McKees Solar Park totaling almost $4,700. So far there were 37 solar investments with additional opportunities still available.
- Work was ongoing from feedback from the Financial Workshop and information for the questions could be found on the 2015 Budget Central section of the City's website.
- The Leroy Hill baseball field drainage and sod project was nearly completed and a puddle-free field would be ready in March. This was a partnership between the Newark American Little League and Land and Water Trust for grant funding.

8. 1-F. COUNCIL MEMBERS

01:01:42

Ms. Hadden

- Attended a two-day Association of Public Administrators conference in Newark. The planning information was particularly interesting to her.
- Did a ride-along with UDPD on 10/31.
- Attended the Financial Workshop and Planning Commission meeting where the budget was discussed and UD's Town Hall meeting regarding strategic planning.
- Held a Blair Village community meeting to address resident's problems.

Mr. Gifford

- Regarding the discontinuance of Green Wednesday, asked the Public Works Director to have a depot at Phillips Park's recycle center for yard waste during the winter.
- Asked how the InformMe system worked – residents select the form of notification they want to receive.
- Reported the sound study had taken a back seat to the budget and Comp Plan but Council would attempt to get that and accessory use discussion moving ahead in 2015.
- Attended the UD community meeting and felt it was a good start. UD planned to continue outreach with the Delaware Will Shine project. According to Ms. Sierer, Town & Gown was tabled at this point and the University was developing new avenues such as town hall meetings and working on other initiatives to inform the public and get community input. Council members Hadden and Chapman were holding open meetings with their constituents, and the University attended some of Ms. Hadden's meetings.
- There would be a scheduled power outage with the installation of the new transformer in Binns, Devon, Studio Green, Lehigh Road area. Information was available on the City's website or in flyers left on doors.

Mr. Chapman

- Announced that he holds open public meetings the third Thursday morning of every month from 8:30 to 10:00 a.m. in the lobby of the University Courtyard Marriott on New London Road.
- A traffic calming test was moving forward on Country Club Drive in Fairfield.

Mr. Markham

- Thanked veterans for their service.
- Asked Mr. Herron to look into the legality of appointing alternates to serve on City Boards rather than increasing the number of board members.
- The McKees Solar Park ribbon cutting was scheduled for 11/14 at 1:00 p.m.
- Discussed Council's ability to get out in the community and legally have conversations to get more public input – this was done with the Paper Mill when a consultant came in and gathered ideas. He previously suggested having Council meetings out in each district to make it easier for people to attend.

Mr. Morehead

- Attended the UD mobility challenge held on the green. He referenced an article in the 10/17 *Newark Post* about the UD harness system which was life-saving technology. Anyone knowing a pre-toddler having mobility problems was encouraged to contact UD's Department of Physical Therapy (GoBabyGo lab on the STAR Campus).
- Commented about a website called www.greaternewark.org which is a homegrown effort spun out of a concern about where the City is going and how to make it better. He also referenced thelittlefreelibrary.org – books in front yards; streetfilms.org – histories of cities around the world that have successfully closed their Main Street and made walking malls thereby bringing culture to town and becoming the economic driver.
- The Planning Commission met on 11/4 and approved the Capital Improvement Plan (the part related to the Comprehensive Plan and devoid of budget information). Although a quorum of Council attended, they did not conduct City business.
- In response to earlier public comment he said there was no reason to be afraid of Council – typically Council members can be reached, and he encouraged anyone in the room to contact him by cell phone. Council's responsibility was to listen to the public and represent them. He believed Council as the legislative body was meant to be a check and balance. To the degree that Council does not hold people's feet to the fire, he believed Council had failed but Council was a democracy and those were the laws they lived under.

Mr. Ruckle

- His daughter was now home and thanked the officers who helped save her life.
- Attended the mobility challenge at UD and looked forward to utilizing their service.
- Thanked everyone for voting in the recent election.
- Attended the Financial Workshop – the City had a $330,000 shortfall to address.
- Endorsed having an alternate member serve on the Board of Adjustment.

Ms. Sierer

- Participated in a UD Police Department ride along on Halloween.

- The Mayor's Masquerade Fun Run and Walk was a great fund raiser for obtaining exercise equipment for the James Hall Trail as part of Newark's healthy initiative.
- Encouraged participation in the Newark Police Department's Full Beards – Full Bellies Food Bank of Delaware fund raising initiative. Donations were also accepted through GoFundMe.com/copslovebeards.
- Encouraged those on Council who had not submitted nominees for the Boards and Commissions Review Committee to please do so. There were currently four appointments and a minimum of five was desirable to begin the review process.

9. 2. <u>ITEMS NOT FINISHED AT PREVIOUS MEETING</u>: None

10. 3. <u>SPECIAL DEPARTMENTAL REPORTS</u>:

A. Special Reports from Manager & Staff

1. City of Newark Snow and Ice Control Plan – Public Works and Water Resources Director

01:29:53

Mr. Filasky presented the first draft of the Snow and Ice Control Plan. Following the merger of the Public Works and Water Resources in 2012, efficiencies and cost savings were explored. Four categories were created based on a storm's severity along with the expected response for each forecast. In categories 3 and 4 snow emergency routes would be enacted and reverse 911 calls would be utilized. Six routes were proposed including a downtown route allowing the trucks to get to different locations sooner. A level 1 critical route was established to maintain major roadways. Mr. Filasky said feedback was critical and would be considered in the plan's annual update.

<u>Council Comments</u>:

Mr. Chapman recommended a link for residents to determine when their street would be plowed.

Mr. Gifford questioned the reason for buying the salt stock at the beginning of the season. Mr. Filasky said it was based on availability (first come, first served). Mr. Gifford asked who was responsible for clearing sidewalks in front of West Park Place Elementary. Mr. Filasky thought it was Christina School District since this was not on the Parks Department list. Mr. Gifford asked if the GPS/IT section was up and running. Mr. Filasky reported there was a GPS in every vehicle showing where every truck had been in the last 12 hours and any locations that were missed. Mr. Gifford noted a formatting issue in the Street Division Operations Center section and asked for details on the Public Works and Water Resources emergency response trailer. Mr. Filasky said the trailer was paid for with FEMA funds to use for spill responses, but could be stocked with necessities for closing down roads and other emergencies. Mr. Gifford referenced the Snow Fleet Preseason Preparations for Senior Mechanic II which listed Rich Gregg as the contact to assess special needs for plowing. Mr. Filasky would change the contact to Supervisor.

Mr. Chapman referred to the City's 10/27/97 letter to DelDOT listing the roads maintained by the City and DelDOT. He believed New London Road was a State emergency route. Mr. Filasky said in some instances DelDOT did not get to roads as fast as the City, so City trucks do a round in and a round out to get to the neighborhoods and then the State comes through to finish clearing. Mr. Coleman explained the State handed most of the City off to the City for snow removal.

