

City of Milford



CITY COUNCIL AGENDA

Monday, August 28, 2017

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

Recognition

Communication & Correspondence

Unfinished Business

Ethics Policy

New Business

Kent County Tourism Board of Directors Appointee

Public Hearing Procedures

Adjourn

All items on the agenda are subject to a potential vote.

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.

080717 081417



105 Ginger Lane
Milford DE 19963
Aug. 4, 2017

Mayor Shupe, City Manager Norenberg, the City Council and Boards
City Hall, 201 S. Walnut St.
Milford DE 19963

Dear Ladies and Gentlemen:

Thank you so much for all the effort you put forth to make the City of Milford a good place to shop (article in the Chronical). But I can't say I can combat the traffic (huge trucks) and the failing building structures that can come down on top of you (brick by brick) as you walk from one store to another. Neither can most of us seniors. Please see what you can do to limit the huge truck traffic that is so menacing to us seniors and see what you can do to get the landlords working on their failing structures (maybe with grants that start before work is begun and given in increments). It would make us feel that we could walk worry free.

We love the street lights and the hanging plants. We love the cleanliness. Please keep up the good work. And of course, thank you.

Sincerely,

A handwritten signature in cursive script that reads "Dottie Renk".

Dottie Renk
302-422-0298

PS Would like to see the Middle School used for special needs children. It can be renovated and in the main structure only.

PS #2 We also thank you for your letter dated 7-28-2017+ for the tax relief it brings.



You're Invited

The Delaware Municipal Electric
Corporation Board of Directors

23rd Annual Dinner

Wednesday, Sept. 20, 2017

5:30 PM

Dover Downs Hotel & Casino

Services to Enhance Your Utility

Speakers: Heidi Lambert, Director of Education, APPA
Steve VanderMeer, Sr. VP Planning & Marketing, Hometown Connections

The Power of Joint Action

Speaker: Patrick E. McCullar, President & CEO, DEMEC

Social Hour 5:30 pm

Dinner 6:30 pm

Dover Downs Hotel & Casino

1131 North DuPont Highway
Dover, DE 19901

*RSVP by Sept. 6th to Kendra Friel
at (302) 653-2733 or
kfriel@demecinc.net*

Serving and representing the communities of
New Castle, Newark, Middletown, Clayton, Smyrna, Dover, Milford, Seaford, and Lewes

the property served. In addition, he was informed that his lot was too small to install a new system. He has requested that he be allowed to connect to the City system.

It is feasible to connect this property to the City system by extending the S. Washington Street main approximately 500 feet. Estimated cost would be \$3700 using 8" main and not including any shoulder restoration which may be required. The use of 8" main as opposed to 6" is recommended in view of future growth in that area.

Due to the circumstances described above, it is recommended that Council approve this project.

Motion made by Mr. Savage and seconded by Mr. Francis to approve the recommendation of the Street & Sewer Committee for installation of a sewer at 102 McCoy Street as outlined in their report. Motion carried.

Ethics - Mr. Williams reported that the Committee recommends adoption of the Code of Ethics, copies of which had been submitted earlier to all Council members, and that its adoption doesn't mean that what has occurred up to this point or any project being worked on at this point is in violation.

Motion made by Mr. Williams and seconded by Mr. Wiley for adoption of the Code of Ethics.

Mr. Savage stated that although he was in favor of a Code of Ethics, he felt this particular Code was more suited to a large city and that "here, in the small town of Milford, where everyone is involved with everyone else, it's not the type we need." He gave several illustrations wherein he, himself, could unknowingly vote for a firm with which he could later become involved and then have to give up his seat and be subject to a penalty, or when various other members of Council, because of the nature of their employment, might also have to give up their seats or be subject to severe penalties. He recommended the issue be tabled until additional study was given the matter.

Mr. Goodwin questioned including commission and committee members in the Code's regulations, and Mr. Williams responded that it had been designed for a purpose.

After additional discussion, Mr. Williams' motion to adopt the Code of Ethics was carried by the following vote:

<u>Yes</u>		<u>No</u>
Mr. Brooks	Mr. Francis	Mr. Goodwin
Mr. Wiley	Mr. Williams	Mr. Savage

CODE OF ETHICS

Section 1: Declaration of Policy.

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all city officials and employees is adopted. The purpose of this code is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the city and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the city.

Section 2: Definitions.

(a) Interest means direct or indirect pecuniary or material benefit accruing to a public officer or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the city except for such contracts or transactions which by their terms and by the substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated.

(1) any person in his immediate family ("Immediate family" is defined as the public officer or employee's spouse, son, daughter, mother, father, sister and brother.) A divorce or separation between spouses shall not be deemed to terminate such relationship;

(2) any person or business entity with whom a contractual relationship exists with the public officer or employee;

(3) any business entity in which the public officer or employee is an officer, director, or member having a financial interest in, or employed by;

(b) Official act or action means any legislative, administrative, appointive or discretionary act of any officer or employee of the city or any agency, board,

committee or commission thereof.

(c) Business entity means any business, proprietorship, firm partnership, person in representative or fiduciary capacity, association, venture, trust or corporation.

(d) Public officer or employee means any person, officer or employee holding a position by election, appointment or employment in the service of the municipality, whether paid or unpaid, including members of any board, committee or commission thereof.

Section 3: Code of Ethics.

(a) The requirements herein set forth shall constitute a code of ethics establishing reasonable standards and guidelines for the ethical conduct of public officers and employees of the city.

(b) Interest in contract or transaction. No public officer or employee having the power or duty to perform an official act or action, related to a contract or transaction which is or may be the subject of an official act or action of the city, shall

(1) have or thereafter acquire an interest in such contract or transaction, or

(2) have an interest in any business entity representing, advising or appearing on behalf of, whether paid or unpaid, any person involved in such contract or transaction, or

(3) have solicited, accepted or granted a present or future gift, favor, service or thing of value from or to a person involved in such contract or transaction, except as provided in Section 3, or

(5) have encouraged, made or accepted any ex parte or unilateral application or communication where a determination is to be made after a public hearing and such public employee fails to make the contents of the communication a part of the record.

(c) The prohibition against gifts or favors in Section 3(b) (4) shall not apply to:

(1) an occasional non-pecuniary gift, insignificant in value, or

(2) an award publicly presented in recognition of public service,

or

(3) any gift which would have been offered or given to him if he were not an official or employee.

(d) Preacquisition of interest. No public officer or employee with respect to any contract or transaction which is or may be the subject of an official act or action of the city shall acquire an interest in or affected by such contract or transaction at a time when the public employee believes or has reason to believe that it will directly or indirectly be affected by an official act or action of the city.

(e) Disclosure of information. No public officer or employee with respect to any contract or transaction which is or may be the subject of an official act or action of the city, shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city, or use such information to advance the financial or other private interest of himself or others.

(f) Incompatible service. No public officer or employee shall engage in or accept private employment or render service, for private interest, when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independence of judgment or action in the performance of his official duties, unless otherwise permitted by law and unless disclosure is made as provided in this code.

(g) Public contracts. No public officer or employee who in his capacity as such officer or employee participates in the making of a contract or performs in regard to that contract some function requiring the exercise of discretion on his part, shall enter into any contract with the city regarding that matter.

(h) Public property. No public officer or employee shall request or permit the unauthorized use of city owned vehicles, equipment, materials or property for personal convenience or profit.

(i) Special treatment. No public officer or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(j) Later case interest. No public officer or employee shall, after the termination of service or employment with the city, appear before any board, commission or agency of the city in relation to any case, proceeding or application in which he personally participated during the period of his service or employment,

or which was under his active consideration.

Section 4: Exceptions to Code.

(a) It shall not be deemed a violation of the standards of the code if the interest of a public officer or employee in a person or business entity is a contractual obligation of less than \$5,000 which has not been preceded by any other obligation, discharged or existing, between the parties, and which is not the first in a series of two or more loans or debts which either of the parties is under an obligation to make or incur.

(b) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of this state to engage in the making of such loans shall not be deemed to create an interest in violation of this code.

(c) A contract for a commercial retail sale, shall not be deemed to create in violation of this code.

Section 5: Enforcement.

(a) The city attorney shall have the primary responsibility for the enforcement of this code. He shall have the power to investigate any complaint, to initiate any suit, and to prosecute any criminal or civil action on behalf of the city where such action is appropriate.

(b) The city council may direct the city attorney to investigate or prosecute any apparent violation of the code or it may employ or appoint any qualified attorney to investigate or prosecute any violation or series of violations by one or more persons of this code.

(c) Any person who believes that a violation of any portion of the code has occurred may file a complaint with the city attorney or with the city council, who may thereafter proceed as provided herein.

Section 6: Advisory Opinions.

(a) Where any public officer or employee has a doubt as to the applicability of any provision of this code to a particular situation, or as to the definition of terms used herein, he may apply to the city attorney for an advisory

opinion. The officer or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicability of provisions of the code before such advisory opinion is made.

(b) Such opinion until amended or revoked shall be binding on the city, the city council, and the city attorney in any subsequent actions concerning the public officer or employee who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. Such opinion shall not be binding in any action initiated by a private citizen.

(c) Any advisory opinion prepared by the city attorney shall be made public. However, the name of the person requesting the opinion and the names of all persons or business entities mentioned in the opinion shall be deemed confidential information and shall not be disclosed by the city attorney unless the public officer or employee waives such confidentiality or where the city attorney deems the public official to have failed to act in good faith in requesting the opinion or in conforming with the opinion or to have failed to act in conformance with the opinion.

Section 7: Penalties; Forfeited Position; Exemptions; Injunction.

(a) Any public officer or employee who willfully and knowingly violates any of the provisions of this ordinance shall be guilty of a misdemeanor.

(b) Upon conviction for any violation of this ordinance of any public officer or employee, such officer or employee shall immediately forfeit his office or position. Nothing in this ordinance shall be construed to prohibit such public officer from being re-elected to any position forfeited under the provisions of this ordinance.

(c) Any contract or transaction which was the subject of an official act or action of the city in which there is an interest prohibited by this code, or which involved the violation of a provision of this code, shall be voidable at the option of the city.

Section 8: Distribution of Code of Ethics.

The city clerk shall cause a copy of this code of ethics to be distributed to every public officer and employee of the city within thirty (30) days after enactment of this code. Each public officer and employee elected, appointed

or engaged thereafter shall be furnished a copy before entering upon the duties of this office or employment.

Section 9: Separability.

If any provision of this ordinance is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this code which can be given effect without the invalid or unconstitutional provision or application.

Mr. Workman likes the concept but asked how this will impact current businesses. He asked if the city would be willing to help them obtain new signs. He said that signs are expensive and businesses are hurting because of the economy and he would not want this to be an additional burden.

Mr. Norris said that new businesses would be aware of this requirement immediately. With existing businesses, we can provide a period of time before the owner must replace their sign. He feels the city can work with the current business owners. Mr. Workman likes that idea but agrees that a new business should be made aware of the new regulations, but prefers giving an existing business some additional time to come into compliance with the new ordinance.

Mayor asked if council wishes for Mr. Norris to proceed with these two proposals as they are requirements of the beautification program in the city.

Mr. Baird asked if what has been developed will be presented to the planning commission to develop an ordinance or if further input is needed from council. Mr. Norris welcomes any additional input or suggestions from council. He plans to take the two proposals to the planning commission as well as share that information with council at a future meeting.

Mr. Morrow feels that Mr. Brooks' suggestion to add walkways in parking lots should also be included. Mr. Norris agreed.

Proposed Ethics Policy

Mayor Marabello said he considered this when he ran for mayor and feels this is the right time to present it to council for their opinion. He noted this is not a formal ethics ordinance but only wanted some information included in the packet.

Mr. Spillane confirmed that because we do not have a formal ordinance at this time, the state code applies to Milford. He informed council that we fall under the Public Integrity Commission which he has addressed a couple of times in relation to conflict of interest on council.

City Solicitor Willard explained we could not trump or supercede state law. However, it is an option though he personally has not represented a town with a separate ethics code or policy.

Mr. Brooks suggests that the city clerk provide the copies of local ethic codes to council for their review before the next workshop.

In the meantime, Mr. Willard will speak with Attorney Janet Wright of the State Public Integrity Commission for her input and suggestion to see if it is feasible.

This will be discussed at the next workshop in January.

With no further workshop items, Mayor Marabello declared the Workshop Session closed at 8:13 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

project, Mr. Medlarz feels this can be put together. If both towns say no, the problems will be fixed and they will move forward.

Mr. Medlarz agreed to attend future workshops or utility committee meetings.

The mayor and council thanked Mr. Medlarz for attending and providing the information to council.

2009 Milford Community Parade Date

Charles Gray of Milford Community Parades requested consideration of the 2009 Milford Parade date of October 28, 2009. He noted the 2008 parade was very successful noting that Comcast broadcasted the parade on four occasions.

He advised that last year's lineup was completed by 8:30 p.m.

Mr. Morrow agreed the parade went very smoothly last year and believes the starting time of 6:30 p.m. was a benefit and provided additional time during the daylight hours.

Mr. Gray added there will be no recommended changes and agree with the start time and the same route worked as well as working with the chief and Milford Police Department.

The matter will be added to the February 9th meeting for approval.

Proposed Ethics Ordinance/Policy

The city solicitor recalled Mayor Marabello discussing the city adopting its own ethics code. Mr. Willard has had previous experiences dealing with the State Public Integrity Commission who deal with financial disclosures for elected officials and ethical complaints based on conflicts of interest and the code of conduct.

Mr. Willard referred to Chapter 58 of Title 29 that states if a municipality does not have an ethics code as part of their ordinance, Chapter 58 applies. It contains detailed information about a conflict of interest, code of conduct, financial disclosures, criminal penalties, procedures which allows for due process.

The solicitor e-mailed Janet Wright, legal counsel for the commission, for codes of towns with ethics codes. Several were included in the packet.

He explained a town can adopt its own code but Chapter 58 requires all counties, municipalities and towns adopt code of conduct legislation as stringent as this act to apply to their employees, elected officials and appointed officials. Many mirror the state code. However, the procedure is different and in many cases instead of the commission hearing the complaints, the town sets up their own board whose members would have terms who would follow the guidelines of the commission.

Mr. Willard said the Public Integrity Commission is very professional and he questions why a town would want to do this. Another option would be to do as Rehoboth does and have an ethics code that states the town adopts Chapter 58 of Title 29. However, towns are permitted to have ethic codes and are encouraged to have them. They are required to be approved by the Public Integrity Commission.

If Milford is interested, the codes of other towns need to be reviewed and the subtle differences noted. It is a task he feels is worthy of a committee.

Mr. Willard prefers the manner in which Rehoboth addressed the state code.

Mr. Brooks then referred to a Code of Conduct that was adopted in 1984 by City Council. Copies were distributed (a copy is available in the City Clerk's Office).

Ms. Wilson feels the 1984 code should be reviewed and compared to the state code. Mr. Willard said that though it is a policy, it may trump the code.

Mr. Workman said if the policy was adopted in 1984, there is no harm in reviewing it and a possible update considered; Mr. Spillane agreed.

Mr. Willard said if this was adopted before the state statute may be an issue.

Council is in agreement an Ethics Code should be in place; Mr. Ambrose noted that we are subject to state code.

Mayor Marabello advised this matter will be placed on the February workshop agenda. Copies of the 1984 Code of Ethics adopted by Milford City Council was distributed to council members.

City Wide Recycling Program

City Manager Baird reported on the success of the recycling program the past three years. In 2006, household tonnage was 7,518 tons. Since participating in the recycling program, that was reduced to 6,860 tons.

Recycling tonnage has increased from 133 tons in 2006 to 445 tons in 2008. There was a big increase in 2007 and 2008 when we went to single stream recycling which made it easier for customers.

In 2006, 3,125 people are shown as participated though all customers were enrolled in the program but everyone did not participate. In 2007, it became voluntary and that number was cut in half to 1,636. The number increased in 2008 to 1,838 which is approximately 58% of the total.

Mr. Baird feels the programs is moving in the right direction as the number of participants and tonnage recycling increases while household tonnage decreases.

Mr. Ambrose recalled that initially, the goal of Delaware Solid Waste was 33% participation.

The city manager reported that the chart does not include costs; when considering the recycling costs and landfill costs it is a wash. Any tonnage savings are paying for the recycling program. He anticipates the program will continue though there is concern about its costs.

He recalled the city entered into a two-year contract whose term is from July 2008 through July 2010 with no increase in rates during that time period. However, he expects the cost of recycling to increase after that contract expires.

With no further workshop items, Mayor Marabello declared the Workshop Session closed at 8:07 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

city, and impacts council actions which impact future outcomes. If it's not addressed it creates a lack of leadership, no guidance, city becomes stagnant, leads to higher costs. Barriers include loopholes in code, no policy to introduce new ideas, no formal council rules, council has limited information on issues, relationship with the planning commission.

Fiscal Soundness determined this is a critical issue because it is required by law, it's efficient, increases public support, is fiduciary responsibility, and maximizes citizens investments. If it's not done, council will not have public support. Barriers include economy, federal government, and council education.

Planning & Growth determined it is a critical issue because good planning makes economic development issues more clear. Consequences of not doing it include no or wild growth, city services negatively impacted, could lose focus on older areas of the city, infrastructure could be inadequate, poorly blended neighborhoods. Barriers include state agencies, developers being dishonest, lack of education of council and planning commission, unclear legal counsel, no teeth in codes or annexation agreements. Failing to plan is planning to fail.

David excused himself to make conduct phone calls to DEMEC regarding electric issues.

The next step in defining a vision for the council was to put the three critical issues into goals and objectives that are specific, measureable, aggressive, results and time bound. Council went back into groups to identify goals and objectives specific to their topic.

At 2:35 pm, Mr. Oechler excused himself and Mr. Baird returned.

Fiscal Soundness determined Goals for the City to be fiscally sound included:

1. A balanced budget
2. Budgeting based on sustainable income
3. Timely budget adjustments
4. Prudent investments
5. Improved procurement practices
6. Adequate reserves
7. No tax increases
8. Zero base budgeting
9. Higher employee productivity using efficiencies and/or technology
10. Expanded tax base through a responsible growth plan
11. Better public support through improved communications
12. Public officials and department head training that is mandatory
13. Continuing education programs
14. Increased training and communication responsibilities assigned to the Finance Director
15. Situational informed responses to critical fiscal issues

How Council Does Business group determined the following goals and objectives:

1. Increase the expertise and professionalism of council
2. Council will attend, develop and participate in an Ethics Training by the January 26, 2009 meeting
3. Rejuvenate the intent of the workshop meeting, beginning with the February or March meeting
4. Develop a formal orientation program for new council members which will be open to all council members beginning in the spring, following election.
5. Set all council meeting times at 7:00 pm, with meetings beginning after public comment
6. Hold public comment sessions at regular meeting only, not workshop meeting, beginning in April or May. Discussion was held regarding adding another council meeting each month, if two are not enough. No decision was made.

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

DRAFT CODE OF CONDUCT ORDINANCE

There is hereby established a new Chapter 120 of the Code of the City of Milford as follows:

CHAPTER 120 – CODE OF CONDUCT AND ETHICS COMMISSION

§ 120-1 Purpose

In order to preserve public respect and confidence in our local government and to avoid any conduct that would create even a justifiable impression of impropriety or breach of the public trust, The City of Milford has deemed it both appropriate and necessary to adopt a code of conduct that will establish specific ethical standards of conduct that will apply to all elected and appointed officials and employees of the City along with uniform mechanisms to guarantee both interpretation and enforcement of such standards.

§ 120-2 Applicability

This Code shall be applicable to all elected and appointed officials and all employees of the City of Milford as of _____, except as otherwise provided.

§ 120-3 Definitions

As used in this Code, the following terms shall have the meanings indicated:

“City” means the City of Milford, a political subdivision of the State of Delaware, and its elected and appointed officials, councils, boards, commissions, departments, employees, committees, or other public bodies existing by virtue of the Charter and/or Code of the City of Milford or an act of the General Assembly or Constitution of the State of Delaware.

“Close relative” means a person's parents, spouse, guardian, grandparents, children and grandchildren (natural or adopted), and siblings of the whole and half-blood, aunt, uncle, first cousin, corresponding in-law, corresponding step-relative, or any member of an employee’s household. “Commission” and “Ethics Commission” means the City Ethics Commission established by this Code.

"Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

“Employee” means all persons who receive compensation as an employee of the City or any department thereof, whether full time, part time, temporary or seasonal, but not persons that are elected or appointed to serve as Mayor, City councilmember or a member of any City committee, commission or board, whether paid or unpaid.

"Financial interest" in a private enterprise applies to any of the following:

(1) The person has or intends to purchase or acquire a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market);

(2) The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000 for services as an employee, officer, director, trustee or independent contractor; or

(3) The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).

"Matter" means any application, petition, request, business dealing, contract, subcontract, or any other transaction of any sort with the City.

"Official" means any elected or appointed official of the City, including all members of any committee, commission or board appointed by the Mayor or City Council by virtue of their powers and authority pursuant to the Charter and/or Code of the City of Milford, or an act of the General Assembly or Constitution of the State of Delaware, and including the members of the Ethics Committee established in this Code and the City Manager, Chief of Police, Department Head, or other person authorized to represent the City in an official capacity.

"Official responsibility" means any direct administrative or operating authority at any level, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, recommend or otherwise direct action on behalf of the City.

"Person" means an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.

"Political Candidate" means any person who is a candidate or nominee to be an official of the City, any person who has been identified officially as a prospective nominee, and any person who is openly considering becoming a candidate to become an official at the next City election.

"Private enterprise" means any activity conducted by any person, whether conducted for profit or not for profit which includes the ownership of real or personal property. Private enterprise does not include any activity of the City or of any agency, authority or instrumentality thereof.

§120-4 Prohibitions Relating to Conflict of Interest

A. General. Each official and employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such employee or official is engaging in acts which are in violation of the public trust or which will reflect unfavorably upon the City. Each official and employee shall further avoid any conduct that may justifiably be viewed by the public as an act of impropriety even if such conduct is not specifically prohibited or considered by such official or employee to be improper absent receipt of a waiver or opinion from the Ethics Commission.

B. Restrictions on exercise of official authority.

(1) Prohibited participation: No employee or official may participate on behalf of the City in the review or disposition of any matter pending before the City in which he or she has a personal or private interest, provided that, upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter.

(a) Personal or private interest: A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his or her duties with respect to that matter.

(b) Impairment of judgment: A person has an interest which tends to impair his or her independence of judgment in the performance of his or her duties with respect to any matter when:

(i) Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

(ii) The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(2) Representing another person before the City: No employee, officer or official may represent or otherwise assist any person with respect to any matter before the City with which the employee, officer or official is associated by employment or appointment, unless such employee, officer or official is assisting such person with respect to any matter in the exercise of his or her official duties.

(3) Personal Benefit: No employee or official or private enterprise in which such employee holds a financial interest shall enter into or benefit from any contract with the City (other than an employment contract).

(4) Private Enterprise:

(a) No City employee, officer or official may represent or otherwise assist any private enterprise with respect to any matter before the City with which the employee, officer or official is associated by employment or appointment.

(b) No City officer may represent or otherwise assist any private enterprise with respect to any matter before the City.

(c) This subsection shall not preclude any City employee, officer or official from appearing before the City or otherwise assisting any private enterprise with respect to any matter in the exercise of such person's official duties.

C. Close Relatives.

The City will use sound judgment in the placement of related employees in accordance with the following guidelines:

(1) No close relative may be hired as an employee if such employment would result in another close relative directly or indirectly supervising such employee.

(2) There will be no direct reporting or supervisor to subordinate relationship allowed.

(3) No relatives of Department Directors will be permitted to work within the chain of command of his/her department.

(4) No relatives of City Council Appointees or the Human Resources Director will be permitted to work in any department.

(5) Employees who marry or become part of the same household while employed are treated in accordance with this policy and may be transferred at the earliest practicable time.

(6) The prohibition against indirect supervision would encompass any person who is a close relative of any Official, the City Manager or Chief of Police.

(7) No relatives of the Mayor or a City councilmember shall be hired by the City during that elected official's term in office.

(8) Any employees that were hired prior to _____ [effective date or adoption of this Code] _____ may remain an employee in their current position notwithstanding any prohibition under this section provided that the employee or official who is a close relative of such employee abstains from any matter that would directly or indirectly effect such employee. No employee exempted by this subsection may be promoted or transferred to a different position in the City without first receiving the prior written consent of the Ethics Commission. Once an employee is promoted or transferred to a different position, or separated from employment and later rehired, no exemptions shall apply.

D. Political Activities: No official or employee may solicit political contributions from any person, including other officials or employees during the course of performing his or her official duties on behalf of the City.

E. Gifts and Favors

(1) No employee or official shall accept any gift in excess of \$50.00, whether in the form of service, loan, thing or promise, from any person who, to the employee's or official's

knowledge, is interested directly or indirectly in any matter with the City and where said contact can be construed as having or attempting to improperly influence said employee or official, or which may result in any of the following:

- (a) Impairment of independence of judgment in the exercise of official duties;
- (b) An undertaking to give preferential treatment to any person;
- (c) The making of a governmental decision outside official channels; or
- (d) Any adverse effect on the confidence of the public in the integrity of the government of the City.

(2) No employee or official shall grant, in the discharge of duties, any improper favor, service or thing of value.

(3) Gifts or favors from any individual person, entity, organization or related combination thereof aggregating \$250.00 or more in the City's fiscal year.

F. Abuse of Office

(1) Political contributions. No official shall agree to sponsor legislation, or to influence in any manner the formulation or passage of legislation, in exchange for political contributions or promises thereof.

(2) Substantial interest. No official shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he or she has a substantial interest. Any such interest shall be disclosed by said official prior to a vote on any such legislation, and said official shall not participate in any discussion on such matters and shall vote "abstain" when called upon to vote.

(3) Use of City property. No official or employee shall request or permit the use of City-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided for the use of such official or employee in the conduct of official business as a matter of municipal policy.

(4) Personal gain. No official or employee shall utilize the influence of his office or position for personal pecuniary gain, or to avoid the legal consequences of his or her personal conduct, or to secure unwarranted privilege, private advancement or gain, nor shall such official or employee acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the City.

(5) Sexual favors. No employee or official, in the course of his or her public responsibilities, may use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a City agency.

G. Post Office or Employment Restrictions.

(1) No person who has served as an employee or official shall represent or otherwise assist any private enterprise on any matter involving the City, for a period of two years after termination of his or her employment or elected or appointed status with the City, if he or she gave an opinion, conducted an investigation or otherwise was substantially involved in such matter in the course of his or her official duties as an employee or official, nor shall any former City employee or official disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.

(2) For all full-time employees, their employment with the City shall take precedence over all other occupational interests of such employee. All outside employment for salaries, wages, commission and self-employment must be reported to the employee's supervisor, who in turn will report to the City Manager or Chief of Police for review. The City Manager or Chief of Police will review such employment for possible conflicts of interest and/or impact upon the efficiency of the employee. Conflicting outside employment or outside employment which inhibits an employee's efficiency will be grounds for disciplinary action, up to and including dismissal. Findings, approvals, and denials of said outside employment requests shall be documented in writing to the employee and the employee's personnel file.

H. Restrictions on Contracting with the City.

No City employee, officer and no private enterprise in which a City employee or officer has legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities mark shall enter into any contract with the City) other than an employment contract unless such contract was made or let after public notice and competitive bidding.

I. Disclosure.

Any City employee or officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any City agency shall file with the Ethics Commission a written statement fully disclosing the same. Such disclosure shall be confidential and the Ethics Commission shall not release such disclosed information, except as may be necessary for the enforcement of this Code. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the City.

J. Exceptions

(1) Statutory responsibility. In any case where a person has a statutory responsibility with respect to action or inaction on any matter where such person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided that, promptly after becoming aware of such conflict of interest, such person files a written statement with the Ethics Commission, fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(2) Waiver. Any employee or official who has acted in reliance upon a waiver from the Ethics Commission that was received in writing before the action or inaction that would otherwise be a violation under this Code is not a violation under this Code unless it is proven that the Ethics Commission granted such waiver without having received a full and fair disclosure of all material information from such employee or official.

(3) Advisory Opinions. Any employee or official who acts or fails to act in accordance with a reasonable interpretation of an advisory opinion that was issued by the Ethics Commission shall be valid and not considered a violation of this Code. For purposes of this exception, no employee or official may rely upon an advisory opinion that has been overturned or superseded by a subsequent advisory opinion of the Ethics Commission.

§120-5 Disclosure and Confidentiality of Information

A. Confidential Information. No employee or official shall engage in any activity beyond the scope of his or her public position which might reasonably be expected to require or induce such person to disclose confidential information such person may have acquired by reason of public position nor shall the person otherwise use such information for personal gain or benefit.

B. Disclosure of Information. No employee or official shall, beyond the scope of such person's public position, disclose confidential information gained by reason of the public position, nor shall such employee or official disclose any information required to be maintained confidential by the Ethics Commission under this Code.

§120-6 Structure of the Ethics Commission

A. Established; composition; removal. The Ethics Commission is hereby established to administer and implement this Code. The Ethics Commission shall consist of five members appointed by the Mayor and confirmed by the City Council. No member of the Ethics Commission shall hold any elected or appointed office under the government of the United States or the government of the State of Delaware or any county or city thereof, nor shall the member or a close relative be an employee of the City or be an appointee by the Mayor or City Council to any other position within the City. Members of the Ethics Commission may be removed by the Mayor, with the concurrence of the City Council, for substantial neglect of duty, gross misconduct in office or a violation of this Code.

B. Terms of office; vacancies. A member of the Ethics Commission shall be appointed for terms of office of five years that may be renewed. Upon the expiration of a member's term, such member shall remain a member until such a time as a new member has been confirmed by the City Council. The initial members shall be appointed for staggered terms of office. When a vacancy occurs in the membership of the Ethics Commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as the original appointment.

C. Chairperson; quorum. The Ethics Commission shall elect a chairperson from among its membership. Three members of the Ethics Commission shall constitute a quorum and, if a quorum is present, a vacancy on the Ethics Commission shall not impair the right of the

remaining members to exercise all the powers of the Ethics Commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least three members; otherwise, the Ethics Commission may delegate authority to the chairperson to act for the Ethics Commission between meetings.

D. Compensation. Members of the Ethics Commission shall receive no compensation.

E. Commission counsel. The City Solicitor appointed pursuant to the Charter of the City shall provide legal counsel to the Ethics Commission and shall be the legal representative of the Ethics Commission in connection with its duties hereunder, on a case-by-case basis, or determine that outside counsel is needed and obtain such outside counsel for a particular matter. In furtherance of its representation, counsel shall have the power and duties to:

(1) Assist the Ethics Commission in preparing and publishing manuals and guides explaining the duties of individuals covered by this Code and in other activities, such as seminars and workshops, educating individuals covered by this Code about its requirements and purposes, and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.

(2) Provide legal counsel to the Ethics Commission concerning any matter arising in connection with the exercise of its official powers or duties.

(3) Review information coming to the attention of the Ethics Commission relating to potential violations of this Code.

(4) Investigate information coming to the attention of the Ethics Commission that, if true, could constitute a violation of any provision of this Code and/or to recommend that possible violations of these, or other state and federal laws, be referred by the Ethics Commission to the Attorney General or the United States Attorney for investigation and prosecution. Matters may be so referred to the Attorney General or the United States Attorney only upon a determination by at least a majority of the Ethics Commission that there are reasonable grounds to believe that a violation may have occurred.

(5) Prosecute disciplinary proceedings, if a determination has been made by at least a majority of the Ethics Commission that there are reasonable grounds to believe that a violation may have occurred before the Ethics Commission and to assist the Ethics Commission in drafting educational materials, waiver decisions and advisory opinions.

(6) Employ and supervise staff necessary to perform investigatory and prosecutorial functions.

(7) Maintain its files and records of all advisory, waiver, investigatory and prosecutorial matters for as long as appointed, at which time they shall be made available to the City.

(8) Perform any other tasks requested by the Ethics Commission concerning any matter arising in connection with the exercise of its official powers or duties.

(a) The Commission Counsel may be recused from a matter before the Ethics Commission when, in the view of Commission Counsel or of the Ethics Commission, such recusal is deemed necessary or appropriate. In situations where Commission Counsel recuses, the duties of the Commission Counsel may be exercised by outside counsel chosen by the Ethics Commission.

(9) The Commission Counsel shall not represent the Ethics Commission until adequate funds have been appropriated for such purpose.

§120-7 Powers and Duties of Ethics Commission

A. The powers, duties and obligations of the Ethics Commission include the following:

(1) Rules of conduct. To recommend to the Mayor and City Council, from time to time, such rules of conduct for public employees and officials as it shall deem appropriate.

(2) Waivers. Upon the written request of any City agency or of any individual who is or was an employee or official, the Ethics Commission may grant a waiver to the specific prohibitions contained in this Code if the Ethics Commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this Code or would result in an undue hardship on any employee or official. Any such waiver may be granted only by written decision of the Ethics Commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision, provided there was a full disclosure to the Ethics Commission of all material facts necessary for the waiver decision.

(3) Advisory opinions. Upon the written request of any employee or official, the Ethics Commission may issue an advisory opinion as to the applicability of this Code to any particular fact or situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion, provided there was a full disclosure to the Ethics Commission of all material facts necessary for the advisory opinion

(4) Referrals to solicitor. To refer to the City Solicitor for investigation any alleged violation of this Code and, after notice and hearing, to recommend such disciplinary action as it may deem appropriate to such appropriate official or agency as the Ethics Commission shall determine, or to take such other disciplinary action as authorized by this Code. The Ethics Commission may dismiss, without reference to the City Solicitor, any complaint which the Ethics Commission determines is frivolous or fails to state a violation.

(5) Report of crimes. To report to the appropriate federal, state or City authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding, whether advisory or disciplinary.

(6) Records. To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of this Code.

(7) Procedures. The Ethics Commission may adopt such other procedures as it deems appropriate in order to fairly and efficiently fulfill its duties and meet the goals of this Code.

(8) To prescribe forms for reports, statements, notices and other documents required by law. The Ethics Commission may permit the filing of reports, statements, notices and other documents by electronic means and may specify the form and contents of such filings.

(9) To prepare and publish manuals and guides explaining the duties of individuals covered by this Code; and giving instructions and public information materials to facilitate compliance with and enforcement hereof.

(10) To provide assistance to appropriate agencies, employees and officials in administering the provisions of this law.

(11) To prepare an annual report to City Council each year describing its activities for the previous year and to prepare such other reports and studies as may advance the purposes of this Code.

(12) Confidentiality. Any application for a waiver or advisory opinion and any proceeding and any decision with respect thereto shall be maintained confidential by the Ethics Commission, unless disclosure is warranted by any of the following:

(a) Upon the written request of the applicant.

(b) Upon determination by the Ethics Commission after a hearing that a violation has occurred.

(c) Upon the determination by the Ethics Commission that public disclosure is required in connection with the prosecution of any violation of this Code.

(d) Substantial evidence of a criminal violation that is reported to the appropriate federal, state and/or City authorities.

(e) All waivers approved by the Ethics Commission, including the record thereof, shall be open to the public for inspection.

(f) The record of all proceedings relating to any decision of the Ethics Commission which is appealed to the Superior Court shall automatically be made available for public inspection.

B. Complaints and Hearing Procedures.

(1) Upon the sworn complaint of any person or on its own initiative, the Ethics Commission may refer to the Commission Counsel for investigation any alleged violations of this Code. The Commission Counsel shall be the prosecuting attorney in disciplinary proceedings before the Ethics Commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross-examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of subsection (h) of this section.

(2) A member of the Ethics Commission shall be ineligible to participate, as a member of the Ethics Commission, in any Ethics Commission proceeding relating to such member's conduct. A member of the Ethics Commission who has been found by the Ethics Commission to have violated this Code shall be ineligible to serve again as a member of the Ethics Commission.

(3) A member of the Ethics Commission may disqualify himself or herself from participating in any investigation of the conduct of any person upon submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to disqualify himself or herself.

(4) In any proceeding before the Ethics Commission, upon the request of any person charged with a violation of this Code, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of a defense.

(5) Evidence. The Ethics Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of books, papers, records or other evidence needed for the performance of the Ethics Commission's duties or exercise of its powers.

(6) In any proceeding before the Ethics Commission, if the Commission Counsel or the Ethics Commission at any time receives any exculpatory information respecting an alleged violation against any person, it shall automatically and forthwith make such information available to such person, and upon request of the person charged shall make any evidence that may be used or relied upon by the Ethics Commission available for inspection and copying.

(7) Any person charged with a violation of this Code may apply to the Ethics Commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on the person's behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(8) All proceedings relating to a charged violation of this Code shall be maintained confidential by the Ethics Commission unless (i) public disclosure is requested in writing by the

person charges; or (ii) the Ethics Commission determined after a hearing that a violation has occurred.

(a) Notwithstanding the confidentiality requirements of paragraph (1) of this subsection, the Ethics Commission shall make available for public inspection the record of all proceedings relating to any decision of the Ethics Commission which is appealed to Superior Court and the Ethics Commission shall report to appropriate federal or state authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this Code.

(b) The chairperson of the Ethics Commission shall, with the approval of the Ethics Commission, establish such procedures as in the chairperson's judgment may be necessary to prevent the disclosure of any record of any proceedings or other information received by the Ethics Commission or its staff except as permitted by this Code.

§120-8 Enforcement and penalties.

A. Enforcement authority. With respect to any violation with which a person has been charged and which the Ethics Commission has determined as proved, the Ethics Commission may take any one or more of the following actions:

(a) Issue a written reprimand or censure of that person's conduct.

(b) With respect to a City employee, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by this Code, but within the limits of the constitution, the laws of the state, the Charter of the City, and ordinances and existing collective bargaining agreements.

(c) With respect to an appointed official, recommend that appropriate action be taken to remove the official from the appointed position.

(d) With respect to an elected City official, recommend that such official be fined in an amount recommended by the Ethics Commission

B. Contracts voidable by Court action. Any contract entered into by any City agency in violation of this Code shall be voidable by the City agency; provided that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the City agency shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the City agency involved has, or should have, knowledge of such violation.

C. Penalties. The Ethics Commission shall have the authority to refer any person who knowingly or willfully violates any provision of this Code to the State of Delaware Office of Attorney General for prosecution pursuant to 29 Del.C., Section 5806(f).

§120-9 Judicial Review

In the event the Ethics Commission finds that any person has violated any provision of this Code, said person shall have a right of appeal to the Superior Court of any such finding, and of any sanctions imposed with respect thereto, by filing a notice of appeal with the Superior Court within 30 days of the final action by the Ethics Commission in a particular case. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Ethics Commission for further proceedings on the record. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Ethics Commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

§ 5801 § 5802 § 5803 § 5804 § 5805 § 5806 § 5807 § 5808 § 5808A § 5808B § 5809 § 5810 § 5810A

TITLE 29

State Government

Public Officers and Employees

CHAPTER 58. LAWS REGULATING THE CONDUCT OF OFFICERS AND EMPLOYEES OF THE STATE

Subchapter I. State Employees', Officers' and Officials' Code of Conduct

§ 5801 Short title.

This subchapter shall be known and may be cited as the "State Employees', Officers' and Officials' Code of Conduct."

67 Del. Laws, c. 417, § 1.;

§ 5802 Legislative findings and statement of policy.

The General Assembly finds and declares:

- (1) In our democratic form of government, the conduct of officers and employees of the State must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
- (2) To ensure propriety and to preserve public confidence, officers and employees of the State must have the benefit of specific standards to guide their conduct and of some disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.
- (3) In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officers and employees of the State should not be unduly circumscribed.
- (4) It is the desire of the General Assembly that all counties, municipalities and towns adopt code of conduct legislation at least as stringent as this act to apply to their employees and elected and appointed officials. This subchapter shall apply to any county, municipality or town and the employees and elected and appointed officials thereof which has not enacted such legislation by January 23, 1993. No code of conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of this subchapter unless the code of conduct has been submitted to the State Ethics Commission and determined by a majority vote

thereof to be at least as stringent as this subchapter. Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from this subchapter.

67 Del. Laws, c. 417, §§ 1, 2; 68 Del. Laws, c. 433, § 1.;

§ 5803 Construction.

This subchapter shall be construed to promote high standards of ethical conduct in state government.

59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1.;

§ 5804 Definitions.

For the purposes of this subchapter:

- (1) "Close relative" means a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.
- (2) "Commission" means the State Public Integrity Commission established by this chapter.
- (3) "Commission Counsel" means the legal counsel appointed by the Commission pursuant to this chapter.
- (4) "Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.
- (5) A person has a "financial interest" in a private enterprise if:
 - a. The person has a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market);
 - b. The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000 for services as an employee, officer, director, trustee or independent contractor; or
 - c. The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).
- (6) "Honorary state official" means a person who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive not more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses).
- (7) "Matter" means any application, petition, request, business dealing or transaction of any sort.
- (8) "Person" means an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.

(9) "Private enterprise" means any activity conducted by any person, whether conducted for profit or not for profit and includes the ownership of real or personal property. Private enterprise does not include any activity of the State or of any political subdivision or of any agency, authority or instrumentality thereof.

(10) "State" means the State of Delaware and includes any state agency.

(11) "State agency" means any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction:

- a. Is limited to a political subdivision of the State or to a portion thereof; or
- b. Extends beyond the boundaries of the State.

(12)a. "State employee" means any person:

1. Who receives compensation as an employee of a state agency;
2. Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or
3. Who is an elected or appointed school board member.

b. "State employee" does not include:

1. Members of the General Assembly;
2. The Chief Justice and Justices of the Supreme Court;
3. The Chancellor and Vice-Chancellors of the Court of Chancery;
4. The President Judge and Judges of Superior Court;
5. The Chief Judge and Judges of Family Court;
6. The Chief Judge and Resident Judges of the Court of Common Pleas;
7. The Chief Magistrate and Justices of the Peace;
8. State officers; or
9. Honorary state officials.

(13) "State officer" means any person who is required by subchapter II of this chapter to file a financial disclosure statement but does not include:

- a. Members of the General Assembly;
- b. The Chief Justice and Justices of the Supreme Court;
- c. The Chancellor and Vice-Chancellors of the Court of Chancery;
- d. The President Judge and Judges of Superior Court;

- e. The Chief Judge and Judges of Family Court;
- f. The Chief Judge and Judges of the Court of Common Pleas; or
- g. The Chief Magistrate and Justices of the Peace.

59 Del. Laws, c. 575, § 1; 61 Del. Laws, c. 132, § 23; 62 Del. Laws, c. 48, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, §§ 33, 34; 73 Del. Laws, c. 19, § 1; 76 Del. Laws, c. 213, §§ 44-51.;

§ 5805 Prohibitions relating to conflicts of interest.

(a) *Restrictions on exercise of official authority.* —

(1) No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter.

(2) A person has an interest which tends to impair the person's independence of judgment in the performance of the person's duties with respect to any matter when:

- a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or
- b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(3) In any case where a person has a statutory responsibility with respect to action or nonaction on any matter where the person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided, that promptly after becoming aware of such conflict of interest, the person files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(b) *Restrictions on representing another's interest before the State.* —

(1) No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

(2) No state officer may represent or otherwise assist any private enterprise with respect to any matter before the State.

(3) This subsection shall not preclude any state employee, state officer or honorary state official from appearing before the State or otherwise assisting any private enterprise with respect to

any matter in the exercise of such person's official duties.

(c) *Restrictions on contracting with the State.* — No state employee, no state officer and no private enterprise in which a state employee or state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations. For the period of July 1, 1990, through June 30, 1991, nothing in this subsection shall prohibit a state employee, a state officer, or a private enterprise in which a state employee or a state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) from contracting with a public school district and/or the State Board of Education for the transportation of school children without public notice and competitive bidding as is permitted under § 6923 of this title.

(d) *Post-employment restrictions.* — No person who has served as a state employee, state officer or honorary state official shall represent or otherwise assist any private enterprise on any matter involving the State, for a period of 2 years after termination of employment or appointed status with the State, if the person gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of official duties as a state employee, officer or official. Nor shall any former state employee, state officer or honorary state official disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.

(e) *Unauthorized disclosure of confidential information.* — No person shall disclose any information required to be maintained confidential by the Commission under § 5806(d), § 5807 (b) or (d), or § 5810(h) of this title.

(f) *Criminal sanctions.* —

(1) Any person who knowingly or wilfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than 1 year and by a fine not to exceed \$10,000.

(2) A prosecution for a violation of this section shall be subject to the time limitations of § 205 of Title 11.

(3) The Superior Court shall have exclusive jurisdiction over prosecution for all criminal violations of this section.

(g) *Contracts voidable by court action.* — In addition to any other penalty provided by law, any contract entered into by any state agency in violation of this subchapter shall be voidable by the state agency; provided, that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the state agency shall consider the interests of innocent 3rd parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the state agency involved has, or should have, knowledge of such violation.

(h) *Exceptions for transportation contracts with school districts.* — *Except for transportation supervisors for any school district within this State, nothing in this section shall prohibit an*

employee or the employee's spouse or children (natural or adopted) from contracting for the transportation of school children. Such transportation contracts may be entered into by an employee or the employee's spouse or children without public notice and competitive bidding as is provided in § 6916 of this title.

(i) [Deleted.]

59 Del. Laws, c. 575, § 1; 63 Del. Laws, c. 1, § 1; 64 Del. Laws, c. 423, § 1; 67 Del. Laws, c. 314, § 1; 67 Del. Laws, c. 417, § 1; 68 Del. Laws, c. 198, § 1; 69 Del. Laws, c. 467, §§ 4, 27; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 150, § 86; 71 Del. Laws, c. 227, § 2.;

§ 5806 Code of conduct.

(a) Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

(b) No state employee, state officer or honorary state official shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- (1) Impairment of independence of judgment in the exercise of official duties;
- (2) An undertaking to give preferential treatment to any person;
- (3) The making of a governmental decision outside official channels; or
- (4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired, shall not be considered to be a violation of this section.

(c) No state employee, state officer, or honorary state official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the State.

(d) Any state employee or state officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any state agency (and any honorary state official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the state agency on which the official serves as an appointee) shall file with the Commission a written statement fully disclosing the same. Such disclosure shall be confidential and the Commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the State.

(e) No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

(f) No state employee, state officer or honorary state official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such state employee, state officer or honorary state official to disclose confidential information acquired by such official by reason of such public position.

(g) No state employee, state officer or honorary state official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such official otherwise use such information for personal gain or benefit.

(h) No state employee, state officer or honorary state official, in the course of public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency.

(i) Notwithstanding the provisions of Chapters 58, 59, and 69 of this title and the State Merit Rules of Personnel Administration, state employees may contract to provide foster care or respite care for individuals with fees paid for by the State provided further that the employee does so at other than assigned work hours. Additionally, these individuals are not permitted to participate in the review or disposition of any matter related to foster and/or respite care in which they have or may have a personal or private interest and may not be monitored or reviewed by other state employees who are more junior or related to them.

59 Del. Laws, c. 575, § 1; 63 Del. Laws, c. 1, § 2; 65 Del. Laws, c. 349, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 5, 27; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 567, § 1; 76 Del. Laws, c. 80, § 33.;

§ 5807 Waivers of restrictions and advisory opinions.

(a) Notwithstanding the provisions of §§ 5805 and 5806 of this title, upon the written request of any state agency or of any individual who is or was a state employee, state officer or honorary state official, the Commission may grant a waiver to the specific prohibitions contained therein if the Commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee, officer, official or state agency. Any such waiver may be granted only by written decision of the Commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision provided there was a full disclosure to the Commission of all material facts necessary for the waiver decision.

(b) Any application for a waiver, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

(1) Public disclosure shall be made by the Commission upon the written request of the applicant;

(2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this subchapter;

(3) The Commission shall report to appropriate federal and state authorities substantial

evidence of any criminal violation which may come to its attention; and

(4) In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) Upon the written request of any state employee, state officer, honorary state official or state agency or a public officer as defined in § 5812 of this title, the Commission, or Commission Counsel subject to § 5808A(a) of this title may issue an advisory opinion as to the applicability of this chapter to any particular fact situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion provided there was a full disclosure to the Commission or Commission Counsel of all material facts necessary for the advisory opinion.

(d) Any application for an advisory opinion, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

(1) Public disclosure shall be made by the Commission upon the written request of the applicant;

(2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;

(3) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and

(4) The Commission shall prepare a summary of its advisory opinions for public distribution without disclosing the identity of the applicants.

59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 6, 7, 27; 80 Del. Laws, c. 204, § 1.;

§ 5808 State Public Integrity Commission; establishment, membership, offices.

(a) The State Ethics Commission is hereby renamed and reestablished as the State Public Integrity Commission to assume the functions of the State Ethics Commission and to administer and implement this chapter, and to perform such other responsibilities as may be entrusted to it by law.

(b) The Commission shall consist of 7 members appointed by the Governor with the concurrence of the Senate. Not more than 4 members shall be registered with the same political party. No member shall hold any elected or appointed office under the government of the United States or the State or be a candidate for any such office. No member shall hold any political party office or an office in any political campaign. Members of the Commission may be removed by the Governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct in office or violation of this chapter.

(c) A member of the Commission shall be appointed for a term of office of 7 years and until a successor has been appointed and has qualified, except that initially the Commission shall consist of the members of the former State Ethics Commission as of July 15, 1994, and said members shall serve the remaining portion of their terms and until their successors have been appointed and have qualified. No member shall serve for more than 1 full 7-year term. When a vacancy occurs in the membership of the Commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as original appointments.

(d) The Commission shall elect a chairperson from among its membership. Four members of the Commission shall constitute a quorum and, if a quorum is present, a vacancy on the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least 4 members. Otherwise the Commission may delegate authority to the chairperson to act for the Commission between meetings.

(e) Each member of the Commission shall be compensated at the rate of \$100 for each day devoted to the performance of official duties. Each member of the Commission shall be reimbursed for reasonable and necessary expenses incurred in the performance of official duties.

(f) The principal office of the Commission shall be in Dover but it may meet, and exercise its power, at any other place in the State.

67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, § 8; 70 Del. Laws, c. 186, § 1.;

§ 5808A Commission Counsel; powers and duties.

(a) There shall be a Commission Counsel who shall be the legal representative of the Commission and have the following powers and duties:

- (1) To assist the Commission in preparing and publishing manuals and guides explaining the duties of individuals covered by this chapter and in other activities, such as seminars and workshops, educating individuals covered by this chapter about its requirements and purposes, and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.
- (2) To provide legal counsel to the Commission concerning any matter arising in connection with the exercise of its official powers or duties.
- (3) To review information coming to the attention of the Commission relating to potential violations of this chapter.
- (4) To investigate information coming to the attention of the Commission that, if true, would constitute a violation of any provision of this chapter and/or to recommend that possible violations of these, or other state and federal laws, be referred by the Commission to the Attorney General or the United States Attorney for investigation and prosecution. Matters may be so referred to the Attorney General or the United States Attorney only upon a determination by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred.
- (5) To prosecute disciplinary proceedings, if a determination has been made by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred, before the Commission and to assist the Commission in drafting educational materials, waiver decisions and advisory opinions.
- (6) To employ and supervise staff necessary to perform investigatory and prosecutorial functions.
- (7) To maintain permanent records of all advisory, waiver, investigatory and prosecutorial matters.

(8) To perform any other tasks requested by the Commission concerning any matter arising in connection with the exercise of its official powers or duties.

(9) Under circumstances in which the Commission has not convened for 60 or more consecutive days, and after notice to the Commission, Commission Counsel may issue written advisory opinions upon the request of any state employee, state officer, honorary state official or state agency as to the applicability of this chapter to any particular fact situation if the request concerns an issue that does not require a waiver and that has previously been determined by:

- a. Written opinion of the Commission; or
- b. Court opinion interpreting the State Code of Ethics.

(b) The Commission Counsel may recuse from a matter before the Commission when, in the view of Commission Counsel or of the Commission, such recusal is deemed necessary or appropriate. In situations where Commission Counsel recuses, the duties of the Commission Counsel may be exercised by the Attorney General or by outside counsel chosen by the Commission.

69 Del. Laws, c. 467, § 9; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 204, § 1.;

§ 5808B Commission Counsel's appointment contingent upon appropriations.

The Commission Counsel established by § 5808A of this title shall not be appointed by the Commission until adequate funds have been appropriated for such purpose. In the absence of such appointment, the Attorney General shall provide legal assistance to the Commission and shall exercise any duties assigned to the Commission Counsel by this chapter. Such duties may also be exercised by outside counsel chosen by the Commission, if adequate funds are appropriated for such purpose.

69 Del. Laws, c. 467, § 9.;

§ 5809 State Public Integrity Commission — Power and duties.

The powers and duties of the Commission shall be as follows:

- (1) To recommend to the General Assembly from time to time such rules of conduct for public employees and officials as it shall deem appropriate.
- (2) To issue written advisory opinions upon the request of any state employee, state officer, honorary state official or state agency as to the applicability of this chapter to any particular fact situation.
- (3) To refer to Commission Counsel to investigate any alleged violation of this chapter and, after notice and hearing, to recommend by resolution, such disciplinary action as it may deem appropriate to such appropriate official or agency as the Commission shall determine or to take such other disciplinary action as is authorized by § 5810(d) of this title or other provisions of this Code. The Commission may also dismiss any complaint that it determines is frivolous or fails to state a violation.
- (4) To report to the appropriate federal or state authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding whether advisory or disciplinary.

(5) To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of § 5807(b) and (d), and § 5810(h).

(6) To follow the procedural rules specified in § 5810 of this title and to establish such other procedural rules as shall not be inconsistent with the rules prescribed therein.

(7) To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers.

(8) To prescribe forms for reports, statements, notices and other documents required by law. The Commission may permit the filing of reports, statements, notices, and other documents by electronic means and may specify the form and content of such filings.

(9) To prepare and publish manuals and guides explaining the duties of individuals covered by this chapter; and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.

(10) To provide assistance to state agencies, employees and officials in administering the provisions of this law.

(11) To prepare an annual report by March 1st of each year describing its activities for the previous year and to prepare such other reports and studies as may advance the purposes of this chapter.

(12) To appoint a lawyer admitted to practice in the State to serve as Commission Counsel.

(13) To request appropriate state agencies to provide such professional assistance as it may require in the discharge of its duties.

(14) To contract for any services which cannot satisfactorily be performed by the Commission Counsel or other Commission staff.

(15) Commencing January 15, 1995, to administer and implement the financial disclosure provisions of subchapter II of this chapter and to maintain the records filed pursuant thereto.

(16) Commencing January 15, 1996, to administer and implement the lobbyist registration provisions of this Code and to maintain the records filed pursuant thereto.

(17) To perform such other responsibilities as may be assigned to it by law.

59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 10-13, 27; 75 Del. Laws, c. 57, § 6.;

§ 5810 State Public Integrity Commission — Complaints; hearings; dispositions.

(a) Upon the sworn complaint of any person or on its own initiative, the Commission may refer to the Commission Counsel for investigation any alleged violations of this chapter. The Commission Counsel shall be the prosecuting attorney in disciplinary proceedings before the Commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to

cross-examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of subsection (h) of this section.

(b) A member of the Commission shall be ineligible to participate, as a member of the Commission, in any commission proceeding relating to such member's conduct. A member of the Commission who has been found by the Commission to have violated this chapter shall be ineligible to serve again as a member of the Commission.

(c) A member of the Commission may disqualify himself or herself from participating in any investigation of the conduct of any person upon submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to disqualify himself or herself.

(d) With respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may take any 1 or more of the following actions:

(1) Issue a written reprimand or censure of that person's conduct.

(2) With respect to a state employee or state officer, other than an elected official, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by Chapter 59 of this title but within the limits of the Constitution and other laws of the State.

(3) With respect to an honorary state official, recommend that appropriate action be taken to remove the official from office.

(e) In any proceeding before the Commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of a defense.

(f) In any proceeding before the Commission, if the Commission Counsel or the Commission at any time receives any exculpatory information respecting an alleged violation against any person, it shall forthwith make such information available to such person.

(g) Any person charged with a violation of this chapter may apply to the Commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on the person's behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(h)(1) All proceedings relating to a charged violation of this chapter shall be maintained confidential by the Commission unless:

a. Public disclosure is requested in writing by the person charged; or

b. the Commission determines after a hearing that a violation has occurred.

(2) Notwithstanding the confidentiality requirements of paragraph (h)(1) of this section, the Commission shall make available for public inspection the record of all proceedings relating to

any decision of the Commission which is appealed to Superior Court and the Commission shall report to appropriate federal or state authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.

(3) The chairperson of the Commission shall, with the approval of the Commission, establish such procedures as in the chairperson's judgment may be necessary to prevent the disclosure of any record of any proceedings or other information received by the Commission or its staff except as permitted by this chapter.

67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 14-18; 70 Del. Laws, c. 186, § 1.;

§ 5810A Judicial review.

In the event that the Commission finds that any person has violated any provision of this chapter, said person shall have a right of appeal to Superior Court of any such finding and of any sanctions imposed with respect thereto by filing a notice of appeal with the Superior Court within 30 days of the final action by the Commission in a particular case. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Commission for further proceedings on the record. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, § 19.;

Crouch, Christine

Subject: FW: Kent County Tourism Board of Directors Appointee to represent Milford
Attachments: Kent County Tourism Board of Directors Informational Sheet.pdf

From: Wendie Vestfall [<mailto:wvestfall@visitdelawarevillages.com>]

Sent: Friday, August 18, 2017 11:50 AM

To: Morrow, Doug <dmorrow@milford-de.gov>; Mayor Shupe <Mayor@milford-de.gov>; Mergner, Christopher <CMergner@milford-de.gov>; Campbell, Archie <acampbell@milford-de.gov>; Peel Lisa <lpeel@milford-de.gov>; Burk, James <JBurk@milford-de.gov>; Brooks, Owen <obrooks@milford-de.gov>; Starling, James <JStarling@milford-de.gov>; Wilson, Katrina <kwilson@milford-de.gov>

Cc: Norenberg, Eric <ENorenberg@milford-de.gov>

Subject: Kent County Tourism Board of Directors Appointee to represent Milford

Honorable Mayor and Milford City Council Members:

Over the past year, Kent County Tourism has worked diligently to create and drive visitor interest to our County. Those efforts include a 5-year Strategic Plan, a new brand identity – Delaware’s Quaint Villages, targeted social media campaign, trade show sales strategy, media buys and relations, hosting influencers and writers, and the launching of a brand new responsive design website (VisitDelawareVillages.com). Since the launch of our site in April, we have seen over 70,000 visitors. Our efforts are proving that Kent County is not only a great place to live and work, but to also visit, explore, experience, and recharge.

As part of the new strategic plan, the Board of Directors and I are seeking out new members to be on the board that are passionate and have a stake in growing tourism/ economic development for the County. We believe that with the right people on our board, Kent County Tourism could become a powerful partner for the county & it’s cities like Milford in helping to bring new hospitality business and events to the area. Kent County is a great place and we’d like to see everyone working together and have a stake in our and ultimately the county’s success.

To do this, we have revised our by-laws to allow the City Councils of Milford, Smyrna, Dover & Harrington to appoint a representative to serve on our board. This appointed member may be the Mayor or City council member themselves or a designee who resides or conducts business in their City. The designee should engage in tourism/economic development and understands the requirements of board membership. (see attached document).

Our goal is to have all nominated/appointed board members voted in by our current board at our September 21st meeting. New board members would start the following month in October.

I am hoping that I can count on you to participate/take advantage of having someone be the voice of tourism in Kent County for Milford. As it is truly our goal to make sure everyone is represented as part of our efforts.

Please let me know if you have any questions and/or would like more information regarding our strategic plan and current efforts to appoint someone. I can be reached at wvestfall@visitdelawarevillages.com or 302-734-4888 ext. 14. I would also be more than happy to come meet with you and/or your appointee prior to them accepting the seat. Please let me know no later than Friday, August 25th if you intend to appoint someone to our board. I will then need to know who that appointee will be by Monday, September 11th in order to have the board vote them in at our next meeting.

Thanks!

Kent County Tourism Board of Directors Information Sheet



Board Job Description:

A member of the Board of Directors is responsible for ensuring that Kent County Tourism fulfills its mission by planning for the future, monitoring operations, and evaluating the organization's performance. Board members serve as the link between Kent County Tourism, its funding sources, and the community in which it operates. As a Board member, you agree to uphold the values and mission of the organization with trust and loyalty, and without conflict of interest. As such, you agree to represent the Board and organization in a manner that projects a positive image of the organization and the tourism industry in Kent County. **By becoming a Board Member, you are making a commitment of your time and talent toward the betterment of the tourism industry in Kent County.**

Term Length: 3-year term (per bylaws), Appointees are limited to serving (3) consecutive terms

Time commitment:

Monthly meetings; additional time required for committee and/or volunteer work at events

Reports to: Board Chairperson

Financial Compensation: No financial compensation shall be made to any member of the corporation except those expenses approved by the Executive Board.

Key Responsibilities:

Advance the mission of Kent County Tourism

- Actively promote the mission of Kent County Tourism by contributing ideas and expertise that facilitate the growth of economic development in Kent County through tourism.
- Keep up-to-date on developments in the Tourism/Hospitality field
- Be informed about the organization's mission, services, policies, and programs; inform others about the organization, and work to enhance the organization's public image.

Ensure effective organizational planning.

- Monitor the organization's programs and services.
- Participate in the development of strategic plans to accomplish the mission and evaluate its success.

Actively participate in all board activities.

- Attend in person monthly board meetings. All members must attend 8 out of 11 meetings per year. There is no board meeting in August.
- Review agenda and supporting materials prior to board and committee meetings.
- Serve on a committee and/or volunteer at Kent County Tourism events. In addition to periodically taking on special assignments
- Suggest nominees to the board who can make significant contributions to the work of the board and to the organization.
- Assess the board's performance.

Ensure adequate resources.

- Carry out the fiduciary responsibilities of the board; reviewing the organization's annual financial statements, protect and preserve the organization's current funding, help in the solicitation of additional funds for the organization.

Meetings:

Full Board Meetings:

3rd Thursday of every month 7:30am. *Time may change
There is no meeting in August.

Executive Board Meetings: Quarterly (Dates TBD)

Committee Meetings: TBD by Committee Chairs

Committees:

Kent County Tourism Board Committees works closely with staff to implement industry and CVB strategies, as well as to strengthen the organization. Other committees may be formed from time to time pending the need of the organization.

Executive Committee: The Executive Committee shall have, and may exercise, the powers of the Board except that the Executive Committee shall not have the power to adopt the budget, or take any action that represents a major change of the affairs, business or policy of the organization. The Executive Committee shall annually review the operations and activities of all standing committees established by the Board of Directors and shall report to the Board of Directors the findings of such annual reviews. The Executive Committee shall review the Strategic Plan Initiatives and oversee the President's performance review and compensation.

Finance Committee: The Finance Committee purpose is to oversee the preservation and protection of current public accommodation tax funding to the Kent County Tourism Corporation, along with exploring potential expansion of funding. The Finance Committee shall oversee the preparation of the annual budget, with guidance from the President, and shall review the Corporation's financial position and make recommendations and reports regarding these matters to the Board of Directors. The final approval of the annual budget shall remain with the Board of Directors. They shall also oversee the annual audit review of the Bureau's financial statements prepared by an independent certified public accountant or accounting firm and prepared in accordance with generally accepted standards.

Compliance and Policy Committee: The Compliance and Policy Committee will meet as necessary and shall oversee the Bylaws, Certificate of Formation, along with the creation and review of the Employee Policy Handbook and other organizational policies.

Nominating Committee: The Nominating Committee shall solicit input from the Board of Directors and other community leaders for prospective candidates. These candidates shall be contacted by the Nominating Committee and must indicate their willingness to serve before they can be submitted to the Board of Directors for approval.

Legislative Committee: This committee focuses on legislative issues that are important to the Kent County Tourism and Tourism related businesses. They assist staff with educating local, county and state government on those issues along with Kent County Tourism role in the economic development of county and its jurisdictions. This committee will collaborate from time with the Finance Committee when it comes to the preservation and protection of current public accommodation tax funding for the organization.

About Kent County Tourism Corporation

(Delaware's Quaint Villages)

Kent County Tourism Corporation (dba Delaware's Quaint Villages) is the destination marketing organization for Kent County, Delaware and its incorporated cities and towns. As the primary programmatic arm for Kent County travel and tourism promotion, it leads the Kent County Tourism industry to work together to generate visitor spending by developing and implementing comprehensive destination marketing programs. It is a self-governing private not-for-profit 501 © 6 corporation with a Board of Directors.

Mission Statement:

Kent County Tourism Corporation is the official destination marketing organization for the county and its jurisdictions, whose mission is to generate incremental economic impact for the community through the attraction of visitors.

Kent County Tourism Objectives:

- Generate positive awareness of Kent County as a destination of choice for travelers by positioning the area as a competitively unique and compelling destination
- Create positive awareness, support, and participation for Kent County Tourism by increasing the development and execution of mutually beneficial collaborative marketing partnerships
- Stimulate interest and desire on the part of consumers to act and visit by creating marketing materials and messaging that engages the consumer and establish a strong emotional connection to the area's product offerings
- Maximize visitor length and frequency of stay to increase economic generation and enhance the value of the visitor's experience by providing outstanding visitor service assistance and in-person tourist information
- Increase the business volume of local tourism business partners and constituents by expanding, promoting and supporting existing attractions, meeting space and sports facilities
- Pro-actively support and provide the development of additional tourism products and services to enhance the visitor experience.
- Protect, support and promote the infrastructure that sustains tourism while continuing to develop new tourism product
- Maintain a research base for the community's tourism industry to provide detailed, relevant, up-to-date local tourism information and industry trends that empower

DELAWARE'S QUAIN VILLAGES MARKETING MODEL

(UMBRELLA MARKETING)

Job Functions of Kent County Tourism Personnel
TV ADVERTISING * RADIO ADVERTISING*PRINT ADVERTISING
PUBLIC RELATIONS*SOCIAL MEDIA*ONLINE MARKETING
*GROUP SALES & RECRUITMENT
PROMOTIONS*CONTESTS*TOUR PACKAGES



Virtually everything Kent County Tourism does is designed to drive traffic to the destination's website (www.VisitDelawareVillages.com). Kent County Tourism's marketing model is founded on the fundamental strategy of generating targeted customers (determined by our Visitor Profile and Branding) through a comprehensive mix of MARKETING, SALES, and COMMUNICATIONS programs, then driving those customers to the website, where they are connected to Kent County tourism partners (Hotels, Attractions, Restaurants, Retail, Parks & Recreational Facilities).

As a non-membership, publicly funded organization, Kent County Tourism offers free listings on their website to tourism partners to ensure transient room tax dollars benefit the entire tourism industry. The premise is: We attract visitors to Kent County and provide opportunities for local businesses to convert those visitors to customers

Kent County Tourism Integrated Services:

- **Marketing/Communications** inspires visitation to benefit the local tourism economy
- **Group Sales** attract the memorable experiences that motivate group travelers and provide fuel for our marketing machine
- **Visitors Services** ensure that visitors get the most out of their stay, spend more, enjoy themselves and come back soon
- **Industry Relations** lift the industry and acts as the conduit between Kent County Tourism and our tourism partners

Kent County Tourism Corporation
435 N. Dupont Highway
Dover, DE 19901

302-734-4888
www.VisitDelawareVillages.com

Milford City Council
Public Hearing Procedures
Effective: September 1, 2017

The Mayor shall preside over Public Hearings and follow these steps:

1. Call the Public Hearing to order
2. Mayor or City Solicitor will explain the procedure
3. Mayor will identify the application or subject by name and number
4. In the case of land use or similar matters, the Mayor will call on the City Planner or other appropriate staff to establish advertising was done as required by law and to review the application or subject
5. Mayor will then call on the applicant or representative to concisely present their application. The applicant is asked to limit their presentation to 15 minutes. If the application is sufficiently complex that more time is necessary, the applicant should notify the City Clerk prior to the meeting and the Mayor will determine and announce if additional time is granted.

Questions may be asked by the City Council or the Mayor during the testimony to clarify comments or statements made during the remarks. The Mayor must recognize speakers first. However, City Councilmembers should reserve discussion or expression of opinions until the deliberation portion of the Public Hearing.

6. The Mayor will then invite testimony from all who favor the application (up to three minutes per person)
7. The Mayor will then invite testimony from all opposed to the application (up to three minutes per person)
8. The Mayor will then invite testimony from those not opposed or in support of the application (up to three minutes per person)
9. After everyone has spoken, the Mayor declares the public hearing closed.
10. The City Council discusses the application based on the merits presented, after which the Mayor will call for a motion.
11. A roll call vote will be conducted on the motion with each Councilmember voicing her/his vote (aye or nay) followed by a brief reason for supporting or opposing the motion based information presented on the record. The order of the roll call vote will change with each such vote and will be tracked by the City Clerk.