

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 28, 2011

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, A. Stuart Markham

Absent: District 3, Doug Tuttle

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia Fogg
Interim City Solicitor Bruce Herron
Assistant to the City Manager Carol Houck
Community Affairs Officer Dana Johnston
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata
Public Works Director Rich Lapointe

1. The regular Council meeting began with a moment of silent meditation and pledge to the flag.

2. **MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT ITEMS 2-J, APPOINTMENT OF SARA JANE SPAULDING AND CAROL GRYGIEL TO COMMUNITY DEVELOPMENT/REVENUE SHARING COMMITTEE AND 2-K, PLANNING COMMISSION MINUTES – MARCH 1, 2011, BE ADDED TO THE CONSENT AGENDA AND A NEW ITEM 8-A-1, RESOLUTION NO. 11-__ : SUPPORT OF AN INCOME TAX CHECK-OFF FOR DELAWARE TAXPAYERS TO DESIGNATE CONTRIBUTIONS TO THE WHITE CLAY CREED WILD AND SCENIC RIVER PRESERVATION FUND, BE ADDED TO THE AGENDA.**

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.
Absent – Tuttle.

3. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public

01:08

Catherine Ciferni, a Newark resident, announced that from April 1 through the first weekend in May, the English Language Institute and other student-based organizations will hold a fundraising project for World Vision Japan. Tables will be set up downtown and around campus where folded and strung paper cranes will be sold for \$1.

4. 1-B. UNIVERSITY

02:28

1. Administration

Mr. Armitage reported that representatives from the Wellspring group and the University Police Department will attend the May 9 Council meeting to review their efforts for handling off-campus behavior related to alcohol abuse. Mr. Armitage introduced Skip Homiak, Executive Director of Campus Safety, who will participate in the meeting.

5. 1-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

6. 1-C. COUNCIL MEMBERS

03:50

Mr. Pomeroy

- Mr. Pomeroy ended his six-year term as First District Councilman with thanks to his wife and children for their patience and understanding and commendations to City staff and other members of Council for their efforts in making Newark a great City. Some of the more memorable events Mr. Pomeroy recalled from his time on Council included resolution of the reservoir litigation, working to highlight economic development issues, continued growth and redevelopment on Main Street and Elkton Road, improved public safety numbers, and programs such as recycling, Green Wednesdays and energy assistance. Mr. Pomeroy said he would most remember the cooperation and lack of political infighting among Council members.

7. Mr. Temko

- Mr. Temko enjoyed serving with Mr. Pomeroy and recognized his proactivity on issues he cared about in the City, his dedication and commitment to the community and respect for his constituents in District 1.

- Newark will host Odyssey of the Mind State finals on April 2.

8. Mr. Clifton

- Mr. Clifton said it was an honor to serve with Mr. Pomeroy during the last six years and recognized him as a true statesman and a dedicated representative of the First District and the City. He felt one of the hallmarks of Mr. Pomeroy’s time on Council was his ability to think outside the box and look towards the future.

9. Mr. Athey

- Mr. Athey said he learned a lot from Mr. Pomeroy with his different perspectives, and he will miss their healthy dialogue. He felt the one word that encapsulated the way Mr. Pomeroy approached his job on Council was “passion” and wished him much success in his future endeavors.

- Attended the “Lights Out” event on the Jim Hall trail which was rather sparsely attended. He felt the event had merit and appreciated staff’s efforts and said if the City repeated the event, he would become more engaged in helping to publicize it in his district.

10. Mr. Markham

- Mr. Markham said Mr. Pomeroy provided great service to the City and to his constituents and that his successor had huge shoes to fill. He believed Mr. Pomeroy earned his full title, the Honorable Paul Pomeroy.

11. Mr. Funk

- Thanked Mr. Pomeroy for his service to the City.

12. 2. APPROVAL OF CONSENT AGENDA

- 17:25**
- A. Approval of Regular Council Meeting Minutes – March 14, 2011
 - B. Approval of Special Council Meeting Minutes – March 21, 2011
 - C. Receipt of Alderman’s Report – March 24, 2011
 - D. ***First Reading - Bill 11-05*** - An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning From BL (Business Limited) to BB (Central Business District) .85 Acres Located at 206, 208, 220 and 224 East Delaware Avenue - ***2nd Reading April 25, 2011***
 - E. ***First Reading - Bill 11-06*** – An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, By Bringing the Code Into Conformity with the State Code Regarding An Exception to the Ban of the Use of An Electronic

Communication Device While Driving a Motor Vehicle - **2nd Reading April 25, 2011**

- F. **First Reading – Bill 11-07-** An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, By Revising the Electric Rates Effective June 1, 2011 - **2nd Reading April 25, 2011**
- G. **First Reading – Bill 11-08 –** An Ordinance Amending Chapter 7, Building, Code of the City of Newark, Delaware, With Regard to Contractor’s Bonding Requirements - **2nd Reading April 25, 2011**
- H. Reappointment of Patricia Wilcox, 804 Cambridge Drive, to the Community Development/Revenue Sharing Committee – Term to Expire March, 2014
- I. Reappointment of Martin Wollaston, 432 Arbour Drive, to the Community Development/Revenue Sharing Committee – Term to Expire March, 2014
- J. Appointment of Sara Jane Spaulding and Carol Grygiel to Community Development/Revenue Sharing Committee (At-Large and Business Community At-Large Appointments)
- K. Planning Commission Minutes – March 1, 2011

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Mr. Athey suggested issuing a press release or fact sheet regarding the proposed electric rate change before the April 25th meeting to aid the public in understanding the significant change in the City’s method of calculating rates.

Mr. Funk felt the City should become more active in positively promoting the face of the City through its press releases. He said while attending the candidates forum, it was evident that there were many misconceptions about the City and how funding was handled. Mr. Athey thought the City’s efforts on press releases were adequate but that the press might not always be publicizing them. He added that items covered at Council meetings could be found on the City’s website the next day.

13. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING** – None

14. **4. FINANCIAL STATEMENT**

21:35

Mr. McFarland reviewed the February financial report where results for all funds on a consolidated basis were about \$258,000 over budget.

The Governmental Funds were slightly over budget. Net revenues were up with the largest portion (\$141,000) resulting from a University building permit for the Carpenter Center. Expenses were up due to one-time contractual payments made early in the year.

The consolidated Enterprise Funds were \$222,000 over budget. Revenues were up about \$500,000 due largely to electric margins which were above budget pending action on the proposed change in electric rates. Operating expenses in the Enterprise Funds were up about \$300,000 due to one-time contractual payments at the beginning of the year.

The cash position was \$20.6 million at month end and was the strongest the City had seen in some time. The increase in February was largely due to some working capital changes that were considered positive.

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE FEBRUARY 2011 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Tuttle.

15. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

- A.** Recommendation to Purchase Truck Mounted Knuckle Boom Loader with Trash Body In Accordance with Previously Bid Contract from Greenville, South Carolina

23:37

Ms. Houck reviewed her memo of March 17, 2011 wherein it was recommended to replace the 1997 truck mounted knuckle boom loader which was experiencing rust and engine problems with a 2011 Freightliner Chassis with a Pac-Mac body at a total cost of \$116,147.75. Funds were available to cover the cost of the equipment purchase from two capital programs. Therefore, it was recommended that Council authorize the purchase.

Ms. Houck explained that a price was obtained from the National Joint Powers Association purchasing cooperative which came in above budget and presented concerns based on the shipping/servicing location. That led to price comparisons with a City of Greenville, SC, contract for the same unit that was awarded to Carolina Environmental Systems. Contact was then made with Mid-Atlantic Waste Systems of Chester, PA, with whom the City had done business in the past. They offered a competitive bid at \$11,545 lower than the NJPA bid.

In view of the bid process, Mr. Athey was concerned that a local equipment manufacturer might complain they did not get a chance to bid on the job. Ms. Houck explained that the City had awarded several previous contracts to the NJPA, and local businesses did not necessarily get to see those. Also, Mid-Atlantic was fairly local, and the City had purchased numerous pieces of equipment from them.

Mr. Markham commented that the last truck purchase approved by Council had three different bodies and asked whether that arrangement would work for this unit. Ms. Houck said swapping bodies was not suitable for this particular vehicle since it would be used on a daily basis for bulk pickup, creek cleanouts, brush collection, etc.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE PURCHASE OF A 2011 FREIGHTLINER CHASSIS WITH A PAC-MAC BODY BE AWARDED TO MID-ATLANTIC WASTE SYSTEMS AT A TOTAL COST OF \$116,147.75.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Tuttle.

16. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 11-04 – An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, To Bring the Code Into Conformance with State Code, By Prohibiting Operating a Motor Vehicle During an Emergency

27:27

Ms. Fogg read Bill 11-04 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-04.

Mr. Herron explained the bill was intended to adopt into the City's Code the same law enacted by the State prohibiting the operation of vehicles during an emergency. Violations could then be heard in Newark's Alderman's Court.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

(ORDINANCE NO. 11-03)

17. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

- A.** Request of Catherine Rooney's Restaurant, 102 East Main Street, to Amend the Special Use Permit Granted on July 27, 2009, by Modifying the Existing Limitation of 12 Midnight on the Sale of Alcoholic Beverages to Permit the Sale of Alcoholic Beverages Until 1:00 am Daily

28:51

Joe McCoy, President of Catherine Rooneys, reported that he actively sought input from the neighbors on his request to extend the hours for serving alcohol from 12 midnight to 1:00 am. The McCoy's community involvement included serving on the Parking Committee and participating in a number of charitable events in the City, and he felt they had demonstrated their ability to be good neighbors and good corporate citizens.

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

Mr. Athey clarified that the Special Use Permit for alcohol could be rescinded at any time. Mr. Funk added it had been made clear to Mr. McCoy that patrons were not permitted to stand and drink outside the restaurant – a problem experienced at several other downtown establishments. Mr. Clifton reported the initial concerns expressed by several Washington House neighbors were allayed following a meeting of the homeowner's association attended by Mr. McCoy. During this meeting, an explanation of the City's Special Use Permit process was provided.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE REQUEST OF CATHERINE ROONEY'S RESTAURANT TO AMEND THE JULY 27, 2009 SPECIAL USE PERMIT MODIFYING THE EXISTING LIMITATION ON THE SALE OF ALCOHOLIC BEVERAGES FROM 12 MIDNIGHT UNTIL 1:00 AM DAILY BE GRANTED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

18. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA**

A. Council Members:

1. Resolution No. 11-___: Support of An Income Tax Check-Off for Delaware Taxpayers to Designate Contributions to the White Clay Creek Wild and Scenic River Preservation Fund

32:01

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

Council accepted Mr. Athey's recommended amendment to add the House Bill number (44) and to forward the Resolution to all members of the House Revenue and Finance Committee.

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

Question on the Motion was called

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Tuttle.

(RESOLUTION NO. 11-D)

19. **8-B. OTHERS:** None

20. **9. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff: None

21. **Meeting adjourned at 7:30 pm.**

Patricia M. Fogg, CMC
City Secretary

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