Mr. Markham suggested putting GPS information on the website so residents would know when they would be plowed and was glad that snow emergency removal routes were mentioned. He wanted a more formalized towing plan. Ms. Houck said the University would help out whenever possible by offering their lots for snow emergency parking free of charge. Regarding private contractors Mr. Filasky anticipated using them only when a necessity, mostly for Main Street. The Street Division Operations Center located on Phillips Avenue was equipped to be a snow center for people to be able to get rest and food. Mr. Filasky explained that it was not necessary to define hills and icy areas on Level 1 but any concerns about roads should be identified to PW. Mr. Markham requested a definition of plowing – by the end of the storm roads should be plowed curb to curb, with a goal of 24 hours after the final snowfall. Mr. Markham discussed reduced speed limits while plowing to keep snow from being thrown onto sidewalks. He asked that the map be checked for missing roads/annexations. In the 10/27/97 letter to DelDOT Old Paper Mill Road was listed as the State's responsibility but clears it after the City because

of accessibility issues – Mr. Markham asked whether the City get some credit for it. Mr. Markham suggested having citizens inform PW about the conditions of neighborhoods.

Mr. Morehead said curb to curb plowing never happened on his street and recommended that page numbers be added to the document. He pointed out the need to figure out what to do with Casho Mill Road back yards beyond the fence and what to do with that side of the street. Mr. Morehead asked for an explanation of the resident fire hydrant responsibilities. Mr. Coleman reported that residents were requested to keep hydrants clear of snow. Mr. Morehead pointed out that PW needs to pay close attention to the location of hydrants in the cul-de-sacs and to refrain from plowing them in. Mr. Morehead suggested posting on the website the number of inches of snow predicted and then updating it in real time. Mr. Filasky added he would include the level of response. Mr. Morehead was concerned about the category 1 storm with an icing event in hilly areas.

Mr. Ruckle would like the City to be more proactive getting the word out about moving cars off the road that obstruct plowing. He suggested providing helpful tips recommending where people should put their snow and areas to keep clear.

Mr. Coleman reported the InformMe System was available to make notifications during snow storms.

Public Comments:

Helga Huntley, District 1, recommended using GIS technology. She pointed out that the event report form was missing Route 6. She suggested contacting the Delaware Environmental Observing System and using their information to plan and evaluate. They were funded by the State for weather emergencies and had snow centers all over the Delaware and in Pennsylvania with data and forecasts that may be of value to Newark.

Brett Zingarelli, District 4, felt the report should have been a workshop topic.

John Morgan, District 1, commented about snow removal from the sidewalk area behind the fences on Casho Mill Road and suggested the City clear the sidewalks with a snow blower since it could be a public safety issue. He did not feel the City should clear the weeds. With regard to Main Street, he suggested the City consider clearing the snow and paying for it with a levy on the property owners on Main Street.

Donna Means, District 5, commented on residents shoveling snow into the street.

Mr. Morehead asked staff when reviewing development plans to watch out for underground water that may create freezing problems in cold weather.

Ms. Hadden asked staff to send a snow tips flyer in utility bills before snow arrives.

11. 3-A-2. CITY PENSION COMMITTEE PROPOSAL – DEPUTY CITY MANAGER/FINANCE DIRECTOR

02:44:19

Mr. Vitola presented the proposal which came about from Russell's second quarter investment review. Currently there was no formal pension committee in the City. Mr. Haines and Mr. Vitola shared the pension duties administratively, engaging with the investment managers and the actuarial consultants, reviewing the investments on a quarterly basis and providing reporting and feedback to Council, studying the actuarial reviews and calculations and making recommendations to Council on the underlying benefits plans, budgeting for the contributions and making cash payments into the fund, and working with the third-party administrator to make benefits payments to retirees and service providers. In recent years the City overfunded pension and OPEB and both balances improved steadily over the years. Pensioners are paid on time and fund obligations are met. The working relationship with actuarial and investment consultants is exceptional. However, as Trustees, Council should be more educated and more involved and some of the finer details of the pension and OPEB oversight process could be more formalized. Also the City would benefit from the expertise that is independent of the hired investment manager and independent of the hired actuarial consultant. For those reasons staff felt Council should support the formation of a Pension and OPEB Committee as described in the recommendation by DT Investment Partners. No formal action was required tonight – Committees were formed by ordinance and a first reading would be scheduled for 11/24 or 12/8. The ordinance would be based largely on the

recommendations provided in the attachment so Council was asked to continue to review the materials. The recommendations contemplate a committee of five members including two Council members and call for two-year staggered terms for the elected officials to promote continuity so one Council member would have an initial one year term and the other would have a standard two year term. The staff members were ex-officio members so there was no need to define a term. DT was retained to advise the City on the formation of the Committee and would help with the committee's first several key activities, including the review of the existing investment policies and recommendations for improvement, the development of an RFP for investment management services and help with the selection of the investment manager or managers. At the end of DT's initial engagement after the Committee has shaped the investment policies and selected a new manager, then the Committee would seek independent advisory services in contractual increments beyond the initial engagement, perhaps one to three years. At that time the committee of four would be seeking the fifth independent member.

Council Comments:

Mr. Morehead questioned the Council training – Mr. Vitola wanted to first form the Committee, educate the Committee, develop a plan and incorporate training for all of Council by the independent advisor. Mr. Morehead asked how the one and two year recommendation would work since Council serves two-year terms. Mr. Vitola explained only one Council member's first term would be a one-year term, after that they would always be two-year terms. Mr. Vitola added that specific timing would be in the ordinance.

Mr. Markham pointed out this dealt with being a trustee for a pension plan and creating a subcommittee. He assumed that meant minutes would have to be maintained and the meetings would be public and subject to FOIA. Mr. Vitola was aware of that fact.

There was no public comment.

12. 4. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

A. Bill 14-22 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Establishing Definitions For Types of Council Meetings and Notification Requirements ***(See Item 6-A-1)***

02:51:42

Ms. Bensley read Bill 14-22 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 14-22.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Ms. Bensley explained this bill was discussed at several meetings. At the 10/13 Council meeting Council was presented a revised version of Bill 14-20. Revisions incorporated feedback from Council and the public into a new approach instead of trying to merge the State FOIA Act, the Charter and the Rules of Procedure into one Code section. The revised proposal took the approach of amending both the Code and the Rules of Procedure to create consistent definitions with the State FOIA statute and the City Charter. In addition to the changes included in the draft presented on 10/13 Mr. Gifford suggested additional changes that were incorporated into the final version. These changes included changing the definition of regular meetings to only be a meeting of Council at the days and times provided in the Council Rules of Procedure, adding for the purpose of Executive Sessions to the provision for starting regular meetings at an earlier time, changing the provision for posting packet items on the website for special meetings to no later than 6 hours prior to the meeting instead of 24 hours prior to match the language in the State FOIA statute and deleting the sentence "Emergency meeting shall be noticed in accordance with the emergency meeting requirements of Delaware Code under the emergency meeting notice requirements. The last suggestion was adding "in the Municipal Building" to the posting requirements for emergency meetings. There were also some other minor wording changes made.

There were no Council comments at this time.

Public Comments:

Anne Maring, District 1, asked for the introduction of text messages and voice mail messages into the notification requirements. Since that would be included in InformMe, she thought it was a necessary addition to be inclusive of the public.

Amy Roe, District 4, said the bill was much improved but section b-3 and b-4 on the notification requirements for special meetings and emergency meetings does not say special meetings will be with the agendas on the City website and asked for the language to be added.

Helga Huntley, District 1, commended Ms. Bensley for her efforts and noted section b-3 specifies that any packet item for a special meeting must be posted no later than 6 hours in advance. She thought the same language should be used for regular meetings and workshops.

Jen Wallace thanked Ms. Bensley for her work. Ms. Wallace thought the time limit for providing packet items for regular meetings should be between 24-48 hours.

MOTION BY MR. GIFFORD, SECONDED BY MS. HADDEN: THAT THE SECOND SENTENCE OF SECTION B-3 UNDER SPECIAL MEETINGS WOULD STATE "IN ADDITION NOTICE, INCLUDING A LINK TO THE AGENDA, SHALL BE POSTED ON THE HOME PAGE OF THE CITY WEBSITE WHICH SHALL INCLUDE A CALENDAR ENTRY AND SHALL BE DISTRIBUTED TO THE MEDIA IN THE FORM OF A PRESS RELEASE TO THE MEDIA E-MAIL LIST MAINTAINED IN THE OFFICE OF THE CITY MANAGER.

UNDER SECTION 4, EMERGENCY MEETINGS, "NOTICE INCLUDING A LINK TO THE AGENDA SHALL BE POSTED IN THE MUNICIPAL BUILDING AND ON THE HOME PAGE OF THE CITY WEBSITE WHICH SHALL INCLUDE A CALENDAR ENTRY. ALL SOCIAL MEDIA ACCOUNTS MAINTAINED BY THE CITY UNDER THE CITY OF NEWARK DESIGNATION AND SENT TO THE MEDIA E-MAIL LIST AS DEFINED IN SECTION 2-7 B-3 AS A PRESS RELEASE PRIOR TO THE MEETING."

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Morehead referred to section b-1 (regular meetings) and recommended keeping the wording for the third sentence "All packet items shall be linked to the corresponding agenda item and posted on the city website 7 days in advance of the meeting." He would then strike the fourth sentence entirely.

Ms. Bensley put this sentence into the ordinance for two reasons – there were several agenda items that may be advertised in advance as part of the agenda but for timing reasons may not necessarily be available seven days in advance (e.g. Planning Commission minutes). Contracts would be another example.

Ms. Hadden was satisfied with the sentence as written.

Mr. Chapman wanted to clarify the wording that goes beyond reasonably possible so that the packet items be posted on the City website on the same date the items were received by Council members (last sentence in b-1). Ms. Bensley said that had been the practice of the City Secretary. She noted when posting items not received with the initial posting, the date they were posted was included to show new items added. Mr. Morehead was concerned that he did not have time at the last minute to review new material.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: FOR ITEM B-1 ADD WORDING THAT ALL PACKET ITEMS SHOULD BE LINKED TO THE CORRESPONDING AGENDA ITEM OR POSTED ON THE CITY WEBSITE SEVEN DAYS IN ADVANCE OF THE MEETING. IF A PACKET ITEM IS NOT AVAILABLE SEVEN DAYS IN ADVANCE OF THE COUNCIL MEETING THE PACKET ITEM SHALL BE POSTED ON THE CITY WEBSITE AS SOON AS REASONABLY POSSIBLE WITH THE POSTING DATE BUT IN ANY EVENT NO LATER THAN THREE DAYS BEFORE THE MEETING.

Mr. Markham asked for clarification if this was calendar or business days. Mr. Markham said calendar days applied – essentially Friday prior to the meeting.

MOTION FAILED. VOTE 3 to 4.

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

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO ADD IN THE WORDING FOR ITEMS B-1 AND B-2 IN THE FOURTH SENTENCE THAT THE PACKET ITEMS SHALL BE POSTED ON THE CITY WEBSITE ON THE SAME DATE IT IS RECEIVED BY COUNCIL MEMBERS WITH THE POSTING DATE (STRIKING AS SOON AS REASONABLY POSSIBLE).

MOTION PASSED. VOTE: 6 to 1.

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

Question on the Motion as amended was called.

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

MOTION PASSED. VOTE: 6 to 1.

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

13. 4-B. BILL 14-23 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY PERMITTING A DESIGNEE OF THE CITY MANAGER TO ADMINISTRATIVELY REVIEW AND APPROVE PURCHASES AND CONTRACTS EXCEEDING THE SUM OF $5,000.00 BUT LESS THAN $25,000.00

03:19:51

Ms. Bensley read Bill 14-23 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 14-23.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Herron reported the amendment clarified that the City Manager's designee as well as the City Manager had the authority to review and approve all purchases and contracts between $5,000 and $25,000. Currently the references in the ordinance to contracts and purchases under $5,000 and over $25,000 referred to the City Manager or his designee – the designee phrase was absent from the $5,000 to $25,000 category. When reading the language literally it required the City Manager herself (not a designee) to review and approve all the $5,000 to $25,000 purchases for contracts. Based upon discussions with staff, it was Mr. Herron's understanding that historically going back to at least two City Managers, the ordinance had been interpreted to include the City Manager's designee in all instances. Staff did not believe there was any reason why the City Manager's designee should not have such authority. The other change substituted the phrase his/her wherever the word his appeared.

Mr. Morehead said the information Council received was that this was not a burden and represented far less than one contract review a day. He thought if Council expected the City Manager to have control of the budget this would be a reasonable expectation to continue with what the law currently said. He felt the wording was intentional regardless of how it was interpreted throughout the years.

Mr. Gifford asked if changing his to his/her in the Code was being done just for this ordinance. Ms. Bensley explained these changes were made as bills with the related wording came up. In response to Mr. Markham's question she further explained gender

issues were being looked at as part of the recodification process and anticipated the legal review would come back from the codifier before month end.

Public Comment:

Anne Maring, District 1, preferred that Council have a greater role in approving contracts and would take the responsibility away from the City Manager.

Amy Roe, District 4, said the bill violated the Charter by transferring the designation of who approves purchases from the City Manager to a designee of the City Manager. Charter section 703.3 specified that only Council could transfer some of the powers granted to another administrative officer, not the City Manager. Thus Council had to select the specific administrative officer who would be responsible.

John Morgan, District 1, agreed the proposed ordinance was inconsistent with the City's Charter which made it clear that Council decided to whom the authority to approve purchases could be delegated. Mr. Gifford informed Mr. Morgan that from January 1 to October 22, 2014 the City made 172 purchases for amounts ranging from $5,000 to $25,000. Mr. Morgan recommended the ordinance be redrafted to authorize the Deputy City Manager (but no other City employee) to approve such purchases in exceptional circumstances when the City Manager could not reasonably do so and in those instances suggested lowering the upper limit to $20,000.

Helga Huntley, District 1, felt the fact that City staff ignored the rules for years did not justify changing them. She thought the Deputy City Manager should have the authority to approve purchases only in the event of incapacitation by the City Manager.

Jen Wallace, District 3, opposed any changes to the ordinance.

Eric Boye, greater Newark, disagreed with the current ordinance and suggested that all purchases over $5,000 be approved by Council.

Jeff Lawrence, District 3, questioned who proposed the amendment. Mr. Herron replied at a previous Council meeting he was requested to clarify the amendment. He did not believe it violated the Charter which stated Council may, by ordinance, transfer the purchasing power granted to the City Manager to administrative officers subordinate to the City Manager. The term his or her designee was present in the ordinance for at least 40 years and was synonymous with the phrase an administrative officer subordinate to the City Manager. The amendment, like the existing ordinance, transferred this power in a manner permitted by the Charter. There was no requirement that Council must select by ordinance the specific administrative officer to which the power transfers. Mr. Lawrence felt Council had the opportunity to take control of the City and suggested they do so wisely.

Brett Zingarelli, District 4, said it was unacceptable that City staff was not held accountable for breaking the law.

Rebecca Powers, District 3, thanked Mr. Morehead for bringing up who originated the amendment. A lengthy discussion ensued by Council. Ms. Powers felt the question remained unanswered.

Donna Means, District 5, wanted staff to be accountable for their actions.

Mr. Morehead thought it was appropriate for the City Manager to be responsible for purchases between $5,000 and $25,000. This would amount to reviewing less than a purchase/contract a day which he considered reasonable. Mr. Gifford thought the purchasing administrator could do most of the work and then get final approval from the City Manager. Ms. Houck said since the 10/13 meeting staff put that plan in place and she is provided a listing to sign off on. Mr. Gifford suggested a report back in several months to determine how this new procedure was working.

MOTION BY MR. MOREHEAD, SECONDED BY MR. GIFFORD: THAT BILL NO. 14-23 BE POSTPONED INDEFINITELY.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

14. 4-C. BILL 14-24 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY UPDATING MANAGEMENT CLASSIFICATION AND ESTABLISHING THE POSITION OF DEPUTY CHIEF OF POLICE

04:01:07

Ms. Bensley read Bill 14-24 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 14-24.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Haines reported this bill incorporated three amendments to Chapter 2. The first regarded the pay grade of the Deputy Finance Director to provide consistency when looking at deputy director pay grades in the operating departments. This position was inconsistent when looking at scope and responsibility and would adjust the pay grade from a 23 to a 26 by ordinance but would not impact the actual compensation level of the employee. Increases were merit based.

The second was a salary compression issue that would immediately impact the compensation level of the management employee who was the field supervisor of the Electric Department's AFSCME union members. His salary was compressed compared to the top union member and in his absence when a union employee was designated as the employee in charge to make field decisions, that employee would make a higher base salary during that time period. It would be difficult to have a union employee want to step up into management when they would realize the compensation was less than the union employee. This would change the pay grade 21 to pay grade 22 and align the position title from supervisor to superintendent.

The third was the inclusion and the adoption of the Deputy Chief position discussed with Council in June in order to create a supervisory team and succession plan within the Police Department. The proposal was reviewed and supported by FOP Lodge #4.

Mr. Morehead referred to the classification of operating departments and asked if there were any non-operating departments. Mr. Haines said they look at the ones in the field – Public Works & Water Resources, Parks & Recreation. Mr. Morehead asked how Finance was an operating department. Mr. Haines said Finance reaches everywhere in the City. Mr. Morehead asked if the plan would be for multiple deputy chiefs. Mr. Haines explained this would create the title, and the intent was administratively to have two.

Ms. Hadden asked to hear from the FOP. MCpl Greg D'Elia who represented the FOP said the FOP fully supported the ordinance. They believed they were working toward modernizing the department and would structure it in a proper way to bring them into the future. Ms. Hadden asked if there were concerns about losing any FOP positions. MCpl D'Elia said the FOP knew they would lose one overall union position but still supported it. The way the ordinance was structured they understood unless there was a candidate who was not suitable, the new positions were still coming from within the union ranks.

Mr. Gifford asked MCpl D'Elia to explain his "modern police department" comment. MCpl D'Elia said the Police Department structure had not changed in many years and there were changes in other police departments that go away from having management be the top levels of the departments with either a deputy safety director or safety director running it and then a Chief of Police under it instead of having union members be the next tier down. It made sense to fix some of the other structural problems within the ranks.

Mr. Markham asked why not have another captain position, why an administrative position. MCpl D'Elia said adding a third captain was redundant as far as the FOP was concerned. The FOP wanted the department to run as efficiently as possible to better provided services to the citizens and to benefit the union and this structure seemed to work better than any other structure. Mr. Haines added it was helpful in the administrative appeal process. Mr. Markham was concerned about the cost of having two administrative positions. Mr. Haines explained some adjustments would be made within the ranks and it was preferable to have the two deputy chiefs in place to comment about that structure.

Mr. Gifford noted the deputy director positions were being leveled across the three departments. A constituent questioned whether they should all be at the same level given their different responsibilities and education. Mr. Haines explained each one varied based on their obligations, qualifications and demands. From a feasibility standpoint he thought in 2015-2016 there would be a fair process to have an analysis of management team operations. As far as the general concept he felt it fit from an organizational standpoint.

Mr. Gifford referred to the salary compression and asked whether the supervisor would never make more than a direct report. According to Mr. Haines in this instance the individual employee doing the job of the absent management supervisor will make more than the management employee.

Mr. Ruckle asked if creating the new Police Department positions would benefit the department by helping to retain the officers and keeping them with the City. Mr. Haines believed the opportunity would be a great motivator in the department.

Public Comment:

Amy Roe, District 4, noted the Chief of Police was required to reside within the City of Newark but did not see any such requirement for the Deputy Chief of Police. She was surprised this was for more than one position of Deputy Chief of Police with no explanation of the cost to taxpayers and thought that information should be made available to the public. She felt much of the language in this bill was not appropriate for inclusion in the Code and recommended that Section 2-93.3 read “The city manager shall promote, or recruit, police officers for the rank of deputy chief of police.”

Carolyn Carter, District 5, thought it was fortunate there were a number of public speakers who commented about a number of glitches and that consideration should be given to the amount of responsibility people should or should not have.

John Morgan, District 1, agreed the public should know the cost when ordinances were modified either creating or redefining positions and urged Council to make that a general practice.

Eric Boye, greater Newark, discussed income disparity regarding City employee wages. He supported the idea of a deputy chief.

Chris Hamilton, District 4, felt there was some disconnect about who Council served and that they needed to get better organized.

Mr. Morehead noted there was no pay scale. Mr. Haines pointed out on page 1 the pay scale for Deputy Chief of Police was listed as a 29. Mr. Morehead questioned the requirement for living in the City – Mr. Haines said there was not an obligation in the union contract itself that required residency and when promoting from within if there was an existing ranked officer who lived outside the jurisdiction that would preclude the promotion.

Mr. Gifford clarified with Ms. Bensley that any changes to the ordinance would require an amendment. He thought it was not fully clarified and had a large budget impact and should be further considered before continuing.

Mr. Markham assumed Council could decide not to fund the position if it was available and this made the position available.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO REMOVE AMENDMENT 3 FROM BILL NO. 14-24.

MOTION FAILED. VOTE: 2 to 5

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

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT BILL NO. 14-24 BE APPROVED AS PRESENTED.

MOTION PASSED. VOTE: 6 to 1

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

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

16. 6. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Amending the Rules of Procedure for the 2014-2015 Council Year

04:36:26

Ms. Sierer announced that she was removing item 5 (prohibiting ceding of time and item 9 (restricting public comment to open public comment and public hearings on ordinance and Planning Department items. Mr. Markham removed item 8 (limiting the total time one person may speak per meeting) and item 11 (summary minutes).

Ms. Bensley explained the genesis of the resolution was to be as a partner to Bill 14-22 which was considered and passed earlier this evening. It was to help with the consolidation of the meeting definitions and notification requirements by amending the Code and the Rules of Procedure to fit with Delaware's FOIA and Newark's Charter. Those amendments were in the resolution to be considered.

As part of the discussion on 10/13/14, Mr. Gifford suggested that Council consider permanently removing appointments to the City's Boards and Commissions from the Consent Agenda. After that meeting Council recommended additional changes via the City Secretary. Ms. Bensley reviewed those items in her 11/3/14 memo to Council as well as a history of recent changes to the Rules of Procedure.

Item 1 – Mr. Gifford proposed separating the boards and commissions appointments from the Consent Agenda. Mr. Ruckle did not agree since any item could be pulled at any time. Mr. Morehead has done so and felt it was considered a hostile act.

Item 2 – Considering an end time for Council meetings of 11:00 p.m. Mr. Chapman thought this made sense and suggested if discussion of an item started before 11:00 p.m. that item should be finished but no further items should be considered with discretion used by the Mayor. Mr. Ruckle saw merit in Mr. Baumbach's comments about putting public comment in the middle of the meeting and then continuing on with City business. Mr. Markham questioned considering items that must meet certain time lines and that it always be at the Chair's discretion. Ms. Bensley reported that ordinances for second reading and public hearing and Planning Department items required advertising separate from posting on the agenda and it would be burdensome to cancel and reschedule those items (items 4 and 5 on the agenda). Mr. Chapman agree that the Chair's discretion made sense for items 4 and 5. Mr. Markham wanted the rules clarified to all. Mr. Morehead was concerned about the necessity of an end time. Ms. Bensley explained that other than items 4 and 5 there was nothing preventing continuing the meeting with 7 days notice so rather than holding everything over to the next meeting and a motion was made to postpone until the following Monday, that was an option where the advertising requirements could be met. Mr. Morehead preferred not adding more meetings. Mr. Chapman thought creating an end time gave better expectations and staff would prepare agendas that would operate within those time limits. He felt the quality wanes with later meetings and this was an attempt to begin correcting that. Mr. Ruckle noted safety issues for people driving home from late meetings – he felt 11:00 p.m. was a reasonable time and the Mayor should have the ability to determine scheduling.

Mr. Morehead asked if the Mayor had the authority to set meeting schedules. Ms. Bensley said as the Chair of the meeting the Mayor could call the meeting at any time. Mr. Markham thought it was important to set expectations about what can happen.

Item 3 – Creating an end time for workshops – Ms. Sierer reported this was being done with most workshops having a 7:00 – 9:00 p.m. start and end time which seemed to be working fine. She thought it was important to include in the rules. Mr. Markham suggested this be stated up front.

Item 4 – Limiting the ceding of time to a maximum of one person or three minutes for a maximum total of six minutes per person. Mr. Markham previously suggested five minutes of speaking time with no ceding of time but that failed. He felt three minutes getting a point across would have a bigger impact. Mr. Gifford found it difficult to get a point across in three minutes.

Item 6 – Mr. Markham suggested postponing this discussion until after discussing when public comment would be held (item 10).

Item 7 – Require people to sign up to speak for an agenda item. Mr. Markham said this came from several individuals and groups. He wanted to spell out the policy that at the Chair's discretion, public comment be open to anybody who had not signed up. He said this was typically a rebuttal. He felt there should be a positive incentive for signing up in advance. Ms. Sierer said Mr. Baumbach suggested that members of the public who sign up to speak be allotted three minutes and those who do not sign up be allotted two minutes. Mr. Morehead did not support this as he thought this stifled discussion. Mr. Markham said fairness had to be considered as to when a conversation was finished.

Item 10 – Moving open public comment to the end of the meeting – Ms. Sierer thought since the entire agenda was open to public comment, it would be prudent to do the City's business on the agenda items first where the public was allowed to comment and then move the general open public comment to the end of the meeting. She felt having open public comment to the beginning of the meeting was impeding Council's ability to get the business done. Mr. Gifford noted at the last few meetings public comment was fairly short and there were other items that lasted much longer that could have been put in different places. In other states where Council changed where public comment was given usually it promoted (rather than discouraged) public participation and the Attorney General ruled on it. He did not believe this enhanced the public's ability to participate. He supported waiting to see where it panned out and the meetings could be more streamlined otherwise.

Mr. Ruckle pointed out there was public comment on every item and under Items Not on Published Agenda. In addition, Council members could be contacted to discuss other issues. He liked Representative Baumbach's idea of scheduling a set time after completing the business of the City and then having public comment.

Mr. Morehead felt the business of the City was serving the residents.

Mr. Chapman said it was important to protect time at the beginning of the meeting for open public comment.

Mr. Morehead provided information from the 1/6 memo discussing the location of public comment – for the State there were nine with public comment at the beginning of the agenda, two in the middle, two prior to the start of business start,17 at the end and 12 with none. Dover prior to the start of business had a 15 minute limit, Wilmington had 30, Bethany had a 30 minute overall limit at the beginning and Delaware City had a 15 minute overall limit at the end.

Mr. Chapman noted time frames needed to be protected for elected officials.

Regarding item 6 Mr. Morehead questioned whether this was two parts. He understood the request to permit audience members who needed to leave to speak but the wording was not entirely clear that people may speak only one time per item. Currently people returned to the microphone with other thoughts and he thought that was a free speech issue that should not be eliminated. He wanted it split into two separate pieces – one regarding people that needed to speak early and the other regarding whether someone could speak more than once on the same issue. Mr. Markham said the intent was to say people spoke once on an item, not to restrict any other conversation.

Public Comments:

John Morgan, District 1, suggested if Newark wanted the help of elected officials in getting PILOT funds, they should work to accommodate their schedules. Mr. Morgan said that Robert's Rules of Order said a consent agenda should be used only for uncontroversial items. The Mayor (who usually made these appointments) could not pre-determine whether there was any objection to these appointments. Also, the Consent Agenda was not open to public comment except at the beginning of the meeting. Regarding setting the end time of the meeting he thought 11:00 p.m. was early and that a majority of Council should reserve the right to deal with important issues. He also thought the Mayor should consult with Council before setting ending times for workshops. He supported the idea that people who have not signed up for speaking on an agenda item should be limited to two minutes instead of three.

Nick Wasileski, District 3, spoke on behalf of the Delaware Coalition for Open Government. One of its goals was to improve, expand and promote public access to government. He pointed out that a primary means for public access was the comment period on the Council agenda. Public comments were a formal venue and the comments were on the record. Opinions and concerns could be addressed to Council. They could also present facts on topics that were more and more complex and required more time for discussion. Public comment also allowed opposing and diverse sides to express their viewpoints. He urged continued public discussion.

Anne Maring, District 1, stressed the importance of creating the opportunity for separate discussion about boards and commissions. She felt it was the public's right to cede their time and bring their ideas to Council.

Amy Roe, District 4, thought Mr. Gifford's suggestion on the Consent Agenda was consistent with City Council's decision when they adopted the Consent Agenda. She thought it was not appropriate to create an ending time for Council meetings and moving public comment to the end of the meeting,

Jeff Lawrence, District 3, agreed the meeting times ran too long and suggested Council examine the amount of policy that was discussed.

Donna Means, District 5, felt the ordinance was trying to restrict Constitutional rights. She said there were many unanswered questions and problems in the City.

Jim McKelvey, District 4, felt public comment should not be reduced, restricted or relegated to the end of a meeting.

Tom Uffner, District 1, supported removing appointments from the Consent Agenda. He did not support restricting public comment.

Sheila Lynch, District 3, felt Council was not listening.

Helga Huntley, District 1, commented on the resolution. She suggested adding to part C that audio recordings were to be made of emergency meetings as well as of regular and workshop meetings. She agreed appointments should be moved from the Consent Agenda. She did not think eliminating public discourse should be considered.

Brian Dunigan, District 3, felt a two minute compromise was better than nothing and that elected officials should be able to speak immediately. He thought it was reasonable to allow earlier comment on agenda items for people who needed to leave.

Jen Wallace, District 3, said the residents were the City's business and appealed to Council not to pass any of these proposals.

Rebecca Powers, District 3, felt government's purpose was to serve its citizens and public comment was an important part of meetings and this was a time to be reaching out to citizens, not pulling back.

Brett Zingarelli, District 4, expressed concerns about limiting public comment and placing it at the end of Council meetings.

Eric Boye, greater Newark, suggested that Council apply the same rules to themselves as to everybody else.

Chris Hamilton, District 4, encouraged Council to listen to the public.

(ITEM 1) MOTION BY MR. GIFFORD, SECONDED BY MS HADDEN: TO ACCEPT THE CREATION OF A SEPARATE SECTION FOR BOARDS AND COMMISSIONS APPOINTMENTS FROM THE CONSENT AGENDA. THE AMENDMENT WAS STRIKE THE WORD "APPOINTMENTS FROM THE SECOND LINE OF THE PARAGRAPH DESCRIBING ITEMS THAT MAY BE PLACED ON THE CONSENT AGENDA AND INSESRT A NEW SECTION BETWEEN THE FINANCIAL STATEMENT AND APPROVAL OF CONSENT AGENDA TITLED "APPOINTMENTS TO BOARD, COMMITTEES AND COMMISSIONS."

MOTION PASSED. VOTE: 5 to 2.

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

(ITEM 2) AMENDMENT BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: TO CHANGE THE WORDING OF THE AMENDMENT AS WRITTEN TO INSERT THE WORDS "AND TO END BY 11:00 P.M. UNLESS OTHERWISE EXTENDED BY MAJORITY OF COUNCIL RECOGNIZING COMPLETION OF AN AGENDA ITEM COMMENCING PRIOR TO 11:00 P.M. MAY BE FINISHED AFTER 11:00 P.M. (WORDING TO BE PLACED AFTER 7:00 P.M. BUT BEFORE THE COMMA IN THE SECOND PARAGRAPH OF THE RESOLUTION.)

MOTION PASSED. VOTE: 5 to 2.

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

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: TO APPROVE BULLET POINT 2 WITH THE AMENDED LANGUAGE PRESENTED IN THE PREVIOUS AMENDMENT.

MOTION PASSED. VOTE: 4 to 3.

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

(ITEM 3) MOTION BY MS. HADDEN, SECONDED BY MR. GIFFORD:
TO CREATE AN END TIME FOR WORKSHOPS AT THE DISCRETION OF THE MAYOR.

MOTION PASSED. VOTE: 6 to 1.

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

(ITEM 6) AMENDMENT BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO INSERT THE SENTENCE "INDIVIDUALS MAY SPEAK ON A PUBLISHED AGENDA ITEM DURING OPEN PUBLIC COMMENT. THEY MAY SPEAK ON THAT AGENDA ITEM ONLY ONCE."

MOTION PASSED. VOTE: 4 to 3.

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

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO AMEND THE RESOLUTION WITH THE PROPOSED WORDING.

MOTION FAILED. VOTE: 2 to 5.

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

Mr. Markham said his request was to clarify an unwritten policy so it is clear to the public that people will be allowed to speak if they did not sign up. Under Public Comment he suggested wording to the effect that it is Council's tradition to open public comment to those who have not signed up after those who have spoken on the sign-up list. Mr. Chapman thought it was appropriate to add it midway in the Public Comment statement following the sentence "At the appropriate time, individuals who have signed up for public comment will be called forward to the podium by the chair of the meeting to speak."

(ITEM 7) AMENDMENT BY MR. MARKHAM, SECONDED BY MR. GIFFORD: TO INSERT IN THE PUBLIC COMMENT SECTION AFTER THE WORD SPEAK BUT BEFORE THE WORD INDIVIDUALS THE SENTENCE "THEREAFTER OTHER MEMBERS OF THE PUBLIC MAY REQUEST TO BE RECOGNIZED BY THE CHAIR."

MOTION PASSED. VOTE: 5 to 2.

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

(ITEM 10) MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: NOT TO CHANGE OPEN PUBLIC COMMENT FROM WHERE IT CURRENTLY EXISTS.

MOTION PASSED. VOTE: 6 to 1.

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

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

MOTION PASSED. VOTE: 6 to 1.

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

(RESOLUTION NO. 14-CC)

17. 6-B. Others: None

18. 7.RECOMMENDATIONS ON CONTRACTS & BIDS: None

19. 8. FINANCIAL STATEMENT: None

20. 9. APPROVAL OF CONSENT AGENDA

06:35:41

Mr. Gifford requested that items 9E (Reappointment of Bob Chadwick to the Downtown Newark Partnership for a Three Year Term to Expire July 15, 2017) and 9F (Amendment to the Board of Adjustment Term of David Levandoski to Reflect a Four Year Term Expiring September 15, 2018) be removed from the Consent Agenda.

Ms. Bensley read the agenda as amended.

A. Approval of Council Meeting Minutes – October 13, 2014
B. Receipt of Alderman's Report – October 23, 2014
C. Receipt of Planning Commission Minutes – October 7, 2014
D. Receipt of Real Estate Tax Assessment Quarterly Supplemental Roll
G. ***First Reading* – Bill 14-25 –** An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, By Increasing the Water Rates Effective January 1, 2015 By 7.2% **– *Second Reading* – November 24, 2014**
H. ***First Reading* – Bill 14-26** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Adding a Definition For and Criteria to Operate No Impact Home Businesses – ***Second Reading* – December 8, 2014**

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO APPROVE THE CONSENT AGENDA AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

21. 9-E. REAPPOINTMENT OF BOB CHADWICK TO THE DOWNTOWN NEWARK PARTNERSHIP FOR A THREE YEAR TERM TO EXPIRE JULY 15, 2017)

Mr. Gifford thanked Mr. Chadwick for completing his application. He said Mr. Chadwick stated the most important reason he should be on the DNP Board was because a member of the Chamber of Commerce was a required component and gave as an example of his work on a team or committee his participation on the DNP Board during his past three years of service. There were 14 possible meetings Mr. Chadwick could have attended during his tenure and it appears Mr. Chadwick was at 7. His attendance rate was the second lowest of any DNP Board member.

Mr. Gifford pointed out that the New Castle County Chamber of Commerce has over 1,500 member businesses and said perhaps there was an alternate person with more ties to the City who may have more interest in attending meetings regularly.

MOTION BY MR. RUCKLE: TO APPROVE THE REAPPOINTMENT OF BOB CHADWICK TO THE DOWNTOWN NEWARK PARTNERSHIP FOR A THREE YEAR TERM TO EXPIRE JULY 15, 2017).

MOTION FAILED DUE TO LACK OF A SECOND.

22. 9-F. AMENDMENT TO THE BOARD OF ADJUSTMENT TERM OF DAVID LEVANDOSKI TO REFLECT A FOUR YEAR TERM EXPIRING SEPTEMBER 15, 2018

Mr. Gifford voted against this previously and wanted it separated out from the Consent Agenda. He had no additional comments.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT THE BOARD OF ADJUSTMENT TERM OF DAVID LEVANDOSKI NOT BE AMENDED TO A FOUR YEAR TERM.

MOTION FAILED. VOTE: 2 to 5.

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

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO CORRECT THE BOARD OF ADJUSTMENT TERM OF DAVID LEVANDOSKI TO REFLECT A FOUR YEAR TERM EXPIRING SEPTEMBER 15, 2018.

MOTION PASSED. VOTE: 5 to 2.

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

23. Meeting adjourned at 1:26 a.m.

Renee K. Bensley
Director of Legislative Services
City Secretary

Public Comments by John Morgan (District 1) at the Newark City Council Meeting on November 10, 2014

This evening I shall again discuss two appointments on the Consent Agenda. I am glad that later tonight you will consider Councilman Gifford's proposal to create on future agendas a separate item for appointments to Boards and Commissions, as I have been urging for the past several months, so that the public can comment on them when you are considering them, rather than several hours earlier.

On the questionable reappointment of David Levandoski to our city's Board of Adjustment, I have little more to say other than that he shall again have to recuse himself if there is again an appeal involving another controversial project on the STAR Campus, and that there still has been no answer to the very relevant question of whether Mr. Levandoski disclosed to former Mayor Funk his own involvement in the power plant component of TDC's project when Mayor Funk appointed him to the Board of Adjustment in early January 2013. The citizens of Newark deserve a clear answer to this question. Hence I again urge that you not approve Mr. Levandoski's reappointment until he has given a satisfactory answer to this question. If Mr. Levandoski is not here now, since he lives a 5-minute walk from here at 200 Sunset Road, you could easily arrange to phone him and ask him to appear before Council later tonight, when you will discuss his reappointment for a 4-year term.

I turn now to the reappointment of Bob Chadwick to the Downtown Newark Partnership. After concerns about his reappointment were raised by me and many other citizens of Newark two weeks ago, mainly because of his urging the citizens of Newark to "embrace" TDC's project in August 2013 and his belittling the environmental concerns of its opponents, on November 1 Mr. Chadwick published in the *News Journal* a "Delaware Voice" column, in which he disputed our contention that he has a significant conflict of interest because he is the Executive Vice President of the New Castle County Chamber of Commerce. So let me explain why he does.

Mr. Chadwick is not an independent businessman. He works for the New Castle County Chamber of Commerce, which last year strongly supported TDC's project; witness its November 2013 issue of *Business Matters*, which featured a front-page article promoting TDC's project and another article by Mr. Chadwick's boss, Mark Kleinschmidt, with the title "NIMBY vs. Jobs". Moreover, Mark Kleinschmidt is a "Founding Board Member" of the curiously named "Delawareans for Environmental and Economic Development", which not only strongly backed TDC's project, but also poured $45,000 into our city's mayoral election in November 2013 to support the candidate who was viewed as most supportive of TDC's project (see the attached documentation). At that time, Polly Sierer was quoted in the *Newark Post* as saying "This is from an outside group and was done without my knowledge, approval, or involvement," and she described D.E.E.D.'s intervention as "disrespectful to me and, more importantly, to the residents of Newark". If these "disrespectful" interventions by D.E.E.D. and Bob Chadwick on behalf of TDC's project didn't pose a conflict with the interests of Newark's residents, what else would?

In his "Delaware Voice" column Mr. Chadwick continues to refer misleadingly to TDC's project as involving only a "data center", without any mention of its "power plant" or even a "CHP facility", and continues to repeat uncritically TDC's unjustified claims about creating "hundreds of long-term jobs", when in fact on April 25 Gene Kern himself stated in a speech to the fossil-fuel friendly organization "Secure America's Future Economy" that his data center could potentially lead to the ***closing*** of "some 600 data centers in this area"

(see the attached document, which is not widely known). We don't need this sort of "help", which would have benefited a few extremely wealthy people while causing a net ***loss*** of good jobs for the middle classes and polluting our city's air with TDC's "poison", as Marge Hadden eloquently described what our town suffered for more than a year at the Council meeting on October 13. It is both fair and accurate to say that Bob Chadwick is one of those outsiders who urged Newark's citizens to "embrace" that poisoned chalice and imbibe its contents. Do we really still need his help and advice?

Near the end of his "Delaware Voice" column, Mr. Chadwick wrote that the opponents of TDC's power plant project "should not delude themselves into thinking that they represent the entire citizenry or even a majority of the citizenry". We are not delusional if we observe that in last November's mayoral election, the 5 candidates who openly opposed TDC's project garnered over 55% of the vote. Nor are we delusional if we contend that the candidate who won with barely more than 40% of the vote should not assume that she has a mandate to ignore the concerns of the majority of the citizens of our town in making appointments.

To conclude on a positive note, I suggest that in the future it would be wise for the Mayor to consult with those other candidates who won an appreciable fraction of the vote before making appointments and reappointments to our city's Boards and Commissions. If she will do so, our city can resume the process of recovering from TDC's "poison".

11/10/14 13

State Representative Paul Baumbach, District 1

Thank you all for your service to our city. I extend a special thank you for the extensive time that you have devoted to the city's public meetings, including city council meetings. In case other meetings this evening make it impossible for me to attend and address council tonight, I have prepared these comments related to the proposed changes to the city's rules of procedure.

I am focusing on the amendments shared last week by City Secretary Renee Bensley, and I address them in the same sequence. Some are just mild thoughts. I have highlighted the few on which I feel more strongly.

I do not support the proposed change to making all board/commissions automatically non-Consent Agenda items. Given that items on the Consent Agenda may be moved to the non-consent agenda at the request of a sole council person, and given that historically these items were non-controversial, I am not convinced that this change is warranted. I don't see this area as 'broken.'

I can understand the proposal to set an end-time, but I suggest that if this is adopted, you **consider a change whereby no new items on the agenda will be addressed/begun after a set time period, such as 11pm**. In this manner, if an item has begun to be considered prior to 11pm, but its consideration continues past 11pm, its consideration can be continued, but no additional items can be considered at that night's meeting. I would be very wary of adopting this change if the public comment period is moved to the end of each meeting's agenda—we need to ensure that the public comment period is never skipped.

I think that six minutes is a reasonable maximum amount of time for a member of the public to address a single item at a meeting. I expect that the rules include exceptions being permitted (by the Mayor, or a majority of Council members?) in special circumstances. Extensive concerns are best submitted in writing in advance, so that all council members have a chance to digest them. If necessary, such written comments can be accompanied by no more than a six minute verbal executive summary of them.

I understand that ceding of time prohibition proposal is being withdrawn.

Providing a mechanism for members of the public to speak on a specific agenda item, when they must leave early, seems reasonable, however I imagine that this can get out of hand.

I am most concerned with the issue of needing to sign up to speak before that item has been taken up by the council. While I understand that this makes it easier to manage, I feel that this is ill-advised as it would prohibit public input related to information introduced after the start of the item's consideration, which feels contradictory to the purpose of Open Meeting laws and guidelines. I understand that one Council Person noted that such 'late entries' get an advantage of getting the 'last word.' This concern is valid, however the same weakness is present for those who sign up early, versus one minute before the item's consideration begins. This is an inherent weakness in the First In First Out sign-in sheet approach, and excluding public input after the item's consideration has begun does not remove this weakness. **I urge the council to reject this proposal.**

I understand that total time limit proposal is being withdrawn.

I understand that public comment restriction on ordinances and Planning Department items is being withdrawn.

While I understand the motivation, **I do not support moving the open public comment period to the end of the meeting.** I feel that it sends a bad message, and there are more attractive **alternatives** to consider. Perhaps a change can be made to move open public comment to be the first item on the agenda taken up on/after 8pm or 8:30pm, so that there is a dedicated 60-90 minutes of business conducted prior to the open public portion of the meeting. This enables the council to move to the front of the agenda items needing a quick, but simple decision by council, those involving paid staff testimony, or others on a tight timetable, and it lets the public know that if they only wish to have their say on a general point, they can skip the first hour (or 90 minutes). This 'later, but not at the end' approach feels much more welcoming than moving the open public comment period to the very end of the meeting.

I understand that summary minutes proposal is being withdrawn.

Those are my thoughts, for what they are worth. Thank you again for your dedicated service to our city.

State Representative Paul Baumbach, District 1

11/10/14 6A1

Dear Members of City Council

I understand that there is a need to manage the time required for City Council meetings. Setting an END TIME sounds like a great idea. As an engaged resident, I have seen the effects of over-long meetings and, it isn't pretty.

Now, how to make that work, and still have a well functioning democracy,...there lies the rub. Much of this dilemma lies in how we view the use of public comment. Public Comment is:

View #1. A valuable opportunity for residents to offer facts and opinions on the functioning of city government, the use of tax dollars and the consistency of our processes with our vision of a smoothly functioning democracy which aims to provide for the health and safety, as well as the quality of life of our residents.

View #2. An opportunity for anybody to rant for three minutes about what they think is wrong with city government.

Depending on which view you hold,

Public Comment is an item to be appreciated and given some latitude -- or – Public Comment is something to be reduced, restricted, relegated to the end of a meeting.

Since I hold the View #1, above, and attempt to act accordingly, I think public comment needs to be given some latitude, as follows:

a. Place no limit on the number of persons ceding time (the number of offers is a measure of the strength and unanimity of the opinion or the perceived value of the information being offered)...consider it a straw poll.
b. Use the sign up requirement as an organizing process, not a limiting feature. Invite last minute comments as a way to be sure that all are heard. Having the last word is of no particular value, unless it happens to be the right word i.e. the word needed to clarify the choice at hand, offer the compromise that works, provide information not yet included, etc.

c. Do not prohibit Public Comment after an issue is in discussion at the table. If the table discussion includes an error, or misinformation, the value of a Public Comment that clarifies could be invaluable.
d. Do not limit the number of times a person can speak. A meeting may range over multiple topics and each one may elicit useful information in a Public Comment period. It is entirely possible that one resident, with a keen eye for facts and sound reasoning, might offer many useful comments in a single meeting.

In our family we have a joke about those who "take a long turn". You might hear, "Not me, you call Uncle Bob. He likes to take a long turn, and I've got things to do." There is a tendency to avoid Uncle Bob.

There is a difference between EFFICIENCY and EFFECTIVENESS.

Efficiency is getting things done quickly, expeditiously, no wasted motion.

Effectiveness is getting the RIGHT THINGS DONE RIGHT.

In my opinion, Public Comment is not WASTED MOTION. When done well, in the right spirit and with an eye to brevity and accuracy, it can improve EFFECTIVENESS.

Newark City Government cannot afford the appearance of hindering or suppressing public comment, any more than it can afford the appearance of opacity.

Respectfully submitted,

Jim

Jim McKelvey