

MILFORD CITY COUNCIL
MINUTES OF MEETING
September 25, 2017

The City Council of the City of Milford met in Workshop Session on Monday, September 25, 2017 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walton Street, Milford, Delaware.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Arthur Campbell, Lisa Peel,
Owen Brooks Jr. and Katrina Wilson

City Manager Eric Norenberg, Police Captain Gary Bailey and
Deputy City Clerk Christine Crouch

COUNSEL: City Solicitor David Rutt, Esquire

Mayor Shupe called the Council Workshop to order at 6:01 p.m.

Freedom of Information Act Training/Max Walton, Esquire

The Mayor noted that representatives from Seaford and Milton were also present.

City Manager Norenberg introduced Max Walton noting that he is a partner with Connolly Gallagher LLP and is Chair of the firm's Government Practice Group. Mr. Walton advises and litigates on behalf of several government entities and businesses in Delaware and is well known in his capacity as Senior Fellow at the University of Delaware's Institute of Public Administration.

Mr. Walton explained that he is present in his capacity as a professor from the University and if Solicitor Rutt says something different, that is the person that Mayor and Council need to listen to.

The attorney explained that FOIA is used many times as a weapon against municipalities and a lot of times, there is lack of knowledge about it. He became involved in this area because he felt it was important to provide the knowledge so that if confronted, it can be addressed properly.

Mr. Walton then proceeded with the following review of the Delaware Freedom of Information Act:

PUBLIC POLICY OF FOIA

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

He recalled when he was first hired to represent New Castle County after approximately thirty cases had been filed by one attorney against them. During that period of time, the attorney decided to FOIA all of Mr. Walton's bills after which he learned very quickly that anyone was privy to that information because he was paid with public funds. Though he had not lost a single case, the attorney was complaining the County was spending too much money.

Mr. Walton also emphasized that under FOIA, never assume that written communications with an attorney cannot be released. He recalled representing a municipality in which a very controversial annexation decision was made. The developer paid money into an escrow account and Mr. Walton's advice to the town was adverse to the developer. Under FOIA, the advice got out to the residents and was used against that municipality.

Mr. Walton said a valuable lesson is if you write it down, make sure it is very clear it is attorney-client privilege because no

one knows what may come out of it. For example, he asked Council to imagine what it would look like on the front page of a newspaper if a Councilperson wrote on a piece of paper that 'someone was a jerk' and the City had to release it when a FOIA request was received.

He further emphasized that we are all stewards of the public and have to abide by all FOIA rules.

PUBLIC BODIES

While the City Council is clearly a public body, the statute has a far broader reach.

A public body includes any regulatory, administrative, advisory, executive, appointive, or legislative body of any political subdivision of the State.

That means any board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and committee, subcommittee, legislative committee, association, group, panel, council or any other entity or body is subject to FOIA.

Thus, if the matter is related to the City (even an ad hoc committee with only the power to recommend), the open meeting requirements of FOIA apply.

If there is a quorum of members present, there is a meeting of the public body

Mr. Walton noted that the biggest issue under FOIA is the public body exception. For example, Council is a public body as is clearly defined in the law. He added that any committee or support group to Council is also a public body because they were appointed by Council. As a result, an agenda must be posted and minutes taken.

In addition, any members of those bodies are subject to disclosure of certain documents and related information.

Councilman Campbell arrived at 6:11 p.m.

OPEN MEETINGS

The general rule, subject to a few exceptions, is that every meeting of all "public bodies" shall be open to the public. Del. Code Ann. tit. 29 § 10004(a).

Meetings must be held within the jurisdiction of the public body.

No serial meetings can be held – all decisions and deliberations must be made in public.

Example:

Four or five people requested no parking or thirty-minute parking signs in front of the post office. In turn, their Mayor recommended creating a committee and certain people volunteered to serve. The Mayor then appointed them to be on a Traffic Calming Committee who was to report back to Council with recommendations. In that situation, they would be categorized as an Ad Hoc Committee who is also subject to FOIA.

Mr. Walton then referenced the law which states if a group receives money from a public body, that group is also subject to FOIA. As a result, claims have been filed that fire companies are public bodies because they receive money from a municipality. Fortunately the law was not extended to those groups though this example provides the type of challenges associated with FOIA.

Another similar example occurred about ten years ago and involved an attorney at a Board of Adjustment who was presenting a contentious variance request. The Board of Adjustment took a recess and then decided to postpone it until the next meeting.

Following that initial three-hour hearing, the attorney goes out with his clients to a small restaurant. He is sitting there and behind him was a group of people who were talking about what a terrible job the attorney had done before the Board of Adjustment and how they didn't like the arguments that were made. The attorney then finds they were members of the Board of Adjustment who had met for dinner after the hearing.

He stressed that public officials need to be cognizant that when they are discussing public business, that is a quorum and something a lot of officials forget about, particularly in a small town. In the case of a three-member board or committee, anytime there are two people discussing a matter, that is a quorum. He recently recommended to one of the municipalities that he represents, never to appoint a three-member board because of inability to control those quorums.

Mr. Walton pointed out that another municipality is going to get in trouble because four of the Councilmembers go out and eat together after every meeting. They said they invoked the social gathering exception though that can only be used if they do not discuss public business. Mr. Walton said he has seen them together and it is very obvious they are discussing public business when they are together.

He referred to a similar scenario involving four members of Council who drive to Dover in the same car to a meeting. Mr. Walton stressed that is a quorum of Council and a FOIA violation because they talk about public business.

OPEN MEETING REQUIREMENTS

- Notice
- Agenda
- Minutes

He then continued the FOIA review by explaining that every meeting has to be open to the public body in that municipality's jurisdiction. Riding in a car together is not open to the public. He recalled that someone wanted to have a joint meeting stating that this is a meeting if Milford City Council and three other towns cannot be present with a quorum which is not allowed.

Mr. Walton reiterated that decisions and deliberations must occur in public view.

He recalled being hired to represent a town the day before a Board of Adjustment hearing. They forwarded him the file and he did not know any of the people on the Board. He walked into a room of approximately 100 people. He guided the Board through the deliberation process and at the end of the hearing, all the Board Members backed away from the table and got into a huddle. Mr. Walton asked the Chair what they were doing; he answered they were deliberating and had done it that way for twenty years. He explained that FOIA requires them to deliberate in public which means they have to speak into the microphone in order for everyone present to hear the discussion. The manner in which this had been handled was a clear violation of FOIA.

NOTICE

All public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least seven days in advance thereof.

"Regularly scheduled meeting" means any meeting of a public body held on a periodic basis.

Mr. Walton noted that there also has been number of complaints filed regarding the seven-day notice requirement because a regularly scheduled meeting requires seven-day notice.

Example:

The City of Wilmington was posting a meeting and the agenda was being added a day or so before. Mr. Walton stated that a FOIA decision was released in the last couple weeks that require the agenda to be posted seven days in advance. That is

the only way proper notice can be given to the residents.

Public notice is a conspicuous posting of notice at the principal office of the public body holding the meeting, or if no such office exists, at the place where meetings of the public body are regularly held.

If you plan to do video conferencing, you must say so in the meeting notice.

The video conferencing should be done from a public location.

Mr. Walton also advised that video conferencing is permitted if it is on the agenda. However, because both the body and the person being video conferenced have to be in a position where they can be seen publicly on both sides. As a result, they have to be in a public place like a restaurant and the location must be noted on the agenda.

AGENDAS

Agendas are required for all meetings.

"Agenda" is defined as a general statement of the major issues expected to be discussed at a public meeting.

Only in very rare circumstances can the agenda be amended within seven days.

As a rule of thumb, if seven days notice of the agenda item could have been given, the agenda cannot be amended.

There must be some emergency situation that permits the agenda to be amended.

If the agenda is amended, the reason why the agenda is amended must be stated.

Mr. Walton then discussed agenda items and what is not specific enough. He explained that if the public is unable to determine what is going to be discussed, the item is not specific enough. There has to be some specificity to that agenda item. A lot of municipalities get in trouble because they add a 'discussion about parking on a certain street' though a possible vote may occur. Another could involve the change of a trash hauler that needs to be voted on. However, this workshop item could be added as 'Discussion by Max Walton to provide FOIA Advice'. That would not require a vote. In that particular instance, two items will have a possible vote and the other item will not have a vote. If Council voted on the discussion, that would not have given the public the appropriate notice that action would be taken.

He suggests that adding a line at the top that states every matter on agenda is subject to a possible vote. That would allow the agenda items to be listed.

Mr. Walton then informed Council the agenda can be amended up to six hours in advance of the meeting. However, it has to include a reason for the new item being added to the agenda and a description for the delay. Finally, if the agenda is filed less than seven days in advance of the meeting, the public body must provide additional proof that each new matter of public business came up unexpectedly and after the initial posting and that they require immediate attention.

As an example, Council has a meeting on the third Thursday of the month. Four days before the meeting, the City receives a decision in a litigation case and a determination of whether to appeal is needed by a certain deadline. The agenda can be amended and an explanation drafted that states 'this matter was presented today and requires immediate attention because a decision is needed on how to proceed'. He feels a municipality can get away with that sometimes, but the town would not get away with adding 'introducing a new ordinance on four days notice' unless it is an emergency ordinance.

He reiterated that agenda amendments under that standard are very pressing and important. An agenda can only be amended with a legitimate reason that seven-days notice was not given. If it is something that is extremely important, a special meeting can be called. Otherwise, it should wait until the next meeting. The Attorney General's (AG's) opinion is that seven days is seven days and there better be a good reason why the City was unable to give that seven-days notice.

MINUTES

Minutes are always required.

Minutes, at minimum, must include a record of those members present and a record, by individual members, of each vote taken and action agreed upon.

Minutes of executive sessions must be taken and the minutes are considered public records "so long as public disclosure

would defeat the lawful purpose for the executive session, but no longer.”

Mr. Walton noted that even though the statute provides the minimum requirements, if the minutes are too deficient the AG's Office will have a problem with them.

In addition, minutes of executive sessions must be taken. Also, no voting is permitted in executive session. Council must go back into a regular session to vote. In theory, all that is needed for those minutes are the names of the members that were present though that is really not good enough according to the AG's opinions.

EXECUTIVE SESSIONS

Executive sessions, while necessary, are in contravention of the public policy of the open meeting laws. Thus, executive sessions are closely scrutinized to assure that they are proper.

Executive sessions are permitted ONLY IF they fall under the categories listed in Del. Code Ann. tit. 29 § 10004(b). The big ones are:

1) Discussion of an individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open. This provision does not apply to an individual citizen's qualifications to pursue any profession or occupation for which a license must be issued by the public body in accordance with Delaware law.

(4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body.

(6) Discussion of the content of documents, excluded from the definition of "public record" where such discussion may disclose the contents of such documents.

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing.

*(9) Personnel matter in which the names, competency and abilities of individual employees or students are discussed, unless the employee or student requests that such a meeting be open. (**Must be only employees-not subcontractors).*

EXECUTIVE SESSION RULES

Minutes must be taken.

Governing body must vote to hold an executive session.

Executive session must be on the agenda.

Agenda must be specific about the statutory exemption that applies.

No votes may be taken in executive session – votes must be in public session.

The executive session topics cannot stray from the issues on the agenda.

Prohibited from having a straw poll.

Mr. Walton explained that executive session minutes can be kept confidential in most situations. However, if the matter for confidentiality is no longer needed, those minutes become public.

Example:

A municipality wanted to buy a couple properties and met in executive session to discuss those negotiations. Once the property is purchased, the confidentiality goes away. At that point, the executive session minutes become public.

He also reported that attorney-client privilege advice remains an open question. Mr. Walton had taken the position that once he provides advice in executive session, that would last forever. The exception is that Council votes to waive the privilege.

However, Mr. Walton anticipates a challenge to that will be filed in the near future.

He emphasized that City Councils can get in a lot of trouble in executive sessions. During his first executive session, he wrote down three bullet points. Because he has never had an executive session overturned, he still carries those same handwritten notes each time he goes into an executive session.

Mr. Walton feels there is one thing in the law that can be scrutinized and recalled the prior review of the public policy which states that everything should be open. Because of that, executive sessions go against the public policy of FOIA so lawyers ultimately fight against it.

He then reviewed the various reasons allowed to be discussed in an executive session.

For example, if a city manager is hired, their qualifications can be discussed in an executive session. However, that individual also has the ability to request that meeting be open.

Mr. Walton explained that he just went through a personnel matter and had it added to the agenda as 'executive session for personnel matters relating to (the name of employee)'. In that manner, the employee had the opportunity to request the session be open even though it was a personnel matter. Unfortunately that was a really bad decision on the employee's part though they had the right to request that. The City tried to explain the personnel rule to ensure there were no violations, though it made the situation very difficult.

He noted that a solicitor being hired is a contractual situation and does not fall under FOIA because they are not city employees and is backed up by case law.

Most executive sessions are for pending litigation or collective bargaining exception which is very straightforward reason. The key is to make a determination that what is discussed in executive session and whether it will have an adverse effect on the bargaining or litigation position of the public body.

Mr. Walton makes the determination by considering any potential adverse effect on the public body if the information was made public.

He noted that one of the rare exceptions for an executive session is the 'discussion of the content of documents, excluded from the definition of "public record" where the discussion may disclose the contents of such documents'. Mr. Walton said that one of the easiest ways to handle this is to have a lawyer write an attorney-client privilege memorandum providing legal advice. That should be considered when those more normal situations do not apply such as 'strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body.'

Mr. Walton said that employee disciplinary issues can be discussed in executive session though the employee again has the right to request it be in public. He stressed this only applies to employees and not subcontractors which include contracted attorneys.

The executive session must be listed on the agenda according to Mr. Walton. There remains a lot of open questions about how detailed the executive session agenda item needs to be.

Example:

City Council of Dewey Beach made a motion to go into executive session reference personnel which is a very vague statement. The AG's Office ruled that the section must be specifically stated though more recently, they are allowing a little more freedom.

Mr. Walton said if he wants to have an executive session about a specific employee, that section can be referenced without

adding the employee's name. However, the employee needs to be notified in order for them to invoke their right of making it public. There was a recent FOIA case ruling that stated that could be done as long as the employee was made aware the executive session was about them. Therefore, official notice should be given to that person.

He also stressed that no vote can be taken in executive session though he is sure that Milford never does this though he is aware of other jurisdictions that do.

Example:

City Council is in executive session discussing pending litigation and that leads into another matter. In that situation, Council is straying from the topic which is against the law. Council is required to stay on the topic and there are a number of cases where Council went from an employee matter related to one person to another employee matter related to another person. Those types of scenarios can get a Council into trouble.

Mr. Walton emphasized Council is not there to discuss a matter that is completely unrelated to the topic. He frequently goes into an executive session where he must provide a strategy about a legal matter. He informs Council of his recommended course of action. He is familiar with one Mayor who likes to ask in executive session 'hey, what do you think' or 'how would you vote on this'. Mr. Walton has to cut that Mayor off every single time. No straw votes are permitted in executive session and all votes and related language must be discussed in public session.

PUBLIC RECORDS

Public records are defined by Del. Code Ann. tit. 29 § 10002(l) as:

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

NON-PUBLIC RECORDS

Examples of non-public records:

- (1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy;*
- (2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;*
- (3) Investigatory files compiled for civil or criminal law-enforcement purposes;*
- (4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy;*
- (5) Any records specifically exempted from public disclosure by statute or common law;*
- (6) Any records which disclose the identity of an anonymous contributor of a bona fide and lawful charitable contribution to the public body;*
- (7) Any records involving labor negotiations or collective bargaining;*
- (8) Any records pertaining to pending or potential litigation which are not records of any court;*
- (9) Subject to certain exceptions, any record of discussions held in executive session;*
- (10) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used; and*
- (11) Emails received or sent by members of the Delaware General Assembly or their staff.*

RESPONSES TO REQUESTS-PRODUCTION OF PUBLIC DOCUMENTS

Responses to FOIA requests must be made within 15 business days.

If more time is needed, the reason for more time must be legitimate and must be explained.

If the request is denied, the reason for denial must be explained.

Documents may be reviewed prior to disclosure to assure that non-public records are excluded from the request.

Mr. Walton explained that virtually anything is considered a public record. Currently, text messages do not have to be produced though he anticipates that to become part of the statute in the very near future.

Public records involve any manner in which public business is discussed. Mr. Walton referred to Milford providing specific emails under the domain @milford-de.gov adding that an official may also have a private email account. If there are any City-related emails on the private email account, there is public business being conducted on that private account and that public official is not going to get around FOIA using that private account. If the City gets sued, he guarantees that the private email account will be subpoenaed. As a result, it will have to be searched and through an electronic discovery and that official is most likely in big trouble.

Mr. Walton stressed how important it is for every public official to use the work email for City business and their personal email for personal business only. He asked that Council not be complacent in doing that.

Example:

A beach town required an electronic discovery. One official claimed that he only used his iPad and that no other computers were used for public business. Even though his home computer still had to be searched, they determined he was telling the truth which Mr. Walton pointed out was the easiest collection of data he had been involved in.

Deleted or not, chances are very good that the material still exists in retrievable form, waiting for discovery by lawyers seeking anything they can use to support their clients' claims. He asked Council to think about how many texts and emails they are sending and to consider the consequences.

Mr. Walton also reported that voice mails relating to City business are all considered public records.

He emphasized that the public record definition is very broad though it gives a list of items that are not considered public records. He then reviewed that list which includes personnel files, trade secrets or commercial or financial information.

Example:

Amazon.com wants to come to Milford. They want to share a trade secret with the town. The town is able to do that though the city solicitor should review everything that is being done because this can get the town into trouble though that confidential information can be protected from disclosure.

The City of Newark prepared an RFD for a parking garage or ideas on how to solve the parking problem. The one bidder deemed their proposal to be confidential and the document was clearly marked. They attempted to determine whom that privilege applied to though it was never resolved. Therefore, that company had to rebid to ensure it was public.

Mr. Walton noted there are broad protections against criminal and investigatory files. Any records exempted from other disclosures by statute or common law are also exempt.

Example:

Donations were requested during a Council meeting one evening; Mr. Walton made a donation anonymously. At the next meeting, the City Manager publicly thanked Max Walton for making a donation even though that is exempt.

Other exemptions include medical and student files, collective bargaining, potential litigation, library cards and emails sent or received by members of the General Assembly or their staff.

Mr. Walton said he just had a case related to the General Assembly exemption and the State's Office of Billing. The fact is that documents were withheld after a FOIA request because the members of the General Assembly and their employees were involved. The AG's Office ruled that was against the public policy of FOIA because they are protecting constituents. It also

stated that the possibility of copying a member of the General Assembly could potentially keep everything out of FOIA. Mr. Walton said that may be true, but that is not what is says. The case was taken to the Delaware Superior Court on appeal and the Court ruled that 'emails sent or received by members of the general assembly are not subject to disclosure'. As a result, the General Assembly has a lot of protection and does not have to abide by the law required of municipalities.

He noted that responses to FOIA requests must be made within 15 days. If extra time is needed, a response can be sent stating the reason. If a request is denied, there must also be a reason provided.

ENFORCEMENT

Attorney General's Office generally enforces FOIA and/or decides a FOIA complaint, although citizens may bring suit as well in certain circumstances.

For public records denials, there is a 60-day statute of limitations.

For open meeting violations, the statute of limitations is six months.

The burden is on the custodian denying access to public records.

Open question – how do you satisfy that burden?

Mr. Walton pointed out the FOIA law is difficult to understand because of the number of amendments that have been made over the years.

He then explained that the process requires the AG's Office to first determine if there is a FOIA violation after which an advisory opinion is provided. After that, action can be brought against the municipality in order to enforce it. There are no appeal rights through the Courts.

He also advised that state agencies are represented by the AG's Office and separate appeal rights had to be handled in a different manner because there were no AG reviews for state agencies before an amendment was made. However, there is a sixty-day statute of limitations for public record denials and a six-months statute for open meeting violations. Mr. Walton feels those time lines may apply to the AG's Office though this statute would apply if FOIA action was filed.

The responsibility is on the government official to prove that FOIA was not violated and the burden is not on the person making the complaint. It is sometimes impossible to determine how much proof is needed. Typically the AG's Office writes a letter which is accepted as sufficient evidence that the burden has been satisfied. Mr. Walton expects a Supreme Court ruling possibly during the first part of 2018 which will clarify what is applicable to satisfy that burden.

CASE EXAMPLES

Agenda Violations

Committees

Serial Quorum

Beyond Scope of Executive Session Topic

Mr. Walton explained there are many agenda violations that can be reviewed on the AG's website. He recalled the seven-day requirement that was violated by Wilmington because they were not adding the agenda items when the meeting was posted. Another problem occurs when an agenda item is not specific enough for a person to understand what is being discussed and voted on.

Another matter that frequently comes up is 'council comments'. A Councilmember may start talking about an item instead of asking that it be put on the agenda for the next meeting and a long discussion ensues.

He emphasized that each of those is an agenda violation. If a Councilperson plans to talk about a specific item, it needs to be properly added to the agenda.

Mr. Walton then stated that committees are the next wave of FOIA complaints. Every municipality has committees and those

committee members do not understand when they are subject to FOIA and the majority of the time they are.

The other issue that is violated a lot is the serial quorum requirement.

Example:

There is a FOIA case where the Town Council got together and went out to view a certain property. He is unsure if there were five or seven members of the Council but two Councilmembers went first to look at the property, then two more Councilmembers went together, then two more after which one more went. They then all agreed to purchase the property after they all looked at it at their next meeting.

What they did is gerrymander which is a method by which they could all get together and decide on a vote in a procedure without actually doing it at a public forum. That is considered a serial quorum. That is illegal because Council business must be conducted in the public's view.

He explained another situation is when an email that is sent to every Councilmember. Mr. Walton receives his agenda by email from each municipality. When that occurs, one councilperson may respond and begin to talk about one of the items. If Mr. Walton is unable to get them on the phone fast enough to shut it down, it becomes a FOIA violation because it involves a serial quorum. FOIA does not permit any decisions to be made by email.

As a result, if there is a question about the agenda, the Councilperson should send that question to the City Clerk or the City Solicitor and not copy the other Councilmembers. He said a situation can be really embarrassing after an email went out and someone submits a FOIA and it is very clear there was a serial quorum violation.

Councilwoman Peel pointed out that is the reason Council should not 'reply to all' in any situation. Mr. Walton said the only time he replies 'to all' is when someone on council starts to respond to an email. His immediate response is 'stop it you know better'.

Mr. Walton said the hardest one to prove is whether or not Council strayed from an executive session topic. However, he feels it may be the most violated one. If there is a recording, it is very easy to determine if Council went beyond the topic. Without the recording, the municipality has to figure out a way to prove what was done is proper in relation to the law.

An unknown attendee in the audience stated that in his Town, they have executive sessions after people are asked to leave the room. After the executive session concludes, Council returns to open session and votes on the matter. However, no one stays for the vote. He asked if they are required to inform those present before the executive session that they are permitted back into the room at the time of the vote.

Mr. Walton explained that the doors have to be opened and at that point, the public is allowed back into observe the vote. However, there is no requirement to officially inform them they can legitimately come back. He reported that he had a municipality who got in trouble over this. They have their executive sessions at 6:00 p.m. before their open meetings. They were doing everything right though there was a problem because the doors at Town Hall automatically stayed locked until 6:45 p.m. and no one could get in until that time. Unfortunately, Mr. Walton nor Council realized, or thought about it, until a FOIA complaint was filed. The Town's response was that the complainant was correct. The most important thing is to have it on the agenda so the public is aware it is occurring. He suggests the Mayor announce that the public is able to come back in at the conclusion of the executive session though it is not required.

Councilwoman Wilson pointed out that the agendas often state at the bottom that "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".

Mr. Walton explained it can be amended and there are some very minor exceptions in the FOIA statute and provided the following information:

The agenda can be amended six hours in advance though there has to be a reason and a notice. He agrees it is good to have that statement on the agenda because there are times when the agenda can be amended.

Mr. Walton also reported there is a provision that allows Council to go into an emergency executive session. The only time that can be done is in an urgent situation, similar to below:

A lawyer walks up to the podium, introduces himself and proceeds to tell City Council they have violated his client's constitutional rights and if Council does not settle this case tonight, a lawsuit will be filed tomorrow for \$2 million in damages. As a result, the City did not have any advance notice. In that situation, perhaps Council could go into executive session. Beyond something that severe in nature, there is no excuse an executive session should not be on the agenda.

Solicitor Rutt noted there may be an extreme personnel issue whereby a City Manager may have been arrested that day and someone needs to be appointed as interim or the status of the City Manager discussed.

Mr. Walton reiterated that it would have to be something so extreme that it rose to the level that it required immediate action with no other possibility. The majority of the time that is not the case and Mr. Walton has never had to do that in his seventeen years.

Another question was asked from the audience if deletions could be made to the agenda. Mr. Walton pointed out that if an item is not going to be discussed, it can be removed at anytime. It can also remain on the agenda but not discussed.

Further discussion occurred between Mr. Walton and audience members though it is inaudible.

There being no further questions, Mayor Shupe thanked Mr. Walton for taking the time to provide the information and to educate our Councilmembers that attended.

The Workshop Session concluded at 7:03 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a large initial "T" and "H".

Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
September 25, 2017

Milford City Council held a Public Hearing on Monday, September 25, 2017 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Bryan Shupe

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

City Manager Eric Norenberg, Police Captain Gary Bailey and Deputy City Clerk Christine Crouch

COUNSEL: City Solicitor David Rutt, Esquire

Mayor Shupe called the Public Hearing to order at 7:01 p.m.

BOARD OF REVISION AND APPEAL

On Monday, September 25, 2017 at 7:00 p.m., City Council will sit in the Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware, as a Board of Revision and Appeal in regard to the 2017-2018 City of Milford General Property Assessment.

All appeals resolved by the City Assessor. As a result the hearing was canceled.

PUBLIC HEARING

Richard D & Janice Comstock

442 Kings Highway

For a Final Minor Subdivision of .81+/- acres

R1 (Single Family Residential) Zoning District.

Present Use: Single Family Dwelling and Vacant Land; Proposed Use: Same

Tax Map 1-30-1.19-038.00 and 1-30-1.19-038.06

Due to the absence of the City Planner, City Manager Norenberg presented the application.

Mr. Norenberg explained the owner of two adjacent properties has requested to move the lot line ten feet to the west thus reducing the width of the adjacent parcel. The application meets all requirements set forth in Zoning Code Chapter 230 and Subdivision Code Chapter 200.

The application was reviewed and considered by the City Planning Commission on August 15, 2017 at which time they recommended approval.

No comments were received from DelDOT, Sussex Conservation District nor the State Fire Marshal Office.

Mr. Comstock then addressed Council stating that a realtor had recommended they remove ten feet off the adjacent lot and add to their property because the garage is located two feet from the property line. That was a result of a variance approved ten to fifteen years ago though there was no intention of selling their house at that time.

With that now under consideration, it would be advantageous to the new homeowner to have a little more land between the two properties versus actually being within two feet of the neighbor.

Because the lot is vacant, they felt it would be an easy process.

Mayor Shupe then opened the floor to public comment. There being no responses, the floor was closed.

Councilman Burk asked if this will create a non-conforming lot. Mr. Norenberg stated that according to the City Planner, this will provide the appropriate setbacks.

Councilwoman Wilson moved to approve the request of Richard D and Janice Comstock for a final minor subdivision of .81+/- acres, as presented, seconded by Councilman Burk. Motion carried by the following roll call vote:

Councilman Campbell votes yes adding that he does not believe the ten feet will create any problems and instead will help the owner sell the property as was recommended.

Councilwoman Peel votes yes stating she has no concerns based on what was presented.

Councilman Burk votes yes stating it looks good.

Councilman Brooks votes yes based on what was explained.

Councilman Morrow votes yes adding that it will correct an incorrectness.

Councilman Starling votes yes stating that it provides the homeowner some additional land which appears to be beneficial.

Councilwoman Wilson votes yes for all the reasons stated adding it also makes the property owner happy.

There being no further business, the Public Hearing portion of the meeting was adjourned at 7:15 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with the first name "Terri" being the most prominent.

Terri K. Hudson, MMC
City Clerk/Transcriber

MILFORD CITY COUNCIL
MINUTES OF MEETING
September 25, 2017

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, September 25, 2017.

PRESIDING: Mayor Bryan Shupe

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

City Manager Eric Norenberg, Police Captain Gary Bailey and
Deputy City Clerk Christine Crouch

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:14 p.m.

INVOCATION AND PLEDGE

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

RECOGNITION

Mayor Shupe read the following three tributes into record:

Tribute/Rajene Bowe

Tribute/Nia Bowe

Tribute/Courtney (CJ) Kohel

Tribute 2017-23
RECOGNIZING RAJENE BOWE

WHEREAS, The City of Milford is proud to recognize the athletic accomplishments of former Milford High School student and softball athlete Rajene Bowe; and

WHEREAS, Ms. Bowe's double digit steals and home run during the State Championship game assisted in the Milford Lady Bucs clinching the 2017 DIAA Softball State Championship; and

WHEREAS, Rajene went on to earn the First Team All-State after her senior season; and

WHEREAS, Ms. Bowe continued to play softball after her senior season with the Delaware Express, who claimed the title at the 2017 USSSA World Series; and

WHEREAS, during the tournament, the Delaware Express played fourteen total games, winning six in one day proving the mental and physical strength of all the girls on the team; and

WHEREAS, Ms. Bowe was awarded the USSSA World Series Tournament VIP.

NOW, THEREFORE, BE IT RESOLVED, that I, Bryan W. Shupe, Mayor of the City of Milford, take this opportunity to congratulate Ms. Rajene Bowe and wish her much success as she attends Dominican College in Orangeburg, New York.

Tribute 2017-24
RECOGNIZING NIA BOWE

WHEREAS, The City of Milford is proud to recognize the athletic accomplishments of former Milford High School student and softball athlete Nia Bowe; and

WHEREAS, Ms. Bowe played third base during the Championship game which assisted the Milford Lady Bucs in clinching the State Championship; and

WHEREAS, during the tournament, Nia added two home runs, including her first ever grand slam; and

WHEREAS, after her senior season, Nia continued to play softball with the Delaware Express, who claimed the title at the 2017 USSSA World Series; and

WHEREAS, the Delaware Express played fourteen total games, winning six in one day proving the mental and physical strength of all the girls on the team; and

NOW, THEREFORE, BE IT RESOLVED, that I, Bryan W. Shupe, Mayor of the City of Milford, take this opportunity to congratulate Ms. Nia Bowe and wish her well as she begins her higher education at Coppin State University in Baltimore, Maryland.

Tribute 2017-25
RECOGNIZING Courtney "CJ" KOHEL

WHEREAS, The City of Milford is proud to recognize the athletic accomplishments of Milford High School student and softball athlete CJ Kohel; and

WHEREAS, during the State Championship game, CJ's three-run homer assisted in the Milford Lady Bucs clinching the 2017 DIAA Softball State Championship; and

WHEREAS, Ms. Kohel not only plays on the Milford Lady Bucs softball team, she also plays on the Delaware Express as catcher; and

WHEREAS, after playing fourteen total games, winning six in one day, the Delaware Express claimed the title at the 2017 USSSA World Series;

WHEREAS, playing over 12 hours straight during the tournament proved the mental and physical strength of all the girls on the team; and

NOW, THEREFORE, BE IT RESOLVED, that I, Bryan W. Shupe, Mayor of the City of Milford, take this opportunity to congratulate Ms. CJ Kohel and wish her continued success as a senior at Milford High School.

All three recipients were presented with their tributes following the reading by Mayor Shupe.

Proclamation 2017-19/Public Power Week

Mayor Shupe read the following proclamation into record:

PUBLIC POWER WEEK OCTOBER 4-10, 2017

WHEREAS, we, the citizens of the City of Milford, place high value on local control over community services and therefore have chosen to operate a community owned, locally controlled, not-for-profit electric utility and, as consumers

and owners of our electric utility, have a direct say in utility operations and policies;

WHEREAS, the City of Milford Electric Division provides our homes, businesses, farms, social service, and local government agencies with reliable, efficient, and cost-effective electricity employing sound business practices designed to ensure the best possible service at not-for-profit rates;

WHEREAS, the Electric Division is a valuable community asset that contributes to the well-being of local citizens through energy efficiency, customer service, environmental protection, economic development, and safety awareness;

WHEREAS, the Electric Division is a dependable and trustworthy institution whose local operation provides many consumer protections and continues to make our community a better place to live and work, and contributes to protecting the global environment;

NOW, THEREFORE BE IT RESOLVED: that the City of Milford Electric Division will continue to work to bring lower-cost, safe, reliable electricity to community homes and businesses just as it has since the utility was created to serve all the citizens of the City of Milford; and

BE IT FURTHER RESOLVED: that the week of October 4-10 be designated Public Power Week to recognize the Electric Division for its contributions to the community and to educate consumer-owners, policy makers, and employees on the benefits of public power;

BE IT FURTHER RESOLVED: that our community joins hands with more than 2,000 other public power systems in the United States in this celebration of public power, which is best for consumers, business, the community, and the nation.

Related to the Public Power Week designation, Mayor Shupe announced a sign will be installed at the Customer Service Office and a banner flown downtown. A billboard will also be featured near Milford. All items have been paid for by DEMEC as they strive to promote greater awareness of the benefits of public power and dedicated service of employees.

On Friday morning of Power Public Week, coffee and donuts will be provided at the Customer Service Office.

COMMUNICATIONS & CORRESPONDENCE

Mayor Shupe thanked the community for the record crowds that attended the various weekend events including the City's 230th Birthday of its Founding and Laying Out, Third Thursday, St. John's Oktoberfest and the Melody Booker Memorial Event.

Councilwoman Wilson thanked Mayor Shupe, City Manager Norenberg and Milford Police Department for helping the owners of the Traveler's Inn as they continue with their plan to remodel. In particular, she appreciated their assistance with the people who live there by allowing them additional time to relocate. She is very hopeful it will become a much better place in our town for those who need a place to live.

UNFINISHED BUSINESS

Public Parking Lot Paving Project (Previous M&T Site)

City Manager Norenberg submitted the following memo:

The Public Works Department requests City Council's approval to pay an invoice for the paving of the North Walnut Street Parking Lot (Touch of Italy). The original estimate for the project was under \$30,000, and staff proceeded with a purchase order. However, due to a recent increase in asphalt prices, as well as additional paving work necessary for adequate drainage, the final cost for the project came to \$31,374.07. The work was done prior to the new Charter adoption, which raised the purchasing threshold to \$50,000.

Staff requests City Council approve an invoice from Jerry's Paving in the amount of \$31,374.07 for the paving of the North Walnut Street Parking Lot (Touch of Italy) with funds from Account 139-1110-413-72-11 (Economic Development Fund).

Public Works Director Mark Whitfield added there was also some additional paving required where the previous oil tank was located for the purposing of providing additional drainage. That added approximately \$1,300 which created the overage.

When asked the status of Touch of Italy, Mayor Shupe reported the City is waiting on State approvals that include one from the Public Health Department which is required to issue the interior building permit. It was confirmed that once the building permit is received, they will have six months to complete the construction according to their Development Agreement.

Councilman Morrow moved to authorize the payment to Jerry's Paving, in the amount of \$31,374.07, for the paving of the Touch of Italy Parking Lot to be paid from Account 139-1110-413-72-11 (Economic Development Fund), seconded by Councilwoman Wilson. Motion carried with no one opposed.

Service Club Sign Display

As has been discussed, several of the Milford Service Club Signs were removed when the old 'Welcome to Milford' sign near the overpass north of Milford at the Route 1/Route 113 split was removed. As a result of DeIDOT regulations regarding the installation of signs, additional signs were unable to be added to the new 'Welcome to Milford' sign reinstalled at that location.

Since that time, there was a proposal that the City find a new, more prominent location for the signs. Several new locations have been discussed and the selected location is on City-owned property at Northeast Front Street between the Milford Police Station and the Kent County Pump Station.

After a design was selected by City Council earlier this summer, Parks and Recreation staff was asked to get quotes for a similar sign and landscaping.

It is the Parks and Recreation Director's recommendation that we proceed with the City taking the lead to have the sign installed and landscaping done. The total project is approximately \$8,700 and Mr. Dennehy intends to approach the service clubs to ask for funding toward the sign project.

Councilwoman Wilson asked how Mr. Dennehy came up with eight service clubs; Mr. Norenberg said that it needed to be an even number based on the sign. Once he determines the exact number of clubs, a more accurate cost can be provided. If Council prefers to continue pursuing additional clubs, that can be done and a later update provided.

Mayor Shupe recommends providing this possibility to the public in case another service club is interested in participating in this project.

Kent County Tourism Board of Directors Appointee

City Manager Norenberg referenced the following email sent to Mayor and Councilmembers on August 18th:

Over the past year, Kent County Tourism has worked diligently to create and drive visitor interest to our County. Those efforts include a five-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 & its 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 county's success.

To do this, we have revised our bylaws 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, a City Council member or a designee who resides or conducts business in their City. The designee should engage in tourism/economic development and understand the requirements of board membership.

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.

Because there was no interest from Councilmembers, he asked Parks and Recreation Director Brad Dennehy to represent the City on this board.

Councilman Burk moved to appoint Brad Dennehy to the Kent County Tourism Board, seconded by Councilman Campbell. Motion carried.

NEW BUSINESS

2017 Justice Assistance Grant Authorization

Milford Police Captain Gary Bailey reported that the Department applied for the JAG application. Two other Sussex County agencies—Seaford and Georgetown, are also included in this grant. Milford will be using \$17,669 to purchase items which will assist the new forensic specialist and equip the forensics lab. Included in the packet is a breakdown of the equipment.

This will ultimately save the Department a lot of time, money and manpower hours with evidence collection.

Captain Bailey said they are very fortunate to have Retired Dover Officer Lawrence Simpkins come on board in this civilian position as well as the availability of funding this endeavor.

Councilman Burk moved to authorize the purchase of forensic items needed to equip the new forensic lab and authorize the 2017 JAG application, seconded by Councilman Brooks. Motion carried.

Resolution 2017-09/Support of Delaware Outdoor Recreation, Parks and Trails Grant Application

City Manager Norenberg reported that P&R Director Dennehy has allocated capital money in several budgets to re-deck the wooden riverwalk areas. Some railings will also be added and some additional repairs made to the Bicentennial Park Bridge. A grant has been submitted to cover the difference in what was budgeted and the actual costs.

In the meantime, Mr. Dennehy is also contacting other organizations to solicit funds for the project.

Councilman Brooks moved to adopt Resolution 2017-09, seconded by Councilman Morrow:

*Resolution 2017-09
SUPPORT OF DELAWARE OUTDOOR RECREATION, PARKS AND TRAILS
GRANT APPLICATION CITY OF MILFORD RIVERWALK IMPROVEMENTS*

WHEREAS, the City of Milford has worked with residents to begin a process to restore sections of the Riverwalk; and

WHEREAS, the City of Milford has previously approved and adopted a Master Plan for the development of the Riverwalk;

and

WHEREAS, the City has filed Delaware Outdoor Recreation, Parks and Trails (ORPT) Grant pre applications to the Delaware Division of Parks and Recreation for both purposes; and

WHEREAS, the City has been authorized to submit formal ORPT applications in the amount of \$75,000 for improvements to the Riverwalk, to be done using a phasing approach, for the purpose of removing and replacing the existing worn timber decking with composite deck materials; and

WHEREAS, the City has set aside funds in the General Fund Capital reserves to support these efforts; and

WHEREAS, the City hereby designates Parks and Recreation Director Bradley Dennehy to manage the project and coordinate the ORPT Program requirements for reporting and reimbursement; and

WHEREAS, the City understands that improvements funded through the ORPT Grant Program will remain as outdoor recreation uses in perpetuity.

NOW, THEREFORE BE IT RESOLVED, that the City of Milford hereby approves the applications for the Riverwalk improvements through the ORPT Grant and shall abide by all requirements of the ORPT Grant Program for reimbursement and stewardship responsibilities.

Motion carried.

Introduction/Ordinance 2017-20/Chapter 180-Residential Rental Operating License

Mayor Shupe introduced the following ordinance:

Ordinance 2017-20
CODE OF THE CITY OF MILFORD
PART II-GENERAL LEGISLATION
CHAPTER 180
RESIDENTIAL RENTAL OPERATING LICENSE

NOTICE is hereby given that the following ordinance is presently under review by the City Council of the City of Milford:

WHEREAS, the City of Milford enacted a Residential Rental Operating License Ordinance, to protect the health, safety, and welfare of its residents and to prevent the deterioration of the housing stock in the City; and

WHEREAS, from time to time, City Council determines a need for amendments and additions to the Residential Rental Operating License Ordinance of the City of Milford; and

WHEREAS, it is recommended that the transfer of a license during the licensing period be permitted upon payment of administrative fees; and

WHEREAS, it is recommended that no rental unit be occupied by another renter until a rental inspection has been performed.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. Section 180-5. Application for rental operating license and agreement to comply is hereby amended by removing text indicated in strikethrough and incorporating new text in red and underlined as follows:

Section 2. Section 180-6. Contents of applications is hereby amended by removing text indicated in strikethrough and incorporating new text in bold and red as follows:

Section 3. 180-7. Regulations for issuance of licenses is hereby amended by removing text indicated in strikethrough and incorporating new text in red and underlined as follows:

Section 4. 180-8. Inspections is hereby amended by removing text indicated in strikethrough and incorporating new text in red and underlined as follows:

Section 5. 180-9. Violations and penalties; enforcement is hereby amended by removing text indicated in strikethrough as follows:

Section 6. Dates.

City Council Introduction: September 25, 2017

City Council Public Hearing: October 9, 2017

Scheduled Adoption: October 9, 2017

The City Manager explained the amendments incorporated were a result of a recommendation by the Community Affairs Committee earlier this summer. It will be discussed at the October meeting.

See packet for complete ordinance.

Introduction/Ordinance 2017-21/Chapter 57-Planning Commission

Mayor Shupe introduced the following ordinance:

*Ordinance 2017-21
CHAPTER 57
PLANNING COMMISSION*

NOTICE is hereby given that the following ordinance is presently under review by the City Council of the City of Milford:

WHEREAS, Chapter 57 of the City of Milford Code requires the City Planning Commission to consist of nine members; and

WHEREAS, it has been difficult to find nine qualified members to have a full complement; and

WHEREAS, Title 22, Section 701 of the Delaware Code states that Municipal Planning Commissions shall consist of not less than five, nor more than nine members; and

WHEREAS, reducing the required number to align with Title 22, Section 701 would allow the Planning Commission to convene by having a smaller majority present versus the five currently needed to conduct often time-sensitive or emergent circumstances; and

WHEREAS, An Act to Amend the City of Milford Charter was signed into law by Governor John Carney on August 30, 2017 and reflects the reduction of members as so stated.

NOW, THEREFORE, the City of Milford hereby ordains:

Section 1. Chapter 57, Section 57-2 is being amended as indicated below new language in underlined italics and omitted language by strikeout text.

Section 2. Dates.

City Council Introduction: 09-25-2017

Scheduled Adoption: 10-09-2017

City Manager Norenberg explained this amendment relates to the composition of the Planning Commission and is being

changed to conform with the recently adopted City Charter.

See Council packet for complete ordinance.

Introduction/Ordinance 2017-22/Chapter 178-Real Estate Transfer Tax

*Ordinance 2017-22
CODE OF THE CITY OF MILFORD
PART II-GENERAL LEGISLATION
CHAPTER 178
REALTY TRANSFER TAX*

NOTICE is hereby given that the following ordinance is presently under review by the City Council of the City of Milford:

WHEREAS, Chapter 178, Section 178-2D of the Code of the City of Milford currently exempts from the City Realty Transfer Tax transactions where all grantees qualify as first-time home buyers under Section 178-1H; and

WHEREAS, Section 178-2A. provides that the City transfer tax shall be split equally between the grantor and grantee unless otherwise agreed to by the parties; and

WHEREAS, the City of Milford desires to amend Chapter 178, Section 178-2D. to limit the first-time home buyer exception solely to the grantee's portion of the City realty transfer tax as defined in Section 178-2A, (typically one-half (1/2) of the total City transfer tax); and

WHEREAS, grantors shall still be subject to and required to pay grantor's portion of the City realty transfer tax as defined in Section 178-2A, (typically one-half (1/2) of the total City transfer tax); and

WHEREAS, for purposes of the first-time home buyer exception, grantor and grantee shall be prohibited from contractually modifying the apportionment of the transfer tax, as stated in Section 178-2A to decrease the grantor's portion of the transfer tax;

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. The Code of City of Milford, Chapter 178, Section 178-2, entitled "Rate of tax; when payable; exception", is hereby amended by deleting the language indicated in ~~strikeout text~~ and inserting the underlined language in its place as follows:

"D. [There shall be no tax imposed on those] On transfers where all grantees qualify as first-time home buyers, no transfer tax shall be imposed on the grantee's portion of any transfer tax as defined in §178-2A. hereof. For purposes of this article, "first-time home buyer" shall have that meaning given in §178-1H. The first-time home buyer exception shall apply only to the grantee's portion of the transfer tax as defined in §178-2A. hereof and shall not relieve the grantor from payment of grantor's portion of the transfer tax as defined in §178-2A. hereof. For purposes of the first-time home buyer exception, grantor and grantee shall be prohibited from contractually modifying the apportionment of the transfer tax as set forth in §178-2A. to decrease the grantor's portion of the transfer tax. This provision shall apply to all contracts entered into as of October 19, 2017.

Section 2. Dates.

City Council Introduction: September 25, 2017

City Council Public Hearing: October 9, 2017

Scheduled Adoption: October 9, 2017

City Manager Norenberg explained this is a clarification of the City's Realty Transfer Tax Code and aligns with both counties in relation to the First Time Home Buyers exemption.

Complete ordinance can be found in the Council packet.

Street Sweeper Purchase Authorization

The following memo was prepared by Public Works Director Mark Whitfield:

The Public Works Department requests City Council consider a recommendation to replace the street sweeper used by the Street and Utility Division. The street sweeper is used for the sweeping of streets and cleaning of storm sewer catch basins.

Routine street sweeping is critical to maintaining a high level of service to residents by keeping streets clean. Routine catch basin cleaning helps reduce storm sewer backups and on-street flooding. Street sweeping removes sand, grit, deicing materials, litter, and other debris from the City streets. Catch basin cleaning removes sand, soil, grit, leaves, litter and other debris from storm sewer inlets.

The replacement unit will also come with a "WeedSeeker" spray unit to routinely spray weeds within the curbs along city streets. Weeds within the curbs along City streets are not only unsightly, but also cause pre-mature pavement failure along the edges, which allows water intrusion to the under surface of the street. The WeedSeeker unit is designed to spray only when it detects weeds, and thereby reduces the amount of herbicide needed to control weeds. The unit will also significantly reduce the number of labor hours needed for curb weed control, since the work will be done simultaneously with street sweeping, and not as two separate operations.

The present 2006 unit has more than 5,360 hours of use and has become unreliable due to constant breakdowns. Council authorized \$145,000 be set aside in the Streets Capital Budget for the past two years to cover the replacement cost of the unit. Presently, \$290,000 is available for the purchase.

The Street and Utility Division staff has evaluated several different units for the possible replacement. After viewing demonstrations as well as checking various references, it is recommended a Johnston unit be purchased from Johnston North America of Mooresville, North Carolina for \$289,711.70. The purchase can be made through the State of Delaware contract, HGACBuy Purchasing Agreement Contract #SW04-16.

Specifications for the sweeper unit are included in the Council packet.

Councilman Brooks authorized the replacement of the street sweeper and recommends authorizing the purchase of a Johnston unit from Johnston North America of Mooresville, North Carolina for \$289,711.70 through the HGACBuy Purchasing Agreement Contract #SW04-16, seconded by Councilman Morrow.

Councilman Brooks noted the money is in the budget and he will be glad to get a new one.

Motion carried.

Trailer Mounted Sewer Flusher Purchase Authorization

PW Director Whitfield submitted the following memo for Council consideration:

The Public Works Department requests City Council consider a recommendation to purchase a trailer mounted sewer cleaner for the Water/Sewer Division. The sewer cleaner is used for the maintenance of sanitary sewer lines and manholes, as well as storm sewer lines and inlets. Routine jetting of sewer lines is critical to maintaining a high level of service to residents and helps reduce sewer main back-ups. The jetting removes grease, roots and other debris from the sewer mains. The trailer-mounted unit is needed to service lines within rights-of-way (off City streets) where access cannot be made with the truck-mounted unit. The trailer-mounted unit will also serve as a backup to the truck-mounted unit, when the unit is down for maintenance or repairs, and to address multiple sewer back-ups within the city's sewer system. The unit will also be used to clean storm sewer lines. Presently, the City does not have a trailer-mounted unit. The old truck-mounted unit has been used in the past as a backup. However, it does not allow access to rights-of-way, and repair parts are no longer available to

maintain the unit.

The Water/Sewer Division staff has evaluated several different units for the possible replacement. After viewing demonstrations as well as checking various references, staff recommends a Vactor unit be purchased from Maryland Industrial Trucks of Linthicum, Maryland for \$59,427.00. The purchase can be made through the NJPA Purchasing Agreement (Contract #022014-FSC) through the Delaware State Contract.

Specifications for the unit are included in the Council packet.

Councilman Brooks moved to authorize the purchase of the Vactor unit from Maryland Industrial Trucks of Linthicum, Maryland for \$59,427.00 through the State of Delaware Division of Purchasing, NJPA Agreement Contract #022014-FSC, seconded by Councilwoman Wilson. Motion carried.

Budget Adjustment/Growmark Phase II Environmental Site Assessment

An Environmental Analysis is being conducted for the purchase of the Growmark property at the northeast corner of Northeast Fourth and Northeast Front Streets. The Phase I analysis was completed earlier this summer and identified a number of recommended items including some subsurface evaluations, soil sampling, chemical laboratory testing, etc.

A proposed scope of work was provided that is expected to cost no more than \$45,000. It is recommended a combined supplemental appropriation from the General Fund Reserves in the amount of \$48,000 be authorized to cover the costs of the Phase I and Phase II analysis.

Councilman Burk moved to approve payment for the two Environmental Site Assessments on the Growmark Property in the amount of \$48,000, seconded by Councilman Brooks. Motion carried.

ADJOURN

There being no further business, Councilwoman Wilson moved to adjourn the Council Meeting, seconded by Councilman Campbell. Motion carried.

The Council Meeting adjourned at 7:45 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Transcriber