

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

April 25, 2016

Those present at 7:00 p.m.:

Presiding:	Mayor Polly Sierer District 1, Mark Morehead District 2, Todd Ruckle District 3, Jen Wallace 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 Communications Manager Kelly Bachman Community Affairs Officer Megan McNerney Finance Director Lou Vitola Parks & Recreation Director Joe Spadafino Planning & Development Director Maureen Feeney Roser Planning & Development Manager Michael Fortner Public Works & Water Resources Director Tom Coleman

1. The regular Council meeting began at 7:01 p.m. with a moment of silent meditation and the Pledge of Allegiance.

2. MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT ITEM A, EXECUTIVE SESSION, BE REMOVED FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.

Nay – 0.

3. 1. **PUBLIC PRESENTATIONS:** None

4. 2. **ITEMS NOT ON PUBLISHED AGENDA**

A. Public

05:06

John Morgan, District 1, was pleased the Police Department was taking the issue of bicycle safety seriously and issuing summonses in the past several days. He hoped they would continue to do so and work with the University in having a good, safe, coherent policy that everyone on campus would understand and would follow those rules.

Katie Gifford, District 3, referred to the Rules of Decorum. In Robert's Rules of Order, Chapter XX, Section 61, Disciplinary Procedures, Offenses Occurring in a Meeting, it said that nonmembers (audience members) or a particular nonmember or group of nonmembers could be excluded at any time from part or all of the meeting. Such exclusion could be effected by a ruling of the chair in cases of disorder. In another section, Protection from Annoyance by Nonmembers in a Meeting; Removal of an Offender from the Hall, it said an assembly has the right to protect itself from annoyance by nonmembers, and its full authority in this regard can be exercised by the chair acting alone. Further, either of these cases could be appealed by any Council member (other than the chair), but not by the nonmember. She thought the City's Rules of Decorum contained quite a few subjective words and suggested if there were future reconsiderations that Council could consider what was already in place in Robert's Rules and stick to some of their wording.

Ms. Gifford referred to Bill 16-15 on the Consent Agenda, the First Reading for a change to the management salary plan adjusting some of the pay grades. She noted there were several statements

implying there was some good data collection and benchmarking. She thought it would be helpful to see those benchmarks to determine the total impact the changes may have on the budget and what kind of benchmarking was done.

John Bauscher, Madison Drive, expressed concern about the Council meeting held on April 4th. He pointed out that the meeting agenda did not mention administrative warrants and that Council immediately went into Executive Session then came back to the table and voted to direct staff and the City lobbyist to pursue a State Code amendment to the General Assembly which would allow the issuance of administrative warrants for inspection of properties to determine compliance with applicable codes. He stated that the public had no opportunity to have any input on this matter.

5. 2-B. ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS: None

6. 2-C. UNIVERSITY
(1) Administration

13:59

Caitlin Olsen, UD Government Relations, made the following announcements:

- Ag Day would be held on 4/30 from 10 a.m. to 4 p.m.
- The Creamery was celebrating its fifth birthday this weekend.
- Elena Delle Donne was returning to the Bob on 5/1 for a Chicago Sky preseason game at 2 p.m.
- Blue Hens Fandemonium would be held at the UD Athletics Complex on 5/7 from 10 a.m. to 1 p.m.

7. 2-C-2. STUDENT BODY REPRESENTATIVE:

Haley LaMontagne was present at the meeting.

8. 2-D. LOBBYIST:

17:00

Rick Armitage reported on actions he took following Council's directive to work on the Code inspection. He shared the draft prepared by Max Walton, Esq. with the lobbying community and got feedback from a representative of the Delaware Apartment Association, from the Delaware Association of Realtors and from a Senate attorney who represented a number of tenants throughout the State. A meeting was held on Friday with people from the Newark Landlords Association and the Delaware Apartment Association. For some reason there were technical problems with the call-in number and the representative from the Realtors Association was unable to participate. Mr. Walton would now incorporate the feedback from that meeting in a revision to the bill. Once the revision was available it would be shared with as many stakeholders as possible.

In regard to the DEFAC Group, the General Fund revenues were stable. For a \$3 billion budget, the \$8 million dollars that they talked about between FY16 and 17 they almost could account for that as rounding error. The more important segment of the meeting was about what was happening with the Transportation Trust Fund. Those revenues continued to remain strong, and the \$24 million tax increase they passed last year related to motor vehicle fees increased. Between last year and this year an additional \$14 million were going into the Transportation Trust Fund.

Earlier today Mr. Armitage listened to DeIDOT's bond presentation. They again asked in their request to the Bond Committee for the \$5 million for Municipal Street Aid as well as the money appropriated to legislators for community transportation. The other thing that made them happy was that the Federal government passed a five year transportation bill which resulted in a 5% increase to states throughout the country, and Delaware's increase was about \$15 million per year which translated into \$75 million over the next five years.

Last week Mr. Armitage, Ms. Houck and other staff members attended a meeting about House Bill 200, the disability parking revisions introduced last June. There was lots of good input and he thought the few concerns the City had would be addressed in cleaning up technicalities in the language. Moving forward there would be revisions, and he thought the City would be satisfied with that. His sense was that the regulated community – shopping centers, realtors, apartment complex owners – were very concerned about the cost. The University had 10,000 parking spaces. They would have to redo all their signage at a significant cost, plus the lead time. About 50% of their parking spaces were re-striped every year. There still were some concerns around the legislation, so he was not sure what Representative Viola would do.

Regarding PILOT, Mr. Armitage had discussions with the co-chairs of the Joint Finance Committee. He did not think there would be a chance for the City to do a presentation until after budget markup. He knew Ms. Houck and staff were trying to revise what was put together in 2014, and there would be a chance to do that. Unless the general fund revenue projections increased dramatically, he did not know that there would be much success this year. The other question from the co-chairs was how much the subvention from the University was today. That should be included in the City's presentation as Mr. Armitage did not want it to appear the City was trying to hide something.

House Bill 308 about workmen's comp was vetted by staff and there was no impact on the City.

Regarding PILOT, Mr. Markham asked if Mr. Armitage had the subvention number. Ms. Houck said it was \$512,000. Mr. Markham remarked there were strings attached to some of that money. Ms. Houck said she would give Mr. Armitage a whole report that would be helpful. Mr. Armitage felt it should be included in the presentation to Joint Finance regarding the PILOT funding. Mr. Markham asked what general impression Mr. Armitage got from people he talked to about the fairness of PILOT. Mr. Armitage was not sure that fairness came into the equation at this point in time. He thought a number of people understood, but unless they found a lot more money so they could essentially add money to the program rather than retract any money from the county seats, it was unlikely to change. Senator McDowell said he would look at that much harder next year but not this year.

Mr. Markham referred to the Bond Committee meeting on Thursday. Mr. Armitage said they were meeting all week, but Natural Resources was on the agenda this Thursday. Mr. Markham said the City could not vote on the resolution but had a recommendation from the Conservation Advisory Commission supporting that and also had also a request from the Coalition for Natural Stream Valleys to support the request for a \$10 million appropriation for farmland preservation and \$9 million for open space funding. Mr. Markham supported this and a constituent had written to him about this. He requested that Council give permission for Mr. Armitage to speak in favor of this to the Bond Committee. Ms. Hadden, Mr. Morehead and Ms. Sierer supported this as well. Ms. Sierer asked Donald Sharpe to speak on the topic. Mr. Sharpe said the Governor was offering \$3 million in the budget for each and that was not enough money. He noted the White Clay Nature Center was very crowded and about 10,000 children visit a year. They would like to relocate the center to the Robinson House and name it after Dorothy Miller. There were about eight organizations on board who supported the request, and he hoped the City would also show their support. Mr. Armitage noted the Bond Committee was not able to fund those in previous years, so he was not sure where it would end up but he would speak on behalf of the City on those issues.

Mr. Morehead referred to HB200 (disability parking revisions) and asked if there was a potential to grandfather existing spaces and make this effective going forward for new development so it did not have such an extreme financial impact. Mr. Armitage's sense was that every time a lot was restriped, it must be brought up to current code and grandfathering would not be applicable. Ms. Houck's understanding was that any new construction or updating, restriping, or modifications to a parking situation, required adherence to the new legislation. Ms. Houck explained that currently, ADA requirements had to be met, and there was no provision for inspection for a permit. Mr. Armitage said in this particular bill, the effective date was one year from the date of passage, so there was a year of lead time for entities to gear up.

9. 2-E. CITY MANAGER:

32:09

Ms. Houck welcomed Ms. Wallace as the new Council member for District 3.

10. 2-F. COUNCIL MEMBERS

32:28

Mr. Ruckle

- Noted there was an accident on the water tower with high winds blowing the tarp and paint getting onto a constituent's property. He was very pleased at the City's prompt and efficient response.
- Received a number of phone calls about the noise ordinance. NPD offered to come out and do a seminar for anyone who wanted to attend about how they would be enforcing this.
- Was working with a resident who had trespass issues and other related problems.
- Attended with the New Castle County City Council a meeting put on by the Animal Welfare Department. This was a new department formed in 2014. He was disturbed to hear that animal control meant dog control, and there was no entity in the state that would take care of rabid raccoons or anything that was not a dog. He felt the public safety was at risk and their goal was to get rid of Newark and Dover's animal control and get full control in the state. They also did not want to serve under the Division of Family Services anymore but wanted to be put under livestock which did not have the same standard of protecting human life.

Mr. Morehead

- The prescription drug take back would be held on 4/30 from 10 am to 2 pm at the Municipal Building. This gets old drugs out of people's medicine cabinets and keeps drugs out of the water supply.

Ms. Hadden

- Reminded everyone of the Presidential Primary on 4/26.
- Addressed a variety of constituent concerns.
- Participated in the Mayor's Lyme disease challenge.
- Met with the University regarding the upcoming alumni weekend celebration on 6/4. They ramped it up this year and added a lot of family-friendly activities. She encouraged people to go out to the website and look at the schedule.
- Attended the Planning Department's training workshop.
- Welcomed Ms. Wallace to Council and looked forward to collaborating with her on issues.
- Welcomed back Ms. Sierer and Messrs. Chapman and Markham and thanked them for representing the public so well.
- Her next meet-and-greet was 5/5 at 5 pm at Pat's Pizzeria. Mike Fortner from the Planning Department would talk about the function of the Planning Department and future vision and anything else the group would be interested in discussing.

Mr. Chapman

- Compiled a list of all of the items brought to him over the last several months. He was meeting with staff members to resolve any issues that were not already addressed.

Ms. Wallace

- Thanked everyone for coming tonight. She was glad to see so many constituents in the audience.
- Had a busy first five days and was hearing from constituents and responding to their concerns.
- Accepted Ms. Hadden's challenge to take the bite out of Lyme disease. Videos could be found on the City's Facebook page.
- Looked forward to representing her constituents and working to make Newark a better place.

Mr. Markham

- Welcomed Ms. Wallace.
- On 4/28 in the Council Chamber, the second Cleveland Avenue improvement task force would take place. The meeting was open to the public.

Ms. Sierer

- Read the following statement regarding National Bicycle Month in May.
"In celebration of National Bike Month, Downes Elementary School is working with the Newark Bicycle Committee, WILMAPCO and the City of Newark to advance its Safe Routes to School Program. Two initiatives are underway. The first is to apply for a Safe Routes to School bicycle infrastructure grant. Downes facilitated an online parent survey and a safety audit with a variety of stakeholders to explore potential infrastructure changes that would improve the safety of those who wish to bike or walk to school, with an emphasis on bicycle travel. The grant application is due at the end of May and makes available up to \$125,000 of funding during each year of a three-year project. The draft Infrastructure improvement plan includes a variety of elements, the most significant being the construction of buffered bike lanes, which is a wide paint strip, or a protective bike lane, which is the use of physical elements like plastic bollards, to separate bikes from car lanes. This would be along Casho Mill Road from Barksdale Road to Nottingham Road. Also the changes include the relocation of a crosswalk on Casho Mill, the addition of an ADA ramp at the school there near the entrance driveway, and the addition of curb extensions in selected locations along the corridor.
The plans would be finalized on April 28th, and the grant was to be submitted by the end of May. There were similar opportunities there to receive some grant money and make improvements for that school. Also, on Tuesday, May 10th, Downes Elementary School would kick off a Bike Tuesday program in celebration of National Bike-To-School Day. She would be on hand to greet students and distribute small tokens to those who bike or walk to school. Downes Elementary developed a committee to work hard on making creative awareness about bicycling and walking to school in a safe manner."
- 5/20 was Bike to Work Day. There would be a presentation in the morning at Mentors Circle at the University of Delaware. The City was collaborating with the University as was done in the past to make it a special event.
- The Mayor's Bike Ride was 4/30. Registration was still open and t-shirts were available. The family ride was at 10:30 a.m., and a longer ride was scheduled at 11:00. Events would be held at the Newark Shopping Center.

- It was mentioned at the last meeting that a constituent reached out about the University potentially moving their spring break week to coincide with St. Patrick's Day. Ms. Sierer met with University officials and they have addressed this with the Faculty Senate. No decision was made but they were looking at it and, hopefully, would be addressing that opportunity in doing what was done by many other schools.

