

City of Milford



CITY COUNCIL AGENDA

February 9, 2015 - 7:00 P.M.

Joseph Ronnie Rogers Council Chambers

Milford City Hall

201 South Walnut Street

Milford, Delaware

COUNCIL MEETING

Call to Order - Mayor Bryan Shupe

Invocation

Pledge of Allegiance

Approval of Previous Minutes

Recognition

Proclamation 2015-03/City of Milford Goes Red Month & Wear Red Day
Proclamation 2015-04/National African American History Month**

Monthly Police Report

City Manager Report

Committee & Ward Reports

Communications & Correspondence

Unfinished Business

Introduction/Ordinance 2014-18/Chapter204/Amendment/Taxation
Ratification/Comcast Agreement

New Business

State of Delaware/DNREC/Mosquito Control Spray Agreement
FY 2014-2015 Budget Adjustment/Shawnee Acres Trench Repair Project/Municipal Street Aid*
Authorization/Legislative Letter/CTF & MSA Issues*

Monthly Finance Report

Adjourn

This agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

**SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT NO LATER THAN ONE WEEK PRIOR TO MEETING;
NO PAPER DOCUMENTS WILL BE ACCEPTED OR DISTRIBUTED AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.**

What is City Goes Red?

City Goes Red originated in Kent and Sussex County as a service initiative of Southern Delaware Circle of Red.

City Goes Red works in tandem to further emphasize the Go Red for Women efforts.

Now in its third year, City Goes Red is an awareness campaign whose sole function is to create awareness of Women and Heart Disease.

Our message is simple-light up the southern Delaware towns with red lights, red dresses, proclamations and anything else that creates awareness and an opportunity to educate women on heart disease.

We have accomplished this effort simply by having friends take towns and then work with leaders in those towns through merchants residents etc.

There is only one rule as we want towns to work with their own unique personalities and resources.

The one rule is that we do not expect fund raising-this effort is awareness only.

Current towns participating our

- Dover
- Milford
- Smyrna
- Harrington
- Seaford
- Lewes
- Georgetown

We are happy to provide ideas or put you in touch with other towns that have been successful.

I am going to die for posting this pic. Here is Lois Blough my good friend and partner in crime on the beach in Zihuatejo Mexico circa 1988. Yes that is an iguano lol

Zihuatejo Mexico

FOR IMMEDIATE RELEASE

Contact:

Cities Go Red to Raise Awareness

Heart Disease & Stroke: #1 and #3 Killers of Women

February , 2015 – State buildings, stores, restaurants, and other businesses throughout Kent and Sussex Counties are dressed in red this month. These organizations are participating in **City Goes Red**, a program created by **Southern Delaware Circle of Red** in support of the **Go Red for Women Movement**, celebrating ten years of public awareness of women and heart disease. During this time, 1.5 million women have joined this movement and 34% fewer women are dying of heart disease each year.

The group hopes that **City Goes Red** will remind people of the need to continue the fight against heart disease and stroke. Together, these diseases affect more women than men and are responsible for 1 in 3 deaths each year.

Local businesses are also displaying red dresses, posters, and other special items to raise awareness.

The red lights and dresses will be on display through the month of February. This period includes the Go Red for Women Luncheon, scheduled for February 6, 2015, at Dover Downs Hotel.

#30#

Southern Delaware

- ❖ Smyrna
- ❖ Dover
- ❖ Camden
- ❖ Wyoming
- ❖ Milford
- ❖ Harrington
- ❖ Seaford
- ❖ Lewes
- ❖ Georgetown



Heart disease is the No. 1 killer of women in the United States, claiming more lives than all forms of cancer combined. Together, we can raise awareness in the fight against heart disease by turning the city **RED**.

City Goes Red ~ Raising Awareness of Heart Disease in Kent and Sussex Counties

City of Milford



PROCLAMATION 2015-03

City of Milford Goes Red Month & Wear Red Day

WHEREAS, heart disease is the number one killer of women yet is often preventable; and

WHEREAS, cardiovascular diseases cause one in three women's deaths each year, killing approximately one woman every minute; and

WHEREAS, an estimated forty-three million women in the U.S. are affected by cardiovascular diseases; and

WHEREAS, heart disease kills more women than all forms of cancer combined but is often undiagnosed; and

WHEREAS, ninety percent of women have one or more risk factors for developing heart disease yet only one in five American women believe that heart disease is her greatest health threat; and

WHEREAS, women comprise only twenty-four percent of participants in all heart-related studies; and

WHEREAS, since 1984, more women than men have died each year from heart disease, and the gap between men and women's survival continues to widen; and

WHEREAS, women are less likely to call 911 for themselves when experiencing symptoms of a heart attack than they are if someone else were having a heart attack; and

WHEREAS, the American Heart Association's Go Red for Women movement has been impacting the health of women for ten years and more that 627,000 women's lives have been saved and 330 fewer women are dying every day; and

WHEREAS, in honor of the 11th Birthday of National Wear Red Day on February 7, 2015, Go Red for Women is asking all women across America to Go Red by wearing red and speaking red:

- *Get Your Numbers: Ask your doctor to check your blood pressure and cholesterol.
- *Own Your Lifestyle: Stop smoking, lose weight, exercise and eat healthy.
- *Realize Your Risk: Women think it will not happen, but heart disease is the cause of one in three female deaths each year.
- *Educate Your Family: Make healthy food choices for you and your family; teach your kids the importance of staying active.
- *Don't Be Silent: Tell every woman you know that heart disease is their number one killer; raise your voice at GoRedForWomen.org.

NOW, THEREFORE, I, Bryan W. Shupe, Mayor of the City of Milford, do hereby proclaim the month of February 2015 as City of Milford Goes Red Month and Saturday, February 14, 2015 to be Wear Red Day in the City of Milford and urge all citizens to show their support for women and the fight against heart disease by commemorating this day by wearing the color red and by increasing awareness, speaking up about heart disease and empowering women to reduce their risk for cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford, Delaware to be affixed this 9th day of February, Two Thousand and Fifteen.

Mayor Bryan W. Shupe

Attest: City Clerk

City of Milford



PROCLAMATION 2015-04

African-American History Month - February 2015

WHEREAS, much of the City of Milford's honor, strength and stature can be attributed to the diversity of cultures and traditions that are celebrated by the residents of this area; and

WHEREAS, African Americans have played significant roles in the history of the State of Delaware and the City of Milford's economic, cultural, spiritual and political development while working tirelessly to maintain and promote their culture and history; and

WHEREAS, as a result of their determination, hard work, intelligence and perseverance, African Americans have made valuable and lasting contributions to the State of Delaware and the City of Milford by achieving exceptional success in all aspects of society including business, education, politics, science and the arts; and

WHEREAS, Americans have recognized black history since 1926, first as Negro History Week, later as Black History Month and today as National African-American History Month; and

WHEREAS, National African-American History Month is a time for all Americans to remember the stories and teachings of those who helped build our nation, took a stance against prejudice to build lives of dignity and opportunity, advanced the cause of civil rights and strengthened families and communities; and

WHEREAS, during National African-American History Month, all Americans are encouraged to reflect on past successes and challenges of African Americans and to continue improving society so that we live up to the ideals of freedom, equality and justice.

NOW, THEREFORE, I, Bryan W. Shupe, Mayor of the City of Milford, do hereby proclaim the month of February 2015 to be AFRICAN-AMERICAN HISTORY MONTH in the City of Milford; I further encourage all residents to join me in honoring the many contributions made by African Americans throughout this community and to participate in the many educational events honoring the contributions of Black Americans.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford, in the State of Delaware to be affixed this Twentieth day of January in the Year of our Lord Two Thousand and Fifteen.

Mayor Bryan W. Shupe

Attest _____

Milford Police Department



E. Keith Hudson
Chief of Police



400 N.E. Front Street
Milford, Delaware 19963

TO: Mayor and Members of City Council

FROM: E. Keith Hudson, Chief of Police

DATE: February 9, 2015

RE: Activity Report/January 2015

Monthly Stats:

A total of 646 arrests were made by the Milford Police Department during January 2015. Of these arrests, 212 were for criminal offenses and 434 for traffic violations. Criminal offenses consisted of 47 felonies and 165 misdemeanors. Traffic violations consisted of 120 Special Duty Radar, 3 Drunk-Driving charges, and 311 other charges.

Police officers investigated 40 accidents during the month (3 personal injury, and 37 property damage) and issued 120 written reprimands. In addition, they responded to 1,125 various complaints including city requests and other agency assistance.

Monthly Activities:

SRO's are working and planning some future events. Pfc. Bloodsworth is working on a "Safe Summer Send Off", an event similar to the one she coordinated at Lulu Ross Elementary School back in the fall. We are also still looking into the possibility of collecting used books for our CP unit to distribute to area children, probably this summer.

They have also started planning for the 2015 Milford's Night Out. Pfc Bloodsworth and Corporal Masten will be assisting Morris Elementary with an Intruder Drill. They plan to schedule the drill on an in-service day with school staff present only and no students.

The Milford Police Department K-9 Unit responded to 93 calls for service and was utilized on 10 different incidents.

The unit conducted two assists with Milton Police Department and Harrington Police Department, conducted two tracks on felony armed robbery suspects (one robbery suspect located and subsequently apprehended), assisted patrol units with two large violent crowds and had one no-bite apprehension (armed robbery suspect).

Telephone 302-422-8081

Facsimile 302-424-2330

They conducted three sniffs for CDS. As a result the following were seized:

- *Marijuana 4.5 grams (\$90.00 street value)
- *Cocaine 113.7 grams (\$11,370.00 street value)
- *Heroin 11.5 grams *701 doses (\$7,010.00 street value)
- *One vehicle seized (\$4,500.00 value)

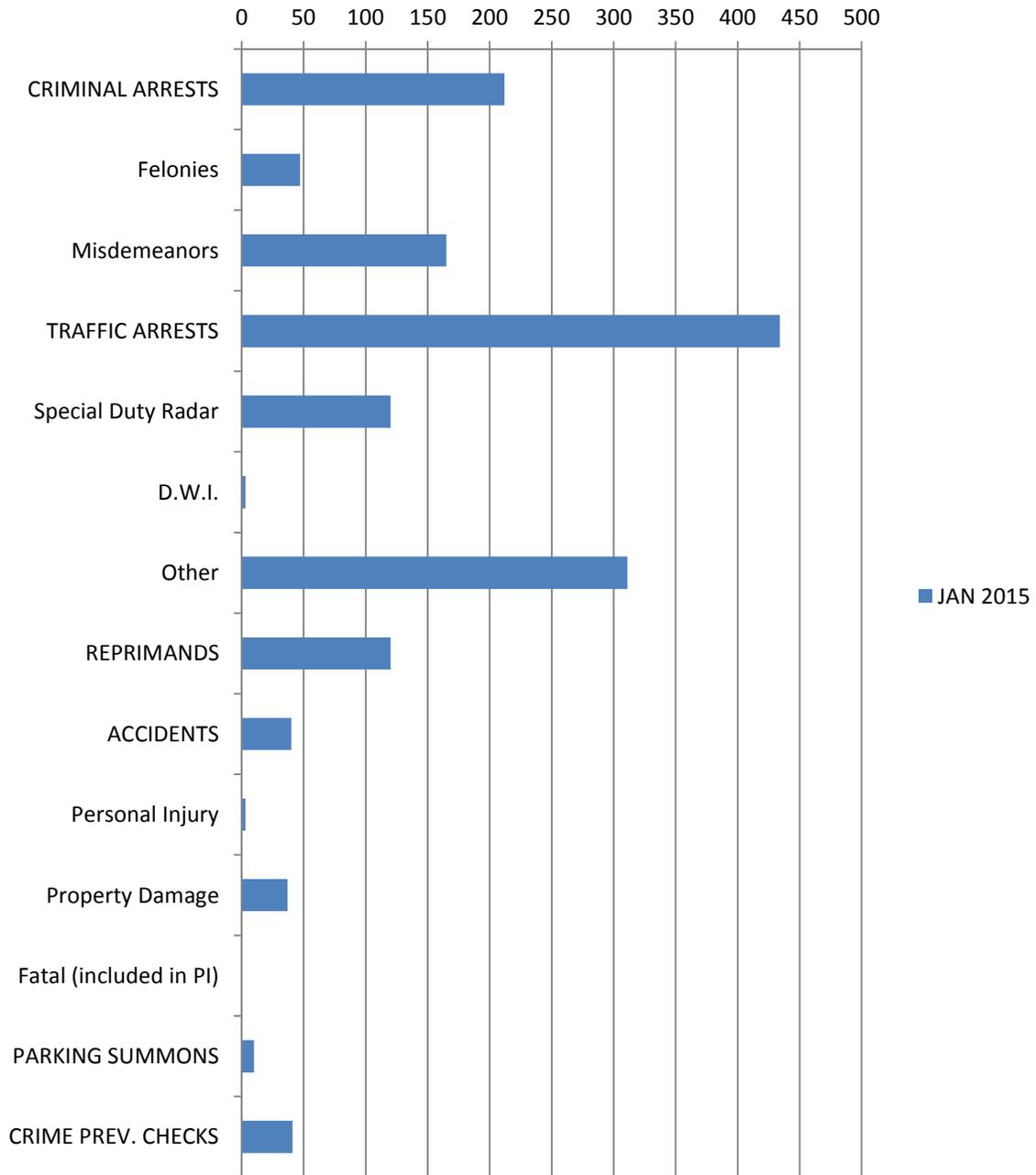
Cameras were replaced in the department that were not functioning properly.

Applicant testing will be held in March.

JANUARY 2015 ACTIVITY REPORT

	JAN 2015	TOTAL 2015	JAN 2014	TOTAL 2014
COMPLAINTS	1125	1125	1128	1128
CRIMINAL ARRESTS	212	212	142	142
Felonies	47	47	47	47
Misdemeanors	165	165	95	95
TRAFFIC ARRESTS	434	434	294	294
Special Duty Radar	120	120	16	16
D.W.I.	3	3	4	4
Other	311	311	274	274
REPRIMANDS	120	120	155	155
ACCIDENTS	40	40	44	44
Personal Injury	3	3	6	6
Property Damage	37	37	38	38
Fatal (included in PI)	0	0	1	1
PARKING SUMMONS	10	10	26	26
CRIME PREV. CHECKS	41	41	20	20
FINES RECEIVED	\$ 10,611.23	\$ 10,611.23	\$ 6,655.24	\$ 6,655.24

JAN 2015





OFFICE OF THE CITY MANAGER
HANS MEDLARZ
TELEPHONE 302-424-3712

201 SOUTH WALNUT STREET
MILFORD, DE 19963
FAX 302-424-3558

February 2015 City Managers Report

Administration:

- Made contact with a number of key businesses
- Attended a symposium with School District officials
- Coordinated Bayhealth campus utilities with representatives
- Started mediation process between residents and Carlisle Fire Company regarding downtown siren use
- Hosted an afternoon with Senator Carper and the Mayor
- Coordinated design aspects of the DeIDOT Safe Routes to School project
- Completed Rural Development compliance review
- Coordinated possible public works agreement for S.E. utility expansion
- Developed framework for solid waste ordinance revisions
- Started electric tariff reviews
- Distributed copy of the "Smoking Prohibited" ordinance adopted by Council in December to Americans for Nonsmokers Rights Foundation, Berkeley.
- Completed annual bond disclosure documents

Electric Department:

- Attended Thompsonville Overpass preconstruction and on site coordination meetings
- Worked through connection issues regarding Watergate townhouse bldg. 3
- Conducted several electric tariff meetings
- Attended AMP Workshop "Basic Cost of Service Concepts" in Philadelphia
- Continued tree trimming operations along Old Shawnee Rd. and Evergreen Terrace
- Completed foundation for City Hall lighting Project
- Partially completed electric relocation for Thompsonville Project up to a conflict point with Verizon
Placed Lighthouse Christian Church transformer pads
- Received delivery of the Wire Puller from Sauber Mfg.
- Rewired and replaced 3 CTs, tested and replaced Perdue primary electric meter
- Installed 2 solar meters at the following addresses
- Repaired meter pan damage at 100 Causey Ave.
- Compliance Environmental completed an Inspection on warehouse and
- Compliance Environmental is working with Department on 2014 SARA 312 Chemical Inventory Report

Streets and Solid Waste Department:

- Crews & office staff have been notifying customers of proper bulk pickup arrangements
- Clearing City streets in anticipation of ordinance revisions
- Completed leaf vacuum season by the first week of February
- Culvert under Maple Avenue was re-inspected and alternate repair options investigated
- Prepared for major snow event

Water and Sewer Department:

- Pulled & cleaned sewer pumps at S.E. Second Street pump station
- Supporting Teal Construction at different sites
- Repaired water leak at S.E. Second St. and Montgomery St.
- Cleared several sewer back-ups.
- Attended start-up of 10th Street water plant generator
- Assisted in well draw down at Seabury Avenue water plant
- Investigated as built conditions for sewer force main in Watergate subdivision
- Participated in several meetings with CB&I with regards to the pile load testing
- Attended S.E. water treatment plant pre-bid meeting



DELAWARE SOLID WASTE AUTHORITY

Richard P. Watson, P.E., BCEE
Chief Executive Officer

Robin M. Roddy, P.E., BCEE
Chief Operating Officer

Board of Directors

Richard V. Pryor
Chairman
Ronald G. McCabe
Vice Chairman
Theodore W. Ryan
Timothy P. Sheldon
Tonda L. Parks
Gerard L. Esposito
Gregory V. Moore, P.E.

January 9, 2015

Hans Medlarz
City of Milford
P.O. Box 159
Milford, DE 19963

Dear Hans:

Enclosed please find the City of Milford's numbers for the month of December 2014.

**December 2014
Weight in Pounds**

MARSHALL STREET

SINGLE-STREAM TOTAL	OIL GALLONS
36,227	850

MILFORD COMMONS

22,293	
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Sincerely,

Rich Von Stetten
Sr. Manager of Statewide Recycling

C:\RVS\RD correspondence\cityofmilford.doc
Christie Murphy
Attachments: City of Milford Curbside Totals



1128 S. Bradford Street, P.O. Box 455, Dover, Delaware 19903-0455
Phone: (302) 739-5361 Fax: (302) 739-4287

CITIZENS' RESPONSE LINE: 1-800-404-7080 www.dswa.com

**CITY OF MILFORD CURBSIDE RECYCLING
DECEMBER 2014**

Date Out	Trans Num	MT Label	DT Label	Bill Acct Name	Net TN
12/4/2014	794450	7100-RC Single Strea	7000-Recommunity	City of Milford	4.99
12/4/2014	794489	7100-RC Single Strea	7000-Recommunity	City of Milford	4.86
12/5/2014	794526	7100-RC Single Strea	7000-Recommunity	City of Milford	4.42
12/5/2014	794527	7100-RC Single Strea	7000-Recommunity	City of Milford	5.09
12/11/2014	795131	7100-RC Single Strea	7000-Recommunity	City of Milford	4.88
12/11/2014	795152	7100-RC Single Strea	7000-Recommunity	City of Milford	6.65
12/18/2014	795847	7100-RC Single Strea	7000-Recommunity	City of Milford	3.92
12/18/2014	795855	7100-RC Single Strea	7000-Recommunity	City of Milford	5.71
12/19/2014	795898	7100-RC Single Strea	7000-Recommunity	City of Milford	3.86
12/19/2014	795979	7100-RC Single Strea	7000-Recommunity	City of Milford	4.03
12/26/2014	796528	7100-RC Single Strea	7000-Recommunity	City of Milford	2.16
12/26/2014	796533	7100-RC Single Strea	7000-Recommunity	City of Milford	2.59
12/31/2014	797323	7100-RC Single Strea	7000-Recommunity	City of Milford	5.5
				TOTAL	58.66

ELECTRIC RATE COMPARISON

Enclosed you will find a five-year comparison of electric rates. We will do this twice a year due to each provider having a winter rate and a summer rate.

I have also requested a sample commercial rate comparison which I will provide upon receipt. Each member has been asked to provide an actual bill from a Medium General Service Customer.

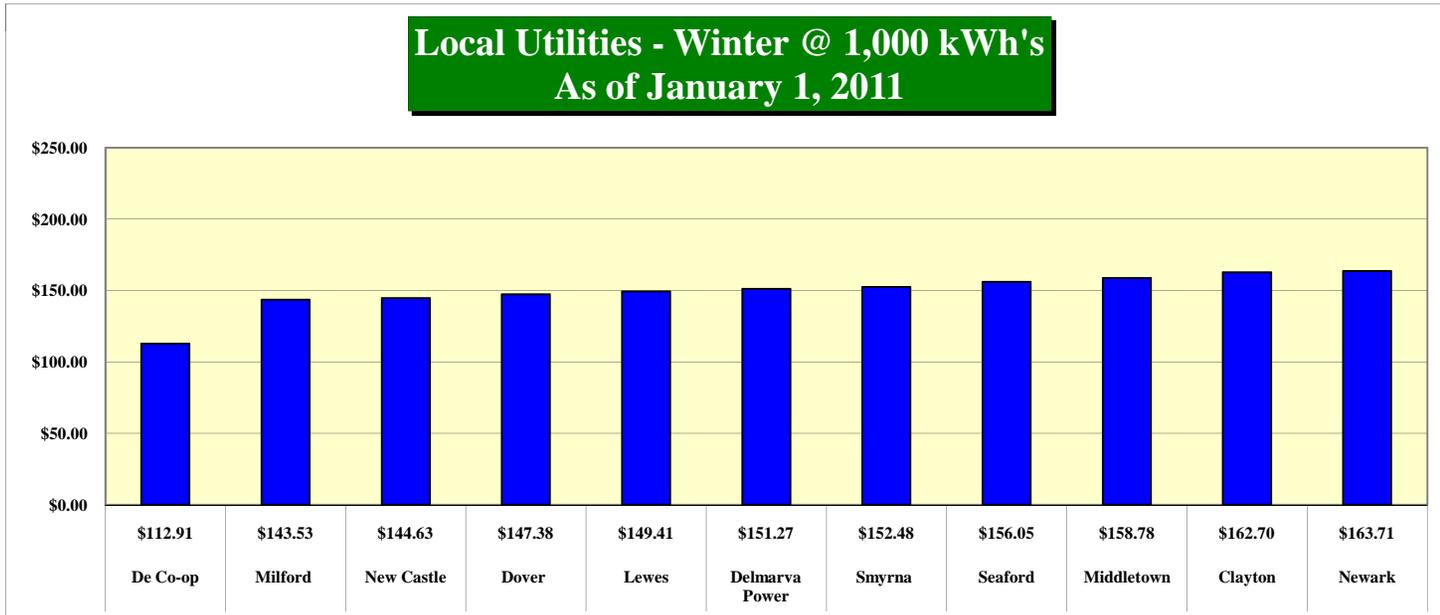
Selected Area Utilities

Winter (Oct. - May)

RESIDENTIAL RATE COMPARISON @ 1,000 kWh

		<u>% Difference</u>	<u>% Difference</u>
<u>De Co-op</u>	\$112.91	0%	-25%
<u>Milford</u>	\$143.53	27%	-5%
<u>New Castle</u>	\$144.63	28%	-4%
<u>Dover</u>	\$147.38	31%	-3%
<u>Lewes</u>	\$149.41	32%	-1%
<u>Delmarva Power</u>	\$151.27	34%	0%
<u>Smyrna</u>	\$152.48	35%	1%
<u>Seaford</u>	\$156.05	38%	3%
<u>Middletown</u>	\$158.78	41%	5%
<u>Clayton</u>	\$162.70	44%	8%
<u>Newark</u>	\$163.71	45%	8%

* Approximate. DP&L's transmission capacity charge is based on each individual's Peak Load Contribution (PLC) to the overall transmission load. Each customer has a unique PLC that changes every January.



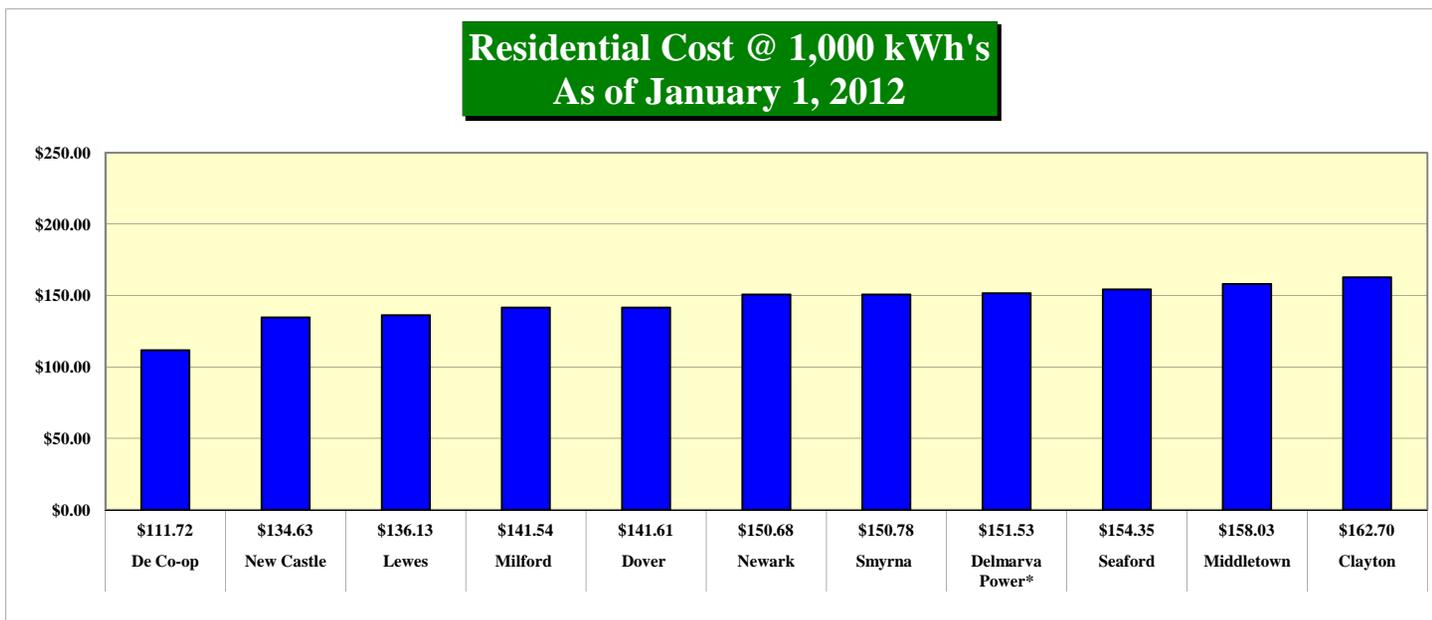
Selected Area Utilities

Winter (Oct. - May)

RESIDENTIAL RATE COMPARISON @ 1,000 kWh

		<u>% Difference</u>	<u>% Difference</u>
<u>De Co-op</u>	\$111.72	0%	-26%
<u>New Castle</u>	\$134.63	21%	-11%
<u>Lewes</u>	\$136.13	22%	-10%
<u>Milford</u>	\$141.54	27%	-7%
<u>Dover</u>	\$141.61	27%	-7%
<u>Newark</u>	\$150.68	35%	-1%
<u>Smyrna</u>	\$150.78	35%	0%
<u>Delmarva Power*</u>	\$151.53	36%	0%
<u>Seaford</u>	\$154.35	38%	2%
<u>Middletown</u>	\$158.03	41%	4%
<u>Clayton</u>	\$162.70	46%	7%

* Approximate. DP&L's transmission capacity charge is based on each individual's Peak Load Contribution (PLC) to the overall transmission load. Each customer has a unique PLC that changes every January.



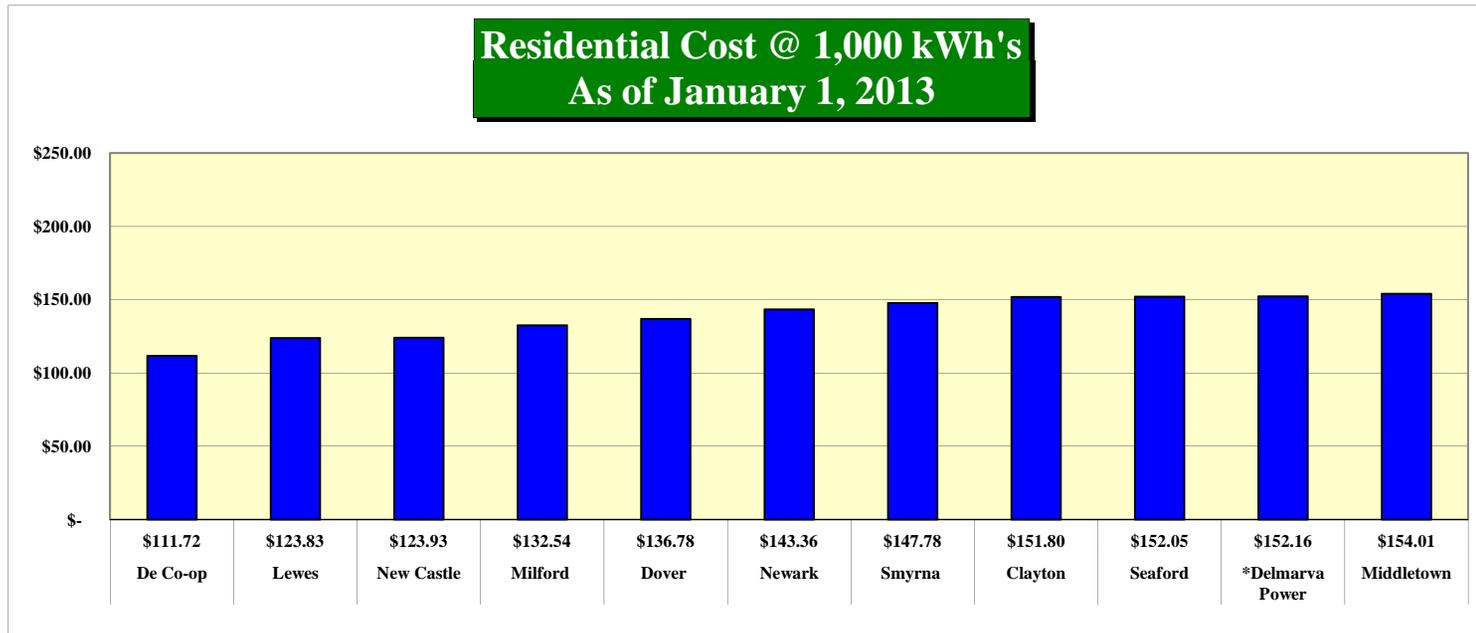
Selected Area Utilities

Winter (Oct. - May)

RESIDENTIAL RATE COMPARISON @ 1,000 kWh

			DE COOP	DPL
			<u>% Difference</u>	<u>% Difference</u>
<u>De Co-op</u>	\$	111.72	0.0%	-26.6%
<u>Lewes</u>	\$	123.83	10.8%	-18.6%
<u>New Castle</u>	\$	123.93	10.9%	-18.6%
<u>Milford</u>	\$	132.54	18.6%	-12.9%
<u>Dover</u>	\$	136.78	22.4%	-10.1%
<u>Newark</u>	\$	143.36	28.3%	-5.8%
<u>Smyrna</u>	\$	147.78	32.3%	-2.9%
<u>Clayton</u>	\$	151.80	35.9%	-0.2%
<u>Seaford</u>	\$	152.05	36.1%	-0.1%
<u>*Delmarva Power</u>	\$	152.16	36.2%	0.0%
<u>Middletown</u>	\$	154.01	37.9%	1.2%

* Approximate. DP&L's transmission capacity charge is based on each individual's Peak Load Contribution (PLC) to the overall transmission load. Each customer has a unique PLC that changes every January



Selected Area Utilities

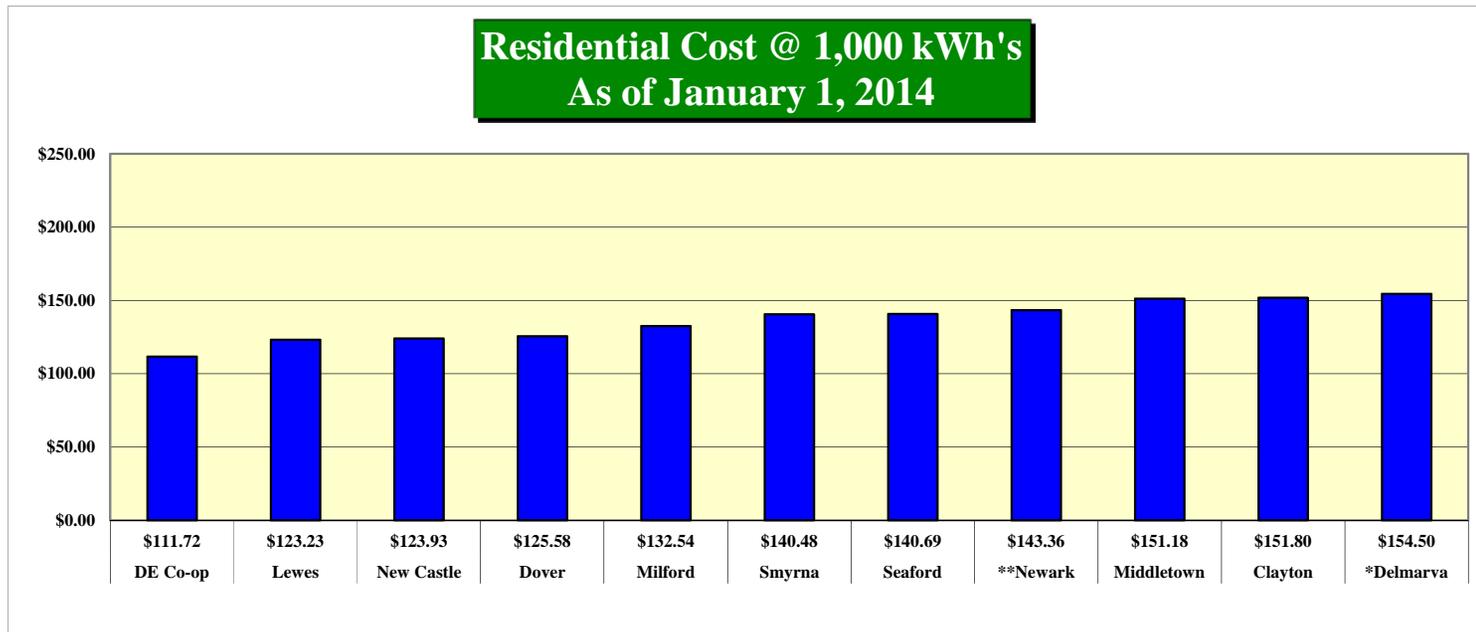
Winter (Oct. - May)

RESIDENTIAL RATE COMPARISON @ 1,000 kWh

		DE COOP	DPL
		<u>% Difference</u>	<u>% Difference</u>
<u>DE Co-op</u>	\$111.72	0.0%	-27.7%
<u>Lewes</u>	\$123.23	10.3%	-20.2%
<u>New Castle</u>	\$123.93	10.9%	-19.8%
<u>Dover</u>	\$125.58	12.4%	-18.7%
<u>Milford</u>	\$132.54	18.6%	-14.2%
<u>Smyrna</u>	\$140.48	25.7%	-9.1%
<u>Seaford</u>	\$140.69	25.9%	-8.9%
<u>**Newark</u>	\$143.36	28.3%	-7.2%
<u>Middletown</u>	\$151.18	35.3%	-2.1%
<u>Clayton</u>	\$151.80	35.9%	-1.7%
<u>*Delmarva</u>	\$154.50	38.3%	0.0%

* Approximate. DP&L's transmission capacity charge is based on each individual's Peak Load Contribution (PLC) to the overall transmission load. Each customer has a unique PLC that changes every January.

