

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES
February 23, 2009**

Those present at 7:30 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, A. Stuart Markham

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia M. Fogg
City Solicitor Roger A. Akin
Finance Director Dennis McFarland
Planning Director Roy H. Lopata
Water & Wastewater Director Roy Simonson
Assistant to the City Manager Carol S. Houck
Community Affairs Officer Dana Johnston

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

2. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL**
A. Regular Council Meeting of February 9, 2009

There being no additions or corrections to the minutes, they were approved as received.

3. **3. ITEMS NOT ON PUBLISHED AGENDA**
A. Public

Robert Brunner, 382 South College Avenue, was concerned that the City now charged for parking in front of the Main Street Post Office. Mr. Lopata reported this resulted from problems enforcing fifteen minute free parking at that location and was implemented when Ordinance 09-06 was adopted amending parking meter zones.

4. Bruce Diehl, 205 Meriden Drive, suggested that snow removal regulations be closely examined because the ordinance was difficult to enforce. Mr. Athey said his intent in discussing the situation was to have clear sidewalks for pedestrian safety. He suggested re-examining the ordinance to determine if it could be improved to become more effective.

5. **3-B. UNIVERSITY**
1. Administration – There were no comments forthcoming.

6. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. 3-C. COUNCIL MEMBERS

Messrs. Athey, Markham and Pomeroy welcomed the public to the meeting and were pleased so many people were willing to participate in the public process.

8. Mr. Athey thanked Mr. McFarland for representing the City in a radio program regarding the water rate increase.

9. Mr. Athey felt the new speed sign on East Park Place was very effective.

10. Mr. Athey thought the topic of lowering the drinking age from 21 to 18 would be an interesting subject for the newly reorganized Town & Gown Committee to look into as to its impact on the City. He referenced a 60 Minutes show on the topic which suggested support by college presidents. Mr. Funk said the University administration opposed such a change.

11. Messrs. Temko and Pomeroy congratulated Lisa Diller, who was recently elected New Castle County Councilperson for the Fifth District, and looked forward to working with her.

12. Mr. Temko provided an update about the recent Traffic Committee meeting. Country Club Drive met the criteria for traffic calming, and a committee will be established to continue pursuing the subject. Corbit Street was being examined to determine if it met the criteria for traffic calming. The Renee Court issue was tabled to next month's meeting.

13. Messrs. Temko and Pomeroy noted that the West Newark Civic League would meet on 2/24/09 at 7:00 p.m. in the Mayor's Conference room.

14. Mr. Temko reported that the Downtown Newark Partnership recommended pursuing an in-house pilot program with recycling containers at a few strategic locations in the downtown area.

15. Mr. Tuttle received positive feedback from constituents on the new speed signs, particularly the West Chestnut Hill Road location, which seemed to have a significant impact in driving behavior.

16. Mr. Tuttle commended the City's new "Green Wednesday" program and the brochure which publicized it. In addition to saving the City money, he felt the program would be simpler to understand since there would be a routine day for residents to put out yard waste and grass clippings.

17. Mr. Markham commented on the new signage on Kirkwood Highway which he felt contributed to slower traffic speeds.

18. Mr. Markham noted that the drilling at Curtis Paper Mill was scheduled to start this week.

19. Mr. Pomeroy appreciated how quickly the "Green Wednesday" program was implemented by staff, and he felt it would be a much more efficient and easy way to handle yard waste.

20. Mr. Pomeroy thanked Mr. Sonnenberg for getting the March 30th budget workshop scheduled.

21. Mr. Pomeroy appreciated Mr. Sonnenberg's proactivity in the Traffic Committee transportation plan review with WILMAPCO and for the changes he recommended to the Traffic Committee.

22. Mr. Pomeroy reported on a meeting with Altenae Technologies, a company specializing in induction lighting in municipalities.

23. Mr. Clifton attended a meeting at the Chrysler UAW Hall sponsored by the UAW and Scott Spencer, an advocate of electric vehicles. The purpose of the meeting was to set a framework and game plan to be presented both federally and to Chrysler Corporation in a last ditch effort to keep the plant open and bring a green auto manufacturer to the plant. Mr. Clifton expected that more would be heard about this valiant effort in the future.

24. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING**

A. Bill 09-03 – An Ordinance Amending Ch. 30, Water, By Establishing a Water Rate Schedule Effective 2/1/09

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: TO LIFT BILL 09-03, AN ORDINANCE AMENDING CH. 30, WATER, BY ESTABLISHING A WATER RATE SCHEDULE EFFECTIVE 2/1/09, FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. McFarland explained the City's rate structure for water. The rate structure was split into a set of rates for customers residing in the City and a set of rates for customers residing outside the City. In exploring the rationale for the rate change, Mr. McFarland explained staff looked at the water utility's annual budget and determined whether the revenues generated would be sufficient to recover the ongoing operating and capital costs. In the analysis for 2009, it was clear the City needed a rate change to recover the current year's costs and to reach a targeted operating margin of 18-20%. The operating margin (or profit) was used to fund future investments in the water utility to maintain the existing infrastructure and fund future improvements or expansions of the system. Mr. McFarland said the last water utility rate increase was eight years ago. Thus, water rates had been constant through that period, while expenses and the need for reinvestment in the infrastructure increased. Had the City increased the rates on an inflationary basis during that time period, the cumulative effect would have been greater than the 30% currently proposed.

Mr. McFarland reported that the rationale for the rate differential between City and non-City customers contained multiple components. The first was a contribution to the recovery of costs for the City's overhead. About \$350,000 incurred for oversight and management related to time spent by the City Manager and staff to oversee the water utility. Since the costs were not directly included in the rates attributed to the water utility, they were paid by City residents through their taxes. Through a differential rate, non-City customers would contribute towards the recovery of the costs.

Mr. McFarland said the second component of the differential was the recovery of capital costs paid by City customers in the past. By the time non-City customers were added to the system, the capital cost for the construction of the primary system was paid. To make up for the fact that City residents paid the full capital cost, the rate differential would essentially buy into an existing system rather than come in at the current marginal costs.

The third reason for the differential was the recommendation by the Water Resources Agency last October to consider increasing water rates. The WRA was housed at the University of Delaware and was supported by a number of government entities in the state. Mr. McFarland said it was important to note that differential rates between City and non-City customers were commonplace for municipal utilities. If the proposed rates were adopted, there would be about a

50% differential between non-City and City rates, comparable to the differential in other Delaware cities such as Dover, Milford and New Castle. The differentials for the City of Wilmington were 80% and 100% for Rehoboth Beach.

Mr. McFarland reported the incremental annual revenues raised by the proposed rate changes would be \$470,000 from City customers and \$350,000 from out-of-town customers. In perspective, the revenues for the entire water utility in 2008 were about \$4.3 million. The impact on an average annual residential bill for in-City customers would be \$30, and customers outside the City would see a yearly increase of approximately \$80. In a comparison of existing water rates throughout New Castle County, the rate for non-City customers was less than anything in New Castle County except for residents of Wilmington and Newark in-City rates.

Gerald Kauffman, Director of the University of Delaware Water Resources Agency, worked with the water purveyors in Delaware since 1999. The water purveyors, including Newark, implemented over \$2 billion of additional storage in northern Delaware which was a significant economic benefit for the state. He reviewed some of the investments that were made by the community in Newark's water system and reported that the City was the only water purveyor in Delaware to have "conjunctive use" (a reliable water supply from ground and surface water.) According to Mr. Kauffman, the in-City water rate was about \$3.50 per thousand gallons and converted to about \$200 a year. The outside-City water rates reflected about \$4.50 per thousand gallons or about \$270 a year. Newark's existing rate, based on all 50 water purveyors surveyed by the agency in Delaware and the three surrounding states of Maryland, New Jersey and Pennsylvania, was 33rd percentile, which he felt was low in comparison with other water systems. Mr. Kauffman explained the reason for the differential between in and out-of-City customers was that the City had been investing in the water supply infrastructure, and the residents were now realizing the equity on their return. He said in terms of the proposed water rate increase, deferred maintenance was not desirable; rather, there should be a systematic maintenance program to invest in operation and maintenance, thereby avoiding a big system failure down the road while providing for future economic development.

Mr. Clifton felt the main issues were whether the rate increase was justified based on parity and equity, being able to maintain infrastructure, and continuing to deliver a quality level of service. He thought the information presented about the rate differential was unbiased, credible information. Although timing was bad for a rate increase based on the economy, he felt it was a prudent decision and recommended a 15% increase for City and non-City residents. He stated that the billing retroactivity was not a new issue and wanted it to be addressed. Regarding comments about water taste and quality, he suggested that any issues be communicated to Mr. Simonson, Water Department Director. Mr. Clifton thanked Senator Peterson for her leadership role and her offer to work with the City.

Mr. Pomeroy said the original 15/30% rate decision was not made arbitrarily; rather, significant data was reviewed before determining the increase. He felt given the fact there was no true competition, at a minimum it was incumbent on the City to insure that the rates were below the market. He did not feel the 30% increase was a bad policy-oriented decision and said it was not done with malice toward out-of-town customers. After talking with state legislators, he came to better understand and felt sympathetic about the position of out-of-town residents. Another consideration was the tough economic times. Mr. Pomeroy was open to a 15% across-the-board increase followed by subsequent discussions with state representatives. He also felt it was important for customer service-related issues and the retroactivity issue to be addressed. He could not support a retroactive rate increase and suggested an effective date of April 1st.

Mr. Markham felt the City needed to better communicate its plans and should review rates more often. He added that infrastructure was expensive and had to be funded in some way. He believed that the water fund should pay for itself and not be subsidized by other fees. Mr. Markham felt fairness was important and would support a 15% increase both inside and outside the City. He agreed the retroactivity issue in the utility billing program had to be updated.

Mr. Funk felt the new rate should not become effective until April 1st and said there was already a differential rate built in between City and non-City residents. Thus, he agreed to a 15% across-the-board increase.

Mr. Tuttle agreed that April 1st seemed like a reasonable implementation date for the increase. He said leveling out the increase to 15% was probably a rational way to proceed. However, he emphasized this reduction would create a \$175,000 hole in the budget revenue which would have to be found elsewhere.

Mr. Temko hoped to see the retroactivity problem addressed in the billing system upgrade. He was concerned about the City's financial situation with a \$175,000 hole that needed to be found for the water infrastructure. He recognized the economic situation was such that he did not want to create financial hardships but was concerned about finding money in other areas to subsidize the water. He added that it would have been beneficial to have tonight's discussion during the initial budget process and noted that Mr. Sonnenberg recommended implementing utility increases before finalizing the budget process. In terms of differential and working together, Mr. Temko was interested in hearing the public comments.

Mr. Athey said he would not have a problem with the 15/15% increase but noted that could not be a permanent situation. He said each customer should have their own rate with all that was involved in water rates (conveyance, pumping, treatment, etc.) to service each house, but it was impractical to develop thousands of rates which was where rate classifications came into play (residential, commercial, industrial, in-City, out-of-City), and the best method was to follow the prevailing practices which was exactly what the City did. He continued to feel that Newark's rates were good. In the interest of hearing from the customers, Mr. Athey did not have a problem with talking and coordinating with state representatives. Mr. Athey addressed the quotes he read which said the City was imposing the increase to balance the budget on the back of non-residents. He explained that Jerry Kauffman's recommendation stating there was latitude in the pricing was received in October, and the budget was not released until November. He commented that this was a brutal budget and the accusations that the City was doing something underhanded were difficult to swallow. He admitted the City could have done a far better job explaining their position. Mr. Athey hoped the retroactivity issue could be fixed with new software.

Mr. Clifton said he was advised by Mr. Akin that the 15/15% increase was a substantial change to the ordinance which would require the first reading at tonight's meeting and the second reading at the next meeting. Mr. Akin noted in Section 402.2 of the Charter, when a matter came before Council, any substantial change in the pending ordinance required that the ordinance go back to a first reading and could not be passed at that same meeting. Mr. Akin said the 15% out-of-City increase was a substantive change in the ordinance because even though it may give relief to those who were present to ask for equality, nonetheless there were others not present who believed Council would vote on a 15/30% increase. If there was no differentiation between the two rate increases, that constituted a substantive change in the ordinance. Thus, if Council agreed to the specific numbers of an adjusted ordinance tonight and was satisfied to rest on those changes for a second reading, there was no need to go back to a first reading. In Mr. Akin's opinion, Council could assume tonight was the first reading of the ordinance and the second reading could occur at the 3/9/09 meeting.

Mr. Tuttle clarified that this could be a first reading if Council considered a flat increase of 20% which was where the City needed to go to raise the same revenue and factoring in the April 1st start date. Mr. Akin said a 20% flat increase for both in and out of City would have to be a first reading and advertised as a second reading at the 3/9/09 meeting.

MOTION BY MR. TUTTLE: TO AMEND THE PERCENTAGE INCREASE TO 20% ACROSS THE BOARD FOR CITY AND NON-CITY CUSTOMERS.

Mr. Temko believed that a 20/20% increase would get the City where it needed to be, but he did not want to support the motion.

Mr. Athey questioned whether they could delay an action for two weeks or a month until a March meeting to give them time to meet with Senator Peterson and try to work something out.

Mr. Pomeroy believed they had to impose a minimum increase of 15% for both City and non-City customers.

Mr. Athey thought if they did a 15/15% increase now, they would be back again with another increase. He preferred to do the increase in one step.

Mr. Temko suggested hearing from the public, meeting with state legislators and coming back with some sort of compromise and a first reading in several weeks.

Mr. Clifton thought most people at the meeting would be comfortable with a 15% increase and felt it would be counter-intuitive to come back a month from now with an additional increase. He thought they could have done a better job over the course of the year to stay current with the economy and suggested servicing customers in the best way possible and moving forward with a collaborative effort.

Mr. McFarland reported by going to a flat across-the-board fee of 15/15%, there would be a budget shortfall of approximately \$233,000.

Mr. Pomeroy supported the 15/15% increase, meeting with state legislators, and reviewing the matter again.

Mr. Funk suggested that the rates needed to be adjusted every year.

MOTION FAILED DUE TO A LACK OF A SECOND.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT BILL 09-03 BE AMENDED BY MAKING THE WATER RATE INCREASE 15% INSIDE THE CITY AND 15% OUTSIDE THE CITY LIMITS EFFECTIVE APRIL 1, 2009, THEREBY MAKING THIS A FIRST READING.

The Chair opened the discussion to the public.

State Senator Karen Peterson said she was ready to sit with Council to get the City where it needed to be and at the same time get the constituents where they needed to be. She sincerely appreciated Council having heard their concerns and credited Representative Kowalko for pulling this together.

State Representative John Kowalko thanked Council for reconsidering the action on behalf of his constituents.

State Representative Mike Ramone thanked the constituents for coming out. He apologized for not being involved in the dialogue earlier and credited the City for working to find a solution. He felt all anyone was fairness, and said not one person he spoke to disagreed with an increase in the water rates. He hoped to see a positive vote on the 15/15% and looked forward to being given the opportunity to work with the City on financial options.

Dr. C. F. Martz, 12 Dunbar Road, was concerned with the differential. He said he lived in the area for a number of years and never knew he was being charged more for water than Newark citizens. He added that non-residents had no vote in Council elections and were just looking for fairness.

Kevin Brown, 901 Rahway Drive, said the City voted to raise taxes for the reservoir by 14-15%. He felt he was overtaxed and was tapped out. He felt the 15/15% increase was too high and suggested making it a 5% and 10% increase.

Connie Merlet, 134 N. Dillwyn Road, Windy Hills Civic Association President, said Windy Hills was an old, middle-class development, built in the late 50's and early 60's, and there were many original owners including senior citizens on fixed incomes. She reported that two weeks ago, two houses went for sheriff's sale, and young children lived in one of the houses. She thought about those families when hearing about the rate increase and hoped Council thought about the lives of Windy Hills residents when considering the water increase.

Amy Roe, 19 Sunset Road, said her concern was not about the rate increase, and she did not mind a 15% increase. Her water consumption was low, and she felt she could save 15% off her water usage and would not be impacted at all. She was more concerned about the process and the resident notification. At the first public hearing for the rate increase over a month ago, there was a beneficial discussion about notifying residents that the rate increase would be retroactive. She had notes from that meeting where Mr. Athey asked Mr. McFarland to clarify the retroactivity and the notification letter. However, the letter she received was from January 7, 2009, and it did not address retroactivity. Her question was, did those letters go out, what did they look like, and why didn't she get one. Mr. McFarland could not explain why Ms. Roe did not receive a letter and offered to provide her with a copy. Ms. Roe said she was part of the first wave of the announcement and wondered if everyone in the first wave did not get the letter. She also mentioned that her water main was broken during the cold weather, and she was notified by a knock on her door that it would be repaired, which she greatly appreciated. She felt the customer service provided on the water utility was great.

Kimberly Shropshire, 41 Millwright Drive, said some Newark residents thought people who lived outside the City deserved an overcharge. She stated that she paid about 2/3 more in County tax than City residents and learned from Stephanie McClellan that budget constraints would eliminate police patrols in her area.

Kathy Cardillo, 28 Cordele Road, lived in her current residence for 29 years. For 25 years she had a filtration system on her kitchen faucet and on her refrigerator to make her water potable. A 30% increase would be a setback for her and she asked why the City had to have unequal rates for City and non-City residents. Mr. Funk asked Ms. Cardillo to speak with Mr. Simonson about her water problems.

Tina Pierce, 7 Cordele Road, Red Mill Civic Association President, said she appreciated Council considering the 15% increase but expressed concern that they might consider another proposal down the road to get back to the 30% proposal. Mr. Funk said he would like to adjust the rate annually based on the cost.

Richard Cooper, 211 S. Dillwyn Road, thanked Council for their cooperation and working towards the 15/15% increase and treating out-of-City residents equally. He said while Mr. McFarland's presentation probably met expectations, it would have exceeded expectations if people had seen the breakdown of operating expenses and moving towards those targets. Rather than seeing what rates other areas were charging, he would have preferred to see proposed projects and what it would take to maintain the infrastructure.

Betty Smack, 80 Welsh Tract Road, requested more notice of rate increases in the future.

Marlyn Holder, 13 Bender Drive, wanted to know if the new rate in the City included trash pick up, leaves, and snow removal. Mr. Funk said those services were paid by City taxes.

William Westmoreland, 37 Ferncliff Road, said until 2001 people who lived outside the City paid double water rates. He appreciated consideration by Council to use the same rate increase for customers in and out of the City.

Jean White, 103 Radcliffe Drive said a 15% rate increase for out-of-town customers was more in absolute dollars than 15% for in-City rates. She asked for an explanation about the need to go back to a first reading. Mr. Akin reiterated that the reduction of the out-of-City rate by 50% of the increase was a substantial change in the ordinance. Further, there were some in the City who did not attend the meeting because they assumed the rate voted on would be 15/30%. Had it been 15/15%, it was likely that some residents would have come and expressed their displeasure. Therefore, in Mr. Akin's opinion, this was a substantial change which required two readings, the first of which was tonight.

Pam Rubinski, 14 Ridge Avenue, said the Water Department received many calls in opposition to the out-of-City increase. She said people who live outside the City limits of Newark do not feel they are outsiders.

Representative Ramone presented a petition of 154 signatures of people who were not in attendance and objected to the proposed increase.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2nd Reading 3/9/09)

25. 4-B. FINANCIAL STATEMENT

None

26. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

A. Implementation of Recycling Program

Ms. Houck explained the efforts undertaken to educate the community and obtain information about participation in the recycling program. The response hoped for was 72%, and nearly 63% was achieved. There were currently 922 City residents who participated in the Delaware Solid Waste Authority's program, and many responded that they wanted to participate in the City's program. Maintaining the Delaware Solid Waste carts provided cost reductions associated with the reduced number of carts needed. Regarding cart pricing, Ms. Houck said the current pricing was lower than the 2006/2007 cost for rollouts of the

automated program. Funds were available from the capital program, and it was recommended that the carts be purchased from Schaefer Systems International, the City's existing contractor, at a total cost investment of \$152,455.

Mr. Clifton asked about plans for townhouse communities with no garages for cart storage. Ms. Houck said residents in those developments would be permitted to use plastic bags instead of carts.

Mr. Pomeroy asked how the need for additional carts would be handled for residents who did not yet sign up. Ms. Houck said more carts could be ordered, and a 50 cart minimum was required to get the going rate. After the initial order was placed, \$25 would be charged for a cart. Mr. Lapointe said residents would have time up to the manufacture start date to order a cart at no additional cost. Based on the City's available storage, about 400 carts would be the largest number the City could store at one time.

Mr. Temko asked if there would be any type of notification confirming that residents had enrolled in the program. Ms. Houck will look into sending a postcard or some other notice.

Mr. Tuttle said as a resident with a DSWA cart, he responded to the recycling program and selected his cart size. He assumed he would receive a replacement cart and his DSWA cart would be removed. Mr. Lapointe said the recommendation before Council was based on taking advantage of a \$42,000 savings offered by using DSWA carts. The City would utilize DSWA carts from existing customers, and the list was crosschecked to eliminate any duplication in ordering carts.

Mr. Markham asked whether the DSWA and trash carts could be used interchangeably. Mr. Lapointe said for identification purposes, the DSWA cart would have to be used for recycling.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE PURCHASE OF RECYCLING CARTS BE AUTHORIZED FROM SCHAEFFER SYSTEMS INTERNATIONAL AT A TOTAL INVESTMENT COST OF \$152,455.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

- A. Bill 09-05 An Ordinance Amending Ch. 32, Zoning, By Creating a New Article VII, Public Parkland District and Designating City Property as "PL"

Ms. Fogg read Bill 09-05 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-05.

Mr. Lopata said the zoning classification established a new district and was designed to protect the City's parkland as recommended in the Comprehensive Development Plan IV. All City parkland outside the 100-year floodplain would be designated PL zoning. Mr. Markham clarified that if the City sold parkland it would require rezoning. Mr. Lopata explained some confusion by the Planning Commission in thinking this would create a "forever wild" district. However the classification was established to create a district with appropriate uses for parkland as explained in his memo of 1/13/09 to Council.

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: 7 to 0.

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

(ORDINANCE NO 09-07)

28. 6-B. BILL 09-07 AN ORDINANCE AMENDING CH. 20, MOTOR VEHICLES AND TRAFFIC, BY IMPOSING A MONETARY FINE WHEN A PERSON UNDER THE AGE OF 21 IS DRIVING AFTER CONSUMPTION OF ALCOHOL

Ms. Fogg read Bill 09-07 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-07.

Mr. Akin said the ordinance proposed by Mr. Herron would cover an unintended loophole to make the ordinance consistent with state law.

The Chair opened the discussion to the public.

Anna Gesterak, 1317 Worton Drive, questioned what impact was expected from the bill. Mr. Akin said the ordinance imposed a monetary fine on the offenders. Previously, the ordinance was silent on what happened to this class of people, and the judge could only impose court costs. There was also an impact on the license of suspended driving privileges. The City viewed this type of alcohol-related offense seriously, and he believed in passing the ordinance, there would be significant financial consequences to those who violated the ordinance.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 09-08)

29. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS
None

30. 8. ORDINANCES FOR FIRST READING
None

31. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA
A. Council Members:
1. Discussion re “Operation Round-Up”

Mr. Temko said he came across this program when he did a consulting project for a municipality dealing with the problem of low-income residents who were unable to pay their heating bills. What was recommended and since

adopted was "Operation Round Up", a program used across the country by local governments with their own electric utility. The program was a voluntary opt-out program, and provided six months publicity prior to a notification on bills announcing the start of the program. A utility bill of \$78.20 would be rounded to \$79.00, and the average additional cost was \$.50/month or \$6.00 a year for participants. Calculating that amount with the number of City customers and with an average participation rate would translate to over \$50,000 a year for the City. Considering current economic times, Mr. Temko felt the City should pursue the program, and he recommended earmarking the funds to help supplement the Community Development/Revenue Sharing Committee's funds to help economically disadvantaged residents. Mr. Temko noted the capability for this program would be available with the billing system upgrade.

Mr. McFarland said Operation Round Up had become a common feature across the country and the functionality was included in the upgrade planned for the billing system. Mr. McFarland said when the ordinance was developed, Council would need to determine how the funds should be directed.

Mr. Clifton supported the program but did not like the idea of the voluntary opt out. Mr. Temko said the idea was to make it as simple as possible with something like a check box on the utility bills. He reported the percentage of participation was approximately 80% for opt out versus 10% for opt-in programs.

Mr. Markham was opposed to the opt-in program. Mr. Athey thought the program was a good idea, and Messrs. Funk and Clifton agreed that the burden should be on the resident if they wanted to opt in.

The Chair opened the discussion to the public

Jean White, 103 Radcliffe Drive, supported having a fund to help residents who could not afford to pay their bill. She strongly objected to an opt-out program which she felt put a burden on people and preferred an opt-in program.

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

Mr. Temko offered to contact other communities to find out if they received negative feedback from their opt-out programs.

32. 9-A-2 PRESENTATION ON NEWARK'S CIVIC HEALTH

Postponed to the 3/23/09 meeting at the request of Mr. Temko.

33. 9-A-3. RESOLUTION NO. 09-__ : TO ESTABLISH AN IDENTITY THEFT PROGRAM CONSISTENT WITH THE FAIR AND ACCURATE CREDIT TRANSACTION ACT AND TO APPOINT A CITY PRIVACY OFFICER IN CONJUNCTION THEREWITH

Mr. McFarland said adoption was required to comply with 2003 legislation. The deadline for compliance was May 1st. The program required policies and procedures to protect confidential customer information. The resolution adopted a broad policy, under which there would be numerous procedures that would apply to various City departments.

Mr. Markham asked the status of the technology changes, and Mr. McFarland said existing technology could be utilized as best as possible to comply.

Mr. Clifton said he attended a Delaware League meeting where the presenter talked about the liability issues behind the program. He asked if there was anything the City should consider as far as liability for a breach in the computer system or for information compromised by an employee. Mr.

McFarland said there was no exposure to any greater liability than before other than being subject to a Department of Commerce audit.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

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: 7 to 0.

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

(RESOLUTION 09-E)

34. 9-B. COMMITTEES, BOARDS & COMMISSIONS

1. Discussion re Proposal for an Anti-idling Ordinance – Conservation Advisory Commission

Mr. Steve Dentel, member of the Conservation Advisory Commission, said the recommendation developed from the idea that just like large-scale polluters, every citizen should recognize the need for limits on how much pollution society will allow. Individual automobiles were a source of unnecessary pollution when vehicles idled for excessive lengths of time, plus it was a waste of natural resources, and contributed to air pollutants. For example, five minutes of idling created about a pound of carbon dioxide, contributed to carbon monoxide, particulate pollution, smog, and noise pollution. There were some myths about idling being the best way to warm up a car and that it saved batteries. However, none of those things were true anymore.

Mr. Dentel explained this was an extension of state regulations that applied to heavy-duty vehicles. The Commission took the state code and stripped out the gross vehicle weight and added a provision used in some cities to improve enforceability. According to Mr. Dentel, the bottom line of the recommendation was Article 4.0 which stated, “No person who owns, operates or leases a motor vehicle or who owns, leases, or occupies land and has the actual or apparent dominion or control over the operation of a motor vehicle on such land shall allow or permit the engine of such motor vehicle to idle for more than five consecutive minutes when the motor vehicle is not in motion.”

This extended to all vehicles rather than heavy-duty vehicles and would help raise consciousness about not wasting energy or creating air pollution. Mr. Dentel said there were exemptions such as emergency vehicles and cold weather below certain temperatures.

Mr. Dentel said the CAC would like the City to take a lead on this issue which hopefully would encourage other cities to follow the example. The Commission will work to help publicize an ordinance if adopted by Council.

Mr. Funk asked why “idle” was not defined.

Mr. Pomeroy felt the exemptions were reasonable. He asked how people coming into the City would know about the ordinance. Mr. Funk said appropriate signs should be posted at every entrance road into the City notifying people of the ordinance. Mr. Dentel said some of this came from Ithaca, New York, and nothing was posted there about excessive idling. Mr. Markham noted that state buildings have anti-idling signs posted in their parking lots. Mr. Clifton gave the CAC credit for the proposal and said it would be applicable to the hotels on South College Avenue where it would be valuable in reducing idling by tractor trailers.

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT MR. AKIN BE DIRECTED TO DRAFT AN ANTI-IDLING ORDINANCE AND INCLUDE THE DEFINITION OF THE TERM "IDLE."

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

35. **9-C. OTHERS:** None

36. **10. SPECIAL DEPARTMENTAL REPORTS**
A. Special Reports from Manager & Staff: None

37. **10-B. ALDERMAN'S REPORT**

MOTION BY MR POMEROY, SECONDED BY MR. ATHEY: THAT THE ALDERMAN'S REPORT DATED FEBRUARY 18, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

38. **Meeting adjourned at 10:35 p.m.**

Patricia M. Fogg
Patricia M. Fogg, CMC
City Secretary

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