

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 10, 2017

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, July 10, 2017.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Arthur Campbell, Lisa Peel, James Burk,
Owen Brooks Jr., Douglas Morrow and James Starling

City Manager Eric Norenberg, Police Chief Kenneth Brown
and Deputy City Clerk/Recorder Christine Crouch

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:00 p.m.

INVOCATION & PLEDGE

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

RECOGNITION

Milford Police Department Officer Recognition

Chief Brown introduced the Officer of the Quarter Detective Tim Maloney and provided some background stating that he was hired in July 2013 where he had been an officer in Milton. Chief Brown promoted him to Corporal in September 2016.

He stated that he has done a great job in every aspect of police work and especially as a detective. He noted there are only two detectives of which one has been out with medical issues. Detective Maloney has done a great job handling all of CI's duties during that time.

Detective Maloney also headed up the police department's team at Relay for Life.

He then presented the award to Detective Maloney and photos were requested by Chief Brown with Mayor Shupe.

Deputy City Clerk Christine Crouch

City Manager Norenberg acknowledged Deputy City Clerk Christine Crouch who has been filling in and doing an outstanding job covering her own responsibilities as well as those of the City Clerk while she has been out.

He also noted that she is away on vacation this week and returned back at 6:00 p.m. to handle this meeting. He presented her with some items to make s'mores when she returns to their camping site tonight.

MONTHLY POLICE REPORT

Police Committee Chairman Burk presented the monthly report on behalf of Chief Brown, noting they have been dealing with a number of issues and asked that Council keep them in their prayers.

Councilman Burk moved to accept the June 2017 report, seconded by Councilman Brooks. Motion carried.

MONTHLY CITY MANAGER REPORT

City Manager Norenberg referenced his monthly report and asked for questions.

Councilman Brooks acknowledged that Mr. Norenberg was recognized by the International City/County Management Association for thirty years of dedicated service and professional management at the local level. City Manager Norenberg was congratulated by those present. He will be provided a service award at their annual conference in San Antonio, Texas in October.

Councilman Burk moved to accept the City Manager report as submitted, seconded by Councilwoman Peel. Motion carried.

MONTHLY FINANCE REPORT

City Manager Norenberg reported that through the eleventh month of Fiscal Year 2016-2017 with 92% of the fiscal year having passed, 92% of revenues have been received and 82% of the operating budget expended.

He noted that a number of the revenue categories are coming in ahead of expected and the overall expenditures are under budget adding that our staff has done a great job of collecting revenue and trying to stay under budget.

Councilwoman Peel moved to accept the May 2017 Finance Report, seconded by Councilman Starling. Motion carried.

COMMITTEE & WARD REPORTS

Community Affairs Meeting

Community Affairs Committee Chairperson Peel discussed the Rental License Ordinance that was reviewed as was recommended at a prior Council meeting.

The appeals process was considered, but because the City does not have an appeal process for late payments in regard to any other payments or license, the Committee agreed not to recommend an appeals process. However, if the City was at fault, corrections would be made.

In addition, some updates to the code were reviewed in order for City Planner to continue following the policy outlined in the ordinance with a notification going out in November and subsequent late notices going out twice.

Mr. Norenberg clarified that a notice would be sent prior to the first of the year, January would be the grace period, with late notices being mailed in late February and a final notice in April.

One other subsequent recommendation was that when the rental license is transferred from one owner to another, rather than requiring the new owner to apply for rental licenses for each unit in an apartment building, an administrative rental license transfer fee would be charged instead. Council will see that introduction in the next couple meetings.

COMMUNICATIONS & CORRESPONDENCE

Chief Brown announced that the department lost their K9 unexpectedly a day after he became ill and lethargic on the officer's way home. He was immediately taken to Savannah Animal Hospital where emergency surgery was performed and the canine died on the operating table.

UNFINISHED BUSINESS

Alcohol Waiver/Chapter 77 Alcoholic Beverages/DMI 3rd Thursdays

Mayor Shupe recalled this event being discussed at the last meeting and involved a proposal, submitted by Downtown Milford, who in conjunction with the Second Street Players, Riverfront Theater, wanted to establish a small beer garden in the front of the theater.

Additional information was requested by City Council at that time.

Mayor Shupe followed up with them today noting that he was provided with a copy of the Gathering License application sent by the Riverfront Theater to the State of Delaware and a drawing of the plan. He asked that Council approve the waiver but because there remains some confusion over whether this would occur inside or outside, some additional paperwork will be provided if the event was outside. Delaying the approval would not permit the beer garden at the July 15th event.