11. 3. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

12. 4. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**

- A. Reappointment of Michael Gritz to the Community Development/Revenue Sharing Advisory Committee for a Three Year Term to Expire March 15, 2019

44:03

Mr. Morehead nominated Mr. Gritz to continue on the Community Development Revenue Sharing Advisory Committee where he served since 2013. He was extremely detail-oriented and a community service volunteer.

There were no Council or public comments.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT MICHAEL GRITZ BE APPROVED TO SERVE AS THE DISTRICT 1 REPRESENTATIVE ON THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY COMMITTEE FOR A THREE YEAR TERM TO EXPIRE MARCH 15, 2019.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.

Nay – 0.

13. 5. **SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff: None

14. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS:**

- A. Recommendation to Award Contract No. 16-04 – 2016 Street Improvement Program

46:20

Mr. Coleman presented the recommendation for Contract No. 16-04, the 2016 street contract. The pricing this year came back favorably. Fontana Concrete Contractors was the low bidder. For the basic bid package with the minimum number of streets in the contract, they came in at \$909,000. Next was Grassbusters at \$953,000 who had the contract last year, and third was A-Del at \$1.379 million. The pricing this year was good for two reasons. Primarily, this was the first year municipal street aid did not have to use prevailing wage requirements which was a State law that was passed last year. The second part was the fact that asphalt prices were very low now due to the low gas prices. With the \$909,000 base bid, both of the option streets were able to be included under the \$1 million dollar budget for this year's contract.

In addition to that, after the contract was let and bid, the City secured \$199,500 from Senators Sokola and Hall-Long and Representative Baumbach. This funding allowed the addition of three more streets to the contract: Hidden Valley Drive, Chrysler Avenue, and Lark Drive. Lark Drive was specifically requested by Senator Hall-Long. Senator Sokola and Representative Baumbach provided their money towards the contract in general. There were a few specific streets that were in the base bid and option streets that they funded. What that did was freed up funding that allowed adding the next two streets in priority order into the contract, which were Hidden Valley and Chrysler Avenue. Funding available was \$199,500 through the Community Transportation Fund from the three state legislators. Current resources were \$329,000 and capital reserves of \$155,000. One thing to note was the \$515,000 that was estimated to come through the Municipal Street Aid for 2016, half of that was yet to be approved – it would be approved in the fiscal 2017 State budget. Technically, half of it was still up in the air, but that was normal and was something that happened every year. At this point, he believed the money would be allocated as intended. Fontana had the City's contract multiple times over the past few years. Staff was pleased they were the low bidder on this year's contract. It was therefore recommended to award Contract 16-04 to Fontana Concrete in the amount of \$1,185,359 contingent upon the State of Delaware funding as noted in the recommendation for the 2017 fiscal year.

Mr. Markham confirmed with Mr. Coleman that due to pricing, all 15 streets would be done.

Mr. Chapman was contacted by a constituent who was concerned about that corner where the paving ended at Farmhouse Road did not have curb cuts at all for pedestrian traffic to the sidewalk. He asked if there was any way that would be addressed during the paving project. Mr. Coleman explained if

the City paved past a location where there was either a deficient or missing ramp, by law they have to add a ramp or upgrade that ramp to ADA standards. Mr. Chapman asked Mr. Coleman to look at that corner specifically. Obviously, the opposite side of the intersection would not qualify under those confines. If it would not be addressed during the paving, he asked to be made aware when it was on the timeline for the ADA ramp project.

Ms. Wallace asked what streets would have to be cut if the City did not receive as much funding from the State of Delaware budget, considering Senator Hall-Long's request that Lark Drive be done which was one of the streets that was added. Mr. Coleman explained that those funded with legislator funding could not be cut and were locked in. Lark and Quail Drive would be locked in along with Colgate and one other. The remaining streets would be looked at to see what could be optimized. The length of one street might have to be changed versus knocking the whole street off. Since the pricing by street came in pretty big blocks, dropping a whole street may cause the funding to be below target with money left over. He said there was no indication they were not going to fund it, but that was one of the items that was on the chopping block last year. At that time it was going to go totally away, but there was always a chance it could be some modified amount that was not gone but in the middle.

Mr. Morehead asked whether the computer modeling was still being used to indicate which street would be next as far as making the most sense to pave. Mr. Coleman said no, this year was the gap year. Staff was in the process of building the model for next year. During the budget the funding target was left at \$1 million to get the model results in time for the fiscal 2017 budget. So there would be modeling results for next year and in this year's contract, there was a heavier focus on the bad streets (Quail Drive and Prospect). The engineering firm had all the information and were in the process of building the different modeling scenarios now.

Mr. Morehead thought the City had a computer model that was used in years past. Mr. Coleman reported it gave a five year outlook and last year was year five of that outlook. In looking at this Mr. Morehead felt encouraged that streets are one of the City's main infrastructures and that work was being done on roads that do not carry a lot of traffic. He thought if we were that far ahead and doing that well, other than the State streets that run through town, Council should feel encouraged. He was not sure, given Mr. Coleman's answer. Mr. Coleman responded that some of the streets, like in West Branch, were a continuation of a multi-year project. Crews were in West Branch each of the last two years and were working their way out of the neighborhood. For example, in Ridgewood Glen, that was a two inch mill, so it was one of the minor pavement rehabilitation techniques. The road they wanted to get at was Shenandoah, but work was done from the back of the neighborhood out so some of the side streets had to be tackled before getting to the main street so heavy trucks would not be driven back across the new pavement to get to the back. Some of them were lower volume, but it was to be able get to higher volume streets in the out years.

Mr. Coleman confirmed this was not the ADA ramp contract. That was a separate contract and had not yet been put out to bid.

Ms. Hadden asked Mr. Coleman to clarify option one and option two. Mr. Coleman said they were two smaller streets, option one was one street, option two was another street. The reason those three streets were able to be added after the bid was advertised and put out was that the contractor offered to extend their unit pricing from the competitive big contract to these other streets. Project manager Pusey Pemberton was happy with the pricing and thought it was a good deal that they would extend it. Mr. Coleman would email Ms. Hadden the street information.

Ms. Hadden asked if they would go all the way down to the bedrock with this. Mr. Coleman responded no, depending on the street, it was either a two-inch mill or a three-and-a-half inch reconstruction, so if there was a soft spot, they would dig down deeper with some undercut and would put back maybe six inches of asphalt in places where the road was failing from sub-base. In general, it was just the wearing course, the surface.

Mr. Ruckle asked how much was being saved by doing all this now for the future instead of saving this money. Would getting all this done now, would it help with saving money next year? Mr. Coleman thought even at this funding level, this was technically underfunded. That was discussed during the budget - what up-funding amount should be pushed towards it this year? The back-of-the-envelope number was closer to \$1.5-\$1.6 million, assuming an even distribution. He felt this was still below where it needed to be, but once the modeling results came back from the consultant, there would be a better outlook for the next few years. Staff was running three versions of the model to figure out what the full funding level would be, and then two other pricing levels below that, to get an idea of the trajectory of pavement conditions into the out-years, depending on different funding levels.

Mr. Markham asked the timing on this. Mr. Coleman said some streets were earlier than others and that was the reason for rushing it out and getting it out earlier this year. In general, the downtown streets were done before mid-August and then the outer streets after that. He thought it would be much sooner this year and almost definitely finished before the end of the year unlike last year.

Mr. Markham asked for Council members to be made aware of the roads scheduled for repaving in their districts and when so this information could be shared with their constituents. Mr. Coleman said after the pre-construction meeting they would have a basic idea, but ultimately the schedule came down to how the weather worked out, but he could provide the original schedule and any updates along the way through the weekly report.

Donna Means, District 5, asked for a clarification on the pay scale for the pavers. She felt the City should pay the prevailing wage. She also wondered what Senator Hall-Long's interest was in Lark Drive where she specifically said she wanted that street paved. Ms. Houck reported Senator Hall-Long was at a meeting of the civic association and the concerns were raised. She followed it up with outreach to the City and asked what the price quote would be and then advised she would be funding it. Ms. Houck noted that was not unusual with other legislators over the years.

As a follow up to Mr. Markham's comments about the transportation department, Ms. Means noted there was a meeting tomorrow night. She claimed that DART planned to stop all the routes from the park-and-ride north. There were several people in District 5 who would be without transportation into the City. The meeting was 4-6 p.m. at the building next to the high school, and she urged someone from City Council to attend that meeting, because there were people in Evergreen who had no transportation and they gave up their cars because they were in their 90s. She felt something had to be done for public transportation in Newark.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT CONTRACT NUMBER 16-04, THE 2016 STREET IMPROVEMENT PROGRAM, BE AWARDED TO FONTANA CONCRETE FOR THE BASIC BID ALONG WITH OPTIONS 1 AND 2, HIDDEN VALLEY DRIVE, CHRYSLER AVENUE, AND LARK DRIVE, IN THE AMOUNT OF \$1,185,359, CONTINGENT UPON THE STATE OF DELAWARE FUNDING AS NOTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.

Nay – 0.

15. 6-B. RECOMMENDATION TO AWARD CONTRACT NO. 16-06 – WATER MAIN REPLACEMENT – 2016

01:03:24

Mr. Coleman presented Contract No. 16-06, the 2016 water main installation contract which was discussed at length during the capital budget review. This project was developed half in-house this year, so some of the engineering plans were done by City employees, and the other half was done by the engineering consultant. This should save some money going forward in the capital budget so more of the money was available for the actual construction versus the engineering costs.

During the budget discussion Mr. Coleman always used \$1 million per mile as a rough idea of the cost to do water mains. Unfortunately this year, that number did not bear out. It was closer to \$1.35 million per mile this year, largely a function of the difficulty of some of the streets to complete, some very expensive DeIDOT work that staff was re-evaluating how to handle and a few very select items that were pretty expensive in this contract, unfortunately. As a result, the completion of Flora Circle would have to be postponed until 2017 where it would be at the top of the list and focus instead on the first four areas, Hillside, Center Street, Winslow and Beverly, and Ferncliff Drive.

Mr. Coleman noted during this discussion last year, the decision was made not to postpone Darwin Drive. This year he did not think it was the same situation for out-of-city water main work being installed. A contract would be up later this year for a new water main from Windy Hills out towards Red Mill Road. The Windy Hills tank project and several other projects were going on outside the City right now. He thought the focus on the inside-city plus postponing that one street would get it down to where it needed to be for the contract in order to earmark the \$100,000 for non-destructive pipe testing this year that was considered during the budget discussion last year.

DeIDOT's 2017 paving plan was now available. It was fairly ambitious with Main Street, Cleveland Avenue and Library Avenue on the docket to be paved next year, which seemed aggressive. Main Street

was probably a lost cause if DelDOT was actually going to pave it – there was really no chance the City would get in before them. Fortunately, even though that pipe was very old, it did not have a break history, but it reinforced the need to do the testing discussed. That request would come before Council later this summer.

This contracted area was 1 through 4 to Mumford and Miller who had the contract last year. Their work was very satisfactory and finished slightly under budget. It was therefore recommended to award Contract 16-06 to Mumford and Miller for \$1,234,273.50.

Mr. Markham referred to Center Street where there was planned development which was basically on hold. He asked if a line would be installed in preparation for any type of development along that street. Mr. Coleman replied yes, the contract was done with an item for that project. The City met with the developer to see what they wanted at that location and included it as a line option for the contract. If the project moved forward the items no longer needed would be taken out. Mr. Morehead confirmed with Mr. Coleman that a bigger main was not required at that location.

Mr. Morehead noted the comment that referenced a portion of the water main system exceeding an average lifespan. He asked if there was any sense of what that portion was. Mr. Coleman reported that under the GIS master plan staff was currently age-dating the pipes based on construction in the area. The targeted completion date was June. The downtown area actually had pipes well beyond a hundred years. Staff was also building a water system capacity model with that and would be able to run different simulations to see, moving forward with main replacements if it should be a replacing kind or if it should be an increase. In the Center Street location, it did not need to go bigger because there was a lot of water in that location due to the surrounding mains, so there was already enough there for the development.

Mr. Morehead asked whether breakage information was being added such as whether effects from the surrounding land would cause a pipe to break preferentially regardless of its age. Mr. Coleman said there was break history, and that was used up until now for prioritizing either break history or water quality. Next year staff was leaning towards doing only a handful of streets with replacement, probably one or two – Flora, and maybe one other street and then a lining contract because there were numerous persistent water quality issues in certain sections of town that needed to be addressed. There were not any real burning streets aside from any that were found during the non-destructive pipe testing that had an extreme break history that really needed to be addressed immediately that were more important than the water quality issues in a few areas around town. So it would be a smaller water main replacement contract next year, and likely a larger water main lining contract.

There were no public comments.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO AWARD CONTRACT 16-06, WATER MAIN REPLACEMENT (AREAS 1 THROUGH 4), TO MUMFORD AND MILLER, IN THE AMOUNT OF \$1,234,273.50.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

16. 7. FINANCIAL STATEMENT: (Ending January 31, 2016 and February 29, 2016)

01:12:02

Mr. Vitola presented the unaudited financial statements for this past January and the two-month period ended February 29th, 2016. The consolidated results were very similar in January and February, just about \$1,000 difference in total between the two, so he would focus on the results through February.

He called out an issue that was brought to his attention by Mr. Morehead. The second sentence of the January memo said the consolidated deficit was *lower* than the budgeted deficit, but it should say that the consolidated deficit was *higher* than the budgeted deficit. The numbers in the table were correct, but it was narrated incorrectly and would be updated on the link to the agenda as well as on the website.

Through February the governmental funds were about 5.7% behind the expected deficit which was driven by a revenue shortfall and partially offset by expenses that were coming in under-budget. The revenue shortfall was due primarily to the timing of cash receipts. Both revenues and expenses were seasonalized now to try to adjust for the timing issues, but there were certain revenues that usually hit in February that were received in March this year. Plus, the seasonalizing was based on history, and if this year's timing was different from historical patterns, there would be a variance like this.

Mr. Vitola said the point was, starting last year, the timing issue would work itself out in March-April, barring anything out of the ordinary, but it would not hang with the City as it normalized through the whole fiscal year like it used to. So this was not anything major. The fees that came in a little bit later this year were a combination of franchise fees, subventions and grants, and so far in the governmental funds, expenses were under control through February.

In the enterprise funds, the expenses were running a little higher than the seasonalization predicted. The most notable were the full encumbrance of the tree-trimming contract, substation maintenance in the electric fund, water treatment chemicals and tank cleaning in the water fund which was already done, so all the expenses hit early ahead of expectation.

All spending remained within the full-year budget at this time, but were just passing the expected monthly breakdown this early in the year, and it was expected to normalize soon.

Enterprise fund revenues rebounded in February thanks to water and sewer volumes, but electric volumes continued to be lower than the year-over-year volumes. The electric margin was 10% short of expectations due to the warm weather through the winter months. March was even worse. DEMEC reported that March represented the seventh consecutive month in which wholesale volumes were lower than the same period the previous year for all DEMEC members. So the trend was almost entirely attributable to weather and started about ten months ago with last year's milder summer. Staff would keep a close eye on electric sales because lower volumes could force the wholesale rates up which would impact the city's RSA calculations passed in March and which could bring staff back to the floor for an RSA revision. However, it looked like DEMEC officials were going to wait and see how it worked out approaching and probably through the summer.

Aside from the electric, March results would be a little bit stronger and the department directors were well aware of the need to contain costs. The insurance and maintenance funds were performing well and offsetting some of the negative variance. The cash position was strong today. At the end of February the cash position was \$27.4 million which included \$21.4 million in cash reserves and \$6 million in operating cash. The reserves were part of the subject of an RFP for investment management services along with pension and OPEB trust funds. The final candidates would be interviewed by the Pension Committee on Friday, so there would be more about that in Mr. Vitola's weekly and in a future Council recommendation.

One open item after the last financial presentation was Mr. Markham's request to show the green energy funding right on the financials themselves so the McKees' activity was at its usual spot on page 14 in the February financials. On page 15 of the financials was the new report showing the green energy fund balance. The ending balance through February was \$6,900 and the last of the residential recipients in the queue were just paid in April. There were three left that the fund owed about \$12,700 to, so that left just the United Methodist Church's grant which should be paid off in June. The department would then keep a roll forward of the green energy funds on each report going forward and the McKees' report would be collapsed by year, 2014 and 2015, so it just took up a couple lines and could run forward on that page for several decades.

Mr. Markham referred to the January 31, 2016 report memo, Enterprise Funds and said the City replaced all the parking equipment in the lots. He wanted to know the trends in the lots to see if it was better with new equipment. Mr. Vitola said last month was the first month so he had his fingers crossed.

Mr. Markham addressed the February 29, 2016 report, Enterprise Funds. There was a discussion already about the drop in usage for electricity and he knew the other funds started to come back but he thought there still had to be some type of calculation for conservation. As the rates were raised as was done for sewer and water, people would conserve. Mr. Markham referred to the cash balance, second line from the bottom, "The dip in cash from January to February is a function of timing, as account receivable spiked by roughly the same amount as the cash decrease. The cash balance improved in March...". He asked if this was back to the \$29.3 or was still low. Mr. Vitola replied it was \$29.2 as of today.

Mr. Markham said DEMEC had been warning about higher wholesale prices but it seemed if usage was down, the demand was down as well. He asked if DEMEC would be looking at locking in lower rates right now. He thought it seemed like a good time to negotiate better rates. Mr. Vitola said Mr. Markham was right. They were locked into power – he thought 2016 was hedged all but 3-4% and then a substantial amount of volume was already locked in for 2017-2018. The issue was the ancillary services – the transmission capacity and congestion. They were expected to be higher in 2016 which they were, but DEMEC did not expect energy to go as low as it did which was why the wholesale price increase that was expected did not occur. Now with the lower volumes some of those fixed costs were being spread over

fewer kWh, so even though the energy-only component of the rate was the same, the per kWh charge was higher because the costs were fixed and could not be changed despite the drop in volume.

Mr. Markham addressed the issue of the new transmission line from Salem and Hope Creek nuclear plants to the State of Delaware. The expense was not good news, especially since he believed it would be spread to DEMEC as well. Mr. Markham assumed DEMEC would try to fight that. Mr. Vitola thought they would as they were often a leader at FERC in appeals with cases like this. However, he did not know enough about jurisdiction, etc. to determine if this was something they would hop on or not. Mr. Markham felt the more advance notice the City could give its customers the better as this would really hurt the large industrial customers.

Mr. Markham asked if the season adjustments were a success or continue to adjust. Mr. Vitola said still success, the problem was not being able to adjust mid-year. When the budget was loaded at the end of the expiring fiscal year – December 2015, very early January 2016, a three-year average of revenues and expenses were taken and loaded into the monthly budget buckets. Once that was done it could not be changed as it was unacceptable practice and misleading. Mr. Markham thought this was better as previously it was flat and when he looked at it he would not have as good a feeling about where things stood. He hoped Mr. Vitola's successor would take this year's information and get ahead of the game and adjust for that.

Regarding McKees Solar Park and the Green Energy Fund (page 14), Mr. Markham asked how many subscribers were in the Cost of Energy Program. Mr. Vitola reported there were 97 at \$1.00 per month per subscriber.

Mr. Markham asked the amount of the United Methodist Church green energy grant (page 15). Mr. Vitola thought it was \$30,000, and they were under the 33% rule. Anybody after them would be 25%.

Mr. Markham reiterated his request for an evaluation of the Honeywell Smart Meter project. Mr. Vitola said this was on his list for a long time. It would be challenging without all of the large meters in, but he felt he could make the assumptions needed to show that the volumes were on average something like 12-13%.

Mr. Morehead – following up with Mr. Markham's comment about follow up of projects, the LED street lights were basically completed from his understanding with a handful not done in areas that were too soft for the trucks to get to. He wondered if there was any lowering of the City's electric use because of that. Mr. Vitola would assume yes but would get the number. The savings should be \$90,000 per year, almost one million kWh a year so in a month it should be a twelfth of that. Mr. Morehead asked if that would be reported with the McKees-Green Energy Fund combination to see that effect because the payments were coming out of the Green Energy Fund. Mr. Vitola had not planned to – the payments would be seen on page 15 going forward. The Green Energy Fund would be seen paying for the indirect debt service through DEMEC to the SEU but he did not have performance metrics planned for the financials. That could possibly be done quarterly or annually to show the kWh savings and the resulting cost but there was not a model like McKees where the notional value of the savings was parked into a Newark green energy reserve for the CAC. He thought the plan was to implement and use the savings to repay that stream of debt service to the SEU. Mr. Morehead said the comment about using the savings implied there was a number – he would like to see what that number was if that could be worked in somehow. When the City implemented ideas that paid off like McKees, it should be publicized.

Ms. Hadden asked to add a report showing how the parking meters performed.

Donna Means, District 5, asked how the solar powered trash cans were doing. She thought they were supposed to pay for themselves in 4-5 years. Mr. Vitola reported they were doing well. All the overtime savings was being met, the volume savings were being met and recycling was being diverted from the landfill which saved tipping fees. Mr. Vitola could produce a report.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO ACCEPT THE FINANCIAL REPORTS ENDING JANUARY 31, 2016 AND FEBRUARY 29, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

17. 8. ORDINANCES FOR SECOND READING & PUBLIC HEARING

- A. **Bill 16-13** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Permitting the Sale of Alcoholic Beverages By Indoor Theaters With a Special Use Permit

01:30:36

Ms. Bensley read Bill 16-13 by title only.

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-13.

Mr. Fortner introduced the Zoning Code amendment to permit the sale of alcoholic beverages in indoor theaters in a BB and BC zoning district with a Special Use Permit. The proposed Zoning Code amendment, should it pass, did not in itself automatically permit a movie theater to sell alcohol. It would create a procedure for the theater to present the application for a Special Use Permit to Council.

Mr. Fortner reported in 2014 the Delaware General Assembly passed House Bill 299 which permitted movie theaters to sell beer, wine and distilled beverages under certain conditions and subject to the Delaware Alcohol Beverage Control Commission. Some of the regulations under the legislation was that the alcohol must be sold at a separate location away from the other concessions, the servers must have training, the patrons must be 21, when you purchase alcoholic beverages you are given a wristband and could buy one alcoholic beverage at a time and no more than two alcoholic beverages during the duration of the film. The beverages would be served in a different kind of cup that would differentiate it from the non-alcoholic beverages. Currently in Newark selling alcoholic beverages was not permitted under the Zoning Code. When the State legislation passed, movie theaters could apply directly to the ABC and if they met their qualifications, could serve alcohol. In Newark the sale of alcohol in restaurants was regulated by the Special Use Permit. The Zoning Code has two sections – Section A, permitted uses and Section B, conditional uses. Permitted uses were by-right and conditional uses required a Special Use Permit. Under the Special Use Permit (32-78) Council could look at requests on a case-by-case basis, judge the appropriateness of the application, set other conditions and was revocable if the applicant was not in compliance with the factors granting the permit. Furthermore, reports from the Police Department and Code Enforcement could be considered in the evaluation process.

The Zoning Code amendment put forth by the Planning Department and approved unanimously by the Planning Commission would do the following. It would add in Section 32-18(b) in the BB zoning district item (15) *Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements of Section 32-56.4(f) and requirements of the Delaware Code.* The same language would be added in the BC zoning district, Section 32-19(b). Deleting Section 32-56.4(f)(B) which reads *“Special use permits for restaurants selling alcoholic beverages for public consumption on the premises”* deletes and reinserts the same language but adds the words *“and indoor theaters”* so the regulations would now pertain to restaurants and indoor theaters.

In terms of department comments the Police Department contacted the Middletown Police Department which has a movie theater serving alcohol and they reported no incidents related to the serving of alcohol at the theater. The Planning and Development Department notes that movie theaters in Middletown and Wilmington currently sell alcoholic beverages. They feel the requirements of House Bill 299 and the Delaware Alcohol Beverage Control Commission combined with the Special Use Permit allowing the revocation of the permit adequately addressed the concerns for adverse impact. The City Manager’s office, Code Enforcement office and the City Solicitor also viewed this legislation and determined they have no concerns with this.

Ms. Wallace asked how many times Special Use Permits for alcohol were revoked. Mr. Fortner was not aware of an instance where there was a revocation but there were issues that were dealt with before getting to that point. He understood in June the Police Department was going to give a presentation to Council. They were working on a better procedure that involved a point system based on the type of violation.

Ms. Wallace asked if the Special Use Permits were for the operator or for the business. Mr. Fortner explained they run with the land, so the permit transfers to new owners. Mr. Morehead pointed out that in the past Council limited Special Use Permits to a particular owner and a particular business so when it came time to approve the permit itself, they had that capability.

Mr. Morehead asked if there was any data from Wilmington or Middletown about the effects of this change. Newark’s demographics were entirely different. Mr. Fortner said there have been no instances of concern reported by the police in those area.

Mr. Ruckle stated that he had heard from a large number of people from all the different districts and outside the districts that supported this idea. The students would not be going there because of the cost, and they had their own movie theater. This was more for the residents than the students. It would be attracting the people from the new apartment building, the Brazilian steakhouse and other people outside the city. That whole area was getting completely transformed and there was plenty of parking at the Newark Shopping Center. This was not catering to the students.

Ms. Wallace asked if by calling this an indoor theater and not a movie theater this would open it up to other types of theaters. The State legislation called it a movie theater. Mr. Herron thought the common usage was an indoor movie theater. Mr. Chapman did not know the exact background but at Chapel Street Players could get a glass of wine. It was a pretty low key and safe place to have a glass of wine. Mr. Fortner explained the State legislation regulated movie theaters and other theaters differently. This pertained only to movie theaters. Newark called it indoor theater and it applied to other types of theaters as well. Chapel Street Players were probably grandfathered. If another theater like a playhouse was to open, a similar type of regulation could go into effect or the City could choose to differentiate it somehow. Right now it was an indoor theater and that was the way the Zoning Code referred to it.

John Morgan, District 1, followed up with some of the comments already made, starting with Mr. Morehead's statement that the demographics of the City were very different from those of Middletown. There were about 16,000 undergraduates living in town and Middletown did not have a University at all. He suggested the Planning Department broaden its search and look at what was happening in college towns in other states where it was legal to serve alcohol inside of a movie theater. Dr. Morgan pointed out that once this revision was approved, any use would be grandfathered forever. He welcomed having a movie theater in town which catered to responsible adults and families but was concerned about the location of this place which was within easy walking distance of places where thousands of immature undergraduates live.

Dr. Morgan would feel a lot more comfortable with this if there was a limit of only one drink because if nothing else, getting up in the middle of the movie to get another drink was disruptive to other people in the audience. He recommended sending this back to the Planning Commission for fine tuning.

Regarding the idea about having cameras monitoring what was going on, he did not know how this was possible inside an auditorium where the lights were turned off.

Laura Henderson, District 3, thought when the ordinance itself came up that there should be larger safeguards than what House Bill 299 has. She agreed with Mr. Ruckle and Dr. Morgan that the demographics were different in Newark and that because 50% of the population was under the age of 25, maybe not so responsible. That was her experience working at the Cinema Center for 15 years, that we should have better safeguards.

Jeff Lawrence, District 3, noted that he was glad that since movie theaters currently did not serve alcohol that minors did not consume alcohol in this town.

Jean White, Radcliffe Drive, looked forward to having a movie theater again in the Newark Shopping Center. However, she did not think Council should pass this ordinance to allow alcohol to be served in the movie theater to those 21 or older. Eating in a restaurant with others is a social occasion to share conversation with friends and family with or without alcohol. A movie theater, by contrast, showed movies where patrons sit in the dark next to persons they may not know and not for the purpose of conversing with the person or persons near them. One comes to watch the movie not to converse during the movie with the person next to or near them.

Some families may not want their child or teenager sitting next to or nearby of age movie goers drinking alcohol. Perhaps the video cameras aimed at the audience may prevent passing of alcohol beverages to underage patrons as claimed, but some families may not even want their children or teenagers in a locale with alcohol being drunk nearby. Certain religions do not allow or condone their adherence to drink alcoholic beverages at all. A movie theater in Newark should be for the whole community, not a place where certain families feel restricted by their own views or uncomfortable going because of the alcohol that is served and that will be with others in a darkened room.

Families and persons in Newark have many restaurants to go to. When this passed, Newark would only have one movie theater to go to in the community. Ms. White felt it should cater to all persuasions and be inclusive and welcoming to all. Newark was awash in alcohol - big profits were made from the sale of alcohol and every restaurant and bar wanted a piece of the alcohol pie. Rejecting the proposed ordinance created no hardship to moviegoers. Those who desired alcohol could have it with dinner at a

restaurant before the movie or in their own apartment or house and could go to a restaurant or bar after the movie or back home if they feel they wanted alcohol afterwards. For this reason, she asked Council to vote against the proposed ordinance.

Marilyn Minster, Minster's Jewelers, and a longstanding tenant in the Newark Shopping Center, probably heard more about what the community thinks than the City. She agreed with Mr. Ruckle that this would be an adult theater, not necessarily a family thing in the evening. People were looking forward to this type of entertainment, going to a restaurant and then going to the movie. They could not have more than two drinks and would be monitored. On Saturday mornings and in the daytime, no alcohol would be served – it would be children's time. She highly recommended that Council approve this change in the Code.

Donna Means, District 5, concurred with Ms. Minster and saw no problem with the theater serving alcohol. She urged Council to approve the ordinance.

Arthur Helmick, owner of Main Street Movies 5, noted they were aware Newark was a college town and said 30 states had movie theaters in college towns with alcohol. He pointed out that the representatives of the shopping center owners were very conscious of those facts and did not want it to be a movie theater for college misbehavior. In their lobbying efforts for this bill it was more about the accommodation for the public that comes to the theater, thus the two drink limit with the wristband.

Regarding concerns about removing the wristband, people would do things if they wanted to break the law no matter what was done to prevent it. This would not be a theater that people would go to for drinking. It was an accommodation for the community for people that enjoy going out for the night and also, to ensure that the people in Newark were served by this as was Regal Brandywine and Penn in Wilmington.

Mr. Helmick said this was not like the Alamo Drafthouse Cinema with a minimum age restriction of 21 and unlimited drinking - they only go to states where allowed by law. Delaware had strict alcohol restrictions and was very concerned over this as well. As far as children being involved, the theater had assigned seating, and if someone wanted to change their seats, management would do everything they could to accommodate the customers.

Mr. Ruckle thought this might be a good opportunity for live streaming events such as realtor conventions and for bringing in a new clientele to Main Street. Mr. Helmick explained this was a more complicated industry than that, particularly with streaming issues and State requirements. Seating would be limited to around 500 seats and the theater would be state of the art.

Mr. Ruckle pointed out that Newark wanted to be known as a great city with a college in it, not just as a college town. These types of businesses would change that mentality. Most businesses catered to the students, and now we have other business opportunities that would cater to families and residents, and the City needed to support it. Mr. Helmick stated that their contracts were driven that they had with the theaters like Sony, Warner Brothers, Disney and so on by the movies they release. With only five screens total, they would take the blockbusters as they come based on the public's demands.

Mr. Chapman said Council was not looking at any application at this point. He cautioned against creating law around the idea of a single applicant. He wanted the discussion to stay broader than that.

Mr. Chapman was surprised to hear there was so much debate on this tonight. There was a movie theater there for a long, long time. It would be nice to have a rejuvenated movie theater there, and he thought it was okay to say upscale. If he was a business owner coming to the City of Newark, he might be targeting a certain demographic of customers and sometimes that might be students and sometimes it might be another demographic. If the product or service provided something that was attractive to students, he would want them there because it was a large demographic and would help the success of a business. He asked what was better for the City – healthy, vibrant businesses or vacancies. The Newark Shopping Center fell apart in previous decades. It was coming back to life now for a lot of different reasons, but the ability to bring good, successful businesses here was very important.

According to Mr. Chapman, movie patrons could go to the movie theater having already consumed as much alcohol as they pleased. He did not see the ability to drink one or two additional alcoholic beverages at the theater making a huge difference. He reminded everybody that Special Use Permits were revocable at any time. Opening up the permitting process would create confines so that it was not a given that this was allowed because of State Code inside the City limits – that in order to serve

alcoholic beverages, there was now a procedure that would involve a public process and come before Council to let them understand the unique criteria of each applicant.

Mr. Morehead said there must be something different about District 1 because the commentary he heard about this was not in support and was much more similar to the letter that Council received questioning the family experience. While alcohol with a meal or at a bar was available to all adults, this would head us down a path of having alcohol at an ice skating rink, maybe a shopping center or grocery store, maybe a hair salon. He asked why the City would distinguish between any businesses. He thought there was an understanding that there were plenty of places to drink in this town and that in our society, people drink as a social event. Certainly there were people who break the law. A movie theater was a dark environment. He thought if Newark was looking for this to be a family place, then Council should very carefully consider, as Laura Henderson mentioned, the lack of appropriate and inclusive controls. He suggested that Council tread carefully here.

Ms. Hadden agreed with Mr. Chapman and with statements by Ms. Means in that people already would pre-game if they wanted to going to the movies. Some people would take a flask in or bring in something. Here was an opportunity to have trained people watch for that behavior and control two drinks in two hours, which would not get anyone drunk unless they came in after pre-gaming. Then hopefully the staff would be trained to recognize that these people should not be served. She had a lot of grandkids and did not have a problem, but she would not send her grandkids into any theater at 11 p.m. on a Saturday night. She thought people could make decisions on both ends to choose to go or not to go. She did not see a problem with changing the law to include indoor theaters.

Ms. Wallace said District 3 was mixed. Some were for, some were against. She had reservations but thought those could be addressed at the permit application time. She was not necessarily opposed to alcohol in indoor theaters. She thought Mr. Morehead made an important point that this may bring future requests for alcohol in different types of venues. At this point alcohol was restricted to restaurants and the Playhouse. That was something to consider.

Mr. Markham said he was typically the one restrictive vote on Council when it came to alcohol. This Council was more relaxed when it came to alcohol. He saw this as something different. This was not a restaurant, not a cafeteria but kind of a one-off. When the Newark Shopping Center went in, the City was promised a nice theater. He saw this as one of those items that would hopefully pull people back into the City. When he campaigned the first time around, he wanted people to make the left turn to come into the City instead of the right turn to go wherever else they go. Even though it kind of went against previous votes, Mr. Markham would support allowing this experiment in a movie theater (when the special use permit comes) to have a nice theater with significant restrictions on it, probably placed on the hour.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE AMENDMENTS PRESENTED IN BILL NO. 16-13 TO CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, BE APPROVED PERMITTING THE SALE OF ALCOHOLIC BEVERAGES BY INDOOR THEATERS WITH A SPECIAL USE PERMIT.

MOTION PASSED. VOTE: 6 to 1.

Aye – Chapman, Hadden, Markham, Ruckle, Sierer, Wallace.
Nay – Morehead.

(ORDINANCE NO. 16-16)

18. 8-B. BILL 16-14 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY UPDATING THE RULES AND REGULATIONS FOR THE USE OF PARKS OWNED BY THE CITY OF NEWARK TO COMPLY WITH FIREARMS REGULATIONS IN STATE CODE

02:15:00

Ms. Bensley read Bill 16-14 by title only.

MOTION BY MR. RUCKLE, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 16-14.

Mr. Herron reported that Section 2-71 (j) of the Code prohibited the possession of firearms in City parks. There was a State law which provided that municipal governments may enact no law, ordinance or regulation prohibiting the possession of firearms except in municipal buildings. It stated that any such ordinance enacted after 1985 was repealed. In effect, this portion of the ordinance was already repealed

and this was a clean-up measure designed to correct the Code. It was brought to the City's attention by Representative Baumbach.

Mr. Markham asked Ms. Bensley if this was pointed out by the recodification efforts and how it would affect that effort. Ms. Bensley could not say if this was pointed out or not as there were quite a few notes in there. This would not derail that effort in any way.

John Morgan, District 1, was puzzled that it would be illegal to have in a public park a BB gun or an air rifle, but it would be legal to have a pistol or a firearm, which were much more dangerous.

Jean White, Radcliffe Drive, was confused and did not understand when the State Legislature passed a law that changed Newark's. She asked if this happened just recently. Mr. Herron explained in 1985, the State Legislature passed a law that prohibited municipalities from legislating in this area regarding possession of firearms. They exempted any laws or ordinances that were then already on the books. For whatever reason, back in 1988, the City passed this ordinance. This ordinance should not have been passed because it was a violation of the State law. Mr. Herron confirmed that there was no further action by the State on this since 1985 other than the recent exception to possession of firearms in municipal buildings.

Mrs. White wondered whether this should be re-discussed at the State Legislature level. At any rate someone could come in with an assault weapon because it was a firearm, but that would be okay because it was being taken off. She really did not understand this. Ms. Sierer said this was matching our law with the state. Mr. Morehead remarked that Dr. Morgan was making the exact same point. Mrs. White thought there was something recent that had been done in the State Legislature. Mr. Morehead said no, there was nothing recent - this was fixing something that was broken.

Ms. Hadden asked Mr. Herron if, by making this change, it put this ordinance back to what it was in 1985. Mr. Herron did not think this ordinance, at least from City Code, existed before 1988. The first reference in the Code was 1988.

Ms. Hadden said she sort of understood it. Growing up in a family with three brothers, all who went hunting, played outside, it would not have been uncommon for them to carry a pen knife, have a BB gun or an air rifle or a bow and arrow around the house. Should they take it to a public park and play around other kids with those items, probably not. Her mind made this leap that she thought that might have been sort of the intent of this. If removing this puts the ordinance back to what it should be by taking that out and brings it into conformance with the State, she was also okay with that.

Mr. Chapman clarified to Ms. Hadden that as it was written in the amendment the BB and the air rifle were being left in. Ms. Hadden understood that meant they were not supposed to be in the park. She was saying they should not be.

Mr. Ruckle did not understand why pellet gun was being taken out. He understand pistol and firearms because those would be carried by adults. Mr. Herron explained that firearm was defined in State law as any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosion, gas or mechanical means. But then it also explicitly said it does not include a BB gun. Mr. Herron interpreted a pellet gun to fall within the definition of a firearm as stated in State Code and therefore the City could not regulate it. Mr. Ruckle felt a firearm was something that used gunpowder. That was the one that he would question. He thought everyone had the right to defend themselves and that was why this was in here. It was a State law. They can open carry a handgun. He did not agree that a pellet gun was a firearm and that was one that could still be excluded. Young kids or teens carried those and it could be an issue.

Mr. Markham said it seemed to him like all that was being done was cleaning up an error made some 20 years ago. He suggested moving on and doing this amendment and asking the City Solicitor to research whether a pellet gun should be there. If it was determined otherwise, the amendment could be brought back.

Question on the Motion was called

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.

Nay – 0.

(ORDINANCE NO. 16-17)

19. 9. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:** None

20. 10. **ITEMS SUBMITTED FOR PUBLISHED AGENDA**
A. **Council Members:** None
B. **Others:** None

21. 11. **APPROVAL OF CONSENT AGENDA**

02:25:49

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – March 28, 2016
- B. Approval of Council Meeting Minutes – April 4, 2016
- C. Receipt of Alderman’s Reports – March 31 and April 13, 2016
- D. Receipt of Planning Commission Minutes – March 1, 2016
- E. Resignation of Gloria Hickey from the District 4 Position on the Election Board
- F. **First Reading – Bill 16-15** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Creating Additional Pay Grades and Updating Management Classifications – **Second Reading – May 9, 2016**

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

Renee Bensley
Director of Legislative Services
City Secretary