

CITY OF MILFORD
COUNCIL WORKSHOP MINUTES
September 27, 2023

The City Council of the City of Milford convened in a Workshop Session on Wednesday, September 27, 2023, beginning at 6:08 p.m.

PRESIDING: Mayor Archie Campbell

IN ATTENDANCE: Councilpersons Mike Boyle, Andrew Fulton, Todd Culotta, Brian Baer, Jason James Sr., and Katrina Wilson

STAFF: City Manager Mark Whitfield, Police Chief Cecilia Ashe, and City Clerk Terri Hudson

COUNSEL: Solicitor David Rutt, Esquire

ABSENT: Councilmember Daniel Marabello and Nirmala Samaroo

PUBLIC COMMENT PERIOD PRIOR TO MEETING

No one signed up to speak, so Mayor Campbell proceeded with the Workshop Session.

The Workshop Session commenced at 6:06 p.m.

Marijuana Dispensary Land Use Changes

Planning Director Rob Pierce read the language from the presentation slides attached.

Upon conclusion, he asked if Council wants to prohibit the sale recreational marijuana within the City, allow the sale of recreational marijuana but regulate it based on the hours of operation, location, and/or number of establishments. However, he is willing to talk with other entities to see how they plan to handle recreational marijuana use in their jurisdictions and prepare similar regulations.

Planner Pierce is also willing to revisit the rules that fall under state government or federal government related to alcohol, tobacco, and firearm sales.

He added that presently, recreational marijuana sales are not permitted in Delaware, which is why he is willing to take a let's see how it goes in other community's approach. They are still trying to figure out all the rules and regulations of how to oversee that at the state level. However, other towns are having the same discussions assuming it will eventually happen.

Councilman Fulton believes recreational marijuana should be handled in the same manner as alcohol community-wide and believes it will increase revenues in Milford.

Councilmember Baer agreed with Councilmember Wilson stating why make it difficult and she sees it grouped the same as alcohol statewide. Milford should be the first to accept this though consistency is a must. The City has already permitted two growers in Milford and because of that, retail should follow with the ability to sell the product.

Mayor Campbell said all Mayors in the beach communities informed him it has been denied in each of their towns.

Councilmember James said it can be done, though it needs to be done carefully. There needs to be a careful review of other regulations to prevent any conflicts. He added there are still some criminal elements attached though he believes that will eventually fade in time.

He disagrees it should be handled the same as alcohol because permitting marijuana is still very new, though alcohol regulations have been in place for many years. Moving forward carefully is his recommendation.

Councilmember Culotta agrees it needs to be considered carefully and what works and what doesn't in other states that permits it should be considered. Locations should be a primary focus as well. He suggests looking to the State for guidance.

Mr. Pierce said Milford has the right to set its own restrictions for recreational marijuana and the city is unable to prohibit medical dispensaries.

Councilman Boyle said after he read the law, it appears that the State will regulate it though perhaps hours may be restricted by the City.

Solicitor Rutt explained the State is in process of appointing members to the commission who will establish the regulations. He also noted that the new section in Title 4 entitled Alcohol, Liquor and Marijuana Regulations address local control and permits a municipality to prohibit its operation of cultivation facilities, manufacturing, testing, or retail through the enactment of an ordinance. The municipality can enact ordinances that are not in conflict with the chapter, but only governing time, place, manner, and number of establishments, but the county cannot.

Planner Pierce informed Council the City can establish a business license to allow it.

The law was reviewed with Solicitor Rutt reiterating the commissioners are still being appointed who will determine the applicable rules and regulations. Councilman James agreed that Council still has time before making any final decisions on how this will be handled in the City. He thinks it is important to hear from our residents before any final decision is made.

Councilman Fulton provided various facts regarding the timeline for other steps and that regulations will not be in place until late 2024 or early 2025 before all regulations are in place for the legal sale of cannabis.

It was agreed this is too early to make these decisions and to postpone at this point.

Council also requested a status report on this matter over time.

Because of its relationship to public safety, Council desired Chief Ashe be involved in the conversations and decisions. However, Councilmember Fulton asked that Council consider the questions that Planner Pierce had brought to Council about prohibiting the sale of recreational marijuana and believes that answer is no and why more discussion is needed to move forward on the matter.

Planner Pierce explained that the use of recreational marijuana is not prohibited in Delaware and a municipality can only prohibit its sale. Councilmember Fulton talked about it being permitted in a home but not within so many feet of a public right of way. The only focus for Council should be deciding the number and placement of sales establishments.

Council agreed to wait and see what occurs before moving forward with establishing rules.

Planner Pierce confirmed the only one medicinal dispensary is permitted in each county, and he is only aware of one in Smyrna. Councilmember Wilson advised there is another in Lewes.

Accessory Dwelling Unit Impact Fee

Public Works Director Mike Svaby reviewed the ADU Impact Fee analysis noting that the Zoning Code defines accessory dwelling units, with one being an accessory apartment or an accessory cottage. One is a unit behind a house and the other a unit within a house, and associated water and sewer impact fees.

Current charges are:

- ▶ City Water Impact Fee - \$3,456 per Equivalent Dwelling Unit (EDU)
- ▶ City Sewer Impact Fee - \$1,826 per EDU
- ▶ Kent County Sewer Impact Fee - \$3,059 per EDU

▶ The Kent County fee is assessed to all properties connected to the City of Milford sewer system regardless of which County the property resides in because Milford is a Municipal Contract User to the Kent County Regional Wastewater Treatment Facility in Frederica, DE where all wastewater is treated.

▶ Sewer and Water Impact Fees collected are used for capacity improvements to water and sewer infrastructure (i.e. sewage pump stations, water tower, water treatment, upsizing of pipes, etc.)

▶ Equivalent Dwelling Unit – “A term used to express the load produced on a sanitary sewerage system approximately equal to one dwelling place and as further defined in the most recent impact fee ordinance adopted by the Kent County Levy Court.”

▶ Equivalent Dwelling Unit – “A term used to express the load produced on a water system approximately equal to one dwelling place and as further defined in the most recent impact fee ordinance adopted by the Kent County Levy Court.”

He reminded Council impact fees are the sewer and water impact fees are collected to address the capacity improvements for water into our infrastructure. The primary predicate for all of the assessment of sewer and water impact fees is what it is in an equivalent dwelling unit (EDU) or load produced on a sewer system or water system.

Calculations by municipalities are based on the following same or similar language:

Residential – “Any dwelling with one or more baths and at least one or more bedroom(s). This includes single-family houses, apartments, mobile homes and efficiency units: 1.0 EDU.”

Director Svaby then reviewed all permit fees associated with the construction of residential units and also ADU’s.

A review of other jurisdictions revealed the following:

- ▶ Kent County – Impact Fees assessed the same as other dwelling units
- ▶ Town of Smyrna – Impact Fees assessed the same as other dwelling units
- ▶ City of Dover – Impact Fees assessed the same as other dwelling units
- ▶ Town of Lewes – Impact Fees assessed the same as other dwelling units
- ▶ City of Newark – Impact Fees assessed the same as other dwelling units
- ▶ Town of Rehoboth Beach – ADU’s are not permitted

Director Svaby asked for Council’s direction in how to proceed ADU impact fees.

Concerns were expressed by Councilman Culotta about additional charges related to existing structures. He noted a current situation that has resulted in substantial costs for something intended as affordable housing, when in theory there is no additional impact.

A long conversation followed with Planner Pierce explaining the prohibitions and utility impacts.

City Engineer James Puddicombe explained the code review that was performed. He noted the existing sewer is unable to be run through the existing house due to backup exposure. The water can be and a one-inch service can serve two houses on two properties. And electricity can be extended from the existing house.

Evaluations are done on an individual basis which determines the location of the tie-in and capacity of the line.

It was agreed the options available to the property owner/builder should be explained for complete transparency. Council also agreed the language in the code should be very clear with no ambiguity.

Pallet Village Options

City Manager Whitfield recalled the previous presentation with Springboard Collaborative and whether Council wants to partnership with them.

He put together some city parcels as options for a pallet village location or other private property locations. All three locations presented are properties owned by the City of Milford.

When asked if Council wants to pursue, it was agreed there is a need to explore the inevitable, but the question is where it should go.

It was agreed that Springboard Collaborative is a worthy organization, but the location is the problem and its impact to the surrounding areas.

There was questions about whether the City should oversee the project, though a partnership with a private entity possibly should be considered.

Each of the three locations was then evaluated. Also noted was that Georgetown was able to bypass a lot of the requirements to get it placed in its current location. The pros and cons of various areas were discussed.

It was noted and agreed that the Georgetown location is close to the service areas needed for those residents and the same should apply in Milford.

Mayor Campbell added that Georgetown also still has a tent city, in addition to those that have been accepted in the Pallet Village.

When presenting each of the sites, the City Manager said he is not in favor of the one by the solar farm because it's next to a substation. Battery storage is being planned for the lot as well. The only close service to that site is Brandywine Counseling. All other services, including public transportation, are a distance away.

He said the other two locations identified are the old police station, soon to be vacant, and the undeveloped land on the north side of the new police station. Planner Pierce agreed there is about three acres available there beyond the wetlands on that parcel.

Springboard agreed that is the best location in terms of the state health services, public transportation, and other stores. It also borders a residential neighborhood as well.

There is also a lot of square footage available at the old police station, as well as a lot of paving which would aid with the placement of the units. The old station could also be used as emergency shelter, and a possibility for other needed.

City Manager Whitfield recommends Option 2, which is north of the new police station.

Councilmember James pointed out the various reasons this is coming to fruition, including the safety and concern by our citizens. He also believes that a partnership with Springboard Collaborative is the best option though other options were considered.

He added that while property is very valuable, he thinks that our citizens would concur with this decision to use a portion of our property for this purpose. He also agrees with the City Manager that the NE Fourth Street location is the most appropriate site considering all factors and the needs of the residents of this community.

Councilman Culotta expressed concern about the voters who approved the police station without considering using a portion of that land for this purpose.

When asked what other use the land adjacent to the new police facility could be used for, City Manager Whitfield said it is an ideal location for a City park and with the infrastructure available in the area, water and sewer connections would allow a restroom facility and a cooking facility appropriate for a picnic area.

Affordable housing has also been considered for that site. Again, with sewer and water available, working with a developer such as Milford Housing would be appropriate.

Planner Pierce explained the zoning of each site, adding that the proposed use would require a conditional use and a public hearing.

It was agreed that public comment is necessary before proceeding with the pallet village.

City Manager Whitfield said from what he is hearing, he will pursue this with Springboard, adding that a public hearing will be scheduled.

There being no further business, the Council Workshop concluded at 7:26 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder

Attachment:
Marijuana Dispensary Land Use Changes Presentation



Chapter 230 - Zoning Marijuana Dispensaries

September 27, 2023



Delaware Code - Title 16 Health and Safety Medical Marijuana

- ▶ **Chapter 49A. The Delaware Medical Marijuana Act. § 4917A. Local ordinances.**
- ▶ Nothing shall prohibit local governments from enacting ordinances or regulations not in conflict with this chapter or with Department regulations regulating the time, place, and manner of registered compassion center operations and registered safety compliance facilities, provided that no local government may prohibit registered compassion center operation altogether, either expressly or though the enactment of ordinances or regulations which make registered compassion center and registered safety compliance facility operation unreasonably impracticable in the jurisdiction.



Delaware Code - Title 4 Alcoholic Liquors and Marijuana Recreational Marijuana

- ▶ **Chapter 13. The Delaware Marijuana Control Act. Subchapter IV. Determination of Applications. § 1351 Local control.**
- ▶ A municipality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure.
- ▶ A municipality or county may enact ordinances or regulations that are not in conflict with this chapter or in conflict with regulations enacted by the Commissioner, governing the time, place, manner, and number of marijuana establishment operations. A municipality or county may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner that a marijuana establishment may operate in such municipality or county.



Current Milford Zoning Regulations - Alcohol, Tobacco, Firearms & Marijuana

- ▶ When discussing the sale of medical or recreational marijuana, a comparison of how the sale of other similar products are handled within the zoning code should be considered.
- ▶ Under the current zoning ordinance, Marijuana sales would be considered retail and permitted within the commercial zoning districts.
- ▶ Tobacco sales fall under retail.
- ▶ Firearm sales fall under retail.
- ▶ Regulations pertaining to the sale of alcohol depend on the principal use; microbrewery, distillery, brewpub, liquor store, tavern, restaurant, etc. Most of these are permitted within the commercial districts or conditional uses within the industrial districts.



Previous Milford Zoning Amendments - Alcohol, Tobacco, Firearms & Marijuana

- ▶ Ordinance 2015-04 was adopted May 26, 2015.
- ▶ Amended Chapter 230-44(D) "All establishments involving the sale of alcoholic beverages either on or off premises, which are located within 1,000 feet of any public or private school, day-care or child care center or church, **unless food is prepared and served for consumption on site or for takeout, or alcoholic beverages are produced in said location.** Approval to sell alcoholic beverages at special events or gatherings for a period of time, not to exceed three days, may be granted if approved by City Council.
- ▶ Prior to the amendment, the sale of alcohol in restaurants, brewpubs, distilleries, liquor stores, taverns, tap rooms, etc. could not be located within 1,000 feet of a school, day-care or church.



Previous Milford Zoning Amendments - Alcohol, Tobacco, Firearms & Marijuana

- ▶ Ordinance 2022-06 was adopted January 24, 2022.
- ▶ Amended Chapter 230-44(D) by completely removing the following; ~~“All establishments involving the sale of alcoholic beverages either on or off premises, which are located within 1,000 feet of any public or private school, day care or child care center or church, unless food is prepared and served for consumption on site or for takeout, or alcoholic beverages are produced in said location. Approval to sell alcoholic beverages at special events or gatherings for a period of time, not to exceed three days, may be granted if approved by City Council.”~~
- ▶ Where alcohol could be sold is now dependent on the principal use of the property and OABCC regulations.



State/Federal Agencies - Alcohol, Tobacco, Firearms & Marijuana

- ▶ State of Delaware, Department of Safety and Homeland Security (DSHS), Division of Alcohol & Tobacco Enforcement (ATE)
- ▶ State of Delaware, Office of Alcoholic Beverage Control Commissioner (OABCC)
- ▶ State of Delaware, Department of Health and Social Services (DHSS)
- ▶ Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)



State of Delaware Division of Alcohol & Tobacco Enforcement

- ▶ The Division of Alcohol and Tobacco Enforcement (ATE) is a state law enforcement agency. Officers of the Division are primarily tasked with the enforcement of Title 4 - The Liquor Control Act and the Administrative Rules of the Delaware Alcoholic Beverage Control Commissioner. The Division of Alcohol & Tobacco Enforcement is also tasked with checking all establishments that sell tobacco for compliance in regards to youth access to tobacco laws.
- ▶ Department of Safety and Homeland Security and the Department of Health and Social Services have been tasked with creating the framework for the production, manufacture, and sale of legal recreational marijuana at the State level.
- ▶ <https://date.delaware.gov/ATE/index.shtml>



State of Delaware Office of Alcoholic Beverage Control Commissioner (OABCC)

- ▶ The Commissioner establishes rules and regulations to control the business, manufacture, sale, dispensation and distribution and importation of alcoholic liquors within and into the state to ensure the public safety and the best interests of the consumer while not unduly restricting the alcoholic beverage industry.
- ▶ The Commissioner grants/denies applications for liquor licenses, approves/disapproves requests for modifications to licensed establishments, performs inspections and grants renewals of liquor licenses.
- ▶ <https://oabcc.delaware.gov/>



Discussion

- ▶ Does City Council want to prohibit the sale of recreational marijuana within City limits?
- ▶ Does City Council want to allow the sale of recreational marijuana but regulate based on the hours of operation, place, manner and number of establishments?
 - ▶ If so, does City Council want to revisit regulations related to the sale of alcohol or look into regulations regarding the sale of tobacco products and firearms?
- ▶ Does City Council want to treat the sale of recreational marijuana as a retail use, which would be similar to how the sale of alcohol, tobacco and firearms is currently regulated in the City zoning code?



Next Steps

- ▶ Review what other Delaware municipalities and counties have in their zoning ordinances related to the sale of marijuana.
- ▶ Prepare draft ordinance amendment based on additional research and the City Council workshop discussion, if needed.