City Manager Norenberg noted that part of the dilemma in the front is there are public right-of-ways on three sides. Therefore, the drawing would need to show the fencing as is submitted with other requests.

Mr. Norenberg added that he, Mayor Shupe and DMI Third Thursday Chair Peggy Reilly has been trying to get that information for the past couple weeks. He agrees that if we can get something satisfactory that will not adversely impact the public right-of-way and is compatible with the food trucks and other activities, he agrees with Mayor Shupe's recommendation.

Councilman Morrow arrived at this time.

Councilman Burk pointed out that he has been to a couple of events at the theater and has found that the adults serving the alcohol have ABC server cards and he does not believe they will allow the alcohol outside, when they are serving it inside. Therefore, he does not see an issue with it.

Councilman Campbell spoke with the Theater's Treasurer Dan Marabello who indicated he had no problem with the request.

Councilman Burk moved to approve the alcohol waiver as permitted in Chapter 77, with the stipulation that additional information is needed if the location is planned outside, seconded by Councilman Campbell. Motion carried by a 4-1 vote with Councilman Starling casting the sole dissenting vote.

NEW BUSINESS

*Introduction/Ordinance 2017-16
Susan Frketic on behalf of Faulton LLC for a Conditional Use
156/158 Mullet Run Street
Tax Map MD-16-173.00-01-03.07*

City Manager Norenberg introduced Ordinance 2017-16 stating this is a conditional use for the First Kids Academy. City Council will hold a public hearing on the ordinance at the July 24th meeting.

*Introduction/Ordinance 2017-19
Perdue Real Estate Holdings Inc. for a Conditional Use
255 N Rehoboth Boulevard
Tax Map MD-16-174.19-01-09.00*

City Manager Norenberg introduced Ordinance 2017-19 for an amended conditional use for chicken processing at the Perdue plant. Council will also hold a public hearing at the July 24th meeting.

Tax Waiver/Exemption Status – Michelle Gardner (Draper Farm)

City Manager Norenberg explained we have been going through all of our tax records to ensure they are correct. In doing so, we are making certain that every property being taxed should be taxed and vice versa.

In March and April, a number of property owners who had tax-exempt properties, were sent letters asking for proof. For example, a non-profit was required to submit the IRS non-profit certification or other documentation. In many of these cases, the City did not have any information in our files and there was no action by Council or some other legal authority.

Ms. Gardner is one of the recipients of these letters. She met and discussed the situation as was discussed. She inherited these

properties from her parents and thought that the property had been tax exempt by approval of the City. After further discussion, we realized that her property would most likely qualify under the County and State farmland agricultural exemption program. Therefore, it was agreed to put this matter on hold as she proceeded with the process needed through the USDA, State of Delaware and Kent County. She understood that if she secured those approvals, the property would continue to be tax exempt.

In late June, Ms. Gardner provided the City with paperwork from Kent County indicating she met the terms and conditions for exemption under the Farmland Assessment Act. Since the Draper Farm would have been exempt under the provisions of the Farmland Assessment Act program from the point at which the property was annexed, and the fact that our recent audit only discovered this discrepancy, but had never taxed the property nor should it be taxed (prior to rezoning or development occurring), it is recommended that the City Council approve a temporary exemption for the Draper Farm for taxes billed and due in 2016 and 2017 pending activation of the Kent County Farmland Exemption for tax year 2018.

In 2009, City Council took formal action on a number of tax exempt properties. This property was not included during that meeting though the note associated with this account referred to those minutes.

He noted that the City Clerk and Deputy City Clerk did a lot of searching for the documentation and this is the result.

Councilman Campbell asked if this is a similar situation to the Jesse Webb property; Mr. Norenberg stated it is similar with a twist. That is based on how Sussex County handles the farmland exemption program and the reason we are still working on that. There are a number of issues in each individual situation that will be reviewed by our City Solicitor.

Councilman Starling moved that City Council approve a temporary exemption for the Draper Farm for taxes billed and due in 2016 and 2017 pending activation of the Kent County Farmland Exemption for tax year 2018, seconded by Councilman Campbell. Motion carried.

Delinquent Tax Accounts Update

City Manager Norenberg submitted the following memo:

As we await the Governor's signature on Senate Bill 82 to enact our revised City Charter, we are making plans to begin collection of delinquent taxes. Since you are likely to get calls and questions, I wanted you to be aware that in accordance with the following provision in our soon-to-be-updated Charter, letters will be sent to the top ten delinquent property owners in the next week or so:

(e) In addition, the City Manager, acting on behalf of the City, may pursue the sale of the lands and tenements of the delinquent taxpayer, or the lands or tenements of a delinquent taxpayer alienated subsequent to the levy of the tax by monition sale according to the same procedures and subject to the same rights, authority and powers as are applicable to the Counties under Chapter 87 of Title 9 of the Delaware Code, as may later be amended, replaced or relocated within the Delaware Code. Prior to commencing any action for the sale of lands and tenements, the City shall send written notice to the assessed owner providing the total balance owed and language indicating a failure to pay within 30 days may result in the commencement of legal proceedings for the sale of the assessed property.

Attached is a draft of the first such letters. You will notice it contains the provision for publishing information about the delinquencies on the City website as was requested by City Council during the retreat.

He recalled the Taxpayer Penalty and Interest Forgiveness Program Council approved last year for those property owners who became current by June 30, 2016. They also had the opportunity to pay the base fee and taxes owed while having their interest and penalties waived. A number of property owners took advantage of that.

At that same time, sixteen taxpayers entered into payment plans which allowed them to pay their taxes throughout the year a little at a time. If they completed that program by June 2017, their interest and penalties would have been waived as well. Of those sixteen, twelve were completed and four did not follow through with their agreements. Of the four, approximately \$6,000 is still owed.

Mr. Norenberg advised the total delinquencies are still at approximately \$431,000 when taxes, penalties and interested are

totalled. Included in that were the two properties, Draper being one, and another that owed \$18,000 that just went through a Kent County-initiated monition sale. As a result, that amount is reduced to approximately \$400,000.

The new charter language requires a thirty-day notice before initiating legal action. The following draft letter is proposed to be sent to those delinquent property owners:

Dear Mr. and/or Ms. Taxpayer:

As you are no doubt aware, your property taxes and/or fees/charges owed to the City of Milford are overdue and you owe the City not only back taxes/fees/charges, but penalties and/or interest. Attached is a current statement. As a result of your delinquency, other taxpayers must pay more than their fair share to support the operations of the City of Milford.

We understand that there may be extenuating circumstances for some taxpayers. That is why in 2016 we offered you and other taxpayers an opportunity to have penalties and/or interest waived if your account(s) were brought current by June 30, 2016 (or enter into a payment program). Unfortunately, you did not take advantage of that opportunity.

Accordingly, in the coming months the City will take legal action against property owners to obtain a legal judgement in order to collect the funds owed to the City. Such action would be reflected on your credit report. However, if you make full payment of amounts owed to the City (including penalties/interest) by August XX, 2017, you will avoid any further legal action related to the amounts currently due.

To make your payment, please contact the City of Milford Customer Service Office at 422-6616 or visit the Office at 119 S. Walnut Street.

Also, please be aware that the City of Milford intends to list the names, addresses and amounts owed for the most delinquent properties on the City website beginning on August XX, 2017. Anyone who owes the City more than \$6,900 in back taxes, fees, liens, penalties and interest, and has not made payment as described above by August XX, 2017 will be included on the list. Milford is a community worth investing in. Our dedicated staff provides public safety and other services that maintain and improve the quality of life for our residents and businesses. We hope you agree that these services are worth paying for and will bring your accounts current please.

Mr. Norenberg reported that there is approximately \$120,000 owed in the top ten delinquent properties, which includes one commercial property and a handful of properties that were condemned and demolished. The fees associated with the demolitions were added to the account. In addition, we are maintaining those laws and assessing \$100 each month for mowing services.

He also noted that two of the properties are in our business park and one-owner occupied home that staff is attempting to get their taxes current to prevent selling the property.

When the process is started, he hopes the word will spread. In addition, Mayor Shupe has recommended a press release be prepared.

When asked if the delinquent list will be posted in the newspaper, Mr. Norenberg recommends posting the top ten on the website once the letter is mailed.

Ethics Policy/Introductory Discussion

The City Manager noted that the new charter language includes the adoption of an Ethics Policy. During the past couple months, he has been working with the City Solicitor on a draft that would apply to City Council, City Employees and a number of Boards and Commissions that currently exist or could be appointed in the future. Eventually it will need to be on the agenda as an ordinance.

Councilman Brooks said the last time Council talked about this, City Council elected to go with the State law. Solicitor Rutt explained that Title 29 has an ethics policy that is applicable to municipalities. However, they also encourage each municipality to adopt their own. Councilman Brooks said this has been talked about at least three times and the other solicitor said he didn't have one. Councilman Brooks brought one in and showed him; then Council adopted another one.

Solicitor Rutt said he has not seen that. He explained the ethics code by statute, has to be at least as restrictive as the State

Code. Therefore, it is required to be reviewed by the Public Integrity Commission before the City officially adopts it.

He has not seen another code and is unsure if it complies with State law. However, the one that has been developed meets those standards and is geared toward Milford.

There may be questions about a lot of the language though it is what the State code requires.

Currently if there was an ethics violation, it would have to go through the State Public Integrity Commission. In our City, a Milford Ethics Commission would be established. Councilman Burk asked if we need a Milford Commission. He remembers talking about it and recalled appointing another five-member body that the State already had in place. He referenced the thirteen-page document and questioned its need.

Councilman Brooks prefers going with the State code; Councilman Burk agrees.

Solicitor Rutt explained this was prepared because the charter amendment states there should be an ethics code in place. He confirmed the State code endorses each individual municipality having their own. But each municipality has the option of following the State code.

Councilman Brooks said the last time it was discussed, City Council agreed to follow the State code as was advised. He asked Councilman Morrow and Councilman Morrow said he recalled that.

Solicitor Rutt said it is here for Councils' consideration and if it wants to be introduced now or later, or not at all, that is a Council decision.

According to Councilman Brooks, it was discussed and he brought a copy and showed it to former Solicitor Tim Willard, who indicated that Milford did not have one. It was discussed and a new ethics policy was made and there were things added to it. But he thinks they keep disappearing.

City Manager Norenberg stated that with all due respect, it did come up and was considered by the Charter Review Committee so there is language in the new charter that states the Mayor and City Council shall develop and adopt a Code of Ethics applying to elected officials and city employees in general. This document is one option though we can continue to look for the missing code as determine whether or not it complies with State law.

Councilman Burk asked if we would still adhere to the charter if we adopted the State's code. Councilman Morrow recalled that the new language allowed us to follow the State code or create a new one for Milford.

Councilman Burk feels we have enough problems filling the vacancies on the Planning Commission and now we are going to find five more people for an ethics board.

Solicitor Rutt said it could be reduced to three members. Councilman Burk feels we do not need one. He sees of a lot of duplication of efforts lately which is very frustrating to him.

Solicitor Rutt explained there is a lot of information in the proposed code that deals specifically with the City. For example, the following definitions:

“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.

“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.

The conflicts of interest are geared more toward City-activity as opposed to State-activity. He recommends that be considered when this decision is made.

Councilman Brooks asked if a new one should be created though the City would continue to use the State Ethics Commission; Solicitor Rutt reiterated the State code prefers each municipality have their own ethics commission if their own code is created. Solicitor Rutt said he is willing to ask them if they would still be willing to hear the violations on behalf of the City.

Mayor Shupe recommends we track down the specific document that Councilman Brooks has referenced. Councilman Burk asked that more research be done before it is put on another agenda.

City Manager Norenberg recommends it be added to the next agenda for more discussion in two weeks. In the meantime, we will do some research in hopes of answering the questions brought forth tonight.

Councilman Morrow confirmed that Council adopted an ethics policy in the past.

Councilman Campbell asked why the previous ethics policies disappeared adding that is a concern.

Councilman Burk said it would have to be in the minutes if it had been adopted.

EXECUTIVE SESSION

Councilman Burk moved to go into Executive Session reference below reason, seconded by Councilwoman Peel:

{Pursuant to 29 Del. C. 10004(b)(9)} (Personnel Matter)

Motion carried.

Mayor Shupe recessed the Council Meeting at 7:43 p.m. for the purpose of an Executive Session as permitted by Delaware's Freedom of Information Act.

RETURN TO OPEN SESSION

Councilman Burk moved to return to Open Session, seconded by Councilman Morrow. Motion carried.

The Open Session resumed at 8:02 p.m.

No action was needed as a result of the Executive Session.

ADJOURN

The Council Meeting was adjourned by Mayor Shupe at 8:03 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Transcriber