**City of Newark begins Summer Rates in April



Selected Area Utilities

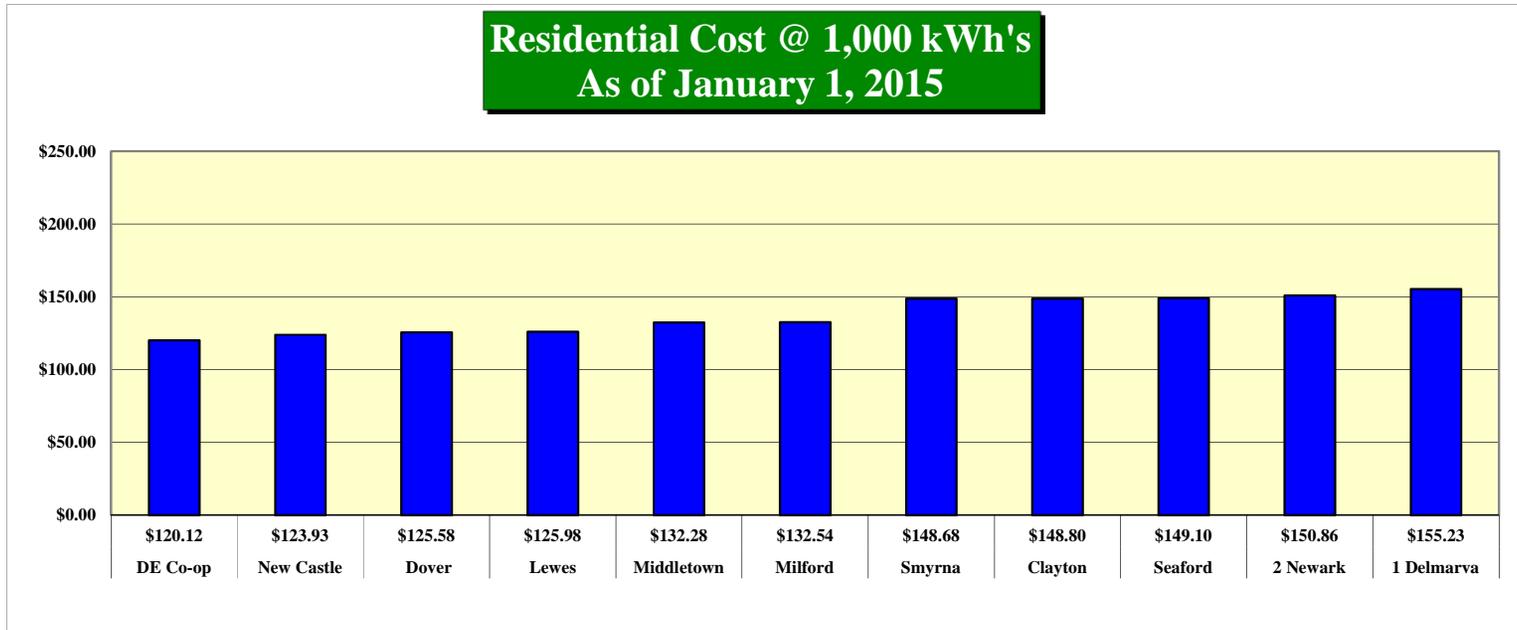
Winter (Oct. - May)

RESIDENTIAL RATE COMPARISON @ 1,000 kWh

		DE COOP <u>% Difference</u>	DPL <u>% Difference</u>
<u>DE Co-op</u>	\$120.12	0.0%	-22.6%
<u>New Castle</u>	\$123.93	3.2%	-20.2%
<u>Dover</u>	\$125.58	4.5%	-19.1%
<u>Lewes</u>	\$125.98	4.9%	-18.8%
<u>Middletown</u>	\$132.28	10.1%	-14.8%
<u>Milford</u>	\$132.54	10.3%	-14.6%
<u>Smyrna</u>	\$148.68	23.8%	-4.2%
<u>Clayton</u>	\$148.80	23.9%	-4.1%
<u>Seaford</u>	\$149.10	24.1%	-4.0%
² <u>Newark</u>	\$150.86	25.6%	-2.8%
¹ <u>Delmarva</u>	\$155.23	29.2%	0.0%

¹ Approximate. DP&L's transmission capacity charge is based on each individual's Peak Load Contribution (PLC) to the overall transmission load. Each customer has a unique PLC that changes every January.

² City of Newark begins Summer Rates in April.



*City of Milford's
Annual Community Prayer Breakfast
Honoring Mayor Bryan Shupe*



*Milford Senior Center's Crystal Room
111 Park Avenue
Milford, Delaware 19963*

*\$15.00 per person
Saturday, March 21, 2015
7:30 a.m.*

Guest Speaker

Debra Puglisi Sharp

*Community Prayer Breakfast Scholarship
to benefit:
Milford Senior Center*

*For tickets and/or more information call
(302) 422-3385 or Milford City Hall (302) 424-3712*

City of Milford



PRESS RELEASE COMMUNITY PRAYER BREAKFAST MARCH 21, 2015 Honoring Mayor Bryan Shupe

The Annual Community Prayer Breakfast, honoring first year Mayor Bryan Shupe, will be held Saturday, March 21, 2015 beginning at 7:30 a.m. The buffet breakfast will be held in the Crystal Room of the Milford Senior Center at 111 Park Avenue, Milford Delaware.

Guest speaker will be Debra Puglisi Sharp who will share the inspiring message of her personal transition from victim to survivor. Debra, an R.N., is an inspirational speaker and the author of *Shattered--Reclaiming A Life Torn Apart By Violence*. She has appeared on national talk shows including Oprah, 20/20, Montel, the John Walsh Show, A&E Biography and the Bonnie Hunt Show.

Those attending will also be inspired with the musical talents and spirituality of Elder Isaiah Kilgo-Felder of Inner Circle Outreach Ministries and Pastor Joel Andrus of Lighthouse Christian Center.

This is a great opportunity for the business community and residents to come together for some hearty food and fellowship for the body and soul.

Call the Milford Senior Center at 302-422-3385 or Milford City Hall at 302-424-3712 for ticket information.



**DELAWARE LEAGUE OF LOCAL GOVERNMENTS
MONTHLY DINNER MEETING
THE DUNCAN CENTER
500 W. LOOCKERMAN STREET, 5TH FLOOR, DOVER**

THURSDAY, February 26, 2015

REGISTRATION/SOCIAL HOUR: 5:30 P.M. - 6:15 P.M.

DINNER: 6:30 P.M. – 7:15 P.M.

PROGRAM: 7:15 P.M.

PROGRAM:

There are two presentations on the agenda for this meeting. Mark Grubb, Director of the Delaware Division of Communications, Department of Safety and Homeland Security, will discuss the value of FirstNet, a new nationwide broadband network being built for exclusive use by public safety first responders. The proposed network is a high-speed wireless system that will provide more capacity, interoperability, and reliability than the normal cellular arrangement, which can become overburdened during emergencies. This program is developed to describe the implementation process for the State’s local governments and elected officials

Mat Carter of the Delaware Center for Transportation will introduce the self-evaluation requirement of the Americans with Disabilities Act regarding municipal building, parks, and infrastructure projects. Mr. Carter will explain the background and describe resources available to help local governments comply. Elected officials, managers, and staff supervisors make up the target audience for this presentation.

Next Meeting: Thursday, March 26, 2015

WE MUST HAVE YOUR RESERVATIONS NO LATER THAN FEBRUARY 19, 2015

Mail To/Make Payable to: Delaware League of Local Governments • P.O. Box 484 • Dover, DE 19903-0484
Phone: 302-678-0991 • Email: cfluft@udel.edu

_____ will have _____ attendees
(Municipality/County/Agency)

PLEASE LIST THE NAMES OF THOSE ATTENDING

<u>Name</u>	<u>Title</u>
_____	& _____
_____	& _____
_____	& _____
_____	& _____
_____	& _____
_____	& _____

- () Check enclosed for () dinners @ \$30 each
- () Please direct bill the Municipality/County/Agency
- () Payment will be made at the door
- () Enclosed for () dinners @ \$30 each

PUBLIC NOTICE
Ordinance 2014-18
Chapter 204-Taxation

NOTICE IS HEREBY GIVEN that the following ordinance is currently under review by Milford City Council:

WHEREAS, the taxation of real property constitutes a significant portion of the annual municipal revenues necessary to facilitate governmental operations; and

WHEREAS, it is in the best interest of the City of Milford, as well as its residents, to ensure that all properties are fairly and properly assessed for the purposes of taxation; and

WHEREAS, rules are hereby established regarding exemptions, dates, deadlines, appeals and annual and supplemental bills.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1.

Article II, entitled Exemption of New Improvements Added to Property, Sections 204-6 thru Section 204-11, is hereby rescinded:

~~ARTICLE II - Exemption of New Improvements Added to Property~~

~~§ 204-6. - Eligibility for new improvement exemption of real property taxes.~~

~~The exemption shall only apply to the increase in assessed value resulting from substantial rehabilitation, renovation or improvements of existing properties (residential, commercial, industrial, etc.) located within the city limits. New construction does not qualify.~~

~~The building permit for the said improvements must be issued prior to June 30, 2013 and shall be valid for a period of one year. The exemption shall be based on the change in the improvement assessment value only. The land assessment is not eligible for exemption under this article.~~

~~§ 204-7. - Amount of the exemption.~~

~~The amount of the exemption shall be determined by subtracting the value of construction per the building permit from the improvement assessment value following the new construction.~~

~~§ 204-8. - Application of the exemption and limitations.~~

~~The dollar amount of the exemption shall be multiplied by the property tax rate in the first full tax year following the issuance of a certificate of occupancy by the City. The dollar amount of the exemption shall be limited to a maximum of \$1,000 for residential properties and limited to a maximum of \$5,000 for all other properties. The exemption shall only be good for one year immediately following the~~

~~§ 204-9. - Appeals.~~

~~An aggrieved taxpayer may appeal from the disposition of an exemption claim in the same manner as is provided for appeals from assessments generally.~~

~~§ 204-10. - Due date for payment of property taxes.~~

~~Property taxes shall be payable on or before September 30th of each year.~~

~~§ 204-11. - Penalties.~~

~~To every tax not paid after the said date established in § 204-10, there shall be added and collected a penalty, for each month that the said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in § 204-10 for the addition and collection of penalties.~~

Section 2. A new Article II, entitled Authority to Exempt Real Property from Taxation, is hereby added to read as follows:

ARTICLE II – Authority to exempt real property from taxation.

§ 204-6. The city council shall have the power to exempt real property located within the city from municipal property taxes when, in the opinion of the tax assessor, the same will best promote the public welfare. The city assessor shall be empowered to grant tax exemptions in the same fashion as a county exemption, pursuant to 9 Del. C. § 8105 and 8110, and upon receipt of an application to the City of Milford filed by the organization to establish its entitlement to such exemptions.

§ 204-7. No assessment shall be made against that portion of a parcel during the period in which the portion qualifies for agricultural, horticultural or forest uses as more fully defined by 9 Del. C. § 8330 through 8337, inclusive.

Section 3. A new Article III, entitled Annual Tax Bill, is hereby added to read as follows:

ARTICLE III – Annual Tax Bill.

§204-8. The tax year shall run from October 1st through September 30th each year based on assessed values as of June 30th.

§ 204-9. Property taxes shall be payable on or before September 30th of each year.

§ 204-10. To every tax not paid after the said date established in 204-9, there shall be added and collected a penalty, for each month that said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in 204-9 for the addition and collection of penalties.

Section 4. A new Article IV, entitled Supplemental Assessments and Tax Bills, is hereby added to read as follows:

ARTICLE IV- Supplemental Assessments and Tax Bills

§204-11. Supplemental Assessment Required.

A. Changes, including zoning and construction, shall require reassessment of the property at its fair market value as of the date of the last City-wide revaluation. A supplemental assessment

will be determined for the amount of difference between the value stated on the regular assessment roll(s) and the new fair market value.

B. Supplemental tax bills shall be issued when there is an increase in taxable value caused by any change as stated in 204-11. More than one tax year may be affected by the increase in value, causing more than one supplemental bill to be issued. Even when a property has been sold, the original owner may be billed for any change in value relating to the dates of their ownership.

C. The increase in assessed value resulting from the reassessment is reflected in a prorated assessment that covers the period from the first day of the month following the supplemental event to the end of the fiscal year.

§204-12. - Assessment Appeals.

- A. Appeal date deadlines
- | | |
|--|---------------|
| Appeal filing deadline (Annual billing) | August 31st |
| Appeal filing deadline (October billing) | November 30th |
| Appeal filing deadline (January billing) | February 28th |
| Appeal filing deadline (April billing) | May 31st |
- B. Right to appeal is lost if appellant has missed the designated appeal date.
- C. Appeals/refunds for errors or opinions of value from appellants will not be heard for prior years.
- D. The assessment as revised and adjusted by the board of assessment appeals shall be the listed value for the year under appeal and shall be the basis for the levy and collection of taxes for the city.

Section 5. Dates.

Introduction 02-09-15

Adoption (Projected) 02-23-15

Ordinance will be effective ten days following its adoption.

CABLE FRANCHISE AGREEMENT
BETWEEN
CITY OF MILFORD, DELAWARE
AND
COMCAST OF DELMARVA, LLC

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FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Milford, Delaware (hereinafter, “City” or “Franchising Authority”) and Comcast of Delmarva, LLC (hereinafter, “Franchisee”).

The City having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 - 631 (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, and words in the plural number include the singular number. The word “shall” is mandatory and “may” is permissive. Words not defined in the Cable Act or herein shall be given their common and ordinary meaning.

1.1. “Cable Service” or “Service” shall mean the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. “Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

1.3. “City” shall mean the City of Milford, Delaware.

1.4. “Customer” or “Subscriber” shall mean a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.

1.5 “Educational Access” is channel designated for noncommercial use by educational institutions such as public or private schools (but not “home schools”), community colleges, and universities.

Commented [CC1]: Accepted by Comcast

1.65. “Effective Date” shall mean _____ 2014. means the date on which all authorized persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the “Term” section herein.

Commented [CC2]: Accepted by Comcast

1.76. “FCC” shall mean the Federal Communications Commission, or successor governmental entity thereto.

1.87. “Franchise” shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.98. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

1.109. “Franchise Area” shall mean the present legal boundaries of the City of Milford, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise, as per the requirements set forth in Section 13.12 of this Agreement.

Commented [CC3]: Accepted by Comcast

1.110. “Franchising Authority” shall mean the City of Milford or the lawful successor, transferee, designee, or assignee thereof.

1.124. “Franchisee” shall mean Comcast of Delmarva, LLC.

1.13 “Government Access” is a channel designated for noncommercial use by the Franchising Authority for the purpose of showing local government at work.

Commented [CC4]: Accepted by Comcast

~~1.12. “Gross Revenue” shall mean revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles (“GAAP”). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees. Gross Revenue shall not include program launch support payments, revenue from advertising and home shopping, refundable deposits, late fees, investment income, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad~~

~~debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.~~

1.14 “Gross Revenue” means revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles (“GAAP”). Gross Revenue includes revenue received from monthly basic cable fees, premium and pay-per-view video fees, Franchise fees (a/k/a fee on fee), subscriber fee, advertising and home shopping revenues, installation fees, fees for leased access channels, fees for service calls, subscriber equipment rental and sales fees, and fees from the provision of any other Cable Services. Gross Revenue shall not include program launch support payments, revenue from refundable deposits, late fees, investment income, nor any taxes or other fees except for franchise fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided, however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

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1.153. “Person” shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

1.16. “Public Access” is noncommercial use of a channel by the public on a first-come, first-served, nondiscriminatory basis. Public Access time may not be used to cablecast programs for profit, or for nonpolitical or commercial fundraising in any fashion.

Commented [CC6]: Accepted by Comcast

1.174. “Public Buildings” shall mean those buildings owned or leased by the Franchising Authority for municipal government administrative purposes, and shall not include buildings owned by Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.185. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, park or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include

other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

1.196. "Standard Installation" shall mean the standard one hundred twenty-five foot (125') aerial Drop connection to the existing distribution system.

1.2047. "Video Programming" or "Programming" shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

~~1.18. "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.~~

Commented [CC7]: We'll need to discuss deletion of Competitive Equity language. We may not need this exact language but we'd like to have some clause that allows us to at least come back and meet with the City if they pass a more favorable franchise agreement to another video provider.

SECTION 2 - Grant of Authority

2.1. Franchise Grant. The Franchising Authority hereby grants to the Franchisee pursuant to the Cable Act, and any applicable State laws, a non-exclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

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2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ~~fifteen (15)~~ five (5) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act. This Franchise shall be automatically extended for ~~three (3)~~ one (1) additional terms of five (5) years each unless either party notifies the other in writing of its desire to enter renewal negotiations under the Cable Act at least one (1) year before the expiration date of the then-current Franchise Agreement, whether it be the initial term or a subsequent extended term.

Commented [CC9]: This is an issue for us. At a minimum we'd agree to 10 years similar to what we did in Felton and Smyrna.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended.

SECTION 3 – Construction and Maintenance of the Cable System

3.1. Permits and General Obligations. The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Way, or impedes vehicular traffic. The issuance of such permits shall not be unreasonably withheld or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality and shall be in accordance with the standards found in the National Electric Code, applicable FCC regulations, and generally applicable provisions of the City of Milford building code. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

Commented [CC10]: Accept by Comcast

3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed, including, but not limited to, changes of grade or location of the Public Way, at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify Franchisee of such funding and make available such funds to the Franchisee.

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3.2.2. Relocation at Request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be

required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. provided, however, streets shall be restored in accordance with generally applicable City specifications and subject to City inspection and approval.

Commented [CC12]: We need to discuss the last part of this sentence "and subject to City inspection and approval."

3.2.4. Safety Requirements. The Franchisee shall undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any collateral, real property damage caused by such trimming. Franchisee shall provide not less than thirty (30) days' notice to the City of its intent to do such work within the Franchise Area.

Commented [CC13]: Could we add language "Except in cases of emergencies repair or restoration of service interruptions, the Franchisee shall provide the Town with advance notice of tree trimming."

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground, unless the Franchising Authority is actively engaged in an undergrounding project in the immediate area where the lines are to be installed, in which case Franchisee shall place its Cable System transmission and distribution facilities underground as outlined in this subsection provided that such underground locations are equally capable of accommodating the Franchisee's cable and other equipment without

technical degradation of the Cable System's signal quality. Nothing in this Agreement shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

Commented [CC14]: Accepted by Comcast

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not available, Franchisee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.8 Discretion in Emergency. In the event of an emergency, the Franchisee acknowledges that the Carlisle Fire Company and the Milford Electric Department have the authority to remove and/or cut the Franchisee's cable lines without prior notification of the Franchisee. The Franchise Authority shall notify the Franchisee as soon as reasonably possible of any such action. The Franchise Authority shall not be financially responsible for repairing any cable lines removed and/or cut pursuant to an emergency.

Commented [CC15]: Our regional vice president couldn't approve this change, so I had to escalate to our division vice president for his review.

SECTION 4 - Service Obligations

4.1. General Service Obligation. The Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) occupied dwelling units per mile ~~with aerial cable or sixty (60) residential occupied dwelling units per mile in areas with underground cable~~ and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained of sufficient strength and quality so that the signal on the line extension shall meet FCC requirements for signal strength and quality. For purposes of this section, a home shall be counted as a "dwelling unit" if, and only if, such home is within ~~two hundred seventy-five (275) four hundred (400) feet~~ of the public right of way. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within ~~one hundred and twenty-five (125) four hundred (400) feet~~ of the Franchisee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within one year after it

Commented [CC16]: All of these are acceptable to Comcast except for the note below

Commented [CC17]: We would request that this be changed back to 125 feet which is the FCC standard. For a standard installation we can provide service to a home if it's located within 125 feet without having to do a plant extension that is more costly.

confirms that the density requirements have been met following notice from the Franchising Authority that one or more residents has requested service.

The Franchisee may elect to extend service to areas that do not otherwise qualify to receive service under this section if any resident or group of residents agree in writing to pay to Franchisee the cost of construction, including materials, labor, and the total cost of any easement(s) necessary to accomplish the proposed line extension. One half of the cost of construction shall be paid to the Franchisee prior to engineering and the balance shall be paid prior to installation.

4.2. Programming. The Franchisee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Franchisee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Franchisee's employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments. The Franchising Authority shall provide the Franchisee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Franchisee, any Cable Service, program or signal transmitted over the Cable System by the Franchisee.

4.6. Emergency Alert System. [In accordance with applicable FCC Regulations, the Franchisee shall maintain an Emergency Alert System \(EAS\) for use in transmitting Emergency Act Notifications \(EAN\) and Emergency Act Terminations \(EAT\) in local and state-wide situations as may be designated to be an emergency by the Local Primary \(LP\), the State Primary \(SP\) and/or the State Emergency Operations Center \(SEOC\), as those authorities are identified and defined within applicable FCC Regulations.](#)

Commented [CC18]: Accepted by Comcast

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Franchisee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law. Except to the extent otherwise expressly permitted under applicable law, Franchise shall provide Cable Service to each resident in the Franchise Area in accordance with a uniform rate structure throughout the Franchise Area. The preceding requirement shall not prevent Franchisee from using bulk, commercial, promotional, and other rates in accordance with Federal law.

Commented [CC19]: We'll need to further discuss this change. This language is in Felton agreement but not Smyrna agreement. Our regional VP has some concerns with including this and I'm escalating to our division vice president for his review.

SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection

6.1. Customer Service Standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC. Franchisee shall provide Franchising Authority with the toll-free phone number and any subsequent changes thereto, which Customers may use in making service inquiries. Franchisee shall maintain a record of the type and nature of all telephonic or written complaints received within Franchise Area. Upon written request of the Franchising Authority, the Franchisee shall provide within thirty (30) days a report outlining the complaints received in the prior twelve (12) months; provided, however, the Franchisee shall not be required to produce the report more than once a year.

Commented [CC20]: Open item for discussion. Comcast would like to delete "telephonic" since our telephone system doesn't accurately capture this information and written complaints are the only practical way to capture this info.

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6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 7 - Oversight and Regulation by Franchising Authority

7.1. Franchise Fees. The Franchisee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Franchisee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due ~~forty-five (45)~~ thirty (30) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February). Each franchise fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for the computation of the Franchise Fees paid during that period. The Grantee shall not be liable for the collection of franchise fees from customers in a newly annexed area until notified in writing by the Franchise Authority of the annexation. Upon receiving such notice, the franchisee shall begin collecting within sixty (60) days of such notice.

Commented [CC21]: Can we keep this at 45 days? Our finance department that handles payments is based out of PA and processes a large number of franchise fee checks and is typically allowed 45 days.

7.2. Franchise Fees Subject to Audit.

7.2.1 Upon notice pursuant to Section 13.2 herein, during Normal Business Hours at Franchisee's principal business office ~~in the State of Delaware;~~ the Franchising Authority shall have the right to inspect the Franchisee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within ~~two (2)~~ three (3) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

Commented [CC22]: This is new language that Comcast is requesting.

Commented [CC23]: Acceptable to Comcast

Commented [CC24]: Accepted by Comcast

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Franchisee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Franchisee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within ~~sixty (60)~~ thirty (30) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

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7.2.3. Any “Finally Settled Amount(s)” due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Franchisee within thirty (30) days from the date the parties agree upon the “Finally Settled Amount.” Once the parties agree upon a Finally Settled Amount and such amount is paid by the Franchisee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Franchisee’s books and records.

7.3. Oversight of Franchise. In accordance with applicable law, the Franchising Authority shall have the right to, at its sole cost and expense and upon reasonable prior written notice and in the presence of Franchisee’s employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Franchisee’s compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601 et seq. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Franchisee agrees that the Franchising Authority may review the Franchisee’s books and records regarding customer service performance levels in the Franchise Area to monitor Franchisee’s compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Franchisee pursuant to the provisions of Section 13.2 herein, at the Franchisee’s business office located in the State of Delaware, during Normal Business Hours, and without unreasonably interfering with Franchisee’s business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Franchisee for a minimum period of ~~twenty-four (24)~~ thirty-six (36) months.

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Commented [CC27]: New change from Smyrna/Felton which is 24 months. Can you tell me what the statute of limitations is for records in DE? Normally we try and mirror that in our agreements.

7.5.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC’s rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature.

The Franchising Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The Franchisee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. Franchisee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchising Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

SECTION 8 – Transfer of Cable System or Franchise of Franchisee

8.1. Neither the Franchisee nor any other Person may transfer the Cable System or the Franchise without prior written notice to the Franchising Authority. No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation, or (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership. Within thirty (30) days of receiving a notice of transfer, the Franchising Authority may, in accordance with FCC rules and regulations, notify the Franchisee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party.

SECTION 9 - Insurance and Indemnity

9.1. Insurance. Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million

Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Franchisee shall provide workers' compensation coverage in accordance with applicable law. The Franchisee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Franchisee may become subject during the term of this Franchise Agreement.

9.2. Indemnification. The Franchisee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents acting in their official capacities from and against any liability or claims resulting from ~~property damage or bodily injury (including accidental death) that arise out of the Franchisee's construction, operation, maintenance, or removal of the Cable System, Franchisee's actions that result in (i) property damage or bodily injury (including accidental death), (ii) invasion of privacy or defamation of any person, firm, or corporation, (iii) a violation or infringement of any copyright, trademark, service mark, or patent, or (iv) civil, criminal, or administrative penalties, arising out of Franchisee's failure to comply with any federal, state or local statute that arise out of the Franchisee's construction, operation, maintenance, or removal of the Cable System~~, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Franchisee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchising Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee's ability to defend the claim or action. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

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9.2.1 Franchisee shall not be required to indemnify the Franchising Authority for negligence or misconduct on the part of the Franchising Authority or its officials, boards, commissions, agents, or employees, including any loss or claims related to PEG access Channels in which the Franchising Authority or its designee participates, subject to Applicable Law.

SECTION 10 - System Description and Service

10.1. System Capacity. During the term of this Agreement, the Franchisee's Cable System shall be capable of providing Video Programming with reception available to its customers in the Franchise Area in accordance with the Cable Act.

~~10.2. Cable Service to School Buildings. Upon request, the Franchisee shall provide, at no cost to the Franchising Authority, Basic Cable Service and Standard Installation at one (1) outlet to each public and private grade school (K-12) building, not including "home schools," located in the Franchise Area within one hundred twenty five (125) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred twenty five (125) feet aerial distance of the cable plant and service for more than one (1) drop in each building. For the purposes of this Section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not include "home schools."~~

~~10.3. Cable Service to Governmental and Institutional Facilities. Upon request, the Franchisee shall provide, at no cost to the Franchising Authority, Basic Cable Service and Standard Installation at one outlet to each Public Building located in the Franchise Area within one hundred twenty five (125) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred twenty five (125) feet aerial distance of the cable plant and service for more than one (1) drop in each building. Public Buildings are those buildings owned or leased by the Franchising Authority for municipal government administrative purposes, and shall not include buildings owned by Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.~~

10.2 Continuing Existing Cable Service to Public Buildings and Schools. Franchisee shall maintain the current level of existing active drops, outlets and Basic Cable Service, at no charge to the City, to each Public Building as designated by the City listed in Exhibit A attached hereto and each school within the Franchise Area; provided, however, the cost to repair or replace a nonstandard drop will be paid by the City or school.

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10.3 Public Building School Existing Wiring. Nothing in this section shall require Franchisee to move existing or install additional drops or outlets at no charge to schools and those public buildings included in Exhibit A. It is understood that Franchisee shall not be responsible for any internal wiring of such Public Buildings and/or schools.

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10.4 Public Building. For the purposes of this section, the term Public Building refers to those buildings identified in Exhibit A and those buildings owned or leased by the City for municipal government administrative purposes including City Hall, fire police and ambulance stations, and libraries. Public Buildings shall not include buildings owned by the City but leased to third parties, or buildings such as storage facilities at which government employees are not regularly stationed.

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10.5 School. For the purposes of this section, the term “school” means a public or private educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301, et seq., as amended, and does not include “home schools.”

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10.6 Cable Service to New or Relocated Schools. Upon written request, the Franchisee shall provide, at no cost to the City, Basic Cable Service and Standard Installation at one (1) outlet to any new or relocated school (K-12) building, not including “home schools” located in the Franchise Area within one hundred twenty-five (125) feet of the Franchisee’s distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred twenty-five (125) feet aerial distance of the cable plant and service for more than one (1) drop in each building. For purposes of this section, a new school shall be any school not having an existing active drop, outlet, and Basic Cable Service at the time of this agreement.

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10.7 Cable Service to New or Relocated Public Buildings. Upon written request, the Franchisee shall provide, at no cost to the Franchising Authority, Basic Cable Service and Standard Installation at one (1) outlet to any new or relocated Public Building located in within one hundred twenty-five (125) feet of the Franchisee’s distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred twenty-five (125) feet aerial distance of the cable plant and service for more than one (1) drop in each building. Such new or relocated Public Building(s) shall be added to Exhibit A. For purposes of this section, a new Public Building shall be any Public Building not having an existing active drop, outlet, and Basic Cable Service at the time of this agreement.

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SECTION 11 - Enforcement and Revocation Proceedings

11.1. Notice of Violation or Default and Opportunity to Cure. In the event the Franchising Authority believes that the Franchisee has not complied with the material terms of the Franchise, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

11.1.1. Franchisee’s Right to Cure or Respond. The Franchisee shall have ~~forty-five (45)~~ thirty (30) days from the receipt of the Franchising Authority’s written notice: (i) to respond to the Franchising Authority, contesting the assertion of non-compliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

Commented [CC35]: Comcast would request 45 days in order to have time to fully investigate, cure or respond to a default notice.

11.1.2. Public Hearings. In the event the Franchisee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within ~~forty five (45)~~ thirty (30) days or the date projected by the Franchisee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Franchisee in writing of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard.

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11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Franchisee is in default of any material provision of the Franchise, the Franchising Authority may: (i) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; (ii) assess liquidated damages in accordance with Section 12; or (iii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

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(a) The Franchising Authority shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Franchisee shall have ~~ninety (90)~~ thirty (30) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Franchisee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.

Commented [CC38]: Revocation is the death penalty for us and we take it very seriously. As such we would like to have the entire 90 days to prepare and formulate a response but may be able to do 60 days. Smyrna and Felton are both 90 days.

(b) At the designated public hearing, the Franchising Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Delaware, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court, which

shall have the power to review the decision of the Franchising Authority “de novo” and to modify or reverse such decision as justice may require.

11.2. Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.2.1. in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.2.2. where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

11.3. No Removal of System. Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §621 (b)]. If Cable System is not actively being used to facilitate any other services, or if certain portions of Cable System are not being actively used to facilitate any other services, those unused portion or portions of Cable System shall be removed, if technically feasible, by Franchisee at Franchisee’s expense, or if Franchisee fails to do so within nine (9) months of Cable Service no longer being provided, by Franchising Authority at Franchisee’s expense.

