

MILFORD CITY COUNCIL
MINUTES OF MEETING
November 13, 2017

The City Council of the City of Milford met in Workshop Session on Monday, November 13, 2017 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Christopher Mergner, Arthur Campbell, Lisa Peel, James Burk, Owen Brooks Jr, Douglas Morrow and Katrina Wilson

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

COUNSEL: City Solicitor David Rutt, Esquire

Mayor Shupe called the Council Workshop to order at 6:03 p.m.

Code of Conduct Training/Public Integrity Commission/Legal Counsel Deborah Moreau

City Manager Norenberg referenced those in attendance from the Town of Milton and the City of Harrington. In addition, he reported that Milford employees received this training as well as Milton and Harrington employees.

Ms. Moreau then introduced herself as Counsel to the Public Integrity Commission. This organization is responsible for the oversight of the State of Delaware Code of Conduct, commonly referred to as the Ethics Code.

She explained that the Commission has jurisdiction over all State Executive Branch employees, as well as municipalities and counties in Delaware who have not adopted their own Code of Conduct. Each county or municipality is eligible to adopt their own code though it would have to be drafted and submitted to the Commission for approval. It would then need to be added to the City or County Charter. Until that is done, the municipalities and counties fall under the jurisdiction of the Commission.

Ms. Moreau then reported the following:

Approximately 53,000 people in the State of Delaware fall under the Commissions' jurisdiction due to most municipalities electing not to adopt their own Code of Conduct. However, the City of Dover, City of Wilmington, Town of Smyrna, Delaware City, New Castle County, along with a couple of entities in Sussex County, have adopted their own versions. The reason most entities do not adopt their own code is because a board has to be formed and maintained.

All government officials are watched by the public to make sure that whatever is being done as part of their official duties is done properly. That applies to any person, whether elected or appointed to a commission or board, or city employee.

A number of articles in the news were referenced in which elected officials were forced into resigning over ethic violations. In one case, a governor had to resign when it was alleged his fiancé' was leveraging his public position to benefit her private business.

In New York State, the State Assembly Speaker was convicted of accepting \$4 million worth of bribes in December of 2015 though he is appealing the conviction. The appeal is based on the situation involving the former Governor of Virginia whereby he and his wife were accused and convicted of receiving gifts from a wealthy resident who sold herbal supplements. The resident purchased the Governor's wife a designer wardrobe and gifted them the price of their daughter's wedding, vehicles and other items. Both the former Governor and his wife were convicted and each received prison time. However, he appealed to the US Supreme Court and was successful in getting the conviction overturned.

The court grew a distinction at that point between buying influence and buying official action. The court felt the Governor had only introduced the resident to the right people and they could not find proof that he had accepted a bribe in that case because there was no official action involving legislation so the conviction was overturned.

Ms. Moreau believes that opinion was based only on the fact the prosecutors were pursuing a criminal conviction where the standard of proof is higher and why the court overturned it. If the code of conduct statute had been used, she believes they would have been successful.

As indicated, the New York Assembly Speaker's case is on appeal based on the overturned conviction of the Virginia Governor even though the Justice described the former governor's actions as tawdry or inappropriate in accepting the gifts.

She then recalled the Delaware Medical Examiner's case in 2014 in which he pled no contest to misuse of public office. He was using his state lab, state personnel and state email to run a private business on the side. Any government worker can have their own business, but the question is how to draw the line between your government position and your private position. In one month, it was determined he had sent 800 emails in one month related to his private business. They found fault in the amount of work he was contributing to his personal business while working for the State of Delaware and not the fact that he had a private business on the side. His plea means there is enough evidence to convict him but he would not admit his guilt. When he entered the no contest plea, he was fined \$100,000 in restitution.

Another case in June 2016 involved seven State of Delaware case workers who were accused and indicted of stealing money from one of the welfare programs totaling approximately \$1 million. They created fake food stamp benefit accounts for personal use or to sell and one of their friends would come in and collect the money every week. The people who were supposed to be monitoring their files were not doing their job either so this continued for quite sometime.

Anything that happens in the State or Local Governments will always be highlighted in the newspapers.

The ethics law was drafted in 1974 as a result of Watergate. The State of Delaware adopted their version in 1991. That commission was made up of State Employees and did not work well because they were monitoring other State Employees. As a result, in 1994, they reformed the committee with commissioners not affiliated with the State. They do not work for the State, contract with the State and are completely independent in their decision making. It includes seven commissioners with a variety of backgrounds including community service people, attorneys, retirees, etc. With a good mix, they are able to get a viewpoint from every background.

The commission also handles financial disclosure collection from state officials and lobbyist registrations. Presently there are 350 lobbyists in the State who lobby for approximately 1,000 organizations from Phillip Morris and Walmart, to a small privately owned businesses.

Their website provides a great deal of information. Should anyone have questions, Ms. Moreau recommends the website be reviewed first.

The opinion synopsis page provides information on every opinion the commission has issued since 1991 though the identifying information has been removed. It provides some answers about whether a situation applies and whether or not an opinion is needed.

The statutory purpose of ethic rules is to ensure the public has respect for their government. However, there is always a balancing test going on to prevent having so many rules that no one wants to work for the government.

When someone is serving in their official capacity, that person cannot have a personal or private interest that impairs their judgment when performing their official duty. For example, if an agenda item requires a vote and a relative is involved in the matter in some way, you need to recuse yourself. Recusal is more extensive than simply not voting.

The Delaware Department of Corrections put out a bid for someone to provide medical care for its prisoners. Two bids were received and three people reviewed them. The one reviewer reported that his wife worked for the one company so he was not going to vote. However, he stayed on that committee and discussed the two bids though he volunteered not to vote.

When the court looked at it, his appearance or mere presence during the discussion had tainted the process. He should not have been involved in any manner because a person is able to communicate a wealth of information just through body language or facial expressions without saying a word. That is the reason recusal means 'leave the room'. A person cannot just sit in the room during the discussion and not vote. Instead, that person has to physically leave the room to prevent one's colleagues from

facing a decision of whether they should look at you and try and attempt to prevent being influenced by that person's body language. Leaving the room eliminates any issues.

Another local case involved a State Board that requires anyone who wishes to offer a specific medical service, to apply and obtain approval from the board. A person cannot simply put up a sign that states some type of medical service is being offered. Two hospitals, Beebe and Nanticoke, wanted to start offering cardiac services at the same time. Both applied to the board for the new service.

Nanticoke was helped by someone who had been a previous member of the board. He was no longer on the board and had been gone for approximately eighteen months. However, he helped them with the paperwork and the process in addition to attending the public hearing. He only sat and listened during the hearing but did not say anything.

The board ended up voting to grant the application to Nanticoke but not to Beebe. Beebe's application was not as well thought out and planned. As a result, they had to wait a year and resubmit. Two weeks later, the person who had helped Nanticoke made an announcement they were going to partner with someone to provide cardiac services at Milford Memorial Hospital. This person was the CEO of Milford Memorial Hospital board at the time. So in addition to the connection that he had previously served on the medical needs board, he now has a financial connection because his hospital will benefit from this as well.

As a result, Beebe filed suit based on the process of having too much intermingling and decided to let the court decide. The court took notice and asked whether this person has attended the public hearing. He responded by saying yes, but he did not say anything. The judge pointed out that his presence in the room still tainted the process.

Officials must consider the requirement to remove themselves from the room when there is a topic of conflict. Being present continues to be a conflict even if the person does not participate in the vote.

The process will be determined invalid if someone with a conflict does not leave the room during the discussion. It resulted in the process starting over again which was expensive and time consuming.

Another situation involved a Department of Corrections Hiring Committee and a new job was posted for the motor pool which is a very coveted spot. This employee worked in the yard or handled transportation and most of the guards preferred that type of position because they did not have to work with the inmates. Of the three people that applied for the job, one worked for and had a very close relationship with one of the board members making the decision, one was a nephew to one of the board members and the third person (Brice) had no relationship to any applicants. During a personal conversation between the wife of the third applicant and the aunt whose nephew applied, the aunt revealed that her nephew had gotten the job.

The wife reported the results to her husband (Brice) before the aptitude test was even taken by the applicants. The test resulted in the applicant who had a relationship with the board member receiving the highest score, followed by the husband of the wife who was given the advanced information, then the nephew who received the lowest score. As a result, the applicant receiving the highest score was hired.

Mr. Brice filed a grievance with the union board. Following a hearing, the job had to be reposted and Brice won and was hired for the position. He then filed a claim in the Supreme Court who awarded him the cost of his legal fees.

Another situation involved a State employee who was in charge of the summer school program whereby students who receive free food during the school year are eligible to get lunches throughout the summer. She received \$130,000 to cover the cost of the project. It was put out to bid and she assigned her fiancé to be the administrator of the fund and paid him \$60,000. The auditor's office was investigating how many houses received two checks from the State of Delaware and the reason for the two checks. They determined that in addition to her paycheck, her fiancé was receiving pay as a contractor. The contractor was signed by both of them. The Attorney General's Office charged her with Misuse of Public Office and her fiancé with tax fraud because he was not claiming the income. Both were convicted.

Ms. Moreau also pointed out that if an official has a friend or relative who wants to contract with the City, that official is unable to come before Council and help them. They can help them at home, help them put their documents together but the official

is unable to speak for them or handout documents on their behalf.

She also reported there is a two-year restriction on leaving a position as a councilmember, for example, and coming back as a contractor and doing the same job. She stressed that an employee of a town cannot leave to work for a contractor and do the same job. This prevents companies from being encouraged to cherry pick their employees.

As an example, a Bridge Engineer at DeIDOT who worked on the Roth Bridge, is able to leave his DeIDOT job to take another job working on the Delaware Memorial Bridge only because it is a different project.

The attorney referenced a new standard called the Appearance of Impropriety (Prohibited Conduct) 29 Del. C. 5806 (a) and (b). It involves a reasonable person who knowing these facts, would need to think an employee can continue to do their job fairly and impartially. Some items do not fall into a specific category though it may make you question yourself. If someone has to ask that question, more than likely the official should not be doing that.

An official cannot buy an interest in one of the City's contractors as well. City Employees become familiar with the contractors but because an official becomes confident in that contractor's work, does not allow them to buy stock in that business. If that were allowed, every decision made about them would be tainted by that officials' financial interest in that company.

She further stated that no other employment, gift, payment of expenses, compensation, or anything of monetary value can be accepted if there is the slightest chance it will result in impaired independence of judgment, preferential treatment to any person, official decisions or have any adverse effect on public confidence in the government.

Ms. Moreau said this comes up as in relation to dinners, lunches or Christmas presents. They always tell everyone not to accept those type things. They want to prevent any perception that someone wants to buy an official a present because they want to buy that official's good will. The code of ethics say officials cannot accept gifts from contractors plain and simple. For example, a company wanted to give a sales pitch during lunch and provide lunches to the State Employees. They came before the commission who informed them they could do it on their lunch hour, but cannot provide them with lunch. The company's representative felt that if they didn't feed them, the employees would not attend. Unfortunately, that is similar to a bribe and is an illegal act.

If citizens want to come in and provide tokens of appreciation, the City needs to be careful in case that person has a later zoning request or something similar. Officials need to be aware of those situations so it is better to have a 'no gift' policy. People have asked if a dollar limit can be placed on gifts and the answer is no. Ms. Moreau stated that if someone goes to a conference and gets a lanyard, a pen or key chain or something similar, that is fine. But nothing of monetary value like gift cards or anything with a dollar value. She noted that some officials may be bought for \$10 and another official can be bought for \$500 which is the reason a dollar value is inappropriate.

If an organization that is not the City of Milford is going to pay for an official's travel, that official has to consider whether that is a gift or not. The definition of a gift is something given with nothing in return. She referenced a government official who flies a private jet to Hawaii for a five-day stay though the conference is only half of one day. They play golf, drink cocktails, eat at five star restaurants and stay at five star hotels. That is a gift because they did not get anything in return other than sitting in a room for half a day.

But if an employee flies coach the day before the conference and flies back the afternoon of the conference, stayed in a conference hotel and eats regular meals and are required to make a presentation at the conference, then they have given something back. There is an exchange that makes it no longer a gift.

She stressed that officials should be very aware of a situation when a person offers to send that official somewhere and expects nothing in return. That ends up being a gift in the eyes of this law.

One State Employee worked for a Social Services Agency and would go into people's homes and take care of them. One gentleman became an acquaintance and thought it would be a good idea to repay her kindness by putting her in his will. She informed her supervisor of the situation. That could be perceived as coercing him in taking his money when she was at his home. The supervisor went back with her and told the gentleman she could not be added to his will. He responded that it is

his money and he will do what he wants with it. The agency's attorney then had to discuss it with his attorney and finally, they got him to relent and take her out of the will even though he wanted to do something nice for her. That would have been overshadowed by the fact that he took money from one of her clients.

She then discussed several prohibited activities:

If an official knows the City is getting ready to annex land, do not go out and buy it so you can get more money.

Do not use your public office for unwarranted privileges, private advancement or gain.

If you have access to confidential information, do not use that to your advancement.

Ms. Moreau then shared that a Florida resident, who worked for a social service agency had collected a list of all the HIV positive people in the State and disseminated it to his friends so they knew who not to date.

The same applies to computer access. Employees should not be using their computer to surf the web during working hours but also access programs within the State. Employees are unable to access criminal records through DELJIS for anything other than official business.

Ms. Moreau worked for the Department of Justice for nine years. She recalled an employee who was transferred to that department after working elsewhere in the State for twelve years. She was in the middle of a divorce and her soon to be ex had a new girlfriend. She could not resist from looking her up and found out that she had a criminal record and posted it on Facebook. She was terminated the following day.

Another situation involved a very reputable judicial secretary that had been with the State thirty years. She used DELJIS to look up addresses so she could send Christmas cards. When they found that out, she was terminated.

Ms. Moreau pointed out that it makes no difference what the motive is. The rules apply across the board. Government information cannot be used for your own benefit.

Do not engage in activities that might reasonably be expected to require or induce you to disclose confidential information. If an official/employee goes into a restaurant or pub and discusses something you are aware of only because of your official position, do not allow other people to hear you.

She personally observed two witnesses talking about the Exelon merger in a coffee shop in Dover. They proceeded to talk about who they knew in State government and how much influence they had. Ms. Moreau knew everyone they were talking about. She emphasized that officials need to be aware of the small communities in Delaware and if the official is out in the public, people can hear you and chances are it will get back to someone.

Councilman Mergner arrived at this time.

Ms. Moreau reported that the State Commission will also provide advisory opinions. If there is a question about a vote that is coming up and an official is wondering if they have a conflict of interest because they know the people involved. That official can send Ms. Moreau an email and ask for an advisory opinion from the Commission. That information is confidential and they will provide an opinion on the matter.

She further stated that if the town itself wanted to ask about an employee's involvement in a matter, the town can request the advisory opinion. However, that has to be in writing and an email is sufficient.

Ms. Moreau will not tell anyone unless that person is committing a crime. She is then obligated to turn that official/employee in.

There are circumstances in which there are rules that need to be followed though a waiver can be requested by the Commission for an emergency or some other specific situation. However, in these cases, the whole entire opinion will be published so

everyone knows that yes, that official is doing something that may look suspicious, but were given permission to do it.

For example, the Delaware State Police (DSP) has an aviation unit. Their pilots have to be FAA-certified and to obtain that, seven hours training is required on an aircraft with retractable landing gear. DSP has their own plane though it has fixed landing gear. They did not want to buy a whole new plane just so their pilots can train seven hours a year because of the expense. As a result, the head of the Aviation Unit went around to the local airports including Salisbury, Dover Air Force Base and other airports to receive quotes on borrowing an airplane. It turned out the person who had the lowest bid was a State employee. That State employee got the contract with a State Agency which always raises eyebrows. However, DSP did not want to publicly notice and bid the contract because they were on a tight deadline.

There is a requirement in a State contract when it involves a person who is contracting with the government entity and also works for that entity. In that situation, a public notice and bidding requirement is needed though that was not done because it was an urgent matter. As a result, they asked for a waiver of the public notice and bidding requirement. They brought in their paperwork that showed the research that was done and proof that this gentleman had the least expensive option. The waiver was approved to make it easier for them to accomplish this but only because they had already done their homework. In addition, there are waivers that come after the fact. For example, an emergency occurs as a result of a water/sewer issue and the contractor's equipment breaks. That then results in a large portion of the town being without water and sewer and the contractor is unable to get his equipment repaired for two days. This is an emergency because it involves a public health issue and the utility needs to be put back on line as soon as possible.

She recalled one of the Sussex County Commissioners, who had a farm several years ago, also had a piece of equipment that was able to handle the digging and repairing. He used his equipment to fix the repair and charged less than the contractor. However, it was necessary to come to the Commission, after the fact because this was considered an emergency, though they asked for their blessings as to how it was handled. The Commission also granted the waiver in that situation.

Ms. Moreau then commented on their complaint procedure though an official/employee can request an advisory opinion for themselves and the City can request one as well. The public is unable to request an advisory opinion though they can file a complaint. Complaints are sworn affidavits saying that an official has violated the code of conduct. It has to be notarized and in that case, the person's name will be revealed because a hearing will be scheduled and that official has the right to confront their accuser.

Because the accused identity is revealed, the Commission does not receive many official complaints. She noted that many people are very averse to revealing who they are though the Commission receives a lot of anonymous letters. But there are very few complaints where people are willing to identify themselves.

If a complaint is received, the Commission is not going to let you know in the beginning. They receive a lot of complaints that have no substance. For example, someone from the prison wrote that a judge had a personal interest in his sentencing and he was sentenced too harshly as a result. The Commission does not have jurisdictions over the judges so she is not going to call that judge and inform them of the complaint for no reason and get everyone upset. They typically have the Commission review it and dismiss it for lack of jurisdiction.

A person would be notified if there was some substance if it was properly alleged and notarized. In that situation, the person would be contacted, a copy of the complaint provided and a hearing scheduled. All evidence will be provided to the person as well. If a hearing is scheduled and subpoenas are needed for witnesses, Ms. Moreau will issue them. If a person is found in fault of a violation, in an elected official's case, the Commission has no power to remove them from officer because it is a constitutional issue. However, they will publish the opinion and let the voters decide what they want to do at the next election.

If an anonymous complaint is received, she will call that person if there is something to it. Ms. Moreau will inform the person that a letter was received and provide the allegations. They will then be offered an advisory opinion which is confidential. However, that person has the benefit of knowing what was alleged and the violation of the rules. If it is a violation, that person gets advice on how to fix it and the letter serves as legal protection should someone later file a formal complaint.

However, there is no requirement to come in.

Ms. Moreau explained there are a lot of employees who submit anonymous complaints because they are afraid of retaliation. One employee in a State agency contacted her to tell her their boss is supervising his two sons though she is uncomfortable coming forward because of retaliation. She contacted the head of that agency and asked them if they would like to come in and get an advisory opinion. The head of that agency said certainly and by the time they came in, the two sons had been reassigned to other supervisors. They felt that had fixed the problem though really there is still a problem because there are still three supervisors, one of which is the father, who works with the other two supervisors on a daily basis. As a result, the Commission would question whether those supervisors would be independent during a performance review or when assigning projects because their father is always present.

In addition, it is not always a benefit. For example, the son could be made miserable every day of his life if they didn't like his father. The best way to handle it was to move the son to a different county to prevent any crossover, which is what they ended up doing. Each of the three family members worked in three separate counties.

She emphasized that the finding is not always punishment. Often there is a solution worked out to make things more appropriate and in line with the code of conduct.

It was noted there are criminal sanctions for some portions of the code and mainly the conflict of interest and the post employment areas.

The Commission can recommend to the Governor, who appoints board members, a person be removed though they do not have the ability to remove them either.

Other employees can be terminated and merit rules in those situations do not protect them. An employee can be fired, demoted or given a letter of reprimand, in addition to a number of administrative sanctions.

The concluded Ms. Moreau's presentation. She then opened the floor to questions.

There was a question from the audience about a nepotism policy. Ms. Moreau responded by stating actually there is not a policy though what used to be the Office of Management and Budget has since been split and is now the Office of Personnel and Human Resources. This is a new cabinet position and they are currently working on a nepotism policy. While an employer may be able to arrange things where it does not violate the code of conduct, it still affects the morale of the agency.

A question from the audience was then asked by a Milton official about elected officials receiving donations (inaudible). For example, someone makes a donation in the elected official's name whereby a third party benefits.

Ms. Moreau explained that if someone makes the donation and then that person has a matter come before the board, the elected official will need to consider whether the donation was made in hopes of some return favor.

Further inaudible conversation continued from the audience.

Ms. Moreau responded by stating she is sure that someone saw him with this person and would be very willing to tell everyone. She added that even if this Milton official bought his own dinner and had the receipt to prove it, the problem is how it was perceived.

Mayor Shupe then referenced the annual budget reviews noting there are many different aspects of the budget. As an example, one of the organizations the City gives money to is the Milford Museum. If a Council or Mayor is on the board of that museum, it sounds as though that councilperson would need to recuse themselves and leave the room. If that is part of a larger budget being discussed over a two-day period, he asked at what point you recuse yourself outside of the room for that one issue and then vote on the budget as a whole.

Ms. Moreau recommends speaking with the City Solicitor and believes that the budget can be presented and voted on in separate pieces. She recalled a complaint about a councilperson who had a problem voting on a specific portion of the budget. The commission asked him not to vote on the budget because of the conflict. The councilperson stated no, that is the reason the residents elected him and that is only a small piece of what he does. The commission recommended he check with the town solicitor to see if he can vote on the budget by taking that one category out. That councilperson would then be required to leave while any discussion occurred and not vote on the one matter of conflict. The solicitor agreed that would work.

There being no further questions, Councilmember Peel moved to adjourn the Workshop Session, seconded by Councilmember Burk. Motion carried.

Mayor Shupe adjourned the Workshop at 6:59 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Transcriber

Attachments:

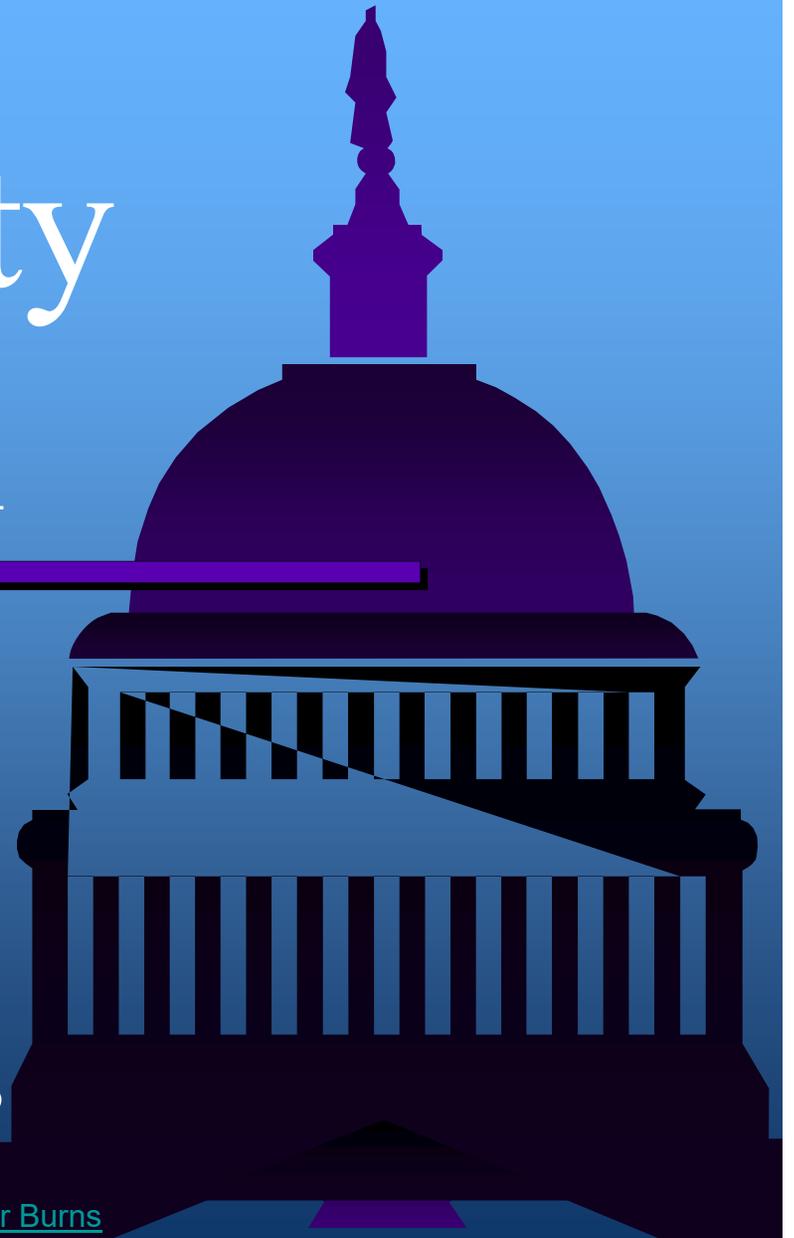
Ethics Presentation
Ethics Brochure

Public Integrity Commission

Ethics in Government

“Divorced from ethics, leadership is reduced to management and politics to mere technique”.

[James MacGregor Burns](#)



Lt. Gov. Darr resigns amid ethics violations, possible impeachment

By ArkansasOnline
This article was published January 10, 2014 at 6:30 p.m.



PHOTO BY BENJAMIN KRJAIN
U.S. Gov. Mark Durr calls resignation Tuesday that he faces investigation of corruption.



AP Photo

Oregon governor facing ca state probe

By JONATHAN TOPAZ | 2/9/15 3:10 PM EST

John Kitzhaber won a fourth term as Oregon's g but he is now facing perhaps the starkest challe

Ex-speaker, once a big powerbroker, convicted in N.Y.

Associated Press

NEW YORK — Former state Assembly Speaker Sheldon Silver was convicted Monday in a \$5 million corruption case that took down one of New York's most powerful politicians and stunned a capital that had become accustomed to scandal.

The jury verdict came after a three-week trial in which federal prosecutors claimed that the 71-year-old Democrat traded favors to enrich himself and then lied about it. The defense countered that the government was trying to criminalize the longtime routines of Albany politicians.

Even in a state capital where more than 30 lawmakers have left office facing criminal charges or allegations of ethical misconduct since 2000, the case against Silver was an extraordinary turn. An assemblyman since 1976, Silver was one of Albany's most storied political figures, a consummate backroom operator with the power to decide the fate of legislation single-handedly.

Silver, who remains free on bail until a sentencing date not yet set, plans to appeal.

"I'm disappointed right now.

Ultimately, I believe that after the legal challenges, we'll get results," he said as he left court after being convicted of all charges against him: honest-services fraud, extortion and money laundering. They carry the potential for decades in prison.



Sheldon Silver

His prosecution was a marquee case in Manhattan U.S. Attorney Preet Bharara's quest to clean up a state government he has called a "cauldron of corruption," an effort that has led to the ongoing corruption trial of Republican state Senate leader Dean Skelos.

With Monday's verdict, "Sheldon Silver got justice, and at long last, so did the people of New York," Bharara, who had watched from the courtroom audience, said in a statement.

With the conviction, Silver automatically loses his Assembly seat. He had kept it while fighting the charges, although after his arrest he was stripped of the speakership he had held since 1994.

The leader of the Assembly's Republican minority, Brian Kolb, called the conviction "a clear signal — again — to Albany: Enough is enough."

Current Speaker Carl Heastie, a Democrat and Silver's successor, said he would "continue to work to root out corruption and demand more of elected officials when it comes to ethical conduct."

After Silver's arrest, the Legislature passed modest changes, including a requirement that lawmakers disclose more about their private income.

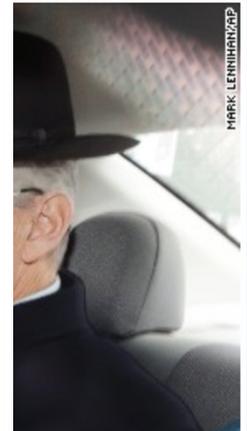
But so far, lawmakers have balked at significant reforms, such as term limits, restrictions on legislators' outside income, tighter campaign finance limits and tougher enforcement of ethics rules.

Prosecutors had argued that they proved Silver traded his office for riches: \$4 million in kickbacks from a cancer researcher and real estate developers. Prosecutors say Silver earned a million dollars more through investments.

"This was corruption," not politics as usual, Assistant U.S. Attorney Andrew Goldstein told jurors.

Dec. 1, 2015

speaker



MARK LENNIR/AP

Supreme Court overturns corruption conviction of former Va. governor McDonnell

Supreme Court overturns corruption conviction of former Va. governor McDonnell

The Supreme Court unanimously voted to overturn the public-corruption conviction of former Virginia governor Robert F. McDonnell. Here's what you need to know about the decision. (Monica Akhtar/The Washington Post)

By [Robert Barnes](#)

[Politics](#)

June 27 at 7:09 PM

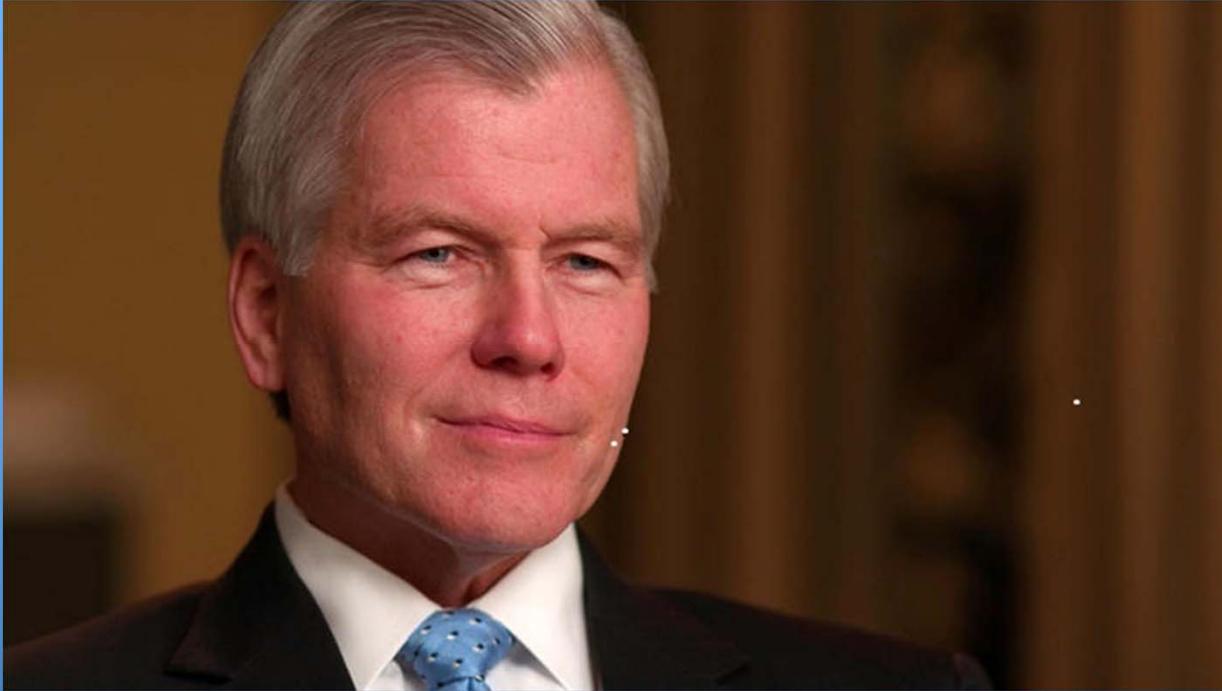
“There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns,” Roberts wrote. “It is instead with the broader legal implications of the Government’s boundless interpretation of the federal bribery statute.” CJ Roberts

Governor sentenced



McDonnell (2nd R) leaves U.S. District Court in Washington, D.C., after he found guilty in his corruption case. (AP Photo/Robyn Beck)

June 2016



July 2017

Delaware medical examiner suspended in drug probe

Jonathan Starkey and Sean O'Sullivan, The (Wilmington, Del.) News Journal 8:36 p.m. EST February 28, 2014

Richard T. Callery oversees the state drug lab, which is being investigated for missing and tampered-with evidence.



(Photo: Suchat Pederson, The (Wilmington, Del.) News Journal)

f 26 CONNECT t 30 TWEET in 2 LINKEDIN 1 COMMENT EMAIL MORE

WILMINGTON, Del. -- Delaware Chief Medical Examiner Richard T. Callery, who oversees the state drug lab that is now the subject of a State Police criminal investigation over missing evidence, [has been suspended with pay](#), officials said Friday.

Callery has led the Medical Examiner's Office since 1997 and earned a \$198,500 salary last year, making him the seventh highest-salaried state employee. He was suspended on Tuesday pending the results of an internal human resources investigation.

In an interview Friday afternoon, Gov. Jack Markell said "we certainly have a number of concerns about the management of the office."

"There are a number of things the investigation is reviewing and I can't talk about them today," Markell said.

STORY HIGHLIGHTS

- State waited 3 days to announce Callery's suspension
- Investigators have identified 21 cases affected by tainted evidence
- Lab handled drug evidence for all Delaware law enforcement agencies

Drug lab scandal still haunts Delaware

Jessica Masulli Reyes and Cris Barrish, The News Journal 9:28 p.m. EDT June 10, 2015

Callery's plea

Callery will plead **no contest** – which is treated the same at sentencing as a conviction – to two counts of official misconduct. The crime is a Class A misdemeanor punishable by up to one year in prison and a \$2,300 fine. A plea of no contest, technically called "nolo contendere," is not an admission of guilt.

Both Joseph Grubb, chief New Castle County prosecutor, and Callery's lawyer Dan Lyons confirmed that the plea hearing will be held Thursday in Superior Court before Judge Fred S. Silverman.

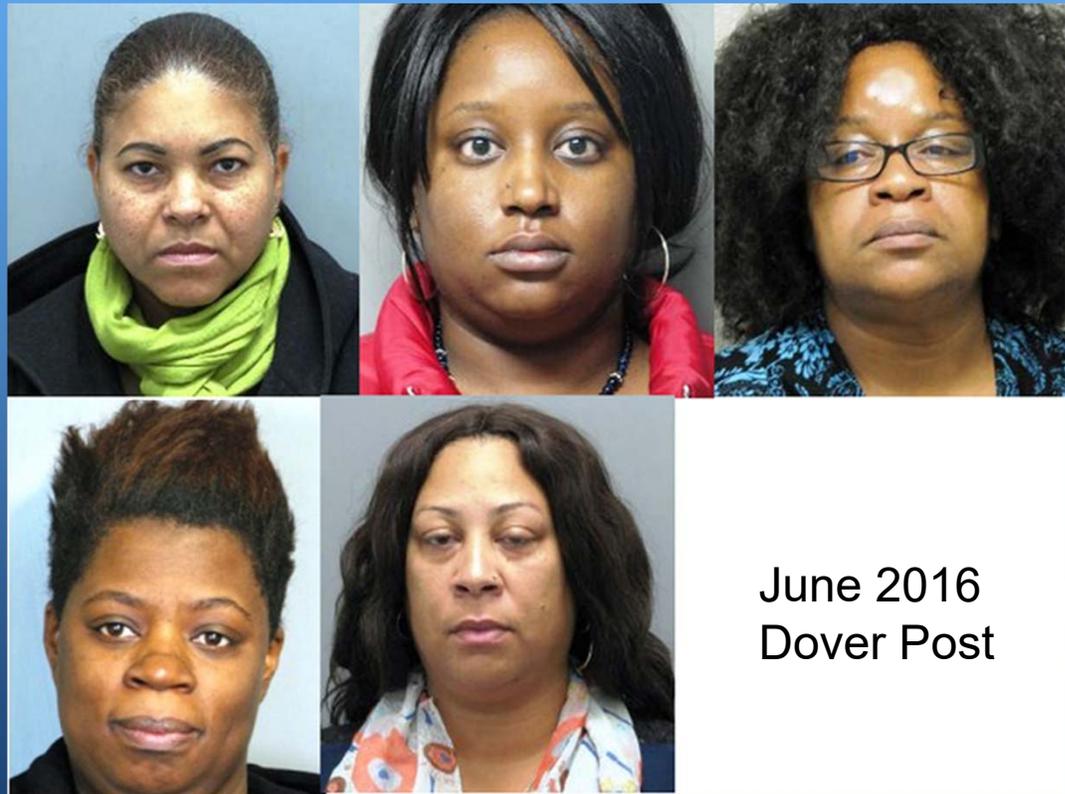
Grubb would not comment further, but Lyons stressed that Callery's plea will be for using state employees and supplies such as his government car to conduct a private consulting business as an expert in other states.

Lyons said Callery, 63, also will pay \$100,000 restitution, an amount the lawyer said far exceeds the value of supplies and employee time he used, and will surrender his medical license for two years.



Seven steal from SNAP, says state

Seven state employees indicted in \$950,000 theft



Background

- Ethics Law Passed -1974
- Ethics Commission Created - 1991
- Public Integrity Commission - 1994
- Full-time Staff Hired - 1995
- Commission Members' Background

Laws Regulating Conduct

Title 29, Chapter 58

- Code of Conduct: *Sets Standards of Conduct*
- Financial Disclosure: *Annual Disclosure by Public Officers*
- Compensation Policy: *Prevents “Double-Dipping”*
- Lobbyists’ Registration: *Disclosure of Expenditures on General Assembly Members and/or State Employees*



Public Integrity Commission

ADMINISTERING AND IMPLEMENTING DELAWARE'S CODE OF CONDUCT FOR THE EXECUTIVE BRANCH.

Welcome

Pursuant to 29 Del. C., Chapter 58, the State Public Integrity Commission administers and implements Delaware's ethics law (Code of Conduct) for the Executive Branch; its financial disclosure law for all three branches; and its lobbyists' registration and expense reporting laws.

[Read More →](#)

> Code of Conduct

Ethical standards for all State Executive Branch employees (rank and file) officers (Senior level & Elected officials) and honorary State officials (appointees to

Easy Reference

Code of Conduct Opinion Synopsis



- [1991-2016 Contracting With The State](#)
- [1991-2016 Jurisdiction & Procedure](#)
- [1991-2016 Local Codes of Conduct](#)
- [1991-2016 Outside Employment](#)
- [1991-2016 Things of Monetary Value](#)
- [1991-2016 Personal or Private Interest](#)
- [1991-2016 Post Employment](#)

Note: If looking for specific term in a category, hit CTRL F once you have opened the link

Statutory Purpose

- Insure public respect and confidence by setting standards of conduct for honorary state officials without unduly circumscribing their activities

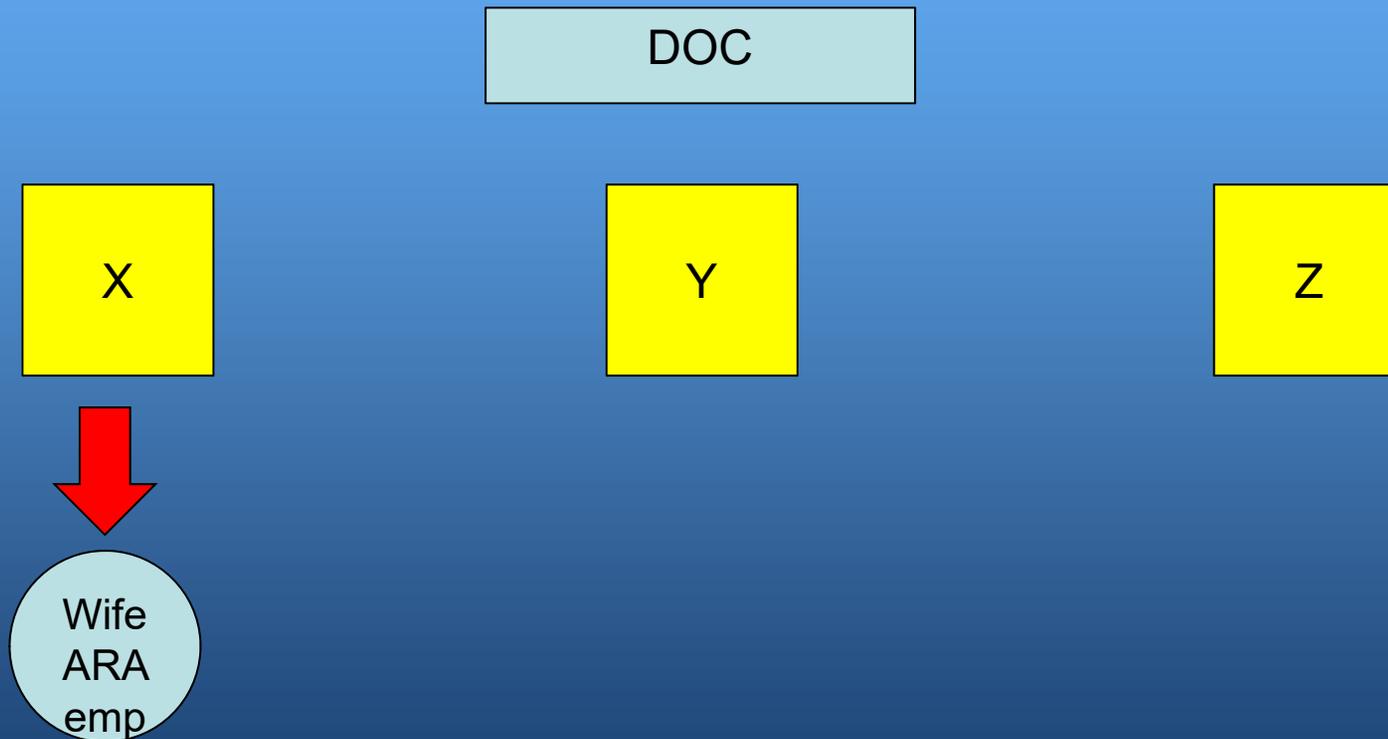
Conflict of Interest

Exercising Authority - 29 Del. C. § 5805 (a) and (b)

- No Personal or Private Interest That Tends to Impair Judgment in Performing Board Duties
- *Interests Which Will Impair Judgment*
 - **Financial benefit to self or a close relative**
 - **Benefit to a private enterprise if you or a close relative have a financial interest**

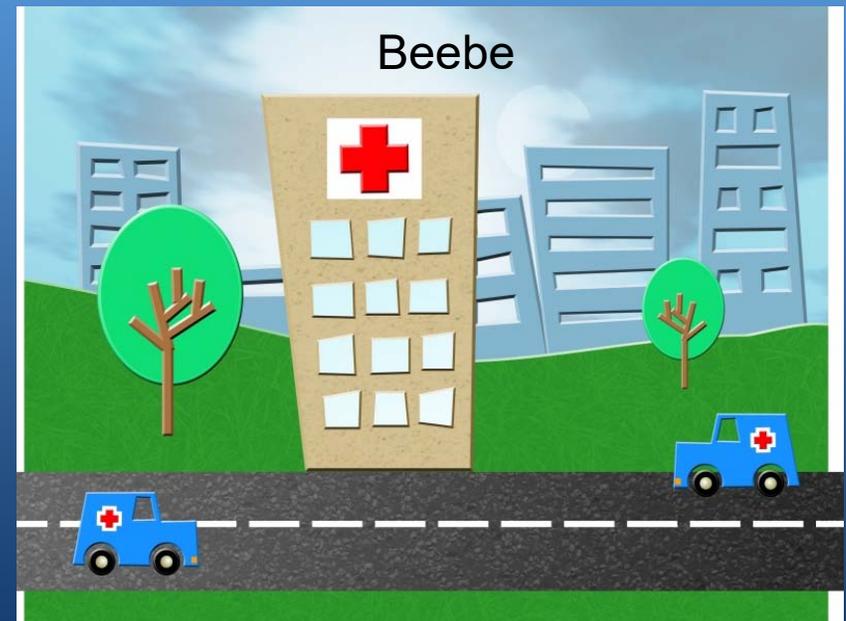
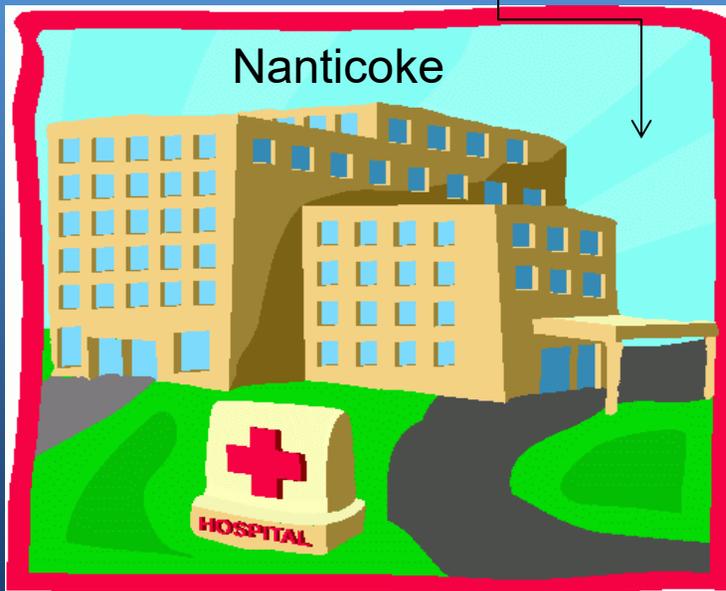
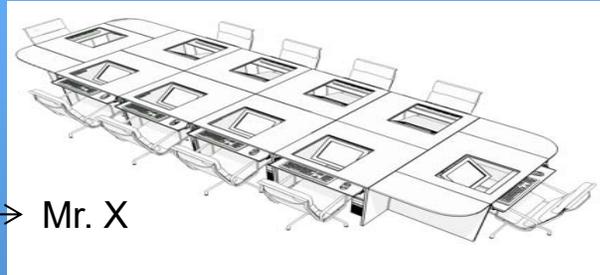
Personal Interest

Prison Health Systems v. ARA



Personal Interest cont.

Beebe v. Cert of Medical Needs Board



Personal Interest cont.

Brice v. DOC

Christiano

Ma son

David
Outten's Sec

Sestito
Nephew
3

Coleman
Highest
score
7



Brice
5

Conflict of Interest

Representation - 29 Del. C. § 5805(b)

- Do not represent or assist a private enterprise before your own Board
- Officers may not represent or assist a private enterprise before the State
 - *Exception: You may assist a private enterprise within the scope of official duties.*

Conflict of Interest

Post-Employment - 29 Del. C. § 5805(d)

- Two-year Restriction

- Cannot represent/assist private enterprise on matters involving your Board if you:

 - Gave an opinion

 - Conducted an investigation

 - Were otherwise directly and materially responsible

- Prohibition on use of confidential information

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806 (a) and (b)

- No Appearance of Impropriety
 - Reasonable person, knowing all the facts, would think the employee could perform their duties fairly and with impartiality.
- No interest in a private enterprise or any obligation in substantial conflict with performing your board duties

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806(b)

- No other employment, gift, payment of expenses, compensation, or anything of monetary value if it may result in:
 - *Impaired independence of judgment; or*
 - *Preferential treatment to any person; or*
 - *Official decisions outside official channels; or*
 - *Any adverse effect on public confidence in government*

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806 (c)

Do not acquire a financial interest in a private enterprise if you have reason to believe it may be directly involved in decisions to be made by you in your official capacity.

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806(e)

Public office shall not be used to secure unwarranted privileges, private advancement or gain.

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806 (f) and (g)

- You may not:
 - Engage in activities that might reasonably be expected to require or induce you to disclose confidential information;
 - Disclose confidential information beyond the scope of employment;
 - Use confidential information for personal gain or benefit.

Waivers and Advisory Opinions

Procedure - 29 Del. C. § 5807

- Written Request
- Confidential *unless*:
 - Applicant Requests in Writing
 - Required for Prosecution
 - Used to Report Substantial Evidence of a Criminal Violation
 - Waiver Granted

Complaints

Procedure - 29 Del. C. § 5810

- Sworn Complaint or Commission Acts
- Person Charged Has the Right to:
 - **Notice & Hearing**
 - **Legal Counsel**
 - **Call Witnesses, Offer Evidence, Cross- Examine**
 - **Examine Tangible Material Evidence**
 - **Exculpatory Evidence**
 - **Apply for Subpoenas**
 - **Confidential *unless*: Person Charged asks for Open Proceedings or a Violation is Found**
 - **Judicial Review by Superior Court**

Sanctions

- *Criminal Sanctions* - 29 Del. C. § 5805(f) Up to 1 Year or \$10,000 Fine
- *Administrative Sanctions* - 29 Del. C. § 5810(d)
 - **Written Reprimand**
 - **Other than Elected Officials: Remove, suspend, demote or other appropriate action**
 - **Honorary Officials: Recommend Removal**

The Rules of Conduct

(1) Do not review or dispose of City matters if you have a “personal or private interest” that tends to impair judgment in performing official duties. 29 Del. C. § 5805(a).

Ex. Board appointee’s “neutral” & “unbiased” remarks on an application were improper when the applicant before his Board had a business agreement with the official’s private employer.

--Beebe Medical Center v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94-A-01-004, Terry, J. (June 30, 1995), *aff’d.*, Del. Supr., No. 304 (January 29, 1996).

Ex. Government employee’s “unsubstantial” & “indirect” participation in a contract that his wife’s employer was seeking, was “undoubtedly improper” although he was not on the contract committee & she was a “low-level employee” in the company.

--Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993).

Ex. Uncle wrote test for government job & sat on hiring panel. His nephew was selected. The Court said it was “the most blatant discrimination based on nepotism & favoritism.”

--Brice v. State, 704 A.2d 1176 (Del., 1998).

(2) Do not represent or assist a private enterprise before the City. 29 Del. C. § 5805(b).

Ex. State appointee wanted private contract with his agency. Court upheld agency’s decision to deny him the contract, as the award of State contracts “has been suspect,

often because of alleged favoritism, undue influence, conflict and the like.”

--W. Paynter Sharp & Son v. Heller, 280 A.2d 748 (Del. Ch., 1971).

(3) Do not contract with the City for more than \$2,000 unless there is public notice & bidding. If less than \$2,000, there must be “arms’ length negotiations.” 29 Del. C. § 5805(c).

(4) For 2 years after leaving City employment, you may not represent or assist a private enterprise on City matters where you: (a) gave an opinion; (b) conducted an investigation; or (c) were otherwise directly and materially responsible. 29 Del. C. § 5805(d).

Ex. Former State appointee represented client before his former Board. He was not “directly & materially responsible” for the matter before the Board, as it was not considered by him before he left the State.

--Beebe Medical Center, *supra*.

(5) Do not incur any obligation or interest that substantially conflicts with public duties. 29 Del. C. § 5806(b).

Ex. Where a State officer placed his personal interest first, “it necessarily follows that...he violated the duty that he owed to the public.”

--In re Ridgely, 106 A.2d 527 (Del. 1954).

(6) Do not accept other employment, compensation, gifts, or anything of monetary value if it may result in: (a) impaired judgment; (b) preferential treatment; (c) official decisions

outside official channels; or (d) any adverse effect on the public’s confidence in the City. 29 Del. C. § 5805(b).

Ex. This prohibition includes luncheons, gift certificates, flowers, holiday gift boxes, etc.

(7) To commence & continue City employment, or Board appointment, you must file a full disclosure with PIC if you have a financial interest in a private enterprise that does business with, or is regulated by the City. 29 Del. C. § 5806(d).

“Financial Interest” includes:

- ownership or investment interest;
- receiving \$5,000 or more as an employee, officer, director, trustee or independent contractor;
- creditor of private enterprise. 29 Del. C. § 5804(5).

“Private Enterprise” is any activity by any person, for profit or not for profit. 29 Del. C. § 5804(9).

(8) Do not acquire financial interests in a private enterprise that may be directly involved in your City decisions. 29 Del. C. § 5806(c).

(9) Do not use public office for unwarranted privileges, private advantage or gain. 29 Del. C. § 5806(e).

Ex. State official had a duty not to personally profit from the State’s services & property by using School materials & employees during State work hours at his home. His action was more than an ethics violation. It violated the

criminal law on “Misconduct in Office.”

--Howell v. State, 421 A.2d 892 (Del., 1980).

(10) Do not improperly disclose or use confidential information. 29 Del. C. § 5805(d); 5806(f) & (g).

Ex. “Indeed, common decency and the most modest norms of privacy command that the State not permit its files to be used in the manner here alleged”—that confidential information on State clients was made public.

--Pajewski v. Perry, 363 A.2d 429 (Del., 1976).

(11) Do not use sex as a condition for an individual’s favorable treatment by you or by the City. 29 Del. C. § 5806(h).

Ex. Requiring a bidder on a City contract to grant sexual favors in exchange for awarding the contract. This is not sexual harassment in the workplace. Please refer to your City personnel manual for the appropriate policy.

(12) Your conduct must not “raise suspicion” of violating the public trust. 29 Del. C. § 5806(a).

Ex. Close relatives had no financial interest in government decision, but it would “be prudent” for officials to recuse themselves.

--Harvey v. Zoning Board of Adjustment of Odessa, Del. Super., C.A. No. 00A-04-007 CG, Goldstein, J. (November 27, 2000), *aff’d.*, 781 A.2d 697 (Del., 2000).

--Actual misconduct is not required; only the appearance thereof. --Commission Op. No.92-11.

To Whom Does the Law Apply?

The Code of Conduct applies to all Executive Branch employees (rank & file), officers (Division Directors & above), and honorary officials (appointees to State and Boards and Commissions); & local government officers, employees, board and commission members, unless they adopt a Code at least as stringent as the State's. The Judicial & Legislative Branches have their own Code of Conduct or Conflict of Interests laws.

Why Ethics?

In our democratic form of government, the conduct of State officers & employees must hold the respect & confidence of the people. Thus, State officers & employees must avoid conduct that violates the public trust or creates a justifiable impression by the public that such trust is being violated.

How Can I Promote Ethics?

By following the Code of Conduct rules.

How Can I Comply with the Rules?

Know the Rules
Follow the Rules
Get Advice When Unsure

Where are the Rules?

Delaware Code, Title 29, Chapter 58. The law and opinions are on the Public Integrity Commission's (PIC's) web site at www.depik.delaware.gov under the heading, "Code of Conduct." Opinions are grouped by topic to narrow your search.

How Can I Understand the Rules?

Read the Statute ---- Read Commission Opinions --- Go to "Ethics in Government" classes offered by PIC through the City ---- Call the Public Integrity Commission with questions --- Seek an Advisory Opinion from the Commission

What is an Advisory Opinion?

An interpretation of the rules by the Public Integrity Commission based on the proposed conduct of a City employee, officer or board member. It gives guidance on whether the conduct will or will not violate the public trust.

Why Would I Seek an Opinion?

It will clarify if you should or should not engage in such conduct. It also can protect you against complaints. If you fully disclose your situation to the Commission and follow its advice, the law provides protection against disciplinary action.

How Can I Seek an Opinion?

Your request must be in writing; there is no formal format. Before you start to write, contact the Commission's office, at 302-739-2399, to obtain help in writing your request.

Should I E-Mail My Request?

By law, you are entitled to confidentiality concerning your requests. If you are confident in your system's security, the Commission accepts email submissions.

When Will I Know if the Conduct is Permitted?

If the situation has been clearly addressed by the Commission, the Commission's staff will provide you with that information. If there is no clear ruling, your written request will be sent to the Commissioners one week prior to the monthly meeting. On the meeting day, the Commission likes to have the requestor present so that if there are questions not answered by the written request, it can obtain the answers at the meeting and issue an oral opinion that same day with a written opinion to follow.

What If a Complaint is Filed Against Me?

You will be formally notified of the allegations against you, and of the rights you have, such as a right to legal counsel, right to a hearing, right to cross-examine, right to examine evidence, etc. If a violation is found, you have the right to appeal to the Superior Court.

What are the Penalties?

Criminal Violations: Up to a year in prison and/or a \$10,000 fine.

Administrative Discipline includes: Letter of Reprimand --- Suspension, demotion, removal or other appropriate disciplinary action.

How Can I Reach the Commission?

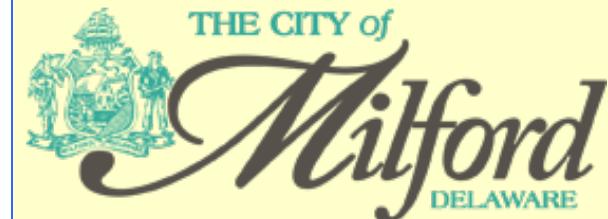
Public Integrity Commission
410 Federal St., Suite 3
Dover, DE 19901
Phone: 302- 739-2399
www.depik.delaware.gov

ETHICS BROCHURE BY:

State Public Integrity Commission



IN COOPERATION WITH



MILFORD CITY COUNCIL
MINUTES OF MEETING
November 13, 2017

Milford City Council held Public Hearings on Monday, November 13, 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 Christopher Mergner, Arthur Campbell, Lisa Peel, James Burk, Owen Brooks Jr, Douglas Morrow and Katrina Wilson

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

COUNSEL: City Solicitor David Rutt, Esquire

Mayor Shupe called the Public Hearing to order at 7:03 p.m.

City Planning Coordinator Rob Pierce was also present.

F. Jerry & Jan W. Kovach

Final Minor Subdivision of 16.46+/- acres

R1 (Single Family Residential) and C3 (Highway Commercial) Zoning District

560 S DuPont Boulevard and 17776 Oak Hill Drive, Milford Delaware

Present Use: Residential; Proposed Use: Same

Tax Map 1-30-3.11-002.00 and 1-30-3.11-009.00

Rob Pierce reviewed the application and read the data sheet/staff report.

The Kovach property is located at 17776 Oak Hill Drive, involves a small parcel off Route 113. The property is designated low Density Residential (1-30-3.11-002.00) and Highway Commercial (1-30-3.11-009.00) in the City Comprehensive Plan and is zoned R-1 (Single-Family Residential District) and C-3 (Highway Commercial District).

The applicant is the owner of both parcels that will be impacted by the lot line adjustment. The parcels are located partially in the City of Milford and within the unincorporated area of Sussex County. The lot line adjustment will require administrative approval from Sussex County prior to formal recordation and legal adjustment of the property line.

Mr. Pierce believes this is the only property partially in the City at this time. As a result of the properties being split by the municipal boundary, the properties are split zoned. The applicant proposes to convey seventy-six (76) feet of property from parcel 002. to parcel 009. to get some additional buffering from an accessory building they have on their primary residence.

The application was advertised in the Milford Beacon on August 30, 2017. All properties within 200 feet received a notice of the request.

The application was reviewed by the Planning Commission in September and received unanimous recommendation for approval.

A survey is included in the packet showing the proposed conveyance.

R.B. Kemp, Professional Land Surveyor from Adams-Kemp Associates, represented the application on behalf of Mr. and Mrs. Kovach who were also present. In addition to the information presented by Mr. Pierce, Mr. Kemp stated that he has contacted Sussex County Planning and Zoning and presented the plan to ensure there would be no issues. They have indicated the request is standard and they have no problem with it.

City Solicitor Rutt asked Mr. Kemp for clarification. He confirmed the parcel is partially in Sussex County and partially in

the City of Milford and that the portion in the City is the focus of the request. Sussex County would continue to have jurisdiction over the balance of the property. Mr. Kemp stated that is correct and referenced the drawing included in the packet.

Mayor Shupe then opened for the floor for public comment. No one responded. The public comment period was then closed.

Councilman Brooks to approve the Kovach Final Minor Subdivision Plan of 16.46+/- acres as described, seconded by Councilwoman Wilson. Motion carried by the following unanimous roll call vote:

Councilman Mergner voted to approve based on the recommendation of the Planning Commission.

Councilman Campbell votes to approve the application based on review and vote of the Planning Commission.

Councilwoman Peel votes to approve to uphold the Planning Commission recommendation.

Councilman Burk votes to approve based on the recommendation of the Planning Commission.

Councilman Brooks votes yes based on the Planning and Zoning Commission.

Councilman Morrow votes yes based on the approval recommendation of the Planning Commission.

Councilwoman Wilson votes yes based on the approval recommendation of the Planning Commission.

ORDINANCE 2017-20

An ordinance to amend Chapter 180-Residential Rental Operation License to allow the transfer of a license during the licensing period upon payment of administrative fees and request an inspection prior to occupancy by a new renter.

Rob Pierce referenced the memo included in the packet outlining the proposed amendments to Chapter 180 Residential Rental Operating License involving three main subjects.

Moving the annual license fee to the City Fee Schedule.

It is recommended the monetary amount for the annual license be moved from the ordinance to the City Fee Schedule as was previously done for Contractor Licensing, Building Permits, Vendor Licensing, and Planning & Zoning Fees.

Adding the Ability to Transfer a License

It is recommended that language be added to allow rental property owners the ability to transfer their license with the transfer of property as was discussed at the July Community Affairs Committee meeting.

The current code states that every landlord shall apply for a rental operating license which historically was interpreted by the Department as requiring new landlords to register a rental property after a real estate transaction. For example, if Owner A registers a one-hundred unit apartment complex in January and pays the required \$5,000, and that is later sold to Owner B, in the past, the City has collected the \$5,000 fee for a second time that same year.

The current code is silent on the transfer of licenses. However, City staff believes this places an unnecessary financial burden on larger multi-family complex owners and recommends associated language to allow a transfer of the rental license as a result of property transfers. The new language would permit the property owners to transfer the rental license for an administrative fee of \$50 per license (property), not per unit. That fee should cover the cost of updating the information and issuing the new license.

Timing of Rental Inspection

Over the past few months, staff has advertised and reviewed proposals from inspection firms to outsource the City rental inspection duties. However, the City retains the right to inspect any residential rental property within forty-eight hours of notice to the property owner. The most appropriate time to inspect a rental unit is between tenants which makes it easier to conduct inspections and perform repairs. It is also less intrusive on the tenant and would allow the City to deny occupancy or revoke the rental license without displacing tenants for substantial violations.

Mr. Pierce said they are in the process of evaluating proposals from inspection firms to conduct residential rental inspections, which will result in scheduling dozens of inspections each week throughout the entire year. He hopes to present the proposal to Council in December.

Concluding his presentation, Councilman Burk followed up by asking what problems do the amendments solve; Mr. Pierce stated that mainly the \$50 fee needs to be removed from the Rental License Ordinance and added to the Fee Schedule. He did not want to bring that before Council until other changes needed to be considered.

The second issue came up in a transaction that occurred a few months ago when the \$50 fee for a new license had to be paid mid-year. When reviewing the code, it was unclear whether or not a license could be transferred though historically, the full amount had been collected. Clarification was needed as a result.

The Planner further stated that the final proposal requiring landlords to request an inspection between tenants came up as a result of the rental inspection program that will be started in January. He felt it would make the process simpler one for both the landlords, tenants and the City if done between occupancies. If this is not approved, Mr. Pierce stated the City will continue to inspect properties after 48-hours of notification.

Councilman Burk asked how quickly we will be able to do a rental inspection; for example, a tenant moves out on the 31st of the month and the next tenant wants to move in on the 2nd. This occurs frequently because they have to leave their old rental by the 31st. He asked if this will place a burden on the tenant because we are delaying the relocation. Another problem is the landlord may want to paint between tenants or have an exterminator come between tenants. He asked what the timeline will be in getting a new tenant in the unit especially when this service is being outsourced.

Mr. Pierce explained the firm they have been negotiating with is considering allocating three days for the primary initial inspection. That would leave two remaining days for follow up or unscheduled inspections such as an emergency. There is no intent to hold any tenant up from occupying the rental unit though Mr. Pierce is aware that landlords need some time to get in and clean things up. In addition, most tenants give notice and if the landlord is aware in advance, they have the option of scheduling something at that point.

Mr. Pierce emphasized that the impromptu tenants that move out most likely left the landlords with some work that is needed.

He reiterated this is to help ease the rental inspection scheduling process and the City is not requesting an inspection at each transfer of a tenant. It is also being considered that if the property passes the initial inspection in year one, that property would not need to be revisited for several years. As a result, the City is trying to reward those landlords who are compliant with no reinspecting each time a tenant moves.

When asked what happens if the property fails the inspection, Mr. Pierce said they would be given a certain number of days to remedy or correct the violations. However, if they continue to violate City codes, they would be issued a fine.

Councilman Burk asked what would fail a rental property and Councilman Mergner asked how long would an inspection take for a two-bedroom unit. Mr. Pierce said there are approximately 1,600 units in Milford and the goal is to inspect half each year. An inspection checklist is being created which includes items from the property maintenance code. The inspector would walk through with the caretaker/landlord and review any issues that are found.

Councilman Burk asked if chipped paint on the exterior would fail an inspection and prohibit someone from moving in; Mr. Pierce stated no. The Councilman then suggested providing a list of those items that would prohibit a new tenant from moving in due to the overwhelming number in the property maintenance code.

Mr. Pierce pointed out that code states that something significant involving a life/safety issue would fail the property. A lot of small minor issues that compound one another, should not prevent the unit from being occupied. They would be given time to correct those issues. For example, if the issues are corrected by the end of a 30-day deadline, that would require reinspections and at some point violations of the City code.

He stressed that these will not be violation notices nor fines. The caretaker/landlord will be advised to address the issues and

then be called for the reinspection.

Mayor Shupe asked if a new tenant could move in during the 30-day timeline while the minor infractions are being addressed; Mr. Pierce said he does not believe that would be a problem adding that the amendments require the landlord to request an inspection though that does not mean the inspection has to be performed. The intent is to get in within the first couple of days to make it less intrusive on the tenant.

When asked who this change benefits, Mr. Pierce explained that the City will inspect all rental units regardless of how long someone has lived in the rental unit.

City Manager Norenberg explained there are two independent focuses. One is to fulfill the obligations the City has under the rental licensing program. Right now, he pointed out that we only have the manpower to handle inspections on a request/complaint basis. The goal is to ensure our residents are living in quality, safe housing.

The other reason we want an inspection of these properties is to ensure the internal premises are safe for habitation. At that time, a full inspection of the outer unit should also be done to make sure the property is well maintained and we are keeping our eyes on all the property maintenance and code concerns that Council has been discussing over the past couple of years. In that manner, we can target concerns that are structural or property maintenance needed that is the responsibility of the landlord or something that falls under the tenant. This will hopefully ramp up the quality of our neighborhoods.

Councilman Campbell asked how to handle properties within the City that are really bad; Mr. Norenberg said that assuming they are rentals, we will add them to the list of inspections. However, we are continuing to follow up on code violations in general.

The City Manager said this has taken some time and will provide some additional inspectors to help the City do this on a more regular basis. Mr. Pierce believes this will involve two to three inspectors. He then added that he hopes the inspection program will move forward regardless of the amendments before Council this evening.

Councilwoman Peel asked if this is only request-driven; Mr. Pierce answered no. The City will reach out to the property owners and try to divide the pool in half and inspect half in year one and the second half in year two. The plan is to proactively move forward with inspections.

Mr. Brooks asked if all empty houses have to be inspected before they can be rented; Mr. Pierce stated no. He is only asking that the landlords request an inspection. The City has the authority to request an inspection upon 48 hours notice to the property owner.

As a result, they could send letters to every rental unit and inform them they want to inspect that unit in two days. However, he does not feel that is sufficient time to make sure everything is in compliance with the checklist. Councilman Burk pointed out the landlords also are required to give their tenants forty-eight hours notice. Mr. Pierce agreed and clarified the code states the City reserves that right. His intent is to work with the landlords to find a convenient time for everyone involved. In addition, the plan is to give the landlord several weeks notice in scheduling these inspections over the next couple years.

Councilman Mergner asked who will coordinate all the efforts and oversee the communication; in his opinion, it seems to be a lot of work in his department. He pointed out there will be letters, communication, follow-ups, documentation, etc. His concern is we go through this process which is great, but are able to keep this up because it seems like a big expense as well.

Councilman Burk agreed that was the pitfall in the past.

Councilman Mergner likes the idea but is concerned about the execution.

Mr. Pierce said some additional discussions are planned in a few weeks. The administrative functions of this process will be split between the consultant and the City. The City will handle the initial outreach requesting the landlord contact and the inspection company. In addition, the City will be responsible for following up on those properties that are not compliant. However, the majority of scheduling will be handled by the consultant.

When asked how many we inspect now per year, Mr. Pierce said a few dozen or so. Councilmember Brooks asked how many inspectors are needed to do the job correctly; Mr. Pierce said the department wants to do 20 to 25 inspections a week over the next couple years.

Mr. Pierce then confirmed that nothing before Council this evening will create additional work and aligns with the current code that the City would do annual inspections.

Councilman Morrow asked the cost; Mr. Pierce stated approximately \$40,000 a year. Councilman Burk asked the unit cost and if the City will lose money on the program. Councilman Burk pointed out we have talked about these things in the past though later it was determined the costs were higher than what was being charged.

Mr. Pierce said he will have additional information though he believes we have the funds within our current budget to cover these expenses. Councilman Burk asked the cost of an inspection and whether the rental license even covers the inspection costs. Mr. Norenberg pointed out those type things that are still being developed. Councilman Burk prefers to determine the facts before we proceed adding this has been a recurring theme. He does not own rentals but is anxious to hear what the landlords in our community have to say.

Mr. Pierce said the negotiated cost is \$50 an inspection.

Councilwoman Wilson then noted that when a resident requests the City come in as a result of a complaint, it is typically because they have not been able to work it out with the landlord. As a result, they use the City as a last resort. What this program is doing is putting things in order to support the City in addressing these problem homes. She understands that we are also not able to do this with two or three in-house inspectors. This will protect the tenants as she has personally witnessed a number of units that have been ignored and not been kept up to code.

Mr. Norenberg explained that there is no reason this ordinance has to be adopted tonight. It was reviewed with the Community Affairs Committee in July who recommended approval. It was presented to Council in October and carried over for a public comment session tonight. In the meantime, the inspection contract will be added to the December agenda for additional action.

If Council is more comfortable, this ordinance could be postponed until December as well. In that manner, Council will have the recommended contract in hand before final consideration is given on the ordinance. He added there is not intent to rush the ordinance.

Mr. Pierce pointed out that he continues to hear complaints that the City has not been able to handle the rental inspections which is the reason he is bringing this plan forward without hiring another employee. Once we get through the first two years of the rental program, he anticipates the number of inspections will decrease as we reward those who pass their initial inspections.

Mayor Shupe then thanked Mr. Pierce and his staff for finding ways to solve this problem and to address the code enforcement issues that have been brought before Council. This is also a way to do inspections that many Milford Realtors have asked for in the most economic manner.

Mayor Shupe noted that the public comments should not address the rental program, but instead the ordinance that is before Council.

Solicitor Rutt agreed that the only thing that can be discussed publicly is the amendments proposed to the code. The ordinance already exists so that program is unrelated issue to any comment. There are three points up for discussion—moving the annual license fee to the fee schedule, adding the ability to transfer a license and requiring a landlord to request inspections between tenants.

Mayor Shupe then opened the floor to public comment. He asked anyone that wishes to speak in favor of Ordinance 2017-20 come forward.

Emmett Vennett of 810 NE Tenth Street stated he only has four houses comprising six units. Most of the landlords in

attendance have many more properties. He recalled that when the inspection and fee schedule was first established, it was with the intent of improving properties throughout the City as far as appearance and standards.

Mr. Vennett noted there are 1,600 units which come to \$80,000 a year for inspections. The last couple of years, these inspections have not been conducted. He has one Section 8 unit that is administered by the State of Delaware. They already do an annual inspection and he agrees it benefits both the tenant and the property owner. He also agrees that sometime a landlord may get complacent with the condition of the property. He added that sometime tenants do not tell him things they should. He believes there is a value in inspection and a value for the community and a value to the tenants. It also can be somewhat of a value to the landlord to provide a point in time and a non-confrontational approach to go in and look at a unit.

However, Mr. Vennett is a little suspicious about moving something to a fee schedule because then it can go from \$50 to \$200 without any input from the community. He noted that the landlords are already contributing \$80,000 though not many inspections are being done. The next thing you know, someone realizes the City is not getting enough money and that the third party needs more money. It is then increased.

Joe Wiley of 202 Lakeview Avenue announced that he has a few questions. The ordinance states that a landlord can request a rental inspection and asked that really means; he asked if a landlord can request one not be done or does it mean it must be requested in a timely manner.

Mr. Wiley stated that the other question is how to handle situations in which there will only be one inspection per year and asked what occurs when a property turns over twice. If one inspection has been done with the first tenant, is another inspection needed for the second tenant.

The other question is how to handle situations in which you have joint tenants and one of those tenants asked that their name be removed from the lease. A new lease is then required for the other person. At that point, the other person will want their electric deposit back from the City and will also ask for a second deposit for the new person. Currently, the City checks to see if there is a rental license in those situations. His concern is the City staff will also check to see if an inspection has been requested while the entire time, the same tenant remains there.

Mr. Wiley noted that most landlords have Section 8 properties. The State inspects those properties every year which is great because that provides an opportunity for the landlord to go into the property and see it as well. The tenant can refuse to let a landlord in if they request to see it. They have the right to their own privacy just as anyone who owns their property. He is unsure if the ordinance coincides with the State law because the Delaware law will override any local ordinance. He then asked if there has been any type of comparison done.

He then asked if when the State has already inspected the Section 8 house, is a second inspection needed by the City.

Mr. Wiley also heard the concerns of the rental program adding that a rental license is \$50. He believes the City is already aware that the inspection process is going to cost more than \$50 per the bidding process. When at the time of the inspection a violation is found, a second inspection will be needed. He is curious whether the cost of the inspections will become so high it will make Milford appear to be a non-business friendly community.

He then noted that there is a perception that all derelict properties in the City are owned by landlords. Mr. Wiley emphasized that is not true. He has been with inspectors who have stated a garage had to be torn down that has existed for one hundred years and if wasn't touched, it will still be there in another hundred years. But it is torn down because it has to be torn down. At the same time, you are looking at a street and see three roofs in a row with shingles missing, and plywood on the back of the houses. Mr. Wiley already knows they are owner-occupied houses though the perception is that all the derelict properties owned by landlords. Instead it is found they are owned by low-income hard-working people who have a home and can't afford to get the work done.

Mr. Wiley asked what happens when a rental home is cited for peeling paint though right now it is complaint-driven by a neighbor who doesn't like it because of the paint peeling off the home. He understands the intent of raising money because of the fee structure. But the City has to be careful and should ensure that the existing codes are enforced and that a new code is not needed.

Mark Davis of 228 Cicada Lane said he owns numerous rental properties. He said he was the one that went to Councilman Brooks when he paid half the rental license and the other half was forgotten in an envelope beside the desk until he received a late notice three months later. The reason this occurred according to the City is because they were already overwhelmed and understaffed when receiving money from rental licenses. Now the City is planning to conduct 800 licenses. He thinks the City is behind two people or more. He asked where the money is in the budget except for more fees and pointed out there are a lot of them.

Sam Passwaters of 315 Columbia Street thanked everyone for doing the jobs they do. He had the chance to go and inspect one of his rental houses at 510 Fisher Avenue five years ago. He did it occasionally to look for leaks or other problems. The gentleman met him at the door and told him he was not allowed to come into the rental. Mr. Passwaters proceeded to tell him he had sent him a letter and had spoken with the man's wife the night before.

The tenant again stated he was not allowed in. Mr. Passwaters left and the tenant went to Milford Police Department and requested that Mr. Passwaters be arrested for trespassing though they would not arrest him because they did not see where any crime was convicted. The tenant then went to a judge who made Milford Police arrest him because he talked after he asked him to leave.

The judge told him he didn't have any record and didn't need a lawyer though that was bad information. He said it ended up costing Mr. Passwaters \$9 in the end though it is probably on his record still. The judge told Mr. Passwaters that he did not care what type of letter was sent or what he did, but when someone asks you to leave a property, you don't own it anymore. He said Mr. Passwaters had turned it over to that gentleman and that he no longer had a say in the property. The judge said the tenant wants to let him in, he can, but if he does not want to let you in, Mr. Passwaters needs to leave and stop talking. The judge asked Mr. Passwaters to stay later and said if you ever enter anyone's property without them there, they can call the police and tell them they have lost \$3,000 cash. He would then come before the judge who would make him pay it.

He pointed out that is another side the City needs to look at and suggested they be prepared when an inspector is sent in. Mr. Passwaters thought he had the right to go in to inspect and keep the property looking right. He loves Milford which is a beautiful community and the City is doing wonderful things.

Mr. Passwaters agrees that a lot of houses are in bad shape though they are not all failing inspection. Mr. Passwaters said he is a contractor and does a lot of work for different landlords. He sees a lot. He rented a house one year and the City Code Enforcer condemned it. He was unaware that the tenants were tearing his house apart. The code enforcer was upset with Mr. Passwaters and asked him to meet there. The code enforcer did not believe Mr. Passwaters had nothing to do with the condition of the house.

But Milford Police Department went with the City Code Enforcer one day because he had to go in and he needed a witness. The police officer said 'oh my God what happened to this house?' The Code Enforcer said why and the police officer continued to say he had been in that home many times for domestic complaints or fights and it was never in that condition. But within no time, that house had been destroyed. He agrees it can happen but it is not necessarily the fault of the landlords. He did not want that to happen \$6,000 later which is what it took to get it back to where it was before they moved in.

Mr. Passwaters has no problem with the inspection. He would love for the City to inspect it because fire alarms and extinguishers need to be updated. He would rather the City have that responsibility after it has been inspected and it is on file that the landlord had those things there before they pulled all the batteries out or removed them or whatever the situation is.

He agrees that tenants change things though he agrees with Mr. Wiley that there are many owner-occupied homes with issues too.

Mr. Wiley returned to the podium to correct his comments later adding that he did not understand the Mayor was asking at that point for people to speak who were in favor of the ordinance. Instead he wanted to be on record that he is not necessarily in favor of the proposed changes though he is in favor of an ordinance if he is able to get some answers to his questions.

No one else was willing to speak in favor of the ordinance.

Mayor Shupe then asked if anyone wanted to speak against the amendment to the ordinance. No one responded.

Mayor Shupe then asked if anyone neutral wanted to speak.

Pat Davis of 1 Misty Vale Court in Milford stated she is not sure but just wanted to listen to people that had interest in rental properties. She is unsure if any Councilmembers have an interest or rent properties. She said that perhaps when these sessions are being done, privately Councilmembers may want to pull some of the people in attendance and put them on a committee. It seems to her like they have really good comments and seem to know more about it.

Nadia Zychal of 303 South Walnut Street stated she does not own a rental property and is a homeowner. Her primary concern is the actual enforcement of the ordinance. In theory it sounds wonderful to have it inspected but in actual practice when you call for very obvious code violations on a person living next door to you and there is no follow up for something that only happens a couple dozen times a year, she is unsure how realistic it is to follow up on 800 units. She stated that the primary problem that needs to be addressed is the low hanging fruit in conjunction with the obvious problems, after which a simple follow up and systemic property-by-property inspection can be done if needed.

There being no further comments, the public comment portion of the meeting was closed by the Mayor.

City Planner Rob Pierce then proceeded to respond to the earlier concerns.

He referenced the proposed amendments showing the additions and omissions. With regard to Mr. Wiley's question, Mr. Pierce explained there is already a \$50 reinspection fee on the books even if it is necessary to come out multiple times to reinspect a rental property. There are no proposed changes to the fee.

In addition, Mr. Pierce explained the City is proposing to reduce a fee that should an inspector arrive and the property is not ready for inspection, a fee of \$100 is assessed. That is proposed to be reduced to \$50. The intent is to provide an initial inspection and one follow-up at no cost to the landlord. The fee of the third inspection would then be reduced to \$50 and is already part of the ordinance adopted in 2008.

He continued by stating the regulation that allows the City Inspector to enter or request an inspection within 48 hours is already part of the City ordinance adopted in 2008. This is not a new item being proposed.

Mr. Pierce is willing to look at the validity of that requirement compared to the State of Delaware Landlord-Tenant Code and will follow up with the City Solicitor. However, that is not part of the amendment before Council this evening.

The intent is to have the landlord request the inspection to reduce the inconvenience of the tenants while making the properties easier to inspect. The goal is not to inspect the units multiple times per year. Once the inspection is completed in year one and the property passes, the City will not be back until year five. If the property fails, the City will follow-up until the items are addressed. Another inspection will be done in year three.

Mr. Pierce explained that if multiple tenants are moving in and out, the property is not going to be inspected each time.

The point of the program is to have a more regular routine of inspections on an every-other-year basis which will be his proposal to Council in a couple weeks.

Another question involved the number of inspections though Mr. Pierce believes that related to the number of times an inspection would be done between tenants.

The Planner shared with those present he is willing to consider the State of Delaware Inspections within this program. It is not being proposed at this time and there is nothing on the books right now stating the City would accept a third party inspection. Mr. Pierce is aware of other jurisdictions that permit it, though it is something that will need to be considered internally as they proceed with the inspection contract.

Again, Mr. Pierce emphasized that is not included in the amendment to this code.

When asked about the privacy laws Mr. Pierce stated that he previously mentioned the code already states the code enforcement official reserves the right to inspect property at anytime to ensure compliance. It further stated that when such inspections are deemed necessary, the Code Enforcement Official will provide 48 hours notice to the owner or caretaker. Exceptions will apply when health or safety conditions exist that require immediate inspections.

Mr. Pierce said if that needs to be modified then it will be corrected.

Solicitor Rutt then addressed the landlord-tenant code. He explained that is in Title 25 of the Delaware Code, Section 5509(a) state:

The tenant shall not unreasonably withhold consent for the landlord to enter into the rental unit in order to inspect the premises, make necessary repairs, decorations, alterations or improvements, supply services as agreed to or exhibit the rental unit to prospective purchasers, mortgagees or tenants. A tenant shall have the right to install a new lock at the tenant's cost, on the condition that (1) The tenant notifies the landlord in writing and supplies the landlord with a key to the lock; (2) The new lock fits into the system already in place; and (3) The lock installation does not cause damage to the door. The landlord shall not abuse this right nor use it to harass a tenant. The landlord shall give the tenant at least forty-eight hours notice of the landlord's intent to enter and shall enter only between 8:00 a.m. and 9:00 p.m.

Mr. Rutt reiterated it is built into the landlord-tenant code to allow for inspections. Therefore, the landlord has the right to do that. He stated he is unsure of Mr. Passwaters' situation and what it specifically involved.

When asked what happens in a case such as Mr. Passwaters, as the landlord, had to go to court and where it ends. Mr. Rutt stated he is unable to give legal advice as to what should have happened. But if one of Mr. Rutt's clients informed him that his tenant would not allow him into the home, he would have advised the landlord to go to the JP Court and get an order against the tenant to allow him to enter the property.

Mr. Pierce explained the last item involved moving the fees, as well as the building, code, planning and zoning fees and licensing fees into a fee schedule with the intent that all fees in the City would be in one document for easy access and an annual review by Council during their budget hearings. Right now they have to be pulled out of every chapter of the code and are difficult to analyze.

City Manager Norenberg agreed that was done when a number of fees including the parks and recreation fees and planning and zoning fees were placed in one document. Eventually, this will be added to the website.

Mr. Pierce added that any change to those fees would be modified through the adoption of a resolution by City Council.

Councilwoman Peel then referenced section 401-88(b) adding that in her opinion, the inspection must be requested and no one is able to move in until that request has been made. Mr. Pierce stated that is correct though the request should be done between tenants.

When a new tenant moves in, Mr. Pierce explained that is the initial inspection of the year and if the property passes, no further inspection is needed if within a few months later another tenant moves out. Should they property fail on several items, another inspection will be done in year three. If the property passes and is compliant following the first inspection, another inspection is not needed until year five.

Councilman Mergner suggested putting them on an annual three-year-inspection cycle and not worry about changing out of tenants. He is unsure why we would want to inspect the property each time a tenant transfers. Mr. Pierce reiterated an inspection is not done each time a tenant moves.

Councilmembers Mergner and Peel both agree that is how it reads. Mr. Pierce explained that if the property has already been inspected and passed, it is good. They will be informed the property does not have to be inspected until a certain year.

Councilmember Burk recommends the language read that way in the code. Three Councilmembers believe that is not how the amendment reads and are recommending more clarification. He does not want it left to someone's discretion.

Councilmember Peel stated the amendment reads contradictorily to what was just said with tenant turnover. Mr. Pierce clarified that if the landlord requests the inspection, as opposed to the City saying the property will be inspected in 48 hours, is less intrusive and more convenient to all parties.

Councilmember Peel believes she is hung up on 'occupy after a vacancy and it cannot be occupied by any person other than the owner or a person directly related unless an inspection has been requested'. That implies to her that any time there is a turnover, there would be another inspection.

Councilmember Wilson suggests the language simply be tweaked.

City Manager Norenberg said there has been a lot of good feedback tonight, some on the actual proposal, and some not related to the proposal. However, because the inspection proposal is scheduled on December 11th, he recommends that Mr. Pierce work on some alternative language to ensure it is clear. At that point, Council can consider that amendment at the December 11th meeting and carried over under unfinished business.

Councilman Burk said if the intent is to make it more convenient for the landlords and tenants, he recommends we reach out to the landlords to get their input.

Solicitor Rutt informed Councilman Burk that could only be done in a public meeting. He further explained that if this ordinance is amended, it would need to be readvertised and another public hearing scheduled on the new amendment. In that manner, other persons will have the ability to provide input. However, to take comments outside the public hearing process would create problems with FOIA.

Mayor Shupe asked if a workshop could be scheduled that would involve the landlords and possibly some tenants to make sure the information on the street level is what it should be as far as the code. Solicitor Rutt stated that could be done or it could go all the way back to the committee though all that is delaying it further.

He feels the best option is to have Mr. Pierce make the changes based on the comments tonight. When it is put back on the agenda, he suggests the public comment session be reopened solely for the purposes of discussing the amendments and nothing else in the code.

Councilmember Wilson moved to defer action until December 11th on Ordinance 2017-20 to allow additional changes to be made, seconded by Councilmember Peel. Motion carried by unanimous roll call vote.

ORDINANCE 2017-22

An ordinance to amend Chapter 178-Realty Transfer Tax in order to limit the first-time home buyer exception solely to the grantee's portion of the City realty transfer tax (typically one-half (1/2) of the total City transfer tax) and require grantors to pay grantor's portion of the City realty transfer tax (typically one-half (1/2) of the total City transfer tax) and prohibit first-time home buyer grantors and grantees from contractually modifying the apportionment of the transfer tax to decrease the grantor's portion of the transfer tax.

City Manager Norenberg stated that earlier this summer, Sussex County adopted an ordinance related to the collection of the property transfer tax by eliminating the portion of the homebuyers' exception that was benefitting the seller, thus allowing the exemption to only apply to the buyer. As a result, we were getting questions from a number of attorneys and realtors after which our code was reviewed and it was agreed the exemption should be revisited. In the meantime, Kent County and other municipalities are also considering this change though the City Manager is unaware of their status.

He shared that real estate transactions in Milford for the first six months of 2017 records were then reviewed by staff. It was determined that 29 transactions involved first-time homebuyers (22 in Sussex County and 8 in Kent County). Sale prices ranged from \$45,000 to \$476,500, with an average of \$164,890. As a result of the first-time homebuyer exemption, the City gave up \$71,727 in six months to both buyers and sellers.

He stated that if the City follows the lead of Sussex County, and sales continue at an annual rate consistent with the first six

months of 2017, by applying the exemption only to the first-time homebuyer and not the seller, the City would receive approximately \$71,000 in additional revenue. This additional revenue, along with current realty transfer tax revenue, must be segregated from the City's general fund and expended solely for the capital and operating costs of public safety services, economic development programs, public works services, capital projects and improvements, infrastructure projects and improvements and debt reduction.

Mr. Norenberg stated that the real estate transfer tax is 4% at the State level and 1.5% for the City. The first time homebuyer exemption has been around for a while this amendment will continue to provide the exemption for the buyer but no longer for the seller. This would be a savings of approximately \$70,000 to Milford's taxpayers. It would mimic the amendment Sussex County implemented earlier this year.

Councilman Burk asked how much of the money that went to the seller was given back to the buyer as help; Mr. Norenberg explained we receive the new deeds from the Recorder of Deeds and do not receive the HUD1 forms.

Councilman Burk agreed that the City would have received another \$71,000, but the complaints he is getting from the realtors are that seller typically gives that amount to the buyer as an incentive. However, if there is no data to prove that, it is a mute point at this time.

City Solicitor Rutt stated that does occur but it is not limited to a first-time home buyer because it is already exempted.

Solicitor Rutt then stated that Title 9 addresses Counties and the Real Estate Transfer Tax of 4% of which the County can assess 1.5% of the transfer tax. However, Title 9 specifically states "and further provided that the County government, shall by ordinance, exempt from such taxation first time home buyers". He noted that it does not say "buyers and sellers". That program was started in 1998.

He referenced State Code's Title 22 which addressed the municipal transfer tax. It also allows municipalities to impose a transfer tax of up to 1.5% which is a division with the State of Delaware. He emphasized that the language does not say the municipalities are obligated to exempt first time home buyers.

Mr. Rutt further stated is there are a lot of municipalities that assess the transfer tax. This year when the State of Delaware increased the transfer tax from 3% to 4%, Sussex County went back and reviewed it to pattern exactly what the statute says that it only apply to first time home buyers. There is no mention of the sellers. As a result, the seller would pay the additional 3.75%.

Under the Delaware Code for municipalities, there is no obligation to exempt first time home buyers.

Councilman Mergner asked why this can't be made part of a sale and not identify what a buyer or a seller has to pay. In other words, he recommends the buyer and seller negotiate who pays what. He does not care who, though it thinks it should be paid at the time of the property transfer.

Councilwoman Wilson stressed that it was provided as an incentive for the first time home buyer to purchase a home.

City Solicitor Rutt stated it is much easier to address when it is included in the statute versus negotiating it.

Councilman Campbell then asked if there should be some sort of cap on the first time home buyer exemption; Mr. Norenberg stated there is presently no cap and that one of the properties purchased by a first time home buyer was almost \$500,000.

Solicitor Rutt explained that if there is no first time home buyer, the 4% State rate is equally divided between the seller and buyer. Of that, 2.5% goes to the State and 1.5% goes to the municipality. For example, the transfer tax on a \$100,000 purchase is \$4,000. Of that, \$2,500 would go to the State and \$1,500 to the City though it is equally divided and paid between the buyer and seller. If the property is in an unincorporated area, the 1.5% goes to the County.

Solicitor Rutt confirmed that Title 22 does not mention first time home buyers and leaves that discretion to each municipality as a result. However, the maximum is 1.5%.

Councilman Burk said that this has always been called a first time home buyer incentive which intent was to attract first time home buyers. He noted that people complain about landlords and tenants but a first time home buyer is owner-occupied which is part of the intent. However, we do not have data to prove if the buyer or seller paid the transfer tax.

Councilman Burk emphasized that Kent County has still not made a decision and he does not want Milford to do something that will detract a first time home buyer. He pointed out we have a new hospital and wants to attract doctors and medical professionals who will purchase Milford's electric and pay Milford's property taxes and have their children go to school here. He would not want to remove the incentive.

Councilman Burk said he is constantly asking what problem we are trying to solve. If the problem is the \$71,000, he asked where it went; if the seller gave it back to the buyers as an incentive to get them to the settlement table, then it's working. That is how he feels about it and added that he does not have any financial interest in the matter.

Councilman Mergner clarified that he does not want the seller to be penalized when selling to a first time home buyer. If he is working with a realtor, though he knows they are unable to choose whom they sell their property to, someone is able to figure it out. Solicitor Rutt pointed out if a seller tries to limit the sale to a first time home buyer, that would be a violation of the fair housing issues.

The Mayor noted that the staff's perspective in looking at the incentive is trying to determine if it is worth the return. That return investment may come in many forms such as a dollar amount or bringing a first time home buyer into the City of Milford, according to Mayor Shupe. He feels a case can be made on whether the \$71,000 should be collected or whether this incentivizes the first time home buyer.

Councilman Burk then referenced to the amount of incentives that have been given to businesses who locate to Milford. He stated that many businesses have been granted waivers of impact fees, licenses, permits, etc.

Councilwoman Wilson agreed adding that the Milford Housing Authority is pushing hard to get first time home buyers here.

Solicitor Rutt stated that a buyer must complete an affidavit in which they have to state where they have lived over the past ten years. By definition, a first time home buyer is anyone who has never owned an interest in real property anywhere in the United States and not just Delaware. However, this is taken at their word after they complete the affidavit. The State of Delaware sometime randomly audits them to verify addresses and if they find the information was incorrect, they can go back and penalize that person.

City Manager Norenberg then stated this was presented to Council as an option because Sussex County had made the change and we were receiving a number of questions about it. The fact is this revenue, must by law, go into a fund that would be used to help improve property values in the surrounding areas through the paving and up keep of streets and sidewalks, for example. He recalled the report provided to Council by the interns who assessed our paving conditions last summer. This is one way we could creatively look at having more money in that fund for those projects. At this point, it is really a public policy decision for Council to decide.

Mayor Shupe then opened the floor to those persons in favor of the ordinance. No one responded.

Mayor Shupe then opened the floor to those persons who wished to speak against the ordinance.

Randy Marvel of 4 Archers Way stated he has lived in Milford all of his life and has been in the real estate business for forty years. He spoke in 1989 when the City was against it. He spoke again in 1998 when Milford considered it. But in their wisdom at that time, Council decided to exempt first time home buyers, which included the seller, as a way to encourage first time home buyers to move into and buy property in Milford.

Mr. Marvel feels this should be considered a tax increase because Council will be increasing taxes on top of what the State Legislators did at the last hour by increasing that same tax by 1%. He said that Delaware now has the highest transfer tax in the United States though he thinks that perhaps New York City may be higher.

Mr. Marvel told the City Solicitor that the seller side of the first time home buyer exemption, in about 90% of the cases, is used as seller help for the buyer. He could have dug out records from last year just like the City did showing the \$71,000. He pointed out the first time home buyer is able to finance 95 to 100% of the value of the property. However, they run into problems with closing costs which can run as high as 10% depending on the mortgage. As a result, they have convinced sellers to contribute to that otherwise they would not be able to sell to first time home buyers because they do not have cash though a few may be lucky and are able to get the money from their parents. The realtors are able to convince the sellers to sell the house to them by contributing to their costs and the 3/4% is always part of the negotiations. He noted that if this change is made, it will come out of the buyers' pocket.

He continued by stating Milford is sending the wrong message to the public. Milford already has issues with competition and people wanting to buy homes, regardless of if they live in town or out of town. The current electric rates are about \$300 a year higher than comparable companies and buyers know that. People will come to Mr. Marvel and say they want to purchase a home in Delaware Coop's territory, for example. A homeowner in the City pays City and County property taxes which is at least twice of what it would be in the County.

Mr. Marvel emphasized that most buyers do not perceive any value for living in the City. It does not make any difference to the general public and they instead prefer to go where it is cheaper. Adding the additional City taxes on top of the mortgage payment and dividing it by twelve is another \$40 a month they have to pay.

According to Mr. Marvel, this will reduce the number of homeowner-occupied properties in Milford. He said there are a lot of first time home buyers who are buying lower priced homes in Milford. If this is eliminated, the number of first time home buyers will be reduced which creates a whole group of other issues. The electric write offs are much higher because that is who will end up buying a lot of properties when a first time home buyer no longer does. There will be more rentals, more issues with crime which makes the police busier, in addition to people moving in and out which creates trash issues.

Mr. Marvel also informed Council that owner-occupied properties participate more in City activities and are involved in City groups, government, schools and make better citizens in the long run to help the community grow.

He stated that his response will be if the City needs money, which it sounds like they do, he recommends the City tax everyone in Milford and not just people who buy and sell houses.

Mr. Marvel also encouraged Council to use the transfer tax revenues for capital improvements. He is aware for the last twenty years, that \$500,000 of that money has been used for operating costs at the police department. If that money had been saved, there would have been enough money to build the new police station.

Gloria Markowitz of 8 East Thrush Drive, Meadows at Shawnee, stated that she takes offense to proposed Ordinance 2017-22, exempting grantors who are first time home buyers in the City of Milford, for the following reasons. Number one, hypothetically speaking, this ordinance amendment is intended to entice first time home buyers to purchase in Milford. She said that we pay a realty transfer tax when we moved here twelve years ago which was \$4,106. She asked if the developer Mario Capano of Capano Development or Beazer Homes paid a realty transfer tax when they sold them their home and bets they did not.

Ms. Markowitz also stated that if a first time home buyer can afford to buy a home here, they can afford their share of the realty transfer tax. It is simply incorporated into their mortgage.

She said that point two, hypothetically speaking, this ordinance amendment is encouraging young families to purchase a home in Milford. Young families have children. Our schools are beyond capacity right now. She asked where will these children be put.

Point three, she continued, is that new home owners with children will vote yes to building new schools. They will not have remembered what happened here during the summer of 2016 when our school taxes skyrocketed.

Ms. Markowitz stated she is opposed to being outnumbered by new property owners who have no idea of what happened here in Milford last year.

She said that theoretically, point four, this ordinance is discriminating against older property owners because at a certain point in life, they need to sell and relocate to a 55 and older community or to an assisted living facility. They will pay a realty transfer tax to move in and now will pay another realty transfer tax to move out, according to Ms. Markowitz. She emphasized that the first time home buyers are exempt and feels that is discriminating.

Joe Palermo of 5 Misty Vale Court, Meadows at Shawnee, stated that when he first heard about this amendment, he was astounded and in disbelief. He indicated that as a senior citizen who just turned 70, he experienced a substantial increase in our school taxes and now the State of Delaware has added on another percentage point to the transfer tax. Now the City is going to turn around and try and pass an ordinance that will increase our taxes.

He further stated that a majority of the residents that are here create a bedroom community of senior citizens. At one point they may no longer be able to handle the home because of financial reasons or because of health. Should they decide to downsize to a condo or a co-op, they will have to pay a State of County transfer tax and now a City transfer tax along with a real estate commission of 5 to 8%. He said that when all of that is added up along with all the incidentals, it is a considerable amount of money. He asked Council to look at the senior citizens who are the little guys and is on a fixed income. He concluded by saying to remember, when a hidden tax is passed, they are the ones that will be hit most because they are on a fixed income.

Dave Markowitz of 8 East Thrush Drive, Meadows at Shawnee, said he only has one thing to say. He thinks that whatever the intentions are, the result is not going to be what the City wants if this ordinance is passed. People are going to sell a house and people will buy a house and are going to pay the selling price. He and his wife have sold three homes themselves without a realtor. They can testify that if they don't want to sell a house to someone, they are not going to sell the house. He said sorry, but a person can work successfully without a realtor in the same manner. If a person says to a realtor don't give us a first time home buyer, and that realtor wants to sell that home, that is what they are going to do. Whatever the intentions are, Mr. Markowitz does not believe it will work and should not work because it is a form of discrimination.

He added that they have paid their taxes in Milford for twelve years. It would be hard for him to imagine that on their way out, the City is going to stick it to them one time. It doesn't seem fair to Mr. Markowitz.

Mayor Shupe then clarified that the ordinance involves only a first time home buyer. The realty transfer tax would be set at the same rate it currently exists unless it involves a first time home buyer.

Inaudible conversation occurring.

Joe Wiley of 202 Lakeview Avenue readdressed Council stating that he is trying to follow the comments though some of them are very confusing. Some of the questions about proposing an ordinance perhaps should come from a group of buyers and sellers. Mr. Wiley is unsure how this ordinance was created and feels that it should be made by multiple people.

Mr. Wiley pointed out there are 1,600 rentals in Milford and if he is not mistaking, the rental stock in Milford is about 50% of the existing homes. He feels the City's goal is to have more owners in town because they generally take more interest in their properties. The idea of trying to change this ordinance, which would limit the first time home buyer exemption, is playing against what Milford is trying to do. He noted that a buyer can choose to sell to whomever they want. You are unable to discriminate even though the buyer has the right to choose one offer over another for any reason. He stressed that buyers do not always take the highest offers.

Mr. Wiley does not understand why the City wants to stop incentivizing first time home owners and instead say that anyone living in the house will be exempted, period. He is sure that will get more people to buy houses in town.

Mr. Wiley said he is against them doing away with the ordinance and not continuing with the first time home buyers exemption. He said that if the City had reviewed the HUD1's, almost all of the money that goes on the buyer or seller side goes back into the pocket of the person buying the house. The first time home buyers come to the table with no money and need all the help they can get. He would hate to see them lose this exemption.

Inaudible conversation occurring.

Solicitor Rutt then read the proposed amendment adding it appears there is some confusion:

On transfers where all grantees qualify as first-time home buyers, no transfer tax shall be imposed on the grantee's (buyer'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 (buyer's) portion of the transfer tax and shall not relieve the grantor (seller) from payment of grantor's portion of the transfer tax.

He explained that right now, there is a 1.5% transfer tax that the City collects on property transfers. If the person who is buying is a first time home buyer, that tax is waived for both the buyer and the seller. The ordinance is proposing that only the buyer's portion, would be waived in a first-time homebuyer situation. The City would then collect the transfer tax by the seller.

Mr. Rutt further explained that if a property is sold to anyone else, other than a first time home buyer, all parties have to pay the realty transfer tax. Presently, if a first time home buyer purchases the house, the seller is also exempt from paying the real estate transfer tax.

Inaudible conversation occurring.

The Solicitor continued by stating the seller's portion is .75 or 1.5% divided by two. The buyer's portion in a first time home buyer situation, or .75%, would still be waived. The seller would then be required to pay their .75%.

There being no further comments, Mayor Shupe closed the floor to further comment.

Mr. Burk moved to deny Ordinance 2017-22, Chapter 178, Real Estate Realty Transfer Tax, and to keep the language in the code as it currently exists, as an incentive to first time home buyers, seconded by Councilwoman Wilson. Motion carried by a unanimous roll call vote:

Councilmembers Burk, Morrow and Wilson both said denying the ordinance is a positive incentive for the City.

Mayor Shupe thanked everyone for coming out for public comment to ensure Council made the right decisions.

A motion was then made by Councilwoman Peel, seconded by Councilman Mergner to adjourn the Public Hearings. Motion carried.

The Public Hearing was adjourned at 8:50 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Transcriber

MILFORD CITY COUNCIL
MINUTES OF MEETING
November 13, 2017

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, November 13, 2017.

PRESIDING: Mayor Bryan Shupe

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

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

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 8:59 p.m.

INVOCATION AND PLEDGE

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

APPROVAL OF PREVIOUS MINUTES

Councilmember Brooks made a motion to approve the October 9, 2017 Council Meetings, seconded by Councilmember Burk. Motion carried.

RECOGNITION

Police Officer Promotion

Mayor Shupe announced this item will be postponed until the November 27th meeting.

City Manager Eric Norenberg

International City/County Management Association (ICMA) Fellow Evan Miller asked that any City employees present at the meeting to join him at podium.

Mr. Miller then stated 'that tonight we would like to recognize someone who has been an invaluable member of the community and has dedicated himself to the services that the City of Milford provides. He tirelessly represents the City with distinction for the betterment of the community and in the highest professional manner'.

He shared that last month, the ICMA celebrated their members' dedication to public service and professional management at the local level. Among the celebration, Milford's City Manager Eric Norenberg was individually recognized for his thirty years of local government service during the Celebration of Service to the Profession which took place during the ICMA Annual Conference. He stated that every day, Mr. Norenberg brings a level of expertise and commitment to the City of Milford that is simply unparalleled. We express our gratitude for his service and look forward to his continued success as a City Manager.

Mr. Evan stated that on behalf of the City of Milford Staff, he congratulates Mr. Norenberg on his achievement and presents him with a plaque from ICMA for his achievement.

Mr. Norenberg thanked everyone for the honor.

MONTHLY POLICE REPORT

Police Committee Chairman Burk presented the report on behalf of Chief Brown noting that activity has increased. Councilman Mergner also publicly thanked the police officers who were in his neighborhood on Halloween.

Chairman Burk also noted that he, along with Chief Brown and five other Milford Officers, attended the IACP Conference in Philadelphia, adding it is a good training opportunity for the officers and is money well spent.

Chairman Burk moved to accept the October Police Report, seconded by Councilman Campbell. Motion carried.

MONTHLY CITY MANAGER REPORT

City Manager Norenberg referenced the report in the packet. He noted that Code Enforcement had 104 cases that were closed during the month and those that are open continue to be worked on.

He reported that we had the first ever City Garage sale and Staff was surprised on how much interest there was. As a result, the City was able to sell a lot of obsolete and miscellaneous items and netted approximately \$2,000.

Mr. Norenberg reported that the Community Conversations continue with eight held to this point. The next one will be held on Wednesday, November 15th and a list of upcoming meetings, agendas and minutes can be found on the City's Website. Meetings have been scheduled for each of the four wards and the Haitian Community. He welcomes any suggestions in the meantime.

Councilman Mergner then asked what a resident does when they miss a trash collection due to a holiday; he asked if they are able to call and make a special request for a pickup.

Public Works Director Mark Whitfield was present. He explained it is difficult to go back around in another neighborhood when it is not scheduled. However, if they have a lot of debris, they can request a special pickup though the City prefers they wait until the next regularly scheduled pickup.

When asked if there is an additional cost, Mr. Whitfield stated yes and that is currently under review.

Councilman Brooks informed Public Works Director Whitfield that last Tuesday his trash and recycling were picked up at different times with trash being last at 5:00 p.m. He has never seen it done at that time and his concern was the dark, rainy conditions and the two employees on the back of the truck. Because of the speeding problem on Tenth Street, he paid particular attention and noticed this was slowing the vehicles down. Councilman Brooks was concerned someone was going to get hit in those conditions. He did acknowledge the employees were dressed in the appropriate safety clothing and was pleased with that.

Mr. Whitfield stated he is surprised and will check into that. He said that normally they get done between 4:00 and 4:30 p.m.

The Public Works Director did report that his Public Works Crews have gone to a new uniform with reflective piping so that they can be more easily seen. Councilman Brooks said the uniforms are very nice and everything has gone very smooth until that late pickup adding that they were on the old trash truck.

Councilman Burk then referenced the memo that stated the City only received one proposal for residential rental inspections. He is unsure if it was mailed to multiple companies or asked if we are getting three bids; Mr. Norenberg said that was the intent. However, for professional services, there are fewer stringent requirements though it was advertised and a complete RFP issued in late August/early September.

Mr. Norenberg was also surprised there was no more interest. As a result, we will most likely enter into a one or two-year contract to see how it works out. In the meantime, the Planning Director has been negotiating with them to get the best results.

He pointed out that he is familiar with a number of companies who are not presently operating in Delaware though they have an interest in relocating here. They are meeting with one tomorrow and will continue to find the best solution.

Councilman Mergner moved to accept the Monthly City Manager Report, seconded by Councilman Burk. Motion carried.

MONTHLY FINANCE REPORT

Finance Committee Chairman Morrow reported that through the third month of Fiscal Year 2017-2018 with 25% of the year having passed, 33% of revenues have been received and 21% of the operating budget expended.

Mr. Morrow said it is early in the year and we need to continue spending cautiously and saving money where possible in order to prepare for next year's budget.

It was confirmed the City's financial reports are available on line. Mr. Norenberg referenced the fund balances on the first page of the monthly report. He noted that a number of those funds are dedicated to particular utilities and reserves are in place for emergencies and planned capital improvements.

Councilman Brooks moved to accept the September 2017 Finance Report, seconded by Councilman Campbell. Motion carried.

COMMITTEE & WARD REPORTS

Councilman Brooks reported that their Community Conversation for the third ward will be held Wednesday night at 6:00 p.m. After the first of the year, he plans to have monthly ward meetings because he is now permitted to have them.

Mr. Norenberg recalled discussing this with Councilman Brooks last week. He stated that he will be happy to make sure the City Clerk's Office and Staff is available on those evenings and there is proper notification and recordkeeping as is required under FOIA.

Councilman Burk reported the second ward held their meeting and a number of people were in attendance. Some things were surprising and he looks forward to City Council receiving the information. He was surprised that bike trails were a higher priority to most residents than a new police facility. He said that means we need to continue working as we move forward with the new facility but refocus accordingly.

Mayor Shupe said he has attended several meetings and it is very interesting to see the differences in what is important to people based on the wards and/or their interests when it comes to other groups.

Councilwoman Wilson reported the Fourth Ward Community Conversations will be held Tuesday, December 5th.

Minutes from all Community Conversation meetings are available on the City website.

COMMUNICATION & CORRESPONDENCE

None to report.

UNFINISHED BUSINESS

Authorization & Implementation/Classification and Compensation Study

Mr. Norenberg recalled the discussion a month ago related to this topic. At that time, the City's HR Administrator was on vacation. She is in attendance tonight and is present to answers any questions regarding the study.

He then referred to the following memo:

Overview and Background

It has been approximately ten years since the City of Milford has done a job classification and compensation study for general employee positions. A compensation study was done in 2016 for the sworn police officers and sergeants in conjunction with union negotiations. During the FY 2016-17 budget process a classification and compensation study for our general employees was budgeted to be sure that we were staying competitive in the market place. Through an RFP process, Paypoint HR was selected and work began in early-2017.

Dr. Rick Campbell and Ms. Karen Campbell from Paypoint HR have worked with every department to update job descriptions in order to ensure that each position is accurately described in order to make appropriate compensation comparisons. On

October 9, Paypoint HR presented their research and general findings for the City's Job Classification and Compensation Study. The report includes recommendations for an updated pay grade chart so that City of Milford positions are competitive in the market place, to retain our workforce and to be attractive for future recruitments. In addition, Paypoint HR has made other recommendations for improving human resources practices and employee compensation.

Discussion

Paypoint HR's report, details recommendations in several key areas and the team has provided the City with several deliverables. Following is a list of each of those key recommendations and next steps for implementation, as well as the deliverables and how they will be used:

- **Updated Job Descriptions:** Job descriptions have been updated by Paypoint HR, in consultation with City department heads, supervisors and human resources staff. Once the study is accepted by the City, job descriptions will be posted on the City website, so that current and prospective employees can review their job descriptions and assigned pay grades (see next item). As many of the job descriptions have changed (and a few titles), HR staff and supervisors will meet with everyone to review the updated versions. Paypoint HR will provide the City with the tools to use in reviewing new or changed positions in the future, so that the continued administration of our job descriptions and classification plan is consistent.
- **Updated Pay Grades:** The report provided to City Council shows the new pay grades (salary schedule) on page 45 of their report. This chart, and an example shown on Exhibit A, will also be added to the City's website so potential candidates know the range of pay for a position that they might be interested in applying for. In the future, Paypoint HR recommends that the pay grades be adjusted based on the CPI annually. The study found that most positions are at or possibly slightly above the market average, in particular those in the Teamsters and IBEW bargaining units (as the City Council will recall, early results from this study were presented in late-spring that resulted in the successful negotiation of the IBEW collective bargaining agreement that was approved by City Council in June). The recommendation is to adjust salaries of positions not yet at the market average (see fiscal impact below).
- **Merit Pay and Special Recognition:** Paypoint HR recommends moving away from standard, across the board pay adjustments to a system that is based on a combination of cost of living adjustments and merit pay. As a result, staff will be recommending changes to the personnel ordinance in the coming weeks. Staff feels these changes will motivate our current high performers, while giving extra motivation to those employees who may not feel inspired by a pay structure that rewards every employee with the same pay increase each year.
- **Restructured Performance Appraisal System:** Paypoint HR recommends employees have a more active role in performance evaluations than in the past. This could initially involve a self-assessment and in the future the use of a 360-degree performance appraisal for all positions. In addition, with the completion of the Strategic Plan, individual goals and objectives will be linked to division and department goals that are then linked to strategic goals set by City Council.

Next Steps

Once the study is accepted by City Council and authorization is given to the City Manager and Police Chief to proceed with implementation, the following activities will take place in the coming weeks:

- **Rollout and Implementation:** The results of the study will need to be presented to each employee. This will include a review of their updated job description, along with any position title changes or pay grade modification that has been as a result of the study.
- **Public Posting:** The new pay grades and job descriptions will be posted to the City's website, so that it is easily accessible to all staff and prospective employees.

Fiscal Impact

Over the past few weeks, we have looked at a variety of options and financial scenarios related to implementing the recommendations to adjust the compensation of the positions that the study identified were below the market. Keeping in mind that many of our employees are at the market level and will need no adjustment, and that the collective bargaining agreements for Police Officers and Sergeants (approved last year) and for unionized electric employees (approved earlier this fiscal year) brought those employees to market rates, the Finance Director, Human Resources Administrator and I sought to find a way to responsibly bring these remaining employees up to the market. Our goal was to be able to make the adjustments for below market employees (identified in the Paypoint HR study) and associated benefit-related costs with no adverse impact on the budget or on revenue sources.

Several scenarios were modeled, including:

- Making adjustments retroactive to July 1, 2017
- Making mid-year adjustments at various implementation dates,
- Making 50% adjustments for supervisory and management employees this year and 50% next fiscal year, etc.

Concurrently, we identified savings in both the general fund departments and enterprise fund operations that can offset the cost of additional compensation. As we are partially through the fiscal year, the impact will be less than the impact of making the

change for the full year. However, once implemented, these adjustments will carry on into the full fiscal year starting in July 2018. Accordingly, any savings that were identified had to be ongoing, not one-time savings or one-time revenues. The result is the scenario shown on Exhibit B that will not result in the need for a revenue increase.

Alternatives

1. Set competitive compensation target to less than Market Average: Paypoint HR and staff agree that in order to attract and retain a quality workforce, we should aim to compensate our employees at the market average. Choosing to be at less than the market average would reduce the fiscal impact of the recommendations now and in the future. During the course of the study, scenarios were modeled that would result in financial savings and reduce the number of positions to be adjusted. However, choosing those options would likely result in reduced morale, increased turnover and difficulty in attracting or promoting into key positions. This alternative is not recommended.

2. Delay implementation of compensation adjustments: The scenario that is modeled and recommended in Exhibit B would implement changes in mid-November. City Council could choose to delay implementation. Each month of delayed implementation would reduce the fiscal impact by approximately \$19,000.

Recommendation

It is recommended that the City Council authorize implementation of the recommendations of the Paypoint HR Job Classification and Compensation Study, including the compensation adjustments

Mr. Norenberg noted that the next step of the implementation plan is to meet with supervisors and every employee to ensure that everyone understands the changes and scope of their job. All of the updated job descriptions will then be available on line.

He noted there are a few minor job title changes but nothing substantial. The upgraded paygrades will be posted on line as well. The 1992 Personnel Ordinance continues to be updated. The merit pay and special recognition that the PayPoint HR Consultants discussed internally with City Staff will move away from the flat across-the-board payraise, to ones that are linked more closely with merit pay increases for anyone non-union.

Mr. Norenberg recalled that the implementation of the pay adjustments was recommended to be November 1st though that was delayed.

In terms of a policy making role, it was discussed whether we need to be competitive when setting our compensation at the market average or if we want to be above or below that. HR Paypoint Consultants and City Staff agreed during the process that we need to be attracting and retaining a quality work force and should aim to compensate our employees at the market average. If less, that would save money but we would risk losing employees and create greater challenges as we are currently experiencing in terms of recruitment.

Councilman Campbell asked if the compensation increases include a COLA. Mr. Norenberg explained that at this point, there is a need to adjust the pay ranges for specific positions/titles not considered to be near the market average. However, the majority of our employees are either in the police department union or the IBEW bargaining unit. Neither of those groups will be impacted by the results of the study. A number of other employees are at or near the market average and will not be adjusted.

The City Manager noted there are only about twenty positions that need minor mid-year adjustments. Cost savings have already been identified to cover those twenty increases to prevent any rate adjustment that may be needed at this point to pay for them.

In terms of COLA, if the recommendations of the study are rolled out properly, staff may propose the employees receive a small COLA of .5 or 1% and include some money for merit increases to reward the high performance employees and to help motivate the others. He feels that will be a better strategy moving forward versus all employees receiving the same increase.

Mr. Norenberg said that according to Consultant Karin Campbell's presentation a month ago, the majority of employees felt that everyone receiving the same increase each year is de-motivating and not as encouraging as being rewarded.

Councilman Campbell asked if that includes the four staff officers in the police department; Mr. Norenberg confirmed the positions that still need adjustments included the four senior officers in the police department that are non-union employees, along with a couple other positions there.. However, Mr. Norenberg pointed out that Chief Brown, the City Clerk and he will not be included in the list because those three positions report to Council and Council preferred not being restricted to a pay scale

when considering their compensation. He feels those positions are pretty close and recalled Chief Brown asking about increases for his staff. As a result, their salaries are being adjusted to ensure there is an adequate gap between the senior union members and the Department's supervisory command staff to encourage others officers who want to be promoted into those positions.

Councilman Burk asked if Chief Brown had received anything more than Council has received in regard to this study and to be specific, data on his employees. Chief Brown stated no.

Councilman Burk pointed out the study states that the City Manager and Police Chief should implement upon authorization. He recommends that Chief Brown be provided the raw data that both the City Manager and HR Person have had during the study. He asked if Chief Brown can have access to that data for his employees and specifically any data related to police employees.

City Manager Norenberg stated that Chief Brown has received the updated job descriptions for each of the six positions in the police department that will be adjusted. He asked if Councilman Burk is referring to the data from other police departments that was used in comparison; Councilman Burk stated he is asking about comparable data that was received from other police departments and referenced the current negotiations whereby the teamsters will receive the comparables being used in the discussions. He feels that because the police fall under Chief Brown, he should be privy to that information. Councilman Mergner agreed that information should be provided to every department including public works or parks and recreation or any other department.

Mr. Norenberg stated that each of the department heads had a meeting with the consultants prior to the presentation given at the Council meeting. He was unaware of anything that Chief Brown needed though the Public Works Director had a follow-up on one position that needed further consideration by the consultants in addition to a few other follow-up conversations about individual job descriptions or confirmation they were benchmarked appropriately with accurate positions in other communities or private employers. However, if Chief Brown needs something else, Mr. Norenberg will provide it and sit down with the consultants if necessary to resolve it.

Councilmember Peel explained that one of the things that stood out to her was about the merit-based pay. She said the consultants emphasized our employees wanted that as motivation. She also wants to talk about the implementation plan in moving forward to include the opportunity for training and education to increase salaries and that the City pay for training as a benefit. She is unsure how all of that works.

Mr. Norenberg explained that Councilmember Peel is talking about a number of things that are already in place though the Personnel Ordinance that dates back to the early 1990's. As a result, there are a number of sections that need to be added or overhauled. Those details are currently being worked on by HR. The department heads have reviewed that document four to five times during staff meetings. It will then need to be reviewed by the City's Labor Attorneys to make sure nothing has been missed. He is hoping to introduce that ordinance in December.

Councilmember Peel then stated that she works for an agency that does not have merit-based pay so she sees everyone making the same salaries and agrees it is discouraging for productive employees. One of the things they have implemented is an innovation award which is a financial incentive. She explained it is similar to a person applying for a grant and there are points for collaborating with another interagency to solve a problem. They would then post their priorities and employees would come up with ways to solve them. She recommends that as well.

Councilmember Peel pointed out that people who are living and breathing the problems firsthand may have some insight to the solutions.

Mr. Norenberg said one thing they have talked about in terms of the strategic plan are the goals and priorities that will be established for the next five years will be tied to the goals and objectives for the City Manager and each department head. That will then filter down to every employee who will have them linked into their performance appraisal process. They want to recognize not only individuals, but teams that may be working to solve a problem or get a grant or implement a new program.

Councilwoman Peel continued by explaining it is twofold for them. They applied for the grant and there are more people awarded the grant money to put toward the problem. At the end, they do a write up explaining the progress and one team is

selected as the innovation winner for coming up with the most progress.

Mr. Norenberg added that lots of private organizations have that type of recognition in the way of suggestion or similar awards. He agrees we definitely need to reward creativity and innovation as well as cost savings. He knows that is something the City has been focusing on and we have been identifying ways to shave costs by doing things more efficiently but still providing great customer service.

Councilman Mergner agrees and likes the 'good idea' award concept.

Councilwoman Peel feels it provides motivation for those employees who are already doing things that are not being recognized. That is something that stood out to her in the focus group. It was apparent that people were frustrated about working harder than someone else though they received the same pay.

Councilman Burk asked how morale is between employees and asked the reasons our employees are giving for leaving during the exit interviews. He asked if it is because of benefits, pay or merit-based increases.

HR Manager Lisa Carmean stated it is definitely a combination. She stated that the City has a workforce that has been here a long time so we are running into the situation where people are retiring. There has been four people retire this year. In the next coming years, there will be more people retiring. In certain positions, she stated that people are looking at the fact that they can go and make more money elsewhere. A lot of them involve our younger force. They feel money is more important at times than the benefits.

Ms. Carmean said that even though our benefit package is very rich, one thing that came out of the study was that a lot of other municipalities do as well and the City of Milford doesn't always realize it.

She further stated that a lot of times, the other municipalities and herself feed off one another and exchange ideas. The HR Manager emphasized that there are other municipalities that have some very rich benefit packages as well.

Councilman Burk said he just received from his employer a double explanation of the benefits. It showed the current pay and the value of each benefit received. He asked if we provide that to our employees; Ms. Carmean said she has plans to do that and was hoping that would be in place by now. Unfortunately, she is only one person and does not have the time to do everything. The City's software allows that information to be pulled at the end of the calendar year. She tried last year, but was just a little bit short when she realized exactly what needed to be pulled before the payroll had to be closed to start the new year. She agrees it is very important our employees see that information.

Ms. Carmean captured that information at the end of the fiscal year in hopes to do again. But in turn, between then and now, we have had a lot of turnover involving employees that have left and new hires. That turnover creates a lot of paperwork for her. Because we piggyback with the State medical and pension plans, the State of Delaware has reduced its workload by pushing the paperwork toward our HR Manager. In turn, what used to be the employee filling a form out was sent to the pension office or OMB to load. That is all done by Ms. Carmean and she is responsible for any updates as well. Though it doesn't sound like much, when something needs to be updated, it takes her a lot of time. She spends a lot of time adding all the information on a new employee or removing an employee that is leaving.

Councilman Burk said he received the benefit breakdown last week. He learned the cost of his benefit package is twice what his salary is. That helps him think that he is getting a good value which convinces him it is not worth looking for another job because of the overall value and feels overall it is beneficial.

Councilman Burk then asked about morale. Ms. Carmean said that at the time it is mixed because we have employees that are embracing a lot of the changes in the City but we also have employees who don't like any change and it brings fear.

Councilman Burk asked if the increase in pay for everybody will alleviate that fear; Ms. Carmean stated that the fact is because our employees know that City Council took it upon themselves in the budget to pass this compensation study showed everyone that Council was interested in knowing where our employees need to be in the market value. She feels they have seen the

different groups, meaning the two unions and what has happened with them. The latest one being the IBEW union which was included in this study and the salary increases already implemented and approved by City Council. She thinks that is because of the fact that employees talk to one another. A lot of the employees are looking at the fact that the compensation study has been done and they are waiting to see the results.

Ms. Carmean also thinks that when the last study was done ten years ago, from the results she has seen the fact is we still have a few people who are not where they need to be only because that last study was never completely implemented. At this point, she thinks, and has discussed with the City Manager, that bringing everyone to market value and providing a firm foundation to build upon, will cause our employees to get even more motivated which will be seen through improved employee evaluations, more training and things like that.

Councilman Burk agreed that developing more talent is a good way and because Ms. Carmean is referring to a great deal of pending retirements, we need to make sure we look at our bench and that we have experienced people that are going to matriculate into these vacant positions.

Councilman Mergner asked if we are tracking turnover rate. Ms. Carmean stated that within the last year, we have had eighteen people leave and fifteen new hires. She has had to process each of those so she is familiar.

Councilman Mergner asked if there is a ballpark number of what it costs the City to retrain a new hire and any other associated costs. He feels that if we don't have that now, it is something that needs to be tracked. Ms. Carmean stated she does not have the number off the top of her head. However, she does know that it not only affects the new hire, but affects all of the other employees, plus the department, plus the services we are giving to our citizens.

Councilman Mergner agreed it is a struggle when there is a high turnover and there are definitely associated costs. The City needs to determine that cost though he also understands that each department is different and specifically public works, police and city hall. But it needs to be considered especially after losing eighteen people in one year.

Councilwoman Peel said that is most likely impacting morale as well.

Mayor Shupe stated that when we talk about finance and wanting to make sure all of our employees are at the market rate, have we also looked at spending some of the salary increase costs to hire additional employees; he asked if our current employees would be happier if our departments had more employees to support one another. Councilwoman Peel asked if Mayor Shupe was referring to a trade off from the pay increases.

Mayor Shupe continued by stating that our Planning and Code Department, for example, has a very small number of staff who try to handle rental licenses, business licenses, inspections, etc.

Councilman Burk pointed out that Ms. Carmean has wanted to do the benefit summary for sometime but doesn't have the time.

Mayor Shupe reiterated that possibly adding employees to each department to help with the duties is an important step or if Ms. Carmean thinks the pay increase will be more important. Ms. Carmean stated that at this moment, because there was a staff reduction approximately eight years ago. Over those years, we have continued to ask our current employees to do more and more but with less and less. She thinks it would be somewhat of a morale hit and though it would be nice to have the extra hands to help, at the same point our employees have gone above and beyond to do that extra mile. Now all of a sudden, they do not feel like they were valued in what they have done.

Councilwoman Peel agreed stating that they just want to be paid for the work they have been doing all these years and especially any extra work. Ms. Carmean stated it is something we definitely need to consider but also feels the current City work force needs to be brought to a level where all of groups of our employees are on the same level.

Councilman Mergner said there will be a lot learned when the job descriptions are completed. He feels there will be a better understanding of what our employees do and should actually help determine what each department does a lot of and those departments that are understaffed. Until the job descriptions are completed and provided to each employee, it will not be understood.

Councilman Burk then reconfirmed that eighteen people left last year; Ms. Carmean stated yes though four were retirees and fifteen new employees have been hired. Right now, there are two open positions though one is going to be filled.

Councilman Burk suggests removing the four retirees from the equation because they would most likely have retired regardless. Of the remaining fourteen, what was the reason for leaving. Ms. Carmean stated that she knows at least four to five went to another employer to make more money.

Councilman Burk asked if we have an opportunity to counteroffer in that situation; Ms. Carmean said if it is not budgeted we do not have the funding to do that. She has handled that in the past by telling those employees that were leaving that the City was doing the compensation study that was going to show exactly what salaries were needed. However, they left anyway because they had the opportunity to make more money.

According to the City Manager, in two department cases, the employees are in bargaining units and is unable to negotiate by offering more money.

When asked if the City requires pre-employment drug testing, Ms. Carmean said we require pre-employment drug testing and physicals for all full-time and part-time positions.

Councilman Brooks asked Ms. Carmean to provide a list of the fourteen positions that employees left. Ms. Carmean stated that we had an accounting position that left but has since been filled. We also had some police officers leave and other police staff leave. We also had a retirement from the Street Department and a retirement from the Parks and Recreation Department. The building inspector left to take another job that was motivated by an increase in salary.

Councilman Burk pointed out that the building inspector left to take a city manager position in another town.

Mr. Norenberg said he will have Ms. Carmean get the entire tally for the year to date and provide that by email to City Council. He does not want Ms. Carmean to do this off the top of her head.

Councilman Burk said he wants to get a read on the morale and if we are doing exit interviews, would really like to know what they are saying. As the attorney from the State Integrity Commission stated, Milford is a small town and if people aren't happy, you hear about it. He had heard some things previously about a specific department that he brought before Council so we could get ahead of it. That is why he is asking for this information.

Councilwoman Peel asked if fourteen is an average turnover or a lot; Ms. Carmean stated that is a really high number. Councilwoman Wilson agreed.

Councilman Campbell stated that if he looks at the money needed to bring these salaries to market, \$172,000 is needed which means there are a lot of people below the midpoint. Councilman Mergner prefers the City to get ahead of the problems and we need to react to that though he feels we should have already been in front of this.

Councilman Morrow asked for the current salary grade structure and referenced the new one. He would like to see exactly what has changed.

Ms. Carmean feels the new pay structure is not going to be a true comparison because the new structure is based differently. That will be one of the things she will need to convey to the employees. Their first thought will be 'I was this and now I'm this'. Councilman Morrow recommends that before it is conveyed to the employees, it needs to be conveyed to the eight Councilmembers exactly what has changed.

Ms. Carmean pointed out this is a brand-new scale and has nothing to do with the old structure. It is based on one created by PayPoint solely. Councilman Morrow understands but is asking to see where the money is going based on the changes. In other words, the plan to implement so he understands it from a financial aspect.

Councilman Brooks agreed stating that Council used to know everything. Now everything is a secret. Councilman Morrow said he simply wants to see where we are starting at to get a better understanding.

Councilman Brooks said when he was Vice Mayor, he and the Mayor would sign checks weekly and he knew what was being paid by the City. He knows nothing more than a man on the street at this point in time.

Councilman Burk stated that is a good point and asked where the money is coming from. He recalled the previous discussion stopped before specific accounts were talked about and exactly where the \$163,904 is being transferred from.

City Manager Norenberg stated that Ms. Carmean, in conjunction with the Finance Director and him, scoured through the current year's budget and identified areas with potential savings that would carry over. They did not want this to be a one-time savings that could not be replicated in next year's budget.

He stated that in some cases, new hires had chosen the single health insurance coverage versus a family plan, or similar healthcare situations. It was also broken down by department to make sure it is touching the right funds and specifically general fund versus the enterprise accounts. They have also incorporated the costs of the fringe benefits. As Councilman Burk referenced earlier, Mr. Norenberg stated that our fringe benefits are 27% of those salary increases. As a result, Ms. Carmean was able to find the exact savings in the HR-related line items. A minor adjustment may be needed later by Council when other minor adjustments are done, but it will not be appropriating any new money though some money may need to be moved from one department to the right department though it will remain in the general or enterprise fund.

When asked about the second question, Councilman Burk said that the funds have been identified and asked how that came about noting it is a sizable amount of money.

Ms. Carmean stated that she took a fine tooth comb and went through each budget.

Mayor Shupe emphasized that eighteen employees leaving here is the canary in the coal mine and a major problem. Our City employees need to be taken care of and rewarded with a rate they deem at least market value so that we can retain our employees who are productive and also attract new employees. He feels the City needs a strong work force in order to move the City forward considering the growth and new projects that we have on board.

The Mayor further stated that is also needed in the private business and he also compares salaries to where they need to be in order to retain the employees that are doing well as well as attract new ones. He feels that salaries and benefits are the two items that most employees look at.

Ms. Carmean informed Council that the City of Seaford did their study two years ago and just brought their employees up to the level they needed to be. Councilman Burk asked that if the study was done two years ago, why are they just now implementing the increased salaries; Ms. Carmean explained that they implemented those salaries last year though the study was done two years ago. She is also aware that Kent County did a study not too long ago as well. It is often recommended to do a study every five to seven years and in Milford's case, it has been ten years. When she compares the old study to the new study, she feels we would not have as many positions to adjust if the last study had been completely implemented.

Councilman Brooks asked why that study wasn't implemented. Ms. Carmean stated it was probably due to the changes in management though she is unsure. All she knows is that it was never followed through. Looking back at the old study, part of it was put in place and the rest of it was supposed to follow. And it was never done though maybe they thought the annual increases were taking care of it. But the new study shows it was never implemented like it should have been and did not include the increases that were needed.

Councilwoman Wilson stated that she somewhat knew when Mr. Norenberg was interviewing and going through his hiring process, that the HR Department needed a great deal of help with becoming current and determining the best way to benefit our employees. Way back then, she can remember conversations about that. Even further back, when Councilwoman Martha Flick was here, who worked in HR at the college level, she was putting together increases for the employees in the City of Milford. She has seen us drag our feet for the non-union employees for a really long time. She is glad it is happening now and believes it is scary to know that fourteen people have resigned from the City. She was unaware of that but hopefully, the City will be able to recruit good employees because of these increases who will want to stay here and feel this is a great place to work.

Councilwoman Peel noted that as part of the transition, there are almost all new department heads though that is a natural transition. Councilman Campbell said he has seen the incorporation of the union and had heard that several union employees

left.

Mayor Shupe feels that Councilman Mergner made a good point and the City does not want to wait until something happens to ask what needs to happen. Councilman Mergner added that he sees it all the time. Someone comes in and starts taking qualified and experienced employees which can decimate a business. Having eighteen employees resign requires the City to be on the forefront. We need our other current employees to be recruiting and bringing in potential employees. Because of the loss, he agrees there is a need for competitive salaries and benefits. He also agrees that plays into the morale and is all intertwined into one package. He feels the benefits are good but it sounds like the non-union compensation needs to be bumped up. Hopefully, this will help any morale issue that needs to be focused on as quickly as possible.

Councilwoman Peel agrees though Council may ask for the fine tooth comb Ms. Carmean referred to again at budget time.

Mayor Shupe recalled this being discussed during the last budget and agreed it did not need to be considered at that time because it would have immediately impacted the budget adversely. He is very happy that the City Manager and HR Manager went back and began to look at retirements and benefits to realize the savings over the last couple months. He agrees they have worked hard to make a case of how this can be done by not adversely impacting the budget and he appreciates that.

Councilman Mergner pointed out that he is aware of the difference of someone who went from a state-funded compensation package to a private compensation package that was huge and in the double digits. Councilman Burk agreed that even if Ms. Carmean is unable to do this individually, perhaps an example can be given showing the salary and the amount of the benefit package if it involves a single person or someone who is married. He emphasized that the employee cost of the benefit package for health insurance in Milford is really low in the market and referenced the 27% number used when calculating the costs of the new pay increases.

Councilman Mergner agreed it should be at least included in the portfolio provided to a new employee when they are hired. Councilwoman Wilson suggests that the employer share also be compared to the employee share. Councilman Morrow agree that is also done by his employer for new employees as well.

Councilman Burk asked if the City is participating in recruitment events such as job fairs, colleges, etc. He feels that is an inexpensive way to put the City's name out there and present what we offer. Ms. Carmean said that has been discussed though it is not being done yet.

Mr. Norenberg said that Chief Brown can speak to this better than he can, but believes the police officer area is a place that has even more challenges. He thinks this is impacting police agencies across the State of Delaware. Chief Brown agreed adding it is actually affecting police nationwide.

Mr. Norenberg feels that whatever needs to be done for police should be addressed and supported. He feels we always target our advertising where we think it is best for that market. He said we don't have to recruit out of state for entry-level electric workers and we actually got the newest employee for the electric department right here in Milford on Marshall Street. Sometimes we can find what we are looking for within our own community and usually they are the ones we want to retain, grow and develop.

Councilman Mergner said the best form of recruiting is the City of Milford employees. He suggests an incentive also works well in many cases.

When asked for additional thoughts, Councilwoman Wilson feels we need to move forward. All of the groundwork has been done and a collection of impartial data has been obtained. We also know the state of the employees is more of an urgency and it will only increase if we wait. We need to take care of our employees and be able to recruit qualified ones.

Councilwoman Wilson moved to authorize the implementation of the job classification compensation study.

Councilman Brooks said he does still not understand who, what and how this is being done. Councilman Morrow agrees with Councilman Brooks and added that he does not think Council was given enough information. He may be missing something, but there has not been a straight answer about how this is being paid for. Nor has he seen a comparison between the old classification and the new classification.

Councilman Campbell said he was under the impression it has already been paid for; Councilman Mergner agreed and thought it was already budgeted. Councilman Morrow pointed out that is the cost to implement this during the second half of this fiscal year. However, it does not count on July 1st when it will have a more than \$320,000 financial impact.

Mr. Norenberg reiterated that Ms. Carmean, Finance Director Jeff Portmann and he have identified the part-year savings for this implementation, which will carry through into next year for continued savings. He does not plan to come back and have to deal with an increase strictly related to employee increases. However, that does not mean there won't be a need for a tax increase as a result of the Teamsters' negotiations or because of an adjustment in the State of Delaware benefits. At this point, the savings will carry into next year.

Mr. Brooks noted that next year the impact will be more than \$300,000 for a twelve-month time frame in addition to another three to four-percent payraise.

Mr. Norenberg emphasized that another three to four-percent payraise is not under consideration. Councilman Brooks noted there is a payraise given to employees every year. The City Manager explained their proposal this evening is to change the focus as a result of the study and to move more toward a merit-based pay though there may be a small cost of living adjustment to make sure the ranges keep pace with inflation. However, the increases will be based more on performances as Councilmember Peel described earlier in the innovation program they offer. Employees would be recognized based on their individual performances and teams as opposed to doing a flat-across-the-board pay adjustment as has been done automatically each year. That does not mean it will be less expensive than doing it the other way, but it will be much more rewarding and beneficial to all the employees.

Councilman Morrow feels the only cost change would be if only half the employees received a merit increase. He emphasized the City has great employees and they need to be recognized fairly. Councilman Brooks stated that he worked at DuPont for thirty-six years and they had six pay groups. Everyone in each of the six groups made the same amount of money. There was no juggling or opinions related to merits.

Councilman Morrow stated that he has no problem taking care of all the employees, but does not feel Council has been given adequate information.

Mayor Shupe asked for confirmation that the finances or ongoing expenses will cover next year's fiscal year budget as well. Mr. Norenberg stated that at this proposed rate, it will. However, when they will need to consider other budget issues next year, including the union contract negotiations, additional pay related to individual performances and cost of living increases. However, the changes related to the collective bargaining agreement for the electric department are already programmed in. The other outstanding issue is the cost of the State's benefits which are anticipated as new costs and are not part of this recommendation.

Councilman Campbell pointed out that we give raises to our employees every year. This study shows we are \$172,000 substantially lower than each position's mid range. So whatever has been done in the past is no longer working. He also asked if there is a reserve for salary increases that can be used; Mr. Norenberg stated that we do not have a specific reserve set aside for salary increases. A huge amount of the City budget each year is pay and benefits for employees. Reserve accounts are linked to capital purchases or projects.

Councilman Campbell looks at this report and sees \$200,000 in the red in employee costs so whatever has been done in the past has kept all City employees below the midpoint and not even at the average. He reiterated that in his opinion, it is not working.

Councilman Burk asked if there are other employees that are above the market rate. Ms. Carmean stated yes, that is correct.

Councilman Morrow said if we are not doing it right now, how will this ensure everyone is correct which is his concern. According to Ms. Carmean, the last study wasn't done correctly though Council was never told that.

Councilman Burk then asked if those employees who are above the market value will receive a COLA or possibly a small increase. Councilman Campbell asked if there will be no raises for specific employees; Councilwoman Wilson said there will be raises for everyone. Councilman Burk then pointed out that healthcare costs will also increase. We still have a lot of good employees and because someone's tenure makes them above their market value though that is all based on what the consultants

have said because Council has not seen the raw data. Those employees will not receive the 3% that Council fought to give them last year. But those same employees are going to be hit with higher benefit costs. He also has some concerns about how and where the money is coming from. He prefers to see a breakdown of where that funding is being taken from to make sure there will be enough money to cover all of next year's increases.

Councilman Burk also stated that he would really like to see the results of the exit interviews of those fourteen employees that left and specifically, why they left and where they went. That is the purpose of an exit interview.

Councilman Campbell understands and added that employees are always going to leave. Though benefits are costly, he knows that the paycheck matters most to our younger employees.

Councilman Brooks pointed out that younger people need money to take care of their kids. Older people need the benefits to take care of themselves.

Councilwoman Wilson sees everyday people with full-time jobs who are still getting State benefits because they are low income. She noted that most of these people don't make anything and need those benefits to live at a certain standard. They need the primary and secondary insurances to pick up the additional medical benefits.

When asked about reserve funds, Mr. Norenberg explained that we have reserve funds, but don't want to deplete them because they are used for capital items.

Councilman Brooks again questioned how we will have the \$300,000 for next year's increases. Ms. Carmean interjected by stating that we have to look at the fact of what Council can approve this based on their ability versus the City being in a position of where Council has to give increases, just like they are now doing with the unions. She pointed out how much money has been spent on lawyer fees for the negotiations. This involves employees that are not part of either union but will consider that if that is needed to an increase. She said that unfortunately they may become unionized even though they didn't want to do that in the beginning. She emphasized that will then cost the City even more but in legal costs.

Mayor Shupe announced there is a motion on the floor to approve the implementation of the study. Ms. Carmean continued (inaudible—everyone talking at once)

Councilman Campbell stated that if it takes \$200,000 to get our City employees up to the mid range, that needs to be done. Councilman Brooks said his question is next year how to cover the more than \$300,000 will be needed.

Councilman Morrow said the elephant in the room is that one penny of a property tax equals \$46,000. Doing some quick math, this will require a fifteen-cent tax increase.

Mr. Norenberg confirmed that \$163,904 is predicated on the time frame of November 13, 2017 thru June 30, 2018. However, Council has the option of changing it to January 1st or December 1st if they prefer.

Mr. Norenberg also reiterated that based on the savings as has been determined this year by Ms. Carmean, those savings will extend into next year's budget though that does not include any COLA increases that may be given to all employees.

Councilman Brooks asked if the \$163,904 is only going to certain employees. Councilman Burk responded by stating it is only going to the people that the consultants determined are below the mid range. He again asked why the City of Seaford did this study two years ago and did not implement it until last year. He wonders if they mulled over it a little bit.

He prefers to have this conversation during a budget hearing.

Councilman Morrow agrees with Councilman Brooks that this needs to be fair to everyone. There are still a number of questions out there that have not been answered and specifically where the money is coming from.

Councilwoman Peel said the numbers are reflected in the report and it is nebulous where the money is coming from. However, each department has identified cost savings based on the current status of employees. There are a lot of variables like certain employees who have a certain healthcare plan that is less expensive than was calculated during the budget hearings. However,

that plan could become a family plan next fiscal year. She asked if the variables that have been considered are realistic; Mr. Norenberg stated that every year when benefits for a vacant position are budgeted, the worst case scenario or most expensive is used. For example, if there are three vacancies, three family medical plans will be budgeted. As there is turnover, a new employee selecting single coverage results in a savings within that department's budget.

According to Ms. Carmean, most of the savings she identified and she assured Council that all variables were taken into consideration and whether or not there could be change next year. However, she agrees nothing is guaranteed.

Councilman Burk asked for confirmation that the savings to pay for the increases is based on healthcare savings. Ms. Carmean answered that it will cover a large majority. Councilman Burk said Council is only asking where the savings is coming from and asked for more explanation. Ms. Carmean said a large majority was from healthcare which she based on the fact that she had someone with single employee coverage though she knew that their spouse was working for the State and had their children on the State policy. She then tried to determine if the spouse will keep the State insurance plan and more than likely, she is 99% sure that these employees will remain with the single employee coverage. Anyone that was questionable was not included in the calculation.

Councilwoman Peel asked if Ms. Carmean used conservative variables; Ms. Carmean answered yes definitely.

Councilwoman Wilson then moved to withdraw her original motion and because there continues to be a lot of questions, she feels it should be postponed and the matter revisited in addition to the fact it is 10:18 p.m. Councilman Morrow seconded the motion.

Councilman Mergner then pointed out the costs are already covered in the current budget. He said that no one knows what will happen next year. To worry about next year's budget is a waste of time. He feels we need to entrust the analysis done by our staff who have overseen this study and their financial recommendations. He said they are feeding this to Council and are doing a great job. At some point, Council needs to take their hands off of it a little bit and entrust that they know what they are talking about. It sounds to him like there is a problem here with salaries and because it is way out there, Council needs to act on it quickly.

Councilwoman Peel agrees it is not going away.

Councilman Mergner said Council can worry about next year but no one knows what will happen then. There is always the option to have cutbacks somewhere else as has been done in the past.

Councilman Morrow pointed out that Councilwoman Wilson is not asking to wait until next year. Right now, she is proposing to talk more about it with more explanation. We need to make sure it's fair across the board.

Councilman Mergner noted that it has been talked about for three meetings and now we are recommending it be posted until December.

Councilman Brooks said that Ms. Carmean and Mr. Portmann have found \$163,000. If we did not have that \$163,000, he asked what would be done. Councilman Campbell said there would be no action taken because the money would not be available.

Councilwoman Peel said we would definitely have bigger questions and it would have to be looked at more strategically with the implementation over a period of time.

Mr. Norenberg said he would not have made the recommendation if the money had not been identified. He said they spent at least a month wrapping up other parts of the study, doing the research and a financial analysis as Ms. Carmean described. He was not going to bring Council a problem that had no solution. His plan was to bring a proposal that could be easily accepted and supported and move forward to address potential morale concerns. If our employees feel there is not support, then we could have a bigger challenge as Ms. Carmean indicated. This will show them that Council is behind a study that has identified some problems and solutions and will satisfy our employee's compensation needs. He thought it was a very workable proposal that has been made in good faith and supported by the Finance and HR Departments.

Ms. Carmean informed Council that she looks at the City as having three groups of employees. There is the police union, the

electric union and now these employees being talked about tonight. Both of the unions have received Councils' blessings. What she is asking for is that this third group be rewarded with the same fairness the other two have. She said to remember that this third group is not in a group who is trying to put the City in a position where they have to be forced into this position. These involve employees that come to work and are an asset to the City every day. She added that it may not involve a piece of equipment or something like that, but she looks at each and every employee as a true asset of the City.

Councilman Morrow asked how many employees are we talking about in this third group; Ms. Carmean said there are approximately 64. Out of the 64, Mr. Morrow asked how many are not in the union because they are supervisors or directors and would not normally be part of a union. Ms. Carmean said fifteen to twenty.

Councilman Morrow pointed out that 33% would not be in the union anyway. Councilman Burk agreed that 33% would not qualify anyway to be in the union. As a result, Mr. Morrow said there are actually two groups among the 64 employees. He does not know how many pieces of that increase pie are these twenty supervisors getting when compared to the other forty plus that are actually hourly and rank and file who could unionize.

He again asked what part of the \$163,000 is going to management versus the rank and file; Ms. Carmean said there were only a few management positions that were pinpointed as needing to go up to the market level. But most of this is going to the actual working people. Councilman Morrow asked for confirmation that two-thirds of the working employees will receive this increase.

City Solicitor Rutt stated that the question is how many people are below the midpoint and how many are above who will not be receiving an increase and asked if those above the midpoint are mainly in the union. Ms. Carmean said they are not included in the \$163,000 because the police and electric unions have already been satisfied and brought to market.

Solicitor Rutt asked if Ms. Carmean is referring to the fifty employees who are non-union, non-supervisory. Ms. Carmean stated that is correct. Councilwoman Wilson agreed the lower middle class employees are being taken care of. She stated that she always refers to the two sets of middle class—the lower middle class and then the others.

Mr. Norenberg did point out that the employees who will be touched by the last aspect of the compensation adjustment are scattered in a variety of positions. They include staff in the police department, the public works department and almost every department. If a position was vacant and then refilled later, it might have been brought in closer to the market because of recruiting that was done at the time. So often some of the employees that have been here the longest are not where they need to be, based on the study that was never fully implemented eight years ago. However, new employees have come in and are benchmarked are closer to where they should be.

The City Manager stated that if Council prefers to defer action until the December meeting, he wants to know exactly what other information needs to be brought to the meeting.

Councilman Morrow reiterated that he needs more time to soak this in and ensure it is fair.

Based on the motion to postpone action until December, Mayor Shupe asked for a vote.

Councilwoman Peel asked what will happen in December. Councilwoman Wilson feels we are at a deadlock. Councilman Mergner said we will only sit in here and do the same thing again. He pointed out it is not fair to Ms. Carmean and Mr. Norenberg who have done all of this work and asked what other questions remain unanswered so that they can answer them.

Councilwoman Wilson said one of the questions is more information on how this will be paid for; Councilman Burk said that some of the money is coming from healthcare and some is coming from somewhere else but we don't know where somewhere else is. Councilman Mergner confirmed we are covered for this year. He respects Councilman Morrow's opinion because he has a lot of history with the City and has a great deal of experience in human resources.

Councilman Morrow said he only needs to know how we can pay for this moving forward. Councilman Mergner said there is a question about how we will cover anything next year. That is the reason he is listening to Councilman Morrow and comprehends what he is saying. He is fine with postponing it but does not want to come back in this chamber and repeat the same information. That does not appear to be fair to him.

Councilman Morrow feels that Mr. Norenberg needs to come up with a plan to show where it is going and how it can be paid for next year assuming our financials will increase every year. He has to come up with a plan to move forward with the \$300,000. Though it is not etched in stone, as a Councilman, he has a duty to understand more about it and making sure it is fair. He has no problem with all employees getting an increase, but still questions the information that has been provided.

Councilman Morrow asked if we can get our Finance Director involved in these questions; Mr. Norenberg reiterated that the money has been identified as continuing savings. They are not just one-time dollars and are a savings that were identified by Ms. Carmean that will continue into next year to prevent a problem in June of not having enough money. He tried to explain it different ways though he is unsure he has presented it the right way. The money identified to cover the adjustments starting in November have been identified as money that will carry through into next fiscal year. There is no money for a cost-of-living adjustment and no money for merit increases though we are unaware of those costs at this point in time. We also do not know what the Teamsters will propose and that impact on the budget. But right now, he stated they are only aware of the cost increase for the IBEW for next year. But there will be many unknowns for next year.

Councilwoman Peel said that is why she needed to ask Ms. Carmean about the health insurance savings -and she verified that it was looked at from a conservative perspective.

Ms. Carmean reiterated that she looked at it from a conservative perspective but will throw out to Mr. Norenberg and Mayor Shupe, that she is willing to forego her increase. She stated that after the last pay study, the lowest and most out-of-whack salary of all City employees was herself. Even with her situation, that is how much she feels we need to value these other employees.

Solicitor Rutt then stated to summarize, it would be right to say that the money or equalization at this point, has been identified in this year's budget and will be carried forward. What will need to be found next year in the budget, is the same thing found every year and involves the cost of living increase and other pay raises. It will be no different next year than any other year in the past.

Councilwoman Wilson then withdrew her motion to postpone. Solicitor Rutt then asked if Councilman Morrow is willing to withdraw his motion.

The procedural process was then discussed.

Ms. Carmean interrupted the conversation adding that she wants Council to remember that our employees know this is going on and asked Council to consider employee morale. She said this will have an impact. Councilman Burk pointed out that Seaford's did as well and they waited a year to put into effect. Ms. Carmean continued by stating she really is unsure of the time frame in Seaford though it was a couple of years ago and thinks it may have been approved possibly the beginning of the year.

Mr. Rutt stated that the motion on the floor is to postpone action on the matter until December 11th.

According to City Solicitor Rutt, if the person who made the motion withdraws it, there is no motion. If there was an amendment to the original motion, the person who seconded the amendment would have to agree to withdraw the amendment. In this case the person making the motion also amended the motion and is withdrawing the motion.

Councilwoman Wilson again withdrew her motion.

Councilwoman Wilson made a motion to authorize implementation of the PayPoint HR Job Classification Study as presented and discussed tonight, seconded by Councilman Campbell. Motion carried.

Motion carried by the following 5-2 vote:

<u>Yes</u>	<u>No</u>
Councilman Mergner	Councilman Brooks
Councilman Campbell	Councilman Morrow
Councilwoman Peel	
Councilman Burk	
Councilwoman Wilson	

Councilman Burk would have preferred to have more data, but will agree at this time.

Councilman Brooks said he will not authorize it. He has been through a number of budget hearings and cannot approve it with so little information.

Councilman Morrow said he will not agree to authorize it at this point. There is a need for more specific information and to figure out how we will be able to pay for it in the future. He is not against the employees receiving increases, but wants to ensure this is fair and the way it was presented to Council does not give enough data.

Councilwoman Wilson votes yes based on the information presented by Mr. Norenberg and Ms. Carmean adding that she trusts that information, which included the Financial Director recommendation as well.

Councilwoman Wilson left at 10:39 p.m. due to an early next day appointment.

NEW BUSINESS

Proclamation 2017-28/Small Business Saturday

Mayor Shupe presented the following proclamation:

SMALL BUSINESS SATURDAY

WHEREAS,

The Mayor and Council of the City of Milford celebrate our local small businesses and the contributions they make to our local economy and community; and

According to the United States Small Business Administration, there are currently 28.8 million small businesses in the United States; and

Small businesses represent 99.7 percent of all businesses with employees in the United States and are responsible for 63 percent of net new jobs created over the past 20 years, and

Small businesses employ 48 percent of the employees in the private sector in the United States; and

On average, 33 percent of consumers' holiday shopping will be done at small, independently-owned retailers and restaurants; and

Of all consumers, 91 percent believe that supporting small, independently-owned restaurants and pubs are important and 76 percent plan to go to one or more small businesses as part of their holiday shopping; and

The City of Milford supports local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

Advocacy groups, as well as public and private organizations across the country, have endorsed the Saturday after Thanksgiving as Small Business Saturday.

NOW, THEREFORE, I, Bryan W. Shupe, Mayor of the City of Milford, do hereby proclaim, November 25, 2017, as

SMALL BUSINESS SATURDAY

and urge the residents of this community to support small businesses and merchants on Small Business Saturday and throughout the year.

Proclamation 2017-30/Veterans Day

Mayor Shupe presented the following proclamation:

VETERANS APPRECIATION DAY

WHEREAS,

Our Great Nation was founded on the belief that all Americans are created equal, and are guaranteed the inalienable rights of life, liberty, and the pursuit of happiness; and

Our Nation's Veterans have sacrificed to preserve and protect our Country and Constitution from all enemies foreign and domestic; and

November 11, 1919, was initially proclaimed as "Armistice Day" to honor our Country's World War I Veterans, and in order for a grateful Nation to pay homage to Veterans of all wars; and

On June 1, 1954, Dwight Eisenhower the 34th President of the United States, signed into law the renaming of Armistice Day to Veterans Day; and

The quality of life we enjoy today was purchased at great cost by the unselfish devotion of these Veterans, as many of our soldiers lost their lives during wars to defend our freedom, and some are still missing in action; and

The City of Milford recognizes the contributions of all men and women in the military who have served our Country, and who continue to serve their Communities today.

NOW, THEREFORE, I, Bryan W. Shupe, Mayor of the City of Milford, hereby proclaim Saturday, November 11, 2017 as

VETERANS APPRECIATION DAY

in the City of Milford, and urge all citizens to honor the sacrifices of the loyal and courageous Veterans who have given so much for the cause of peace by taking a moment to kindly acknowledge them.

Streets Division/Pavement Patcher Purchase Authorization

Public Works Director Mark Whitfield submitted the following memo:

The Public Works Department requests City Council consider a recommendation to purchase a trailer-mounted pothole patcher to be used by the Street and Utility Division. The pothole patcher will be used for the permanent patching of street, alley, and parking lot potholes.

The filling of potholes is critical in reducing water intrusion into the subbase of the pavement structure. Water intrusion into the subbase during freeze-thaw cycles contributes to the premature failure of the pavement structure. Additionally, potholes can be a hazard to vehicles traversing the roadway, and expedient patching reduces the hazard potential. The proposed unit uses an emulsion that creates a permanent patch, without the need to return and repatch with a "hot mix" of asphalt.

The Street and Utility Division staff has evaluated the proposed unit, and viewing demonstrations as well as checking various references, staff recommends Durapatcher Trailer Mounted Patcher, Model 125DJT be purchased from Cimline Pavement Maintenance Group-Duraco/Cimline for \$60,000, which is the same amount authorized by Council in the 2018 Budget. The purchase can be made through the HGACBuy Purchasing Agreement (Contract #SW10-16) through the Delaware State Contract.

Specifications for the pothole patcher trailer unit are included in packet.

Staff requests City Council consider the purchase of the Durapatcher, and recommends authorizing the purchase of the unit through HGACBuy to City Council.

Councilman Brooks moved to authorize the purchase of a Durapatcher Trailer Mounted Patcher, Model 125DJT from Cimline Pavement Maintenance Group-Duraco/Cimline in the amount of \$60,000, through the HGACBuy Purchasing Agreement Contract #SW10-16, seconded by Councilman Burk. Motion carried.

Electric Division/Bucket Truck Purchase Authorization

Public Works Director Mark Whitfield submitted the following memo:

Staff requests City Council consider a recommendation to replace the existing 2008 Ford X56 Service Bucket truck (Unit E-112) used by the Electric Division with a 2017 Terex Hi-Ranger LT40 Articulating/Telescoping Aerial Service Bucket Truck. The existing bucket truck has 78,839 miles, and is ten years old. Ten years is the recommended standard replacement term for bucket trucks, based on annual dielectric testing performed on all bucket trucks within the Electric Division's fleet.

The purchase of this truck will be made through the NJPA Purchasing Agreement through the Delaware State Contract. Specifications for the 2017 Terex Hi-Ranger LT40 Aerial are attached. The Electric Division budgeted \$175,000.00 for the purchase of this unit, and the NJPA final cost is \$131,844.00.

Staff requests City Council consider the replacement of the service bucket truck, and recommends authorizing the purchase of the new unit through the NJPA National Contract.

Councilman Brooks moved to authorize the purchase of a 2017 Terex Hi-Ranger LT40 Aerial through the NJPA Purchasing Agreement through the Delaware State Contract, in the amount of \$131,844.00, seconded by Councilwoman Peel. Motion carried.

Council Rules Discussion

Councilman Burk moved to postpone discussion on the Council Rules matter until the December 11, 2017 Council Meeting, seconded by Councilwoman Peel. Motion carried.

EXECUTIVE SESSION

Councilmember Mergner moved to go into Executive Session reference below statute, seconded by Councilmember Peel:

Pursuant to 29 Del. C. §10004 (b)(4) Discussion of strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation

Pursuant to 29 Del. C. §10004(b)(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements, or sales or leases of real property

Motion carried.

Mayor Shupe recessed the Council Meeting at 10:41 p.m. for the purpose as permitted by the Delaware Freedom of Information Act.

Return to Open Session

Councilmember Burk moved to return to the Regular Session, seconded by Councilmember Campbell. Motion carried.

City Council returned to Open Session at 10:50 p.m.

Potential vote related to strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation (Teamsters Contract)

Potential vote related to site acquisitions for any publicly funded capital improvements, or sales or leases of real property (Police Department Site)

Mayor Shupe announced that no action is needed as a result of the discussion in Executive Session.

ADJOURN

There being no further business, Councilmember Mergner moved to adjourn the Council Meeting, seconded by Councilmember Morrow. Motion carried.

The Council Meeting adjourned at 10:51 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder