

MILFORD CITY COUNCIL
MINUTES OF MEETING
January 8, 2018

The City Council of the City of Milford met in Workshop Session on Monday, January 8, 2018 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware at 6:01 p.m.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilmembers 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 City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

ABSENT: Councilmember James Starling Sr.

City Planner Rob Pierce was also present who reviewed Chapter 180-Residential Rental Operating Licenses.

Code Official Lendon Dennis was in attendance as well.

Review of Chapter 180 Rental Licensing and Inspection Program

Chapter 180 was originally adopted in 2004 and amended to its current form in 2008. It is the code that presently governs the registration and inspections of residential rental properties in the City of Milford. The Code sets forth definitions, rental license requirements, application contents, issuance regulations and outlines inspections, violations and penalties.

The Code states the Code Enforcement Official reserves the right to inspect property at anytime to ensure compliance with all Property Maintenance, Zoning and other City Codes.

The adoption of Ordinance 2008-8 provided the City with the ability to inspect rental properties. There were a number of landlord concerns expressed in 2008, though City Council ultimately voted to move forward with the program and adopted the revisions of the Code with the intent to perform rental inspections.

The Code and Inspection Department has been performing rental inspections internally since 2008 but has not had sufficient staffing levels to pro actively complete all the inspections as was intended by the amendment to Chapter 180. Revisions are not being proposed as they are already included in the Code.

Chapter 174-Property Maintenance has been in place for several years along with Chapter 230-Zoning and other City Ordinances that coincide with chapter 180. The inspections are mainly based on the City's adopted Property Maintenance Code 2015-International Maintenance Code (IPMC).

The following items included on the rental inspection checklist:

EXTERIOR STRUCTURE

- PM.302.1 Sanitation
- PM.302.2 Grading and Drainage
- PM.302.3 Sidewalks and Driveways

- Approved parking surface
- PM.302.4 Weeds
- PM.302.5 Rodent Harborage
- PM.302.6 Exhaust Vents

PM.302.7 Accessory Structures
PM.302.8 Motor Vehicles
PM.302.9 Defacement of Property
PM.302.10 Indoor Furniture in Outdoor Areas
PM.303.1 Swimming Pools, Spas & Hot Tubs
PM.303.2 Swimming Pool - Enclosures
PM.304.1 Unsafe Conditions
PM.304.2 Protective Treatment
PM.304.3 Premises Identification
PM.304.4 Structural Members
PM.304.5 Foundation Walls
PM.304.6 Exterior Walls
PM.304.7 Roofs and Drainage
PM.304.8 Decorative Features
PM.304.9 Overhead Extensions
PM.304.10 Stairways, Decks, Porches, Balconies
PM.304.11 Chimneys and Towers
PM.304.12 Handrails and Guards
PM.304.13 Windows, Skylight, and Door Frames
PM.304.13.1 Glazing
PM.304.13.2 Openable Windows
PM.304.14 Insect Screens
PM.304.15 Doors
PM.304.16 Basement Hatchways
PM.304.17 Guards for Basement Windows
PM.304.18 Building Security
PM.304.18.1 Building Security - Doors
PM.304.18.2 Building Security ;V Windows
PM.304.18.3 Building Security ;V Basement Hatchway
PM.304.19 Gates

The Planner confirmed that inspections are done on both rentals and owner-occupied units.

Mr. Pierce further explained the main component that makes the rental inspection different from the common property maintenance inspection is the interior structure inspections. The City has been doing them since 2008 but at a much smaller scale than what is proposed now.

They include:

INTERIOR STRUCTURE

PM.305.1 Unsafe Conditions
PM.305.2 Structural Members
PM.305.3 Interior Surfaces
PM.305.4 Stairs and Walking Surfaces
PM.305.5 Handrails and Guards
PM.305.6 Interior Doors
PM.306.1 Component Serviceability ;V Unsafe Conditions
PM.307.1 Handrails and Guardrails
PM.308.1 Accumulation of Rubbish or Garbage
PM.308.2 Disposal of Rubbish
PM.308.2.1 Rubbish Storage Facilities
PM.308.2.2 Refrigerators
PM.308.3 Disposal of Garbage

PM.308.3.1 Garbage Facilities

PM.308.3.2 Containers

PM.309.1 Infestation

Section 402 Light

Section 403 Ventilation

Section 404 Occupancy Limits

Chapter 5 Plumbing Facilities and Fixture Requirements

Chapter 6 Mechanical and Electrical Requirements

Chapter 7 Fire Safety Requirements

Ordinance 2008-8, pertaining to Chapter 180, was adopted with the intent of performing rental inspections. In order for the Department to fulfill its obligations to that Council action, staff provides three options:

OPTION 1: Authorize a contract to outsource rental inspections at approximately \$45,000/year;

OPTION 2: Authorize the Department to hire an additional Code Official to perform rental inspections at approximately \$70,000/year; or

OPTION 3: Repeal or Amend Chapter 180 Residential Rental Operating Licenses limiting the City's ability to inspect rental properties.

Mr. Pierce said he is seeking guidance on how Council wishes to proceed with the inspection program.

Mr. Pierce believes the City has been inspecting approximately 50 to 60 properties a year. We have performed more inspections in some years, but positions and job duties have changed over the years. The main focus presently is to do rental inspections on a request-only basis.

Mr. Pierce explained that current and previous staff members have attempted to get the point where all the units can be proactively inspected. Unfortunately, it has not been done due to lack of current staff though it can be outsourced in an attempt to get the inspections caught up.

Councilman Brooks said he was told by Mayor Shupe that we have been trying for two years to hire someone but could not find anyone qualified. Mr. Pierce explained that the position was posted approximately one year ago but the revenue was not approved to hire a new employee at the cost of approximately \$70,000. That cost can be reduced to \$45,000 by outsourcing the service while still providing additional Code Officials, in addition to some administrative assistance with running the inspection program.

Mayor Shupe added that the main financial challenge was that the rental property owners have been paying for inspections every year. However, that money has not been budgeted for the purpose of hiring an additional Code Official and instead was needed to supplement the general fund. He pointed out that Mr. Pierce has come up with a solution to use a third party to get two to three more inspectors on the street to handle the evaluations without negatively affecting the budget.

Councilman Brooks said he prefers a City Employee handle the inspections versus an outside contractor.

Councilwoman Peel asked where the \$70,000 funding will come from in that situation.

Councilman Brooks said he recalls the first two years of the rental program, there was money in the budget and Council did not find out for two years that a Code Official had never been hired.

Councilman Morrow said if that is the case, the money should still be in the budget. City Manager Norenberg explained the money that was appropriated this year was for the contract program identified during the budget process. He stated that Mr. Pierce put out an RFP for the rental inspections services which led to the process of evaluating the proposal and bringing it

to Council. The money for the contract services is budgeted but not for an additional staff person.

Councilman Brooks said he wants to put \$140,000 into outsourcing the inspection services. Mayor Shupe pointed out the cost is \$45,000 per year. Councilman Brooks said the three-year total was \$140,000 on last month's report. Mayor Shupe noted that was referring to the additional City Code Official if hired by the City at a cost of \$70,000 per year. Councilman Brooks feels that if we proceed with this program, it should be done by a City Employee.

Councilman Burk pointed out that another benefit to hiring within is when the Code Official is not handling rental inspections, they can be doing other Code Enforcement work. He confirmed there is \$45,000 already budgeted though we will need another \$25,000. He said that it sounds like we will have more eyes out on the streets, but they would only be looking at rentals and not an owner-occupied home next door that could be of concern.

Councilman Burk asked if Mr. Pierce has checked into accepting the Section 8 rental inspections done by the State of Delaware. Mr. Pierce said that was something he was planning to discuss with Council this evening as well and is open to that recommendation if Council is willing to honor the HUD inspections.

Mr. Pierce did share that HUD's checklist is a little more lengthy than the City's checklist though other cities accept them.

It was confirmed that HUD inspections are annual versus an every three-year inspection proposed by the City. Councilwoman Peel feels like we have gotten into too much of the nitty gritty details. Mr. Pierce agreed reiterating that he would like to know first what Council is comfortable doing. Councilwoman Peel agrees that is much more important at this point and should be done before the leg work on the details is needed.

Mr. Pierce explained that the RFP is not a lump sum annual fee and instead involves a \$50 per inspection fee. If Council were to agree with outsourcing, the program could be tailored to whatever Council is comfortable spending that year, including inspecting all units, half the units or one third of the units.

He said he picked the \$40,000 range because that is what was budgeted last July. He noted there has been an increase in building permits so the City's building plan review and inspection costs have increased as well. The \$40,000 was what he was aiming for and would justify outsourcing the service as opposed to hiring another employee which would have a bigger financial impact.

Councilman Campbell asked how many bodies we get for the \$40,000 estimate; Mr. Pierce stated two to three inspectors and one administrative person who assists with scheduling. He pointed out that if someone was sick or on vacation, inspections would not have to be canceled and rescheduled but instead handled by another inspector. It would definitely help with flexibility versus only having one person to do this work.

Councilwoman Peel then discussed the scope of the position and should another Code Official be hired, the City would determine their job duties which provides more flexibility. She asked if the contracted inspectors are going to negotiate the issues that come up on a daily basis; she feels there will be issues that arise that the City may not have the personnel to handle in house or and the third party only complicates the issue.

Mr. Pierce feels that most of the inspections will work out with the inspector making a decision on a time line that is reasonable for both the City and the landlord. In situations where the landlords may feel there is an unrealistic time line, Mr. Pierce will work that out with the landlord to ensure compliance.

Councilwoman Peel confirmed that is part of the contract and includes all associated work. Mr. Pierce explained the thought would be for a landlord to call the consultant directly for an inspection. The consultant would schedule it within their available windows and then perform the work. The inspection checklist requires the signature of the inspector and the property owner. The property owner would receive a copy and once the owner is ready for the reinspection after all the items have been addressed, they will contact the contractor to come out for a final inspection. The only time the City would get involved is when they failed to comply or failed to respond. The City would then use their enforcement capabilities to step in.

Mr. Pierce confirmed the initial inspection and reinspection would be handled through the consultant and reduce the administrative workload and expenses in house. Though another Official could be hired at a cost of \$70,000 per year, there would be an additional burden on the existing administrative staff with scheduling, paperwork, etc.

When asked how many inspections Mr. Pierce feels can be accomplished with three people, he explained it will depend on Council discussions and the number they decide to move forward with inspecting. All 1,550+/- units could be done over a three-year period while assuming a 60% need to reinspect for various reasons. He said they anticipate approximately 800 inspections a year.

Councilman Burk asked if Code Official Dennis would continue to do the fifty to sixty per year as is being done now. Mr. Pierce believes he could help assist and oversee the program. He would most likely be the first contact for the inspection company when it comes to problems though he will be focusing on some of the more pressing concerns we have on owner-occupied units or units with absent owners. In particular, any case that would be going to court would be handled by Mr. Dennis.

Councilman Campbell confirmed that presently we have one person handling approximately 1,600 rental units in addition to other issues. Mr. Pierce stated that is correct and the reason the City presently only inspects upon request.

Councilman Brooks asked if Mr. Pierce is referring to yards; Mr. Pierce explained that if a tenant requests an inspection or a complaint is received, a rental inspection is then scheduled.

Mr. Pierce confirmed that if a grass complaint was received, regardless of it is a rental or own-occupied unit, a violation is issued. He also explained that the contract would be structured in a way that should we get to the point we reach the \$45,000 benchmark, Council would have the control to authorize increasing that amount if needed.

He also noted that any rental unit that fails would be because of life safety concerns rather than aesthetics. As an example, such issues as inoperable smoke alarms, windows, and doors, holes in the floor or ceiling, chimneys falling over, etc. are a serious problem. Overcrowding would be included though that may be harder to prove. If something requires a follow-up inspection, they will not get a violation letter from the City and instead an inspection report showing the item needs to be addressed and then the unit reinspected. If they fail to comply, then a violation would be issued for any items on the checklist.

It was confirmed that the time line required to comply would be based on the severity of the issue and worked out with the owner. The inspection company has agreed to document any issue with pictures and provide that to the City as backup. It was also confirmed that the checklist has been used for inspections by the City for a number of years.

Councilman Burk recalled the concern about the random selection of rental units to be inspected; he does not like that method and wants everyone treated the same, regardless of whom lives at the property. Mr. Pierce agrees that was considered as a way to keep costs down and to achieve completion within the two-year time frame. Adding a third year will allow the City to accomplish the same goal by inspecting all units over a three-year period and within the same \$45,000 budget frame. There will be a need to determine who is inspected in each of the years, but as long as all units are inspected, there should not be a problem.

City Solicitor Rutt confirmed that random inspections could create a Fair Housing issue. He suggested a couple ways to handle the selection to prevent any problems and be nondiscriminatory. Councilman Burk agreed and recommended the outside contractor decide and in that manner, the liability is on them.

Mr. Pierce said if this rental inspection is completed over a three-year period, each unit could expect to be inspected every three years unless Council has other recommendations.

When asked about rental units with current violations, Mr. Pierce explained that typically any complaint-driven inspection is remedied and he is aware of possibly one outstanding issue relating to a heating component though the City is working with the owner.

Councilman Brooks asked why we were going to hire only one person in 2008 to handle these duties and why now suddenly we need to hire outside help; Mr. Pierce feels from an efficiency standpoint, outsourcing would be a way to control costs and provide some flexibility with our staffing levels. The building inspections and plan reviews have been outsourced for almost a year and that has been very successful in his opinion.

Councilman Brooks prefers not to outsource because this can be started this year and then next year something else will need to be outsourced. Before you know it, the City will be rid of all of their employees and all services contracted as was done with his previous employer, DuPonts, in Seaford.

Mayor Shupe then opened the floor to public comment to discuss the rental inspection program.

Kathy Stetson of 147 Hickory Branch Court, Hearthstone Manor, stated that she moved here about eighteen months ago. Ms. Stetson retired as a Code Official in Tukwila, Washington where she ran their rental licensing program. She developed, implemented and operated the program since 2007. Tukwila, just south of Seattle, has a population of 19,000 and there were about 4,000 rental units in the City. She was the person that managed the program which included administration work, inspections and all other related work. They divided the City geographically into four zones and inspected units once every four years. They had roughly 1,000 units to inspect in each zone.

Ms. Stetson reported that in the State of Washington, there was a law that did not require landlords to only use a City inspector and a choice was offered. They could either choose a City inspector or private inspector that met certain qualifications and was pre-approved by the City. However, they were required to use the City's checklist. For the most part, she shared that she handled most of the inspections. Later the larger complexes were able to get a lower price if they hired a private inspector who met those requirements, which included turning in the checklists for her review. The smaller units typically were inspected by the City inspector.

The city inspection checklist was rated on a point system. A score of 25 or lower was needed though certain items automatically carried 25 points for an immediate failure. Those issues involved smoke detectors, carbon dioxide, etc. Ms. Stetson offered to leave a copy of that checklist with Mr. Pierce.

She added that the property owners were given thirty days to make the repairs and schedule a new inspection.

Everyone with a registered rental, knew which year their inspection was going to be done based on their zone. She concluded by stating it provided a lot of continuity for the landlords.

Joe Wiley of 202 Lakeview Avenue then spoke. He stated that he is somewhat speaking in favor of the ordinance though generally, he is the kind of person that is against increasing the size of government and having too much oversight. However, in this case, he prefers the City hire their own inspector. The landlords would then be working with a known individual and if issues have to be worked out if there is a violation, they are familiar with the one person, versus having a number of inspectors show up. He spoke with Rob about how they were going to deal with issues though he was not clear as to who would actually deal with that.

He suggests that instead of doing all the properties, which would create a burden on the tenants as far as privacy, he recommends revisiting the original idea to inspect the units between tenants and after a tenant moves out and before the new tenant moved in. In addition, he recommends using a probable cause process.

He emphasized his big concern is the privacy of the tenants and depending on the selection process, the burden on landlords. If a landlord has fifty inspections, it will be very labor intensive to complete all those inspections.

Daniel Bond then stated he lives with his wife at 105 North Street. They own fourteen residential rental apartments. He is in favor of inspections and has been paying every year for a number of years and has never had an inspection. Every year when his wife writes the check to pay the City, she always asks what they get in return for that fee.

Mr. Bond said as a landlord, he is not eager to have his apartments inspected though he takes care of them and they are in good

shape. However, neither does he object to it. And he also wants some buildings in his neighborhoods in the fourth ward inspected because they are owned by landlords who are not keeping up codes and there are overcrowding issues that actually persuade new developers from investing in our housing stock.

He stated that he is involved in some programs in the City to improve the housing in that area. One of the things needed is for someone to acquire the property and make it better. However, if a landlord is overcrowding a building and collecting a lot of rent for a very bad building he does not keep up, he is not going to sell that building because it makes too much money. On the other hand, if he does sell it, he will ask an outrageous price. He personally has his eyes on several properties he would like to buy, though he knows the landlord would demand an unrealistic price for them because they are overcrowded and the landlord is making too much money without doing any repairs. If inspections will help force landlords to maintain the right standards, he feels it will work Citywide.

Dan Marabello of 1 Windy Drive, Meadows at Shawnee, stated that he is in favor of inspections. He wants to improve our City for economic development and if we don't create a sense of urgency to get all housing stock in good shape, people will not want to live here nor will they want to come and see what should be a beautiful City. Before the increase in rental fees, landlords were charged a fee of \$25 regardless of how many units they had. Then it was raised to \$50 per unit for the purpose of hiring a second Code Official. That lasted less than two years. Then the City said there wasn't enough funds and that is where he has a problem.

Mr. Marabello stated that he likes to look at numbers. When he looks at the financial stability of Milford, he sees where Milford can more than afford an additional code enforcer at a cost of \$70,000. He feels we need to get this done quickly and not drag it on for years and years.

He recalled that when he was sitting in Mayor Shupe's position, Council was talking about the same thing.

He feels that when we charged the landlords extra money, it was for a second code enforcer going forward and was not based on the budget. He stated that the City has enough money and he knows there is enough. When he looks at the numbers every month, the City has a lot of what is called non-restrictive money which is going up every year.

Mr. Marabello said there is no excuse that the City does not have money. He thinks we have to do this and there is a sense of urgency to get it done quickly.

Scott Crothers then spoke introducing himself as the Vice President of Sales and Marketing for First Manufacturing. He resides at 319 Columbia Street which is straight across from his work.

Mr. Crothers is a firm believer in inspections. He feels the integrity of the individual needs to be protected that is residing in the building. The face of the City wants to be protected and opportunities created for economic development. He is also not a fan of bigger government and he has nothing but positive to say for Mr. Davis whom he has rented from for almost seven years. But at the same time, he feels there should be a balance between correcting those interests and bigger government.

He emphasized that he loves Milford and never thought in a million years he would live in Delaware, but this is now his home.

Mr. Crothers concluded by saying anything that can be done to create new economic development, needs to get done.

Mark Davis (228 Cicada Lane, Milford) stated that he has thirty rental properties in Milford. He stated that outside sourcing is so inconsistent. He said how many in a month or three month's time could he have like running into a problem on the checklist, with chimneys, towers, foundations. A fifty, sixty-year old house with one brick off and he finds himself in trouble. Mortar missing, foundation walls. Not many houses in town don't have a crack in their foundation. He asked where it starts and where does it stop. One inspector's opinion is another inspector's opinion the next time they come along. Glazing of windows, screens, insect screens. He said his houses are missing so many screens and often because his tenant puts in a window air conditioner and tosses the screen. He asked where the screens are in a fifty-year-old window.

Mr. Davis continued by stating that sidewalks and driveways are included. He said not many sidewalks are level in town.

There are driveways and cracks and where does it start and where does it stop with a driveway. He feels it is vague on the areas of how far to take all of those.

He said if you have to have something, he would rather have it in house and talk to the same guy over and over and over.

Mr. Davis told Councilman Campbell that he does not think this is referring to three and four people that the City is going to get from the outside company. The City is going to get \$50 per house per building and that's just a number. If three people do it or five people do it, when they reach \$550, there goes the money. Then the City budget is expecting a 70% fail rate so there is another \$25,000, \$40,000 and then they are going to come back for money right in the middle of the year because everybody failed their inspections. It is a lot of money to be figured out.

Nadia Zychal of 303 South Walnut Street said she has some empathy for running a business. She runs a business herself from her home but every business has expenses. With all apartments comes a thing called a security deposit. If a tenant busts their insect screens out or messes up something else or puts a hole in the wall, there is the security deposit to draw from.

She said she does not really see that being an impediment to running a business unless the landlord is not maintaining their property for other reasons.

Sam Passwaters of 317 Columbia Street feels that most things have already been said. He agrees there is enough government and there is a good time to take care of this and that is when the tenants are moving in. He has heard a couple things about more people living in the houses. Mr. Passwaters feels that is CC Dennis' job and if anyone knows it, then they need to file a complaint and Mr. Dennis will take care of it. He prefers if this is done, someone in house should be doing it.

Donna Coverdale (515 North Washington Street) stated that she and her husband have lived in the City of Milford for twenty years. They moved into their home in April 1998 and the homes around them were mostly owned and not rented. Now in 2018, things have changed. Most of the homes around them are rented and not owned. Since rental properties are beside them and in front of them, they have had rental inspection concerns, which they have reported to the City on numerous occasions. In fact, since August, they have had ongoing concerns they have been vocal about with Mayor Shupe, Planner Rob Pierce, City Manager Eric Norenberg, members of City Council and their ward representatives, the Code Enforcement Official and things have still not entirely come to resolution.

She continued by saying that they were told, according to the remedies mentioned earlier tonight, that repairs would be made until the day of demolition on a shed across the street from our house. They have had multiple issues with this rental property including concerns about prostitution that are taking place across the street. She said they also face Dorsey Alley also called Dorsey Lane and crime is a continuing problem. It is something that needs to be addressed. Overcrowding is an issue which also has been talked about and needs to be addressed. She has requested an increase in police presence from both Chief Hudson and Chief Brown. She also understands there are members of the community that do have concerns about crime.

Ms. Coverdale said that she can honestly say that twenty years ago, she would have never thought that when they moved into their home, there would be a home invasion and a murder right around the corner from their house. But it happened. It is Milford, Delaware and that is where they live. It needs to be a place for people to come and live and feel safe in their community and make a decision to move here from where they are and make it a place that they want it to be.

Mayor Shupe asked if anyone else wished to speak. No one responded. Mayor then closed the floor to any further public comment.

City Planner Pierce was then asked to address some of the concerns of the public.

Mayor Shupe said one of the concerns was about increasing the size of government. He wants to make sure it is understood the City is not proposing any new restrictions or new codes. Instead, what is being discussed is implementing a code that has been on the book for many years and moving forward with the regulations already in place.

Mr. Pierce stated that one of the questions that Mr. Wiley brought up was who deals with the issues resulting from the checklist

inspection. He reiterated that the inspector at the time would work with the property owner to come up with a reasonable time frame suitable for the number of failures. At that point, if the landlord does not feel it is a reasonable time frame, he can reach out to City Code Official Lendon Dennis. If it remains unresolved, the next step would be to contact Mr. Pierce. If Mr. Pierce is unable to resolve it to the landlord's satisfaction, the landlord would be referred to the City Manager.

However, he is hoping a lot of the items can be negotiated and resolved, and in particular the time lines concerns.

Mr. Pierce referenced the comment regarding the vagueness and money on the reinspections. He explained that a 60% failure rate of the 550 units would result in that \$45,000 number. If that number were to increase as a result of 100% failures, it could cost another \$10,000 to \$12,000 if his math is correct.

He reiterated again the City Ordinance on the books already states that if the items are not remedied after the first follow-up, then the landlord is responsible for a \$50 fee. Once past the first inspection follow-up, it becomes the financial responsibility to pay the additional inspection cost. Should the Code Official be required to do three inspections, the landlord becomes responsible for the additional fee.

The worst case scenario would be that all 550 units fail which would require 1,000 inspections within the \$50,000 to \$55,000 range.

The Planner further stated that the City already performs the inspections based on the property maintenance manual. That is based on the minimal housing standards and he emphasized that a cosmetic crack in the foundation will have to be sealed. However, if there is a structural deficiency within the building, that will need to be addressed and it may require an engineer's report to certify the building will not collapse as has been done in the past.

In regard to sidewalks, Mr. Pierce discussed the matter earlier today noting that the City is moving forward with a Sidewalk Inspection Program. Perhaps this could be used as a tool to evaluate the sidewalks in front of the rental units, but postpone any remediation action until that street or ward becomes eligible for the full program.

There will be a one-time initial inspection. Any items that fail will be inspected when the inspector returns. The second visit will not involve a complete reinspection.

Councilmember Peel asked if it would be appropriate to consider making the Code less vague as far as the checklist, particularly in relation to having several minor issues that need to be resolved. Mr. Pierce explained that the City still wants the minor items addressed so it would require the inspector to return to ensure they have been addressed. However, the minor issues are not going to cause the property to be condemned and families displaced. If the unit is unfit for human occupancy and unsafe, that is when the landlord will need to address some serious problems. However, it may take a week for them to remedy the minor issues and at that point, the property can be reinspected. The landlord is not going to receive a civil citation or a fine for failing an item on the initial inspection.

Councilwoman Peel wonders what would make it less subjective; Councilman Burk agrees adding that Ms. Stetson had two great points. The continuity provided from her program to the property owners is important. People know when to anticipate it so it's not just a surprise. He has heard from other property owners they don't want to be inundated with ten inspections in a month. He likes the idea of the point system and people that have a lot of rentals do not want to have to spend all their times at inspections. He wonders if possibly a cap could be added per owner.

Mr. Pierce shared that he has talked with some landlords and discussed trying to spread out the inspections over a period of time. It is possible it would take away some of the geographic possibilities by doing certain wards in a specific year, for example. That would be more based on licenses and owner names, for example.

He emphasized the City is flexible and welcomes Council recommendations on how to structure the program. If they agree with the outsourcing, he would like that contract authorized in order to spend more time prepping for the full-inspection program and determining the notification manner. If a mass mailing is sent this year, they can inform each owner what month their inspection will occur and that another inspection will not be needed until 2021. In that manner, everyone will be informed

and know what to expect.

Councilman Campbell asked how the City plans to handle the overcrowding issues; Mr. Pierce responded by stating the code would be used to evaluate the situation. If there are signs of overcrowding, that will involve a much more in-depth inspection where rooms will be measured, number of beds and sleeping quarters calculated and other evidence checked into that point to overcrowding issues.

His Department has witnessed some units where modifications have been made to the electrical system to accommodate kitchenette sets in the bedrooms, for example. There have been bedrooms in the basements where they are not permitted.

When asked what happens in those situations, Mr. Pierce explained they work with the landlord to move some of the tenants out. The last property was condemned because of potential electrical system failure and safety concerns. In that case, the landlord was renting to one individual who was subletting to multiple individuals. The owner elected to terminate the lease with the one individual immediately.

During the inspection, they observed deadbolts on individual doors and each person had their own living area in each room. There was a dryer in an upstairs bathroom that was not properly vented and put a strain on the home which resulted in a condemnation notice. That home has since been resold and the new owner is renovating it and is no longer a concern of the Code Enforcement Department.

Councilman Burk pointed out there is usually a formula based on habitable space; Mr. Pierce agreed adding it is outlined in the Property Maintenance Manual which is available on line and easily accessible on the City website.

It was agreed that living in a safe environment is the main factor.

Mayor Shupe recalled that one of the concerns involved in-house versus a third-party inspector and recommended that Mr. Pierce flush out some of those details when it is discussed again on January 22nd.

Mr. Pierce shared that there is a contract drafted to outsource the services immediately. Bringing in someone new puts the program four to five months out for implementing. He referenced the success of outsourcing the building inspections and plan reviews and recommends that be done with this service as well.

Councilman Campbell feels there is an advantage to outsourcing the service because it will provide more bodies which he feels will be a benefit. He referenced the 1,600 rental units and only one Code Official.

Councilman Burk asked if doing it both ways would work in order to get caught up; Councilwoman Wilson feels that would be proactive. Councilman Burk pointed out the City is finding money these days and this is something people want that Council hears about all the time. Councilman Campbell said he would agree to that as well.

Councilwoman Wilson said initially, she was not a big fan of outsourcing our services either. But she was comfortable with it because it would put the City in a proactive position to get caught up because the rentals have gotten out of hand over the years. She agrees that it has been discussed for a long time and she has personally discussed the fact that our Code Official needs help and cannot handle this by himself considering what else he has to do and considering the City's growth. Council agreed that nothing has happened over the past ten years.

She concluded by stating that in the long run, that Department needs more staff.

Councilwoman Peel recommends that perhaps a plan be created with pros and cons listed of how each would fit into the budget.

City Manager Norenberg agreed that they will bring back those numbers on both scenarios at the next meeting. Councilmembers agreed that is what they prefer. Mr. Pierce confirmed this would cover the three-year period in order to catch up.

Councilman Burk reminded Mr. Pierce that most landlords prefer an in-house contact considering we are catching up with funds that have been collected for many years. He prefers some kind of point system that flushes out the life/safety issues versus aesthetics.

It was agreed that contact information with the former Washington State Code Official be exchanged.

There being no further business, the Council Workshop concluded at 7:10 p.m.

Respectfully submitted,

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

Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
January 8, 2018

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, January 8, 2018.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilmembers 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 City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

ABSENT: Councilmember James Starling Sr.

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:15 p.m.

INVOCATION AND PLEDGE

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

APPROVAL OF PREVIOUS MINUTES

Included in the packet were minutes from the November 13 and 27, 2017 and December 11, 2017 Committee and Council Meetings. Motion made by Councilmember Burk, seconded by Councilmember Campbell to approve. Motion carried.

RECOGNITION

Tribute 2017-31/Honoring George C. Wright Jr. 's Life

Mayor Shupe read the following tribute into record:

TRIBUTE 2017-31

*HONORING THE LIFE AND MEMORY OF GEORGE C. WRIGHT JR, FORMER MAYOR OF SMYRNA
AND EXECUTIVE DIRECTOR OF THE DELAWARE LEAGUE OF LOCAL GOVERNMENTS*

WHEREAS, George C. Wright, Jr. has dedicated a significant amount of time to public service, having served as a Smyrna Town Councilman for twelve years; and

WHEREAS, in 1981, he became the first African American Mayor elected in the State of Delaware where he served seven consecutive terms (14 years) until choosing not to run for reelection in 1995; and

WHEREAS, George C. Wright Jr. also served as Executive Director of the Delaware League of Local Governments (DLLG) and in that capacity worked closely with elected officials from the entire State of Delaware and across the United States, serving as only one of two Delawareans to have been elected to the Board of the National League of Cities; and

WHEREAS, for more than 26 years, George C. Wright Jr. provided assistance to Municipalities concerning State and Federal programs and regulations, represented Municipal interests before State and Federal legislative bodies and agencies and developed League policies and programs before retiring on June 26, 2014; and

WHEREAS, George C. Wright Jr. proudly served as an effective and respected advocate for Delaware and all with whom he worked with have great respect and admiration for his diligence, his integrity, his friendly manner and genuine concern for others, as well as his high level of commitment to excellence in local government; and

WHEREAS, gentle by nature, but persistent when necessary, he always conducted himself at all times with dignity, grace, optimism, and integrity; and

WHEREAS, former Mayor and Executive Director George C. Wright Jr. died on December 21, 2017 and will long be remembered for his excellent leadership skills, vision, compassion, and unwavering dedication to the State of Delaware and the Local League of Government, which he used to make it a better place to live.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City to be affixed hereto this 29th day of December 2017.

Mayor Bryan W. Shupe

Mayor Shupe reported that the Tribute was created and delivered to the funeral home handling Former Mayor Wright's services. He noted that not only has Delaware lost a highly respected gentleman, but local government has lost their biggest supporter and that Mr. Wright will be truly missed.

Proclamation 2018-01/Recognizing Martin Luther King Day

Mayor Shupe read the following proclamation into record:

*PROCLAMATION 2018-01
HONORING DR. MARTIN LUTHER KING JR.*

Whereas, Dr. Martin Luther King Jr. devoted his life to advancing equality, social justice, and opportunity for all, and challenged all Americans to participate in the never-ending work of building a more perfect union; and

Whereas, Dr. King's teachings can continue to guide and inspire us in addressing challenges in our communities; and

Whereas, the King Holiday and Service Act, enacted in 1994, designated the King Holiday as a national day of volunteer service, and charged the Corporation for National and Community Service with leading this effort; and

Whereas, since 1994, millions of Americans have been inspired by the life and work of Dr. Martin Luther King Jr. to serve their neighbors and communities on the King Holiday; and

Whereas, serving on the King Holiday is an appropriate way to honor Dr. King, meet local and national needs, bring our citizens together, and strengthen our communities and nation; and

Whereas, the King Day of Service is the only federal holiday commemorated as a national day of service, and offers an opportunity for Americans to give back to their communities on the holiday and make an ongoing commitment to service throughout the year; and

Whereas, King Day of Service projects are being organized by a wide range of nonprofit and community organizations, educational institutions, public agencies, private businesses, and other organizations across the nation; and

Whereas, each of us can and must contribute to making our communities better with increased opportunity for all our citizens, and

Whereas, the residents of the City of Milford have the opportunity to participate in events throughout our city on the King Day of Service, January 15, 2018, as well as create and implement community service projects where they identify the need.

NOW, THEREFORE, I, Bryan W. Shupe, Mayor of the City of Milford, Delaware, proclaim the Martin Luther King Jr.

Holiday as a Day of Service in our City and call upon the people of Milford, Delaware to pay tribute to the life and works of Dr. Martin Luther King Jr. through participation in community service projects on Martin Luther King Day and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Milford to be affixed hereto this 8th day of January 2018.

Mayor Bryan W. Shupe

Mayor Shupe announced there will be a public dedication to Dr. King at Banneker Elementary School on January 15th beginning at noon.

MONTHLY POLICE REPORT

Police Committee Chairman Burk presented the monthly Police Report on behalf of Chief Brown. He commended the efforts to continue updated training of his officers, adding that the crime and arrest numbers continue to increase.

He also thanked Chief Brown for his help with snow adding it was a busy couple of days to be working in sub-freezing temperatures.

Councilwoman Wilson thanked the officers that assisted the driver at Brightway Commons with his disabled vehicle.

Chairman Burk said that his friend had a child who was locked in his vehicles and was extremely grateful for the officers' assistance in that situation as well.

Chief Brown thanked Public Works Director Mark Whitfield and his employees for clearing the Police Department's parking lot throughout the storm. They did an outstanding job and for the second year in a row, pre-treated the parking lots with salt which has made a huge difference when compared to past storms.

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

MONTHLY CITY MANAGER REPORT

City Manager Norenberg referenced the updated monthly report in the packet, in addition to the City Clerk distributing a copy to Councilmembers. The amended report reflected additional information received from the Customer Service and Parks and Recreation Departments. Those documents were submitted as a result of the inclement weather closings and recent holidays.

Mr. Norenberg echoed the comments regarding the round-the-clock work done by the Public Works Staff from Wednesday through Sunday, in addition to the same staff having to repair three emergency water main breaks.

He asked Public Works Director Mark Whitfield to provide a report.

Mr. Whitfield shared that the Public Works Department began snow removal and de-icing on Wednesday night beginning at approximately 10:30 p.m. through Friday night at 9:00 p.m. Most of the people were working between twelve and sixteen hour shifts in order to keep up with the drifts on Friday

He explained that no sooner than the crews got home, a water main break was reported on Southeast Second Street on Saturday afternoon. They returned at 5:00 p.m. Saturday and worked until 2:00 a.m. Sunday morning. A second water line break was then reported Sunday at noon on North Rehoboth Boulevard near Travelers Inn. Work continued until 11:30 p.m. that night and our crews were never able to locate the break. The water had to be turned off to three businesses that were fortunately closed for the weekend.

Another call then came in for a third water line break on Marshall Street at 8:00 p.m. on Sunday night. The amount of water flow had to be reduced in order to keep our customers with water. There was an attempt to assembly an outside contracting

crew until 7:00 a.m. on Monday morning.

Mr. Whitfield stated that Marshall Street was in really bad shape today due to the flooding and icing that occurred on Sunday. But with the help of Schrock Contractors today, that water line was fixed by noon and the Rehoboth Boulevard water line was also repaired and back in service by 4:00 p.m. this afternoon.

He also advised that two transformers blew yesterday; one was reset and one had to be replaced because of overloading due to the cold temperatures.

The Public Works Director informed Council they received many compliments about the City of Milford continuing trash pickup throughout the storm. He advised that a number of customers had their trash out and it was collected even though recycling was postponed until the following day. Because today was yard waste day, the crews were able to go back and collect any trash and recycling that was missed on Thursday or Friday.

He was also complimented by a former City Councilman who has a private contractor handle his service that they were not resuming collections until the following week.

Pothole Patching Promotional Proposal

City Manager Norenberg announced the City has the opportunity to receive a \$5,000 grant toward pothole patching. This involves a national food chain who is promoting the program in an effort to reassure their clients can travel safely when picking up their product. They are doing a major marketing campaign and he hopes they include Milford in anticipation of getting some positive publicity.

Council expressed no concerns or objections so the City Manager will proceed.

Councilman Brooks reported that he informed the Public Works Director about a pothole approximately a month ago that he had asked his wife to locate. Within two days, it was fixed so the Councilman was very pleased.

Councilman Brooks moved to accept the City Manager Report, seconded by Councilman Morrow. Motion carried.

MONTHLY FINANCE REPORT

Finance Committee Chairman Morrow reported that through the fifth month of Fiscal Year 2017-2018 with 42% of the year having passed, 48% of revenues have been received and 36% of the operating budget expended. Much of the revenues can be attributed to the increase in building permits and property taxes, as well as a huge jump in Police fines.

Chairman Morrow moved to accept the November 2017 Finance Report, seconded by Councilmember Burk. Motion carried.

COMMITTEE & WARD REPORTS

Touch of Italy Public Parking Lot

Councilman Burk asked if the City can install some signs directing people to use the public parking lots. He referenced a number of municipal lot signs though the arrow has been covered up and a sign on the property pointing to another area.

Public Works Director Mark Whitfield confirmed the signs are on order.

Police Committee/Salary Recommendation

Police Committee Chairman Burk reported that he and Councilman Brooks attended a Police Committee Meeting before the last meeting at which time a recommendation was made for Chief Brown's increase. They are willing to move forward if Council wishes. He sees the packet included evaluation forms and is unsure if the two are autonomous or separate. However, he is willing to do both though he is ready to make a recommendation this evening on what he and Councilman Brooks agreed to.

Councilman Brooks said he seconded it and wants to go ahead and give Chief Brown the pay raise he needs to be competitive. Then after the evaluation is done, he will recommend another one.

Mayor Shupe stated that he is not opposed to Chief Brown getting a raise; however, evaluations are typically done by the entire City Council who make a decision during the evaluation. That will be done for Chief Brown, City Manager Norenberg and City Clerk Hudson because they are all Council appointees.

Chairman Burk agreed but pointed out the Police Committee met recently because of the Paypoint HR pay increases that were given to his staff. Those increases created a very narrow gap between the Chief and his second in command. That was the concern and the reason for the meeting. During the meeting, a recommendation was made for an increase. However, he agrees that after his review, a bigger increase may be considered.

Regardless, at this point, he is prepared to make the recommendation on behalf of the Police Committee though he understands it is up to Council to approve. He reported that the Police Committee had recommended a \$10,000 annual increase to create a buffer between himself and his Captain, approved by a 2-0 vote by himself and Councilman Brooks and that is his motion. Councilman Brooks then seconded the motion.

Councilwoman Wilson said she prefers to do things the right way and in order; she totally understands the concern that Chairman Burk has. She asked if the evaluation can still be done because an increase will be given as has always been done. As long as she has been on Council, those positions were always given an increase though she understands there is a problem with the small gap between the two top positions. She asked if this is an emergency that must be handled now versus when everyone else can discuss it. Chairman Burk explained that the people who received increases during the study, did not receive them based on their performance and instead on the job and market conditions. Councilwoman Wilson agreed adding it was definitely a fee study.

Chairman Burk explained that when the Chief's staff received their increases, the Captain's salary was moved very close to Chief Brown's salary. They agreed during the Police Committee meeting not to tie that increase to performance because a performance appraisal was not needed for the other employees who received an increase.

Councilwoman Wilson asked if the other Police Chiefs' salaries were ever obtained and compared; Chairman Burk feels that would be difficult because there were items discussed in executive session and other issues discussed in open session. He prefers not to talk about what was talked about in executive session. It was confirmed that Councilwoman Wilson did not recall the Police Committee meeting though she is a member of that Committee.

Councilwoman Wilson said she knows Chief Brown will get the increase though she thought he would get it when everyone else received their increase. Councilwoman Peel asked how the Committee arrived at that number; Chairman Burk explained it was considered in executive session and prefers not to provide confidential information.

Councilwoman Wilson asked if this can be talked about in executive session tonight; City Solicitor Rutt stated that salaries are open session issues. Councilman Burk agreed the motion with the number was made in open session. Solicitor Rutt said if salaries are going to be discussed, it needs to be done now.

Councilwoman Wilson repeated the question about how the Committee arrived at that number and whether it was a comparison of other chiefs and the amount of time in their positions. Chairman Burk said the consultant never provided the comparison salaries to Council. Instead some numbers were presented to Council verbally. As a result, there is no actual comparison data to use.

Councilman Campbell asked why the Police Committee never received that salary information from other cities; Chairman Burk stated that he understands it was collected though he has not seen it. Councilman Brooks added that when this was brought to their attention, they compared the Captain and Chief's salaries. The Committee felt that Chief Brown should be making a lot more than \$4,000 over the Captain considering his responsibilities and always being on call.

Chairman Burk agreed especially considering the additional duties and round-the-clock hours. It only made sense to him that his salary needed to be higher. Last year, he made a recommendation for Chief Brown which he felt was low.

Councilwoman Peel asked if Council is able to talk about what the consultant discussed in executive session; Solicitor Rutt stated that Council is able to talk about the salaries because that is an open meeting issue. However, the qualifications of the individuals are subject to the executive session which was a large part of that discussion.

Mr. Rutt recalled that Chairman Burk had suggested a number though he does not know the basis for it. Councilman Brooks agreed adding it was made in open session through a motion.

It was confirmed an evaluation will still follow as is required by the City Charter. Councilman Brooks argued that this is a separate increase and relates to the increases some of the other employees received. Solicitor Rutt said the Charter allows Council to hire the City Manager, Police Chief and City Clerk and he is aware that historically, there has been an evaluation. He assumes that Chief Brown would still receive an evaluation and set a salary and if an adjustment is made at that point, it could be retroactive to this date or another date.

Councilwoman Peel stated that her concern is that an arbitrary number was set. She was not present for the discussion and she understands there are things that are unable to be discussed at this point. He asked if this is setting a tone for inflation by just choosing a number; Councilwoman Wilson agreed. Solicitor Rutt reiterated it was just a number the Committee recommended.

Councilman Morrow said he was present though he was unable to vote. He feels it was a conservative number to get ample separation between Chief and the Captain and was done between the Captain and the Lieutenants. There is a compression which occurs when a partial pay study is done and not everyone is included. It was suggested that a minimum of \$10,000 be given which would create enough separation to justify that number, as was done with the increase recommended for the Captain.

Councilman Campbell asked the difference in salary between the Lieutenants and Captain; Councilman Morrow said that was done through the study. He reiterated that those increases were implemented without any consideration of performance.

Councilman Campbell thought that was to bring them to the midpoint and Chairman Burk added it was to bring them up to market.

Councilwoman Wilson then commented that those officers will also get their normal increase based on their evaluations; Councilman Morrow agreed. Chairman Burk reiterated that would be a performance-based increase versus the increases the study recommended that were based on the market.

Councilwoman Peel asked if the City has the money for this; Councilman Morrow responded by stating yes we do.

When asked where it is coming from, Councilman Morrow stated the coffers of the City of Milford. Councilman Brooks recalled the City was able to come up with more than \$168,000 for increases for certain employees.

Mayor Shupe said he agrees and when you look at Chief Brown's performance, he deserves a raise. However, if it is going to be based on performance, the evaluation is needed. Councilmen Morrow and Brooks said this was not performance and instead was based on an adjustment.

Mayor Shupe believes those numbers were emailed to City Council the day after they were requested; City Manager Norenberg stated that there was a request for Paypoint HR Consultant Rick Campbell to send a statement regarding the Chief, City Manager and City Clerk to provide Council the comparison information in relation to the market. Mr. Campbell sent it to Mayor Shupe, Lisa Carmean and himself. It was then emailed to all of City Council the following day. It did not include information from other municipalities but included information similar to the other positions that were part of the study. It indicated that all three appointed positions fell relative to the market.

Mr. Norenberg offered to print out a copy if anyone wants it.

Mayor Shupe referenced the motion on the floor unless there is further discussion.

Councilwoman Wilson said she does not object by any means, but she just wanted to be aware if it; Councilwoman Peel

agreed. Chairman Burk said he appreciates that and that is the purpose of bringing it before all of Council this evening.

Councilman Campbell said everyone knows the Chief deserves it but he is old school and would prefer this be done through a performance evaluation. Councilwoman Wilson said this will be a first; Councilwoman Peel agreed noting that this is definitely setting a precedent. Councilman Brooks again argued that the City was able to come up with \$168,000 without any problems.

Councilwoman Wilson agreed but feels that was totally different. This is the first of giving an individual increase as far as she can remember.

Councilman Morrow added that there are two more that need to be done as well. But this is the one that stuck out the most when he looked at the numbers. He was shocked that Chief Brown is now the fifth or sixth highest paid employee in the City and is only making more than 3% over his Captain and only 6 or 8% more than one of the Lieutenants.

Councilman Brooks said they did not know until they got copies of what everyone else was making. Then they realized that Chief Brown is not in the ballpark of where he should be when compared to others.

Chairman Burk agreed adding that Council never received the number prior to it being approved. Instead it was distributed after the vote.

Councilman Morrow said this is a man who has given thirty plus years of service and has moved up through the ranks. The only difference is that he reports to Council. Chairman Burk told Councilwoman Peel it is a unique situation that we found ourselves in and he worries about what this could do to Chief Brown's morale and again emphasized his responsibilities are head and shoulders above his Captain's responsibilities.

Councilwoman Peel agrees though her concern is being a little blind sided with it.

Councilman Brooks said he was blind sided when Council was asked to approve \$168,000 worth of increases and no one knew who was getting them.

Councilwoman Peel said she only wants to make sure that once we do this, Council understands that it will set a precedent and that everyone is ok with setting that precedent and we are going to give out \$10,000 because of a discrepancy that happened in pay.

Councilman Morrow said it may not be \$10,000 but it needs to be the correct number. Councilman Brooks pointed out everyone is not the Chief of Police and referenced the higher salaries.

Councilman Campbell pointed out that no one knows the correct number. Councilman Morrow said he does know the correct number is not what he is making now in comparison and feels this will correct the problem. Chairman Burk mentioned that even if the consultant says it is the correct number, the compression is still there. Councilman Morrow does not agree with it being the correct number and he may not agree with the City Manager or City Clerk's once they receive those numbers and analyzes them.

Councilman Brooks said he does not think anyone really studied it because it all depends on what the Chief is expected to do in comparison to what his other employees do.

Mayor Shupe repeated the motion on the floor that Chief Brown be given a \$10,000 increase based on the salary compression though it sounds like there are different thoughts.

Councilman Campbell said this is setting a major precedent even though Council knows the Chief will get his money in a matter of time.

Motion then carried by the following 7-1 unanimous roll call vote:

Councilwoman Wilson stated this is a little unorthodox in her opinion. She does not recall ever doing it this way in the past,

but she definitely wants all of the employees to feel as though their pay reflects the amount of work that they do. It is never a question of the work that Chief Brown does, especially because Council was part of selecting him to do this job. So Council is very knowledgeable of what he has done in the past. Therefore she will support the increase, though she would have preferred to have been part of the discussion and was not. She wishes Council could see how the Police Committee arrived at that great number but nevertheless, she wants to support Chief Brown and make him feel worthy of what he is doing and votes yes.

Councilman Morrow votes yes. He said it is an adjustment to the numbers in the pay study that he personally did not agree with because they didn't seem fair to everyone. He is not saying that against the other Departments or employees but wants everyone treated the same. He thinks it puts Chief Brown more in line with the rest of the officers in the Police Department and he also works 24/7 365 days a year. Chief does a good job and as Councilwoman Wilson pointed out, Council picked him a couple years ago. He totally supports it and reiterated that the City has the money.

Councilman Brooks said he votes yes and shared that we are fortunate to have him as Chief.

Councilman Burk said he votes yes adding that he thinks it is needed because of the results of the study and he is sorry about the way the number came up. He, too, is a data guy and will get into that later. But this is where we are and how he wants to move forward to try and alleviate the compression that was created. He would also like for Chief Brown to have a performance review because he feels they should be two different increases.

Councilwoman Peel stated that this is going to happen because it appears it is inevitable so will vote yes. She does not appreciate being blind sided as Councilwoman Wilson stated. She wants to emphasize that she feels this is something that she would have liked to have seen the related data. She preferred to see how the numbers came out and would like to be involved in the discussion and referenced Councilman Brooks' statement that Council felt like they did not have all the information when the increases were approved. However, she does not feel like that was something created by Council. In making that decision as a Council, she does not think there should be a precedent set for a performance evaluation or increasing someone's pay without everyone being involved which is how it has been since she has been on Council. But in the spirit of maintaining the integrity of this Council, she is voting for it and believes that is important and appreciates the Chief as well.

Councilman Campbell votes yes after listening to all the comments. He feels the Chief is doing more than an ample job and instead is doing a great job. Just the procedure of being blind sided and left out of this decision bothers him, but Chief deserves what he gets and he votes yes.

COMMUNICATIONS & CORRESPONDENCE

Councilman Brooks said everyone is asking him the status of the Touch of Italy and asked for a breakdown from Mayor Shupe. Mayor Shupe reported that he had a conversation with them last month at which time they indicated they will begin working on their offices in 2018 inside the old M&T building. They will then start on the restaurant side.

The Mayor noted that they indicated they do not believe the restaurant will be open before 2019 though he encouraged them to look for another tenant, restaurant or something to hold that space. From a business perspective, he recommended two options. One is to get another business there that our citizens will love. Touch of Italy owns the building so the new business would have to pay them rent. If the business goes in there and renovates the place and something happens that they are not successful, at that point the building has already been remodeled along with any new kitchenware or appliances that have been brought in.

He reiterated their plan is to start on the offices and then proceed with the restaurant.

Councilman Brooks said he has had a lot of questions when he is at Walmart.

Councilman Campbell reported that they received a letter from the Bayview Baptist Church in Laurel who was selected him as the Government Leader of the Week.

Councilman Brooks announced that he had received the same letter two weeks ago and that Councilman Morrow had received

one three weeks ago.

UNFINISHED BUSINESS

Realtor Commission/Business Park & Independence Commons Lot Sales Authorization

The following memo was submitted by City Manager Norenberg:

The purpose of this memo is to review the status of the Greater Milford Business Park and Independence Commons and review options to stimulate sales of the remaining lots.

The City has one lot remaining for sale in the Business Park and eight (8) Independence Commons as shown on the provided exhibits. Lot prices range from \$100,000.00 for a one acre lot to \$460,000 for an eleven-acre lot. Only one lot in Independence Commons has been sold in the past thirty months.

Funds from the sales of lots in the Business Park and Independence Commons go into the City's Economic Development reserve fund which is primarily used for capital improvement projects and onetime projects. Previously, a policy was set that the City would not pay a commission to a realtor representing the buyer of a City-owned parcel in the Business Park and Independence Commons. At the time lot sales were brisk and no commission would maximize City revenue.

Recently, it has been suggested that if the City was willing to pay a commission on lot sales in the Business Park and Independence Commons, there would be more incentive for realtors to bring potential buyers to the City and we could possibly speed the sales and development of remaining lots. Typically, a real estate commission is set at six percent, with three percent going to the seller's agent and three percent going to the buyer's agent.

The following options were presented for Council considered:

- 1. Offer a Commission of 1% to 3% to a Buyer's Agent: This would cost the City approximately \$1,000 to \$3,000 per lot. Advantage: There could possibly be additional realtors marketing the lots. Disadvantage: There would be the expense of paying a commission.*
- 2. Hire a Realtor and Pay Commissions: Prepare an RFP to solicit proposals from realtors to represent the City and select one or multiple realtors based on their proposed marketing plan and commission rates. Advantage: A realtor would actively be marketing the lots, featuring on the MLS, etc. Competition through an RFP process could ensure we get the lowest commission. Disadvantage: There would be the expense of paying a commission to both the seller and the buyer.*
- 3. No Change: Continue current practice.*

The City Clerk confirmed this has always been the policy though nothing could be found in writing for verification. Councilman Morrow stated that he was unable to find anything either and Solicitor Rutt was unable to find related documents as well.

When asked for direction, Councilmembers Morrow and Wilson recommend either one or two percent.

Solicitor Rutt explained that typically a realtor charges four to six percent to sell a commercial property. That fee is then divided between the listing and buyer agents unless they negotiated a different percentage. However, the percentage the City would pay is a capped percentage. If an RFP is done, there may be a variety of numbers received.

City Manager Norenberg explained that option one provides a range that is five to six percent of the total sale and is normally split 50/50 between the buyer and seller's agent. Option 1 agrees to pay the commission to the buyer's agent though Milford will not have its own agent.

One realtor has already offered to put the lots on the MLS listing. That publication would state that the City would pay the buyer's commission as determined.

Option 2 involves the RFP for a realtor to create a marketing plan and aggressively promote the properties. A realtor would be selected by the City and the contract awarded.

Mayor Shupe stated that he prefers to be aggressive considering these lots could potentially create more jobs in Milford. In addition, that sales money comes back into the Economic Development Fund and he feels that 1 to 3% is worth it.

Mr. Norenberg confirmed there would be a higher commission if option 2 was chosen. Another consideration is to try option 1 for approximately six months and if no activity is stimulated, then we proceed with the RFP process.

Councilman Mergner then moved to select option 2 as stated, seconded by Councilman Morrow. Motion carried.

Authorization/Sewer Reserve Funds/DBF Invoice/Southeast Second Street Water/Wastewater Project Video Inspection Services

The following memo was submitted by Public Works Director Whitfield:

An invoice for \$24,424.93 for the televising of the sanitary sewers on Southeast 2nd Street was included in the packet. DelDOT plans to resurface Southeast 2nd Street in the summer of 2018. In order to determine if any necessary sanitary sewer infrastructure was needed prior to the resurfacing, it was necessary to televise the lines. The contractor, Standard Pipe Services, worked through Davis, Bowen and Friedel to complete the work. The contractor also completed similar work for lines on NE and NW Front Street, therefore, in staff's opinion, it made sense to piggyback on the same contract to complete the work for Southeast 2nd Street. Reserve funds were identified in the sewer budget for the Southeast 2nd Street sewer work in the amount of \$1,550,000. Therefore, funds are available for the work. Engineering for the rehab work will be completed by the City Engineer. If necessary, the rehab work will be bid for construction in late winter, early spring 2018.

Councilman Brooks moved to authorize \$24,424.93 from Sewer Reserves to pay for the Davis Bowen and Friedel invoice for televising the sewer lines on Southeast 2nd Street, seconded by Councilman Burk. Motion carried.

NEW BUSINESS

*Authorization/Bayhealth Development Agreement
Authorization/Bayhealth Electric Service Agreement*

The following memo was submitted by City Manager Norenberg:

Over the past year and one-half, Bayhealth representatives and City staff have negotiated two agreements related to the new health campus under construction in Milford. Both agreements will have positive benefits and memorialize subjects that were discussed with City Council in late-2016 and in 2017. Since those City Council meetings, negotiations continued between teams from both organizations as the project proceeded. Recently, attorneys for both parties completed reviews and final edits.

Development Agreement: Development agreements are often established between municipalities and private developers to address on-site and off-site improvements. This agreement with Bayhealth is no different. It addresses responsibility for water, wastewater and electric improvements that are being constructed to serve the new health campus, both on-site and off-site, including those constructed by Bayhealth contractors and City crews. The agreement addresses warranties and other responsibilities into the future.

The development agreement also addresses easements dedicated by Bayhealth, contributions made by Bayhealth to utility improvements in the area (e.g., the southeast pumping station now under construction), fee schedules, inspections, etc. In addition, this agreement addresses Economic Development Incentives in Article 12. In addition to the economic development incentives available to projects with large scale investment and employment that are available anywhere in the City (approved by City Council in 2017), this section addresses two incentives discussed with City Council previously: refunding up to \$50,000 in permit fees, if the City expends less than the full fee payment for inspection services, etc. and a transfer of a remnant parcel of City land in exchange for the easements.

Electrical Service Agreement: Some of Milford's major electrical customers have electrical service agreements with the City, including Seawatch and Perdue Farms. This agreement was developed with the assistance of the Delaware Municipal Electric Corporation (DEMEC) in mid-2017 and then reviewed and refined with representatives of both parties and their respective attorneys. The agreement sets out terms for the provision of electric service for five years, including rates approved by City Council last spring for this classification.

Mr. Norenberg also reported that over the past six months, Solicitor Rutt and the attorney at Bayhealth have been tweaking the legal parts of the document to ensure it is correct.

He noted that the Carlisle Enhancement Fund Fee is still being negotiated between Bayhealth and Carlisle Fire Company and Council may expect to hear more about that in the near future.

Jerry Peters, Director of the Health Campus Project for Bayhealth Medical Center, was present and assured Council the agreement has been reviewed and changed a number of times. They have worked very closely with Mr. Norenberg and his Staff to come to an agreement that is beneficial to both parties.

Mr. Peters said Bayhealth is very pleased to be building the hospital in the City of Milford and enjoys the support of Mayor Shupe, City Manager Norenberg and his Staff.

When asked for the opening date, Mr. Peters anticipates seeing their first patient in the first quarter of 2019.

Councilman Burk moved to authorize the Bayhealth Economic Development Agreement, seconded by Councilman Campbell. Motion carried with a 7-0-1 vote with Councilman Morrow abstaining due to being on Bayhealth's Board of Directors.

Councilman Burk moved to authorize the Bayhealth Electric Service Agreement, seconded by Councilwoman Wilson. Motion carried with Councilman Morrow again abstaining for the same reason.

Adoption/Resolution 2018-01/City Council Rules of Procedure

Mayor Shupe explained this is a working document and City Staff continues to work on it and is asking for comments from City Council.

Mr. Norenberg stated he, along with the City Clerks have tried to make the rules as clear as possible. Exhibit A spells out the current order of business and identifies those items eligible for public comment. It is also broken out into the order of business for the different types of Council meetings, and adds Public Hearing procedures that were effective September 1st.

He realized that inadvertently, the reference to the public only commenting on ordinances and resolutions and not contracts, purchases and more routine items, was left out. As a result, items one and three in the Public Comment Procedures were updated based on that request.

Also included were procedures related to FOIA postings, canceling of meetings, minutes, consent agenda, parliamentary procedure, etc.

Many of the procedures have been modeled after the City of Newark and the City of Dover.

City Solicitor Rutt then suggested that a procedure for Executive Session be included. He has a model policy for school boards which is similar to municipalities and will share that.

Mayor Shupe also recommended that a smaller and more condensed document be created for the public.

Mr. Norenberg recalled that it was suggested that comment cards be completed prior to someone speaking after the Mayor provides a brief synopsis of the procedure.

Councilwoman Wilson likes the idea of signing in initially versus listening to the discussion and suddenly deciding to speak. She prefers either a sign-in sheet or comment card be completed.

Councilman Brooks prefers a citizen be permitted to speak, and emphasized that it takes a good Mayor to run a meeting and added that the gavel needs to be used. This was tried a few years ago and will be necessary to control the meeting.

Mayor Shupe asked that the document continue to be worked on and brought back on January 22nd for final approval.

Introduction/Ordinance 2017-24/2018 City of Milford Comprehensive Plan Update

Mayor Shupe introduced the following ordinance related to the 2018 update:

WHEREAS, Title 22, Section 702 of the Delaware Code, the Livable Delaware program of the Governor of the State of Delaware and House Bill 255 amending Title 9, Title 22 and Title 29 of the Delaware Code authorize Delaware municipalities to carefully prepare and adopt Comprehensive Land Use Plans to guide and regulate future growth and community development; and

WHEREAS, Delaware's Office of State Planning Coordination provides guidance to municipalities in order to effectuate the goal of having well-drawn and executed Comprehensive Plans for all Delaware counties and municipalities, including the provision that Comprehensive Plans be approved and certified by the Governor of Delaware upon their completion, and further requires that certified Comprehensive Plans be revised, updated and amended as necessary, and readopted on a ten-year cycle; and

WHEREAS, the City of Milford's Comprehensive Plan was last adopted in 2008, as amended, and requires revision to account for physical changes and revitalization accomplishments which have since occurred in both the built and natural environments of the community; and

WHEREAS, the City of Milford Planning Commission has prepared and approved, in consultation with the public, interested parties, and government agencies, a Comprehensive Plan for the City of Milford, which articulates an overall vision for the community's future, including goals, objectives, policies and action project recommendations for achieving that vision and has conducted a duly advertised public hearing for public review and comment on May 16, 2017 and September 19, 2017 and, at its meeting on December 19, 2017 recommends the 2018 City of Milford Comprehensive Plan be adopted by Milford City Council at their January 22, 2018 meeting; and

WHEREAS, the 2018 City of Milford Comprehensive Plan will be the foundation for revision or improvement of the City's Zoning Ordinance, Subdivision Regulations, Housing and Maintenance Codes, Capital Improvement Program, Community Development Program, Public-Private Agreements, Potential Annexation Plans, Strategic Plan and other implementation tools; and

WHEREAS, the Mayor and City Council held a duly advertised public hearing on the Plan on January 22, 2018, at which time the 2018 City of Milford Comprehensive Plan was reviewed with the public.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS that the 2018 City of Milford Comprehensive Plan is hereby adopted this 22nd day of January 2018 and effective immediately upon its Certification from the Governor of the State of Delaware.

Dates:

Planning Commission Recommendation of Approval: December 19, 2017

City Council Adoption: January 22, 2018

Effective: (Pending) Governor Certification Date

City Planner Pierce referenced the large document which is scheduled for adoption on January 22, 2018. He noted that some minor revisions are still needed though the context will not change.

Delinquent Property Tax Accounts Update

The following memo was submitted by City Accountant Suzannah Frederick as an update to the Tax Collection and Monition Sales Process:

This memo is an update on the current properties with delinquent tax accounts within the City and who are currently in the monition sale process. In addition, this memo provides a brief update of our changes in collection processes.

City of Milford "Top 10"

In July 2017, a list of top delinquent accounts was prepared. Three accounts were put on the watch list, as they were owner-occupied and a decision to hold them for round two was made. Two properties were being taken to Sheriff Sale by Sussex County. The combined delinquent balance of these 12 properties was \$200,725; ranging from \$26,685.86 to \$5,149.36. On July 21, 2017, a letter was sent by the City of Milford to the Top 10 delinquent accounts. After 30 days of no response, these properties were listed on the City's website.

- 2 (McColley & Blue Hen Ventures) Paid in full \$41,137.55.*
- 1 (Young's Funeral Home) Sold through Kent County Sheriff Sale on 10/31/17 \$15,000 (City was owed \$24,266.58). Before sales are final, original owner has 90-day redemption period to buy back property at sale price plus 15%. City of Milford and Kent County will split sale proceeds pro-rata.*
- 1 (Thayer) Signed a payment agreement to be paid in full by 10/31/2018 and the sale was stayed, the second payment was not made. Kent County is holding sale on 01/30/18.*
- 1 (Webb) Signed payment agreement to be paid in full by 08/28/2018. Failure to make 3rd payment resulted in monitions process being resumed; agreed if December through March payments are received on time the sale will be stayed.*
- 1 (Sherman) Signed payment agreement to be paid in full by 11/30/18 and sale was stayed.*
- 1 (Cohen) Did not sell at 12/19/17 sale; rescheduled for sale 3/20/18.
Original starting bid thought to be too high, new starting bid lowered to recover City's current out of pocket expense in selling the property, and hopefully increase from there.*
- 1 (Parson) In process of bank acquisition.*
- 2 (Tonwe) Listed to sell 01/30/18.*

Sussex County-led sales

- 114 Marshall St (Mason) Sold 11/21/17 \$12,000 (owed to City \$5,149.36).*
- 110 Southeast Front St (Malkowski/Hummell) Sold 11/21/17 \$13,000 (owed to City \$5,441.48).
Before sales are final, original owner has 90-day redemption period to buy back property at sale price plus 15%.
City of Milford and Sussex County will split sale proceeds pro-rata.*

City of Milford "Next 25"

On December 6, 2017, a letter was sent to the next top 25 delinquent accounts. The combined delinquent balance of this selection totaled approximately \$157,460; ranging from \$16,205 to \$2,683. Since then, Customer Service and the City Manager's Office has fielded walk-ins and calls related to this mailing. We have offered payment plans to anyone that cannot pay their balance in full. Our first offer is to have them fully paid by August 31, 2018, before the 2019 bills are due. If August is not attainable, we have offered 12 months, or to have their current balance and penalties paid in full by December 31, 2018. No payment plans are greater than 12 months.

- 1 (Residential) Paid in full \$10,675.26.*
- 1 (Residential) Signed a payment agreement and began monthly payments in the amount of \$575 to have their balance paid in full by 09/30/18.*
- 1 (Residential) Paid \$3,000 and signed agreement to be paid-in-full by 12/31/18.*
- 1 (Business) Paid \$6,500, with a signed letter stating they would pay the balance (\$3,466) in monthly installments by check until paid in full. Official payment plan \$455/month to be paid in full by 08/31/18, pending signature.*
- 1 (Residential) Signed a payment agreement to be paid in full by 12/31/18.*
- Three additional owners have been in communication, though no final agreements made at this time.*
- Lien searches for this list of properties has been ordered, so that the monition process can be started promptly as soon as the 30-day period expires (01/08/18) for properties not in a payment plan, or if a payment plan defaults.*
- The plan is to have several properties per month go to sale, so not to flood the market, as there are limited potential buyers for these sales.*

SUMMARY

Total collection amount due that is in monitions process: \$358,185

Total collected to date: \$ 74,622

Total percentage collected of Top Ten: % 26.06

Total percentage collected of Next 25: % 14.18

There was a tax penalty forgiveness incentive offered in April 2016. Very few accounts took advantage of this program. Several property owners have requested penalties (1% per month) be removed from the account balance once they received the letters warning of monition sales. To be consistent, we have given no penalty forgiveness.

The City of Milford will continue our drive for collections of delinquent accounts. An updated delinquent statement was sent out the third week of November with an additional notification:

Delinquent unpaid property tax balances are subject to Liens and/or Sheriff Sale by the City.

A second notice of delinquency will be mailed by January 12, 2018. At this time, we will prepare a call list to reach out to clients that are not yet on our monitions list, in a continued effort to collect the unpaid accounts.

Ms. Frederick was present and confirmed that a lot of people are coming in because they hear the City is aggressively collecting these delinquent taxes. In 2016, the City offered a forgiveness policy though not many property owners took it seriously. There are notes on accounts when someone called and inquired about it, though they never followed through.

She explained that from August through November 2017, Staff was working with a payment deadline of August 31, 2017. That was done so that when the new tax bills were sent out, the bills would be paid in full. Currently, a twelve-month payment plan is being offered to ensure they are paid in full by December 31st. Everyone that has called about a payment plan is signing up because they understand their property is in jeopardy if this is not taken care of.

Mr. Norenberg believes that when they start to work on smaller amounts due the City that may involve only one or two years of delinquency, there could be an issue of the return on investment considering the legal fees associated with the monition process. He anticipates one more list of delinquent accounts that will need to be addressed before we get to that point. Notices will continue to be mailed though he agrees that the City is receiving a lot of response from people that are hearing the City is finally serious about these accounts.

Ms. Frederick reported that the first delinquent letter went out in November. This week she and the Customer Service Tax Specialist will be printing the next delinquent list. They will make a call list and reach out to those property owners so people understand how serious a situation this is.

She stated that of the 37 delinquent properties, two were taken to sale by Sussex County and all other property owners have been made aware of the amount owed and that they are due. Most people have no argument and are willing to make payment arrangements.

When asked who approves the payment plan, Ms. Frederick said she approves them and the City Manager signs off on them.

Councilwoman Wilson hopes that most of the owners are able to take care of these taxes and that our Staff is reaching out to those people with hardships in a calm and comforting manner. She understands that it needs to be handled in a stern manner because it has to be addressed though she asked to consider the many reasons people have not paid their taxes.

Ms. Frederick confirmed that the Tax Specialist in Customer Service is really good talking with people and defusing situations when needed. She is the one that will be initially contacting these people. Anyone that wishes to go further will then speak with Customer Service Manager Debbie Johnson or call Ms. Frederick directly. The Tax Specialist has been able to get a lot of these accounts taken care of just by reaching out to the property owners.

When asked the average time frame of most delinquent accounts, Ms. Frederick stated that 2010 seems to be the year in which most accounts became delinquent. She explained that once they became delinquent, a late penalty began to be assessed each

month and that number has grown even though many were in the range of \$450 on an average. In addition, the offer to eliminate penalties has expired and each delinquent account is being handled in a consistent manner.

Mr. Norenberg stated that many people are responding upon receipt of the letter as opposed to having to post legal notices on their doors. A few people are in the early stages of the monition process and will be stayed as long as they continue to pay their payment plan. If those payments stop, the process will begin again.

He commended Ms. Frederick and the Customer Service employees who are assigned to this project.

Ms. Frederick shared that many property owners are very thankful the City offers a payment plan versus taking the property directly to a Sheriffs Sale.

City Manager Norenberg emphasized the goal is not to put people on the street but instead to collect the money owed to the City.

Airport Road Final Change Order

Public Works Director Mark Whitfield recalled that back in November, Council approved adding a section of Northeast Tenth Street to this project. He anticipated it costing an additional \$63,181.00. Due to other reduction in quantities in other parts of the road, the actual change order actually came in at \$16,309.72.

The total project budget was \$2,187,000 though the original contract was \$1,655,177. Adding the \$16,309 change order places the project at \$1,671,487.22.

Councilman Mergner moved to authorize the final change to Diamond Materials, LLC for the Airport Road Paving Project in the amount of as \$16,309.72, seconded by Councilman Burk. Motion carried.

City Policy on FOIA Responses

City Solicitor Rutt informed Council that Councilman Burk had submitted a FOIA request in regard to the Compensation Pay Study. There was a question of whether it was to be handled in the same manner as any citizen or should it be considered a Council request; because the request was received from an individual Councilmember and not Council collectively, Solicitor Rutt felt it should be handled in the normal FOIA process with fees applied.

Because of the extent of the request, Solicitor Rutt thought a letter should be sent to Councilman Burk with an estimated cost, which aligns with normal process under FOIA. His recommendation was that such requests should be included in the City's FOIA Policy and specifically, how to handle a FOIA from a Councilmember or a City employee. He said that Delaware Code requires that all public body's have a FOIA policy. The public is supposed to be able to access the FOIA policy through a website or in some fashion.

More questions arose when Solicitor Rutt found there had been other individuals who had made requests for information that had been completed without a fee. He continued by stating the FOIA statute states that if the time to comply with the request is less than one hour, and the number of pages are less than twenty, it is free. After there, there is a ten-cent charge for each page and the hourly rate of staff members who are needed to comply with FOIA. A fee of \$1.25 can be charged for documents such as maps or plans.

Solicitor Rutt noted that the time for attorney review cannot be passed onto the requestor. Instead, only staff time and the out of pocket costs can be assessed. A response is required within fifteen days does not always mean the documents must be provided within that time frame. The response in a situation where there is a lot requested could be the estimate and the time the City is going to need to gather the information. The estimate and response time must be reasonable. Upon receipt of the estimate, the requestor has the right to say they are unwilling to pay the fee, and the City is no longer obligated to fulfill the request.

Because this was a unique situation, Solicitor Rutt felt it was best to add to the agenda and allow Council to discuss how to address a FOIA request from a Councilmember and whether or not they should be treated the same as any other citizen or

should it be considered a special circumstance.

Councilman Burk then recalled that at the October 9th Workshop and the November 13th Council Meeting, he had requested more background data and numbers which he never received. Council also agreed to postpone the discussion in order to acquire more background information. In his motion, he stated at that time, he would vote in favor of it, but wanted more data. He has said from the beginning that he does not like to vote for items without fully understanding what is involved. That is how he felt and he still feels that way.

Councilwomen Peel and Wilson both agreed that is how they felt tonight in response to the earlier conversation.

Councilman Burk said he was unsure why Councilwoman Wilson was not at the Police Committee meeting though the motion was made in open session and can be seen in the minutes from that meeting.

Councilman Burk clarified that he had requested additional information on various occasions, and other members of City Council did. Councilman Burk did not feel satisfied and wanted to know the background and how they got the range of numbers they presented. Then he received a bill for his FOIA request of between \$434.23 and \$590.34 for information that Councilman Burk felt was in a file in someone's office. It had already been collected and the City had already paid for the work that was done by the consultants. He said that he understands the motion was made and it was implemented. It is a finished product.

However, Councilman Burk can still not understand why it will take the HR Manager six hours to collect this information and the City Manager another three hours. It also includes fees for other directors in the City to put their information together. All the while this information had been compiled and had been forwarded to certain people.

He reiterated that he asked for more background data on several occasions and because he was never given any information, he felt there was no other choice but to file a FOIA request for it.

Councilwoman Peel asked what more background data means; Councilman Burk said he wanted the notes and statistics that he assumed would be in a folder that was used to create the ranges. His intent is not to overturn the vote; he simply wants the information they were provided to create what was presented. He tried to be specific with his request and when he received the response from the City, he sent an email right back asking for the breakdown of the estimate. Since that time, the City Solicitor responded stating that the numbers are being recalculated so he still does not know what those numbers were based on.

Councilman Burk said that is also sounded like nothing would be done until it was presented tonight. He is only asking for the information and numbers used to create the report. He is not interested in writing a newspaper article or making this public. He simply wants to know what and where the information came from. When a trash truck is purchased, Council is provided with a spec sheet that includes specifics such as lug sizes and other parts. But for Council to be expected to approve \$163,904 budget adjustment for certain managers in the middle year with no data to back it up seems irresponsible. He feels his request was a reasonable one.

Councilman Campbell said the consultant talked about that evening and he recalled Councilman Burk asking a question. Councilman Burk agreed adding that he asked several questions but never received any direct answers.

Mayor Shupe said he has a different recollection of the series of events that led up to this. In his time line, Council budgeted for the pay study, which was based on a market analysis, to determine what positions in the City were underpaid in the market. We did this process with the police and we did the process with the IBEW. The independent contractor determined the number of our employees who were underpaid based on a market analysis and City Council approved it by a vote of 5-2, which included Councilman Burk's favorable vote. The policy was implemented to take those employees identified in the study and bring their salaries to market value. Mayor Shupe was ensured that it would make the salaries fair for those that were currently underpaid. In turn, that would make the City competitive and be able to retain quality employees or attract qualified future employees when needed. The study was not based on merit, not based on performance and was not a COLA. It was solely based on a market analysis performed solely by an outside firm.

Mayor Shupe said where he had trouble is when a week later, a Councilman asked to see the names and positions of all the

employees and what their salary was before the study and the increase that were implemented. Some of the Councilmembers tried to turn the dialogue into a rank and file versus management discussion. He recalls that the majority of Council agreed that this study was solely based on market analysis and agreed that the implementation was needed for those specific employees and should not be based on personal preference by an elected official.

His recollection was that a few members of Council tried to make this a discussion about something the study wasn't and then tried to make it a rank and file versus management.

Councilman Morrow feels Mayor Shupe is missing the point because Councilman Burk voted in favor of the pay study, but all he was asking for the minutia of the notes and how and where they got the information. He did not care if they were handwritten or from a computer. Mayor Shupe argued that it is important to bring this point up if he is saying this from the standpoint of a Councilman. But in the text Solicitor Rutt sent, he implied that Council means the body of the whole.

Councilman Morrow responded by stating that Mr. Rutt just pointed out that Councilman Burk is also a citizen and an individual who has the right to request this information because it is public information. He feels that perhaps it is a matter of trust but agrees that City Council is obligated to have this information to make the decision and the City should be willing to give Councilman Burk the information, though it sounds like the cost needs to be determined.

Solicitor Rutt stated that if it involved City Council as a whole, City Council is defined in the Charter in Section 4.01 as the eight members. If they want to obtain information through an investigation under Section 3.05 of the Charter, then there is a process by which Council can have Staff put all of the documents together and then produce it.

However, the question was that an individual Councilmember was seeking the information, and he was not acting on behalf of City Council as a whole. The question is whether that Councilmember should comply with FOIA and is subject to the requirements of FOIA just as anyone in the audience or anyone because who is a citizen and comes in and requests the information. That would require the request be submitted and the requestor be given an estimate of the costs. The requestor must then agree to pay it and if not, the person does not get the information.

Solicitor Rutt feels the other point that needs to be clarified from Mr. Burks' comments is that he wants to see the notes and minutia. Mr. Rutt read the PayPoint HR contract and according to the contract, those notes and minutiae are PayPoint's work product and do not belong to the City. Therefore, the City is not obligated to go out and find the documents. When the City responds to FOIA, the City is only obligated to provide documents they have in their possession and are not obligated to create or track down records kept by a third party. PayPoint HR's contract requires them to keep their documents for three years and the City would be entitled to go and look at those only if there was a question of the compensation paid to PayPoint. For example, if PayPoint charged \$25,000 and the City got a three-page report, the City can demand an audit at which time PayPoint HR is obligated to have all that information available for a representative of the City look at and make copies of in order to verify that what was charged was actually earned. In terms of the ownership of PayPoint's studies, interviews and other records, they belong to PayPoint and not the City of Milford.

Councilman Morrow feels that the City is obligated by law to give Councilman Burk what he asked for; Solicitor Rutt agreed adding that is not a question. The question is if Council will agree to waive the fees if an individual Councilperson requests that information or, if an individual Councilperson makes the request under the adopted policy of the City though they have to comply with the same requirements of making payment for staff time, copy time, etc. That is the question according to the Solicitor.

Councilman Morrow believes there is a need to look at the history and what we have done in the past when a citizen asks for similar information and what was charged because he is not familiar with it.

Solicitor Rutt stated that the ACLU made a very comprehensive request of the Police Department under Chief Hudson. It took many hours of pulling records together and what they wanted was the information on tactical equipment that had been delivered to approximately ten police departments in the State of Delaware through a federal program. And the ACLU had to pay for that information and were told it would cost a certain amount.

Councilman Morrow understands that and as long as the City is consistent with each request, he is willing to accept that.

Solicitor Rutt reiterated that because Mr. Burk is a Councilperson, should there be an exception made under FOIA or compliance with the law in order to make a sound decision. He asked how Council wants to put that into the policy implementation.

Councilman Burk stated he is simply asking if someone received 250 plus pages and was never charged. Councilman Burk is familiar with a reporter who requested and received a 250 plus page response and paid zero dollars. He is unsure if it was electronically sent.

Councilman Burk emphasized this whole process would be so much easier if Council was given access when a document is requested. He added that he is not the only person feeling that way.

Mayor Shupe recommends it be brought before Council and discussed. Councilman Burk recommended that Mayor Shupe read the minutes where the request was made multiple times. He still has not been given an answer as to why the Police Chief, City Clerk and Deputy City Clerk were not included in the final draft. That has been discussed with no firm answer even in executive session which is why he added that to his request.

Councilman Burk then asked if all eight members of City Council have to vote before an individual Councilperson is provided information. He noted that Councilman Morrow asked for it and it was provided immediately. He prefers it be handled internally versus having to submit a FOIA. That was never his intention until weeks later and he was still not given the documents.

It was confirmed that Councilman Morrow was not charged for his request though he only received two pages.

Councilman Brooks feels that a City Councilperson should be able to get any information involving taxpayer money. Councilman Morrow agrees that as representatives of the citizens, they have bigger roles and more responsibility financially and ethically. He feels it is Council's responsibility to ensure the City money is being spent correctly. Next year a Councilperson may ask for something else and he hopes he is not turned down or ignored.

Solicitor Rutt stated that he threw this out through the Municipal Attorney's blog and asked about similar situations. There have been three other towns that he will not name that had a similar situation, and in all cases, the Councilperson was put into the same category as a regular citizen.

Councilman Morrow does not feel we should be charged with something when the information is needed to properly run the City and represent the taxpayers and be fair to our employees.

Councilwoman Wilson agrees with Councilman Morrow. She does not ever remember having this situation. However, she feels if she needs to see something in order to make a better decision, she does not feel it is appropriate to have to pay for it. She personally would be very insulted if she received a bill.

The Councilwoman pointed out she has dedicated twenty plus years of representing the people in this City. She is not even considering the magnitude of the request, but is talking about any request in general from Council. If she goes to the City Manager, Mayor or the City Clerk and tells them there is a need for her to look at something, she certainly hopes they would be willing to accommodate her and if not, she would question it.

Councilwoman Wilson does not see why it is a big deal for a Councilperson to make a request. She emphasized that she is not on anyone's side but is only stating her personal opinion. She feels it is a right of City Council and many times there is a need to have that information.

She said it can be looked at as a fringe benefit because they don't get a lot of money to do all the extra things they are responsible for.

Councilman Campbell agreed adding that this most likely happened because Councilman Burk felt he had to submit a FOIA

request.

Councilwoman Wilson pointed out that the only reason Councilman Burk did that was because he could not get the information he had asked for. Councilman Burk said he stated on several occasions that he only wanted more backup data and that was his exact words when he voted.

He stated that Councilman Morrow had lunch with the City Manager and had requested information though he is unsure if Councilman Morrow wants to get into that. Councilman Burk does not think it is necessary to have a one on one meeting and Council is a public body that should talk openly about things.

Councilman Morrow recommends Councilman Burk be given what he requested. Mayor Shupe stated that this did not involve just notes. Councilman Burk said he will read the list of items he requested. He tried to be as specific as possible and what he was looking for was he was sure had to be in a folder in someone's office. He only wanted to look at it and asked for it multiple times.

When asked specifically what he needed, Councilman Burk stated that he wants to know why Chief Brown and City Clerk Hudson were not included. And really, he wants an answer to why Chief Brown was not involved in the entire process and instead his Secretary was. He pointed out that Chief Brown has a department and is responsible for all of those employees and he was completely left of the process. He reiterated that the Secretary was talked to by the consultants for some reason and there was no attempt to talk to Chief Brown. It makes no sense to him.

Councilman Mergner confirmed that City Manager Norenberg was involved in the process. Councilman Burk is unsure if Mayor Shupe was involved as well. Councilwoman Wilson feels that the City Manager should have been able to answer that question because he is the one that negotiated the contract. Councilman Burk agreed adding it was discussed in executive session and there was a nod though he is unsure if a straight answer was provided. It was implied that the data was collected but kept out of the report. He has no idea why and it remains a question that is hanging out there.

Councilman Campbell understood it was because Council evaluates and sets the rates of those three employees. Councilman Burk said that is fine, but it is even more important for Council to get that data on how they came up with the numbers they did. Councilman Campbell does not feel that information should be in the study because it had nothing to do with City Council. Councilman Burk feels it may have been included but was never part of the final product if he understands this correctly.

It was confirmed that one of the questions is who decided to exclude the three appointees; Councilman Burk asked why was Chief Brown kept out of the process that involved his team. He is responsible for all his employees. Councilwoman Peel said she does not believe someone would have written that answer down. Councilman Burk said there may have been an email directing the consultant not to include the three employees. He reiterated that he voted for this but simply wants to be satisfied he made the right decision. He does not want to be an obstructionist or have some sort of political intention. He just does not understand why this has been so secretive. He does not feel it is necessary for him to ask any other Councilmembers to vote to allow him to get information from the City.

Councilman Burk emphasized he did not feel good about it after the fact and could not understand why it was handled like it was. He was never 100% in favor of it and then suddenly, no one wanted to talk about it any more and instead he was asked to wait for another meeting.

Solicitor Rutt then read the list submitted:

'All communications (internal and external), emails (internal and external), notes, meeting agendas, department head interview and meeting notes forwarded to City, meeting attendee lists, supporting documents, contracts, meeting minutes, all draft compensation plans, final compensation plan, recommendations, supporting payroll documents from other municipalities and entities, detailed funding source data, City Solicitor communications, documentation related to who was included in and excluded from the study, and all other pertinent documents involved with the recent employee compensation

study. I would also like the distribution list of all parties privy to the study, supporting documents, and the final report prior to publication in the agenda on 10/6/17. I would also like a copy of all City Employee exit interviews for the last year.'

Mayor Shupe does not feel that Councilman Burk should be unable to get the information, he just wants the list read so Council understands why it is a unique request.

Councilman Burk said he was just trying to be specific in what he was asking for. Councilwoman Peel asked if Councilman Burk is still looking for the raw data; Councilman Burk said in his opinion, the executive summary included enough information. When the consultant was doing the presentation, he asked if that was the complete study. There were other Councilmembers that expressed concern as well and wanted more information. He feels it is Councils' right to ask questions and answers be provided.

Councilwoman Peel, Councilmen Campbell and Morrow all stated they agree. Councilwoman Peel said she wonders if that will get to the bottom of the raw data. He only wants who made the call to leave out those employees and wants a straight answer. After you ask and ask, there is only one other way to get the information. And he still has not received it.

Councilman Brooks agrees that as a City Councilperson, anytime information is needed, it should be provided. He does not care if it is about fleas on a cat or a dog or something that is needed to make a big dollar decision.

Councilman Burk believes that open communication to obtain information is more important than creating a procedure for Council to obtain it. Councilman Campbell said if he has a problem, he goes to Mayor Shupe or City Manager Norenberg and he tells them he needs to know the information. No one has ever told him he could not get the information. So he does not understand this situation. However, he and Mr. Norenberg do go back and forth sometimes.

Councilwoman Wilson feels the same way. She said she has sat here and dealt with many things and has been in the position where she knew nothing. Because she has experienced that, she agrees that Councilman Burk should be given the information he asked for.

Councilman Brooks said that Councilwoman Wilson and Councilwoman Peel felt they had been blind sided by Councilman Burk and him about the Chief's increase. However, Councilwoman Wilson is a member of the Police Committee and anytime he misses a meeting, he calls the Chair of that Committee to ask what happened. Councilwoman Wilson agreed it was her fault that she forgot the Committee meeting and that she voted in favor of it at the Council meeting.

Mayor Shupe then added that he is also on the same page. He thinks Council should be able to get information when it is requested. But we also need to be aware and follow the suggestions of our City Solicitor when something unique comes up.

Solicitor Rutt said it could be something as simple as sitting down with the City Manager. Councilman Burk said he is willing to pay for the request if the fees are reasonably adjusted. However, he is still waiting for an explanation on that as well. From the outside, it looks as though there was a big speed bump thrown in front of him to prevent him from getting that information. That was the basis for him to put it on Facebook. He had people suggest starting a Go-Fund Me page and asked why the cost was so high; he is unsure where to go at this point.

Mayor Shupe suggests that Council set the policy that anytime Council wants information, regardless of the request, it be provided and they do not have to submit a FOIA request.

Councilman Burk asked what is Council privy to and what are they not privy to, which was going to be his next email and specifically asking what he was allowed to see and what he was not allowed to see. Solicitor Rutt thinks Council is allowed to see anything, though the problem was the process. Councilman Burk understands and he does not like that process but he was getting no where.

The Solicitor said if Council wishes to file a FOIA and the fee is waived, then the next person is going to ask why they have to pay. It was a question of how to treat an individual Councilperson versus a regular citizen because Council has the ability

to sit down with the City Manager or anyone else and get the information. That is why when Mr. Rutt looked at it and he wondered how to handle it and ultimately recommended adding it to the agenda for Council to decide. He will take the heat for asking how it should be handled.

Councilman Burk said he only wants the information.

Councilwoman Wilson then made an official motion that any elected official for the City of Milford can request and receive materials and information related to issues that have been or are being presented, whether they have been voted on or not, and that elected official has the right to review those documents without having to submit a FOIA request, and without any associated costs. The motion was seconded by Councilman Morrow.

Councilman Brooks feels that every City Councilperson should know what is going on and not be kept in the dark.

Motion carried by unanimous 6-0-1 vote, with Councilman Burk abstaining due to his involvement in the matter.

International Brotherhood of Electrical Workers (IBEW) Memorandum of Agreement Regarding Sick Leave and Overtime/Authorization

City Manager Norenberg referenced the following memo included in the packet noting that the next two items are very similar in relation to the IBEW and Teamsters:

Recently, two minor amendments to the City's collective bargaining agreements (one with the IBEW and one with the Teamsters) have been negotiated. Both changes will have positive benefits for operations and administration of respective departments and neither change will have adverse financial impact to either party and both sides for each agreement have approved of the changes. Though minor in scope, such amendments to a CBA approved by City Council must be approved of by City Council.

Teamsters: As the City began planning to implement the new timekeeping system, Police Department and Payroll Staff identified procedural changes that would be needed in order to implement the new software, as well as changes that would help maximize the efficiencies possible with the new software. One change that was identified and discussed with the union in the fall requires an amendment to the current collective bargaining agreement. The concept was tentatively agreed to in the fall and details were worked out during the current contract negotiations.

The amendment changes the definition of "regular work period" to 80 hours within a 14-day period. Hours worked in excess of 80 hours would be compensated at time and one-half. Other details are shown in the accompanying amendment. Using this definition will reduce the manual data entry by officers as well as the subsequent manual calculations by administrative staff currently required.

IBEW: When the current agreement was negotiated in June, parties agreed to a provision that did not count sick time toward the calculation of overtime in a given week. However, in emergencies employees may be called on to work later in the week when they are well again. As an incentive to work overtime in such situations, both parties agree that sick leave should count toward overtime calculations as long as there is no pattern of abusing sick leave.

It is recommended that both be approved.

Public Works Director Whitfield added that the IBEW proposal will have a very minor impact on the annual budget. He feels it is more important to have the manpower when needed and those employees should be rewarded for putting in the extra time.

Councilman Morrow asked how this will affect the non-union City employees; Mr. Norenberg said this is similar to the manner in which sick leave is already handled by the non-union employees. Sick leave is counted toward the overtime calculation for those employees as well.

Councilman Burk moved to authorized the IBEW Memorandum of Agreement Regarding Sick Leave and Overtime/Authorization as presented, seconded by Councilman Brooks. Motion carried.

International Brotherhood of Teamsters (Teamsters) Agreement Amendment regarding Overtime/Authorization

City Manager Norenberg clarified this also relates to overtime and the regular work period week for the union officers. There are a lot of timekeeping rules related to the current police officer schedules. To simplify it, the regular work period will be changed to eighty hours over the fourteen-day period to prevent calculation problems for the Payroll Clerk.

Chief Brown explained that some overtime was based on eight-hour days, ten-hour days and twelve-hour days based on the officers schedules, which depends on the divisions they are in. This was a problem for payroll each pay period and will make the process much simpler for her.

Chief Brown confirmed it will not impact increase overtime but only the way it is plugged in.

Councilman Morrow moved to authorize Teamsters Agreement Amendment regarding Overtime/Authorization, seconded by Councilman Brooks. Motion carried.

EXECUTIVE SESSION

Councilmember Burk moved to go into Executive Session reference the below statutes, seconded by Councilmember Campbell:

Pursuant to 29 Del. C. §10004(b)(4) Collective Bargaining Matters
Pursuant to 29 Del. C. §10004(b)(2) Discussion of Site Acquisitions
Pursuant to 29 Del. C. §10004(b)(9) Discussion of Personnel Matters

Motion carried.

Mayor Shupe recessed the Council Meeting at 9:25 p.m. for the purpose as is permitted by the Delaware Freedom of Information Act.

Return to Open Session

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

Council returned to Open Session at 9:45 p.m.

Police Teamsters Negotiations

No action required.

Authorization/Property Purchase

Councilman Burk moved to authorize the City Manager and/or his designee to bid on the two lots discussed in Executive Session, in an effort to cover the amount owed to the City of Milford, Kent County and Milford School District and any associated fees, seconded by Councilman Brooks. Motion carried.

Personnel Matter

No action required.

ADJOURNMENT

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

The Council Meeting adjourned at 9:48 p.m.

Respectfully submitted,

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

Terri K. Hudson, MMC
City Clerk/Recorder