

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 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
Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles Zusag
(arrived 8:50 p.m.)
Building Director Tom Sciulli
Finance Director Dennis McFarland
Planning & Development Director Roy H. Lopata
Police Chief Paul Tiernan
Public Works Director Rich Lapointe
Water & Wastewater Director Roy Simonson

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

2. MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE AGENDA BE AMENDED BY MOVING ITEM 9-C, TO ITEM 3.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT ITEM 9-A-2, PARKING ISSUE AT NEWARK POST OFFICE, MAIN STREET, AND ITEM 9-A-3, RESOLUTION 09-:___ IN MEMORIAM DR. WILLIAM MARKELL, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **9-C-1. OTHERS**

1. Presentation by DeIDOT on Delaware Bike Summit

Heather Dunnigan, Principal Planner for WILMAPCO, reported that the first Delaware Bike Summit was planned for April 24th at Del Tech in Dover. At the summit, speakers from around the country would share ways for communities to become more bicycle friendly. Ms. Dunnigan felt Newark was an excellent city to participate in the summit and considered it the center for bicycling in Delaware.

Local leadership would also be present to share ideas and initiatives on making Delaware a more bicycle-friendly state. She said the hope was to come away with an action plan on how bicycling could be improved in the communities, and the next summit would have a more local focus.

Mr. Markham asked if bike sharing would be on the agenda. Ms. Dunnigan said it would be discussed during the summit as Newark, the University of Delaware and the City of Wilmington expressed interest in this area.

4. 2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL

A. Regular Council Meeting of March 9, 2009

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

5. 3. ITEMS NOT ON PUBLISHED AGENDA

A. Public

Delores Smith, 134 New London Road, expressed concern about speeding, and her request for assistance was directed to Chief Tiernan. Further, she asked if a traffic signal could be installed at Rt. 896 and Corbit Street, and Mr. Funk explained the road was a state highway and she needed to make her request to State Representative Schooley. Mr. Markham suggested the possibility of speed enforcement at that location and moving one of the speed signs there. Ms. Smith also had problems with a squirrel infestation and was advised to speak with Building Director Tom Sciulli.

6. 3-B. UNIVERSITY

1. Administration

Mr. Armitage offered his congratulations to Councilmen Pomeroy, Clifton and Athey on being re-elected to Council. (Note: No election will be held because only incumbents filed in the respective districts.)

7. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

8. 3-C. COUNCIL MEMBERS

Mr. Clifton congratulated Mr. Sonnenberg for becoming a member of the White Clay Creek Watershed Management Committee and felt Mr. Sonnenberg would serve the organization well. Mr. Clifton also noted Mr. Sonnenberg's involvement with the Business Development Committee at the Chamber of Commerce.

9. Mr. Clifton commended the Police Department for national recognition as a flagship agency.

10. Mr. Clifton requested discussion of retiree pensions at the next Council meeting. He thought this was an important issue for the City's retirees who were living on a fixed income. He said the retirees served the City well over the years and felt this should be discussed publicly to come to a conclusion on whether to provide an increase over the next three years.

11. Mr. Pomeroy noted the passing of Dr. Markell who was a great member of the Newark community, and his absence will definitely be felt.

12. Mr. Pomeroy said there was a great degree of excitement about the recycling program, and he appreciated the notification cards sent to give residents a last minute heads up to maximize participation in the program. He asked for clarification on alternatives for residents in townhouses if they did not

want to use a recycling container. Mr. Lapointe said the option to use clear plastic bags was approved on a case-by-case basis for certain communities.

13. Mr. Markham said an e-mail from the Landlords Association regarding the sign ordinance defeated at the last Council meeting offered help in mediating problems. He felt if the Association could put pressure on people, he would encourage outside enforcement.

In regard to issues raised with the constitutionality of different parts of the sign ordinance, he suggested that Council might want to consider a review by C. J. Seitz, an expert in constitutional law. Mr. Funk noted this would be costly.

14. Mr. Markham assumed the possible increase in New Castle County's sewer rates would impact the City, and Mr. McFarland said he was keeping an eye on the situation.

15. Mr. Markham gave kudos to the Electric Department for re-evaluating LED and inductive lighting. He thought it would be good to have similar automatic re-evaluations by other departments.

16. Mr. Markham asked if there was a possibility that the City would receive stimulus funds, and Mr. Sonnenberg said there was almost nothing available for local governments. Mr. Sonnenberg thought the City might be able to obtain funding through the state's revolving fund for sewers. He noted Senator Kaufman's office was extremely helpful in working with the City, and his office was looking into whether alternate energy was something the City could access.

17. Mr. Tuttle pointed out the minutes of the March 10th Conservation Advisory Commission indicated that the Anti-Idling Ordinance was passed by Council. Mr. Tuttle noted this was incorrect information. Rather, Mr. Dentel presented a report to Council, and a motion was made directing Mr. Akin to draft an ordinance. This ordinance was not yet reviewed and adopted by Council.

18. Mr. Tuttle acknowledged the Arbour Park Civic Association for hosting an open house community forum on March 21st. Senator Bethany Hall-Long, Representative John Kowalko, County Council member Lisa Diller and Mr. Tuttle attended. There was an excellent turnout with a lot of interest in the City's financial future which he hoped would translate into a good turnout at the Council budget workshop.

19. Mr. Tuttle announced DART was holding a public hearing workshop involving bus routes changes on March 30th at the WILMAPCO offices from 4-6:30 p.m. He said the good news for Newark was the plan to add Sunday service on Route 6. There was a plan to eliminate Route 65 linking the City with Elkton.

20. Mr. Tuttle reported that in the process of amending the City's alarm ordinance on June 23rd, the annual fee was raised from \$8 to \$10. At that time, the senior citizen exemption was unknowingly eliminated from the ordinance. He felt it was important to determine if Council wanted to abolish or reinstate the exemption and reported about 2,500 alarms were registered, with 35-40% of those being senior citizens. It was the consensus of Council to discuss this at a public hearing of a proposed ordinance.

21. Mr. Temko reported there would be a meeting for the Terry Manor community on April 15th at 6:30 p.m. in the Council Chamber to provide an opportunity for residents to discuss issues, ideas, or concerns with City staff members.

22. Mr. Temko requested a first reading of an ordinance on April 13th regarding the Traffic Committee's recommendation to allow parking on both ends of Renee Court.

23. Mr. Temko said DeIDOT made some changes to the signalization at New London/Hillside Road and the Cleveland Avenue intersection in an attempt to better support movements from all sides and to let cars through on New London when there was no traffic coming from other directions. Any problems should be sent to Mr. Temko (include date and time) which he would forward to DeIDOT.

24. Mr. Athey reported that Officer Wiggins and Cpl. Potocki were featured in an article in the *Newark Post* for recognition they received by the Knights of Columbus.

25. Mr. Athey thanked Mr. Sciulli for his efforts at a house on Orchard Road.

26. Mr. Athey was pleased about the positive response to the Wednesday yard waste pick up.

27. Mr. Athey received a suggestion from a City employee regarding traffic back ups at the left turn onto Academy Street from East Park Place. The thought was to delay the westbound green light by several seconds to clear the left turn lane at the intersection. Mr. Funk suggested a stop line 15 ft. back for the left turn onto Academy Street, as the road seemed wide enough for three lanes at that location. Mr. Tuttle felt that would create difficulties for university buses coming southbound on Academy and making a right turn. He also noted that New Jersey had delayed green signals, and he found that kind of traffic control to be confusing. Mr. Athey said he would like the Traffic Committee to determine if improvements could be made to the intersection.

28. Mr. Athey reported the pedestrian bridge paralleling South College Avenue over the railroad tracks prohibited bicycle traffic. The only time he saw this as an issue was during Saturday football games or during the Liberty Day fireworks display. He did not feel restrictions were needed on the bridge at other times, and noted the proximity to the Hall Trail. He thought there was merit in having the Traffic Committee look into lifting the restrictions with exceptions at certain times. Mr. Clifton agreed it made sense to make changes there, especially when looking at the aftermath of inclement weather, snow and salt on the roadways on the bridge.

29. Mr. Athey appreciated and applauded Mr. Sonnenberg's efforts in reaching out to the community with the White Clay Watershed group.

30. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING**
None

31. **4-B. FINANCIAL STATEMENT**

Mr. McFarland summarized the Financial Report for the period ending February, 2009 which was very similar to the January report. Net revenues and expenses were still very close to budget two months into the year. Utility revenues were substantially over-budget, with the electric revenues being off for the reasons discussed last month plus greater usage in February. The water margins trailed the budget as a result of the rate actions, as did the sewer budget. Mr. McFarland explained it was hard to trend month to month because of the timing of payments to the County and the billing of large sewer customers. Non-utility revenues were about \$300,000 under budget. Property taxes were doing well, and the trend at the beginning of the year continued in February. It appeared property taxes would be over budget by about \$400,000 for the full year. There was a noted weakness in transfer tax revenues. Court fines were starting to run somewhat behind budget. Permit revenues were above budget. Operating expenses were a little over budget based on the many contractual services in January.

Mr. Tuttle questioned interest income which appeared to be at 40% of the budgeted amount. Mr. McFarland explained rates and the cash balance were down and would likely continue that way through the balance of the year.

Mr. Markham noted the one department that stood out as being over budget was the Finance Department which Mr. McFarland attributed to computer expenses.

Mr. Pomeroy noted transfer taxes were down \$191,000 and asked if there was any correlation between February and what the number might be in the next few months. Mr. Funk said traditionally May 1 through September 30 was the heaviest period for residential transfer tax collections, and he was not aware of any commercial projects that would generate a large revenue.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE FINANCIAL STATEMENT ENDING FEBRUARY 28, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

32. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

None

33. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

- A. Bill 09-10 An Ordinance Amending Ch. 25, Sewers, Article IV, Regulations on Nondomestic Waste Water Discharges Into the Public Sewer System and Incorporating, By Reference, Chapter 38 of the New Castle County Code With Amendments Thereto

Ms. Fogg read Bill 09-10 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-10.

Mr. Simonson said the City adopted the County ordinance several years ago for non-domestic waste water treatment. Since that time, the County updated their ordinance, and the City needed do the same. In addition, he recommended that it be incorporated by reference rather than being incorporated into the Code as was previously done. Thus, any changes made by the County would automatically update the City's Code, eliminating the need for incremental changes. Mr. Simonson reported that the fats, oils and grease program were excluded until the City made changes. Mr. Pomeroy asked for the time line on the program, and Mr. Simonson said there were various time lines involved related to inspections or maintenance of grease handling units. He said the Building Department had to be involved as some incremental changes were made on new construction, and the permitting and enforcement process was fairly involved.

Mr. Markham asked if there would be any impact on the commercial enterprises based on the changes. Mr. Simonson said there was no impact from the changes proposed, but in fats, oils and grease, there would be some changes. Mr. Markham asked how notification of changes would be handled if the City adjusted automatically to the County law. Mr. Simonson said the County would notify him of any changes so he would have an opportunity to get the word out. Further, the most impacted group was the large industrial users with permits or who came in to request a permit.

Mr. Clifton asked which large companies would be impacted. Mr. Simonson said the City of Newark, the South Well Field treatment plant, the University of Delaware, Rohm & Haas, and Chrysler all had permits. Mr. Clifton

said if any changes were to be made, he would like the City to reach out to the companies to keep them informed to prevent any negative reaction.

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. 09-11)

34. 6-B. BILL 09-11 AN ORDINANCE AMENDING CH. 20, MOTOR VEHICLES AND TRAFFIC, BY AMENDING SCHEDULE VI, BY PROHIBITING PARKING DURING CERTAIN TIMES ON BRADFORD LANE FROM DEVON DRIVE TO THE EAST END OF THE STREET

Ms. Fogg read Bill 09-11 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-11.

Mr. Tuttle said this ordinance was designed to prevent the same problem that was eliminated at the southern end of Apple Road from occurring at Bradford Lane.

The Chair opened the discussion to the public.

Robert Bruner, 382 S. College Avenue, did not want a situation created where people would go to another area (Bradford Lane) to park since the City had previously prohibited parking on Apple Road.

There being no further comments, 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. 09-12)

35. 6-B. BILL 09-13 AN ORDINANCE AMENDING CH. 21, PEDDLERS, VENDORS AND SOLICITORS, BY REPLACING THE EXISTING CHAPTER WITH REVISED AND UPDATED LANGUAGE

Ms. Fogg read Bill 09-13 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-13.

Mr. Akin summarized the highlights of the ordinance and said much of the ordinance was unchanged from the current Code. He explained that the ordinance was sometimes confusing for the staff and for the public. The ordinance was revised by rearranging it, by inserting some new provisions that had been recently discussed and by removing some obsolete provisions. It was

now broken down into several parts. Traditional vending, typically done in the central business district, was defined as the act of working from a stationary stand selling goods or foodstuffs. Peddling was moving about and selling goods or services either in the central business district or any other part of the City to include the residential districts. Door to door was selling goods and services.

Mr. Akin explained some new features of the ordinance.

With respect to vending in the central business district, a new provision was included that was discussed at some length whereby the owners or operators of businesses would have the right to object in writing to the City if a vendor sought to establish a vending stand directly in front of that business. He believed there was case law to support this, and it fell within Council's right to protect the health, safety and welfare of people and existing businesses.

Mr. Akin also pointed out that an increase in fees for licenses was being proposed at Council's request. The current fee structure was \$50/daily, \$100/monthly and \$300/annually. The recommendation was for the daily fee to remain at \$50, the monthly fee increased to \$350 and the annual fee increased to \$1,000 which provided a permanent business location in the central business district.

Solicitation in the residential districts was moved to its own subchapter of the chapter. Charitable solicitation was defined as activities, fundamentally religious, political, or otherwise charitable in nature, where people go with proper identification door to door soliciting contributions to their endeavor.

When peddling anywhere in the City, especially out in the residential zones, it would be required that people wear identification giving their name and the organization for which they were selling or soliciting.

Mr. Akin noted that a new article was included. The genesis of this was the Downtown Newark Partnership who asked that the ordinance include some regulation as to the placement of vending machines in the Central Business District – that they not be placed on the sidewalks or places where they would obstruct pedestrian flow of traffic nor be capable of being operated by people standing on the sidewalks, but be moved back in off the sidewalks so the district was not lined with vending machines.

Further, fines were imposed for those who violated the new ordinance. Mr. Akin explained that much of the old ordinance was unchanged such as unlawful vending activities, especially in the Central Business District.

Mr. Clifton asked if business to business sales would be impacted by the ordinance. Mr. Akin said he believed the City never defined that as peddling, and it could be specifically excluded from the ordinance if Council so chose.

Mr. Pomeroy asked for clarification of Section 21-17 about adjacent property owners objecting to a vendor setting up shop in their area. Mr. Akin said when someone applied for a vending license at a proposed location, the adjacent property owner would be notified and would have 20 days to object in writing to the City Secretary's office. Mr. Pomeroy and Mr. Funk felt it would make more sense to require the applicant to get an approval form signed by the property owner placing the responsibility on the vendor rather than on the City

Mr. Markham was concerned about restraint of trade in terms of who could object and asked if that issue had been fairly well researched. Mr. Akin said there were similar provisions in other municipal ordinances, and to his knowledge there had not been any challenges to the legality. Mr. Funk added that the City of Wilmington banned all vending from public sidewalks.

Mr. Markham noted Section 21-4 (h) required felony conviction disclosure on the application. He felt criminal background checks might be a more effective way to handle this. Mr. Akin confirmed the applications were forwarded to the Police Department for background checks.

Mr. Temko questioned whether the requirement for wearing identification under Section 22-22 applied to both charitable and non-charitable door to door solicitors. Mr. Akin said both peddlers and charitable solicitors were required to wear identification. Mr. Temko understood that applicants for a license to peddle or solicit would be given information about the City's regulations, but questioned how non-profits, religious organizations and campaigners would get that information.

Mr. Athey asked whether the intent of Article V (Peddling) was for charitable organizations to follow the "No Soliciting" signs. Mr. Akin said the current version of the ordinance did not distinguish between charitable solicitation or peddling. His understanding was that if a person wanted to be free of all solicitation and peddling, charitable or otherwise, posting the property would accomplish this goal. Mr. Athey suggested re-titling Article V from Peddling to Miscellaneous Restrictions to make it clearer that it applied to charitable and non-charitable organizations.

AMENDMENT BY MR. ATHEY, SECONDED BY MR. POMEROY: TO ELIMINATE ARTICLE V PEDDLING AND MOVE SECTIONS 21-23 THROUGH 21-26 UNDER ARTICLE II GENERAL PROVISIONS, NUMBERING THESE AS NEW SECTIONS 21-10, 21-11, 21-12 AND 21-13 AND ELIMINATE SECTIONS 21-18 (FEES) AND 21-22 (IDENTIFICATION).

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Athey did not understand why Article II, Section 21-2 (b) (Exemptions) permitted persons representing a **local** non-profit organization from complying with certain regulations

The Chair opened the discussion to the public.

Bennie Dollard, Wilmington, DE said he maintained his vending business in front of the National 5 & 10 for the last five years. He was disturbed by the increased fee for annual licenses from \$300 to \$1,000. Mr. Funk said the fee translated to roughly \$3 per day. Mr. Dollard said some businesses think the vendors take away their sales, but he felt that was not the case as they sell two different products, and he sends customers to other shops. Mr. Dollard stated he did not have the \$1,000 fee and would need at least several months' notification to come up with that amount. He added that he was one of the smallest business owners on Main Street.

Mr. Athey asked how many vendors currently had annual licenses, and Ms. Fogg stated there were four food vendors whose annual licenses would expire at the end of March.

Mr. Temko felt the change in the annual license was a pretty steep increase and suggested phasing in the new fee considering the economy. Mr. Clifton agreed with Mr. Temko and thought a fee of \$500 this year and perhaps \$700 next year would be easier for the vendors to handle. Mr. Athey suggested \$500 this year and \$750 next year.

AMENDMENT BY MR. POMEROY, SECONDED BY MR. TUTTLE: TO CHANGE THE VENDING LICENSE FEES TO \$250.00 FOR ONE MONTH AND \$500.00 ANNUALLY.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Jean White, 103 Radcliffe Drive said she felt the hot dot stand added to the character of Main Street. When the ordinance came up before, she recommended that the word “local” be taken out of Article II, Section 21-2 (b) (Exemptions) as it was confusing and raised questions.

Mrs. White thought door-to-door solicitation should be included under the definition of Peddler. Mr. Akin replied that peddling was not always a door-to-door activity and said, for instance, someone could peddle on Main Street.

Regarding the appeal process, Mrs. White suggested that the Board of Business Licenses might be a more appropriate group to hear appeals than the City Manager. Ms. Fogg reported that Section 21-8 had always been in the Code providing the right to appeal a licensing decision to the City Manager within 30 days of denial.

Mrs. White asked if the businesses doing textbook buy backs had to be licensed. Ms. Fogg said it was determined some time ago that they would not have to get a permit from the City since they were affiliated with an existing business.

Mrs. White wanted the wording to be clearer regarding vendors getting permission from adjacent property owners or tenants. She said the word “adjacent” meant next door, and it was not clear to her whether permission was required from the business behind the vendor or whether it included two other businesses, the one on the right side and the one on the left side.

Mrs. White asked how organizations such as Girl Scout troops who had a stand in front of the Wilmington Trust Bank would be affected by the ordinance. Ms. Fogg explained the City Secretary’s office was contacted when people wanted to set up a table. An approval letter was provided to them and copied to the Police Department with guidelines about not blocking sidewalks, handing fliers to people, not approaching cars, etc.

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

Mr. Clifton felt the licensing process was beneficial in that it provided an extra layer of security for neighborhoods in the City.

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. TEMKO: TO REMOVE THE WORD “LOCAL” IN FRONT OF NON-PROFIT ORGANIZATION IN SECTION 21-2 (b).

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Temko read the function of the Board of Business License Review, which was to hear appeals taken by any person aggrieved by any administrative decision based in whole or part upon Article VII of Chapter 13 and to advise the City regarding business licensing whenever necessary. Mr. Akin advised this

group did not come under the appropriate section of the Code for the proposed ordinance.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 09-13)

36. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS
None

37. 8. ORDINANCES FOR FIRST READING

A. Bill 09-12 – An Ordinance Amending Ch. 17, Property Maintenance Code, By Further Amending the 2006 Edition of the International Property Maintenance Code

Ms. Fogg read Bill 09-12 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 09-12.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 4/13/09)

38. 8-B. BILL 09-14 AN ORDINANCE AMENDING CH. 32, ZONING, BY AMENDING THE BLR AND RM ZONING DISTRICTS RELATING TO APARTMENTS

Ms. Fogg read Bill 09-14 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 09-14.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 4/27/09)

39. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Request DeDOT to Review Speed Limit on Paper Mill Road

According to Mr. Markham, the police were unable to respond to an enforcement request on Paper Mill Road made by a constituent since the speed limit posted by DeDOT differed from the City's existing ordinance. The location was a downhill grade coming into the City where the speed limit dropped from 45 to 35 to 25 mph. Mr. Markham suggested the City Manager send a letter to DeDOT asking them to reconsider the speed limit. Mr. Funk agreed that 35 mph was a more practical speed limit for the area.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THE CITY MANAGER REQUEST DELDOT TO REVISIT THE SPEED LIMIT ON PAPER MILL ROAD.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

40. 9-A-2. PARKING ISSUE AT THE NEWARK POST OFFICE, MAIN STREET

The Planning Department requested deferral of this item because the Parking Committee would meet to discuss it on April 14th.

41. 9-A-3. RESOLUTION 09- : IN MEMORIAM DR. WILLIAM MARKELL

Mr. Pomeroy read the resolution noting the passing of Dr. William Markell, a long-time resident of the City of Newark and father of Delaware Governor Jack Markell.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 09-F)

42. 9-B. COMMITTEES, BOARDS & COMMISSIONS

1. Appointments to Community Development/Revenue Sharing Advisory Committee

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT MARGARET CATTS, 60 WELSH TRACT ROAD, BE REAPPOINTED TO THE COMMUNITY DEVELOPMENT/REVENUE SHARING COMMITTEE FOR A THREE-YEAR TERM; SAID TERM TO EXPIRE MARCH, 2012.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

43. 9-B-2. APPOINTMENT TO BOARD OF ADJUSTMENT

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT KEVIN HUDSON, 207 VASSAR DRIVE, BE APPOINTED TO THE BOARD OF ADJUSTMENT; SAID TERM TO EXPIRE SEPTEMBER, 2012.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Pomeroy recognized the resignation of Cathy Johnston who continued to serve on the Board of Adjustment after her term expired in September, 2008 until a replacement was found in District 1.

44. 9-C. OTHERS

1. Presentation by DeIDOT on Delaware Bike Summit

(See Item #3)

45. 10. SPECIAL DEPARTMENTAL REPORTS

- A. Special Reports from Manager & Staff
 1. Discussion of Energy Report

Ms. Houck reviewed the report which addressed a number of initiatives brought to the attention of staff by Council. Some of the initiatives were already underway, and the remainder under consideration were grouped to allow Council to provide a motion to move forward.

Mr. Markham wanted to know if numbers were available from DSWA on the electronic equipment recycling program. Ms. Houck said the DSWA program only started last year, and she expected to obtain more information within the next six months. In the meantime, the location and items that may be deposited were being advertised on Channel 22 and on the City's web site.

Mr. Markham asked if biodiesel initiatives had been discussed. Ms. Houck said no, but this could be considered and would require the involvement of Public Works.

Mr. Markham questioned whether an electric-only rate was being considered in the study for people with electric heat. Ms. Houck said winter rates and an electric heat rate would be presented as part of the study. Mr. Markham pointed out that the City would encourage heat pump and geothermal usage by having a lower rate for electric-only customers.

Mr. Temko said energy efficient lighting was discussed for the Municipal Building and asked about investigating motion sensor lighting there as well. He also suggested the option of looking at a differential rate for small non-profits in the community in the rate structure study.

Mr. Temko did not see anything mentioned that offered residents the opportunity to voluntarily purchase higher levels of renewable energy resources or addressing the re-evaluation of the energy source using the City's green energy subscription program. Mr. McFarland said the City was following state standards with respect to renewable portfolios. Mr. Temko said there was a lot of conversation that the City's voluntary program was not much greener than the non-voluntary program, and Mr. McFarland explained there were administrative difficulties in doing that. DEMEC would have to buy a different green portfolio for the City than they buy for everybody else, and the greener portfolio would drive up costs. As a large customer of DEMEC, Mr. Temko would like to see the City not only request that but also ask DEMEC to switch their entire renewable source to something that actually was renewable. Mr. Temko added that re-evaluating the City's energy source was part of Council's initial discussions.

Mr. Temko said he was confused about renewable portfolio standards. He asked if the future plan was that any action to increase the City's percentage of renewable energy would only be adopted following consideration of the cost benefits associated with the renewal energy. Mr. McFarland thought Council first needed to know what the impact might be to the electricity costs and that the difficulty was only serious bidders would get good bids. He would have to do a hypothetical and estimate what it would cost to meet or exceed state standards. He noted the other issue was how green was the green energy purchased, and that would make a huge impact in terms of whether it would be worth adopting state mandated performance standards but with a higher threshold for what constituted renewable energy.

Mr. McFarland explained Blue Water Wind was priced well for renewable energy given the magnitude of the project and the anchor contract with Delmarva. He felt it was a good project economically and environmentally but noted there were not many similar sources available to the City. Mr. Pomeroy agreed that Blue Water Wind was a win-win in all respects. He thought absent that, the City was at the mercy of what DEMEC could get on the open market at a reasonable cost and asked if the City could use some leverage in asking DEMEC to find more green energy sources. Mr. McFarland said the City was a small player in wholesale power markets but noted the growing demand for renewable energy might be helpful in driving the effort forward.

Mr. Temko said the state was going to be meeting these standards and Delmarva would have to meet these standards, and he felt it was very important going forward that the City should be looking not just to keep its costs under Delmarva but also to keep its renewable energy portfolio at or higher than Delmarva's.

Mr. Temko claimed he was still interested in pursuing the establishment of a local community foundation for a conservation advancement program which would offer businesses and residents a tax deduction for donations towards conservation in the City. Ms. Houck said the idea had not been explored any further but could possibly be included with the implementation of the mandatory systems benefits charge.

Mr. Athey asked the intent and the general timing of the rate study and requested an outline of the scope of work for the types of things to be included. Mr. McFarland said he intended to present a mini type of RFP for Council to review and comment on.

Mr. Funk thought there should be more money put into the solar energy fund which was used up very quickly. He felt City residents had a great deal of interest in this source of energy. Mr. McFarland said it was essentially a state administered program, and Mr. Funk added that legally, the City had the right to double the fund if they wished to do so.

Mr. Markham said he did not understand why customer submitted meter readings were not easy to accomplish. Mr. McFarland said the difficulty was understanding how to administer the program to insure timely and accurate call ins. Since the City readings were once every three months but billed on a thirty-day cycle, everybody in that billing would have to call in on a given work day every month in order to keep that cycle going. Further, the existing system would have to be maintained to fill in the spots when a customer would not call in. He felt it was hard to see where better customer service or more efficiency would be achieved. He felt it would be better to devote money to the estimation process so the off months were more accurate. Mr. Markham understood the issues but felt residents would have a much better feeling when they improved energy efficiency and saw this reflected in their next reading. Mr. McFarland said his reluctance was in designing a process for a system serving 10,000 customers that would benefit only a small fraction of customers as this type of program would cost time and money to administer.

Mr. Clifton asked if there were any customers where access was needed to read the meters. Mr. McFarland said generally all residential units had outside reads, but there were commercial units and apartments where access was needed. Mr. Clifton said even if a resident called in their reading, other customers in the area who did not would still have to be read by the City, thereby reducing the cost savings from the call-in program. Mr. Markham pointed out that the program was meant to fill in the estimated months with a more accurate read.

Mr. Temko asked if adopting either the state or a similar renewable portfolio standard was something that staff would look into or something that

needed to be added to the motion. Mr. McFarland felt this was so significant that he was not in a position to make a recommendation but could run some numbers and provide a report to Council. Mr. Temko suggested this might be something to send to the Conservation Advisory Commission to research and report back on. Mr. McFarland said that depended upon how fast Council wanted to move. Mr. Athey preferred to see a report from Mr. McFarland framing the idea, so Council could then decide if this was something to pass on to CAC keeping in mind that the Commission had a new Chair coming on board and Council might want to move a little bit quicker.

Mr. Markham thought it would be a good idea to implement the retrofit of the lighting as soon as possible based on the expected payback. Mr. McFarland said the difficulty in doing that was the tight budget.

MOTION BY MR. TEMKO, SECONDED BY MR. ATHEY: TO ADOPT THE FOLLOWING RECOMMENDATIONS IN THE ENERGY EFFICIENCY CONSERVATION PLAN:

- Support the provision of a budget billing option for utility customers in 2010.
- Support the implementation of a mandatory systems benefits charge in January 2010 that will be embedded in the City's utility rates and fund three energy initiatives of Council.
- Support the intention to retrofit lighting fixtures in the 2010 Capital Program.
- Acknowledge the provision of an electronic equipment recycling program in Newark by the DSWA as satisfactorily meeting the needs of the community.
- Approve of the implementation of a rate study in 2009 to determine the redesign of the rate structure so that it promotes energy conservation and economic development initiatives.
- Support the 2009 investigation of using reusable (same envelope returned with payment) envelopes for utility bill mailings with implementation in 2010, if feasible.
- Approval of plan to evaluate options for automated call-in or on-line acceptance of meter readings in 2010.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

46. 10-A-2. RECOMMENDATION RE INSURANCE RENEWALS FOR 2009-2010

Mr. McFarland explained the recommendation was for the City's casualty insurance coverage for the premium year April 1 through March 31, 2010. There were substantial changes in the program because Travelers declined to bid on the City's renewal coverage. Bids were received from ACE and from AIG. The AIG bid was substantially more expensive, while the ACE bid required higher deductibles and retentions creating a change in the way the program was run. Under the current plan, all claims were forwarded to Travelers. Under the recommendations, small claims would not go to ACE but would be handled by the City through a third-party administrator. Mr. McFarland felt handling claims internally would be unmanageable. He said ACE encouraged municipalities to

be more diligent in their risk management program and to be more conscious of the program.

Mr. McFarland said the City would have roughly the same coverage provided with ACE in terms of exposure or risk. The difference was the liability limit of \$7 million on almost all claims except those related to the reservoir which would be \$4 million. However, Council had the option to expand the umbrella policy for the reservoir to an additional \$3 million of coverage at a cost of \$15,000. Mr. Clifton verified the coverage was for future claims only. McFarland said the total insurance costs in 2008 were about \$540,000, and the new coverage represented a 30% increase and was related to the reservoir and to the litigation involving a house fire. He said based on past claims, it was recommended to set aside \$100,000 for the uninsured loss fund. Small claims over the last three years varied from \$20,000 to \$80,000 in total over a year.

Mr. Athey asked Mr. McFarland to outline a scenario where the higher umbrella insurance would be used for the reservoir. Mr. McFarland explained it would cover any claim associated with the reservoir including a breach or a drowning.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: TO APPROVE LIABILITY INSURANCE COVERAGE FOR 2009-2010 WITH ACE AS RECOMMENDED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

47. 10-B. ALDERMAN'S REPORT

MOTION BY MR POMEROY, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED MARCH 17, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

48. 10-C. REQUEST FOR EXECUTIVE SESSION RE PERSONNEL

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PERSONNEL.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Council entered into Executive Session at 10:20 p.m. and returned to the table at 11:12 p.m. Mr. Funk announced that a motion was required by Council as a result of the Executive Session.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT COUNCIL REJECT THE TENTATIVE AGREEMENT REACHED BETWEEN THE CITY AND CWA.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

49. Meeting adjourned at 11:13 p.m.

Patricia M. Fogg, CMC
City Secretary

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