SECTION 12 – Competitive Equity

~~12.1. Purposes. The Franchisee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights of way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the~~

Commented [CC39]: Our region VP couldn’t approve this change and I had to escalate it to our division vice president for his review.

Commented [CC40]: Open issue. I’m being told we need to have some type of level playing field provision. Would the following language be acceptable to the City?

The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein. If any such additional or competitive franchise is granted by the Franchising Authority which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Franchising Authority agrees that it shall amend this Franchise Agreement to include any more favorable or less burdensome terms or conditions.

In the event that a multi-channel video programming distributor provides service to the residents of the Franchise Authority under a state or federal franchise that is unavailable to the Grantee, the Grantee shall have a right to request amendments to this Franchise Agreement that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise Agreement. Such petition shall: (1) indicate the presence of a competitor that has a state or federal franchise; (2) identify the basis for Grantee’s belief that certain provisions of the Franchise Agreement place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Franchising Authority shall not unreasonably withhold consent to the Grantee’s petition.

In the event an application for a new cable television franchise is filed with the Franchising Authority proposing to serve the Franchising Area, in whole or in part, the Franchising Authority shall serve or require to be served a copy of such application upon the Grantee by registered or certified mail or via nationally recognized overnight courier service.

~~Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Franchisee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.~~

~~12.2. New Video Service Provider.~~

~~12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Franchisee, shall permit the Franchisee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Franchisee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Franchisee submits a written request to the Franchising Authority.~~

~~12.2.2. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Franchisee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Franchisee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.~~

~~12.3. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Franchisee's written request the Franchising Authority shall: (i) permit the Franchisee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Franchisee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchising Authority and the Franchisee shall implement the provisions of this Section within sixty (60) days after the Franchisee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time~~

~~or other limitation on the Franchisee's ability to take advantage of the changed law's provisions, the Franchisee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.~~

~~12.4. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Franchise Area under Sections 12.2 or 12.3 shall supersede this Agreement, and the Franchisee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.~~

SECTION 12 – Liquidated Damages

~~12.1 Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise Agreement by Franchisee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this section is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach.~~

~~12.2 Prior to assessing any liquidated damages, the Franchising Authority shall mail to the Franchisee a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Franchisee's cure period shall be no less than one such period.~~

~~12.3 The Franchising Authority may not assess any liquidated damage if the Franchisee has reasonably responded to the complaint or cured or commenced to cure, as may be appropriate, the violation following receipt of written notice from the Franchising Authority, unless some other cure period is approved by the Franchising Authority. In the event Franchisee fails to cure or commence to cure, or fails to refute the alleged breach, the Franchising Authority may assess liquidated damages and shall inform Franchisee in writing of the assessment. Franchisee shall have thirty (30) days to pay the damages.~~

~~12.4. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day on~~

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which Franchisee received the Franchise Authority's formal written notice of non-compliance.

12.5 Franchisee may appeal (by pursuing judicial relief or other relief afforded by the Franchising Authority) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Franchisee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

12.6 In no event may liquidated damages be assessed for a time period exceeding ~~one hundred twenty~~ (120) days. If after that amount of time Franchisee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other remedies.

Commented [CC43]: Comcast inserted 120 days

12.7 The following assessment of liquidated damages may be applied in accordance with the procedures outlined in paragraphs 12.1 – 12.6.

12.7.1 For failure to pay any amounts due to the Franchising Authority on the due date as provided in this franchise agreement or if no due date is provided herein, within ~~thirty (30) days~~ of the Franchising Authority's making written request therefore. Assessment: ~~\$250~~ per week for each or part thereof that any such amount or portion thereof remains unpaid.

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Commented [CC44]: Is City requesting \$250?

Commented [CC45]: Comcast would request 45 days which is consistent for Smyrna.

12.7.2 For failure to meet any applicable FCC technical or FCC performance standard which adversely affects the picture and/or audio quality for a majority of customers for a thirty (30) day period. Said thirty (30) day period shall begin on the date that Franchisee receives written notice from the Franchising Authority of the picture/audio quality program. Assessment: ~~\$200~~ per day for each or portion thereof beyond such thirty (30) day period, that the cable television system fails to meet such applicable FCC technical or FCC performance standard which adversely affects picture and/or audio quality.

Commented [CC46]: Is City requesting \$200?

12.7.3 For failure to meet PEG obligations under Section 1.4 of this franchise agreement. Assessment: ~~\$50~~ per day for each day such obligations are not met.

Commented [CC47]: Is City requesting \$50?

12.7.4 For failure to remove the cable system in a timely fashion as required by Section 11.3 of this agreement. Assessment: ~~\$50~~ per day for each day or portion thereof the cable system is not removed.

Commented [CC48]: Is City requesting \$50?

12.7.5 For failure to obtain applicable permits and other forms of approval as required by Section 3.1 of this agreement. Assessment:

\$30 per day for each day or portion thereof until an application is made for such permits and other forms of approval in Section 3.1.

12.7.6 For failure to deliver evidence of insurance coverage in a timely manner as required by Section 9. Assessment: \$50 per week or portion thereof until filed.

Commented [CC49]: Is City requesting \$50?

SECTION 13 - Miscellaneous Provisions

13.1. Force Majeure. The Franchisee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

13.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

City of Milford
201 South Walnut Street
Milford, Delaware 19963
Attention: City Manager

To the Franchisee:

~~Comcast of Delmarva, LLC
1301 McCormick Drive, 4th Floor
Largo, MD 20774
Attention: Government Affairs Department~~

Comcast of Delmarva, LLC
5729 West Denneys Road
Dover, Delaware 19904

Attention: Government Affairs Department

~~With copies to:~~

~~Comcast of Delmarva, LLC
1301 McCormick Drive, 4th Floor
Largo, MD 20774
Attention: Government Affairs Department~~

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With copies to:

Comcast Cable
8098 Sandpiper Circle
Baltimore, MD 21236
Attention: Government Affairs Department

Commented [CC50]: Comcast change to delete Largo office and have notices go to Baltimore office.

And to:

Comcast Cable Northeast Division
676 Island Pond Rd.
Manchester, NH 03109
Attention: Government Affairs Department

13.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchising Authority and the Franchisee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings -- whether written or oral -- of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of ~~Delaware where the Franchise Area is located~~, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of ~~such State~~ Delaware, as applicable to contracts entered into and performed entirely within the State.

Commented [CC51]: Comcast accepts these changes

13.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

13.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

13.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, which Franchisee may have under federal or state law unless such waiver is expressly stated herein.

13.10. Incorporation by Reference

(a) All presently and hereafter applicable conditions and requirements of federal, State and local laws, including but not limited to the rules and regulations of the FCC and the State where the Franchise Area is located, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. All such general laws, rules and regulations, as amended, shall control the interpretation and performance of this Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

Commented [CC52]: Comcast accepts these changes

(b) Should the State, the federal government or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

13.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

~~13.12. Annexation. Upon 90 days written notice from the Franchising Authority, any additions of territory to the City, by annexation or other legal means, contiguous to the Franchise Area as defined in Section 1.9. above, the portion of any Cable System of the Company that may be located or operated within said territory shall thereafter be subject to all the terms of this Agreement as though it were an extension made hereunder.~~

Commented [CC53]: Change acceptable to Comcast if we can add language in Sec. 7.1

SECTION 14 – Public, Educational and Government Access

Commented [CC54]: Open issue. We'll need to further discuss adding the PEG language to better understand the City's request.

14.1 Subject to written request from the Franchising Authority that it has the capability to provide PEG Access programming for the PEG Access Channel, the Franchisee shall make available a channel for Public Educational and Government Access (PEG) programming without charge on the basic service tier to be used by appropriate entities as the same may from time to time be designated by the Franchising Authority or its designee. Subject to technical feasibility, Franchisee shall make the channel available within eighteen (18) months of said written request.

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Use of a channel position for public, educational and governmental ("PEG") access shall be provided on the most basic tier of service offered by Franchisee in accordance with the Cable Act, Section 611, and as further set forth below. "Channel position" means a number designation on the Franchisee's channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel position so designated. Franchisee shall not exercise editorial control over any public, educational or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing and enforcing rules for PEG access Channel use.

It is understood that a similar representation exists regarding the provision of a PEG channel in the Franchisee's current franchise with the Delaware Public Service Commission for ~~Sussex~~Kent County, Delaware. If the Delaware Public Service Commission activates its PEG channel provided in its franchise then the PEG channel herein shall be the same PEG channel and not an additional PEG channel. If the Delaware Public Service Commission has not activated such a PEG channel, the Franchisee shall make a PEG Access channel available as stated above. If the Delaware Public Service Commission subsequently activates a PEG channel, the Franchisee PEG channel will be replaced by the DEPSC channel.

Commented [CC55]: Comcast change since system is feed out of Sussex County headend

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Any costs associated with PEG programming and/or the PEG channels shall be paid either by the Franchising Authority or may be line-itemed on customer bills and passed through to customer in accordance with applicable law.

Commented [CC56]: Could we add language "at the franchisee's discretion"

14.2 Nothing in this section shall prohibit Franchisee from using the aforementioned channel for other programming during times when PEG programs are not being broadcast.

14.3 Indemnification. The Franchising Authority shall indemnify Franchisee for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming shown on any PEG channel and from claims arising out of the Franchising Authority's rules for or administration of access.

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SECTION 15 – Performance Bond

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Performance Bond. Within thirty (30) days of the Effective Date of this Agreement, Franchisee shall post a performance bond in the amount of \$25,000 as surety for the faithful performance and discharge by Franchisee of all obligations imposed by this Franchise Agreement. The performance bond shall remain in force and effect throughout the term of this Franchise Agreement. If Franchisee fails to timely pay an assessment of liquidated damages or franchise fees, the Franchising Authority pursuant to Section 12 herein shall give Franchisee twenty (20) business days' notice of its intent to draw the amount owed from the performance bond. The Franchising Authority may not draw from the security bond while any action, appeal or other process has been instituted by Franchisee to challenge the amount owed.

Commented [CC57]: Comcast accepts this change

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

Attest: Franchising Authority:

By: _____

Print Name: Thomas Coughlin Bryan Shupe

Title: ~~Regional Senior Vice President~~ Mayor

Date: _____

Attest:

Franchisee:

By: _____

Print Name: Thomas Coughlin

Title: Regional Senior Vice President

Date: _____

EXHIBIT A

I. MUNICIPAL BUILDINGS

A. City Hall, 201 South Walnut Street, Milford, DE 19963

B. Milford Police Department

C. Parks and Recreation Department

D. Armory

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E. Utilities Department

II. SCHOOLS

A. District Administration Office

B. Milford Senior High School

C. Milford Central Academy

D. Benjamin Banneker Elementary School

E. Lulu M. Ross Elementary School

F. Mispillion Elementary School

G. Morris Early Childhood Center

III. OTHER PUBLIC BUILDINGS

A. Carlisle Fire Company

B. Milford Public Library

↓

From: David Rutt [<mailto:dnrutt@mooreandrutt.com>]

Sent: Tuesday, February 03, 2015 5:44 PM

To: Medlarz, Hans

Subject: FW: Comcast-Milford Franchise Agreement

I have been working with Comcast on the new franchise agreement. I am forwarding this version which has my comments as well as their replies. I do not have a problem with most of the points as they now stand, but there is one point which I think will be contentious. I struck in the first edit a section called Competitive Equity. IN their negotiations with Smyrna and Felton, that section was stricken. Now they want to add it back into ours since the competition is apparently heating up. In essence, they want to have the right to see what ever may be negotiated with another cable company and match it with further concessions granted to Comcast (very simplistic). I have a problem with this since it appears to be a form of price fixing, collusion and assisting them with maintaining a monopoly for Milford cable, and they have not been that great in the past. Mr. Comer told me that the other municipalities had drawn a line in the sand on this, and my opinion is we should too. However, I will do whatever is in the best interest of Milford and what you and City Council wish for me to do. I am to meet with him tomorrow before the SCAT meeting and I'm sure nothing will be decided on this. I wanted to bring you into the loop on this point so we can discuss it later and before the agreement comes back to Council for a vote.



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE
89 Kings Highway
Dover, Delaware 19901

OFFICE OF THE
DIRECTOR

Phone: (302) 739-9910
Fax: (302) 739-6157

City of Milford
P.O. Box 159
201 S. Walnut Street
Milford, DE 19963

January 5, 2015

Re: Do you want State Mosquito Control services in your city/town next year?

Dear Sir or Madam:

It's now time for you to think about the start of another mosquito control season, involving our program now inquiring about whether your city or town might again want to receive (or might newly want to receive) the State's mosquito control services for the upcoming year (2015). By mid-March, 2015 the **Delaware Mosquito Control Section** will once again start its statewide spring woodland control program (to control larval mosquitoes breeding in wet woodlands). We'll then be performing from early April into early November our usual range of other statewide efforts to control these pests and public health menaces, which can originate from coastal tidal marshes, freshwater wetlands, and within developed or domestic settings. As such, **we now want to know if your city or town wants to participate in our control program for the upcoming year**, and to receive at no cost to your municipality the State's mosquito control services.

Potential problems if for some reason you choose not to sign up

In addition to our usual concern for mosquito nuisance problems and their quality-of-life and economic impacts, plus our traditional concern for possible transmission to humans or horses of highly virulent Eastern Equine Encephalitis (EEE), this upcoming season also carries the specter for the quite probable continued occurrence of a relatively new mosquito-borne disease problem given much publicity over the past several years, being West Nile Encephalitis (WNE), which also affects both humans and horses. While WNE might not be as sickening or deadly a problem as EEE, it will probably more frequently occur, and still be quite problematic for some people who contract this virus. We are now also on the lookout in Delaware for the newest mosquito-borne disease to hit the country affecting people, being chikungunya that first came to the Western Hemisphere in December, 2013 in the Caribbean, and for which Delaware last summer had a few imported cases of this disease brought back by travelers to the Caribbean and Central or South America, but fortunately not yet any locally-transmitted chikungunya.

It's important to understand that if at this time your municipality chooses not to participate in the Section's program, then in event of your sudden change of mind, perhaps due to intolerable nuisance or disease problems sometime during the upcoming year, the Section might *not* be able to take control actions until all the agreements and procedures contained herein are fulfilled by your city or town. This can then slow down or even preclude the Section's ability to take or deliver timely response actions.

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through Science and Service***

Find us on Facebook <http://www.facebook.com/DelawareFishWildlife>

What you need to do to participate

In order to best serve the public, the Delaware Department of Natural Resources and Environmental Control (DNREC) has developed and adopted the enclosed **Mosquito Control Spray Policy** to govern applications of insecticides, with particular emphasis on the spraying of aerially- or ground-applied adulticides (insecticides to kill adult mosquitoes), and to a lesser degree for aerially- or ground-applied larvicides (insecticides to kill immature mosquitoes in their aquatic stages), within incorporated cities or towns. Aerial spraying of adulticides or larvicides might be done by fixed-wing aircraft or helicopter. Ground application of adulticides will be done by truck-mounted sprayers (a.k.a. "foggers"). Ground application of larvicides might be done by truck-mounted sprayers, backpack sprayers, or hand tosses. We are not requesting your endorsement for our ability to undertake ground applications of larvicides, but we are for all types of aerial spraying for adulticiding or larviciding, as well as for ground applications of adulticides.

The Spray Policy requires annual consent by municipalities before the Section will undertake certain types of needed insecticide spraying within a city or town's jurisdictional boundaries; provides for contact persons to represent both the municipality and the State; allows through a municipality's own devices for identification of human health-related "No-spray zones" for adulticides (if any); and addresses mosquito control in event of a declared public health emergency. This annual consent can be indicated by completing and returning to the Section the enclosed "**Municipality Endorsement**" form. There is also the option on the endorsement form to indicate that your city or town does not wish to participate. We would greatly appreciate your returning the endorsement form in either case. Without receiving the endorsement signed in some manner by the time requested, the Section will assume that your city or town does **not** wish to participate in the upcoming year's control program.

Please note that just by your signing and returning the Municipality Endorsement form it does **not** mean that you then automatically receive **all** of our mosquito control services whenever needed without any further actions on your part. Converse to this and as a specific exception (exclusive of a public health emergency that Mosquito Control might recognize), and as described in our Spray Policy (see Section III-4), **each and every time** that you want Mosquito Control to undertake any adulticide spraying (to control adult mosquitoes), done by us either via ground-based or aerial applications within or over areas in your municipality's jurisdiction, **your municipality's designated Mosquito Control contact person** (as you will have indicated on the Municipality Endorsement form, or alternatively it could be some other appropriate city or town official) **must contact the Mosquito Control Section and request such adulticiding**. Please note that there can be occasions when we might recommend to your city or town that such type of spraying be undertaken (based on technical information that our program collects), and whereby we advise you that your municipality then officially requests that we take such spray actions. However, in many instances it will be more a matter of your first contacting us on an **event-by-event** basis that you want Mosquito Control to adulticide (which could be determined by your municipality as being necessary or desirable for us to undertake via several avenues, such as your hearing from your citizens or constituents about intolerable local mosquito infestations, or by other means or devices that your city or town might have at your disposal).

The Mosquito Control Section also requires all participating municipalities **to prepare and sign a waiver on official city or town letterhead stationery** permitting spray application by low-flying aircraft, in order to comply with Federal Aviation Administration (FAA) regulations. Additionally, we have included a map of your city or town's area that was made from a pertinent section(s) of a USGS 7-1/2" topographic map(s), **for your municipality to delineate its current incorporated boundaries;**

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through Science and Service***

and for you **to also indicate and delineate requests for human health-related adulticide No-spray Zones (if any)** in regard to adulticide aerial spraying, adulticide ground spraying, or both.

Information about the products we use

We have provided a CD in this packet containing insecticide product labels and Material Safety Data Sheets (MSDS) for the insecticides mentioned in our enclosed Spray Policy, which constitute the range of products that we might use this upcoming season. These written materials, although technical in nature, can provide a wealth of information to any concerned individuals regarding an insecticide's safety for human health, wildlife or the environment. And of course we only use EPA-registered products for the purpose at-hand, safely done in full accordance with federally-approved label instructions. Please note that we also send our daily Spray Announcements to you throughout the control season via e-mail. We have also included a copy of our public information handout "Mosquito Control in Delaware," which you can reproduce and use however you see fit.

If your city or town wishes to participate in the Section's mosquito control program next year, please sign and return **by no later than March 6 (Friday), 2015:**

1. the enclosed Municipality Endorsement;
2. an FAA waiver letter giving us permission to aerially spray over your city/town, written on your city/town letterhead;
3. the enclosed USGS topo map, where you have drawn your municipality's current boundaries and indicated any requested No-spray Zones.

Your response should be mailed to: **Delaware Mosquito Control Section, Division of Fish and Wildlife, DNREC, 89 Kings Highway, Dover, DE 19901.** If you have any questions, please call me at 302-739-9917. Thank you for your cooperation.

Sincerely,



William H. Meredith, Ph.D.
Environmental Program Administrator
Delaware Mosquito Control Section

encl: Mosquito Control Spray Policy (for your information)
CD copy of product labels and Material Safety Data Sheets (MSDS)
Municipality Endorsement form (for your signing and returning)
"Mosquito Control in Delaware" (an informational handout)
USGS topo map (for your indicating municipal boundaries and returning)

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Find us on Facebook <http://www.facebook.com/DelawareFishWildlife>

MOSQUITO CONTROL SPRAY POLICY

The Delaware Mosquito Control Section (Division of Fish and Wildlife, Department of Natural Resources and Environmental Control) utilizes an Integrated Pest Management (IPM) program to control mosquitoes in Delaware.

I. CONTROL METHOD PRACTICES AND PRIORITIES

The Department's (DNREC's) first preference for control is to use environmentally-sound source reduction techniques such as Open Marsh Water Management (OMWM) for saltmarsh mosquito control, managing or manipulating water levels in high-level coastal impoundments so as to disrupt the mosquito's life cycle, or stocking of larvivorous fishes in stormwater basins, backyard ornamental ponds, beaver ponds, etc. Such biological controls are effective in controlling an estimated 95 percent of mosquitoes breeding in areas treated with source reduction. The Department has a long-term program for implementing such approaches and is carrying out this program as time and resources permit. However, source reduction techniques are not suitable for some mosquito producing habitats, and in some cases landowners will not permit the Department to undertake the activities needed for source reduction purposes. In such circumstances, other control measures must then be employed.

The second preference for control is selective application of environmentally-compatible, EPA-registered larvicides (products designed to kill mosquitoes while they are still in the concentrated aquatic life stage) applied to the areas where mosquitoes breed. Aerial larviciding by fixed-wing aircraft or helicopters is usually not practiced directly over residential or developed areas, but ground-applied larvicides are frequently used to treat roadside ditches, flooded fields, used tire piles, abandoned swimming pools, woodland pools, median strip swales, lawn puddles, etc. in urban areas or suburban communities. Aerial larviciding by fixed-winged aircraft or helicopter is primarily used to treat freshwater wetlands, flooded woodlands, or coastal salt marshes or tidal wetlands, and is done only as warranted based upon intensive field surveys of larval occurrence, distribution and abundance. To be effective, larvicides must be applied during a very restricted period in the mosquito's aquatic phase of development. However, unfavorable weather or tidal conditions may prevent effective larvicide applications during this period. Larvicides routinely used in the recent past have included organophosphates such as temephos (Abate); but there is now a tendency to move toward third-generation larvicides, including juvenile growth hormone mimics such as methoprene (Altosid), bacterial insecticides such as Bti (VectoBac, Aquabac, Teknar), or spinosad (Natular). We also make some local use of mono-molecular film larvicides (Agnique, Arosurf). These products may be either liquid or granular formulations. All larvicide products are applied according to federal, EPA-approved label specifications, as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

When unfavorable larviciding conditions occur or larviciding has been unsuccessful, it might be necessary to resort to adulticiding (the term used to describe spraying practices to control adult mosquitoes). This type of spraying always occurs via a liquid formulation which

ultimately becomes a fog or vapor. This is not to be confused with larviciding, which is often done via a dry/granular formulation. The adulticides used for the control of pestiferous mosquito species (e.g. organophosphates such as naled, or synthetic pyrethroids such as permethrin, resmethrin or sumithrin, or etofenprox) are EPA-registered insecticides, which (like the larvicides) have demonstrated minimal human health or environmental risks, and as such can be sprayed over or within populated areas. The EPA has determined that all the mosquito control insecticides applied by the Mosquito Control Section can be used to kill mosquitoes without posing unreasonable risks to human health, wildlife or the environment (but this is not to say that there are no risks at all). Once again, all adulticide products are applied according to federally, EPA-approved label specifications, as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Department will keep abreast of any EPA announcements that would suggest that a pesticide of choice (larvicide or adulticide) might present greater risks to human health or the environment than previously thought, and certainly comply with any new EPA requirements affecting the use of individual pesticide products.

When adulticides have to be used, our first choice is to apply them aerially by fixed-wing aircraft or helicopter within or immediately adjacent to mosquito-breeding areas, immediately after the adult mosquitoes have emerged. This tactic is more effective and less expensive than spraying adulticides over widespread areas after the adults have dispersed. However, before newly-emerged adults migrate to upland zones, the time period available to achieve satisfactory control on or near their breeding habitats is even shorter than for larviciding.

In some cases, however, all of the above controls are inadequate to control mosquito populations prior to their movements into developed areas. In such cases, adulticiding in populated areas might have to be done, particularly if nuisance problems become intolerable or there is the chance of spreading mosquito-borne diseases. These adulticides might be applied aerially (by fixed-wing aircraft or helicopter) or by ground using truck-mounted sprayers.

This spray policy primarily addresses the issues of insecticide applications in populated areas, with an emphasis on adulticide use whether by aerial or ground applications. The best available scientific information from the EPA and product manufacturers, plus independent research by the University of Delaware and other sources, leads us to conclude that the products we use, and the manner in which we use them, pose no unreasonable risks to the public (human health), wildlife or the environment. The EPA's product-labeling process reflects the permitted use and safety precautions that pesticide applicators must adhere to. The EPA, in order to designate a product's approved use, has to complete a risk assessment, and has to determine that the final end use possesses extremely low human health or environmental risks when applied in accordance with federally-approved label instructions, as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

II. ADULTICIDING IN POPULATED AREAS

The decision to spray for mosquitoes in populated areas depends upon two forms of evidence indicating that mosquito populations are unacceptably high. The first form is physical evidence obtained in populated areas from professional analyses of adult mosquito light-trap data

(where available) for population abundance and species composition, or upon adult mosquito landing rate counts. Light-trap counts in populated areas exceeding 25 adult females per night of pestiferous species, or landing rate counts averaging three (3) or more adults per minute in populated areas, indicate a nuisance condition substantially lowering the quality-of-life, as well as an enhanced possibility for mosquito-borne disease transmission. Except when there are additional reasons to believe that some mosquito species may be presenting a significant public health risk, no spraying will be conducted unless physical or complaint evidence suggests that spraying is warranted.

The second form of evidence is public complaints in populated areas, resulting in requests for spraying coming from either individuals, civic or homeowners associations, or local city or town officials within incorporated municipalities. To the extent practicable the Section will investigate in the field the need for a spray response based on the physical evidence previously described, collected in manner as can be practicably obtained in the field in consideration of mosquito species-specific diurnal/nocturnal activity patterns, sampling limitations, and staff or equipment logistical constraints. The Mosquito Control Section will decide whether spraying is warranted on the basis of physical evidence alone; or by the merit, as determined by the Section, of a municipal request; or by the number, merit and pattern, as determined by the Section, of citizen complaints directly received by the Section. **[In regard to public requests for adulticide spraying coming from incorporated areas, the Section requires that citizen requests for spraying during an infestation be coordinated and conveyed to the Section by phone through a designated municipal official.]**

III. PROTOCOLS FOR ADULTICIDING INCORPORATED MUNICIPALITIES

1. Mosquito Control Municipality Spray Endorsement

On an annual basis, each incorporated municipality (city or town) desiring aerial adulticiding or aerial larviciding will prepare and sign a waiver on official municipal letterhead permitting spray application of insecticides by low-flying aircraft for treatments to be done by the Delaware Mosquito Control Section or its contractors, in order to comply with Federal Aviation Administration (FAA) regulations.

Before the start of the pest season (by early or mid-March), the municipality will also acknowledge and agree to through a signed endorsement the Mosquito Control Spray Policy's provisions, in order to allow and request the Mosquito Control Section to spray as warranted either all or portions of areas within the municipality's jurisdiction in accordance with this Spray Policy. Return of the signed endorsement requesting spraying will be needed for the Section to spray by fixed-wing aircraft, helicopter, or truck-mounted sprayer or fogger any adulticides or larvicides within a municipality's borders, with exception of aerial spraying of larvicides over coastal tidal wetlands, and with exception of ground application of larvicides to tidal or non-tidal wetlands or other aquatic breeding sites by truck-mounted sprayers or hand application methods. [In regard to these last two situations, approval from municipalities is *not* necessary for the Section to aerially treat coastal tidal wetlands with larvicides, nor to make ground applications of larvicides in tidal or non-tidal wetlands or other aquatic breeding sites.] Without receipt of this

signed endorsement, the Section will assume that the municipality does not want any aerial adulticiding or non-tidal wetland aerial larviciding, nor any truck-mounted spraying of adulticides, within their jurisdiction during the current pest season (mid-March through mid-November). If a municipality does not sign and return the endorsement before start of the pest season, it must be kept in mind that any change of thought resulting in a municipality to then request spraying later in the season cannot be honored until the endorsement is signed and returned to the Section, which in many cases might slow down or even prohibit the Section's ability to provide timely treatment, even in response to severe nuisance problems or potential disease outbreaks.

2. Adulticide No-Spray Requests and No-Spray Zones

The Mosquito Control Section might entertain and possibly grant requests for creation of No-Spray Zones for situations or circumstances where a resident might have substantial medical complications or adverse impacts from exposure or contact with our adulticide sprays. Please note that the possible creation of No-Spray Zones will not apply for domestic honeybee-keeping, organic gardens or crops, endangered or threatened species or other wildlife species of special concern, etc. These other possible concerns or issues have other approaches or mechanisms to try to deal with such possible conflicts and spray exposures. Possible creation and use of No-Spray Zones is for human health purposes only, and also requires some appropriate medical documentation (from a board-certified M.D. or D.O.), submitted by a person requesting an adulticide spray exclusion that substantiates such a request.

The Mosquito Control Section will not spray those municipality areas delineated by the municipality, and agreed to by the Section, to be zones where: 1) no aerial adulticide can be applied; or 2) areas where no ground adulticide can be applied; or 3) areas where neither method of adulticiding can be done. *Residents/property owners within an incorporated municipality desiring not to be included in the aerial or ground adulticide program must make such requests known by contacting their local municipal government officials.* The decision to request or authorize a No-spray Zone within a municipality, and the consequences for doing such, are entirely the responsibility of a municipality's officials. It is anticipated that such No-spray Zones will not be sought by municipalities for non-residents or non-property owners (i.e. not applicable to casual visitors or tourists). The municipality, after accounting for factors given in Section 3 below (for sizes of No-spray Zones), will prepare maps of No-spray Zones that were requested by their citizens and approved by the municipality, and submit these maps to the Mosquito Control Section for review and concurrence. Please note that it is important that the locations and sizes of each No-spray zone within a municipality be identified each and every year, as there will be no automatic carryover of No-spray Zone designations from previous years. The Section will review the submitted maps and inform the municipality in writing (by U.S. Mail or e-mail) of its concurrence. If concurrence cannot be given by the Section for the proposed No-Spray Zones because of technical or logistical problems, the Section will then meet with municipal officials to resolve these problems. If a municipality wishes to modify the No-spray Zone designations after the pest season has started (i.e. after mid-March), the municipality may request such modification from the Section, but should understand that the Section will need at least two weeks advance notice in order to comply with the requested modification.

With exception of a declared public health emergency by appropriate State-level agencies, it must be understood that within a municipality the decision to adulticide for mosquito control purposes or not to spray is totally up to municipal officials, who have to weigh several factors in making this decision, to then possibly be followed by requesting the Mosquito Control Section's treatment services. These officials have to consider the impacts of intolerably high mosquito populations on quality-of-life factors and local economies, along with the possibility of mosquito-borne disease transmission, weighed against very negligible risks to human health or the environment when using EPA-registered adulticides in manner prescribed by the EPA, plus perhaps aircraft noise issues occasionally associated with aerial applications. If a resident or visitor to an incorporated city or town has a problem with this municipal decision, their complaint or grievance should be taken up with the municipality, not with the Mosquito Control Section. If a resident or visitor's complaint or problem involves aircraft noise or other operational issues for how spraying was done, exclusive of concerns or issues dealing with pesticide exposure, the municipality should, in consultation with the Mosquito Control Section, attempt to directly address these issues with the resident or visitor making such complaint. If the complaint or problem concerns pesticide exposure, which in many cases is quite unavoidable in responding to a municipality's request for adulticiding over or within populated areas, the Mosquito Control Section will assist a municipality in technically addressing a complaint or issue raised by a resident or visitor. However, it must be kept in mind that the Section applied the adulticide at the municipality's request, in conjunction with the Section also independently investigating to the extent practicable that the adulticiding was warranted.

3. Sizes of No-Spray Zones

Because of technical constraints often associated with the nature and distances of adulticide spray drift (which is actually both a beneficial and unavoidable aspect of mosquito control adulticiding), a No-spray Zone for aerial adulticiding could involve an area having a radius of about 1500 feet outward from or around the residence in question (amounting to about 162.5 acres in size), and a No-spray Zone for ground spraying could involve an area having a radius of about 500 feet outward from or around the residence in question (amounting to about 18.1 acres in size). In almost all cases it will probably **not** be necessary for the No-spray Zone to be much larger than these minimums (which are created to avoid treating a residence where no spraying has been requested), but the final determination of the size of the No-spray Zone will be made by the Section on a case-by-case basis. In some or even many cases depending upon wind speed, wind direction, and other factors, it might still be possible at Mosquito Control's sole discretion to adulticide at distances less than what's described above.

It must also be recognized by the local municipalities that certain configurations or densities of No-spray Zones might also prohibit adulticide spraying to an extent greater than the mere summation of individual No-spray Zones. It must also be kept in mind that in many locations the creation of a No-spray Zone for an individual residence will preclude adulticide treatment for many neighbors or nearby residences who desire pest relief -- this situation is a dilemma that the local municipality must resolve.

4. Requests for Adulticide Spraying within Municipalities

A city or town each year signing and returning an annual endorsement form does **not** mean that a municipality then automatically receives **all** of our mosquito control services whenever needed without any further actions on the city's or town's part. Converse to this and as a specific exception (and exclusive of a public health emergency that Mosquito Control might recognize), **each and every time** that a municipality wants Mosquito Control to undertake any **adulticide** spraying (to control adult mosquitoes), done by Mosquito Control either via ground-based or aerial applications within or over areas under a municipality's jurisdiction, **then the municipality's designated Mosquito Control contact person** (as indicated by the city or town on the endorsement form), or some other appropriate city or town official, **must first contact the Mosquito Control Section and request such adulticiding**. Please note that there can be occasions when Mosquito Control might recommend to a city or town that such type of spraying be undertaken (based on technical information that our program collects) and whereby we advise that the municipality then officially requests that we take such spray actions, but in many instances it will be more a matter of the city or town first contacting us on an **event-by-event** basis to request that Mosquito Control performs some adulticide spraying (which could be determined by a city or town as being necessary or desirable for Mosquito Control to undertake via a municipality hearing from its citizens or constituents about intolerable local mosquito infestations, or by other means or devices that a city or town might have at its disposal).

For cities or towns in New Castle County and the northern half of Kent County, with the latter to involve all areas north of Camden-Wyoming on an east-west line that essentially includes all areas from south Dover north, extending on the west side from north of Marydel essentially along Rt. 8 into Dover and then eastward out to areas just north of Pickering Beach, the number to call is our **Glasgow office at 302-836-2555**. For cities or towns in all of the remainder of Kent County in its southern portions, including all of Camden-Wyoming, plus Marydel on the west and Pickering Beach on the east, along with all of Sussex County too, the number to call is our **Milford office at 302-422-1512**. Please refer to Mosquito Control's webpage on the DNREC website for more detailed delineations of the geographic jurisdictions for our Glasgow and Milford offices, at <http://www.dnrec.delaware.gov/fw/Services/Pages/MosquitoSection.aspx>.

Additionally, the Mosquito Control Section now provides the public and municipal officials an on-line portal to submit mosquito complaints and requests for control services, at <http://www.dnrec.delaware.gov/fw/mosquito/Pages/ServiceRequestForm.aspx>. Depending upon if an on-line request comes from a party living within an incorporated municipality or not, Mosquito Control's response might then be different in accordance with what's contained in this policy for residents of incorporated municipalities versus residents in unincorporated areas.

It should be emphasized that any requests for mosquito control spraying coming from residents or visitors in municipalities should **not** be made directly to the Mosquito Control Section, but rather should first go to the appropriate municipal official, such that the city or town can then decide based upon several types of possible inputs as to whether the city or town will

then request our Section's control services. The Mosquito Control Section will not respond to such requests if coming to us directly from a resident or visitor in a municipality (although via various means we might still receive such requests), but rather will tell the caller upon hearing of their problem to now contact their appropriate municipal official. A resident or visitor experiencing mosquito problems in unincorporated areas of the counties can directly call the Mosquito Control Section or utilize the on-line service request portal, done both for our awareness and possible follow-up control actions.

5. Advance Notification of Spray

When there is a good probability that adulticiding operations are imminent within a municipality, to the extent practicable for sake of public notification the Mosquito Control Section will, for each adulticiding event (whether done by air or truck), do the following:

- 1) if the city or town has subscribed to our Mosquito Control listserver, then an appropriate municipal official will receive an e-mailed daily spray announcement, sent in advance of the spray event;
- 2) place a phone spraying announcement on a Mosquito Control Section recorder that citizens can call toll-free at 1-800-338-8181 to find out about the status of spraying;
- 3) on a statewide basis, contact about 15 local radio stations by e-mail to provide a daily spray announcement, which the radio stations may or may not choose to broadcast;
- 4) post a similar spraying announcement on the Mosquito Control Section's (Division of Fish and Wildlife's) DNREC webpage, which the public can access via the Internet at <http://www.dnrec.delaware.gov/fw/Lists/Mosquito%20Spraying%20Announcements/calendar.aspx>.
- 5) for anybody who wants to personally receive via e-mail up-to-date spraying announcements, they can subscribe to a Mosquito Control listserver that will automatically disseminate such announcements to them via the Internet (simultaneously done in conjunction with posting these spraying announcements on Mosquito Control's DNREC webpage) -- the sign-up for this listserver can be accomplished by accessing the Mosquito Control webpage address given in item #4 above;
- 6) finally, immediately prior to aerial applications of adulticides, if possible the treatment aircraft will briefly circle over pertinent areas within a municipality, to provide final notification or signal in the field of intention to spray.

In addition to the advance spray notification measures described above, beginning in 2015 Mosquito Control will implement a new Spray Zone Notification System (SZNS). This system will be used to convey to the general public where and when *aerial* spraying (for adulticides or larvicides) and truck-mounted fogging (for ground-applied adulticides) is planned. To accomplish this, Mosquito Control has partitioned the state into numerical spray zones which are geographic blocks roughly 4.3 miles x 3.4 miles in dimension, or about 14.6 square miles in size

(essentially about one-quarter of a USGS 7.5-minute quad map). The SZNS will consist of two key components. First, an integrative, on-line statewide map will assist the public in identifying their particular zones of interest. Additionally, this statewide map will be updated on a daily basis to display those zones where mosquito control spraying is planned for that day. Second, for good communication purposes, the SZNS will integrate the Delaware Notification Service (DNS) application in order to then broadcast via text, e-mail or phone message when spray activity is scheduled for or within a particular zone. The goal of the SZNS is to provide a tool where the public can identify their spray zone(s) of interest, and then be quickly notified when spray activity is planned within that zone(s). Individuals interested in signing up for this service or viewing the map can do so by visiting <http://www.dnrec.delaware.gov/fw/mosquito/Pages/MC-Spray-Info.aspx>. The link to the SZNS should be available on this webpage by late winter, 2015.

Any additional notification of intent to spray is up to the participating municipalities to perform or offer, but it is probable that giving additional public notice going beyond what the Mosquito Control Section presently performs would not be very feasible or practicable to do.

To the extent feasible and practicable, with exceptions for public health emergencies or when contending with unsettled weather conditions for spraying, such advance notification will be issued by the Mosquito Control Section at least two (2) hours before any adulticide spraying begins, and be done for every adulticiding effort within a municipality's jurisdiction.

The advance notification procedure for spraying described above will now also be followed for every *aerial* larviciding effort within a municipality's jurisdiction (in the past, such notice was routinely provided for spring woodland control aerial larviciding and other aerial treatments of freshwater wetlands, but was not done for aerial larviciding of coastal marshes). While aerial larviciding operations in treating wetland breeding sites usually do not involve spraying directly over people, the unfortunate terrorism events of September 11, 2001 have now greatly increased the public's concern and anxiety about possible bioterrorism incidents, which could occur (at least in theory) via pesticide spray delivery systems, so it is now prudent to ensure that municipal officials are fully aware in advance of any-and-all adulticiding (whether done by air or truck) or aerial larviciding within their jurisdictions. What will not be publicly announced will be truck-based spraying of larvicides (e.g. along roadside ditches) or hand-applied or back-pack larviciding done on foot (e.g. when treating localized breeding sites in small pocket marshes or in residential areas), since these types of activities are: 1) sometimes numerous and scattered; 2) are often not determined to be necessary until actually on-site; and 3) because of their carefully targeted applications to localized surface water (as opposed to the widespread spraying of adulticide aerosols over uplands or marshes by aircraft or truck, or the relatively widespread aerial spraying of larvicides over wetlands), such applications hardly generate any public awareness, concern or comment.

For sake of good communications, and to help other agencies respond to possible public inquiries about mosquito control spraying activities, advance notifications of spraying are also provided by the Mosquito Control Section via e-mail or telefax to the Delaware Emergency Management Agency (DEMA), to each county's 911 Emergency Call Center, and to the

Delaware Department of Agriculture's (DDA) Pesticide Compliance Section and to the DDA's State Apiarist. The preference is to now provide such notification via e-mails.

Additionally, by a working agreement adopted in 2003 among the Mosquito Control Section, the DDA's State Apiarist, and the Delaware Beekeeping Association (DBA), for all aerial adulticide spray announcements the Mosquito Control Section now indicates via coded grid-block numbers (for a special map of Delaware) where aerial adulticide spraying activities are intended to occur. By the tri-party working agreement, it is incumbent upon domestic honeybee keepers to assume responsibility for their keeping up-to-date and for their being aware about locations where aerial adulticiding is soon intended, achieved by the beekeepers taking advantage of the various spray announcement devices mentioned above (i.e. toll-free phone calls, radio announcements, webpage postings, listserver e-mails). If a domestic honeybee keeper has a problem with where some spraying will soon occur, the beekeeper should then inform the Mosquito Control Section in timely manner about such concerns, so that appropriate spray measures can be taken by Mosquito Control to avoid or minimize any adverse impacts to beekeeping operations. Since domestic honeybee keepers frequently move their bee colonies around in addressing crop pollination needs, and since the need for mosquito control spraying can be quite geographically variable and occur with relatively short notice, it is important that good two-way communications be maintained between Mosquito Control and domestic honeybee keepers, which adherence to the working agreement's protocols is intended to provide. The DDA State Apiarist distributes to the DBA for awareness by DBA members copies of the working agreement and the coded grid map. It's also important to note that the 2003 working agreement is now undergoing some revision and updating during the winter and spring of 2015, involving Mosquito Control, the DDA State Apiarist, DDA's Pesticide Compliance Section, and Delaware's registered beekeepers, which hopefully will be completed by May, 2015.

6. Time of Spraying

To the extent feasible and practicable and in consideration of product label requirements, adulticide spraying will be conducted at times which minimize direct human exposure (preferably early morning or late evening for aerial applications). During the summer peak "tourist season" from the Friday evening immediately before the Memorial Day weekend through the Monday evening of Labor Day weekend, aerial adulticide applications in the "coastal resort strip" from Lewes to Fenwick Island may be made on weekdays in the morning from 5:30 to 8:30 a.m. and in the evenings from 6:00 to 9:00 p.m., excluding the weekend that is defined here as Friday evenings through Monday mornings (and through Monday evenings on holiday Mondays of 3-day "weekends"). The "coastal resort strip" itself may be viewed as extending landward of the Atlantic Ocean coastline from Lewes to Fenwick Island a distance of up to about 5 miles inland, as well as about 2 miles landward of the primary bayshores composing the Inland Bays. Exceptions to not aerially adulticiding the coastal resort strip between Friday evening and Monday morning can occur at special request (in writing) from a municipality, or in event that inclement weather or other circumstances prevent timely, effective adulticiding at other times, whereby only the Friday evening to Monday morning weekend period is left for timely, effective spray application. Aerial adulticide applications will only be made when weather conditions comply with product-label spraying requirements (e.g. clear visibility and winds no more than 10

mph). Outside the coastal resort strip area, the weekend exclusion for adulticide spraying will not apply, but the daily time slots for spraying will still apply. An exception to the desired early morning and evening times for aerial spraying can occur when unusual weather conditions (e.g. fog, excessive wind, temperature inversions) preclude applications at the desired times, and yet the mosquito situation is so bad that spraying must still be performed that day, in which case adulticide spraying might occur during the day between early morning and late evening if not in violation of any product label conditions. Ground applications of adulticides statewide may generally be done from early evening through the night into early morning on weekdays or weekends, except that municipalities within the coastal resort strip from Lewes to Fenwick Island during the summer peak "tourist season" will generally not receive ground adulticide applications on the weekends (defined as above); municipalities within the coastal resort strip still might be ground-sprayed on weekends at special request (in writing) of a municipality, or if inclement weather or other circumstances prevent timely, effective ground applications at other times. Ground applications will only be done when weather conditions comply with product-label spraying requirements.

7. Adulticides Used

The Mosquito Control Section may aerially apply by twin-engine aircraft or helicopter at application rates up to those indicated below one or more of the following adulticides, with the choice of which product to use per spray event dependent upon the problem species to treat and other technical factors or local considerations:

- 1) Dibrom Concentrate (naled) applied at 0.10 lbs. AI/A, applied in ULV concentrated formulation of 1.0 oz./A, or
- 2) Trumpet EC (naled) applied at 0.10 lbs. AI/A, applied in ULV concentrated formulation of 1.2 oz./A, or
- 3) Scourge 18%+54% MF (resmethrin + PBO) applied at 0.007 lbs. resmethrin AI/A + 0.021 lbs. PBO AI/A, mixed with mineral oil, applied at a total volume of 3 oz./A (0.6 oz. Scourge 18-54/A plus 2.4 oz. mineral oil/A), or
- 4) Anvil 10+10 (sumithrin + PBO) applied at 0.0036 lbs. AI/A, applied in ULV concentrated formulation of 0.62 oz./A, or
- 5) Permanone 31-66 (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or
- 6) Biomist 31+66 ULV (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or
- 7) Kontrol 31-67 Concentrate (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or

- 8) Evoluer 30-30 ULV (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or
- 9) Aqualuer 20-20 (permethrin + PBO) applied at 0.0035 lbs. AI/A applied in ULV concentrated formulation.
- 10) Zenivex E20 (etofenprox) applied at 0.00175-0.0070 lbs. AI/A applied ULV in undiluted, concentrated formulation; or mixed with mineral oil and also applied ULV.

The following adulticides may be ground applied at application rates up to those indicated by truck-mounted London Fog ULV (Ultra Low Volume) ground foggers:

- 1) Scourge 18%+54% MF (resmethrin + PBO) applied at a rate up to 0.007 lbs. resmethrin AI/A + 0.021 lbs. PBO AI/A, mixed with mineral oil, applied at a total volume of 3 oz./A (0.6 oz. Scourge 18-54/A plus 2.4 oz. mineral oil/A), or
- 2) Anvil 10+10 (sumithrin + PBO) applied at 0.0036 lbs. AI/A, mixed with mineral oil, applied at a total volume of 1.24 oz./A (0.62 oz./A Anvil 10+10 plus 0.62 oz. mineral oil/A), or
- 3) Permanone 31-66 (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or
- 4) Biomist 31+66 ULV (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or
- 5) Kontrol 31-67 Concentrate (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or
- 6) Evoluer 30-30 ULV (permethrin + PBO) applied at 0.0035 lbs. AI/A, mixed with mineral oil applied in ULV concentrated formulation, or
- 7) Aqualuer 20-20 (permethrin + PBO) applied at 0.0035 lbs. AI/A, applied in ULV concentrated formulation.
- 8) Zenivex E20 (etofenprox) applied at 0.00175-0.0070 lbs. AI/A applied ULV in undiluted, concentrated formulation; or mixed with mineral oil and also applied ULV.
- 9) Duet (prallethrin + sumithrin + PBO) applied at 0.0003-0.0008 lbs. AI/A for prallethrin component, plus 0.0012-0.0036 lbs. AI/A for sumithrin component, both applied as a packaged mix in ULV concentrated formulation.

The Mosquito Control Section will make accessible via CD to each incorporated municipality a copy of each adulticide's product label and its accompanying Material Safety Data Sheet (MSDS), provided for their informational purposes as part of annual Spray Policy packets sent to each municipality.

8. Larvicides Used

The Mosquito Control Section may apply at application rates up to those indicated one or more of the following larvicides aurally by twin-engine aircraft or helicopter, or from the ground using truck-mounted sprayers or hand application methods, with the choice of which product to use per spray event dependent upon the problem species to treat and other technical factors or local considerations:

- 1) Abate 4E (temephos) applied at 0.048 lbs. AI/A, applied at 1.5 oz. Abate 4E/A mixed with water to achieve a final application volume of 64 oz./A, or
- 2) Abate 5BG (temephos) applied at 0.1 lbs. AI/A, applied in granular formulation at 2 lbs./A, or
- 3) Abate 2BG (temephos) applied at 0.1 lbs. AI/A, applied in granular formulation at 5 lbs./A, or
- 4) VectoBac 12AS (Bti) applied at 32 oz./A, or
- 5) VectoBac GS or G (Bti) applied in granular formulation at 10 lbs./A, or
- 6) Aquabac XT (Bti) applied at 32 oz./A, or
- 7) Aquabac 200G (Bti) applied in granular formulation at 10 lbs./A, or
- 8) Teknar SC (Bti) applied at 32 oz./A, or
- 9) Teknar G (Bti) applied in granular formulation at 10 lbs./A, or
- 10) Altosid Liquid Larvicide (5% methoprene) applied at 0.013 lbs. AI/A, applied at 4 oz./A mixed with water to achieve a final application volume of 32 oz./A, or
- 11) Altosid Liquid Concentrate (20% methoprene) applied at 0.013 lbs. AI/A, applied at 1 oz./A mixed with water to achieve a final application volume of 32 oz./A, or
- 12) Altosid Pellets (methoprene) applied at 10 lbs./A, or
- 13) Altosid SBG (methoprene) applied in granular formulation at 10 lbs./A, or
- 14) Altosid Briquets (methoprene) applied at one briquet/100 sq. ft., or
- 15) Altosid XR Extended Residual Briquets (methoprene) applied at one briquet/200 sq. ft., or

- 16) Altosid XR-G (methoprene) applied in granular formulation up to 20 lbs./A, or
- 17) VectoLex CG (Bacillus sphaericus) applied in granular formulation at 20 lbs./A, or
- 18) Agnique MMF (nonionic surfactant) applied at 3 oz/1000 sq. ft., or
- 19) Agnique MMF G (nonionic surfactant) applied in granular formulation up to 21.5 lbs./A, or
- 20) Arosurf (nonionic surfactant) applied at 3 oz/1000 sq. ft., or
- 21) Natular 2EC (spinosad) applied at up to 2.8 oz/A, or
- 22) Natular G (spinosad) applied up to 9 lbs./A, or
- 23) Natular G30 (spinosad) applied in granular formulation up to 20 lbs./A, or
- 24) Vectolex WSP (Bacillus sphaericus) applied at 1 pouch/50 sq. ft.

The Mosquito Control Section will make accessible via CD to each incorporated municipality a copy of each larvicide's product label and its accompanying Material Safety Data Sheet (MSDS), provided for their informational purposes as part of annual Spray Policy packets sent to each municipality.

9. Public Health Emergencies

In the event of an Eastern Equine Encephalitis (EEE), St. Louis Encephalitis (SLE), or West Nile Encephalitis (WNE) public health emergency, jointly recognized by DNREC and the Delaware Division of Public Health, aerial or ground adulticiding might be carried out over municipalities that have not signed the Spray Policy endorsement agreeing to permit such activities, as well as spraying also possibly occurring in designated No-spray zones, ceasing when the public health emergency is terminated. In event of a public health emergency, general public health considerations to prevent or lessen serious disease problems must take precedent over individual desires to avoid a short-term exposure to an insecticide that is registered by the EPA for application over populated areas, with knowledge that such exposures will of course take place but which are of minimum risk to human health and safety. The Section will try to continue to observe to the extent feasible and practicable its policies on advance notification, timing of spraying, and type of insecticides used, but public health concerns during emergencies may necessitate deviations from these protocols, such as for application timing, or for treating No-spray Zones, etc.

IV. PROTOCOLS FOR ADULTICIDING UNINCORPORATED AREAS

The spraying of adulticides by aerial or ground application in unincorporated areas does not require a signed Mosquito Control Spray Policy endorsement such as is needed prior to spraying incorporated municipalities. Because of insurmountable practical and logistical problems in

communicating with individual citizens or civic associations in unincorporated areas, the Mosquito Control Section must assume that timely and safe adulticiding is allowable and desired whenever pest populations become excessive or mosquito-borne disease potentially threatens. The Section will determine when and where adulticiding is necessary, based on physical evidence and in conjunction with complaints from individual citizens or civic or homeowners associations. Similarly, the Section's ability to use larvicides, whether applied aerially or by ground, will not require any signed endorsements for when spraying is done in unincorporated areas.

Requests for no spraying of ground or aerially-applied adulticides in unincorporated areas can be made by individual residents or property owners by directly contacting the Mosquito Control Section, to request a form for applying for No-spray Zone consideration, which after completion should then be returned to the Mosquito Control Section at the address indicated on the form (note: to request the application form, contact the Mosquito Control Section at 302-739-9917; or write to Delaware Mosquito Control Section, Division of Fish and Wildlife, DNREC, 89 Kings Highway, Dover, DE. 19901; or you can download a copy of the form over the Internet, by accessing at <http://www.dnrec.delaware.gov/fw/mosquito/Pages/MC-No-Spray-Request.aspx>). Please note that as with incorporated areas, the possible creation of No-Spray Zones will not apply for domestic honeybee-keeping, organic gardens or crops, endangered or threatened species or other wildlife species of special concern, etc. These other possible concerns or issues have other approaches or mechanisms to try to deal with such possible conflicts and spray exposures. Possible creation and use of No-Spray Zones is for human health purposes only, and also requires some appropriate medical documentation (from a board-certified M.D. or D.O.), submitted by a person requesting adulticide spray exclusion that substantiates such a request.

Please note that in situations in unincorporated areas where a local civic or homeowners association (HOA) exists that encompasses a residence for which a No-spray Zone designation is sought, the Mosquito Control Section will then encourage and expect the No-spray Zone request form to be submitted by an appropriate official or representative of the local civic or homeowners association, done on behalf of the resident making the No-spray Zone request, with the resident helping to provide the appropriate official or representative for purposes of form completion the human health-related reason(s) or rationale behind the No-spray Zone request and other pertinent personal information. Adhering wherever possible to this protocol will help ensure that the residents in a neighborhood or development represented by a local civic or homeowners association will then be aware of the No-spray Zone request and its possible ramifications; and via the request form's submission by an appropriate official or representative, that the local civic or homeowners association is then in agreement or concurrence with a resident's request for a No-spray Zone. This should then also assist a local civic or homeowners association to provide notice and explanations to their association's members who might then not receive pest relief services, resulting from a neighbor of theirs requesting and being granted a No-spray Zone designation.

All such requests for No-spray Zones must be made prior to March 1 for each pest season and must be made in writing using the approved form, which will request information such as name, address, and telephone number of the resident or property owner requesting no spraying, a

map indicating the location of the property not to be adulticided, and the human health-related reason(s) for requesting the No-spray Zone. The names, addresses and phone numbers of all residents or property owners that adjacently border a property where no spraying is requested must also be submitted by a person requesting a No-spray Zone. This will assist the Mosquito Control Section in evaluating the No-spray Zone request and in providing explanations to at least some of the people who might then not receive pest relief services, resulting from their neighbor being granted a No-spray Zone designation. Individuals must indicate whether they are requesting no aerially-applied adulticides, no ground-applied adulticides, or both. Similar as with No-spray Zones established within incorporated municipalities, and because of the nature and distances of adulticide spray drift (which is actually both a beneficial and unavoidable aspect of mosquito control adulticiding), the size of such zones for aerial adulticiding must involve an area having a radius of about 1500 feet outward from or around the residence in question (amounting to about 162.5 acres in size), and a No-spray zone for ground spraying must involve an area having a radius of about 500 feet outward from or around the residence in question (amounting to about 18.1 acres in size). In some cases depending upon wind speed, wind direction, and other factors, it might still be possible to adulticide at distances less than what's described above. If the entire requested No-spray Zone all fits inside the property of the person requesting such designation, then submitting information about neighboring residents or property owners will not be required.

This request for no spraying must be submitted each and every year using the approved form, as there will be no automatic carryover of No-spray Zone requests from year to year. If an individual citizen or a local civic or homeowners association in an unincorporated area wishes to request a No-spray Zone after the pest season has started (i.e. after mid-March), such requests may be submitted in writing to the Section similar to requests made prior to mid-March. However, due to the logistical problems in changing operational spraying procedures and advising contractors of revisions, the requester should understand that the Section will need at least two weeks advance notice in order to consider and review the request and to initiate procedural changes (if any).

Based upon the written requests for no spraying of adulticides, the Section will determine the need for and boundaries of No-spray Zones and will notify the individual or a local civic or homeowners association of the Section's decision. When possible, the Section prefers that individual requests for no spraying in areas or neighborhoods that have local civic or homeowners associations be coordinated and conveyed in writing to the Section by the association prior to mid-March; however, individual requests can still be presented to the Section.

The application of adulticides in unincorporated areas will be similar to what is done in incorporated municipalities regarding times of spraying, insecticides used, and public health emergencies. However, in regard to providing advance notification of each spraying event, and because of insurmountable logistical problems, telephone calls or other personal contacts by the Section to individual citizens or local civic or homeowners associations will *not* be made. Nonetheless, concerned citizens can still inquire about the Section's intentions to spray by contacting, on a daily basis, the toll-free phone recording at 1-800-338-8181 or the Section's

webpage posting of daily spray announcements at <http://www.dnrec.delaware.gov/fw/Lists/Mosquito%20Spraying%20Announcements/calendar.aspx>, or they can subscribe to the Section's listserver to automatically receive such spray announcements via the Internet at <http://www.dnrec.delaware.gov/Pages/DNRECLists.aspx>, and they can also be aware of pending spray operations by listening to any spray announcements that may be broadcast by local radio stations.

V. RESOLVING CONFLICTS IN UNINCORPORATED AREAS BETWEEN PERSONS REQUESTING NO SPRAYING vs. PERSONS WANTING PEST RELIEF VIA ADULTICIDING

Whenever possible, persons living in unincorporated areas who do not desire adulticiding will try to be accommodated by the Mosquito Control Section. However, conflicts sometimes arise when one or more nearby neighbors demand adulticiding for pest relief. Such conflict can arise either during the consideration or designation process for a human health-related No-spray Zone or after a human health-related No-spray Zone has been designated. When such conflict arises, the Section will attempt to resolve the disputes on a case-by-case basis, resulting in either continuation or resumption of adulticiding measures, modification of adulticiding measures, or stopping or continued cessation of adulticiding measures. Wherever local civic or homeowners associations exist that encompass a residence for which a No-spray Zone might be sought, the Mosquito Control Section will then also look to an appropriate association governing board or an association official to help make the determination whether to grant a No-spray Zone designation. Having a local civic or homeowners association actually submit the human health-related No-spray Zone request form on a resident's behalf also then indicates to the Mosquito Control Section that the ramifications of possibly not treating anywhere from about 18.1- 162.5 acres within a neighborhood or development have been examined by the local association, and that the association is in agreement or concurrence to go forward in accommodating a human health-related No-spray Zone. Value judgments of public health, safety, comfort and quality-of-life must be weighed against the health or other concerns of an individual requesting no spraying, with such judgments made either by the Mosquito Control Section, or by a local civic or homeowners association wherever such exist that pertinently apply. Individuals with special medical problems possibly attributed to pesticide exposure can obtain a physician's written opinion acknowledging pesticide sensitivity, coming from a board-certified M.D. or D.O., and such people might be given special consideration by the Section to the extent feasible and practicable, with hopefully similar consideration also extended by a local civic or homeowners association wherever such exist that pertinently apply.

The Section will try to resolve all conflicts in a manner acceptable to all parties, including if requested helping a local civic or homeowners association also resolve such conflicts, but public health concerns possibly affecting many people (e.g. arbovirus encephalitis outbreaks) must take precedence over other considerations. For most individuals having health-related concerns involving adulticide exposures, such people can satisfactorily minimize their concerns by paying attention to the advance spray notification process, followed by their taking common-sense measures to minimize or avoid exposure (e.g. temporarily leave the spraying area, temporarily moving inside, temporarily closing windows and doors, etc.). However, please note

that given the safety of the types of EPA-registered adulticides or larvicides that the Section uses, and how these products are then applied with very minimal human health risks, then for a vast majority of people no special precautions need to be taken to avoid exposure to the Section's operational spraying

VI. POLICY APPLICABILITY – TYPES OF SPRAY APPLICATIONS

This policy's requirements to request participation of incorporated cities or towns, and to give advance notice of intention to spray in incorporated cities or towns, is applicable to aerial applications of adulticides, as well as for ground application of adulticides when delivered by truck-mounted sprayers. Participatory consent by cities or towns is also needed for aerial applications of larvicides during the spring woodland control program or for aerial larviciding of other freshwater wetlands; but such participatory consent from municipalities is not needed for aerial larviciding over coastal tidal wetlands, nor for the ground application of larvicides by truck-mounted sprayers or hand or back-pack application methods. However, advance spraying notice of all aerial larviciding within municipalities will be given. This policy's requirements for the Mosquito Control Section to give advance notice to cities or towns of intention to spray is not applicable to ground applications of larvicides when delivered by truck-mounted sprayers or on-foot by back-pack sprayer, hand-held sprayer, or hand toss. [It must be noted that if a municipality desires only on-foot applications of insecticides that are done by hand or back-pack, and does not agree to aerial applications of insecticides nor to adulticide applications by truck-mounted sprayers, in many cases and locations it will then not be possible to provide satisfactory nuisance control or disease prevention.]

The spray policy is also applicable to insecticide applications that are made for mosquito control in unincorporated areas, in regard to many needs, matters or practices that are similar to what occurs in cities or towns; as well as providing some protocols that are specific or unique for adulticiding in unincorporated areas, where municipal government interactions are not possible nor applicable. Finally, requirements to follow this spray policy can be waived by DNREC during a declared public health emergency (see Section III-8).

VII. GENERAL EMERGENCY WAIVERS

The Department, for exceptional circumstances or during emergencies, may modify this policy on a case-by-case basis.

VIII. POLICY ADOPTION

This "Mosquito Control Spray Policy" is adopted as the Mosquito Control Section's (Delaware Department of Natural Resources and Environmental Control) management policy, and supersedes any previous written or unwritten policies.

First formulated and adopted in February, 1990.

Latest revision ---December 19, 2014

MUNICIPALITY ENDORSEMENT

MOSQUITO CONTROL SPRAY POLICY

- A. I hereby certify that the City or Town of _____ has received from the Delaware Mosquito Control Section (DNREC) for the year **2015** a copy of the Mosquito Control Spray Policy, along with a CD electronically containing product labels and Material Safety Data Sheets for the insecticides mentioned in the Spray Policy.
- B. On behalf of the City or Town in regard to participating in and permitting the Section's mosquito control spray activities to occur this year (from March through mid-November) within our jurisdictional boundaries: (please check one):

_____ I agree to allow the Mosquito Control Section to undertake its spraying activities within the city or town, to be done in adherence to and per provisions of the Mosquito Control Spray Policy.

OR

_____ I do not request the Section's mosquito control spray services this year within city or town boundaries.

- C. In event of agreeing to participate and permit mosquito control activities within the city or town, I have enclosed: 1) a USGS topographic map showing the current municipal boundaries, as well as identifying and delineating on the map human health-related No-spray Zones (if any); 2) a signed waiver prepared on official city or town letterhead permitting spray applications by low-flying aircraft.
- D. In event of agreeing to participate and permit mosquito control spraying within the city or town, the municipal contact person is _____ at phone number _____ and e-mail address _____.
As a second municipal contact, his/her alternate is _____ at phone number _____ and e-mail address _____.
- E. Please note that the Mosquito Control Section will send to you via e-mail throughout the control season our daily Spray Announcements.

(Signature of city/town official)

(Title of city/town official)

(Date)



MOSQUITO CONTROL IN DELAWARE

Why does the State need to control mosquitoes?

- ✖ To reduce intolerable nuisance problems that lower quality-of-life.
- ✖ To prevent outbreaks of mosquito-borne diseases such as encephalitis.
- ✖ To lessen impacts to local economies based on animal husbandry, tourism or outdoor recreation.

How does the State control mosquitoes?

Mosquito control in Delaware is performed statewide by the Delaware Mosquito Control Section, an agency in the Division of Fish and Wildlife, Department of Natural Resources and Environmental Control. The Section has a three-tiered approach for controlling mosquitoes that integrates best management practices to reduce insecticide use.

- ✖ The first-tier uses various source reduction methods in the areas where mosquitoes breed by selectively excavating ponds or ditches in salt marshes to provide habitat for native fishes that eat mosquito larvae (a practice called Open Marsh Water Management); or by managing water levels in impounded coastal marshes to reduce breeding sites; or by seasonally stocking fish that eat mosquito larvae in freshwater wetland ponds or stormwater management basins.
- ✖ The second-tier treats wetlands, standing water and other mosquito breeding areas with insecticides to stop larval mosquitoes from emerging as adults.
- ✖ The third-tier applies insecticides to control adult mosquitoes, which might be necessary to do over or within populated areas as a control measure of last resort. This method is only used when the first two approaches fail to achieve satisfactory control.

Applications of larvicides or adulticides are done by aircraft or truck-mounted sprayers, and larvicides are sometimes applied by backpack sprayers or hand tosses. All spraying is done in conjunction with a vigilant mosquito surveillance and monitoring program, to ensure that insecticides are sprayed only when and where needed. In combination with non-insecticide source reduction methods, this approach forms a modern, integrated pest management program for controlling Delaware's mosquito populations.

How does the State decide when insecticide applications are necessary?

There are two considerations for determining when mosquito populations are of enough concern to require control measures. The first consideration assesses mosquito abundance through the use of larval dipping counts, adult light-trap collections, or adult landing rate counts, as well as by the number and location of public nuisance complaints. If the numbers of mosquitoes observed exceed established threshold criteria whereby nuisance or quality-of-life problems will soon occur or are actually happening, then control measures are implemented.

The second consideration monitors the presence of mosquito-borne disease viruses, either by directly testing mosquitoes themselves, or by testing blood samples from sentinel chickens for evidence of virus transmission. The field samples are collected by the Mosquito Control Section using a statewide network of 26 surveillance stations, with virus testing done by the Delaware Division of Public Health Laboratory. If disease virus is detected, this information is combined with assessments of mosquito population abundance, to either change threshold criteria for taking control actions, or to indicate geographic areas of special concern.

What insecticides does the State use?

When it is necessary to use insecticides, only products registered by the U.S. Environmental Protection Agency (USEPA) are used, which must be applied in accordance with all USEPA-approved label instructions. The use of insecticides in Delaware is overseen by the Delaware Department of Agriculture's Pesticide Compliance Section.

Currently, five types of insecticides are used for mosquito control in Delaware. These include 3 larvicides – the microbial larvicide *Bacillus thuringiensis israelensis* (Bti – Vectobac, Aquabac, Teknar); the juvenile growth hormone mimic *methoprene* (Altosid); and the organophosphate *temephos* (Abate). Larvicides are typically applied over marshes or other wetlands, where people are usually not likely to be.

Two types of adulticides are used, which in their routine application may come in contact with people, since these products are applied as aerosols near, over or within populated areas.

Resmethrin (Scourge) or *sumithrin* (Anvil) are synthetic pyrethroid adulticides used to control mosquitoes and other insects. These synthetic compounds imitate natural insecticides found in chrysanthemum flowers. Both compounds have low toxicity to mammals, and break down quickly in sunlight or when exposed to air. Resmethrin and sumithrin are considered by the USEPA to pose little risk to humans when used at the low concentrations for mosquito control.

Naled (Dibrom, Trumpet) is an organophosphorus adulticide. It is primarily registered for use on land to control adult mosquitoes and blackflies. Naled is also used on some food and feed crops to control pests. When applied at low concentrations as required by the label for mosquito control purposes, naled is considered by the USEPA to pose little risk to humans.

How safe are the insecticides that are used?

The insecticides being used for mosquito control, whether larvicides or adulticides, are registered and approved for mosquito control by the USEPA and have gone through rigorous testing to assure that there are negligible adverse effects to human health or the environment. These insecticides have been developed to affect insects while being relatively non-toxic to humans and other mammals, along with being short-lived in the environment. The USEPA has determined that these mosquito control insecticides, when used in accordance with USEPA-approved label instructions, can be applied without posing unreasonable risks to human health, wildlife or the environment. The currently used adulticides are applied as ultra-low volume (ULV) formulations, which allows very small quantities of active ingredients to be used. All insecticide applications carried out for mosquito control are conducted or supervised by licensed pesticide applicators, who have been trained in safe usage and application of insecticides.

What precautions could I take to reduce my exposure to insecticides?

As mentioned above, insecticides used for mosquito control are registered by the USEPA for spraying near, over or within populated areas, and can be applied without posing unreasonable risk to human health. However, there are some steps that can be taken to help further reduce any concerns about insecticide exposure. These measures could include staying indoors and closing windows during spraying, or washing any exposed skin with soap and water after direct contact. In the unlikely event you feel you are experiencing adverse health effects following insecticide application, you should seek medical care.

Who do I call for more information?

An information packet containing the Mosquito Control Section's "Spray Policy," pertinent USEPA factsheets, and technical information (product label, MSDS) about selected adulticides is available by contacting:

Dept. of Natural Resources and Environmental Control (DNREC), Mosquito Control Section	(302) 739-3493
Dept. of Agriculture (DDA), Pesticide Compliance Section	(302) 739-4811
Division of Public Health (DPH), Environmental Health Evaluation Branch	(302) 739-6619

Pesticides and Mosquito Control. United States Environmental Protection Agency (USEPA). Office of Pesticide Programs.

<http://www.epa.gov/opp00001/citizens/mosquitocontrol.htm>

The EXtension TOXicology NETwork (EXTOXNET) Cooperative effort of University of California-Davis, Oregon State University, Michigan State University, Cornell University, and the University of Idaho. <http://www.ace.orst.edu/info/extoxnet/>

MUNICIPALITY ENDORSEMENT

MOSQUITO CONTROL SPRAY POLICY

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- D. In event of agreeing to participate and permit mosquito control spraying within the city or town, the municipal contact person is _____ at phone number _____ and e-mail address _____.
As a second municipal contact, his/her alternate is _____ at phone number _____ and e-mail address _____.
- E. Please note that the Mosquito Control Section will send to you via e-mail throughout the control season our daily Spray Announcements.

(Signature of city/town official)

(Title of city/town official)

(Date)

What It Is

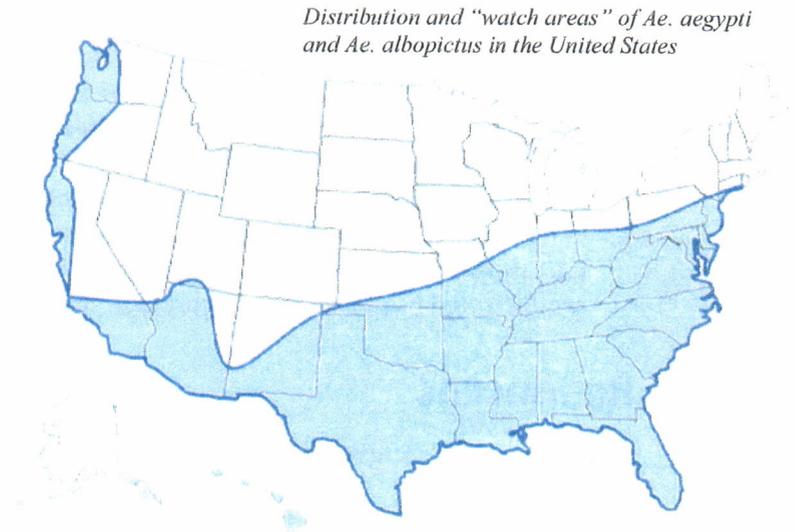
Chikungunya virus (ChikV) (chik-un-GOON-ya) is transmitted by mosquitoes and causes joint pain and severe arthritis. It's not normally fatal, but is extremely painful and symptoms can last for weeks or even months. In elderly people with compromised health, it can be a contributing factor to fatality.

Symptoms

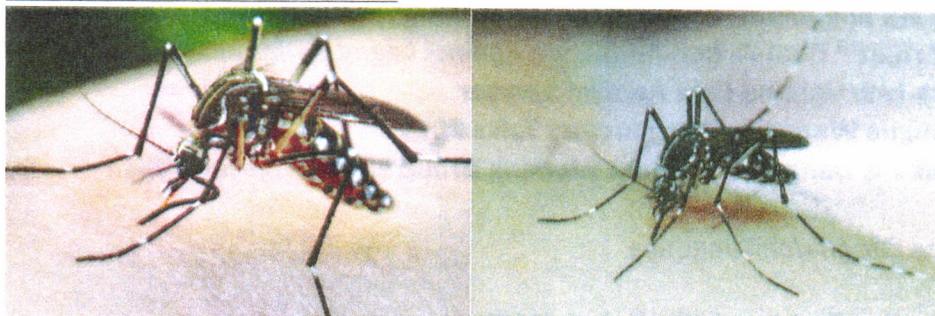
- Abrupt onset of fever & joint pain
- Joint pain often debilitating
- May last days up to weeks
- Joint pain may persist for several months or years
- In older people, can contribute to death

How It Spreads

- ChikV is spread by two species: *Aedes aegypti* and *Aedes albopictus*. Both are day biters.
- They are abundant through about half of the country, primarily in the south and east.
- They are container breeders and bite in or near homes and schools
- Unlike West Nile, **humans are the reservoir for the virus** – meaning that if a mosquito bites an infected human, it will become infected and can spread ChikV to other humans.
- Travelers returning from tropical climates are the ones bringing the virus back to the U.S. If *Aedes albopictus* or *Aedes aegypti* are present in your area and bite an infected returning traveler, local transmission can amplify.
- Even though *Ae. albopictus* and *Ae. aegypti* eggs can overwinter, the ability for an infected female to transmit the virus to progeny is very, very unlikely. By and large, these adults **don't survive the winter**, CHIKV will not circulate (and will not be transmitted) until re-introduced by human travelers. That said, temperate areas with enough moisture can aid adults to overwinter.



How Is ChikV Detected



Aedes aegypti

Aedes albopictus

- Symptoms appear generally 4 – 8 days once bitten by an infected mosquito.
- 72 – 90% of those infected develop symptoms.
- At this time, there are no tests for ChikV in mosquito pools, only in human blood samples.

Why Are Aedes Mosquitoes Challenging to Control?

- *Ae. aegypti* and *Ae. albopictus* are diurnal mosquitoes – active in daytime, resting in sheltered areas at night, especially *Ae. aegypti*.
- *Aedes* mosquitoes breed in sheltered areas and containers, like tires, gutters, pots, and wheelbarrows. Larviciding must reach these sheltered areas to be effective.
- Because *Aedes* rest at night, traditional adulticiding is difficult because mosquitoes are protected from contact with the adulticide.

What Should Mosquito Professionals Do?

- Identify whether you're in an area likely to have ChikV (i.e., an area with significant populations of *Ae. albopictus* and *Ae. aegypti*).
- Maintain surveillance and species counts for *Aedes* mosquitoes
- Implement a larval source reduction plan. Aerial larviciding with a liquid or granule, as well as ground ULV larviciding, have been used to reach containers of all sizes.
- **Educate residents** to reduce breeding sites, use repellent and wear long sleeves and pants.
- Enlist volunteers to help get the word out in addition to posting on community websites, district websites and media outreach.
- If a case is identified, quickly learn if it was locally transmitted or an imported case. Make sure the correct information is being conveyed in the media. To date, most ChikV is imported by travelers who were infected in other areas and developed symptoms upon their return home.
- Use vector-appropriate adult control as human cases emerge. Why wait? Because a human has to bring it into the area. Since *Aedes* have a short flight range, activating adult control around human case tends to be the most efficient approach to adult treatment.

What Are Tools for Suppressing Outbreaks of ChikV?

- There are no medications or vaccinations for ChikV, only pain medication to treat symptoms.
- Rotate larvicides to avoid resistance. Natular's active ingredient, spinosad, has a unique mode of action and novel class of chemistry.
- Because *Ae. albopictus* and *Ae. aegypti* are more active in daytime hours, if mosquito control is done in the evening/early morning hours using an adulticide with an agent to excite resting mosquitoes (i.e., Duet®) would aid in controlling more of the natural population. Traditional adult control products and protocols may not provide effective control at levels necessary to control outbreaks.

Resources

The following resources are available on the Clarke website: www.clarke.com

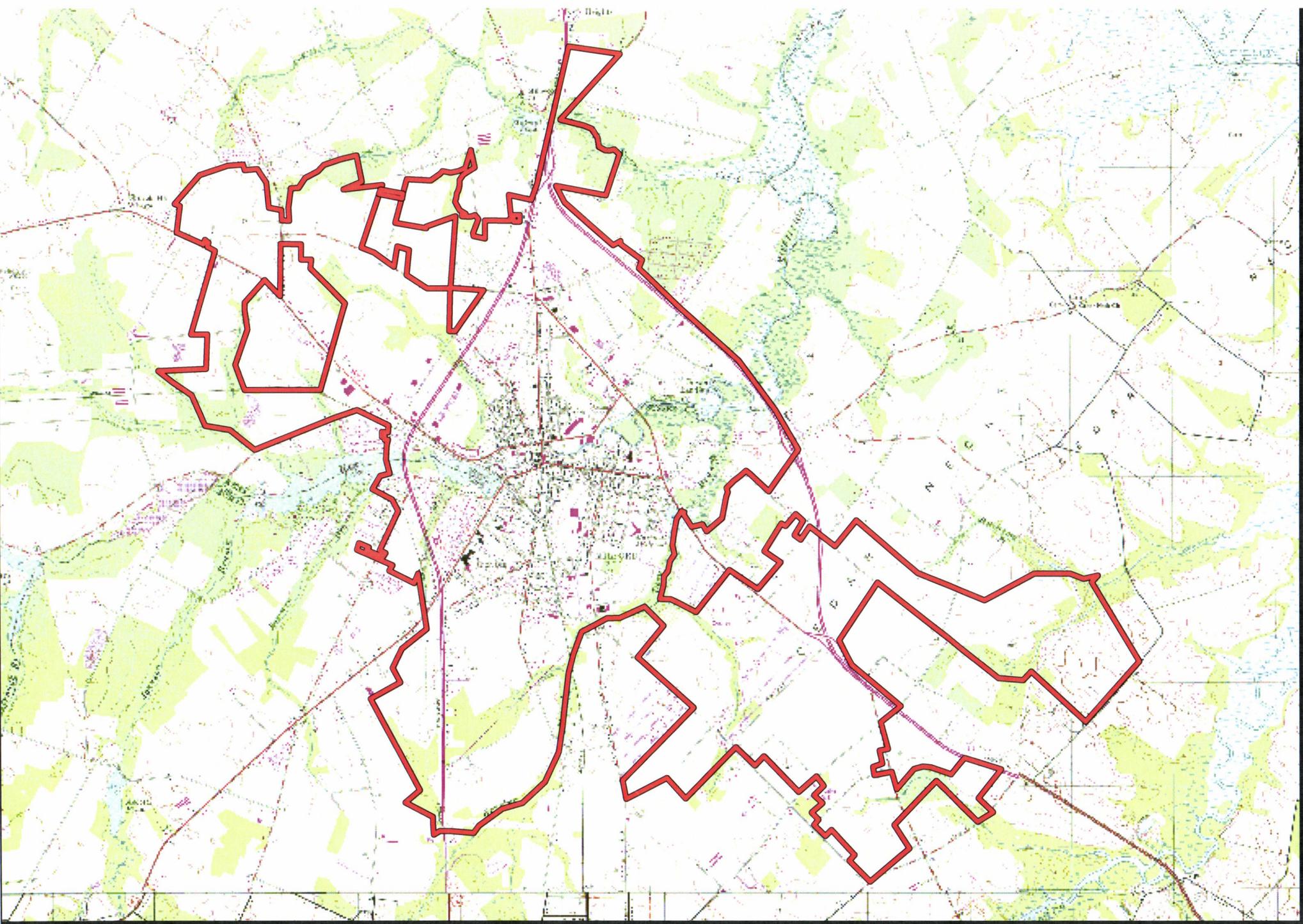
Product trials & publication links:

- 📄 **Area-wide management of *Aedes albopictus*. Part 2: Gauging the efficacy of traditional integrated pest control measures against urban container mosquitoes.**
- 📄 **Prallethrin-Induced Excitation Increases Contact Between Sprayed Ultralow Volume Droplets and Flying Mosquitoes (Diptera: Culicidae) in a Wind Tunnel**
- 📄 **Behavioral Responses of Two Dengue Virus Vectors, *Aedes aegypti* and *Aedes albopictus* (Diptera: Culicidae), to DUET and its Components**
- 📄 **Effectiveness of Ultra-Low Volume Nighttime Applications of an Adulticide against Diurnal *Aedes albopictus*, a Critical Vector of Dengue and Chikungunya Viruses**
- 📄 **Efficacy of Duet™ Dual-Action Adulticide Against Caged *Aedes albopictus* With The Use Of An Ultra-Low Volume Cold Aerosol Sprayer**
- 📄 **Florida Dengue Workshop Introductory Talks 2014**
- 📄 **Florida ChikV & Dengue Workshop Working Group Summaries June 2014**

CDC website: www.cdc.gov/chikungunya

Labels available on the Clarke website (Labels/MSDS): www.clarke.com

- Duet
- Natular G30
- Natular EC
- Natular T30



MILFORD

 Town of Milford

From: Medlarz, Hans
Sent: Friday, February 6, 2015 8:43 AM
To: Portmann, Jeffrey
Cc: Christie Murphy; Carmean, Richard (chief)
Subject: FW: Shawnee Acres Trench Repair Project

Good morning Jeff,

The associated invoice from Jerry's Paving is approved. DeIDOT required the City to repair a utility trench settlement on a state maintained road in Shawnee Acres. It started under Dick's authorization. I will sign it and attached the underlying quotation. I suggest we use the Municipal Street Aid fund for this repair unless you have a better suggestion.

Thanks, Hans

From: Murphy, Christie
Sent: Thursday, February 05, 2015 10:48 AM
To: Medlarz, Hans
Cc: Webb, Tim
Subject: Shawnee Acres Project

Good Morning,

Attached is a bill from Jerry's paving for work done for the above project. As you are aware the funds were not in this year's budget. How would you like us to handle this?



Invoice

Req: _____
PO: _____
Acct: _____
Rcv'd: _____

17776 Oak Hill Drive • Milford, Delaware 19963
302-422-7676 FAX: 302-422-3434

Date of Invoice:
01/09/2015
Invoice Number:
15018

To: City of Milford
Department of Public Works
180 Vickers Drive
Milford, DE 19963
Attn: Tim Webb

Listed below is the description and cost for the work completed at the specified project location:

Project: Miscellaneous Patching Phone: (302) 422-6616x113

Completed Work:

Miscellaneous Patching

Patching

1. Saw cut and rotomilling existing pavement to preform pavement repair in Shawnee Acres.
2. Disposal of excavated material
3. Applied tack coat.
4. Placed leveling and wedging Hot Mix.
5. Placed 2" Type "C" Hot Mix on approximately 225 SY.
6. Clean up and dispose of all debris generated by out construction activity.

Total Amount Due: \$5,120.00

Payment Due 30 Days

2% Service Charge after 30 Days

Thank You

OFFICE OF THE MAYOR
BRYAN SHUPE



OFFICE OF THE CITY MANAGER
HANS MEDLARZ

February 10, 2015

TO BE SENT TO:

Dear Senators Simpson and Bonnini, Representatives Kenton, Peterman and Wilson:

Continued investment in the transportation infrastructure is key to our citizens' mobility and to our local economy and Municipal Street Aid funding is crucial to municipalities' ability making these investments. Similarly, the Community Transportation Fund is instrumental in addressing immediate concerns to maintain and improve the local roadways for all users, not just the ones in the City limits. City Council discussed the Governor's Recommended FY 2016 Budget funding for both of these programs at significantly reduced levels from prior years. Milford City Council on February 9th, by unanimous vote, urged the local Senators and Representatives to restore appropriations to more suitable levels.

Community Transportation Fund and Municipal Street Aid appropriations are leveraged by local funds, but more importantly, leveraged by municipalities' intimate knowledge of their transportation network, development patterns and transportation needs within their boundaries. This serves to not only relieve DeIDOT of the burden of many smaller-scale projects that have large-scale quality of life impacts on Delawareans, but also allows projects to be managed and completed more efficiently than they could be by a statewide agency, putting funding to work immediately in our communities.

Indeed, DeIDOT has a long history of relying on municipalities and their local staff and contractors for roadway maintenance. The City of Milford maintains Airport Road and 10th Street representing a substantial section of roadway which was formerly under DeIDOT's jurisdiction. All of you undoubtedly received calls from constituents regarding the condition of these two roads. Even just basic repairs are estimated above \$1.0 million. Therefore, the City Council unanimously selected this project as the highest priority and requests your mutual consideration for an allocation out of the Community Transportation Fund.

Milford relies upon the predictable availability of funding through these programs to plan ahead for resurfacing and repairs of our road network, often in conjunction with other infrastructure improvements, such as water main replacements, so that work can be completed as efficiently as possible for our residents. Significant reductions, or even consideration of reductions, severely hampers our ability to plan projects in a logical and efficient manner for years ahead. Reducing these necessary funding levels will impact our efforts to work smarter.

In the light of the essential Airport Road/10th Street project we are hopeful that appropriations for the Municipal Street Aid and Community Transportation Fund programs can be, at a minimum, returned to FY2015 levels. Reductions will only compound our already widespread and well documented statewide problem of deteriorating infrastructure. We hope to count on you in this crucial issue and look forward to hearing from you on the City's request for the aforementioned project.

Sincerely,

Bryan Shupe, Mayor

Hans Medlarz, City Manager

**CITY OF MILFORD
FUND BALANCES REPORT**

Date: December 2014

Cash Balance - General Fund Bank Balance	\$4,108,852
Cash Balance - Electric Fund Bank Balance	\$3,714,464
Cash Balance - Water Fund Bank Balance	\$2,890,848
Cash Balance - Sewer Fund Bank Balance	\$931,027
Cash Balance - Trash Fund Bank Balance	\$188,768

	General <u>Improvement</u>	Municipal <u>Street Aid</u>	Real Estate <u>Transfer Tax</u>	Solid Waste <u>Reserves</u>
Beginning Cash Balance	(510,401)	1,133,234	1,693,959	0
Deposits	360,965		57,061	
Interest Earned this Month		150	232	
Disbursements this Month	(93,076)	(32,631)	(41,667)	
Investments				250,000
Ending Cash Balance	(\$242,512)	\$1,100,753	\$1,709,585	\$250,000

A/R-SE Front Street

	GF Capital <u>Reserves</u>	Water Capital <u>Reserves</u>	Sewer Capital <u>Reserves</u>	Electric <u>Reserves</u>
Beginning Cash Balance	804,284	5,560,341	3,250,318	5,440,446
Deposits				
Interest Earned this Month	102	321	189	315
Disbursements this Month	(63,294)	(84,765)	(15,000)	(52,293)
Investments	250,000			
Ending Cash Balance	\$991,092	\$5,475,897	\$3,235,507	\$5,388,468

	Water <u>Impact Fee</u>	Sewer <u>Impact Fee</u>	Electric <u>Impact Fee</u>	Economic Development <u>Fund</u>
Beginning Cash Balance	1,230,888	\$827,547	\$350,140	\$1,032,163
Deposits	6,070	\$3,207	\$1,800	
Interest Earned this Month				
Disbursements this Month				(\$4,370)
Investments				
Ending Cash Balance	\$1,236,958	\$830,754	\$351,940	\$1,027,793

INTEREST THROUGH THE SIXTH MONTH OF THE FISCAL YEAR:

General Fund	5,701	Water Fund	2,137
GF Capital Reserves	647	Water Capital Reserves	1,904
Municipal Street Aid	906	Sewer Fund	784
Real Estate Transfer Tax	1,143	Sewer Capital Reserves	1,132
Electric Fund	4,057	Trash Fund	2,935
Electric Reserves	1,893		

TOTAL INTEREST EARNED TO DATE \$23,239

REVENUE REPORT

Page Two

Date: December 2014	AMOUNT BUDGETED	MTD	YTD	50% of Year Expended YTD%
ACCOUNT				
Economic Development Fund	205,578	0	41,457	20.17%
General Fund Reserves	63,294	63,294	63,294	100.00%
Property Transfer Tax-Police	500,000	41,667	250,000	50.00%
Real Estate Tax	3,769,010	4,297	3,676,396	97.54%
Business License	40,000	10,925	14,050	35.13%
Rental License	85,000	32,250	34,550	40.65%
Building Permits	60,000	1,785	38,738	64.56%
Planning & Zoning	15,000	282	6,775	45.17%
Grasscutting Revenue	15,000	0	7,200	48.00%
Police Revenues	502,000	17,796	298,787	59.52%
Misc. Revenues	267,460	17,606	66,186	24.75%
Transfers From	3,215,480	267,956	1,607,740	50.00%
Total General Fund Revenues	\$8,737,822	\$457,858	\$6,105,173	69.87%
Water Revenues	2,644,000	195,569	1,389,916	52.57%
Sewer Revenues	2,659,860	180,450	1,308,939	49.21%
Kent County Sewer	1,700,000	124,616	894,176	52.60%
Solid Waste Revenues	1,090,545	87,627	533,364	48.91%
Electric Revenues	24,659,500	2,010,690	12,572,392	50.98%
TOTAL REVENUES	\$41,491,727	\$3,056,810	\$22,803,960	54.96%
YTD Enterprise Expense	39,170			
YTD Enterprise Revenue	41,262			
LTD Carlisle Fire Company Building Permit Fund		106,407		

EXPENDITURE REPORT

Page Three

Date: December 2014

50% of Year Expended

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	YTD%	UNEXPENDED BALANCE
City Manager					
Personnel	446,455	\$42,590	177,157	39.68%	269,298
O&M	177,359	\$12,997	81,964	46.21%	95,395
Capital	14,995	\$0	0	0.00%	14,995
Total City Manager	\$638,809	\$55,587	\$259,121	40.56%	379,688
Planning & Zoning					
Personnel	160,990	\$6,515	30,783	19.12%	130,207
O&M	43,968	\$3,344	20,254	46.07%	23,714
Capital	0	\$0	0		0
Total P, C & I	\$204,958	\$9,859	\$51,037	24.90%	153,921
Code Enforcement & Inspections					
Personnel	147,175	\$15,871	69,945	47.53%	77,230
O&M	52,900	\$1,770	21,512	40.67%	31,388
Capital	0	\$0	0		0
Total P, C & I	\$200,075	\$17,641	\$91,457	45.71%	108,618
Council					
Personnel	31,225	\$2,568	12,644	40.49%	18,581
O&M	46,760	\$6,019	25,321	54.15%	21,439
Council Expense	17,000	\$750	11,176	65.74%	5,824
Contributions	211,000	\$0	71,000	33.65%	140,000
Codification	3,631	\$0	650	17.90%	2,981
Employee Recognition	9,369	\$9,368	9,368	0.00%	1
Insurance	31,000	\$9,163	27,507	88.73%	3,493
REDLG Program	60,000	\$0	0	0.00%	60,000
Total Council	\$409,985	\$27,868	\$157,666	38.46%	252,319
Finance					
Personnel	352,620	\$42,750	173,117	49.09%	179,503
O&M	61,085	\$3,106	25,014	40.95%	36,071
Capital	0	\$0	0		0
Total Finance	\$413,705	\$45,856	\$198,131	47.89%	215,574
Information Technology					
Personnel	181,080	\$13,889	56,479	31.19%	124,601
O&M	180,765	\$2,557	46,789	25.88%	133,976
Capital	85,430	\$0	84,818	99.28%	612
Total Information Technology	\$447,275	\$16,446	\$188,086	42.05%	259,189

EXPENDITURE REPORT

Page Four

Date: December 2014

50% of Year Expended

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	YTD%	UNEXPENDED BALANCE
Police Department					
Personnel	3,811,255	\$431,795	1,835,946	48.17%	1,975,309
O&M	499,015	\$45,289	261,058	52.31%	237,957
Capital	121,200	\$0	70,204	57.92%	50,996
Total Police	\$4,431,470	\$477,084	\$2,167,208	48.90%	2,264,262
Streets & Grounds Division					
Personnel	442,810	\$42,437	196,734	44.43%	246,076
O&M	450,475	\$31,493	253,302	56.23%	197,173
Capital	80,000	\$0	18,790	23.49%	61,210
Debt Service	20,520	\$19,207	19,207	93.60%	1,313
Total Streets & Grounds	\$993,805	\$93,137	\$488,033	49.11%	505,772
Parks & Recreation					
Personnel	604,225	\$63,771	292,331	48.38%	311,894
O&M	251,515	\$24,485	158,108	62.86%	93,407
Capital	142,000	\$4,509	101,454	71.45%	40,546
Total Parks & Recreation	\$997,740	\$92,765	\$551,893	55.31%	445,847
Total General Fund					
Operating Budget	\$8,737,822	\$836,243	\$4,152,632	47.52%	4,585,190

EXPENDITURE REPORT

Page Five

Date: December 2014

50% of Year Expended

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	YTD%	UNEXPENDED BALANCE
Water Division					
Personnel	281,615	\$31,219	137,010	48.65%	144,605
O&M	1,045,165	\$73,750	431,267	41.26%	613,898
Capital	347,000	\$0	0	0.00%	347,000
Debt Service	970,220	\$252,771	301,131	31.04%	669,089
Total Water	\$2,644,000	\$357,740	\$869,408	32.88%	1,774,592
Sewer Division					
Personnel	281,615	\$31,217	137,000	48.65%	144,615
O&M	1,194,475	\$117,404	553,238	46.32%	641,237
Capital	612,500	\$0	23,372	0.00%	589,128
Debt Service	571,270	\$369,687	395,157	69.17%	176,113
Sewer Sub Total	\$2,659,860	\$518,308	\$1,108,767	41.69%	1,551,093
Kent County Sewer	1,700,000	\$124,616	894,167	52.60%	805,833
Total Sewer	\$4,359,860	\$642,924	\$2,002,934	45.94%	2,356,926
Solid Waste Division					
Personnel	371,835	\$39,676	178,939	48.12%	192,896
O&M	718,710	\$57,900	361,251	50.26%	357,459
Capital	0	\$0	0	0.00%	0
Total Solid Waste	\$1,090,545	\$97,576	\$540,190	49.53%	550,355
Total Water, Sewer Solid Waste	\$8,094,405	\$1,098,240	\$3,412,532	42.16%	4,681,873
Electric Division					
Personnel	1,210,610	\$123,042	567,873	46.91%	642,737
O&M	1,723,380	\$118,979	718,053	41.67%	1,005,327
Transfer to General Fund	2,500,000	\$208,333	1,250,000	50.00%	1,250,000
Capital	325,855	\$2,317	62,368	19.14%	263,487
Debt Service	399,655	\$252,123	302,060	75.58%	97,595
Electric Sub Total	\$6,159,500	\$704,794	\$2,900,354	47.09%	3,259,146
Power Purchased	18,500,000	\$1,660,542	9,633,248	52.07%	8,866,752
Total Electric	\$24,659,500	\$2,365,336	\$12,533,602	50.83%	12,125,898
TOTAL OPERATING BUDGET	\$41,491,727	\$4,299,819	\$20,098,766	48.44%	21,392,961

INTERSERVICE DEPARTMENTS REPORT

Page Six

Date: December 2014

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	50% of Year Expended YTD%	UNEXPENDED BALANCE
Garage					
Personnel	84,085	10,385	41,522	49.38%	42,563
O&M	69,965	5,620	36,202	51.74%	33,763
Capital	40,000	0	0	0.00%	40,000
Total Garage Expense	\$194,050	16,005	\$77,724	40.05%	116,326
Public Works					
Personnel	198,550	7,421	76,123	38.34%	122,427
O&M	201,160	12,940	71,013	35.30%	130,147
Capital	6,000	0	0	0.00%	6,000
Total Public Works Expense	\$405,710	20,361	\$147,136	36.27%	258,574
Billing & Collections					
Personnel	522,210	55,846	255,098	48.85%	267,112
O&M	229,785	20,544	109,591	47.69%	120,194
Capital	0	0	0		0
Total Billing & Collections	\$751,995	76,390	\$364,689	48.50%	387,306
City Hall Cost Allocation					
Personnel	0	0	0		0
O&M	61,530	4,589	22,907	37.23%	38,623
Capital	0	0	0		0
Total City Hall Cost Allocation	\$61,530	4,589	\$22,907	37.23%	38,623

ALL COSTS SHOWN ON PAGE 6 ARE ALSO INCLUDED IN THE VARIOUS DEPARTMENTS LISTED ON PAGES 3-5 OF THE EXPENDITURE REPORT WHO UTILIZE THE SERVICES OF THE DEPARTMENTS LISTED ABOVE. INTERSERVICE FUNDS ARE ENTIRELY FUNDED BY OTHER CITY DEPARTMENTS.

MILFORD CITY COUNCIL
MINUTES OF MEETING
January 12, 2015

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, January 12, 2015.

PRESIDING: Mayor Bryan W. Shupe

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

City Manager Hans Medlarz, 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 7:03 p.m.

INVOCATION & PLEDGE

The Pledge of Allegiance followed the invocation given by Councilman Starling.

APPROVAL OF MINUTES

Motion made by Mr. Grier, seconded by Mr. Morrow to approve the minutes of the December 8, 2014 Council Meeting as submitted. Motion carried.

RECOGNITION

New City Manager

Mayor Shupe welcomed City Manager Hans Medlarz noting this will be his first official meeting. He reported they have had numerous discussions about what is going well and the many things we need to do better. He stated that Mr. Medlarz is the right man for the job and looks forward to working with him.

Mr. Medlarz said he is excited to work with the mayor and council and after looking at the new goals for 2015, they had a great discussion and agrees with Mayor Shupe this is the beginning of a new chapter for Milford.

Stacey Norton/Human Resources Manager/Perdue Farms, Incorporated

Mayor Shupe recognized Stacy Norton who was in attendance. He reported that Mr. Medlarz and he toured the Perdue Plant and their new organic chicken line. He stated he was very impressed with the operation and the modern and efficient facility.

MONTHLY POLICE REPORT

Police Committee Chairman Morrow presented the report on behalf of Chief Hudson noting the police continue to be extremely busy. Mr. Pikus agreed then moved to accept the monthly police report, seconded by Mr. Mergner. Motion carried.

CITY MANAGER REPORT

City Manager Medlarz presented the following report:

Administration:

- *City Hall was open for the Downtown Stroll on December 5th.*
- *The Armory held an open house on December 11th.*
- *The improvements to the customer service building (former PNC) were ongoing with anticipated contractor completion by January 20th. The security system and furniture procurement was completed in December and both are to be operational by the end of this month.*
- *The Mayor and the current and former Manager were briefed by Del DOT officials on the Department's project prioritization process after the 2nd November Council Meeting.*

Electric Department:

- *Crews assisted Perdue with a primary metering problem.*
- *Asplundh has started trimming trees along the power distribution lines*
- *Crews started the service line relocations associated with the Thompsonville Del DOT Project*
- *The lighting replacement project at the City Hall parking lot was started.*
- *City assisted Delmarva Power in the replacement of a 138KV air break switch.*
- *Crews pulled fiber from City Hall to Customer Service Center (PNC Bank).*
- *Staff opened bids for the 138 KV Motor Operated Switches & Supports with Hamby Young low bidder.*
- *Gary Johnston obtained his Master Electrician's License.*

Streets and Solid Waste Department:

- *Crews worked on two Holidays to provide uninterrupted solid waste collection service to City residents.*
- *New trash truck from Western Standard has been put to full use but is still experiencing warranty issues.*
- *Shawnee Acres sewer trench restoration repair was completed by contractor.*
- *S.E. Front Street striping was completed.*
- *Maple Avenue culvert was examined and remedial action in progress.*

Water and Sewer Department:

- *Crews assisted in the raw water main extension project on Washington Street.*
- *Valve exerciser was procured with delivery in January.*
- *Sewer vacuum truck has experienced a blower breakdown is being repaired with back-up contingencies in place.*
- *CB&I the Southeast water tower contractor started foundation work and offered a change order for adding an obstruction light. It is not required by FAA however with the pending hospital and the likelihood a helipad it may be helpful.*
- *CB&I asked for an additional 45 days for the delay associated with gaining alternate site access from Route 1. They were concerned that the existing access and its proximity to the new Del DOT overpass acceleration lane was not safe for the large vehicles and obtained an alternate site access permit (temporary) from Del DOT .*
- *Seabury Avenue aquifer testing continuing resulting in the permit request for a new construction.*
- *The Southeast water treatment plant is being permitted and advertised.*

Mr. Medlarz then recalled that in November, Mayor Shupe, Former City Manager Carmean and himself met with DelDOT officials to review their plans for the North Front Street interchange. They were informed it is not part of their capital improvement plan and learned how the projects are evaluated and the data used to prioritize projects.

Mr. Medlarz recalled that city council is on record to encourage DelDOT to move forward with the interchange. Unless there is some critical new information, he believes they will stick to their current three-year capital improvement plans. At that time, a new set of data will be considered for the next round.

Mayor Shupe said that city officials clearly expressed concerns about the safety issues. DelDOT made it clear where they are going with the projects they have earmarked and how long this overpass may take. However, that will not prevent him from calling and reminding them that Milford desperately needs the overpass on North Front Street. Even though DelDOT stated that it would be three years before the project was reconsidered, he wants to make sure the city continues to take every opportunity to remind them how important that project is to Milford.

Mr. Medlarz then reported that city crews assisted Perdue with a metering problem and their plant manager was extremely

grateful. He pointed out the benefit of uptime at the facility which is equally important to Perdue and the city.

The electric crews also assisted Delmarva Power in the replacement of a 138KV air break switch. The city manager said that we will also be replacing the same set of breakers on the city side.

Mr. Medlarz stated that in December, an issue was raised by our residents and DelDOT about a culvert problem on Maple Avenue just north of the Gods Way Store. After some investigation, some degradation was found to be causing a dip. He is working on the remedial action with some drafting help. He is hoping to get that project underway to prevent it from becoming a major issue.

He noted that Mayor Shupe, as well as a few other council members, have received some solid waste complaints. He learned there are some warranty issues with the new trash truck recently received from Street Superintendent Tim Webb.

Significant work has occurred on Washington Street. All the raw water mains have been installed and the valves are in place.

The city manager noted that DBF's Eric Retzlaff was heading the operations during the night.

Public works received the valve exerciser which will greatly assist crews with future valve work.

The sewer vacuum truck is out of service due to a blower breakdown that is being repaired which could take some time to repair. He put some backup contingencies in place in cooperation with Kent County and the Town of Wyoming should the city need a sewer vacuum truck in the meantime.

Construction on the southeast water tower started and the contractor has requested a time extension. The city manager believes that is warranted due to the time needed to negotiate a temporary access. The bid for the water plant project is expected in the near future.

Mr. Medlarz advised that the Federal Aviation Administration does not require the tower to be lit because of its height and location. However, our engineers included a change order for an aviation obstruction light of \$6,200. That issue was also brought up by Bayhealth because of their helicopter activities and a somewhat limited approach because of the area power lines. Mr. Medlarz informed them the city had already considered their needs.

Unless there is an objection, he will exercise the change order. He confirmed that council action is not needed and the project has enough money to cover the costs.

Mr. Pikus asked if Bayhealth will share in the costs; Mr. Medlarz explained Bayhealth understands the cost of the extension will be paid by them along with other entities. He will report back once they have discussed this with the other entities.

Mr. Gleysteen asked why there was a need to pull fiber from the new (customer service) building (former PNC) over to city hall; Mr. Medlarz explained that extending the city fiber loop is needed to tie the billing (customer service) department to the city server located in the downstairs of city hall.

When asked for a date when the billing (customer service) department will be operating out of the PNC building, Mr. Medlarz said if everything goes as planned, we could be open sometime in February though that is dependent on the furniture and auxiliary equipment. He expects the construction to be very close to completion by the end of this week.

He said that Mayor Shupe is considering an open house once the billing (customer service) department moves in. He will discuss that further later this evening.

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

City Manager Medlarz advised that he has been subpoenaed on a Personnel Appeals Board Hearing in Kent County on February 9, 2015 which is the same night of the council meeting. Therefore, he will not be in attendance that evening. He

will provide the subpoena to the city clerk so that it is on record.

COMMITTEE & WARD REPORTS

Fourth Ward

Mr. Starling reported that a meeting was held with Mayor Shupe, Chief Hudson and Lieutenant Bailey. He said it was a very informative meeting. The ministers in his ward had some questions and concerns and Pastor Starling contacted Chief Hudson and invited him to attend.

He noted that Chief Hudson provided a lot of information and was very well received. He thanked the chief for what he did adding it was very uplifting to the community.

SCAT Meeting

Mayor Shupe reported that he, along with City Manager Medlarz and Councilman Brooks attended the January SCAT meeting. At that meeting, Sussex County Administrator Todd Lawson reported the county has created the 2015 Economic Development and Infrastructure Grant to be awarded to each town in the county in the amount of \$10,000. The intent of the program is to assist towns with economic development opportunities and infrastructure improvements.

He also reported the county will be providing an additional \$10,000 to each police agency in Sussex County.

COMMUNICATIONS & CORRESPONDENCE

Mr. Starling thanked those that donated food and items toward their annual Christmas dinner for the needy that served between 150 and 200 people.

UNFINISHED BUSINESS

Adoption/Ordinance 2014-16/Chapter 130 Amendment/Floodplain Management

Solicitor Rutt advised that he has been reviewing the ordinance in comparison to the Kent and Sussex Flood Management Ordinances as well as those adopted by various municipalities. He prepared a memo with several points.

In speaking with Mr. Medlarz earlier today, they recommend it be tabled. He will provide a copy of the memo to every council member which includes some new definitions, an amendment to the language and some policy considerations.

Mr. Pikus moved to postpone action on Ordinance 2014-16, seconded by Mr. Morrow:

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MILFORD, DELAWARE AMENDING THE CITY OF MILFORD CODE OF ORDINANCES TO REPEAL CHAPTER 130 FLOODPLAIN MANAGEMENT; TO ADOPT A NEW CHAPTER 130 FLOODPLAIN MANAGEMENT; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT ADMINISTRATIVE PROCEDURES, AND TO ADOPT CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; TO PROVIDE FOR APPLICABILITY; REPEALER; AND AN EFFECTIVE DATE.

Motion carried.

Adoption/Ordinance 2014-17/Chapter 88 Amendment/Building Construction

The following sections of Chapter 88 have been proposed for changes as noted:

Section 1. An Ordinance to Amend the Code of the City of Milford by Amending Chapter 88 entitled Building Construction.

Section 2. Article 1-International Residential Code, 88-2-Additions, Insertions and Changes is hereby amended as follows:

C. Chapter 3 Building Planning

(1) TABLE R301.2(1)

Climatic and Geographic Design Criteria

Flood Hazards
ADOPTED: 07-14-78 CURRENT: 01-06-05 <u>See Chapter 130 Floodplain</u> <u>Management</u>

P. Structural Design.

~~161.2.3 1612.3. Establishment of flood hazard areas. To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for the City of Milford," dated June 16, 1995, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map.~~

~~(FBFM) and related supporting data, along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.~~

Flood hazard areas are established by Chapter 130 Floodplain Management.

Mr. Rutt informed council this piggybacks off the Floodplain Ordinance. As a result, he recommends postponing action on this ordinance and that council consider them together at a future meeting.

Mr. Pikus moved to postpone action on Ordinance 2014-17, seconded by Mr. Morrow. Motion carried.

Ratification/Comcast Agreement

Mr. Rutt said he has prepared his comments based on conversations with Comcast and is awaiting for their response. He looked at similar franchise agreements that Comcast entered into with Smyrna and Felton in addition to some other electronic versions.

He expects to wrap this matter up very quickly considering we are using the same language included in the Smyrna and Felton contracts which was already accepted by Comcast. Mr. Rutt added it is currently in the hands of a representative in New Hampshire who approved both of those contracts.

He said that expanding the income by including advertising and the home shopping networks will make the amount larger; however, there is a federal statutory limit of 5% the city can receive. Overall the city will see an increase in that revenue.

He again reported the contract is non-exclusive. The solicitor expects there may be some questions because it states that in the event the city enters into an agreement with another provider, the city will agree to a reduced percentage (4%).

Mr. Pikus noted that Verizon was here working on fiber optics in the Walnut Street area though it is not yet available in Milford. Mr. Rutt advised it is as close as Blue Jay Lane off the Canterbury Road.

Mr. Pikus moved to postpone action, seconded by Mr. Brooks. Motion carried.

NEW BUSINESS

Introduction/Ordinance 2014-18/Chapter204/Amendment/Taxation

Mayor Shupe recalled this ordinance being discussed at a previous meeting. This ordinance has been developed to address some taxation rules and specifically supplemental bills, appeals and deadlines. Article VII of the City Charter has jurisdiction over city taxation, assessment, rates, etc. This was needed because of some recent problems we uncovered with regard to supplemental bills, appeals and deadlines. Those rules have now been established and will be to Chapter 204. Presently, chapter 204 governs the senior citizen relief program and miscellaneous tax issues.

He reported that this is a housecleaning ordinance and is being presented for introduction only this evening.

Mr. Brooks asked if this can be discussed at the next workshop and Mayor Shupe directed the city clerk to add to that agenda.

Mr. Brooks made a motion to move Ordinance 2014-18 to the January 26th Workshop Agenda for further discussion, seconded by Mr. Morrow:

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1.

Article II, entitled Exemption of New Improvements Added to Property, Sections 204-6 thru Section 204-11, is hereby removed:

ARTICLE II - Exemption of New Improvements Added to Property

§ 204-6. - Eligibility for new improvement exemption of real property taxes.

The exemption shall only apply to the increase in assessed value resulting from substantial rehabilitation, renovation or improvements of existing properties (residential, commercial, industrial, etc.) located within the city limits. New construction does not qualify. The building permit for the said improvements must be issued prior to June 30, 2013 and shall be valid for a period of one year. The exemption shall be based on the change in the improvement assessment value only. The land assessment is not eligible for exemption under this article.

§ 204-7. - Amount of the exemption.

The amount of the exemption shall be determined by subtracting the value of construction per the building permit from the improvement assessment value following the new construction.

§ 204-8. - Application of the exemption and limitations.

The dollar amount of the exemption shall be multiplied by the property tax rate in the first full tax year following the issuance of a certificate of occupancy by the City. The dollar amount of the exemption shall be limited to a maximum of \$1,000 for residential properties and limited to a maximum of \$5,000 for all other properties. The exemption shall only be good for one year immediately following the following the issuance of a certificate of occupancy.

§ 204-9. - Appeals.

An aggrieved taxpayer may appeal from the disposition of an exemption claim in the same manner as is provided for appeals from assessments generally.

§ 204-10. - Due date for payment of property taxes.

Property taxes shall be payable on or before September 30th of each year.

§ 204-11. - Penalties.

To every tax not paid after the said date established in § 204-10, there shall be added and collected a penalty, for each month that the said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in § 204-10 for the addition and collection of penalties.

Section 2. A new Article II, entitled Authority to Exempt Real Property from Taxation, is hereby added to read as follows:

ARTICLE II – Authority to exempt real property from taxation.

§ 204-6. The city council shall have the power to exempt real property located within the city from municipal property taxes when, in the opinion of the tax assessor, the same will best promote the public welfare. The city assessor shall be empowered to grant tax exemptions pursuant to 9 Del. C. § 8105 and 8110, upon receipt of an application to the City of Milford filed by the organization to establish its entitlement to such exemptions.

§ 204-7. No assessment shall be made against that portion of a parcel during the period in which the portion qualifies for agricultural, horticultural or forest uses as more fully defined by 9 Del. C. § 8330 through 8337, inclusive.

Section 3. A new Article III, entitled Annual Tax Bill, is hereby added to read as follows:

ARTICLE III – Annual Tax Bill.

§ 204-8. The tax year shall run from October 1st through September 30th each year based on assessed values as of June 30th.

§ 204-9. Property taxes shall be payable on or before September 30th of each year.

§ 204-10. To every tax not paid after the said date established in 204-9, there shall be added and collected a penalty, for each month that said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in 204-9 for the addition and collection of penalties.

Section 4. A new Article IV, entitled Supplemental Assessments and Tax Bills, is hereby added to read as follows:

ARTICLE IV- Supplemental Assessments and Tax Bills

§ 204-11. Supplemental Assessment Required.

A. Changes, including zoning and construction, shall require reassessment of the property at its fair market value as of the date of the last City-wide revaluation. A supplemental assessment will be determined for the amount of difference between the value stated on the regular assessment roll(s) and the new fair market value.

B. Supplemental tax bills shall be issued when there is an increase in taxable value caused by any change as stated in 204-11. More than one tax year may be affected by the increase in value, causing more than one supplemental bill to be issued. Even when a property has been sold, the original owner may be billed for any change in value relating to the dates of their ownership.

C. The increase in assessed value resulting from the reassessment is reflected in a prorated assessment that covers the period from the first day of the month following the supplemental event to the end of the fiscal year.

§ 204-12. - Assessment Appeals.

A. Appeal date deadlines

Appeal filing deadline (Annual billing)	August 31 st
Appeal filing deadline (October billing)	November 30 th
Appeal filing deadline (January billing)	February 28 th
Appeal filing deadline (April billing)	May 31 st

B. Right to appeal is lost if appellant has missed the designated appeal date.

C. Appeals/refunds for errors or opinions of value from appellants will not be heard for prior years.

D. The assessment as revised and adjusted by the board of assessment appeals shall be the listed value for the year under appeal and shall be the basis for the levy and collection of taxes for the city.

Motion carried.

Board of Adjustment Vacancy

Mayor Shupe informed council that BOA Member Keith Gramling submitted his resignation as of December 31, 2014. The board consists of three members who have the authority to authorize variances as well as hear and decide appeals related to Chapter 230 (zoning code). Therefore, it is a vital part of our zoning process.

He suggested that council members contact either the city manager or himself with any recommendations. In the meantime, he and the city manager will be working to fill the vacancy as well.

Approval/Greater Kent Committee Dues

Mayor Shupe reported the mission of the Greater Kent Committee is to tackle issues that are important to the community and to improve the quality of life for everyone in the county. The organization was founded more than two decades ago and their goal is to make the county a better place to work and live today. There are more than eighty members of the Greater Kent Committee of which the city is one.

Mr. Pikus moved to approve payment of dues in the amount of \$750, seconded by Mr. Starling. Motion carried.

Bid Award/138kV Switches & Supports/Electric Department

Sealed bids were received, publicly opened, and read on December 9, 2014 for furnishing two 138 kV switches and supports for the Delivery #1 Substation. Bids ranged from \$41,985 to \$47,560.

Mr. Medlarz advised that Progressive Engineering, the city's electric consultant oversaw the bid process. The bids were very close and all in the \$40,000 range. Both the Progressive Engineer and Mr. Medlarz reviewed the bids submitted. Mr. Medlarz concurs with the recommendation of the consultant to award the bid to Hamby Young.

Mr. Medlarz explained this will be the city's counterpart to the work done by Delmarva Power and would upgrade the switching on the city's side. He emphasized this is our secondary substation and we need to continue to make improvements at this facility to prevent not totally rely on the new one.

Mr. Pikus moved to award the 138kV bid to Hamby Young in the amount of \$41,985, seconded by Mr. Morrow. Motion carried.

Appointment/DEMEC Director & Alternative Director

Mayor Shupe advised the appointment is a requirement of DEMEC whose bylaws require each member's legislative body to appoint a director and alternate director. Historically in Milford, the director's slot is filled by the city manager and the Electric Department Superintendent becomes the alternate director.

He recommends that our new city manager be appointed director and that Rick Carmean, Electric Department Superintendent remain the alternate director.

Mr. Starling moved to appoint Hans Medlarz as the City of Milford's DEMEC Director and Rick Carmean Milford's Alternate Director, seconded by Mr. Morrow. Motion carried.

Mr. Grier referenced the electric rate comparison chart included in the packet. He asked how it compares to the rates the same month last year noting we are currently fifth and sixth.

Mr. Gleysteen noted the highest cost was '1' Delmarva and asked what that meant. Mr. Medlarz explained that the comparison is based on a typical residential bill @1,000 kWh. Delmarva charges each customer on each individual peak load contribution or history. Each bill can fluctuate based on previous history. It is footnoted and an explanation provided. He recalled the days when Delmarva had the cheapest rate.

Mr. Medlarz explained that there is a savings when you look at the production rate and purchase costs. The detailed report shows the costs have gone down, but the revenue which used to be relied on during peak times, has diminished. Therefore, Milford's gross margin is shrinking which is partly due to the Beasley Power Station in Smyrna being called on during those times and an alternative to wholesale market rates.

He explained there is a power cost adjustment in our tariff which can fluctuate from zero to one-cent depending where the city needs to be to meet the revenue projection. Currently, it appears the .5 cent will continue though it may need to increase to .55 or .6 cents to meet the gross revenue projections. Though he is authorized to do so, Mr. Medlarz is uncomfortable making a change to the power purchase cost adjustment without letting council know ahead of time.

Mr. Medlarz will attend a DEMEC meeting tomorrow and will ask where we fit in when compared to historic residential rates.

Mr. Grier would like as much information as possible because the largest number of complaints he receives is about Milford's electric rates. Having as much knowledge would help.

It was confirmed the PPCA can be adjusted by the city manager without council action though it would be unwise for the manager to abuse that power.

Mr. Medlarz stated he will be meeting with Electric Superintendent Rick Carmean and Jennifer Anderson to discuss some changes they are requesting in our electric tariff. They will bring Jay Kumar in by telephone at which time the entire tariff will be reviewed.

The city manager confirmed that city council sets the electric rates and adopts the tariff.

Billing Department Name Change/Customer Service Department

Mayor Shupe said it was suggested the billing department name be changed to customer service department. He agrees it has a more friendly sound and more accurately covers the work of those employees who handle a number of duties above and beyond billing utilities and taxes.

Mr. Pikus moved to approve the name change from billing department to customer service department, seconded by Mr. Mergner. Motion carried.

FY 2014-2015 Budget Adjustment/Armory O&M/General Fund Reserves

Mr. Medlarz advised there have been some occasions when heat and electric were needed at the armory. There is also a need to have the facility insured.

No money was budgeted this year for armory expenses. Through December 31, 2014, DBF invoices for work done by a structural engineer total \$4,790. Insurance to cover the six-months left this fiscal year is \$4,520. Boiler repairs were needed at a cost of \$634. The total of bills received through the end of 2014 is \$9,944.

Currently, the state is continuing to pay for utilities because the deed has not yet been transferred to the city. Once the deed is recorded, the city will be responsible for those bills.

The recommendation is to approve an amount not to exceed \$20,000, which will allow the current bills to be paid and any additional costs incurred this fiscal year.

Mr. Medlarz emphasized there will be very limited functions at the armory and no long term uses. It will only be open for city activities and heated and lighted as needed. Any other uses should be deferred until there is a determination made on any potential police use. If that were ruled out, council will need to decide how to use the facility and what kind of long term uses would be allowed and any potential staff that may be needed.

Mr. Pikus moved that up to \$20,000 be transferred from General Fund Reserves into a new account 101-1110-411-68-37 be established in which any armory expenses would be paid; any amount exceeding \$20,000 will need further review by council, seconded by Mr. Morrow.

Mr. Gleysteen referenced the \$4,500 insurance bill and confirmed the balance would be for any related expenses that we encounter. Mr. Medlarz reiterated there are bills relating to the structural evaluation, utility bills and some repair bills. He and Finance Director Jeff Portmann believe \$20,000 will cover the balance of the fiscal year.

Motion carried.

DMI Brewgrass Festival Permit Amendment/Time Change

Mayor Shupe recalled this festival was previously approved after the amendment allowing restricted alcohol use to the Parks and Recreation Code was adopted. The committee working on this event felt it was necessary to ask for two changes to the original approval.

They are asking for three additional hours to accommodate a VIP hour (11 a.m. – 12 p.m.) for twenty attendees. The request stated that adding three hours to the event will allow two more bands to be included in the program.

Earlier today, Councilman Pikus brought a concern to the mayor's attention.

Mr. Pikus said some people saw this on the agenda because it is public. He had calls from two different churches. Both Calvary Church and the churches on Front Street called him. They all informed him that changing the hours from noon to 4 p.m. to 11 a.m. to 6 p.m. would create a problem.

Mr. Pikus then contacted Sara Pletcher who is the chairman of the event. Ms. Pletcher agreed to change the start time to noon instead of 11 a.m. when church services were in session.

Mr. Pikus moved that the Brewgrass Festival start at noon and conclude at 6 p.m., amended from its original request, seconded by Mr. Mergner. Motion carried.

DMI Brewgrass Festival/Waiver to Parks and Recreation Ordinance

Mayor Shupe advised the second item the committee is asking council to reconsider is the actual beer glass. The plans were to serve the beer in a commemorative 16 oz. beer glass. One of the new amendments to the ordinance requires alcohol beverages be served and consumed in non-breakable containers. The organizer is requesting a waiver to the ordinance because they feel the commemorative glass will provide more value for the ticket price and will be a token of the festival.

City Solicitor said the statute does not allow a waiver to the ordinance. He said it clearly states that all alcoholic beverages must be served and consumed in a non-breakable container due to safety reasons.

Council suggested insulated or hard plastic cups be used and that a commemorative glass could be issued at the time they leave the event.

Mr. Rutt emphasized that if we start waiving the rules, it could become a problem with later events.

No action by council was needed.

Chapter 193/Solid Waste Ordinance/Proposed Amendments

City Manager Medlarz reported that two things occurred that caused him to review our solid waste policies. The implementation and enforcement of the ordinance passed last year began in the fall. Until then, the solid waste department was wrestling with how to implement the changes. He agrees with Public Works Chairman Brooks that the people generating the waste should bear the burden of paying for it which he believes is the intent of council.

Mr. Medlarz stated that one issue with the ordinance is it requires customers to have the foresight to say for example, next week I am going to have a large quantity of items or large items and I need to call ahead and arrange for their pickup. According to city staff, it rarely happens. The current ordinance states that if the arrangements are not made, the items will be left behind. He said that is what we are seeing throughout the city.

On his first day, Mayor Shupe was expressing concerns with the ordinance; he told him the law is what it states and it cannot be arbitrarily changed.

Mayor Shupe agreed and explained that initially, he would receive complaints from residents because the city did not pick up their trash. That evolved into multiple complaints about the amount of trash sitting around town. People were noticing where trash was left out on sidewalks throughout the city and the reason he brought it to Mr. Medlarz's attention.

Mr. Medlarz and Street Superintendent Tim Webb rode through the four wards for approximately one and a half hour. During that time, dozens of piles of trash were observed. He agrees with the mayor that it is a widespread problem through both the commercial and residential districts.

Mr. Medlarz then asked the finance department and solid waste department to do some research. He asked how much money was received for bulk pickups the first month. He determined that \$1,200 to \$1,250 was billed that month though that does not mean it was collected. He said the administrative effort to collect \$1,200, in \$10 or 20 increments, begins with the crews, then the solid waste administration, then our billing staff and finally our finance staff. He stressed that it will cost \$30 in staff efforts to collect a \$10 charge.

The city manager is proposing that customers who put out excess trash twice in a row or three times in a quarter, be issued a secondary container. That customer would then be charged for the second container at a significant discount. He believes that would be a much simpler way to handle and would address the customer's needs. That would eliminate the significant amount of staff effort that is currently required each time excess trash is put out.

Mr. Medlarz then addressed the renter issue adding that a large number of those accounts become uncollected. He explained the ordinance gives the city the right to lien a property for nonpayment. However, the bills are not in the property owners' name. He does not believe the solicitor would want to enforce collecting a \$100 fine in this situation.

Mr. Rutt agreed adding he had a similar discussion with the former city manager regarding a tenant issue this past summer.

Mr. Medlarz pointed out the city is very proactive in cutting off electric when it becomes delinquent. However, a lot of our customers know how it works and they pay the electric portion before it is disconnected. If they don't pay the trash fee, the garbage collection continues and hundreds of dollars in trash charges can accumulate. The renter then leaves town without making payment. The city has little or no recourse.

Mr. Pikus agreed pointing out the trash bill is added to the electric bill. Mr. Medlarz explained that right now, the renter can pay the electric portion of the bill and never pay the garbage portion. Adding it to the water and sewer bill that is mailed to the owner, then becomes a lienable expense. The city would then have a way to collect those fees.

Mr. Brooks clarified that his point of concern is the number of trash containers overflowing and the extra bags being put out for collection. Compare that to a home with one person who puts out a small bag of trash for collection. In each case, they pay the same monthly fee which he feels is extremely unfair. He said that Mr. Pikus continuously points out the amount of money we are losing in the solid waste department and the need to raise trash rates. He feels the customers abusing the system should be paying more.

Mr. Medlarz agrees and believes this will accomplish that through a significantly reduced rate for the additional container. The reduced fee is appropriate because the truck and crews are already stopped to pick up the original container so there is a lesser cost associated with the second pickup.

This would allow someone to have a big party and put out additional trash on one occasion which our crews will pick up. That situation will not trigger a second container. However, something needs to be done to address excessive trash day in and day out and month after month.

He also stated that yard waste is another year round service so the discount should be larger and something that does not necessarily occur week after week. However, a yard waste customer who periodically needs a second container, should have an even bigger discount and even possibly cut in half.

Mr. Grier likes the idea and understands the intent.

Mr. Medlarz stated that when he saw the stack of notices, he realized the amount of effort and number of employees that were involved.

This was discussed in depth with city staff and they agree this was the most appropriate manner to handle it.

He recalled that council spent a lot of time discussing the ordinance last year, but he will present a new version for discussion at the workshop on January 26th. It would not recommend it be implemented immediately because a public relations effort is needed because it will be a major change. The ordinance could be adopted relatively quickly, but a slightly long implementation period is needed during which time we will educate our residents.

Mr. Morrow asked if there will be any consideration for the small containers and minimal trash used by customers living alone. Mr. Medlarz said he has analyzed the cost of garbage collection over a number of years. If you break down your actual cost, about 1/3 is the actual tipping, 1/3 is labor (collect and dispose) costs and 1/3 is in the administrative and debt service including equipment and operation of the equipment. He expects it could be reduced by 14 to 16%. However, he is unsure if that would be worth it.

The city manager believes it is much easier to say the second container should be issued and an additional fee applied. Because we are dealing with excess trash, we would automatically issue the larger container unless the customer complains they do not have room for it or some other reason. At that point, we would issue a smaller one.

Mr. Mergner said he sees this to be more of a problem during a holiday week. He had neighbors asking why they would not pick up the bags that were put out beside their containers. His question is for those customers who only put out excess trash once or twice a year.

Mayor Shupe said that is something that council will need to determine and specifically how many times, within a specific time frame, will this occur before it triggers a second container.

Mr. Medlarz said that under the current ordinance, the additional trash is not picked up which is creating all these phone calls.

Council agreed the ordinance needs to be amended.

City of Milford Ethics Ordinance

Mayor Shupe reported the need for an ethics ordinance has been discussed by Mr. Rutt on several occasions. Presently the city falls under the state ethics code for government officials which City Manager Medlarz feels is the most appropriate way to handle. An ordinance will be prepared for Milford's code books that references the State Code of Conduct that would be applicable to all city officials.

Mayor Shupe agrees one is needed and referencing the state code is most appropriate.

Mr. Medlarz explained that if council wanted to create their own ordinance, the state board would no longer be available because it only enforces the state code. It would also have to be more restrictive than the state code.

If Milford adopts the state statute, we will have all the state services available which will eliminate a lot of additional work.

MONTHLY FINANCE REPORT

Finance Committee Chairman Pikus reported that through the fifth month of Fiscal Year 2014-2015 with 47% of the fiscal year having passed, 47% of revenues have been received and 38% of the operating budget expended.

Mr. Pikus pointed out that the solid waste revenues are getting extremely low as has been discussed.

He also noted that the General Improvement Fund has been reimbursed and no longer has a negative balance.

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

ADJOURN

With no further business, Mr. Mergner moved to adjourn the Council Meeting, seconded by Mr. Grier. Motion carried.

The meeting adjourned at 8:16 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
January 26, 2015

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, January 26, 2015.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Chris Mergner, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr. and James Starling, Sr.

City Manager Hans Medlarz, Police Chief Keith Hudson and City Clerk/
Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:03 p.m.

INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation given by Councilman Starling.

RECOGNITION

No special guests in attendance.

COMMUNICATIONS

Included in packet.

UNFINISHED BUSINESS

Adoption/Ordinance 2014-16/Chapter 130 Amendment/Floodplain Management

Mayor Shupe advised that FEMA began updating maps in Delaware last year. Because the City of Milford participates in the National Flood Insurance Program, we are required to adopt updated floodplain regulatory language to comply with NFIP requirements. Model ordinances were developed to assist communities adopt higher floodplain standards, which DNREC recommended as a way to reduce flood damage and lower flood insurance premiums. Building Inspector Don Williams has been working with FEMA, state agencies and a consultant firm to assist with the amendment need to our ordinances.

City Solicitor Rutt advised that he has reviewed the draft that was presented to council. Mr. Rutt made some comments that were sent to Mr. Medlarz and later reviewed at a meeting of staff. At that time, Mr. Medlarz presented the solicitor's comments to the FEMA representative via telephone. The appropriate changes were made and the final document being presented, is consistent with the Kent and Sussex County ordinances.

Mr. Pikus moved to adopt Ordinance 2015-16 as presented, seconded by Mr. Brooks:

ORDINANCE NO. 2014-16

Chapter 130/Floodplain Management Code

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MILFORD, DELAWARE AMENDING THE CITY OF MILFORD CODE OF ORDINANCES TO REPEAL CHAPTER 130 FLOODPLAIN MANAGEMENT; TO ADOPT A NEW CHAPTER 130 FLOODPLAIN MANAGEMENT; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT ADMINISTRATIVE PROCEDURES, AND TO ADOPT CRITERIA FOR DEVELOPMENT

IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; TO PROVIDE FOR APPLICABILITY; REPEALER; AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Milford has the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Milford and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Milford was accepted for participation in the National Flood Insurance Program on June 1, 1977 and the City Council of the City of Milford desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

SECTION 1. This ordinance hereby repeals all provisions of Chapter 130 Floodplain Management of the Code of the City of Milford.

SECTION 2. Chapter 130 Floodplain Management, is hereby replaced with the language as follows:

ARTICLE I - GENERAL PROVISIONS

§ 130-1. Findings.

The Federal Emergency Management Agency (FEMA) has identified special flood hazard areas within the boundaries of the City of Milford. Special flood hazard areas are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. Development that is inadequately elevated, improperly floodproofed, or otherwise unprotected from flood damage also contributes to the flood loss.

The City of Milford, by resolution, agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on June 1, 1977. Subsequent to that date or the initial effective date of the City of Milford Flood Insurance Rate Map, all development and new construction as defined herein, are to be compliant with the City of Milford's floodplain management regulations in effect at the time of construction, and all development, new construction, and substantial improvements subsequent to the effective date of these regulations shall be compliant with these regulations.

§ 130-2. Statement of Purpose.

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (A) Protect human life, health and welfare;*
- (B) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;*
- (C) Minimize flooding of water supply and sanitary sewage disposal systems;*
- (D) Maintain natural drainage;*
- (E) Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;*
- (F) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;*
- (G) Minimize prolonged business interruptions;*
- (H) Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;*
- (I) Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their*

actions;

- (J) Minimize the impact of development on adjacent properties within and near flood prone areas;
- (K) Provide that the flood storage and conveyance functions of the floodplain are maintained;
- (L) Minimize the impact of development on the natural and beneficial functions of the floodplain;
- (M) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- (N) Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

§ 130-3. *Areas to Which These Regulations Apply.*

These regulations shall apply to all special flood hazard areas within the jurisdiction of the City of Milford, as identified in § 130-4.

§ 130-4. *Basis for Establishing Special Flood Hazard Areas.*

For the purposes of these regulations, the following are adopted by reference as a part of these regulations and serve as the basis for establishing special flood hazard areas:

- (A) *The FEMA Flood Insurance Study for Sussex County, Delaware and Incorporated Areas dated March 16, 2015 and all subsequent amendments and/or the most recent revision thereof.*
- (B) *The FEMA Flood Insurance Rate Map for Sussex County, Delaware and Incorporated Areas dated March 16, 2015, and all subsequent amendments and/or the most recent revision thereof.*
- (C) *Other hydrologic and hydraulic engineering studies and/or maps prepared pursuant to these regulations or for other purposes, and which establish base flood elevations, delineate 100-year floodplains, floodways or other areas of special flood hazard.*
- (D) *The City of Milford may identify and regulate new local flood hazard or ponding areas. These areas should be delineated and adopted on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.*
- (E) *Where field surveyed topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a flood hazard map, the area shall be considered as special flood hazard area.*

Maps and studies that establish special flood hazard areas are on file at 210 South Walnut Street, Milford, Delaware 19963.

§ 130-5. *Abrogation and Greater Restrictions.*

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. These regulations shall not impair any deed restriction, covenant or easement, but the land subject to such interests shall also be governed by these regulations.

§ 130-6. *Interpretation.*

In the interpretation and application of these regulations, all provisions shall be:

- (A) *Considered as minimum requirements;*
- (B) *Liberally construed in favor of the governing body;*
- (C) *Deemed neither to limit nor repeal any other powers granted under state statutes; and*
- (D) *Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence, where more restrictive.*

§ 130-7. *Warning and Disclaimer of Liability.*

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Milford, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

§ 130-8. *Severability.*

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision

shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

ARTICLE II - DEFINITIONS

§ 130-9. Definitions.

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.

Accessory Structure: A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

Area of Shallow Flooding: A designated Zone AO on a community's Flood Insurance Rate Map with a one percent annual chance or greater of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the 100-year flood (or the 1%-annual-chance flood).

Base Flood Discharge: The volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

Base Flood Elevation: The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. In areas of shallow flooding, the base flood elevation is the natural grade elevation plus the depth number specified in feet on the Flood Insurance Rate Map, or at least 2 feet if the depth number is not specified.

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

Development: Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, placement of manufactured homes, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Dry Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Elevation Certificate: The National Flood Insurance Program, Elevation Certificate (FEMA Form 086-0-33), used to document building elevations and other information about buildings. When required to be certified, the form shall be completed by a licensed professional land surveyor.

Enclosure Below the Lowest Floor: An unfinished or flood resistant enclosure usable solely for parking of vehicles, building access, or storage, in an area other than a basement.

Federal Emergency Management Agency (FEMA): The federal agency with the overall responsibility for administering the National Flood Insurance Program.

FEMA Technical Bulletin: A series of guidance documents published by FEMA to provide guidance concerning building performance standards of the National Flood Insurance Program. See sections where specific TBs are identified.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters, and/or*
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.*

Flood Damage-Resistant Materials: Any construction material capable of withstanding direct and prolonged contact with

floodwaters without sustaining any damage that requires more than cosmetic repair. See FEMA Technical Bulletin #2 - Flood Damage-Resistant Materials Requirements and FEMA Technical Bulletin #8 - Corrosion Protection for Metal Connectors in Coastal Areas.

Flood Insurance Rate Map (FIRM): An official map on which the Federal Emergency Management Agency has delineated special flood hazard areas to indicate the magnitude and nature of flood hazards, and to designate applicable flood zones.

Zone A: Special flood hazard areas inundated by the 1% annual chance flood; base flood elevations are not determined.

Zone AE: Special flood hazard areas subject to inundation by the 1% annual chance flood; base flood elevations are determined; floodways may or may not be determined.

Zone AO: Areas of shallow flooding, with or without a designated average flood depth.

Zone X (shaded): Areas subject to inundation by the 500-year flood (0.2% annual chance); areas subject to the 1% annual chance flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the base flood.

Zone X (unshaded): Areas determined to be outside the 1% annual chance flood and outside the 500-year floodplain.

Zone VE: Special flood hazard areas subject to inundation by the 1% annual chance flood and subject to high velocity wave action (also referred to as coastal high hazard areas).

Limit of Moderate Wave Action (LiMWA): The inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the Zone VE and the LiMWA will be similar to, but less severe than, those in the Zone VE.

Flood Insurance Study: The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and the water surface elevations.

Floodplain: Any land area susceptible to being inundated by water from any source (see "Flood" or "Flooding").

Floodproofing Certificate: The National Flood Insurance Program, Floodproofing Certificate for Non-Residential Structures (FEMA Form 86-0-34), used by registered professional engineers and architects to certify dry floodproofing designs.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to pass the base flood discharge such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height.

Freeboard: A factor of safety usually expressed in feet above a flood elevation for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure: Any structure that is:

- (1) Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or*
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.*

Hydrologic and Hydraulic Engineering Analysis: An analysis performed by a professional engineer, licensed in the State of Delaware, in accordance with standard engineering practices as accepted by FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letter of Map Change: A Letter of Map Change is an official FEMA determination, by letter, to amend or revise an effective Flood Insurance Rate Map, Flood Boundary and Floodway Map, and Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was inadvertently included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood; in order to qualify for this determination, the fill must have been permitted and placed in accordance with these regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project complies with the minimum National Flood Insurance Program requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not amend or revise effective Flood

Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies; upon submission to and approval of certified as-built documentation, a Letter of Map Revision may be issued.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction: Buildings and structures for which the "start of construction" commenced on or after June 1, 1977, including any subsequent improvements to such structures.

Person: An individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

Recreational Vehicle: A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special Flood Hazard Area: The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, and Zone VE. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in § 130-4.

Start of Construction: The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor

does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure (or Building): For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Violation: The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the Elevation Certificate, other certifications, or other evidence of compliance required in these regulations is presumed to be in violation until such time that documentation is provided.

ARTICLE III - ADMINISTRATION

§ 130-10. Designation of the Floodplain Administrator.

The Building Inspector is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator is authorized to: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another jurisdiction or agency, or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.as may be hereafter amended.

§ 130-11. Duties and Responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (A) Review applications for permits to determine whether proposed activities will be located in special flood hazard areas.*
- (B) Interpret floodplain boundaries and provide flood elevation and flood hazard information.*
- (C) Review applications to determine whether proposed activities will be reasonably safe from flooding.*
- (D) Review applications to determine whether all necessary permits have been obtained from those Federal, state or local agencies from which prior or concurrent approval is required.*
- (E) Verify that applicants proposing to alter or relocate a watercourse have notified adjacent communities and the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship), and have submitted copies of such notifications to the Federal Emergency Management Agency.*
- (F) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or disapprove the same in the event of noncompliance.*
- (G) Inspect buildings and lands to determine compliance with these regulations or to determine if noncompliance has occurred or violations have been committed.*
- (H) Review submitted Elevation Certificates for completeness.*
- (I) Submit to FEMA data and information necessary to maintain flood hazard maps, including hydrologic and hydraulic engineering analyses prepared by or for the City of Milford, corrections to labeling or planimetric details, etc.*
- (J) Maintain and permanently keep all records for public inspection that are necessary for the administration of these*

regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing permits, elevation certificates, other required certifications, variances, and records of enforcement actions taken for violations of these regulations.

- (K) Enforce the provisions of these regulations.*
- (L) Assist with and coordinate flood hazard map maintenance activities.*
- (M) Conduct determinations as to whether existing buildings and structures damaged by any cause and located in special flood hazard areas, have been substantially damaged.*
- (N) Make reasonable efforts to notify owners of substantially damaged buildings and structures of the need to obtain a permit prior to repair, rehabilitation, or reconstruction, and to prohibit the non-compliant repair of substantially-damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a structure to prevent additional damage.*
- (O) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assisting owners with National Flood Insurance Program claims for Increased Cost of Compliance payments.*
- (P) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Milford have been modified.*

§ 130-12. Permits Required.

It shall be unlawful for any person or entity to begin construction or other development which is wholly within, partially within, or in contact with any identified special flood hazard area, as established in § 130-4, including but not limited to: subdivision of land, filling, grading, or other site improvements and utility installations; construction, alteration, remodeling, improvement, replacement, reconstruction, repair, relocation, or expansion of any building or structure; placement or replacement of a manufactured home; recreational vehicles; installation or replacement of storage tanks; or alteration of any watercourse, until a permit is obtained from the City of Milford. No such permit shall be issued until the requirements of these regulations have been met.

§ 130-13. Application Required.

Application for a permit shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual start of construction. The application shall be on a form furnished for that purpose.

(A) Application Contents.

At a minimum, applications shall include:

- (1) Site plans drawn to scale showing the nature, location, dimensions, existing and proposed topography of the area in question, the limits of any portion of the site that was previously filled, and the location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.*
- (2) Elevation of the existing natural ground where structures are proposed, referenced to the datum on the Flood Insurance Rate Map, and an Elevation Certificate that shows the ground elevation and proposed building elevations (identified in Section C of the Elevation Certificate as "Construction Drawings").*
- (3) Delineation of special flood hazard areas, floodway boundaries, flood zones, and base flood elevations. Where surveyed natural ground elevations are lower than the base flood elevations, base flood elevations shall be used to delineate the boundary of special flood hazard areas. If proposed, changes in the delineation of special flood hazard areas shall be submitted to and approved by FEMA in accordance with Section § 130- 13(B). Where special flood hazard areas are not delineated or base flood elevations are not shown on the flood hazard maps, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain Administrator, information that is available from other sources, or to determine such information using accepted engineering practices.*
- (4) For subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, and where base flood elevations are not shown on Flood Insurance Rate Maps, hydrologic and hydraulic engineering analyses and studies as required by § 130-19(D).*

- (5) *Such other material and information as may be requested by the Floodplain Administrator necessary to determine conformance with these regulations.*
- (6) *For work on an existing structure, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes substantial improvement, including:*
 - (a) *Documentation of the market value of the structure before the improvement is started or before the damage occurred.*
 - (b) *Documentation of the actual cash value of all proposed improvement work, or the actual cash value of all work necessary to repair and restore damage to the before damaged condition, regardless of the amount of work that will be performed.*
- (7) *Certifications and/or technical analyses prepared or conducted by an appropriate design professional licensed in the State of Delaware, as appropriate to the type of development activity proposed and required by these regulations:*
 - (a) *Floodproofing Certificate for dry floodproofed non-residential structures, as required in § 130-28.*
 - (b) *Certification that flood openings that do not meet the minimum requirements of § 130-27(B)(3)(b) are designed to automatically equalize hydrostatic flood forces.*
 - (c) *Technical analyses to document that the flood carrying capacity of any watercourse alteration or relocation will not be diminished and documentation of maintenance assurances as required in § 130-30(C).*
 - (d) *Hydrologic and hydraulic engineering analyses demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but has not delineated a floodway, as required by § 130-30(B).*
 - (e) *Hydrologic and hydraulic engineering analyses of any development proposed to be located in an identified floodway, as required by § 130-30(A).*
 - (f) *Hydrologic and hydraulic engineering analyses to develop base flood elevations for subdivisions and large-lot developments, as required by § 130-19(D) or otherwise required by the Floodplain Administrator.*
- (B) *Right to Submit New Technical Data.*
The applicant has the right to seek a Letter of Map Change and to submit new technical data to FEMA regarding base maps, topography, special flood hazard area boundaries, floodway boundaries, and base flood elevations. Such submissions shall be prepared in a format acceptable by FEMA and the Floodplain Administrator shall be notified of such submittal. Submittal requirements and processing fees shall be the responsibility of the applicant.
- (C) *Requirement to Submit New Technical Data.*
The Floodplain Administrator shall notify FEMA of physical changes affecting flood hazard areas and flooding conditions by submitting technical or scientific data as soon as practicable, but not later than six (6) months after the date such information becomes available. The Floodplain Administrator has the authority to require applicants to submit technical data to FEMA for Letters of Map Change.

§ 130-14. Review, Approval or Disapproval.

(A) *Review*

The Floodplain Administrator shall:

- (1) *Review applications for development in special flood hazard areas to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information required to support the application.*
- (2) *Review applications for compliance with these regulations after all information required in § 130-13 or identified and required by the Floodplain Administrator has been received.*
- (3) *Review all permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including but not limited to:*
 - (a) *Permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Delaware Environmental Protection Agency under Section 401 of the Clean Water Act.*
 - (b) *Permits required by the State of Delaware.*

(B) *Approval or Disapproval.*

The Floodplain Administrator shall approve applications that comply with the applicable requirements of these regulations. The Floodplain Administrator shall disapprove applications for proposed development that do not comply with the applicable provisions of these regulations and shall notify the applicant of such disapproval, in writing, stating the reasons for disapproval.

(C) *Expiration of Permit.*

A permit is valid provided the actual start of construction occurs within 180 days of the date of permit issuance. If the actual start of construction is not within 180 days of the date of permit issuance, requests for extensions shall be submitted in writing. Upon reviewing the request and the permit for continued compliance with these regulations, the Floodplain Administrator may grant, in writing, one or more extensions of time, for periods not more than 180 days each.

§ 130-15. *Inspections.*

The Floodplain Administrator shall make periodic inspections of development permitted in special flood hazard areas, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:

- (A) *Stake-out inspection, to determine location on the site relative to the special flood hazard area and floodway.*
- (B) *Foundation inspection, upon placement of the lowest floor and prior to further vertical construction, to collect information or certification of the elevation of the lowest floor.*
- (C) *Enclosure inspection, including crawlspaces, to determine compliance with applicable provisions.*
- (D) *Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the base flood elevation.*
- (E) *Storage of materials.*

§ 130-16. *Submissions Required Prior to Issuance of a Certificate of Occupancy.*

The following certifications are required to be submitted by the permittee for development that is permitted in special flood hazard areas prior to the issuance of a Certificate of Occupancy:

- (A) *For new or substantially improved residential structures or nonresidential structures that have been elevated, an Elevation Certificate that shows the ground elevation and finished elevations (identified in Section C of the Elevation Certificate as "Finished Construction").*
- (B) *For nonresidential structures that have been dry floodproofed, a Floodproofing Certificate based on "Finished Construction" (identified in Section II).*
- (C) *For all development activities subject to the requirements of § 130-13(B), a Letter of Map Revision shall be provided.*

§ 130-17. *Flood Insurance Rate Map Use and Interpretation.*

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of special flood hazard maps and data:

- (A) *In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used. When a Preliminary Flood Insurance Rate Map has been provided by FEMA to identify base flood elevation where such elevations were not previously shown, the base flood elevations on the Preliminary Flood Insurance Rate Map shall be used.*
- (B) *Special flood hazard area delineations, base flood elevations, and floodway boundaries on FEMA maps and in FEMA studies shall take precedence over delineations, base flood elevations, and floodway boundaries by any other source that reflect a reduced special flood hazard area, reduced floodway width and/or lower base flood elevations.*
- (C) *Other sources of data shall be reasonably used, with the approval of the Floodplain Administrator, if they show increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies.*
- (D) *Where field surveyed topography indicates that ground elevations are below the base flood elevation, even in areas not delineated as a special flood hazard on a flood hazard map, the area shall be considered as special flood hazard area.*

§ 130-18. *Application of Requirements.*

The general requirements of this section apply to all development proposed within special flood hazard areas identified in § 130-4.

§ 130-19. *Subdivisions and Developments.*

- (A) *All subdivision and development proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.*
- (B) *All subdivision and development proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.*
- (C) *All subdivision and developments proposals shall have adequate drainage provided to reduce exposure to flood damage.*
- (D) *All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in FEMA-delineated special flood hazard areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway delineations. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.*

§ 130-20. *Protection of Water Supply and Sanitary Sewage Systems.*

- (A) *New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.*
- (B) *New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.*
- (C) *On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of flooding.*

§ 130-21. *Buildings and Structures.*

All new construction of buildings and structures, including placement of manufactured homes and substantial improvements to existing buildings and structures, that are to be located, in whole or in part, in special flood hazard areas shall meet the following requirements.

- (A) *Be designed (or modified) and constructed to safely resist flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. Buildings and structures shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses from flooding equal to the base flood elevation, including hydrodynamic and hydrostatic loads and the effects of buoyancy.*
- (B) *Be constructed by methods and practices that minimize flood damage.*
- (C) *Use flood damage-resistant materials below the elevation of the lowest floor. See FEMA Technical Bulletin #2 - Flood Damage-Resistant Materials Requirements and FEMA Technical Bulletin #8 - Corrosion Protection for Metal Connectors in Coastal Areas.*
- (D) *Have electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment located at or above the base flood elevation. Electrical wiring systems are permitted to be located below the elevation of the lowest floor provided they conform to the provisions of the electrical part of this code for wet locations. If replaced as part of a substantial improvement, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section. See FEMA Technical Bulletin #4 - Elevator Installation.*
- (E) *As an alternative to § 130-21(D), electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below the elevation of the lowest floor provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of the base flood.*
- (F) *Meet the specific requirements of Article V.*
- (G) *In a special flood hazard area with more than one designation (Zones A, AE, and AO, floodway), meet the requirements of the most restrictive designation.*

§ 130-22. *Fill.*

- (A) *Disposal of fill, including but not limited to rubble, construction debris, woody debris, and trash, shall not be permitted in special flood hazard areas.*
- (B) *Where permitted by Article V (Zones A, AE, and AO), fill placed for the purpose of raising the ground level and to support a building or structure shall meet the following requirements:*
 - (1) *Extend laterally from the building footprint to provide for adequate access, as a function of use; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency.*
 - (2) *Placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling.*
 - (3) *Consist of soil or rock materials only.*
 - (4) *Sloped no steeper than one (1) vertical on two (2) horizontal, unless approved by the Floodplain Administrator.*
 - (5) *Designed with provisions for adequate drainage and no adverse effect on adjacent properties.*
- (C) *Fill placed for a purpose other than to support a building or structure shall meet the requirements of § 130-22(B)(2) through (B)(5).*

§ 130-23. *Historic Structures.*

Repair, alteration, or rehabilitation of historic structures shall be subject to the requirements of these regulations unless a determination is made that compliance with these regulations will preclude the structure's continued designation as a historic structure and a variance is granted in accordance with Article VI and such variance is the minimum necessary to preserve the historic character and design of the structure.

§ 130-24. *Recreational Vehicles.*

- (A) *Recreational vehicles in special flood hazard areas shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.*
- (B) *Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of § 130-27(C) for manufactured homes.*

§ 130-25. *Gas or Liquid Storage Tanks.*

- (A) *Underground tanks in special flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.*
- (B) *Above-ground tanks in special flood hazard areas shall be elevated and anchored to or above the base flood elevation or shall be anchored at-grade and designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.*
- (C) *In special flood hazard areas, tank inlets, fill openings, outlets and vents shall be:*
 - (1) *At or above the base flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood.*
 - (2) *Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.*

ARTICLE V - SPECIFIC REQUIREMENTS IN SPECIAL FLOOD HAZARD AREAS

§ 130-26. *General Requirements.*

In addition to the general requirements of Article IV, the requirements of this section apply to all development proposed in special flood hazard areas.

§ 130-27. *Residential Structures and Residential Portions of Mixed Use Structures.*

- (A) *Elevation Requirements*
 - (1) *The lowest floor (including basement) shall be elevated to or above the base flood elevation.*
 - (2) *In areas of shallow flooding (Zone AO), the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Map or at least 2 feet if a depth number is not specified; adequate drainage paths shall be provided to guide floodwaters around and away from the structure.*
 - (3) *Enclosures below the lowest floor shall meet the requirements of § 130-27(B).*
- (B) *Enclosures Below the Lowest Floor*
 - (1) *Enclosures below the lowest floor shall be used solely for parking of vehicles, building access, crawlspaces,*

or limited storage.

- (2) *Enclosures below the lowest floor shall be constructed using flood damage-resistant materials. See FEMA Technical Bulletin #2 - Flood Damage-Resistant Materials Requirements.*
- (3) *Enclosures below the lowest floor (including crawlspaces) shall be provided with flood openings which shall meet the following criteria (see FEMA Technical Bulletin #1 - Openings in Foundation Walls and Walls of Enclosures):*
 - (a) *There shall be a minimum of two openings on different sides of each enclosed area; if a building has more than one enclosed area below the base flood elevation, each area shall have openings on exterior walls.*
 - (b) *The total net area of all openings shall be at least 1 square inch for each square foot of enclosed area, or the openings shall be designed and certified by a registered engineer or architect to provide for equalization of hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters.*
 - (c) *The bottom of each opening shall be 1 foot or less above the adjacent ground level.*
 - (d) *Any louvers, screens or other opening covers shall allow the automatic flow of floodwaters into and out of the enclosed area.*
 - (e) *Where installed in doors and windows, openings that meet requirements of § 130-27(B)(3)(a) through (d), are acceptable; however, doors and windows without installed openings do not meet the requirements of this section.*
- (4) *Crawlspaces shall have the finished interior ground level equal to or higher than the outside finished ground level on at least one entire side of the foundation wall.*

(C) Manufactured Homes

New or replacement manufactured homes, including substantial improvement of existing manufactured homes, shall:

- (1) *Be elevated on a permanent, reinforced foundation that raises the lowest floor to or above the base flood elevation and is otherwise in accordance with § 130-27(A).*
- (2) *Be installed in accordance with the anchor and tie-down requirements of the building code or the manufacturer's written installation instructions and specifications.*
- (3) *Have enclosures below the elevated manufactured home, if any, meet the requirements of § 130-27(B). For the purpose of this requirement, the lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member of the lowest floor.*

§ 130-28. Nonresidential Structures and Nonresidential Portions of Mixed Use Structures.

(A) Elevation Requirements

- (1) *The lowest floor (including basement) shall be elevated to or above the base flood elevation or the structure shall be dry floodproofed in accordance with § 130-28(B).*
- (2) *In areas of shallow flooding (Zone AO), if not dry floodproofed, the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Map or at least 2 feet if a depth number is not specified; adequate drainage paths shall be provided to guide floodwaters around and away from the structure.*
- (3) *Enclosures below the lowest floor, if not dry floodproofed, shall meet the requirements of § 130-27(B).*

(B) Dry Floodproofing Requirements

Dry floodproofed structures, together with attendant utility and sanitary facilities, shall:

- (1) *Be designed to be dry floodproofed such that the structure is watertight with walls and floors substantially impermeable to the passage of water to the level of the base flood elevation. In areas of shallow flooding (Zone AO), the structure shall be dry floodproofed at least as high above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Map or at least 2 feet if a depth number is not specified.*
- (2) *Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*
- (3) *Be certified by a licensed professional engineer or licensed professional architect with a Floodproofing Certificate, that the design and methods of construction meet the requirements of this section. Refer to FEMA Technical Bulletin #3 - Non-Residential Floodproofing - Requirements and Certification for guidance.*

§ 130-29. *Accessory Structures.*

Accessory structures shall meet the requirements of these regulations. Accessory structures that have a footprint of no more than 200 square feet may be allowed without requiring elevation or floodproofing provided such structures meet all of the following requirements:

- (A) *Useable only for parking or limited storage;*
- (B) *Constructed with flood damage-resistant materials below the base flood elevation;*
- (C) *Constructed and placed to offer the minimum resistance to the flow of flood waters;*
- (D) *Firmly anchored to prevent flotation, collapse, and lateral movement;*
- (E) *Electrical service and mechanical equipment elevated to or above the level of the base flood elevation; and*
- (F) *Equipped with flood openings that meet the requirements of § 130-27(B).*
- (G) *For guidance, see FEMA Technical Bulletin #7 - Wet Floodproofing Requirements.*

§ 130-30. *Protection of Flood-Carrying Capacity.*

(A) *Development in Floodways*

Within any floodway area designated on the Flood Insurance Rate Map, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic engineering analysis that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Such technical data shall be submitted to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. The proposed development activity may be permitted if the analyses demonstrate that the activity:

- (1) *Will not result in any increase in the base flood elevation; or*
- (2) *Will result in an increase in the base flood elevation, provided a Conditional Letter of Map Revision has been issued by FEMA and the applicant completes all of the following:*
 - (a) *Submits technical data required in § 130-13(A)(8)(d);*
 - (b) *Evaluates alternatives which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;*
 - (c) *Certifies that no structures are located in areas which would be impacted by the increased base flood elevation;*
 - (d) *Documents that individual legal notices have been delivered to all impacted property owners to explain the impact of the proposed action on their properties;*
 - (e) *Requests and receives concurrence of the Mayor of the City of Milford and the Chief Executive Officer of any other community impacted by the proposed actions; and*
 - (f) *Notifies the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship).*

(B) *Development in Areas with Base Flood Elevations but No Floodways*

For development activities in a special flood hazard area with base flood elevations but no designated floodways, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such analyses and data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. The proposed development activity may be permitted if the analyses demonstrate that the cumulative effect of the proposed development activity, when combined with all other existing and potential special flood hazard area encroachments will not increase the base flood elevation more than 1.0 (one) foot at any point.

(C) *Deliberate Alterations of a Watercourse*

For the purpose of these regulations, a watercourse is deliberately altered when a person causes a change to occur within its banks. Deliberate changes to a watercourse include, but are not limited to: widening, deepening or relocating of the channel; installation of culverts; construction of bridges, and excavation or filling of the channel or watercourse banks.

For any proposed deliberate alteration of a watercourse, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

The proposed alteration of a watercourse may be permitted upon submission, by the applicant, of the following:

- (1) *Documentation of compliance with § 130-30(A) if the alteration is in a floodway or § 130-30(B) if the alteration is in a watercourse with base flood elevations but no floodway.*
- (2) *A description of the extent to which the watercourse will be altered or relocated as a result of the proposed development.*
- (3) *A certification by a licensed professional engineer that the bankful flood-carrying capacity of the watercourse will not be diminished.*
- (4) *Evidence that adjacent communities, the U.S. Army Corps of Engineers, and the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship) have been notified of the proposal and evidence that such notifications have been submitted to the Federal Emergency Management Agency.*
- (5) *Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with City of Milford specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.*

ARTICLE VI - VARIANCES

§ 130-31. Variances.

The City of Milford's Board of Adjustment shall have the power to authorize, in specific cases, such variances from the requirements of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(A) *Application for a Variance*

- (1) *Any owner, or agent thereof, of property for which a variance is sought shall submit an application for a variance to the Floodplain Administrator.*
- (2) *At a minimum, such application shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request. Each variance application shall specifically address each of the considerations in § 130-31(B) and the limitations and conditions of § 130-31(C).*

(B) *Considerations for Variances*

In considering variance applications, the Board of Adjustment shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

- (1) *The danger that materials may be swept onto other lands to the injury of others.*
- (2) *The danger to life and property due to flooding or erosion damage.*
- (3) *The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.*
- (4) *The importance of the services provided by the proposed development to the community.*
- (5) *The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.*
- (6) *The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.*
- (7) *The compatibility of the proposed use with existing and anticipated development.*
- (8) *The relationship of the proposed use to the comprehensive plan for that area.*
- (9) *The safety of access to the property in times of flood for ordinary and emergency vehicles.*
- (10) *The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.*
- (11) *The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.*

(C) *Limitations for Variances*

- (1) *An affirmative decision on a variance request shall only be issued upon:*
 - (a) *A showing of good and sufficient cause. A "good and sufficient" cause is one that deals solely with the physical characteristics of the property and cannot be based on the character of the planned construction*

- or substantial improvement, the personal characteristics of the owner or inhabitants, or local provisions that regulate standards other than health and public safety standards.*
- (b) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property.*
- (c) Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.*
- (d) A determination that the granting of a variance for development within any designated floodway, or special flood hazard area with base flood elevations but no floodway, will not result in increased flood heights beyond that which is allowed in these regulations.*
- (e) A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.*
- (f) A determination that the structure or other development is protected by methods to minimize flood damages.*
- (g) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
- (2) Upon consideration of the individual circumstances, the limitations and conditions, and the purposes of these regulations, the Board of Adjustment may attach such conditions to variances as it deems necessary to further the purposes of these regulations.*
- (3) The Board of Adjustment shall notify, in writing, any applicant to whom a variance is granted for a building or structure with a lowest floor elevation below the base flood elevation that the variance is to the floodplain management requirements of these regulations only, and that the cost of federal flood insurance will be commensurate with the increased risk.*

ARTICLE VII - ENFORCEMENT

§ 130-32. Compliance Required.

- (A) No structure or land development shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations.*
- (B) Failure to obtain a permit shall be a violation of these regulations and shall be punishable in accordance with § 130-34.*
- (C) Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that is contrary to that authorized shall be deemed a violation of these regulations.*

§ 130-33. Notice of Violation.

Notices of violation shall be issued in accordance with the requirement of the Building Code Chapter 88.

§ 130-34. Violations and Penalties.

Violations and penalties shall be administered in accordance with the requirement of the Building Code Chapter 88.

SECTION 3. APPLICABILITY.

For the purposes of jurisdictional applicability, this ordinance shall apply in the City of Milford. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 4. REPEALER.

Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict. This ordinance specifically repeals and replaces Chapter 130, Floodplain Management.

SECTION 5. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the City Council of the City of Milford that the provisions of this ordinance shall become and be made a part of the City of Milford Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in

order to accomplish such intentions.

SECTION 6. DATES.

Introduction: November 10, 2014

Adoption: January 26, 2015

Effective: February 5, 2015

Motion carried.

Adoption/Ordinance 2014-17/Chapter 88 Amendment/Building Construction

Mayor Shupe informed council an amendment to the building construction ordinance was also needed as a result of the new floodplain regulations. To prevent amending this chapter each time a floodplain map was required, a cross reference was added to the building permit and structural design sections of the ordinance.

Mr. Pikus moved to adopt Ordinance 2014-17, seconded by Mr. Starling:

ORDINANCE 2014-17
Chapter 88-Building Construction

WHEREAS, the City of Milford deems it necessary to regulate and govern the conditions and maintenance of all property, buildings and structures; and

WHEREAS, the City stipulates the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and

WHEREAS, the City requires the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures are herein provided; and

WHEREAS, the City calls for the issuance of permits and collection of fees.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1.

An Ordinance to Amend the Code of the City of Milford by Amending Chapter 88 entitled Building Construction.

Section 2. Article I-International Residential Code, 88-2-Additions, Insertions and Changes is hereby amended as follows:

C. Chapter 3 Building Planning

(1) TABLE R301.2(1)

Climatic and Geographic Design Criteria

GROUND SNOW LOAD	WIND SPEED	SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP	ICE BARRIER UNDER-LAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX	MEAN ANNUAL TEMP
			WEATHERING	FROST LINE DEPTH	TERMITE					
25	100	A	SEVERE	24 Inches	MOD-HEAVY	14	NO	SEE CHAPTER 130 Floodplain Management	368	55.7F

Section 3. Article II-International Building Code, 88-4-Additions, Insertions and Changes is hereby amended as follows:

P. Chapter 16, Structural Design.

1612.3. Establishment of flood hazard areas. Flood hazard areas are established by Chapter 130, Floodplain Management.

Section 4. Dates.

Introduction: November 10, 2014

Adoption: January 26, 2015

Effective: February 5, 2015

Motion carried.

Brewgrass Festival/Amendment to Approval

Mayor Shupe recalled this event being discussed on two previous occasions. The organizers of the Brewgrass Festival, previously approved by council, are asking to expand the site to include Memorial Park. The original approval was only for Bicentennial Park. The intent is for participants to be able to use the bridge and enjoy and experience the Mispillion River. Projected are 500 people.

The organizer, Sara Pletcher emphasized they will strictly adhere to ordinance regulations and specifically, fence in the areas where alcohol will be consumed.

The area map was included in the packet and now includes an entrance on both sides of the river where designated drivers will be stationed and provided if needed.

The mayor talked to Ms. Pletcher and shared some concerns that the neighbors on the Memorial Park side of the river may have a problem with the noise. She agreed to install some type of acoustics to block the noise from the homes in that area. Live music will remain solely on the Bicentennial Park side.

Mr. Mergner asked the cut off time for the bands; Ms. Hudson confirmed the event would begin at noon and end at 6:00 p.m. Mr. Pikus pointed out they had originally wanted to start the event at 11:00 in the morning, but he received a number of complaints from the area churches and they agreed to move it to noon.

Chief Hudson asked if this event is co-sponsored by the city; Mayor Shupe stated no, it is solely sponsored by Downtown Milford, Incorporated.

Mr. Grier moved to expand the site for the Brewgrass Festival to include Memorial Park, seconded by Mr. Gleysteen. Motion carried.

NEW BUSINESS

Adoption of Resolution 2015-01/Acceptance of Public Improvements/Fork Landing Farms

Mr. Medlarz explained this is a three-step process. Once a subdivision receives final approval, the developer installs streets, utilities and associated improvements. Once the improvements are in place and inspected, the subdivision is built. The developer can then make a request for the city to take over those improvements.

In this case, the developer has completed all improvements, the punch list has been completed and the public works department is ready to accept them. He explained this is a preliminary acceptance for one year and should any contingencies occur, final acceptance will not be granted. If no contingencies occur, the maintenance bond will expire and final acceptance will be granted.

Should issues arise, we will use the maintenance bond available to the city and extend the preliminary approval period until such items are corrected.

Mr. Morrow moved to adopt Resolution 2015-01, seconded by Mr. Brooks:

ACCEPTING PUBLIC IMPROVEMENTS FOR FORK LANDING SUBDIVISION

WHEREAS, Chapter 200 provides that public roads and public utilities shall be accepted into the City of Milford's street system and public utility system by resolution of City Council; and

WHEREAS, Former Public Works Director Brad Dennehy has determined that all required improvement for the Fork Landing Subdivision have been completed;

WHEREAS, The Fork Landing Subdivision has provided the City of Milford with a maintenance bond for the public improvements and public utilities guarantying the improvements for one year from the date of acceptance of the improvements; and

WHEREAS, the water distribution system, sewer system, sewer pumping station and all public streets in the subdivision known as Fork Landing, including Camberly Way, Drummond Drive and Knotts Court are dedicated for public use, as shown on the final map for Fork Landing Subdivision; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Milford during a regular session of Council, by a favorable majority vote, accepts the water distribution system, sewer system, sewer pumping station and all public streets and easements in the Fork Landing Subdivision that are to be dedicated for public use into the City of Milford's street system and public utility system;

BE IT FURTHER RESOLVED, that the City of Milford assume responsibility for the future maintenance and repair of all streets, easements and public utility systems in Fork Landing Subdivision as noted in this resolution.

s/Mayor Bryan Shupe

Motion carried.

Approval/SE Front Street Improvements Project/Additional Sidewalk Installation

Mr. Medlarz explained that the improvements planned in the original contract have been completed. A property that should have been included in the project scope was omitted. It was brought to the attention of the engineers mid way through the project. They felt it was inappropriate to include by change order but instead opted to address it separately in conjunction with the public works and parks and recreation crews.

Mr. Williams and Mr. Medlarz met with the property owners who are anxious to get this project completed. There is a section that is their responsibility which Mr. Medlarz made clear. The owners understand and those repairs were also arranged through our contractor. The city will do some prep work and parks and recreation will remove the bricks. Public works will make the utility adjustments and handle some rough grading.

City crews will then work with Shea Concrete to complete the work which reduces the project costs by several thousand dollars. However, the price quoted for the anticipated scope is very competitive and has Mr. Medlarz's support.

Mr. Brooks moved to pay the Shea Concrete Invoice in the amount of \$8,700, for the city portion of this project, to be funded from the Municipal Street Aid account, seconded by Mr. Morrow. Motion carried.

Approval/FY 2014-2015 Budget Adjustment/Maple Avenue Culvert Repair

As previously mentioned in the January City Manager report, the city-owned culvert under Maple Avenue connecting Silver Lake with the millpond has been compromised and the road surface has started to settle. Mr. Medlarz feels there is a need for the repairs to be done as quickly as possible though no need for immediate alarm at this point in time.

Mr. Medlarz explained that a design has been developed, with the assistance of our public works staff, to make the repair

at a reasonable cost. Our staff will assist with the sandbags, stone and dewatering. There is a chance our crews could complete the work and if not, Shea Concrete will assist though they would be limited to one day. The proposal was structured with both scenarios.

When asked if there should be a weight limit, Mr. Medlarz does not feel that is necessary. However, a heavy vehicle, such as a tractor trailer, should be prevented from parking over it though that would be an unlikely situation.

He added that once it is fixed, the public works crew will do some minor repairs to get the patch up to the appropriate level. This should then last another twenty years or so.

Mr. Medlarz pointed out that if the project had been addressed in this year's budget, a complete repair could have been done versus this type repair.

Mr. Pikus moved to approve a FY 2014-15 budget adjustment in the amount of \$17,658 to complete the Maple Avenue culvert repairs, funded from the Municipal Street Aid account, seconded by Mr. Brooks. Motion carried.

Mr. Medlarz advised the street will need to be closed to do the repairs.

Approval/FY 2014-2015 Budget Adjustment/Truitt Avenue Sidewalk Urgent Repairs

Mr. Medlarz stated that the sidewalk leading to the bridge on Front Street and Truitt Avenue is undermined by an approximate one square foot tunnel beneath. A complete void has formed and there is the potential for an imminent collapse should we incur a major rainfall event. The city's responsibility begins at the back curb on both sides from the right-of-way.

The second issue involves a heavily-used pedestrian walkway between the shopping center and the fourth ward. A major utility pole was placed on the walkway on the north end of Truitt Avenue where its guy-wire is preventing proper clearance.

The repairs are on the opposite ends of Truitt Avenue and will cost a total of \$6,000.

The city manager spoke with the owner of Shea Concrete who agrees with our concerns and understands this was not included in this year's budget. Because this is the slow time of the year, Mr. Shea provided a very reasonable cost for the repairs.

Mr. Medlarz reported there is approximately \$1 million in the Municipal Street Aid fund. However, there is also an urgent need to repair Airport Road. He has authorized core borings on Airport Road to get an idea of what is needed and how it can be done in the most economical manner. He feels we cannot continue to deplete funds from either the Municipal Street Aid Fund or other similar accounts without taking into consideration major improvements that are needed.

Mr. Starling moved to approve a FY 2014-15 budget adjustment in the amount of \$6,865 for two sidewalk repairs on Truitt Avenue, seconded by Mr. Pikus.

Mr. Pikus then recalled money being set aside in the current budget for repairs to Airport Road; Mr. Medlarz confirmed that he checked with the finance department and there was nothing specifically earmarked for that project.

Motion carried.

Mr. Starling then recalled the extension planned from the original Truitt Avenue to Truitt Avenue Extended off West Street and US Route 113 discussed many years ago. Mr. Medlarz remembered the plans though Mr. Pikus said he believes that right-of-way was given to the church. The city manager is unaware if that occurred.

Approval/FY 2014-2015 Budget Adjustment/Preliminary Engineering Expenses/2015 Sewer System Project

The sewer department is requesting funds from sewer reserves to pay for the USDA application work being done by DBF. The city has accrued \$21,353 in DBF bills toward this application which Mr. Medlarz confirmed is the final cost. The funds need to be approved so the invoices can be paid.

Mr. Medlarz recalled city council authorizing the engineers and staff to prepare a funding application for the 2015 sewer system improvements which was completed last year. He confirmed we have received the funding offer obligating documents for phase I which were executed by the mayor.

He noted that USDA's Program Specialist Lisa Fitzgerald is present to comment on the status of the second phase of the funding packet.

Mr. Medlarz and Mr. Portmann agree that when city council authorizes such items, there is a need to authorize a cost center and possibly a project number. Council should consider a 'not to exceed amount' in such cases.

In this situation, all bills were paid with the exception of the last one. He was going to code it to the cost center and found out there was none; Mr. Portmann agreed that should be done.

Mr. Medlarz asked council to correct the issue so that they are aware of the applications and preliminary expenses. The process is not as simple as requesting the money and USDA sends the obligating documents as a result. He pointed out there are a number of steps that must be followed. Environmental assessments must be considered and engineering comparisons prepared which comes at a cost.

He said he is putting a motion before council to make sure it is in the right category and to give a 'not to exceed number'. In addition, once the second obligating package is presented and it goes public (1) the expenses incurred need to be outlined, (2) council agrees this is where we want to go and (3) after the public hearings and referendum occurs, council would then execute the bond document.

Mr. Medlarz feels it is important that council understand how this works and that they are comfortable paying the last bill before he approves it.

He further explained there could be some associated costs depending on the complexity of the application. If the project does not move forward, those costs will need to be appropriately accounted for so that the auditors know council was aware and authorized the expense. The preliminary expense from an accounting standpoint will be rolled over to become an eligible project expense. However, if the project never moves forward it becomes a city expense which must be properly accounted for and authorized.

If it moves forward, it will be subject to a single audit. If it does not move forward, the auditors question the expense and if the proper authorizations are not in place, the auditors will add a 'finding' to the next audit which means we are not in accordance with the government accounting standards.

Mr. Pikus said council is aware of that process now. Mr. Medlarz assumes council is aware of the project and has properly authorized it to proceed and are now waiting Ms. Fitzgerald's update once the expenditure is approved.

Mr. Pikus moved that sewer reserves in the amount of \$21,353 be transferred into a special account to pay for the costs associated with DBF preparing the USDA grant for the 2015 sewer repairs, seconded by Mr. Brooks. Motion carried.

Ms. Fitzgerald then addressed council reporting that Milford received the first approval of the first phase of the funding obligated in September 2014. This involved a \$600,000 loan and a \$1 million grant that required the city to contribute \$400,000. Currently, the city is in the application process for phase two, which according to Ms. Fitzgerald, was applied for at the same time she was working on the application with DBF. Therefore, there is nothing else to do at this time except refresh some of the financials as they become stale.

She explained her review is complete and had made her recommendation to her supervisor. The full allocation for the state is expected by mid February. At that point, USDA will make an offer of assistance to the city. Prior to that, it is too early in their fiscal year and no money is available. Last year the city applied late in the fiscal year when the allocation was available.

Any of the costs paid out of pocket can be reimbursed through this loan which is typically done at the time the loan closes.

Mr. Pikus asked if all the bills incurred on the project will be paid; Ms. Fitzgerald stated as long as the receipts and account summaries are provided, the money will be reimbursed. This would follow the same process as was done on the Southeast Milford Water Expansion.

She added that normally there is one bond closing at the end of the project and the loan portion would be closed at the same time. Grant draws would then be done every thirty days.

Approval/FY 2014-2015 Budget Adjustment/DBF Contract Amendment/Seabury Avenue Test Well

The following letter was submitted by DBF's Erik Retzlaff:

RE: PROPOSAL ADJUSTMENT

Test Well Services

Groundwater Investigation

Seabury Avenue WTF

Project No. 0052A165.C02

Per our recent discussions, Davis, Bowen & Friedel, Inc. (DBF) is pleased to present this proposal adjustment for engineering services related to the installation of a test/production well at the Seabury Avenue Water Treatment Facility site. As you are aware, the City previously approved the attached proposal for the installation of a 4" test well at the site. Based on DNREC's recent policy adjustment preventing the reclassification of a test well to a production well, we are recommending the City install a 6" production well that could be utilized as a production well should the production capacity be available.

Increasing from a 4" Well to a 6" Well will cost \$12,500.00 in materials and additional drilling time needed. Additionally, in order to utilize the well as a Production Well, access tubes must be installed for level measurement.

Costs for the access tube are estimated at \$7,500.00. In total, the cost increase to go to a 6" Production Well is approximately \$20,000.00.

All terms as listed in the previous Proposal dated September 15, 2014 attached will remain.

Mr. Medlarz recalled when he and Mayor Shupe discussed the goals for the city what rose to the top is the city's continued effort to provide adequate water supplies to our residents and industries. In this effort, the city already worked with City Engineer Erik Retzlaff in exploring the available aquifers at the Seabury Avenue facility which was authorized through an engineering contract.

When Mayor Shupe asked the city manager his comfort level with this, he stated that working with the city engineer, as well as reviewing the electric logs, CAMA logs, cuttings and sieve analysis, etc. he feels reasonably comfortable we do have a source of water available. However, there is always a risk associated with drilling wells. Though no guarantee, if the well was upsized from four to six inches, and we were correct in our assumptions and are able to obtain the yield we expect, we would have the opportunity to go back to DNREC and reclassify it from a test to a production well. That would save significant funds in the future.

The city manger feels this is a relatively small investment. After a discussion about the cost, Mr. Retzlaff is proposing a 'not to exceed cost' of which he will pass any and all incurred costs through a 'no markup' which Mr. Medlarz feels is a great offer adding the success rate will be well above 75%.

Mr. Mergner asked if it is more a financial risk in the way we want to use it; Mr. Medlarz explained that the test well will have to be drilled regardless. The upsizing and associated cost provides the likely opportunity to use it as a production well which will save the same amount because a four-inch well was just drilled that cannot be used as a production well.

The city manager feels this is a calculated risk with a significant upside.

Mr. Medlarz confirmed there are three wells left at the Seabury Avenue facility and two are marginal producing wells.

He explained it is a budgeted expense and there is money available through the Redner's fund.

Mr. Grier moved to approve the Proposal Amendment to increase the test well from four inches to six inches and the associated work at the Seabury Avenue Water Treatment Facility dated January 23, 2015, seconded by Mr. Starling. Motion carried.

ADJOURN

With no further business, Mr. Pikus moved to adjourn the Council Meeting, seconded by Mr. Grier. Motion carried.

Meeting adjourned at 7:58 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
January 26, 2015

The City Council of the City of Milford met in Workshop Session on Monday, January 26, 2015 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Bryan W. Shupe

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

City Manager Hans Medlarz, Police Chief Keith Hudson and City Clerk/
Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

The Workshop Session convened at 7:58 p.m.

Ordinance 2014-18/Chapter 204/Taxation/Supplemental Bills and Appeal Deadlines

Mayor Shupe recalled the following ordinance being discussed at the previous meeting:

WHEREAS, the taxation of real property constitutes a significant portion of the annual municipal revenues necessary to facilitate governmental operations; and

WHEREAS, it is in the best interest of the City of Milford, as well as its residents, to ensure that all properties are fairly and properly assessed for the purposes of taxation; and

WHEREAS, rules are hereby established regarding exemptions, dates, deadlines, appeals and annual and supplemental bills.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1.

Article II, entitled Exemption of New Improvements Added to Property, Sections 204-6 thru Section 204-11, is hereby rescinded:

~~*ARTICLE II - Exemption of New Improvements Added to Property*~~

~~*§ 204-6. - Eligibility for new improvement exemption of real property taxes.*~~

~~*The exemption shall only apply to the increase in assessed value resulting from substantial rehabilitation, renovation or improvements of existing properties (residential, commercial, industrial, etc.) located within the city limits. New construction does not qualify.*~~

~~*The building permit for the said improvements must be issued prior to June 30, 2013 and shall be valid for a period of one year. The exemption shall be based on the change in the improvement assessment value only. The land assessment is not eligible for exemption under this article.*~~

~~*§ 204-7. - Amount of the exemption.*~~

~~*The amount of the exemption shall be determined by subtracting the value of construction per the building permit from the improvement assessment value following the new construction.*~~

~~*§ 204-8. - Application of the exemption and limitations.*~~

~~*The dollar amount of the exemption shall be multiplied by the property tax rate in the first full tax year following the*~~

~~issuance of a certificate of occupancy by the City. The dollar amount of the exemption shall be limited to a maximum of \$1,000 for residential properties and limited to a maximum of \$5,000 for all other properties. The exemption shall only be good for one year immediately following the~~

~~§ 204-9. - Appeals.~~

~~An aggrieved taxpayer may appeal from the disposition of an exemption claim in the same manner as is provided for appeals from assessments generally.~~

~~§ 204-10. - Due date for payment of property taxes.~~

~~Property taxes shall be payable on or before September 30th of each year.~~

~~§ 204-11. - Penalties.~~

~~To every tax not paid after the said date established in § 204-10, there shall be added and collected a penalty, for each month that the said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in § 204-10 for the addition and collection of penalties.~~

Section 2. A new Article II, entitled Authority to Exempt Real Property from Taxation, is hereby added to read as follows:

ARTICLE II – Authority to exempt real property from taxation.

§ 204-6. The city council shall have the power to exempt real property located within the city from municipal property taxes when, in the opinion of the tax assessor, the same will best promote the public welfare. The city assessor shall be empowered to grant tax exemptions pursuant to 9 Del. C. § 8105 and 8110, upon receipt of an application to the City of Milford filed by the organization to establish its entitlement to such exemptions.

§ 204-7. No assessment shall be made against that portion of a parcel during the period in which the portion qualifies for agricultural, horticultural or forest uses as more fully defined by 9 Del. C. § 8330 through 8337, inclusive.

Section 3. A new Article III, entitled Annual Tax Bill, is hereby added to read as follows:

ARTICLE III – Annual Tax Bill.

§204-8. The tax year shall run from October 1st through September 30th each year based on assessed values as of June 30th.

§ 204-9. Property taxes shall be payable on or before September 30th of each year.

§ 204-10. To every tax not paid after the said date established in 204-9, there shall be added and collected a penalty, for each month that said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in 204-9 for the addition and collection of penalties.

Section 4. A new Article IV, entitled Supplemental Assessments and Tax Bills, is hereby added to read as follows:

ARTICLE IV- Supplemental Assessments and Tax Bills

§204-11. Supplemental Assessment Required.

A. Changes, including zoning and construction, shall require reassessment of the property at its fair market value as of the date of the last City-wide revaluation. A supplemental assessment will be determined for the amount of difference between the value stated on the regular assessment roll(s) and the new fair market value.

B. Supplemental tax bills shall be issued when there is an increase in taxable value caused by any change as stated in 204-11. More than one tax year may be affected by the increase in value, causing more than one supplemental bill to

be issued. Even when a property has been sold, the original owner may be billed for any change in value relating to the dates of their ownership.

C. The increase in assessed value resulting from the reassessment is reflected in a prorated assessment that covers the period from the first day of the month following the supplemental event to the end of the fiscal year.

§204-12. - Assessment Appeals.

A. Appeal date deadlines

Appeal filing deadline (Annual billing) August 31st

Appeal filing deadline (October billing) November 30th

Appeal filing deadline (January billing) February 28th

Appeal filing deadline (April billing) May 31st

B. Right to appeal is lost if appellant has missed the designated appeal date.

C. Appeals/refunds for errors or opinions of value from appellants will not be heard for prior years.

D. The assessment as revised and adjusted by the board of assessment appeals shall be the listed value for the year under appeal and shall be the basis for the levy and collection of taxes for the city.

Section 5. Dates.

Introduction 01-12-2015

Ordinance will be effective ten days following its adoption.

Mayor Shupe advised this ordinance has been developed to address some taxation rules and specifically supplemental bills, appeals and deadlines. Article VII of the city charter has jurisdiction over city taxation, assessment, rates, etc. This will address some problems encountered with supplemental bills, appeals and deadlines. Those items were discussed and created after several meetings of the staff involved in the process. They have now been added to Chapter 204 which is the code that presently governs the senior citizens relief program and other miscellaneous tax issues. This is a housecleaning ordinance and is being presented for review this evening.

Mr. Rutt suggests that some additional language be added to Section 204(6). In the second sentence, it reads the city assessor shall be empowered to grant tax exemptions pursuant to 9 Del. C. § 8105 and 8110. He explained that Title 9 of the Delaware Code relates specifically to counties and his concern is someone could challenge it by stating the city assessor does not have jurisdiction under Title 9.

The solicitor suggests it state the city assessor shall be empowered to grant tax exemptions in the same fashion as a county exemption pursuant to 9 Del. C. § 8105 and 8110.

He said home rule and the charter grant the right to assess taxes and that would be the power by which the city assessor could grant the exemption but in the same manner as the county.

With no further comments, Mayor Shupe advised it would be formally introduced at the next council meeting.

City Manager Medlarz then noted that our code does not require public hearings in most cases. He asked if council has the right to post a public hearing in the case of ordinance amendments in general.

Solicitor Rutt explained that council has the right but a public hearing is not required. In this case, the charter gives council the authority to enact taxes by ordinance.

Ordinance 2015-01/Chapter 193/Solid Waste Amendments

Mayor Shupe advised that city staff, along with City Manager Medlarz, has been reviewing the solid waste code since the previous meeting.

Mr. Medlarz reported that he met with the solid waste crews this morning. He has also met with the city employees involved in this process on numerous occasions as he informed council at the last meeting.

He recalled when Mayor Shupe had contacted him with some trash concerns the first day he was city manager. There were two other council members who had received complaints on the same day so he knew the solid waste ordinance needed some attention.

The city manager provided some highlights of the changes at the last meeting. All of the changes have been added with one exception. The city's customer service supervisor made some very valid points against adding the solid waste fee to the water and sewer bill. The problems dealt with servicing as much as collection. After considerable discussions, they believe a deposit is warranted. The city requires an electric deposit for renters but a solid waste deposit was never implemented.

Should a tenant walk away from the electric bill, they lose the deposit; if they walk away from the solid waste obligation, the city is stuck with the bill. Mr. Medlarz believes that \$100 is a fair amount considering a customer could get away with not paying their trash bill for at least a couple of months. In addition, a large quantity of items could be left at the time they move out.

The city will pick up loose items such as bags, boxes, cartons, etc. with no addition fee. However, should this occur two consecutive times or three times in six months will trigger a second container at a discounted rate. It will be tracked by the public works crews and administrative staff. A customer putting out excessive trash two times in a row will trigger a form letter from the public works department stating they have exceeded the allowance two times in a row and in accordance with the ordinance, will be issued an additional container due to their needs.

The city manager feels the staff is agreeable to this approach. He believes the trigger points are fair and would still allow someone to have a large party or a big Christmas which would result in excess trash. He reiterated the customer would not be penalized because it is a one-time occurrence.

He referenced Mr. Brooks' previous concerns that a customer who generates the waste should pay the costs which involves removal, collection, disposal, etc. He feels this addresses that concern.

The other issues is that bulk and additional items were not picked up unless the customer called. It became very unmanageable because most people would not call. If three sofas were left curbside and they had not called in, a tag would be placed on the door to call public works and make arrangements. The previous charge for that pickup was \$10.

Currently, we have to notify the customer, come back, pick the item up, dispose of the item, bill the customer and collect the additional fee. Before this change was made to the ordinance, we only picked the item up. Mr. Medlarz pointed out there is now an enormous administrative effort which adds administrative costs to the collection and disposal fees. In most of these cases, it becomes an uncollected fee.

He feels the intent was good, but after speaking with the street superintendent, public works administrative assistant and customer service supervisor, a minimum of \$50 should cover the city's expenses. For that amount, up to five bulk items will be picked up. After the fifth item, an additional \$10 will be charged for each additional item because the crews and truck are already on site, so there is some economy of scale in that situation.

Mr. Medlarz asked council to inform him if they believe these amendments are too harsh or not harsh enough. He welcomes any opinions on these matters.

The city manager then noted that Mr. Brooks expressed appreciation for how we now handle the holidays and will provide service on certain holidays. The solid waste crews told Mr. Medlarz they believe it actually enhances the service and they are more than willing to continue doing that.

Mr. Medlarz also pointed out that our crews absolutely needs some holidays off so the holidays were structured accordingly. In addition, each time there are two holidays in one week, one would be worked otherwise it becomes unmanageable for our crews to catch up.

Mr. Medlarz pointed out there has been a lot of discussion between a number of staff members to come up with

something that will satisfy our customers and give our staff something to work with. He is hoping this will reduce the number of calls to the mayor and council.

Mr. Pikus asked how we deal with apartment complexes if the owner supplies his eighty units with dumpsters though the city still picks up the trash. Mr. Medlarz explained that the containers have to first be approved to ensure they are not larger than three cubic yards to ensure we can pick them up. If the apartment complex has the room, they also have the ability to have individual containers such as Hearthstone Manor.

Mr. Pikus said he is referring to Silver Hill/Parson Thorne Apartments. Mr. Medlarz emphasized it is the owner's option to choose city services or a private collector. In the past, the city required mandatory service across the board.

Mr. Pikus said in this case, the owner purchased his own containers at our city specifications. He asked how each apartment is billed for trash; Mr. Medlarz said they pay the residential rate. Mr. Pikus said in this case, they are using the owner's container so there should be no deposit. Mr. Medlarz explained that a complex that uses a dumpster does not have individual trash pickup. Therefore, it is not an issue.

Mr. Pikus asked if any residential customer has an option to use another trash company. Mr. Medlarz explained the ordinance clearly states there is a mandatory residential requirement. If you live in an apartment complex, the owner has the opportunity to use its own contractor. Mr. Rutt agreed noting that the lease should contain a section explaining the tenant must use the apartment complex' trash service.

Mr. Pikus said he had two large apartment owners call him with concerns. He asked that one owner, who has ninety units, to write down questions.

Mr. Medlarz asked if they currently have containers/dumpsters, private service or individual containers. Mr. Pikus said they are using city services but own the containers/dumpsters.

Mr. Medlarz explained that one of the apartment complexes in town has individual accounts. He read one of the questions that asked why a \$100 deposit is required for new rental accounts because if terminated after only two months, they would have only owed \$47. The city manager explained as an example, a new renter moves in and only stays two months but pays no bills during that time. However, the renter has left everything they had in the apartment or on the curb and leaves town. If the landlord agrees to pick up all the items left, then the deposit would not be required. However, that is unlikely and in most cases, picks up the phone and calls the city to come get it. Because of that, we need something in place to cover our costs. He feels it would warrant the deposit though council has the right to reduce or increase it.

Mr. Pikus said that makes sense to him.

Mr. Medlarz then read a question that asked if city council has the desire to stop collection services from rental units altogether. The city manager pointed out the city has a significantly high number of rental units and said he hopes councils' answer is no. For our staff to attempt to track the rentals and owner-occupied units will be difficult.

The city manager explained the reason this was even brought up is because collections and liens is a much simpler task when it involves an owner-occupied unit. That would only work in a predominantly owner-occupied community which is not the case in Milford.

Mr. Pikus agreed adding that Randy Marvel was the person that wrote the questions.

Mayor Shupe thanked Mr. Medlarz for providing the information so that council has a better concept of the problems we are experiencing. At the next level, he suggests we consider the dollar amounts and is willing to accept public input.

Mr. Medlarz stated that he would like some idea of whether council feels what is being proposed is totally off base so that it can be amended. Mr. Pikus agrees there is a problem in the city and we are losing money in that department so something needs to be done. He feels the steps we are taking is a positive step. In concept, he feels council will agree

we are moving in the right direction though he said there are still some questions that may need to be answered.

Mr. Medlarz asked what other questions or concerns he has; Mr. Pikus said he has no other questions or concerns. Mr. Medlarz reiterated that he needs council input and encourages comments.

Mr. Mergner referenced the establishments who have private haulers. He asked where they fall in keeping their establishments free and clear of waste on curbs, etc. He asked if this is addressed in this ordinance because even though the city does not pick up their trash, there should be some type of accountability for those businesses to prevent that waste from sitting there until it can be picked up.

Mr. Medlarz explained that falls under the building code/property maintenance ordinances. He explained the solid waste code addresses our customers and rules related to containers, fees, etc. He pointed out that Councilman Mergner is referencing the same issues that Councilman Brooks and he are working on which is a code enforcement issue. He encouraged council to inform him of any related code enforcement issues. For example, if the business has a private hauler but it does not meet the requirements of the city code, then steps need to be taken to alleviate the problem though it would not fall under this ordinance.

The city manager reiterated that if a commercial entity cannot be accommodated with the individual containers or the maximum three-cubic yard for multi-family (only) units, that business would need to contract through a private hauler. Commercial service in Milford is only provided to a small trash generating establishment and they are provided the residential-sized container(s) only.

Mayor Shupe thanked the city crews noting they have responded quickly after he and some other council members reported several problems to Mr. Medlarz. He has already heard from those residents that whatever we are doing now needs to continue because it has worked.

Potential Procurement of Hourly Labor and Equipment Purchases Under Kent County Contract

Article 3 of the City Charter addresses the city's procurement and contract requirements for personal service and purchase of supplies and work for municipal purposes. It states that bidding is not required in some situations including contracts for any service rendered by the State of Delaware or any political subdivision thereof.

Mr. Medlarz explained that currently, the city has the right to procure goods and services under state contract. He said if other subdivisions/jurisdictions have competitively advertised and bid services and/or goods, does our charter and state law allow Milford to procure under their contracts or do we have to seek that authorization.

Mr. Medlarz advised that the Kent County general labor and equipment contract is a multi-million dollar contract. These multi-million dollar contracts have a hundred different labor categories, equipment pieces and services. They involved competitive pricing for projects which were two small by themselves to go through the engineering design and bidding process. Those contractors may not be willing to extend the same unit price which would make this a non-issue. However, if they are willing, the city would get some economy of scale we would not achieve otherwise.

Right now, there are several projects on the books that City Manager Medlarz considers to be a somewhat urgent nature while city staff feels it is beyond their capabilities. These items are being postponed which is creating larger problems and will cost more money if we wait to do the work.

For those reasons, Mr. Medlarz feels we need to come up with a way to resolve the issues in a competitive manner so council is satisfied and the city does not overpay. It would have been advantageous if we could procure services through other subdivisions/entities of the state.

If not, he would recommend we do a companion advertisement with a companion award or whatever our solicitor advises we can do.

City Solicitor Rutt confirmed that Mr. Medlarz is asking whether the city can piggyback with Kent or Sussex County

when bidding for vehicles, supplies or some type of work; Mr. Medlarz stated yes.

Mr. Rutt said he will look at that and also consider the city doing it jointly with another municipality.

Mr. Pikus feels this is a great idea and would result in a substantial savings for the city. Piggybacking a bid with another municipality would definitely be an advantage and a savings to the city.

Mr. Medlarz pointed out that none of the other municipalities have this with the exception of the City of Newark. Both Kent and Sussex County have it though Sussex to a smaller degree than Kent County.

Mr. Medlarz noted that in addition to the economic savings, it also speeds up the process, cuts out the middle man and eliminates a design need where in most cases, the design is not needed.

He stated that the city charter gives the city manager tremendous leeway when it comes to procurement of services which is a great benefit.

If council agrees, Mr. Medlarz will work with Mr. Rutt to come up with a suggestion of how to structure this. It could be as simple as procure services under a contract of a subdivision of the state or council could feel it is not doable at all. If the only way it can be done is as a charter amendment, it may be easier to do our own advertising and contract. In the meantime, they will discuss it.

The consensus of council is for Mr. Medlarz to proceed as he is recommending.

City of Milford Southeast Master Plan Amendment

Some zoning amendments to the Master Plans are needed to accommodate the development of the new Bayhealth Facility on Wilkins Road and State Route 30.

The city manager recalled that in 2011, city council approved an overlay amendment to the Comprehensive Plan for the southeast area. He explained that is a planning document on record that governs the area.

He referenced the associated land use map in question. The property targeted by Bayhealth for their new facility is identified as commercial. Though in the broadest sense, a hospital could be considered a commercial enterprise, the most appropriate designation would be institutional or employment center which is only on the east side of Route 1. The planning office considers the hospital an employment center with many different zoning applications happening within the entity.

From a land use planning standpoint, this is a very complex issue and a number of things depend on it.

Mr. Medlarz explained that if the state planning office did not allow the change unless a change is made to this Southeast Master Plan, it would set this project back by several months.

He pointed out there is another trigger built in the comprehensive plan which states if a building exceeds a certain size, it must go through the State of Delaware PLUS process. We would go through the PLUS process for no other reason but to change the master plan. The change of zone could then occur.

The same process would then need to be repeated for the hospital. When the conditional site plan is submitted, it will contain a building that exceeds the size and therefore, requires that process.

Mr. Medlarz is trying to convince the state planning office this would be a complete duplication with a detrimental effect on the hospital's time line. As a result, the city will make one final attempt to get this done at minimum, in a parallel manner.

Mr. Pikus asked the zoning of the Hall property and the triangular piece owned by Elmer Fannin; Mr. Medlarz confirmed

it is all commercial zoning.

Mr. Brooks recalled the properties on the east side of Route 1 being zoned institutional; Mr. Medlarz said it is designated employment center. Either of those two would be appropriate. However, Mr. Medlarz is asking the state planning office to proceed in a parallel manner. The city is making a commitment to go through the plan amendment with the hope the planning office will allow the zoning process to occur and the conditional use site plan to be submitted at the same time.

He is hoping the city can resolve this before the hospital steps in which is why he felt council needs to be aware of the situation.

When asked how long this will take to occur, Mr. Medlarz explained that a map amendment with an underlying master plan amendment would take three months at a minimum. Mr. Brooks recalled the hospital's intent was to break ground later this year.

The consensus of council was to proceed with the plans as the city manager recommends

Clarification of Intent/Milford Code Chapter 230-62(D)

Mr. Medlarz pointed out the current city code states:

No zoning permits, certificates of occupancy, licenses or building permits shall be issued nor shall any applications for changes of zoning, conditional uses, variances or special exceptions be accepted unless all taxes, assessments, sewer, water, electric, trash charges and any other fees due the City are paid and in good standing.

Mr. Medlarz interprets this if any services, taxes, fees, etc. and in particular entities and legal names, are unpaid, the city will not provide any additional licenses, permits, etc.

There was a related issue that occurred the first week he was city manager. The city's customer service superintendent contacted Mr. Medlar and explained that someone was requesting utility services be put in a tenant's name, but the property owner needed a rental license before that could be done. Before issuing a permit or license, her staff confirms the property taxes, sewer, water, electric, trash charges and any other fees are paid up and current. The request is then honored.

In this case, there were outstanding property taxes owed.

Mr. Rutt then explained this is called a 'clean hand ordinance' which is found in most municipality, county and state codes that issue permits. The Milford ordinance states that no permits, licenses, etc. SHALL be issued. Under Delaware law, the word 'shall' is mandatory. He explained that this section states specifically that all taxes and any other fees are paid and in good standing.

If an owner of a property comes in for a building permit on a specific property, but also owns other properties, the fees and taxes on those properties must also be considered.

Mr. Rutt said the interpretation of this ordinance means the property owner would not be entitled to the permit until the owner has paid all other fees, assessments and taxes and anything else owed the city. That is the purpose of this type of ordinance. It prevents someone from running up bills on a property in southern Milford when they own another property in northern Milford and are seeking a permit.

Mr. Pikus asked if that is the intent; Mr. Medlarz reiterated that the customer service supervisor contacted him the first week with this question. His interpretation is the same as Mr. Rutt's interpretation. He feels this should be done across the board, even though he understands there may have been some underlying political issues that affected our past practice.

Mr. Rutt and Mr. Medlarz agreed that the law on the books is very clear and it needs to be enforced as it is written. If

not, council has the right to change it.

Mr. Grier also agrees that it needs to be handled just as it reads; Mr. Morrow and Mr. Brooks agreed. Mr. Pikus stated it should be followed as stated.

Mr. Medlarz noted this is standard language and he has seen some laws that address overlapping ownerships in LLC (limited liability corporations) that tries to capture multiple ownerships. In those cases, it becomes difficult and Mr. Rutt would need to do a great deal of research on the state website to determine every partner. Mr. Rutt agreed stating that is difficult because usually only the certificate is available which states when it was formed and the principal or registered officer listed as the agent. The certificate does not list all the members.

The city manager agreed this is the standard language; beyond that it is difficult though some people have mastered the art of creating the entities to get around these clean hands ordinances.

Mr. Grier asked if it is appropriate to ask for the members of an LLC; Mr. Rutt said that somewhat defeats the purpose of an LLC. He said the city could ask though he feels there would be some resistance.

Mr. Medlarz said if someone comes in and requests a service for an LLC and signs as the managing partner, our billing staff runs the individual's name to determine what he owes.

Mr. Rutt said another way to do that is to use the billing address. Many times an LLC may have different names but the same billing address.

Mr. Pikus said it needs to be enforced appropriately.

Adjourn

With no further business, the Workshop was adjourned by Mayor Shupe at 8:52 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder