

MILFORD CITY COUNCIL
MINUTES OF MEETING
August 11, 2014

The City Council of the City of Milford met in Workshop Session on Monday, August 11, 2014 for FOIA (Freedom of Information) training in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Christopher Mergner, Garrett Grier III, S. Allen Pikus, Owen Brooks, Jr., and Douglas Morrow, Sr.

City Manager Richard Carmean, Police Chief Keith Hudson and City Clerk/
Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

The Workshop Session convened at 5:35 p.m.

FOIA Training/DAG Edward Black/Attorney General's Office

Also present were Deputy City Clerk Christine Crouch and City Office Assistant Katrina Wilson as well as members of the City of Milford's Planning Commission and Board of Adjustment.

Solicitor Rutt introduced Assistant Attorney General Edward Black as the current FOIA expert for the State Attorney General's office. Anytime a FOIA complaint is filed, he investigates it and provides an opinion.

Mr. Black emphasized that he is not present as the city's lawyer. He represents various agencies but the Department of Justice does not represent municipalities.

He explained that the most recent amendment to the FOIA law states that his training sessions are not to be considered legal advice which prevents any ethical problems. David Rutt, the city solicitor, is the attorney responsible for providing the city with advice.

Mr. Black explained that the push for FOIA or government transparency nationally came as a result of the Nixon Administration and some of the things the Frank Church Committee discovered in their investigations. The Delaware Attorney General's Office swings toward transparency. He explained there are no black and white answers to every question, but there are two things that cannot be ignored. One is the general assembly who has the authority to change the statute and the other is the political environment.

He then referenced a presentation and explained the general assembly started Chapter 29, Chapter 100 of the Delaware Code, with a declaration of policy which reads as follows:

"It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the citizens of this State, this chapter is adopted, and shall be construed."

Mr. Black stated that two critical areas come out of the declaration. The policy allows citizens to observe and monitor; however, it says nothing about participating. As council is making decisions that could implicate FOIA, they should consider whether they are giving citizens ample opportunity to observe and monitor.

He had a situation recently that involved a controversial board of adjustment zoning hearing in a municipality. They

expected a big crowd and the municipality reserved the largest place they could find within their boundaries though it was not big enough.

He explained that to observe and monitor does not mean each sides is allowed the same number of people. Mr. Black added that because it wasn't a public hearing, they were unable to speak anyway.

The other thing the declaration addresses is determining what a public body is. If it is not a public body, there is no open meeting requirement and public records are not needed. When there is a public body, there is the requirement for open meetings and the disclosure of public records.

Mr. Black pointed out that the latest amendment to FOIA requires him to provide training sessions. The FOIA manual must also be revised every two years. His office will review the manual for approval on September 21st. Better information will be available by updating the manual in terms of what the statute now states and the opinions rendered in the interim.

In addition to the general opinions published on the AG's website, a synopsis of each opinion is now required. This prevents having to read the entire opinion to find out what was involved.

Mr. Black then referenced public bodies. He reported that several school boards in New Castle County got into the habit of noticing an executive session prior to their regular board meeting. They would then meet at a set time in the cafeteria and have dinner. He emphasized that is not legal. In order to go into executive session, you must first go into regular session. He explained it was a public body that consisted of a quorum and while they were having dinner, they discussed business.

The school board also decided it would be a good idea to exchange ideas on a regular basis. Monthly, the superintendent and one board member from each school district would meet for breakfast on a rotating basis. He emphasized that is a problem because it is a public body.

The definition of public body is defined in the law as:

Public body means, unless specifically excluded, any regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the state...

...A legislative or executive branch, agency, board, committee, subcommittee or group established by an act of the General Assembly or a body established by the General Assembly.... appointed by a state body or public official...

...Those bodies that are supported in whole or in part by public funds, expends or disburses grants/gifts, and impliedly or specifically charged to advise or make reports or recommendations...

Mr. Black pointed out that people find themselves in trouble in a variety of circumstances.

He advised that exempt bodies are any caucus of the House or Senate, University of Delaware and Delaware State University and courts are exempt except for meetings of the Boards of Trustees. Public bodies having one member, such as a governor, mayor or city manager are exempt.

A body of one can also appoint committees that are not public bodies. For example, if the mayor calls the meeting of city employees, that is not a public body.

Mr. Pikus asked if the mayor can meet with one or two councilpersons; Mr. Black said that depends on what he is up to. What the mayor cannot do through meetings, phone calls or e-mails, with a sub quorum of council, is try to persuade council to take some sort of action. He cannot legally campaign or solicit council. He can take greetings and can ask councils' opinion. However, there is a problem if he tries to persuade what will become a quorum.

A question was asked if the city manager or mayor can solicit the planning commissioners. Mr. Black said the mayor cannot campaign by going to one member at a time. When asked how someone would know this had occurred, Mr. Black said a person would file a FOIA request and any e-mails would have to be provided. Even though he is a body of one, that does not make him exempt from public observation.

Mr. Black further explained that it is not necessarily the consensus of the quorum, but the idea that citizens have the ability to observe and monitor. If deliberations are needed on an issue, it must be done in public. There are very few exceptions though one is executive sessions.

The question was then asked what the planning commissioners can discuss with one another about the agenda prior to the meeting. Mr. Black said it can be asked what you think; what a planning commissioner or council member cannot say is...I think we should do this, here is why and do you agree and if not, I want to hear your reasons. Mr. Black said that will get someone in trouble very quickly.

The city manager asked how much leeway he has to call individual members of the body and the mayor to discuss a project for example. He said it sounds like he needs to be careful when trying to solicit support to vote for a project that he wants done. Mr. Black explained the city manager is a body of one so he is exempt from open meetings. He does not have to send notice or put out an agenda. He has the right to call a mayor or one council member and say this is what I am thinking about. That can be done because he is only a body of one.

Mr. Carmean asked if he can physically meet with them in his office; Mr. Black explained the same thing applies. The method does not matter which is typically the way people get around this through e-mails, texts or telephones. They generally do not try to get around FOIA by meeting face to face. The point of Mr. Black mentioning electronic communications is because that will not work simply because it is not face to face because it is the same situation as being face to face.

Mr. Pikus explained that we are a city manager form of government. He asked if the city manager can call and ask one councilperson about something happening, then call another councilperson and ask him. Mr. Black said that is fine. However, what gets someone in trouble is when it becomes a quorum and whether it is only a body of one or is the city manager looking for council to take action on something. If he is looking for action from council, then it needs to be looked at from the council side and not as a body of one.

Mr. Black said the city manager can try to persuade less than a quorum without having an open meeting, but once you get to a quorum, it becomes a problem. He explained that is a quorum in the aggregate because we are not talking about a quorum of a quorum.

Mr. Black then reviewed the public record requirements. Each public body is required to appoint a FOIA coordinator and develop a web portal for receiving FOIA requests.

Also added this year is the requirement for a public body to provide a physical address. Public bodies must also provide reasonable assistance to the public in identifying and locating records. When someone requests copies of minutes since 2004, he said they are really not entitled to that. However, they are entitled to come in and look at those minutes. If they request copies, a policy can be established that includes associated fees. If not, they would need to abide by the state statute.

Mr. Pikus confirmed that if someone wants copies of meeting minutes, we can charge for that; Mr. Black said they can be charged for the copies. He said the city has the right to charge those fees up front.

In addition, the requestor can be charged the lowest pay rate of a person qualified to handle the request. When the request is received, the number of pages should be determined and the amount of time estimated to comply with the request. An estimate, itemized budget is then created and presented to the requestor. Until the fee is paid, the work does not begin. They should also be informed that when the money runs out, they will let them know.

Mr. Pikus then asked if council is sitting in session and either the city manager, council person or the mayor asks our city solicitor to render a decision. The city solicitor quotes a decision rendered by the courts. A person then requests a copy of the decision which must be provided by our city solicitor. He asked if we can charge the requestor the fee the attorney will charge the city.

Mr. Black explained that answer is neither/nor. The requestor should be steered toward the internet or direct them to the nearest law library and told it is not a record of this body.

The city manager asked and Mr. Black confirmed that if someone requests a bid document that was passed and accepted by council, we could not charge that person for the associated cost of our engineers to prepare the bid document and instead could only charge them the costs of reproducing it. Mr. Black said there is another twist on that and what happens when fifteen different people ask for the same document. If the requestor was charged the engineer fees, would they be spread among all fifteen or only charged to the first person.

Mr. Black stated the city is only required to provide reasonable assistance in identifying and locating records. Once it gets to the point of research, the cost needs to be estimated in terms of a budget that would include how much time it will involve, the employment cost of the lowest paid, qualified person who can perform the task and duplicating fees. The requestor should be sent the estimate with a tag line stating this is only an estimate and we are unable to begin work until the estimate is paid. We will then inform you if it is more than the estimate.

Someone asks the typical cost charged by the city for a FOIA request. The city clerk explained it depends on the request and the work and time involved. If it is a one page document that is readily available, there is no charge. The majority of persons requesting information are referred to the city website.

Mr. Black explained that a response to a FOIA request is required within fifteen business days though that does not mean 'reply'. If it results in voluminous documents, the requestor should be informed that a budget is being prepared and an estimate will be provided soon.

Mr. Rutt pointed out that it is necessary to promptly request non-custodial e-mails and other records and asked Mr. Black to expand on that matter. Mr. Black noted that it does not just apply to e-mails. He explained that a non-custodial e-mail is an e-mail that is not in the custody of the city. Generally, an e-mail goes from one person to another person. One of those persons involved may not be an employee or related to the City of Milford. Most public bodies have a record retention policy. Often those records are destroyed.

He explained the first thing the city needs to do is have the house locked up and not allow any e-mails to be erased due to a pending FOIA request. The next thing is to make the same request of the other party. It is not just communications. For example, an IT firm is hired by the city and a relational database is created for the town's use. If someone wants a copy of the database and the city says they do not have it because it is not in the city's custody but instead is on our contractor's computer.

Mr. Black emphasized that will not work. That is non-custodial property actually belongs to the city because the city paid for. The city is responsible for obtaining it.

In a recent case, DelDOT was selling advertising for a law firm on the back of their buses. Another attorney got upset because it was an exclusive deal. DelDOT had contracted with an ad agency to sell advertising only. They had control only to the extent that they had to approve the copy. The terms of the contract were negotiated by the ad agency and DelDOT only received the money. He explained this is a slightly different situation because the contract requested was not the property of DelDOT. The only contract DelDOT had was with the ad agency.

The attorney general's office has made the distinction that public records can be in someone else's possession if they are the actual property of the public body. Something in someone else's possession that is not property of the public body is not.

The DAG then reviewed other items that are exempt and specifically personnel, medical and pupil files. Information such as home addresses, telephone and social security numbers should be redacted.

Mr. Black said they have had a lot of questions where a vendor claims that the release of certain documents would put them at a competitive disadvantage or in some manner a 'trade secret'. They received one request for records that involved seventy suppliers and all but eleven provided the information. He reported that because the vendor claims it is a trade secret does not necessarily make it so.

He noted that investigatory files are also exempt. Exemptions continue after the file or investigation is closed because of the information it contains such as the name of a confidential informant.

Included in the exemption are civil, personnel and housing code investigations or similar investigations.

Criminal files and records are exempt. However, any person can request and obtain a copy of their own criminal record but not the investigative file. Files can be provided but witnesses, confidential info and other privileged information would need to be redacted.

All other criminal records are exempt from public scrutiny.

Other records exempted by statute or common law include HIPAA, tax info, documents filed under seal, etc.

The city manager then referenced utility bills and asked if the information contained on the bill is privileged only to that account. In particular, he asked if the tenant billing information can be provided to the landlord; Mr. Black pointed out that should be determined by the city solicitor. However, the immediate red flag is that it could be a violation of privacy.

Mr. Pikus confirmed that a person's electric bill is their private information; Mr. Black referenced the first exemption and said it cannot be entirely private because the electric company generated it but there could be some information in the bill that might be considered private. He is unable to answer the question without more facts adding that over the years, courts have gone both ways on this matter.

He then explained that another exemption applies to records pertaining to pending or potential litigation which are not records of any court. Mr. Black said there is confusion about what is 'pending' because that means there is actual litigation. This has to be more than a possibility. When Mr. Black was in private practice, he would listen to a client and the question would follow if they could be sued for something. His answer was always yes, because you can be sued for anything as long as the filing fee is paid. As a result, anything has a potential for litigation but needs to be more defined and should involve a demand letter or an actual threat of litigation.

Mr. Pikus then asked about planning commission appeals. Hypothetically, he said the planning commission makes a decision and the public has observed every meeting leading up to that point. The applicant then decides to appeal the planning commission's decision. He asked if the meeting and documents leading up to that point are public records; Mr. Black said it is public because the record has to be filed to file the appeal. He explained that deliberations are what becomes exempt. It is a tighter rule when it involves an executive branch appointed board.

Mr. Black then reviewed meeting criteria that is subject to FOIA. The formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business either in person or by video conference.

Mr. Pikus stated that after a city council meeting, a group of council members and city officials meet for dinner. A decision was made during a council meeting and a vote taken during the meeting. The group then goes to dinner. He asked if the matter can be discussed at dinner because final action has been taken. Mr. Black said yes unless the discussion turns to reconsidering the decision. It then is a problem and a FOIA issue. However, congratulating each other for a job well done is not a problem.

He then stated that meetings must be posted where they are typically held. If a meeting is moved to a different location, the meeting needs to be posted there as well.

The city manager then asked if before a meeting begins, it becomes evident that a larger facility is needed due to the number of people attending. He asked if we can put notice on our doors and move to another location. Mr. Black explained that falls under an adjournment for the purpose of reasonable accommodations. The announcement can be made that the meeting is being moved to another location and will reconvene in half hour.

Mr. Black explained that if it is determined a larger venue is needed, the longer a period before a meeting is scheduled to begin becomes more complicated. Once it has been determined, there should be an attempt to make reasonable accommodations. That could take time and most likely, the meeting would need to be postponed. He does not feel it would not fall under the definition of emergency.

Mr. Grier confirmed the postings on the door would cover this situation. Mr. Black said yes in addition to posting the meeting as is normally done. That notice would contain the new location and would need to be posted at city hall and the new location.

Mr. Black said the best way to handle it would be to reschedule the meeting. The issue then becomes if twelve hours advance notice is sufficient to post the notice at city hall and on the website. He feels the answer is probably no.

Mr. Rutt feels the best way to handle is to convene the meeting and announce that because of the large number of people present, the meeting is being moved to the library, for example. Mr. Black said that will work if the city has the ability to move to a large facility. The meeting would then be reconvened at the new location.

Mr. Pikus then pointed out that the mayor and four members of council may call a meeting according to the city charter. He confirmed that one council member may call a ward meeting; Mr. Black stated yes. Mr. Pikus asked if it is a public meeting and asked if minutes need to be kept. Mr. Black said it is not a public body at that point, but it could become a public body and is why there have been problems when this occurred. He said a ward meeting is called and the council representative asks to have the city manager there or the police chief there. He explained that has now become a problem because it is now starting to look like a public body that is there to conduct public business.

Mr. Pikus said, as an example, he wants to have a second ward meeting and asks the city manager to be there and asked if minutes need to be kept. Mr. Black said it depends on what is being done. Hypothetically, he said there are two council members from the same ward that want to have a ward meeting. They want to discuss what is on their constituents minds. A couple council members show up and they start talking about public business. This is then a public meeting and FOIA applies.

Mr. Pikus continued by stating there is no agenda for the meeting and the intent is to have an open ward meeting and if any citizen wants to ask any question and the city manager is there to respond. Mr. Black said the potential problem begins when the city manager agrees to attend.

Mr. Pikus asked if the best way to handle this is to take questions and provide those questions to the city manager or police chief to later handle. Mr. Black emphasized that is the way local government is to be handled. He reiterated that FOIA requires observing and monitoring but not participation. With a ward meeting, there is an opportunity to participate. The ward residents can bring their questions or issues to that meeting.

Mr. Pikus asked who sets the agenda for a public meeting; Mr. Black said whoever is able to call the meeting.

In response to a question, Mr. Black explained that if a ward meeting was scheduled and several members of the public body end up attending, there is the potential that an issue would be brought up and opinions exchanged. The informational session then turns to deliberating public business and the fact that no agenda was posted is a FOIA violation.

A question was asked about a deadline for amending the agenda before a meeting, Mr. Rutt said an item can be removed though an item can be added up to six hours before the meeting. But the reason needs to be noted why it was added after the seven-day posting.

According to Mr. Black, an explanation needs to be added to the agenda stating the reason the item was added at the last minute.

Mayor Shupe then stated that a community meeting that would include city staff must be called by either the mayor or four or more council members.

Mr. Pikus asked if the city manager can call a meeting. Mr. Rutt and Mr. Black both stated the city manager does not have the right to call a meeting.

Mr. Carmean pointed out the agenda is either set or approved by the person who has the right to call the meeting which in Milford would be the mayor. Mr. Black said that hopefully everyone would cooperate with respect to calling a meeting as is done in most towns; the city manager agreed.

Mr. Black then noted that the standard for notice requirements for executive sessions is less stringent because the matter discussed are items that need to be kept confidential. By their very nature, should they become public knowledge would make it difficult to do your job. For example, a public body can go into executive session for legal strategy and potential litigation. However, more information is needed than simply reciting the statute though specific information is not required.

He warned not to confuse the exception for discussing an individual's qualification for a job with personnel matters. Personnel matters apply to people who are employed; qualifications for a job relate to people who are not employed.

Mr. Black explained the only thing that can be discussed in an executive session is the item(s) listed on the agenda under the executive session. Deliberating can be done in executive session but council must come out and vote publicly.

Some discretion is needed when an executive session is added to an agenda in order to keep the matter confidential; that is the reason the attorney general's office allows some leeway, though they want a little more than what the statute simply reads.

Mr. Black noted that the minimal requirement for meeting minutes are not very stringent though a stenographic record is not required. Recordings must be provided if someone requires that.

He reiterated that the attorney general's office is now required to provide annual FOIA coordinators training effective July 2015. The attorney general's website contains all opinions back to 1995.

When asked to elaborate more on serial e-mails, telephone calls and meetings of individual council members, Mr. Black expressed caution regarding long e-mail chains. He said the means of communication does not matter. In the eyes of FOIA, e-mail communication is the same as face to face communication. Instead of one councilperson sending an e-mail to the mayor, it is then forwarded to the city manager or police chief. Then the councilperson wants the opinion of yet another person. Suddenly, there is a quorum discussing city business. If that has occurred, FOIA has been violated. City business is being discussed via an e-mail, telephone or through meetings. That requires an agenda and recordkeeping. Mr. Black explained this is the most common way to violate the statute.

Though the easiest way to communicate is through an e-mail, that is the area where most people get into trouble.

Mr. Rutt added that also applies to phone calls where a councilperson goes right down the line and talks to one council member after another.

Mr. Black cautioned that solicitation regarding public business by any other means other than at a public meeting should be avoided. The public has the right to observe and monitor which means they are able to see the deliberations.

Mr. Carmean asked if there is a zoning application before the planning commission, can we contact them to persuade them to vote a certain way; Mr. Black feels that beside professional suicide, once the word is out that the city manager has taken a particular position, someone is going to be on the other side and it will become a big problem. When working in a public capacity, there are limits attached that do not apply to private citizens.

He said Mr. Carmean can talk to the planning commissioners about what he thinks, but cannot solicit or try to change their positions. He said this will get someone in trouble even though the two people talking are from different bodies. Even though that situation may not fall under the open meeting law, it will definitely create a political problem for the person.

Mr. Grier asked what kind of penalty is involved with a FOIA violation; Mr. Black pointed out the section 10005 addresses enforcement. He said that overall, any action taken at a meeting can be challenged in the Court of Chancery who can issue orders to do something or to stop doing something. Something could end up in Superior Court and involves money. If someone is denied access to public records, they can bring suit in Superior Court though the preference is to bring it to the attorney general's office first even though that is not required. The person would be provided attorney fees at a minimum. If they can prove they suffered other harm as a result of a FOIA violation, they can be awarded money as well.

Mr. Black then provided contact information adding that they are available at anytime. He concluded by reemphasizing that he is not Milford's attorney and he is unable to provide legal advice.

With no further business, the Council Workshop concluded at 9:07 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Terri K. Hudson".

Terri K. Hudson, MMC
City Clerk/Recorder

cc: AG FOIA Presentation

Delaware's Freedom Of Information Act

Overview of Public Records and Open Meetings Rights and Obligations

**Presented by Edward K. Black
Deputy Attorney General**

Milford, Delaware

August 11, 2014

OVERVIEW

- Delaware's Freedom Of Information Act
 - Open Records Provisions
 - ✓ What documents must be made available for public inspection?
 - Open Meeting Provisions
 - ✓ What meetings and discussions must be open to the public?
 - Education [effective July 1, 2015]
 - ✓ AG to publish biennially a FOIA coordinator manual, hold annual training seminar and publish on a website all FOIA opinions and summaries thereof.

FOIA Policy Declaration

- Provides public with important rights to
 - observe the performance of public officials
 - monitor the decisions made in formulating and executing public policy
- FOIA is to be interpreted to further the accountability of government to the citizens of this State

What Is A “Public Body”?

- Typically not an issue
- Issues arises when two or more people gather to discuss public business
- Issue is important because all public bodies have obligations under FOIA

“Public Body” (continued)

- Any other legislative or executive branch agency, board, committee, subcommittee, or group
 - Established by an act of the General Assembly or a body established by the General Assembly
 - Appointed by a state body or public official, or
 - Otherwise empowered by a state entity
- That is
 - supported in whole or in part by public funds
 - expends or disburses grants/gifts
 - impliedly or specifically charged to advise or make reports or recommendations

“Public Body” (continued)

- Exempt Bodies
 - Any caucus of the House or Senate
 - UD/DSU, except for Boards of Trustees
- Bodies Exempt from Open Meetings
 - Public bodies having only one member
 - ✓ Governor, Mayor, Town Manager, etc.
 - “Body of One” can appoint committees
 - ✓ Staff meetings?
 - ✓ Citizens, private sector?

Public Records Duties

- Implement Policy for Addressing FOIA Requests
- Develop a Web Portal for Receiving FOIA Requests
- **NEW for 2014 [HB 322]:** Provide a mailing address for receiving FOIA requests through the U.S. mail
- Designate a FOIA Coordinator and identify on website
 - **NEW for 2015 [HB 321]** Public bodies must provide the name and contact information for its FOIA coordinator to the AG. Within 20 working days of any change of FOIA coordinator or the FOIA coordinator's contact information, public bodies must update website and notify AG.
- Provide Reasonable Assistance to the Public in Identifying and Locating Records
- Promptly Request Noncustodial Emails and Other Records

Public Record Duties (continued)

- Conduct Diligent Search for Records
- Consultation with or Referral to Originating Body
- Respond Within 15 Business Days
- Make Records Available for Inspection and Copying
 - **NEW for 2015 [HB 323]:** Executive branch bodies required to publish an annual or biennial reports must post them on State website

What Documents Are “Public Records” Under FOIA?

➤ Public Record Defined

- information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.

➤ AGO Carve-Outs

- Working drafts
- Personal Notes

Statutory Exemptions

- 1. Personnel, Medical and Pupil Files the disclosure of which would constitute an invasion of personal privacy
 - Should redact home address, telephone & SSN
 - Generally can't redact names, job, time sheets, attendance records, salaries or benefits for public employees except for
 - Retirees
 - Employees of DOT contractors
 - Tax, social security and elective deductions
 - Swat Member
 - Merit employees?

Statutory Exemptions (continued)

- 2. Trade Secrets/Commercial or Financial Information Obtained from a Person which is of a Privileged or Confidential Nature
 - “Trade Secrets”
 - ✓ Secret formula, process, etc.
 - Commercial or financial information
 - ✓ List of assets & liabilities, P&L statement, tax returns
 - Obtained “from a person”

Statutory Exemptions (continued)

- 3. Investigatory Files Compiled for Civil or Criminal Law Enforcement
 - “Blanket” exemption that covers a broad array of files and records
 - Housing code violation investigatory files
 - Uniform Collision Traffic Reports
 - Complaints about town ordinance violations
 - **But not** DOL prevailing wage law violations
 - Exemption continues after file/investigation closed
 - Exemption waived if documents or information put in public domain
 - Documents disclosed in response to discovery/subpoena

Statutory Exemptions (continued)

- 4. Criminal Files and Criminal Records
 - Criminal files
 - Statute suggests all criminal files are closed to public scrutiny
 - Blanket exemption exists even after disposition of criminal case
 - Waiver
 - Criminal records
 - Any person can request and obtain a copy of their own criminal record, subject to redaction of witness names, intelligence personnel and aids, or any other privileged or confidential information
 - All other criminal records are closed to public scrutiny

Statutory Exemptions (continued)

➤ 6. Records Exempted by Statute or Common

Law

- Federal Statutes
 - HIPAA?
- State Statutes
 - Tax information
 - Personal healthcare information
 - Education records
 - Documents filed under seal
- Common law
 - Executive privilege
 - Attorney-client communications/attorney work product
 - Personal privacy

Statutory Exemptions (continued)

- 9. Records Pertaining to Pending or Potential Litigation Which are not Records of any Court
 - Pending Litigation
 - Quasi-judicial administrative proceedings
 - Planning Board appeals
 - Arbitration proceeding
 - **NOT** PERB matters
 - Potential Litigation
 - Litigation reasonably foreseeable
 - Threat of litigation, demand letter

Public Meetings

- What Meetings Are Subject To FOIA?
 - The formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business either in person or by video-conferencing
- Quorum
 - Series of sub-quorum telephone calls, or emails
 - ✓ Vote taken or consensus reached?
- Discussion/Action
 - Public business discussed?

Public Meeting Requirements

- Publication
- Meeting Notices
- Agendas
- Minutes

Publication: When to Publish Notice & Agenda

- Regular Meetings and Intent to Hold Executive Session
 - Notice posted 7 days in advance of meeting
 - Agenda must be posted with notice or added at least 6 hours in advance
- Special or Rescheduled Meetings
 - At least 24 hours' notice required
 - Requires a showing of an exigent circumstance or compelling need to meet on shortened notice
- Emergency Meetings Exempt from Notice Requirements
 - Necessary for the immediate preservation of public peace, health or safety, or to the General Assembly

Publication:

Where to Publish Notice & Agenda

- Publication must include conspicuous posting of notice
 - At the principal office or, if none, where meetings are regularly held and
 - For all “noncounty and nonmunicipal public bodies” – electronically on State website approved by the Registrar of Regulations?
 - For all State agencies within executive branch -- electronically on the State’s Public Meeting Calendar
- Must make a reasonable number of notices available

Publication:

What to Include in the Notice

- Date, Time and Place of Meeting
- Video conferencing
- Agenda, if determined at the time
 - ✓ If not determined when notice posted, agenda must be added at least 6 hours in advance of meeting with explanation for the delay
 - ✓ Agendas may be amended if
 1. Explanation of delay provided in amended agenda
 2. New matter came up unexpectedly after the initial posting
 3. New matter requires immediate attention

Publication:

What to Include in the Agenda

- General statement of the major issues expected to be discussed at a public meeting
 - ❖ Must draw the public's attention to the fact that specific important subject will be treated
 - "Primary Election" -- vote to open fewer polling stations
 - "Class Sizes and Enrollment" -- new teacher funding
 - "Application – PATS INC." -- \$4.5 million IRB issuance
 - "Town Charter Changes" -- restriction of voter eligibility

Publication:

What to Include in the Agenda

➤ Statement of intent to hold an executive session and the specific grounds therefor

❖ Two views

1. Notice requirements less strict
 - Sufficient to reference statute and/or general short-hand reference
 - Not required to specify what legal, personnel, or other subjects are discussed in executive sessions
2. Must provide public with the precise reason or reasons for convening in private
 - Reference to statutory exemptions may not be enough

Executive Session

- A public body may discuss certain matters in private
 - An individual's qualifications to hold a job
 - ❑ Does not apply to current employees or personal disagreements among members of public body
 - ❑ Does not permit discussion of the selection process
 - Strategy sessions, including those involving legal advice or opinion from an attorney, about collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on bargaining or litigation position
 - ❑ May discuss litigation objectives, deployment of resources, legal issues, parameters for settlement
 - Personnel matters in which the names, competency and abilities of the individual employees or students are discussed
 - ❑ Does not apply to independent contractors
 - ❑ Does not permit discussion of the process for hiring new employees

Meeting Minutes

- Must prepare minutes even when meeting taped
- Should approve and post at next meeting
 - **NEW for 2014 [HB 320]:** Executive branch bodies that meet four or less times per year must electronically post draft minutes within 20 working days after the meeting. Prior to being posted, draft minutes may be distributed to members of the public body who were present at the open public meeting. Draft minutes may continue to be revised and corrected up until final minutes are approved by the public body at an open meeting.
- Minimal requirements
 - Attendance record
 - Accounting of each vote taken or action agreed upon
- Executive session minutes may be withheld for as long as the matters discussed remain confidential/privileged

FOIA Education

- AG to publish biennially a manual for FOIA coordinators laying out
 - Duties and responsibilities of FOIA coordinators
 - FOIA time frames, how to calculate them, and the circumstances in which they are tolled
 - Power of the public body to charge fees for requests for public records
 - An explanation of the reasons for calling an executive session, including an explanation of the strategy session exception
 - A summary of Delaware judicial opinions, Attorney General opinions, and other legal opinions issued in the preceding 2 years related to this chapter.

FOIA Education (continued)

- AG to hold annual FOIA coordinators training
 - Open to the public and noticed in accordance with FOIA
 - Training to include
 - ✓ topics included in the manual
 - ✓ a discussion of best practices for responding to requests for public records
 - ✓ question and answer session.
- AG to maintain a website containing Attorney General opinions a summary of the holding of each opinion

Contact Information And Additional Resources

- **FOIA Deputy**

Edward Black

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Del. Department of Justice

820 N. French Street
Wilmington, DE 19801
Phone: (302) 577-4209

edward.black@state.de.us

- **FOIA Coordinator**

Janice Guevarez, M.S.

Administrative Specialist II
Del. Department of Justice

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For access to Attorney General Opinions issued from 1995 to present, see <http://opinions.attorneygeneral.delaware.gov>.

Opinions have been posted in electronic format and may be searched by key words or by using available drop-down menus.

MILFORD CITY COUNCIL
MINUTES OF MEETING
August 11, 2014

The Monthly Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, August 11, 2014.

PRESIDING: Mayor Bryan W. Shupe

IN ATTENDANCE: Councilpersons Christopher Mergner, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr. and Katrina Wilson

City Manager Richard Carmean, Police Chief Keith Hudson and City Clerk/
Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Shupe called the Monthly Meeting to order at 7:11 p.m.

INVOCATION & PLEDGE

The Pledge of Allegiance followed the invocation given by Cantor George Mason.

APPROVAL OF MINUTES

Motion made by Mr. Pikus, seconded by Mr. Gleysteen to approve the minutes of the June 17, June 18, July 14, July 24 and July 28, 2014 Council and Committee Meetings as submitted. Motion carried.

RECOGNITION

No special guests in attendance.

MONTHLY POLICE REPORT

Police Committee Chairman Morrow presented the police report on behalf of Chief Hudson. Mr. Pikus moved to accept the police report, seconded by Mr. Grier. Motion carried.

CITY MANAGER REPORT

Mr. Carmean read into record the following report:

ADMINISTRATION

I have had the second progress meeting with the contractor doing the remodel at our future billing office. There are a few surprises as far as some of the construction plans in the initial plans. Though minor costs were involved, we are upgrading the public restrooms floors from vinyl to ceramic tile which is more suitable for the wear and cleaning needs of a public area. The completion is still planned for late October.

We have received the deed to the Armory property from the State of Delaware. I will forward all legal paperwork to Mr. Rutt. Representative Harvey Kenton has been in touch with my office and I have asked he contact Governor Markell's office to attempt to set up a small ceremony wherein the Governor will pass the keys onto mayor and city officials. We will have a discussion as to possible uses for this property in the future.

STREETS AND SOLID WASTE

Numerous street projects are planned for completion before the weather gets bad again. Jerry's Paving has assured me that Lemuel Street and Lovers Lane will be finished before school opens. These two streets are high traffic areas during the school year.

North Washington Street and those intersecting streets will begin following Shea's Concrete completion of the required sidewalk work. The holdup has been the availability of a milling machine which is subcontracted by his company though the paving will begin in all probability prior to the concrete work on Washington Street.

Southeast Front Street is seeing mostly sidewalk and curb construction at this time. The overlay of the street itself will be completed by October.

SEWER AND WATER

I had a pre-construction meeting with DBF and CB&I the contractors of the new Southeast Water Tower. I signed the Notice to Proceed document on August 4, 2014. The anticipated completion date for the project is November 27, 2015.

The water main extension construction to the tower site and our eastern city limits, awarded to Teal Construction, will begin in the next few weeks and be completed in the fall.

The new well at the tower site has begun and will be complete by late fall. The well will not be placed into use until the new treatment facility is built at that location. The facility is in the final design phase and will be bid out in the early fall.

ELECTRIC

We have had several short outages of one of our main circuits in the past few months. While I cannot give the exact reason for those interruptions, there are a few possibilities. The most likely reason is we have had our contracted crews working during those times, and when they are working we place the circuit in a "one shot" position. This means that if there is a problem the circuit breakers will blow and not reset automatically. Under normal operations, the blown circuit will reset itself causing a small blip but not an outage. Our crews will continue to monitor the circuit.

I talked to the electric crews and told them I am getting stale on telling council and residents that the outage was caused by a bird though that was a possibility. A bird does not normally sit on the one-shot set and would only be a slight interruption. It is usually on Saturdays when the contractors are working. I noticed them this past weekend and believe that is what it is should anyone asks.

Once the work is done, I do not expect any more problems.

Mr. Brooks reported that the electric contractors hired by the city informed one of our residents that her electric would be turned off on a particular day. They then went back later and gave her a specific time which she appreciated.

Mr. Carmean said our crews normally go door to door to inform our customers. In this case, the contractors preferred to notify customers in advance because of the varied times the electric would be off in lieu of having our employees handle it.

Mr. Pikus asked the status of the West Shores development; Mr. Carmean said he recently met with the owner at the site to discuss some of the sewer testing required before any permits can be pulled. The model homes will be built within the next three to four months.

The city manager said they will be building nice products and home prices will begin in the in the \$200,000 range.

Mr. Pikus moved to accept the city manager report, seconded by Mr. Brooks. Motion carried.

COMMITTEE & WARD REPORTS

Public Works Committee

Public Works Chairman Brooks recalled the parking problem on West Clarke Avenue by hospital employees. The city manager and he reviewed it and recommend four two-hour parking signs be installed in the locations designated by Mr. Pikus. The city manager also followed up with Chief Hudson who had also reviewed the area.

COMMUNICATIONS & CORRESPONDENCE

Included in packet.

UNFINISHED BUSINESS

Ratification/Comcast Cable Television Franchise Agreement

Mayor Shupe reported that Comcast is asking city council to renew their franchise agreement that expires in November of 2014. He recalled that Councilman Pikus brought up a couple of issues that were also being considered.

Mr. Rutt reported that he has reviewed the contract and has several questions and concerns. The agreement is a fifteen-year agreement with three five-year extensions for a total of thirty years, which Mr. Rutt pointed out is a very long time.

He said the contract also covers cable service which is defined as video programming. It does not include internet, telephone or other services that Comcast now offers. When the franchise agreement was initially entered into many years ago, Comcast only provided cable service. The gross revenue is based on monthly basic cable, premium and pay per view video services. As a franchise fee, the city receives 5% of the gross revenue and after considering the definition, the city is only receiving a percentage of the cablevision and nothing for the other services.

The solicitor recommends the contract be negotiated. He noted this is a nonexclusive franchise which means it does not prohibit another cable provider from coming into the city.

Some additional provisions need to be added regarding city notification of tree maintenance or similar work.

Mr. Rutt was also concerned with the \$1 million liability insurance cap which has no escalator over the time frame of the contract.

In his opinion, it appears they copied the previous contract and changed the dates though a number of things have changed over that time frame.

He will provide the city manager the information so that Mr. Carmean can contact them.

Mr. Rutt's recommendation is to negotiate the contract before a final draft can be ratified by council.

Mr. Pikus compared the fee we are receiving and believes Milford's is considerably lower in comparison to other communities and in particular, to Middletown. He agrees the city manager needs to renegotiate before reconsidering.

Mr. Gleysteen suggests we consider 5% of the total services and five-year contracts.

It was pointed out that any increase the city receives will be passed onto their customers.

Mr. Rutt noted the term is fifteen years with automatic five-year extensions so essentially this is a thirty-year franchise agreement.

Mr. Grier asked if they are required to get approval from the Public Service Commission before passing on an increase; Mr. Rutt explained this is not a necessary public service and they are controlled by the FCC.

Mr. Pikus moved to postpone any action on the Comcast Franchise Agreement and have the city manager renegotiate and bring back a revised contract, seconded by Mr. Pikus. Motion carried.

Relocation/Washington Street Water Treatment Facility

Mayor Shupe recalled the city manager has asked that the Washington Street Water Treatment Facility be relocated beside the PNC building in a parking lot area acquired at the time that building was purchased. This has been discussed with presentations both at a public works committee meeting and council workshop.

Mr. Brooks moved to relocate the Washington Street Water Treatment Facility to the new site adjacent to the former PNC building, seconded by Mr. Morrow. Motion carried.

Mr. Carmean said that he will get back with council though council agreed to make the original site a public park with some type of recreational activity which the Parks and Recreation Director had recommended and our engineers have been working on.

Mr. Brooks confirmed with the city manager that this site will become a public park; Mr. Carmean stated yes. Mr. Brooks recalled that Mr. Pikus requested additional parking be considered for this area. Mr. Morrow agrees there is a lack of parking for any visitors who wants to use the park. The parking at the location was removed at the time the building was demolished.

USDA \$2 Million Loan/Water Projects

Mr. Carmean advised that he spoke with DBF Erik Retzlaff today. He prefers we take more time to look at this and would like it scheduled at an upcoming workshop. He will request some additional information on the projects be considered. Mr. Carmean asked that Mayor Shupe and council members review the information included in the packet and consider any other projects that should be considered.

It was confirmed that Mr. Carmean had DBF submit the application to the USDA.

Mayor Shupe recommended tabling this matter until the workshop.

Mr. Pikus moved to postpone action until the workshop, seconded by Mr. Morrow. Motion carried.

NEW BUSINESS

Delaware League Local Government/Annual Dues

Mayor Shupe advised that the league dues are based on the size of the municipality. Dues range from \$500 to \$10,000 and the city's dues are \$4,000 per year.

Mr. Brooks moved to approve payment of the dues, seconded by Mr. Morrow. Motion carried.

St. John's Oktoberfest/Alcohol Waiver

The mayor explained that the church has requested a waiver to Chapter 77 of Milford's Code pertaining to the open container law. He noted that this is an annual fundraising event that occurs this year on October 3rd to October 4th. The ability to serve and drink beer keeps with the tradition of Oktoberfest where beer will be sold.

Mr. Morrow moved for approval of the waiver to Chapter 77 for the St. John's Oktoberfest, seconded by Mr. Gleysteen. Motion carried.

Grotto Pizza/Community Night/Alcohol Waiver

Mayor Shupe advised that Grotto Pizza has submitted a request for a waiver to the city's open container law as outlined in Chapter 77 of City Code. Grottos have planned a special event on Thursday, August 21st from 4:00 p.m. to 11:00 p.m. where they will be celebrating Customer Appreciation Night. The festivities will occur in a secluded area in their parking lot adjacent to the bar side of the restaurant.

Mr. Morrow moved for approval of the waiver to Chapter 77 for Grotto Pizza on August 21st, seconded by Mr. Mergner. Motion carried.

Mr. Brooks recalled a similar event at this location that he voted against only because of some potential traffic/safety issues. However, there were no problems and no noise that evening which he would have observed only living a short distance away.

FY 2014-2015 Budget Adjustment/North Washington Street Paving Project/Transfer of Funds

Mayor Shupe recalled the North Washington Street Improvements project awarded at the last council meeting in the amount of \$125,250.50. There is currently \$116,000 in CTF funds for the project though another \$9,250.50 is needed. Finance Director Jeff Portmann recommends this be paid from Municipal Street Aid which requires council approval.

Mr. Carmean explained that the additional money is needed to meet the bid total.

Mr. Pikus moved to approve \$9,250.50 be paid from Municipal Street Aid for the North Washington Street Paving Project, seconded by Mr. Gleysteen. Motion carried.

Resolution 2014-12/Redemption of City of Milford General Obligation Bonds, Series of 2005

Council approved proceeding with this payoff following an executive session discussion this past December. Mr. Pikus reported the city will save \$300,000 annually in debt service. A resolution is required to proceed with the buyout.

Mr. Pikus moved to adopt Resolution 2014-12 as follows, seconded by Mr. Morrow:

*RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILFORD, DELAWARE
AUTHORIZING CERTAIN ACTIONS IN CONNECTION WITH REDEMPTION OF
THE CITY'S GENERAL OBLIGATION BONDS, SERIES OF 2005*

WHEREAS, the City of Milford, Kent and Sussex Counties, Delaware (the "City") has previously issued its General Obligations Bonds, Series of 2005 (the "2005 Bonds") pursuant to a resolution approved of City Council on May 9, 2005 and a Bond Ordinance enacted by City Council on May 9, 2005 authorizing the issuance of the 2005 Bonds; and

WHEREAS, the 2005 Bonds are currently outstanding in the aggregate principal amount of \$2,600,000; and

WHEREAS, the 2005 Bonds are subject to redemption prior to maturity, at the option of the City, in whole or in part, at a redemption price of 100% of the principal amount of the 2005 Bonds to be redeemed, plus accrued interest to the date set for redemption; and

WHEREAS, the City has determined to redeem the 2005 Bonds using monies available to the City; and

WHEREAS, the City has determined to undertake all action necessary to redeem all of the City's outstanding 2005 Bonds.

NOW, THEREFORE, the City of Milford, Delaware, hereby resolves as follows:

- A. *The appropriate officers and employees of the City are hereby authorized and directed to determine the redemption date for the 2005 Bonds, such redemption date to be on the earliest date allowable according to the terms of the 2005 Bonds.*
- B. *The appropriate officers and employees of the City are hereby authorized and directed to inform The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent") for the 2005 Bonds, of the redemption date and to direct the Paying Agent in writing to undertake all necessary actions to effect the redemption of the 2005 Bonds and to direct the Paying Agent to publish a notice of redemption not less than thirty days prior to the date selected for the redemption of the 2005 Bonds.*
- C. *The appropriate officers and employees of the City are hereby authorized and directed to do all acts and things necessary in the planning, preparation and accomplishment of the redemption of the 2005 Bonds, including making proper arrangements for payment of principal of and interest on the 2005 Bonds due to be paid on the date selected for the redemption of the 2005 Bonds from monies available to the City.*
- D. *All resolutions or parts of resolutions inconsistent herewith are hereby rescinded, cancelled and annulled.*

I, the Undersigned Officer of the City of Milford, Kent and Sussex Counties, Delaware (the "City"), DO HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution duly adopted by the affirmative vote of a majority of the members of the City Council of the City at a Public Meeting held on August 11, 2014; that proper notice of such meeting was duly given as required by law; and that said Resolution has been duly entered upon the Minutes of said City Council, showing how each member voted thereon.

IN WITNESS WHEREOF, I have hereunto set my signature as such official and affixed the seal of the City this 11th day of August, 2014.

s/City Clerk

Council Rules, Policies and Procedures

Mr. Rutt referenced the workshop relating to the FOIA review by DAG Ed Black prior to the monthly meeting. He said that segues into the meeting scheduled tomorrow night that was called by Councilwoman Wilson. He said that many people today received a Notice of a Community Meeting by way of an e-mail blast from the Chamber of Commerce.

Mr. Rutt said he spoke to Mrs. Wilson and wants to clarify a few things. He said this is a ward meeting that anyone can attend which has raised a lot of questions. He said when you look at the minutes of the last meeting, it could be construed as a council meeting which it cannot be. Mr. Rutt said the charter provides for two regular meetings a month or special meetings. Special meetings can only be called by the mayor or four members of council. He said that Mr. Black stated that a special meeting is only called as a result of an emergency meeting for a specific purpose and it is necessary to stick to that particular topic.

Mr. Rutt explained that FOIA requires a notice of the emergency meeting and the specific purpose stated. Failure to comply with those requirements could render any decisions that may be made at the meeting and any discussions voided.

He said there are no problems with ward meetings which can only be to gather information from the councilpersons' constituents. He said there should not be any city employees there unless they attend as a member of the public. Mr. Rutt said Mr. Black pointed out that we start getting into a gray area when questions are asked of council people and city employees and that needs to be avoided.

The solicitor stated then directed any council member that decides to attend, to only listen and not participate in the discussion. He explained it is somewhat gray on whether there should be meeting minutes. However, he suggests they be kept solely for purposes of what was discussed so they could be brought back to the city management or mayor. According to Mr. Rutt, there is no need to publish any agenda. He emphasized we do not want to run afoul of FOIA or the charter.

The solicitor feels there is a need to make council aware of the procedures for special meetings and what they can and cannot do. If another policy is needed, he recommends that be established. Under FOIA and the city charter, he feels it is clear how special meetings can be held and Ms. Wilson's meeting tomorrow evening can only be viewed as a ward meeting.

Mayor Shupe said the public has questioned him about how to deal with a statement that was made or an ordinance. He had asked the city solicitor to explain the procedure on reaching city council and how to have a voice. He has also asked the solicitor to explain how this should be handled from a council standpoint.

Mr. Rutt explained that if anyone has a constituent with a problem, they should come to their council representative. That information should then be presented to the city manager.

As an example, if a resident has a problem with the electricity, they can call the electric department; the councilperson can also recommend the resident contact Rick Carmean in the electric department. However, the council person does not have the right to call Rick Carmean or any other city employee.

Mr. Rutt explained that those problems need to funnel back through the city administration.

If it involves a situation where council action is needed, that council person can ask for the item to be put on the agenda. He noted there are ward reports at which time a constituent's concern can be expressed if the item is appropriate for the agenda.

The solicitor explained that council going to individual employees creates chaos. When an employee is on the street working and a council person starts questioning the employee or asking them to do something, puts the employee in a very awkward situation. Any questions or concerns need to be posed to the city administration.

The city manager asked about specific items that are planned to be discussed in regard to a committee or even a ward report; Mr. Rutt clarified that anything involving a committee as opposed to a general topic can be part of a committee report. The solicitor does not feel it should be a specific line item unless it is something out of the ordinary.

Mr. Carmean asked, as an example, if an ordinance that a councilperson wants to be considered should be added to the agenda for discussion. Mr. Rutt said it does not have to be added if there will be a general discussion. For example, the public works committee can recommend an ordinance be adopted to bury all the electric wires. The introduction of the ordinance will then be added to an agenda. He does not feel that suggesting the city manager work on an ordinance has to be on the agenda.

Mr. Rutt suggests discussing how to approach meetings and also agendas. He feels council needs to determine how they want to see the meetings operate more efficiently and then work on some policies over the next couple months. In addition, there needs to be some council procedural rules. He explained it is not unusual for public bodies to have their own procedural rules adding that the charter says council meetings are governed by Roberts Rules of Orders. However, policies can be added about how the public can address council, how council deals with issues that may arise, etc. For example, whether that information should first be provided to the city administration. He urged council to think about that.

Ms. Wilson stated that this was brought up because she had planned a Fourth Ward meeting. She questions that because meetings have occurred in the same manner as long as she has been on council. She also noted that some meetings have been called on the drop of a dime and in a lot of cases, when not all of council was informed. But those meetings took place without a problem.

She explained it is difficult to get answers about code enforcement unless they are present. If people have concerns about code enforcement, she feels the best way to address them is with facts and that is something she is unable to provide.

Ms. Wilson felt she was doing the right thing by inviting all of council. She did not believe she needed clarification from the mayor adding that she is very transparent. Notifying the city manager and city clerk is always how committee or ward meetings have been handled in the past. She felt this was still protocol.

She emphasized that she has never been informed it was to be handled differently. She was simply asking for the support of council and did not expect them to answer questions or vote on any matter. She emphasized that her intent was only for councils' support.

As she has said many times, Mr. Starling and she represent the fourth ward. But they also represent the entire city because the decisions they make impact the entire city. That is the reason she invited all of council.

Ms. Wilson said she has no idea of how many people will attend and there could only be five. She only distributed flyers in the fourth ward area, but because she receives e-mails from the chamber, she felt it was an appropriate manner of letting people know she was having the meeting.

She said the intent of the meeting was informational only and encouraged anyone interested to attend.

Mr. Rutt said he is probably the one that threw the flag because of FOIA issues. He said the attorney general office has become very strict and referenced the Dewey Beach case. The AG issued a decision in late 2012 regarding special meetings and actually put the city on watch where every agenda for every meeting had to go through the AG's office first. They also voided every vote that had occurred and his role is to say no, you can't do that.

He then referenced DAG Black's presentation which had some interesting observations. He said it is not a problem for one or two ward persons to get information to bring back to council. But once you start getting others involved, it becomes a gray area and into a situation of a discussion where opinions will be stated. That is what gets a person into trouble according to Mr. Rutt.

Mr. Carmean said he told Mr. Black that he and Chief Hudson have both attended many ward meetings, he as the city manager and before that as the police chief. He said they have always been very willing to attend and to hear any complaints or concerns first hand. But Mr. Black has informed council tonight that by himself or Chief Hudson attending gives the meeting the flavor of city business and they should not be there. That is totally new to both of them. He indicated that is because of their positions even though they do not have a vote. However, with them attending, it makes the meeting official and minutes need to be kept even though Ms. Wilson and Mr. Starling are the only ones there. Ms. Wilson pointed out that Mr. Starling would not be at this meeting and she will be the only ward representative there.

Mr. Brooks pointed out that over the years he had many ward meetings, some of which went back to when Harry Jarman was on council. Some involved neighborhood watch programs and a lot of problems were solved as a result. At one point, the first ward and third ward council members held a combined meeting. Then they were informed they could no longer hold those meetings because minutes needed to be kept. After that, no more meetings were held.

Ms. Wilson said that taking minutes is no problem.

Mayor Shupe feels that he and council need to be more aware of the procedures and how city business is conducted. He said specifically, how a resident addresses a concern and whether or not that council person takes the problem to city council. He said we need to think about how to implement these policies and if something needs to be changed to fit the needs of our residents.

The mayor emphasized the need for some written procedures and address any obstacles that should be addressed. The procedures and policies are important and he wants something in place that will work for everyone.

Mr. Brooks pointed out that he had issues he took directly to the city manager to handle. When he has a problem, he contacts either the city manager or the police chief which is what the charter requires. Council cannot go to any other city employee or police officer and he feels that has always worked well. He stressed that an employee or police officer cannot have nine people telling them what to do. He feels the procedure is clear as well as the reasons that is in place.

Mr. Carmean agrees that Mr. Brooks always adheres to that. He recently received a call from a councilperson about a water problem who asked him if they should call the public works director. The city manager pointed out that before they were

elected to council, they had the right to call the employee direct. Once that person became an elected official, they no longer were able to do that. Mr. Carmean's response to the request was no, he would handle calling the employee. He said that once a person is elected, they lose some of their rights including being able to contact an employee or department head directly. They can only contact the city manager or police chief while they are in office. He agrees that it can lead to confusion and problems among our employees which is why it must be handled by either himself or Chief Hudson.

Mr. Mergner said he is concerned about communicating through e-mails. He pointed out it is much easier for someone to complain in an e-mail versus in person or by telephone. He asked how this should be handled. He questions how an e-mail should be handled and asked that some guidelines be established on e-mails and similar ways to communicate in order to protect the city. He would like to know how to proceed and respond.

Mayor Shupe agrees noting that when he was just a resident, it was easy to answer an e-mail or pick up the phone and call someone. But in an elected official's position, everything needs to be on the record and while we want to serve the residents, we also need to keep the city's position in mind.

The city manager pointed out that over the past several years, council is receiving more and more complaints through e-mails. In most cases, the councilperson forwards the e-mail to him. He assured council that when he receives the e-mail, he only responds to that councilperson directly. If he responds to the resident, he copies the councilperson but it is never forwarded to another councilperson.

When Mr. Carmean receives a telephone call from a councilperson, he follows up with an e-mail so there is a record. He referenced Mr. Black's discussion about e-mails and where they can end up. If council sends him an e-mail it stops with him unless he is otherwise directed. He again emphasized the need for council to forward any complaints to him or Chief Hudson which has always worked well.

Mayor Shupe said as stewards of the city and representatives, it is necessary to work together to make sure a resident's concern is resolved. He feels council should be available to help one another.

MONTHLY FINANCE REPORT

Finance Committee Chairman Pikus reported that through the twelfth month of Fiscal Year 2013-2014 with 100% of the fiscal year having passed, 98.7% of revenues have been received and 96.8% of the operating budget expended.

He noted that we are extremely low in solid waste reserves and need to keep a close eye on that account. Electric reserves have decreased due to some large payouts to cover the cost of some major projects that were recently completed.

The finance chair concluded by stating the city is self sufficient and in good shape compared to many other towns.

Mr. Grier moved to accept the June 2014 Finance Report, seconded by Mr. Gleysteen. Motion carried.

ADJOURN

Mr. Pikus moved to adjourn the council meeting, seconded by Mr. Grier. Motion carried.

Meeting adjourned at 8:14 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder