

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

February 9, 2015

Those present at 6:00 p.m.:

Presiding: Deputy Mayor, A. Stuart Markham, District 6
District 1, Mark Morehead
District 2, Todd Ruckle
District 3, Rob Gifford
District 4, Margrit Hadden
District 5, Luke Chapman

Absent: Mayor Polly Sierer

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
Electric Director Rick Vitelli
Public Works & Water Resources Director Tom Coleman
NPD Chief Paul Tiernan

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(6) for the purpose of discussions of the content of documents, excluded from the definition of “public record” in §10002 of this title where such discussion may disclose the contents of such documents.

Council entered into Executive Session at 6:00 p.m. and returned to the table at 6:57 p.m. Mr. Markham advised that no action was 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. PROCLAMATION CONGRATULATING ANDREW POWERS ON ACHIEVING THE RANK OF EAGLE SCOUT

06:54

Andrew Benjamin Powers, a Newark resident and member of Boy Scout Troop 22, was recognized for attaining the highest honor bestowed on a Scout – the Eagle Scout Award. Mr. Powers volunteered in the community at Christiana Hospital, assisting with the Newark Area Welfare Committee annual holiday food drive and restoring a shed at Leeds United Methodist Church.

3. BOX TOPS FOR EDUCATION PRESENTATION – JARED WASILEFSKY

09:37

Jared Wasilefsky presented details regarding the General Mills Box Tops for Education program where local schools, grades K-8 may earn 10¢ per box top redeemed. Mr. Wasilefsky recommended that Newark implement a Community Engagement Initiative and Council agreed to have Mr. Chapman, Ms. Sierer and City staff meet with Mr. Wasilefsky to continue to develop a path forward.

4. 1. ITEMS NOT ON PUBLISHED AGENDA:

A. Public

27:39

Rick Celeste, District 5, asked Council to vote no to changing the referendum process. If there would be a referendum he wanted it to contain a question for a five year moratorium on rental properties. He thought fees associated with the construction and support of rental properties should be increased to more appropriately share the tax burden. Mr. Markham stated tonight's discussion about the referendum was only a conversation and there would be no vote.

John Morgan, District 1, reviewed the history of Charter changes by resolution, by referendum and by approval of the General Assembly (comments attached).

Anne Maring, District 1, asked that the parking garage action item be removed from the Comprehensive Plan. She felt it should be in the CIP. Mr. Morehead responded that the change was made and the Planning Department was asked to go back and look at the wording since the parking garage was mentioned in several chapters.

Margaret Cassling, District 1, thought it would be a mistake to make a referendum change and wanted Newark citizens to continue to have a voice in their community.

Tom Uffner, District 1, encouraged Mr. Ruckle to withdraw his fence ordinance which he felt was unnecessary.

Helga Huntley, District 1, asked if there was a timeline for improvements to the floodplain ordinance approved at the 1/12/15 Council meeting. Ms. Houck will follow up. Ms. Huntley hoped the issue of regulating accessory uses and defining a neighborhood would be forthcoming at a Council workshop. She noted the University's Rodney and Dickinson property was zoned UN, limiting its use to college or university purposes. She suggested that Council decide what would best fit into the neighborhood and how the land should be rezoned.

Donna Means, District 5, recognized Messrs. Nietubicz and Fortner as being exemplary City employees for their assistance with loan programs. Ms. Means did not think the City's new phone system was user friendly.

Jen Wallace, commended the InformMe system and appreciated City staff listening to and implementing suggestions from residents.

5. **1-B. ELECTED OFFICIALS:** None

6. **1-C. UNIVERSITY**

51:24

(1) Administration – Rick Deadwyler, University of Delaware Government Relations, reported on several upcoming events at the University.

Michael Chertoff, former Secretary of the U.S. Department of Homeland Security, will deliver the first UD Cybersecurity Initiative Distinguished Lecture on 2/10 at 3:30 p.m. at the Gore Recital Hall.

Melissa Harris-Perry will be the featured Black History Month speaker at 7 p.m. on 2/19 in the Trabant University Center at the University of Delaware.

Author and educator Geoffrey Canada, president and former CEO of the Harlem Children's Zone will deliver the annual Louis L. Redding Lecture on Civil Rights and Social Justice on 3/3 at 5:00 p.m. in Mitchell Hall.

The University will host a celebration of the Carnegie Foundation's Community Engagement Classification at Clayton Hall on 3/9 from 5:30 to 8:00 p.m.

7. **1-C-2. STUDENT BODY REPRESENTATIVE**

8. **1-D. LOBBYIST:** None

9. **1-E. CITY MANAGER:** None

10. 1-F. COUNCIL MEMBERS

56:55

Mr. Chapman

- Announced the Traffic Committee would meet on 2/17 at 3:30 p.m. in the Police Chief’s conference room. One of the items discussed would be to remove permit parking on New London Road. Public participation was encouraged.

Mr. Gifford

- Pointed out there would be a second reading for a fence height ordinance and residents from District 3 were welcome to submit their comments to Mr. Gifford.
- Asked for a report on the performance of parking meters at the 3/9 meeting.

Ms. Hadden

- Worked with constituents and attended the workshop on the Comprehensive Plan.
- Has a 5 p.m. meet and greet on the first Thursday of each month at Pat’s Pizza – all are welcome to attend.
- Asked the status of the sound study. Ms. Houck reported the purchase order was initiated and sent to the vendor. He was reviewing information and she was waiting to hear back from him.

Mr. Morehead

- Attended the Empty Bowls fundraiser at the Newark Senior Center for the Meals on Wheels program. The Senior Center and Meals on Wheels program were always in need of volunteers and donations.
- Attended one of the four Christina School District referendum meetings where approximately 12 people were in attendance. Community meetings would also be held on 2/12 and 2/17 with the referendum on 2/24. The referendum would include questions about a 28-29% increase in school taxes and a 46.8% increase in school taxes.

Mr. Ruckle

- Meets the first Friday of every month with New Castle County Representative Lisa Diller and State Representative Ed Osienski at the Senior Center - meetings are open to the public. They are discussing ideas for a Police Athletic League Center in the greater Newark area.
- Police Department promotions will be held on February 12.
- Regarding the water main break he commended the City for the notification efforts but felt there was room for improvement in notifying out of town water customers.

Mr. Markham

- Regarding the referendum, if the full vote passed the increase would be about 140% of his taxes to the City.
- The snow budget was in good shape this winter.

11. 2. ITEMS NOT FINISHED AT PREVIOUS MEETING:

- A. Approval of Special Council Meeting Minutes – December 15, 2014

01:08:12

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT THE SPECIAL COUNCIL MEETING MINUTES OF DECEMBER 15, 2014 BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer

12. 3-A. SPECIAL DEPARTMENTAL REPORTS:

- 1. Recommended Changes to City of Newark Charter

01:08:44

Mr. Vitola reiterated no action was being requested on this item tonight and the purpose of the discussion was to get public feedback and Council direction on how to approach a possible Charter change to allow resolution debt as opposed to referendum debt. The concept of the Charter change was first discussed at the 10/7/13 financial workshop and discussed it in more detail at the 5/5/14 financial policy and 9/29/14 stormwater workshops. The recommendation was submitted in October 2014 with red line Charter changes for Council and the public's review well in advance of any action.

According to Mr. Vitola Council had several options:

- Add a requirement for a second public hearing or a thirty day notice requirement rather than the ordinary resolution process.
- Increase the vote requirement from four to five.
- Reduce the carve-out limit from 4% to 2% or some other percentage with no regard to lender.
- Reduce the carve-out limit to a dollar amount rather than a percentage with no regard to lender.
- Restrict the type of loan permitted by resolution to infrastructure only (water, sewer, stormwater or electric system).
- In addition to the overall resolution debt limit, the debt could be restricted on a per project basis to somewhere in the range of \$2 million so the citizens could be assured that any project being undertaken without a referendum was a small infrastructure project only and would not have a material impact on the annual budget or on the City's credit profile.

The proposed Charter change was constructed by benchmarking with other comparable cities and resolution debt especially for the purpose of infrastructure loans and was very common in the State. The City had significant room for debt based on its current financial profile, not only from a debt capacity standpoint but from an ability to pay standpoint as well. Staff believed the resolution debt process would be more efficient especially in the context of the State revolving loan process and would also save money in the form of interest expense, underwriting fees, possible grants and subsidies and avoiding referendum costs. The debt approved by referendum would work with the State process also.

Mr. Vitola added that this change was being proposed primarily as a result of the discussions related to the stormwater utility with Council members and residents asking for funding alternatives. At the staff level as discussed at length during the 2015 budget hearings it was agreed that a reasonable amount of debt was a responsible way to solve some of the infrastructure problems sooner rather than later.

Mr. Morehead asked for the average municipal debt nationwide. Mr. Vitola would get that information, but responded the City was exceptionally low compared to national standards. Mr. Chapman said the resolution was specific to allowing some amount of resolution debt rather than referendum debt – the idea being put forth by the Finance Director had no request to increase the overall debt limit, so he questioned why the data was needed to discuss resolutions. Mr. Morehead's understanding was the problem point was within the percentage already allowed, so his question was if we are allowed 10% and we know the problem is at 7.2%, why would the City go anywhere near 6% or 8%. That is where he would like to know the tipping point. Mr. Vitola replied it was typically expressed in debt per capita but the question was resolution debt yes or no and if so, how much, not are we going to take on any additional debt.

Mr. Ruckle asked the cost of a referendum – Mr. Vitola said it was less than \$10,000. He said most people he talked to in his district supported the infrastructure improvements and the cost but wanted to be able to have the referendum. He stated that he could not accurately get a count to justify that cost so until the City could provide him the ability to poll his district 100%, he did not think the City could move forward to take the referendum away. He suggested that the City research alternative ways to vote such as through cable television in order to obtain the voice of their district when they vote.

Mr. Gifford remarked about Dr. Morgan's comment that to change the charter there were implications in the Code that the City should do a referendum for that – this was

never done to Mr. Gifford's knowledge. Further in looking at the charter to borrow money we actually go to referendum but folks that vote for their Council person – they were not the only people that get to vote for incurring debt – it could be by the tax payers and for businesses that are in the City. By changing this referendum procedure, those folks would not get a say, so for the first four percent or two percent (depending on the type of loan), Newark would be disenfranchising those folks and we added that in 1972. He did not receive any positive comments about taking the right to referendum away and could not see any reason why we would not try to use our process as it is today first. He said referendums were a tiny fraction of the borrowing amount. We should make sure we do referendum only when it was justified for a larger project and stormwater was one of them. Mr. Gifford was confused – he thought the City was going to bring a stormwater proposal for a fee – were we now going to change it to a proposal for bonded indebtedness, but he did not see it in the budget anywhere. Unfortunately it could be anything – it was not specified to anything as it was now, so that was another thing that everyone should be aware of and when you only need four votes of Council.

Mr. Gifford asked Ms. Bensley – in Section 407, it looked like there was language missing from one of the Charter changes. Also it looked like there was a Tax Financing District (TIF) missing. At this point in time he only wanted to consider changing things when there was a problem.

Ms. Hadden remembered the meeting where Council said to think outside the box and see what type of funding became available. This was certainly thinking outside the box but she was not in favor of taking away the public's democratic process for incurring a large amount of debt. Plus, with not knowing where we are with the stormwater fee she thought it was too early in all of the processes to even think about and she would not support this.

Mr. Markham believed staff was looking at different ways to do things and trying to find a way to get a big chunk of money to do the large stormwater projects and then use some type of fee that was smaller and spread out over time. The question will be for referendums - don't we know what the State has available far enough ahead so we can plan for a referendum. Mr. Vitola spoke with the State about this, they will be flexible and understand Newark's situation and that there was no possibility for resolution debt. The State process was roughly a year long. There was only a limited amount of funding available every year and it was highly competitive. There were cities, counties and even private water utilities that consumed the funding. Mr. Vitola said the 2% rate would sunset and rates would go up after January. He felt tonight's feedback was very helpful to staff so they would know what direction to go in. They would still try to get State debt through the referendum process.

Mr. Ruckle pointed out the referendum could state when funding became available the City could have up to two years to utilize this type of financing, so the City would not have to spend \$10,000 every year. Mr. Vitola would confirm with bond counsel if there were any restrictions on the time post-referendum date.

Mr. Morehead polled a significant number of people from his district and did not find a single person in favor of the Charter change. He felt if the homework was done by Newark and the projects identified and got the public's buy-in as was done with the reservoir that the State would tend to mark those projects higher. He felt most residents were willing to pay for getting good services.

Mr. Markham said there were a couple different things, one is the planning and the other is a trust issue.

Ms. Houck said as explained by Mr. Vitola this was the beginning of the conversation and this was mentioned at the workshops – there was no mention from Council that this should not come forward. She felt the best course of action was to get working on the referendum aspect to avoid wasting time.

Mr. Chapman asked for clarification on the bottom of page 1 which showed the example of three other municipalities in the State that have some resolution debt limit. In

the scenario where other municipalities were putting forth debt requests in the revolving funds, is what is left for Newark in the event of an approved referendum borrowing proposition, is what is left for us for the State to even consider after what has already been taken – Mr. Vitola – yes. Mr. Chapman – so those municipalities that can come forward with the resolution, that approval for those funds has chipped away at the total amount the State originally set forth. Mr. Vitola – correct. So Newark is now competing for the money that is left and if Newark is the only municipality out of 50 in the State that does not have a resolution debt limit, we could be competing for funds after an approved referendum that has a zero balance left. Mr. Vitola responded that was possible and we would have to wait to determine what, if any State funds were available the next year and what, if any, EPA funds were available to supplement that in the following year.

Mr. Chapman heard feedback for and against the referendum.

Mr. Morehead asked Mr. Vitola to revisit the timing of the request for the money to the State because he thought there was plenty of time to get in on even footing with every other City and have a referendum. Mr. Vitola said there was a time between when the State extends a binding loan commitment and from when we would have to accept which does not happen until there is a public hearing at the State and the EPA approves the project. Then, there is another public hearing at the State where the project financing is approved. At that point they extend the binding loan commitment and Newark would not be able to start the referendum process until the project was approved and the funding was approved. If the State's binding loan commitment within a period of time, you can get bumped off the list into the next year. So there is a timing issue but Mr. Vitola advised the State we may be facing referendum debt only and they said they will do whatever they can with their time lines to help us out. Mr. Vitola furthered that there are two rounds. Typically every year there was a total amount per year available for all the cities, counties and the privates. After the initial advertisement that the money is available there is one round of funding and funds go. Later in the year there is another round of funding. If by virtue of the referendum process we are kicked from the first submission to the second there could be less funding than Newark would need for its projects. Mr. Morehead said "but the timing is not such it would force Newark into that second position using the referendum process that is currently law." Mr. Vitola said no, but it would exacerbate the problem. Mr. Morehead confirmed Newark was playing on the same equal footing with everyone else in the State with the referendum process in place.

Mr. Gifford said as an alternative to that we could also do a referendum before even submitting a project to the State with the anticipation that they would accept the project if it was a very important project. Mr. Vitola said that was correct and we would hope we rank highly and beat out the other municipalities.

The Chair opened the discussion to the public.

John Morgan, District 1, was pleased with Council's comments and directed their attention to the second handout he distributed which showed on one sheet a possible schedule for a referendum as soon as this spring to coincide with the elections in three Council districts. He would support a well-justified request for a bond issue and a referendum and thought many other citizens would. He thought there was a lot of flexibility in how a referendum could be worded and he urged Council and staff to examine closely the actual texts of the referenda from 1999 and 2001 associated with the reservoir first for the purchase of the land and secondly for the construction of the reservoir.

He referred to an article in the New York Times about the City of Glendale and the difficulties they got into through excessive borrowing mainly to construct large sports complexes. According to the author of the article one can deduce that the median level of debt expressed as the amount of money borrowed divided by the total assessed value of the property for American cities was approximately 1 ¼%. The tax base of Newark was approximately \$800 million, and 1 ¼% of that was approximately \$10 million. That was where we are in our bonded indebtedness which was around \$11.5 million. There is also approximately another \$10 million of some form of debt because of the Smart meters. He thought we were already above the median and getting another \$10 million in debt was something that should be thought about carefully by all members of Council.

Anne Maring, District 1, stated the CWSRF which this whole proposal was based off of came into existence in 1990 and DWSRF funding had been around since 1997. She will e-mail the PDF from 2014 showing the many steps to the process starting with the notice of intent. There was nothing to restrict Newark from having a referendum even before the notice of intent. The big part of this was being put on the project priority list that has to be approved by the EPA. The workshop required for Newark to attend would be February 23 in order to put in a notice of intent which must happen between February 26 and March 26. In regard to a question regarding the time between when it is approved and the loan closure, it was 120 days.

Miranda Wilson, District 4, discussed the idea of a referendum brought up by Mr. Ruckle and the uses to which it could be put. She said it gives a sense for what people in the districts actually believe and a sense of who we are as a City.

Sheila Lynch, District 3, thank Council for asking constituents what they wanted.

Bonnie Meredith, District 3, was pleasantly surprised with Council's conversation about the referendum. She would have preferred a better presentation from the City about why they wanted to have this resolution. She did not understand the time line and did not see anything written in advance that would help her.

Tom Uffner, District 1, felt the referendum process should be followed.

Helga Huntley, District 1, strongly objected to the Charter change. Ms. Huntley pointed out that referendums were used to amend the Charter in 1964 and 1967. She detailed the timeline to get these loans from the State:

- City submits notice of intent.
- State will put together a project priority list.
- If project does not make the list, it is out of the running.
- If project makes the list, a complete proposal is required including engineering, environmental and financial information.

During this process the referendum could be prepared and held or could be held after State approval – there was at least 120 days to approve the loan thereafter. There was no such thing as cities with resolution debt having any kind of precedence. These were EPA mandated programs currently created by the Clean Water Act and she expected the programs to continue in the future.

Mr. Gifford thought the Charter changes done in the 1960's were by Charter Commission. He wondered if a Charter change was passed by resolution of three quarters of Council if that had ever gone to referendum.

Jeff Lawrence, District 3, said debt should be a last resort and that the City needed to get its priorities in line before starting to talk about debt.

Mr. Markham stated staff was given direction not to proceed with resolution debt.

13. 3-A-2. BOARDS AND COMMISSIONS REVIEW COMMITTEE UPDATE AND PROPOSED PATH FORWARD

02:00:32

Ms. Bensley reported there were currently five appointed members of the seven and a sixth nomination was received today. She was asking Council for a formal, more defined charge for the committee. Her memo included 11 potential items that could be part of the formal charge along with others Council wanted to include. In addition, she requested permission to get the kick-off meeting scheduled without a full committee since it had been almost a year since staff began working on this committee.

Mr. Markham wanted to move forward and suggested ranking the 11 items in terms of priorities. He checked off everything but number 5. Ms. Bensley recommended having

them tackle eight to nine items. She thought this list could be used as a springboard to be able to set a formalized review form. Thirteen boards were on the list for evaluation.

Ms. Hadden went through the items and pulled out all the key actions and wrote what she thought was a general charge: "The general charge shall be to evaluate, assess, review and submit recommendations to City Council regarding general rules, procedures and processes related to current or proposed boards including recruitment procedure and training processes deemed helpful to perform basic board duties."

Mr. Gifford asked about proposed boards – was that because they may propose a board? Ms. Hadden said yes, they may propose a board.

Mr. Markham said boards and commissions sometimes flounder when they do not have very clear direction. He thought it was necessary to spell out the points Council wanted them to do. There were no particular items that Council felt were unnecessary in the list.

Mr. Morehead was agreeable to let the committee move ahead without its full membership. He thought having a standard format across all of the boards was good and that the list was comprehensive – items 1 (was about all the boards) and 11 (looks like final report to Council) therefore, Council was only looking at items 2 through 10 for each board. Mr. Ruckle expected to have an application in shortly for his district, so he would move forward.

The Chair opened the discussion to the public.

John Morgan, District 1, said he was eager to get moving and meeting on the first Thursday of each month should work for him as long as the meeting was 7:00 p.m. or later. On the issue of compensation both the State Code and the City of Newark's Code provided for the possibility of compensation to members of the Board of Adjustment. He thought that should be considered carefully as it was important to have qualified people on that Board.

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

It was the consensus of Council that it was acceptable for Ms. Bensley to proceed.

14. 3-A-3. RECOMMENDATION TO COUNCIL REGARDING THE SERVICE OF COUNCIL MEMBERS ON COMMITTEES
RESOLUTION 15-__ : A RESOLUTION ALLOWING COUNCIL MEMBERS TO SERVE ON COMMITTEES ESTABLISHED BY CITY COUNCIL WHEN AUTHORIZED BY ORDINANCE

02:20:32

Mr. Herron stated that Council adopted a resolution in 1997 prohibiting Council members from serving on committees established by Council. Should Council wish to go forward with item 4-B, Bill 14-28 which provides that two Council members will serve on a newly established Pension Committee it is his recommendation that Council adopt this new resolution which makes it clear that Council members are permitted to serve on committees when specifically authorized by ordinance.

Mr. Morehead asked why the resolution was passed on 1997. Mr. Gifford felt there was no clear direction in 1997 when Council adopted the resolution. Ms. Bensley added that when the resolution was passed in 1997 four months later the Downtown Newark Partnership was established where they placed the Mayor on the committee meaning that the same Council within four months decided to put a member of the Council on a committee. Nothing would change at this time.

MOTION MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT ITEMS 3-A-3, 4-A AND 4-B BE DISCUSSED SIMULTANEOUSLY AND VOTED ON INDIVIDUALLY.

MOTION PASSED. VOTE: 5 to 1.

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

15. 4. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. **Bill 14-27** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Creating a Pension Committee

03:52

Ms. Bensley read Bill No. 14-27 by title only.

Mr. Vitola explained it was Council's role as fiduciary of the Pension Plan and the OPEB trust that led to the discussions about being more involved in the administration of the plan in the form of a Pension Committee. Mr. Vitola advised the City's Pension Committee on a de facto basis was himself and Mr. Haines. They report on investments, on the actuarial work and submit recommendations to Council who has the ultimate authority for governing the plan as plan trustees. So the thought was when forming the committee that members of Council should serve on the committee.

Mr. Morehead was not in favor of Council being on this committee – he thought Council was the deciding committee at the end so the presentation should be professionally done to Council and he was comfortable with the current structure of residents serving on committees and presenting to Council and then Council making decisions based on that.

Mr. Morehead raised for Council's consideration – the November 3, 2014 letter attached to 4-A talking about the Pension Committee formation – this came, also there was a request from Council at the June workshop (the retreat) where Council requested to have training. This letter in the second paragraph acknowledges that request but then puts forward only that forming this committee is the resolution. He emphasized the need for training for Council whether or not the committee is formed and said it was time to get it done. Mr. Vitola responded the vision for the committee was 1) to form it, 2) have an inaugural meeting and 3) to have the pension consultant form an investment policy statement that the committee would recommend and use it as the basis to hire a new investment manager. He envisioned the training to be conducted by the newly selected investment manager, not the potentially outgoing investment advisor. If Council does not wish to wait that long, someone else could be used to do a 4-6 hour open workshop where there was the consultant that presents, the investment manager that presents and the actuary that presents and all of it would be Newark specific.

Mr. Markham agreed Council should have the training but wanted to focus on whether or not to do a committee with Council.

Ms. Hadden did not think it was appropriate for a Council member to be working on the committee. This left an option for two positions the Mayor could appoint from the public or the committee could consist of the Finance Director, Deputy City Manager and the investment consultant.

Mr. Chapman explained the reason he voted no to have these heard together was because principally it sounded like Council had feelings about whether they should be serving on committees. On item 3A3 principally he found himself on the fence but he was uncomfortable with Council serving on a committee that has some sort of more important recommending role to the rest of Council. Regarding 4A, the committee structure looked good. As far as Council members participating in committees he was not in favor.

Mr. Gifford asked if Council was mentioned in 4-B. Ms. Bensley said it was part of the Pension Committee discussion in general.

After working on the ranking for the lobbyist, Mr. Gifford felt like now he knew a lot more than others when this would come back to the table and felt more uncomfortable about allowing Council members to be on committees.

Mr. Markham asked if it was decided to change the makeup of the committee and not have Council members participating, would that be a substantive change that would have to go through a first and second reading. Mr. Herron would not consider that a substantive change.

The Chair opened the discussion to the public.

Sheila Lynch, District 3, thought one of the strengths in the City was having a well educated population who were invested in their community. She did not think there was a need for Council to do double duty which would preclude any conflict of interest.

Nancy Willing, District 3, felt uncomfortable with the composition of the task force to choose a lobbyist and thought it was a confusing process. Her request was to have a clear procedure on how members would be chosen.

Tom Uffner, District 1, believed it was a bad idea for Council to serve on committees because it would take away voices from the public and give one or more members of Council undue influence. He thought the resolution was unnecessary.

Helga Huntley, District 1, read the reasons from the 1997 resolution for its passage and said in relation to 3A3 whether participation would provide a significant conflict of interest. Regarding 4A she felt there was a logistical problem with appointing Council members to serve on this committee which is it is suggested to appoint Council members for a two-year term and they are supposed to be alternating and this would cause problems because Council terms are only two years so unless a Council member is appointed immediately after their election, they cannot serve a full two-year term unless they get re-elected. To get around that a one-year term could be stipulated and for more continuity on the committee, a Council member could always be reappointed.

Mr. Morehead's question was about what event was happening at that time that brought this resolution about.

Ms. Bensley addressed the two year term and said that was part of the reason why in the structuring of the bill the appointment was scheduled for the organizational meeting when terms begin and end for Council. Ms. Huntley said this applied only to the three members who were just elected for the two year terms. She did not think it was a good idea.

John Morgan, District 1, said there were many examples at the University where committees composed of department faculty gave recommendations to the department as a whole for a vote. He thought it was important the committee not be dominated by Council members and suggested perhaps one Council member only.

Mr. Haines said the pension was a contractually negotiated item in the public law perspective – there was not a public hearing on going out to RFQ for the provider so there was not that expectation that every recommendation from this goes to the public hearing. There is a public labor element to it which is why Council's involvement was welcome on it, so it did not fall in the same bucket as some of the other citizen boards and was Council's exclusively negotiated item.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO APPROVE ITEM 3-A-3, RESOLUTION ALLOWING COUNCIL MEMBERS TO SERVE ON COMMITTEES ESTABLISHED BY CITY COUNCIL WHEN AUTHORIZED BY ORDINANCE.

MOTION DEFEATED. VOTE: 0 to 6.

Aye: 0.

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

Absent: Sierer.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: UNDER PROPOSED NEW SECTION 2-98.4 TO STRIKE ITEM (c)(2)a., TWO COUNCIL MEMBERS, AND INSERT TWO MEMBERS OF THE PUBLIC FROM SEPARATE DISTRICTS.

Mr. Gifford asked Mr. Haines to explain if members of the public were on the committee would there be any need to do something different. Mr. Haines said there would not, but for the unique involvement why Council could be part of it. Public involvement was welcome. A recommendation may come forward that may require contractual negotiations outside of a recommendation or guidance provided.

Mr. Chapman's thought was Newark may be well served to mirror what the State did several decades ago and use people with a professional background (a professional service whether paid or unpaid).

Question on the Amendment was called.

AMENDMENT DEFEATED. VOTE: 2 to 4.

Aye: Morehead, Ruckle.

Nay: Chapman, Gifford, Hadden, Markham.

Absent: Sierer.

Mr. Markham asked if there was any further discussion on item 4-A.

Ms. Hadden proposed and then withdrew an amendment related to the membership of the committee.

Mr. Gifford said the concern was that the committee was too small and suggested that staff and Council come back to a future meeting with recommendations for the committee.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT ITEM 4-A, BILL 14-27, BE POSTPONED INDEFINITELY.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer.

16. 4-B. BILL 14-28 – AN ORDINANCE AMENDING THE AMENDED PENSION PLAN FOR EMPLOYEES OF THE CITY OF NEWARK, DELAWARE, REGARDING ENUMERATING THE DUTIES OF THE PENSION COMMITTEE

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT ITEM 4-B, BILL 14-28, BE POSTPONED TO THE MARCH 23, 2015 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer.

17. 3-A-4. 2015 RSA CALCULATIONS

03:06:33

Mr. Vitola reported that as expected, wholesale electric rates were down again for 2015. Rates fell in recent years and largely followed DEMEC's projections – dating back to the first year that the rate stabilization adjustment (RSA) was implemented, wholesale rates were lower than the City's expected rates resulting in a return to customers every year. This year the wholesale rate drop will save almost \$3 million in purchase power costs which will be passed back to customers through the RSA. There was a minor offset

required to allow the City to reach the budgeted margin of 20% leaving a net return of one cent on each customer's monthly bill per Kwh. The one cent give back was a higher return to customers than in 2014, so rates were dropping a little more than half a penny. For the average residential customer using 775 Kwh per month in 2014 the RSA returned about \$3.49/month. In 2015 the RSA will return \$7.75/month for that same customer which is about \$4.26 more per month and over \$50 for the year. The RSA may also be used to return the prior year over-collection to electric customers. The 2014 over-collection of about \$1.5 million (if returned to customers) would push the RSA up another 6/10 of a cent to 1.6 cents per Kwh.

Staff was recommending that the over-collection be diverted to the RSA which was established with a little over \$1 million in 2012 over-collections. This was timely as DEMEC signaled that the course of falling rates will likely come to an end after 2015. Rates were expected to increase in 2016 as a result of increased ancillary costs on the regional grid that was operated by PJM and especially as a result of revised performance capacity rules which will ramp up in 2016 through 2020. While electricity-only costs have been relatively stable and should continue to be stable, the cost to send the power across the grid was rising significantly which was impacting end rates. Having nearly \$2.6 million in the form of a buffer in the RSA would help mitigate the impact on rising rates for our residents. Amounts encumbered in that fund can only be used with Council approval.

To recap, staff recommended that Council approve the rate of one cent per Kwh to be passed back through the RSA to customers over the next 12 months and to approve the transfer of \$1,536,015 to the City's RSA.

Mr. Gifford asked for clarification of Section 11.2 (d), Revenue stabilization adjustment. Mr. Vitola explained there was a line on the bill where the RSA was passed back and every bill has to include that give back. In the past it was calculated on a monthly basis when the DEMEC wholesale rate used to change every month. Around the time of the rate study which coincided nicely with DEMEC's decision for the members to approve a billing rate for the entire year there was an effort to move the RSA calculation to an annual calculation. Mr. Vitola said in 2014 there was an RSA recommended and rates increased in such a way due to circumstances beyond DEMEC's control that the billing rate had to be increased by the board mid-year which was rare but when it happened staff adjusted the RSA again. So if there is a shock or a change staff can come back and make a recommendation to adjust the RSA again if necessary.

Mr. Gifford asked how much would be added by just going to the minimum of the rate stabilization reserve. Mr. Vitola would have to go back and pull up the financial policies. Mr. Gifford's thought was since we have raised rates in other utilities this year that maybe we get into the minimum of our financial policy but return the rest to customers.

Mr. Morehead asked if the rates ever changed retroactively from DEMEC. Mr. Vitola said they did not.

Mr. Morehead asked if the stabilization reserve was specifically to subsidize rate change or whether it had any other purpose at all. It was Mr. Vitola's understanding that it could only be used to mitigate the effects of an electric rate increase. Per the financial policies it was a separate section in the reserve accounts and was intended for electric rate shocks and rate increases.

Mr. Morehead said he was less comfortable with the rate stabilization reserve as time goes on. He understood the RSA calculation to be for over-collection and changing wholesale costs but did not think the City should be subsidizing use. Mr. Vitola said the City was not subsidizing use but was offsetting the impact of future rate increases by having that money available and the RSA technically was intended to address 1) differences in wholesale rates and 2) the achievement of the City's operating margin. The City can make the decision to pass back over-collections which it has done and one time has not done. The recommendation is to not pass back the over-collection and put it aside in the rate stabilization reserve so rates can stay stable at DEMEC's base rate even after wholesale rates increase. There would be some years relying on the reserve. Currently,

wholesale rates were below the base rate of the RSA but the rates could increase to the point where they equal the base rate in which case the RSA would be calculated at zero. There could also be a point where wholesale rates were higher than the base rate and the calculated RSA would be something like one cent. So in addition to all of the charges in the tariff, one cent would be added instead of given back. At that point the City could decide to remove funds out of the rate stabilization reserve and used to keep the RSA at zero for another year.

Mr. Morehead pointed out that the current rate was approximately 15 cents per Kwh by the time everything was built in. He was not comfortable with having a rate stabilization fund – he felt if that number should be moving to 16 cents, it should move to 16 cents.

Mr. Markham reported in 2005 the City did not raise its rates and the rates were subsidized to all customers in the amount of \$6 million. Mr. Morehead pointed out this fund would not last years, it would only last months.

The Chair opened the discussion to the public.

Helga Huntley, District 1, thought the City's proposal made sense but was not aligned with Code requirements. She encouraged Council to change the law to let the City do what it wants to do. She said the RSA did not stand for rate stabilization but stood for revenue stabilization adjustment and unlike the rate stabilization fund which was designed to help buffer the customers from wholesale price variations, the revenue stabilization adjustment was designed to buffer the City from wholesale price variations so the City had an easier time budgeting. The Code said to take the difference between the actual wholesale cost and the base wholesale cost and multiply that by a loss factor that was supposed to be adjusted annually. She thought the line loss factor should be part of the annual discussion of the RSA. Secondly, the Code states the City may adjust the RSA as determined by this formula to maintain operating margins and capital requirements – it does not specify that the City was permitted to over-collect and use those funds for rate stabilization reserves. Ms. Huntley felt a rate stabilization reserve made a lot of sense and in case of a rate shock it was nice for customers to have small increases. However, it was not in the Code and was not stated as a permissible reason not to return that over-collection.

Chris Hamilton, District 4, said it was the customers' money and he did not understand why the City did not give it back.

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

Mr. Gifford wanted to continue with his discussion to return everything down to \$1.5 million because if it was in our financial policy we should do it and then revisit the revenue stabilization adjustment.

Mr. Morehead believed the law should be followed.

Mr. Herron had no comments at this time.

Mr. Vitola felt there was some kind of disconnect between the intent of the RSA as put forth in 2011 by former Finance Director Dennis McFarland and the changes that made it into the Code. The calculation as stated in the Code was not what was intended or done in 2011, 2012, 2013 or 2014. In each of those years there was a look back to the intent of what was done in 2011 and it seemed that not everything in Section 11-4.1, Computation of the Revenue Stabilization Rate agreement was amended as intended. He could break down the calculation to show that the calculation was meeting this requirement. However, rather than using the loss factor of \$1.085 it was the actual loss factor for the upcoming year which was greater than this number and results in a greater give back and the 9 cents was also outdated – it should be 9.33 cents that happened in connection with the Black and Veatch rate study and the DEMEC rate for 2011, so by Code it would be some \$900,000 less being given back to the customers. Staff was going on the intent of the 2011 memo which was repeated in 2013, 2014 and again in 2015. Mr.

Vitola agreed the Code was not reflective of what was intended in 2011 and he wanted to come back with a Code amendment at a future meeting, but he thought the revenue stabilization as calculated here had an advantage to the rate payers over the Code section. The calculation was largely the same.

Mr. Markham noted the majority of the funds go back to the largest customers excluding the University of Delaware. Mr. Vitola confirmed the biggest users by virtue of using more Kwh would get more dollars back but everyone had the same rate per Kwh. Mr. Gifford added that the percentage was the same.

Mr. Gifford said he was confused because the Code was incorrect and the City was calculating something he did not understand making it difficult for him to vote.

Mr. Vitola wanted to get this started tomorrow in the larger amount because it was what the City was paying on the DEMEC bills now and if it was not given back now it would contribute to another over-collection. Mr. Vitola explained the City's rates in 2011 were set assuming power was going to cost 9.33 cents – it was cheaper than that now so we take the difference and give it back to the customers but it is not that simple because we have to buy more Kwh than we sell due to line losses so we have to scale that up and give back the customers even more because if we save \$3 million with the difference in the wholesale rate, the actual wholesale rate vs. the base rate is a penny and we apply that penny to every Kwh we sell which is what is on the bill that is not fair because we are technically saving more than that as a function of sales vs. purchases. That is the nature of the loss factor. So really we take the difference in wholesale rate, scale it up by a loss factor and give it back to the customers. If the opposite was true that the rates were higher (our rates are set to generate a margin based on the cost of power of 9.33 cents the true cost is 10.33 cents, we have to pass that on to the customer as well.

In response to Mr. Chapman's request for clarification, Mr. Vitola stated that what staff was recommending and asking Council to support was that the revenue give back was greater than what Code specified based on intention of the original process. Mr. Gifford added that Ms. Huntley's calculation was that all of it could go back to the customer and would not be put back in this account. Mr. Chapman said he also believed in the duality and function of this fund and its benefit so if we need to go back and redefine what we want this to do or the exact criteria, then we should do that and perhaps decide that it be reviewed if not annually, at some specific interval of time to prevent disconnects like this going forward.

Mr. Morehead asked if we were calculating based on last year if we continue to over-collect for another month until we get this right – can we include that over-collection? Mr. Vitola said we could.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO POSTPONE ITEM 3-A-4 INDEFINITELY.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer.

20. 4-C. BILL 15-01 – AN ORDINANCE AMENDING CHAPTER 19, MINORS, CODE OF THE CITY OF NEWARK, DELAWARE, BY AMENDING THE PENALTIES FOR UNLAWFUL ENTRY OF A MINOR IN TO PLACES WITHIN THE CITY WHERE ALCOHOLIC LIQUORS ARE KEPT, SOLD, DISPENSED OR SERVED

03:32:16

Ms. Bensley read Bill 15-01 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 15-01.

Mr. Herron advised this amendment eliminates the possibility of imprisonment for persons under 21 who enter and remain in a liquor store. The reason it was being presented to Council was that it was inequitable and inconsistent to allow the potential for imprisonment for this offense when the more consequential act of actually possessing or consuming alcohol while under 21 is punishable by a fine only. Under the comparable State Code provision the penalty was a fine only.

There was no public comment.

Mr. Chapman asked Mr. Herron to communicate with the family who brought this matter to the City's attention.

Mr. Ruckle asked to verify this did not apply to a minor who was accompanied by an adult. Ms. Huntley said there was such an exemption in the law under Section 19-2.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer.

21. 4-D. BILL 15-02 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY CHANGING CERTAIN PENALTY PROVISIONS AND BY REQUIRING THAT INDIVIDUALS WHO ELECT THE FIRST OFFENDERS PROGRAM FOR A DUI OFFENSE OBTAIN AN IGNITION INTERLOCK DEVICE IN ORDER TO SECURE A REDUCED PERIOD OF LICENSE SUSPENSION IN ACCORDANCE WITH STATE LAW

03:36:39

Ms. Bensley read Bill 15-02 by title only.

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 15-02.

Mr. Herron said the amendment was intended to be a reflection of the current State law. The General Assembly amended the State DUI statute to require that all defendants who elect the First Offenders Program obtain an ignition interlock device and would bring Newark's Code into compliance with the State law on this issue and also with respect to other penalties and will allow the Alderman's Court to coordinate the processing of First Offender DUI cases with the Division of Motor Vehicles.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THE WORD SIX BE CROSSED OUT ON THE THIRD LINE OF AMENDMENT 1 (d)(1).

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer.

The Chair opened the discussion to the public.

Tom Uffner, District 1, asked what the incentive for doubling the period of imprisonment would be in this change. Mr. Herron reported that it now mirrored State law.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer.

22. 4-E. BILL 15-03 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY CREATING THE POSITION OF DIRECTOR OF ECONOMIC DEVELOPMENT AND COMMUNICATIONS

03:42:27

Ms. Bensley read Bill 15-03 by title only.

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 15-03.

Mr. Haines presented the bill which was the ordinance to create the Director position in response to concerns expressed by Council regarding communication efforts and questions regarding the DNP and the focus on economic development beyond the downtown area. The department would include a public relations person who would also work with the DNP, the media content specialist to handle the website, Channel 22, graphics and posters and interns. Parking would be connected to this department as well.

Mr. Morehead pointed out there were several references to the attached organizational chart in the November 10, 2014 letter which was not attached. According to Mr. Haines that was part of the documents during the budget process. Mr. Morehead posed the question since Council was required to create the department, why would they create a department head before creating the department? Mr. Haines said the approved 2015 budget had the expenditures for the department. Mr. Morehead's understanding was that it was an ordinance and organizational charts were maintained in the ordinances – and it simply was not there. Mr. Herron would have to determine whether the inclusion of that in the budget actually created the department.

MOTION MR. RUCKLE, SECONDED BY MS. HADDEN: THAT BILL 15-03 BE POSTPONED TO THE MARCH 23, 2015 MEETING.

MOTION PASSED. VOTE: 5 to 1.

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

Nay: Gifford.

Absent: Sierer.

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

24. 6. ITEMS SUBMITTED FOR PUBLISHED AGENDA
A. Council Members: None

25. 6-B. Others: None

26. 7. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation on the Purchase of Replacement Police Vehicle from State of Delaware Contract No. GSS14013-POLICEVEH

03:53:28

Chief Tiernan presented the recommendation contained in staff's memo of 1/13/15 for the purchase of a Chevrolet Tahoe 4 x 4 with a police package at a total cost of \$31,752.25 from I.G. Burton and Company of Milford, DE.

Mr. Tiernan verified that the pursuit ready package was available for this vehicle.

There was no public comment.

MOTION BY MR. GIFFORD, SECONDED BY MS. HADDEN: TO AUTHORIZE THE PURCHASE OF ONE CHEVROLET TAHOE 4 X 4 WITH A POLICE PACKAGE AT A TOTAL COST OF \$31,752.25 FROM I.G. BURTON AND COMPANY OF MILFORD, DE.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer

27. 7-B. RECOMMENDATION TO PURCHASE SCADA INTEGRATION SERVICES FOR REPLACEMENT OF THE SUBSURFACE MONITORING SYSTEM AT THE RESERVOIR AND ESTABLISH A PROFESSIONAL SERVICES CONTRACT FOR SCADA INTEGRATION SERVICES

03:55:41

Mr. Coleman presented the contract which was a two-part recommendation – the first part was specific to fixing the reservoir SCADA system that monitored ground water levels underneath the reservoir for changes in level that could be indicative of a leak. The system failed in 2014 and became obsolete with the elimination of Windows XP. Replacement systems reviewed were a cellular-based system tried at remote sites which had a very low cost rollout but higher maintenance cost – the total cost came in at \$90,000. Digitalogic (who has worked with the Electric Department) was then recommended by the IT Department and one of the many benefits was to work with one integrator vs. two when it came to securing the network. In addition there was already a capital project for SCADA on the water side specific to almost all of the water facilities. Since there was already a sole source provider in the City who was integrating services it made the most sense to bring them in under a professional services contract.

This would be a not-to-exceed contract equal to the approved budget amounts for this year and the next two years which currently had nothing budgeted for the next two years in the water side. The thought was that Council while approving the budget would essentially approve the extension to this contract for the next two years and then additionally include an option for the City to extend for an additional three years. The total amount requested for PWWR was \$270,000 and \$66,000 for Electric, for a total of \$336,000 for year one. The goal was to start at the reservoir and finish it, then do the Windy Hills tank painting and then move down to south well field since it was the most SCADA ready.

A discussion ensued regarding costs since this was a sole-source vendor. Mr. Vitelli reported the Electric Department used Digitalogic since 2007. They went through the RFQ process and were the low bidder by \$60,000. They are doing one to two substations a year and he highly regarded their work.

Mr. Gifford referenced the contract length and confirmed that it was three years plus an option to renew for another three years. Mr. Coleman explained when the next budget was approved, what Council approved for SCADA would then amend this contract with that amount. Mr. Gifford was not comfortable with the length of the contract and suggested doing it for one year.

Mr. Ruckle confirmed through Mr. Coleman that the City had the right to cancel the contract at any time. Ms. Houck explained one of the main reasons to do this was because this was not something where you jump around to other vendors once you invest in SCADA.

Mr. Markham pointed out that the reservoir was in his district and stressed the importance of getting it up and running. Considering what was put into the reservoir he thought this was a small investment to make sure it was done right. Mr. Gifford agreed with the funding but was concerned the funding would be added and Council would not have say over that funding in future years. This would not come back to Council – money would be added to the next budget and Council would have to go through and specifically look for that money in the budget. It was difficult for Council to know what was just spent – they did not just spend \$270,000 plus \$66,000 – they spent that money plus any that was added.

Ms. Houck clarified that Council would be approving it in the budget and it would be clear in the capital program that it was SCADA related. Mr. Gifford understood that but said if there was something in the budget you did not like it was difficult to pull and there were a lot of monies that just continue. Mr. Morehead said effectively this would be pre-

approved. Mr. Gifford did not object to the projects but was concerned about the formality of how it is done.

Mr. Coleman agreed that two years would be enough to get going because if it was not finished this year, the work could continue on it next year. Mr. Coleman said one other item that came up during the budget process was the discussion of capital projects and the ongoing maintenance and what would end up in the operating budget as a result of the capital item. This project would result in \$3,420 per year in operating and maintenance expenses.

Ms. Houck asked how long the build out was on this project. Mr. Coleman expected it would take at least several years.

The Chair opened the discussion to public comment.

Helga Huntley, District 1, had concerns similar to Mr. Gifford's and suggested as a solution that there be a three year option contract with a particular company but since the budget was not known in the out years it could not be written into the contract right now. However, the contract could specify that whatever that budget was would be approved separately by Council.

Tom Uffner, District 1, commented that an Internet search brought up numerous open source SCADA options and he asked if anyone looked into those possibilities. Mr. Coleman said in this case the software cost was not a large part of the cost of the contract. The vast majority of the cost was equipment and some engineering, so the software came out to a one-time purchase price of \$2,500 per site up front and after that it was 12% of the \$2,500 per year in maintenance. That involves the support and upgrades for the software.

Mr. Vitelli reported there was another project coming up – it was the auto restoration of the sub-transmission circuits that needs to talk to the SCADA system, so he would be coming back next year for more funding for software from Digitalogic.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO APPROVE THE RECOMMENDATION TO AUTHORIZE A PROFESSIONAL SERVICES CONTRACT IDENTIFYING DIGITALOGIC AS NEWARK'S SCADA SERVICES PROVIDER FOR AN AMOUNT UP TO, BUT NOT TO EXCEED, \$336,000 FOR SCADA INTEGRATION AND IMPLEMENTATION. THE CONTRACT WOULD BE FOR THREE YEARS WITH THE OPTION TO RENEW ANNUALLY FOR A PERIOD OF NO MORE THAN THREE YEARS.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Sierer

28. **8. FINANCIAL STATEMENT**: None

29. **9. APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS**:

A. Reappointment of John Hornor to the Conservation Advisory Commission At-Large Term to Expire March 15, 2018

04:19:21

Mr. Gifford believed Mr. Hornor was qualified for the reappointment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: THAT JOHN HORNOR BE REAPPOINTED TO THE CONSERVATION ADVISORY COMMISSION, WITH HIS AT-LARGE TERM TO EXPIRE MARCH 15, 2018.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.
Absent: Sierer.

30. 10. APPROVAL OF CONSENT AGENDA

04:20:15

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Workshop Minutes – January 5, 2015
- B. Approval of Council Meeting Minutes – January 12, 2015
- C. Receipt of Alderman’s Report – January 7, 2015
- D. Receipt of Alderman’s Report – January 15, 2015
- E. Receipt of Planning Commission Minutes – December 2, 2014
- F. **First Reading – Bill 15-04** – An Ordinance Amending the Comprehensive Plan by Changing the Designation of Property Located at 21, 27, 39, 45 and 49 Center Street – **Second Reading – March 9, 2015**
- G. **First Reading – Bill 15-05** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from RS (Single Family Detached Residential) and NCV (New Center Village to BB (Central Business District) 0.846 Acres Located at 21, 27, 39, 45 and 49 Center Street – **Second Reading – March 9, 2015**
- H. **First Reading – Bill 15-06** – An Ordinance Amending Chapter 10, Elections, Code of the City of Newark, Delaware, By Defining Residency Requirements for Poll Workers for City Elections – **Second Reading – February 23, 2015**
- I. **First Reading – Bill 15-07** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Defining Fence Height Limitations – **Second Reading – March 9, 2015**

MOTION BY MR. GIFFORD, SECONDED BY MR. CHAPMAN: TO APPROVE THE CONSENT AGENDA AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

31. Meeting adjourned at 11:16 p.m.

Renee K. Bensley
Director of Legislative Services
City Secretary

Attachment

1A

Public Comment by John Morgan (District 1) at the February 9, 2015, Newark City Council Meeting

CHANGING MUNICIPAL CHARTERS BY RESOLUTIONS AND REFERENDUMS

This evening I would like to present some general information about the history of how Delaware's General Assembly envisaged the charter of a municipality should be changed, and about how our city's charter has been changed on 3 occasions during the past decade.

In December 1961, by a 2/3 majority of each house, the 121st General Assembly approved a bill on Home Rule for municipalities

<http://delcode.delaware.gov/sessionlaws/ga121/chp260.shtml>

which established the following procedure for amending a municipality's Charter. §811 provided that any proposed amendment had to be approved by at least 3/4 of the municipality's legislative body, or by a simple majority of a duly elected Charter Commission. Next, §812 provided that notice of the proposed amendment had to be published in a local newspaper at least 30 days prior to a referendum, with copies of it made available to any citizen who wanted one. Finally, §813 provided detailed rules for how the proposed amendment of the municipality's Charter had to be approved by a majority of the municipality's voters in a referendum. It is worth emphasizing that in 1961 the General Assembly envisaged that a municipality's charter could be changed **only** after a majority of the voters had approved the change in a referendum.

In July 1975, the 128th General Assembly approved a bill

<http://delcode.delaware.gov/sessionlaws/ga128/chp166.shtml>

adding to §811 the following sentence: "In addition to the procedure hereinbefore set forth, a Charter may be amended by act of the General Assembly, passed with the concurrence of two-thirds of all the members elected to each House thereof." It is worth emphasizing that having a Charter change approved by 2/3 of each house of the General Assembly was intended to be an **alternative** to the procedure involving a referendum established in 1961, not a **replacement** for it.

It is also worth emphasizing that nothing in §811 now requires that there first be a vote by at least a 3/4 majority of our City's Council for the General Assembly to consider a so-called "amendment" of our City's Charter. For example, in June of last year a House bill was introduced to "amend" our City's Charter by removing from our Charter our City's right to have an Alderman's Court. Under existing Delaware law, this proposed "amendment" was completely legal, but I think nobody in this room would say that it was right. This is an illustration of the general facts that laws can be abused as well as used, that not everything which is strictly legal is morally right, and that legislators, at both the state and the municipal level, should avoid procedures which are just barely legal, but strike many citizens as morally wrong.

Mainly because the agendas and minutes City Council meetings on our City's website do not extend further back than late 2006, I do not know when our City's Charter was last amended by the resolution + referendum procedure established by the General Assembly in 1961. However, I have been able to find since 2006 three occasions when our City's Charter was amended first by approval of a resolution by a 3/4 majority of Council, followed by the approval of 2/3 of each house of the General Assembly.

The first such occasion was in 2007, when at its meeting on March 12 Council considered 4 proposed changes of our City's Charter.

<http://www.cityofnewarkde.us/DocumentCenter/Home/View/228>

2 of these were relatively minor changes necessitated by changes in state law made by the General Assembly. A third amendment proposed the elimination from our Charter of the obsolete office of "House Sergeant". The fourth amendment provided for the filling of vacancies on Council by special elections rather than by vote of the remaining members of Council. Only the last of these was substantive, and it had the effect of **increasing** rather than **decreasing** the opportunities for citizens to participate in the governance of their City.

The second such occasion was in the spring of 2008, when because of honest mistakes made in 2003 and 2004 by a previous Council and City staff and our City's former legal counsel, our City urgently needed to raise an appeal bond to contest a judgment of \$37 million awarded by a federal court because our City had not followed the proper procedure for terminating its contract with Durkin Contracting to build the reservoir. Hence at its meeting on May 12, 2008, Council unanimously approved a resolution requesting that the General Assembly amend our City's Charter "As It Relates to the City's Ability to Borrow Money for Current Expenses & the City's Power to Incur Bonded Indebtedness", with one of the proposed changes being the addition of a paragraph authorizing Council "to take whatever action is necessary to obtain an appeal bond as may be required for the appeal of a court judgment".

<http://www.cityofnewarkde.us/DocumentCenter/Home/View/718>

That was a dire emergency, unlike any our City had ever experienced before, so sending this amendment directly to the General Assembly without a referendum should not be regarded as a good precedent for now making it extremely easy for Council to authorize the borrowing of many millions of dollars in situations which are not dire emergencies, instead of seeking the approval of the citizens of Newark in a referendum. L

The last such occasion was in 2013, when at its meeting on April 22 Council considered 3 proposed changes of our City's charter. The first of these changed the required date for the annual submission and approval of the 5-Year Capital Improvement Program, the second changed an obsolete definition of our City's boundaries, and the third increased from 29 to 60 days the lead time for filing petitions for standing for election to Council. Though others might, I have no quarrel with any of these 3 changes to our City's Charter. I am, however, concerned that the agenda and minutes of this meeting

<http://www.cityofnewarkde.us/Archive.aspx?ADID=2768>

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show that none of these 3 proposed changes was open for public comment, and that all 3 of them were approved by Council, with very little discussion, within a grand total of 6 minutes, at the very end of a very long meeting which lasted after midnight. That is very far from the level of involvement by a municipality's citizens in a referendum, publicized at least 30 days in advance, which the General Assembly intended when it first established the procedure for changing a municipality's Charter.

Looking to the future, I hope that Council will submit to the citizens of Newark for a referendum any proposed change in our City's Charter which could have a significant effect on the governance or the finances of our City, instead of cutting our citizens out of the process by sending the proposed Charter change directly to the General Assembly after it has been approved by Council in a resolution.