

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
July 14, 2008

The Regular Monthly Meeting of Milford City Council was held in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware on Monday, July 14, 2008.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Clifford Crouch, Owen Brooks, Jr., Douglas Morrow, James Starling, Sr. and Katrina Wilson

ALSO: City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello called the Monthly Meeting to order at 7:30 p.m.

#### BOARD OF REVISION AND APPEAL PUBLIC HEARING

The Public Hearing before the Board of Revision and Appeal Public Hearing scheduled at 7:00 p.m. regarding the 2008-2009 City of Milford General Property Assessment was canceled due to all issues being resolved by our Land Management Data Manager.

#### INVOCATION

Following the Pledge of Allegiance, Councilman Starling gave the invocation.

#### APPROVAL OF MINUTES

Ms. Wilson moved for approval of the June 3, 4, 9, 16 and 23, 2008 minutes as submitted with Mr. Workman seconding. Motion carried with no one opposed.

#### RECOGNITION

None.

#### MONTHLY POLICE REPORT

Ms. Wilson moved for approval of the monthly police report submitted by Chief Hudson. Mr. Starling seconded motion.

#### CITY MANAGER REPORT

The following report was submitted by City Manager Baird:

##### Lakeview Ave/Causey Avenue Road Improvements

*DelDOT has started preliminary work on Lakeview and Causey Avenue and work is expected to continue over the next few weeks. DelDOT has informed the city the contract will be extended to include portions of Marshall Street and Elks Lodge Road and possibly portions of Seabury Avenue. I will continue to keep you updated as DelDOT informs the city of its plans.*

##### Comprehensive Land Use Plan Update

*Public meetings on the city's Land Use Plan will be held by the planning commission on Tuesday, July 15th and Tuesday, August 19th at 7:00 p.m. at the Delaware Rural Water Association Building. It is anticipated the draft plan will be considered part of the State's PLUS review in early September.*

Subdivision and Zoning Code Amendments

The planning commission will hold a public hearing on proposed zoning and subdivision amendments on Tuesday, August 19th. Subsequently, public hearings by city council are scheduled for Monday, August 25th. Complete copies of the proposed amendments are available on the city's website.

Annual Budget

As requested at your previous meeting, a public hearing on the city budget will be held on Monday, July 28, 2008.

Recycling

The city has prepared a brochure that outlines the city's recycling program provided in partnership with DSWA. This brochure was produced as a part of an effort to inform and educate city residents on what materials are able to be recycled through the single stream program and provides contact information for residents to enroll in the curbside recycling program. I would like to thank Christie Hughes of the Engineering and Public Works Department for her efforts in the production of this brochure.

Councilman Workman is assisting with the distribution of brochures in his ward.

Recycling material will be picked up every other week beginning August 1, 2008.

City of Milford/Delmarva Power Interconnection Agreement

I have been in close contact with representatives from DEMEC and Delmarva Power regarding the proposed interconnection agreement necessary for the city to proceed with the interconnection of a new electric substation. It is anticipated that a new interconnection agreement between DEMEC and Delmarva Power will be completed later this month which should be followed by an interconnection agreement between Delmarva Power and the city in August.

Once this interconnection agreement is completed between Delmarva Power and the city, we will be able to finalize issues needed to proceed with our bond issuance.

Mr. Baird added that city crews are presently coordinating utility adjustments, curbing work, etc. with DELDOT. Construction work will continue until late August or September.

The city manager anticipates bonds will be ready for issuing in late September or early October. Once the Delmarva Power final interconnection is prepared, it will be presented to council for action.

The Silicato subdivision application is proceeding with final plan preparation. Once that is completed, it will be forwarded to the planning commission for review and consideration; it will then be sent to council for final action.

Mr. Brooks has received a lot of complaints about the railroad crossing on Route 113 by Haven Lake. He asked whether Mr. Baird has discussed the matter with Norfolk Southern. Mr. Baird discussed the issue when DELDOT was working on Lakeview Avenue. He is unaware of any commitment from DELDOT or the railroad to do the work at the present time though the city will continue to pressure them to correct the problem.

Mr. Workman referred to the change in the recycling program to bi-weekly pickup and asked if Solid Waste will pickup the entire city in one day; Mr. Baird responded that was his understanding. Mr. Brooks advised that according to the Delaware Solid Waste letter, if the collection falls on a holiday, they will pick up the following day.

When asked the status of the city hall construction, Mr. Baird informed council he anticipates council may possibly have the late August meeting at city hall though staff will not move back until at least September. That will allow the contractors to complete their work in a more timely manner. He stressed the time frame is still an estimate at this point.

Regarding the location of the electric substation, Mr. Baird said there are three possible locations though he does not want to divulge them at this time because they are in negotiations with the property owners.

Mr. Workman moved to accept the city manager report, seconded by Mr. Morrow. Motion carried.

Mr. Morrow asked if customers can opt for a larger recycling container. Mr. Baird recommended those customers contact city hall as DSWA indicated they would work with us on this.

## COMMITTEE REPORTS

### *Planning Commission Advisory Subcommittee Report*

Mayor Marabello advised the subcommittee met on June 16<sup>th</sup> to consider the conflicts between the ordinance, charter and state law. He read the following report into record:

*The Planning Commission Advisory Committee discussed the status of the current terms of the Planning Commission and the appointment structure described in 7.08 of the City Charter, Chapter 57 of Milford City Code, and Title 22 of the Delaware Code and offer the following recommendation:*

- 1. The current terms of the Planning Commission should be adjusted to expire on August 31, 2008.*
- 2. Mayor should have the authority to nominate individuals to the Planning Commission with the nominees being appointed by City Council.*
- 3. Terms: The language contained in §57-2 of City Code should be used. "The Commission shall consist of nine members to be appointed by the Council. The term of each member so appointed and confirmed shall be for three years, except that of the members first appointed, three shall be appointed to a term of three years, three shall be appointed to a term of two years, and three shall be appointed for a period of one year."*
- 4. The City Charter should be amended to reflect that language in Title 22 of the Delaware Code and Chapter 57 of the Milford City Code.*

Mayor Marabello then advised that the deadline for applications for new appointees has been extended to July 22<sup>nd</sup>. The names would be submitted to the city council for review on July 28<sup>th</sup>. On August 1<sup>st</sup>, council should be prepared to make appointments effective September 1, 2008.

City Solicitor Willard advised that part of the recommendation calls for a charter amendment. There is an inconsistency in the charter which calls for five members to serve three year terms and four members to serve two years. Title 22 has some leeway to have between two and five, though the code says there will be three. The committee agreed consistency was needed and that all commissioners should begin their terms on specific dates. A charter amendment cannot be considered until January when the next legislative session begins.

Solicitor Willard then presented the following amendment to the Charter:

An Act to Amend the Charter of the City of Milford Chapter 726, Volume 57, Laws of Delaware as amended relating to the Planning Commission.

Amend Section 7.08 of the Charter of the City of Milford Chapter 726, Volume 57, Laws of Delaware as amended by deleting the second sentence of the first paragraph.

Synopsis: This amendment corrects an inconsistency with Milford Code, Chapter 57, relating to the term lengths of Planning Commission members. Each member is to have a 3-year term and those terms are to be staggered at the onset.

He recommends this be put into the proper form to be presented to the general assembly.

Mr. Brooks asked how this affects the current commissioners; he referred to the proposed terms noted on the planning commission roster advising that three terms expire in May of 2009, three in 2010 and three in 2011.

The solicitor feels it is important to preserve the integrity of the duration of their terms so they are not removed for cause.

On September 1<sup>st</sup>, they would begin a new term. He feels that unless the charter amendment is not approved by the general assembly or the governor does not sign the bill, he believes this will become effective in January.

Mr. Spillane recommends the commissioners' terms who have served the longest be one year and the newest commissioners appointed in 2008 be given the three-year term. He referred to the proposed expiration dates of the three longest serving commissioners whose terms would expire in 2011 and prefers they expire in 2009.

Mr. Willard said that within the next month, the names need to be matched to the terms. By making appointments on the same date each year, the process will be much simpler with at least one term expiring on that date annually.

Mr. Baird advised that when Mayor Marabello makes his nominations, he will assign the proposed term at that time. Council will then consider the name and the proposed term prior to their appointment.

Mr. Crouch said he is somewhat confused because of some comments that have been made about the commissioners who have served a long period of time who are very effective but should receive the shorter term. Mayor Marabello answered we want to get this streamlined to prevent forgetting to reappoint a good commissioner. He added council must decide which commissioners are most effective.

Mr. Crouch noted the importance of an effective commissioner who should not be penalized because they have served a longer period of time. Mr. Spillane does not understand why a person appointed in May would have the shortest term.

Mr. Ambrose explained the purpose is to establish a pattern which addresses terms. He served for eleven years and was never reappointed. He emphasized that though a term may expire in 2009, that person could be reappointed. Mayor Marabello agreed stating that in the past, we did not conform to the code or the charter and this needs to be corrected.

#### *Scheduling of Annexation Committee Meeting/McColley Request*

Mayor Marabello directed Annexation Committee Chairman Crouch to schedule an annexation committee meeting to review the Lynn and Karen McColley request to annex 22.367 acres into the City of Milford.

#### COMMUNICATIONS

All communications were included in the packet.

#### UNFINISHED BUSINESS

##### *Downtown Milford, Incorporated/Kiosk Placement on City Lands & Electrical Work*

Scott Angelucci of Downtown Milford said since they received preliminary approval of the kiosk from council, he met with Parks and Recreation Director Gary Emory and Electric Superintendent Marty Messick. Mr. Messick confirmed the availability of the electric without any major changes. Mr. Emory and Mr. Angelucci have agreed the most appropriate location for the kiosk is adjacent to Walnut Street and on the western side next to the Riverwalk. It will be placed beside the Farmers Market site on a location next to the concrete pad on the south side of the planter beds.

They plan to have the electric and concrete pad in place in time for the delivery of the kiosk.

He and Mr. Messick discussed moving the utility box back 15 to 20 feet so it can be placed in that location. Mr. Messick will follow up later this week.

Mr. Ambrose moved for approval of the site location and electric work for the Downtown Milford Kiosk, seconded by Mr. Workman to approved. Motion carried.

##### *Adoption of Ordinance 2008-9/Chapter 185/Sewer Rates & Impact Fees*

*The City of Milford hereby ordains as follows:*

*Chapter 185 Sewer*

*Section 1.*

*An Ordinance to Amend the Code of the City of Milford, Chapter 185, thereof, entitled Sewers, for the purpose of amending sewer user rates and impact fees.*

*Section 2.*

*Section 10 of Chapter 185, Schedule of Rates and Charges, Paragraphs (A) and (B), is hereby amended to read as follows:*

*§ 185-10. Schedule of rates and charges.*

*The Council has the authority to establish sewer rates and charges set forth in the following schedule, which shall be effective July 1, 2007 August 1, 2008 and shall be collected from the customer of the sewer system under operation of the City of Milford. The rates and regulations shall be reviewed on an annual basis and adjusted as necessary. Each user of the wastewater facilities will be notified annually of effective user charge rates either by mail or advertisement in a paper of general circulation within the City of Milford.*

*A. Rate schedule based on metered water consumption.*

*(1) City service rate:*

*(a) Zero to 1,000 gallons: \$10.00 minimum per month.*

*(b) Over 1,000 gallons: \$2.43 per 1,000 gallons.*

*(2) County service rate. This fee is an adjustable sewer charge for sewage treatment performed by the Kent County Disposal District No. 1. It will be adjusted annually to the actual billing and flow documented by Kent County. This rate will be charged to each customer based on total water meter consumption recorded.*

*B. Rate Schedule based on metered sewer flows.*

*(1) City service rate:*

*(a) Zero to 1,000 gallons: \$10.00 minimum per month.*

*(b) Over 1,000 gallons: \$2.43 per 1,000 gallons.*

*(2) County service rate. This fee is an adjustable sewer charge for sewer treatment performed by the Kent County Disposal District No. 1. It will be adjusted annually to the actual billing and flow documented by Kent County. This rate will be charged to each customer based on total metered sewage flow recorded up to the average of the four quarters immediately preceding the effective date of this chapter. The rate is set by Kent County.*

*Section 3.*

*Section 24 of Chapter 185, Impact Fee Established, is hereby amended by adding a new subsection, § 185-24(C), that automatically increases impact fees on an annual basis beginning in July of 2008 to read as follows:*

*§ 185-24. Impact fee established.*

*A. Prior to the issuance of a certificate of occupancy by the Code Official or other duly authorized representative, all developers or owners of newly constructed structures requiring sanitary sewer service shall pay the applicable impact fee per EDU to the City of Milford. A schedule of impact fees is attached to this chapter. The City reserves the right to bar occupancy of any such structure and withhold sanitary sewer service until such time as the aforementioned fee is paid in full. The fee per EDU as shown on the attached (ADD) FOLLOWING schedule shall represent the impact fee to be used for construction, maintenance and expansion of the City's wastewater system*

*B. Impact fees shall be in accordance with the attached (ADD) FOLLOWING schedule.*

*(1) The This schedule shall be reviewed annually by the Mayor and Council and may be adjusted to incorporate revisions as necessary.*

*(2) If two or more dwellings, apartments, stores, offices or industrial units are connected through a single lateral, the impact fee payable under the schedule below shall be computed as though each such dwelling, apartment, store, office, or industrial unit were a separate property or user with a separate connection to the sewer.*

*C. Impact fee Schedule:*

*Fees will be automatically adjusted on an annual basis as follows:*

<u>Effective Date</u>	<u>Impact Fee Per EDU</u>
Current	\$975
August 1, 2008	\$1,014
July 1, 2009	\$1,055
July 1, 2010	\$1,097

<i>July 1, 2011</i>	<i>\$1,141</i>
<i>July 1, 2012</i>	<i>\$1,186</i>
<i>July 1, 2013</i>	<i>\$1,234</i>
<i>July 1, 2014</i>	<i>\$1,283</i>
<i>July 1, 2015</i>	<i>\$1,334</i>
<i>July 1, 2016</i>	<i>\$1,388</i>
<i>July 1, 2017</i>	<i>\$1,443</i>
<i>July 1, 2018</i>	<i>\$1,501</i>
<i>July 1, 2019</i>	<i>\$1,561</i>
<i>July 1, 2020</i>	<i>\$1,623</i>
<i>July 1, 2021</i>	<i>\$1,688</i>
<i>July 1, 2022</i>	<i>\$1,756</i>
<i>July 1, 2023</i>	<i>\$1,826</i>
<i>July 1, 2024</i>	<i>\$1,899</i>
<i>July 1, 2025</i>	<i>\$1,975</i>
<i>July 1, 2026</i>	<i>\$2,054</i>
<i>July 1, 2027</i>	<i>\$2,136</i>

*Section 4.*

*Date Introduced: June 23, 2008*

*Projected Adoption Date: July 14, 2008*

*Projected-Effective Date: August 1, 2008*

City Manager Baird explained impact fees are one time fees imposed upon the owner(s) of any new, remodeled, restored or enlarged residential, commercial, institutional or industrial structure or structures or any combination thereof resulting in an increased sewer flow to the existing sanitary sewer system. The impact fee schedule has been discussed for the past three years but never acted upon. The fee schedule contained in the proposed ordinance is the same schedule proposed in 2006.

The ordinance was introduced on June 23, 2008.

He reported this is the final year of a three-year sewer rate increase designed to generate revenue to cover the debt service for the sewer system improvements approved by the voters in February 2008. A household using 7,000 gallons per month will see a \$2.10 monthly or \$25.20 annual increase under the proposed increase.

Mr. Baird advised this ordinance increases the base sewer fee from \$8.50 to \$10.00 per month with a \$.10/1,000 gallon usage rate increase. The ordinance includes a provision to increase sewer impact fees from \$975 per EDU to \$1,014 per EDU and a 4% impact fee increase annually through July 1, 2027.

The proposed effective date of the ordinance is August 1, 2008.

In response to a citizen's concern presented by Mr. Workman, Mr. Baird verified that sewer charges are only charged on water meters for sewer usage on that meter. He emphasized there are no sewer charges on irrigation meters. The city does not have the ability to charge a fee for a service that is not being provided.

Mr. Crouch moved for approval of Ordinance 2008-9 as presented, seconded by Mr. Ambrose. Motion carried by unanimous roll call vote.

*Adoption of Ordinance 2008-10/Chapter 222/Water Impact Fees*

*NOTICE IS HEREBY GIVEN the following Ordinance is currently under review by City Council of the City of Milford: The City of Milford hereby ordains as follows:*

*Chapter 222 Water*

*Section 1.*

*An Ordinance to Amend the Code of the City of Milford, Chapter 222, thereof, entitled Water, for the purpose of amending water*

*impact fees.*

*Section 2.*

*Section 31 of Chapter 222, Impact Fees, is hereby amended by adding a new Subsection 222-31(H) to read as follows:*

*H. Impact fee Schedule:*

*Fees will be automatically adjusted on an annual basis as follows:*

<i>Effective Date</i>	<i>Impact Fee Per EDU</i>
<i>Current</i>	<i>\$1,845</i>
<i>August 1, 2008</i>	<i>\$1,919</i>
<i>July 1, 2009</i>	<i>\$1,996</i>
<i>July 1, 2010</i>	<i>\$2,075</i>
<i>July 1, 2011</i>	<i>\$2,158</i>
<i>July 1, 2012</i>	<i>\$2,245</i>
<i>July 1, 2013</i>	<i>\$2,335</i>
<i>July 1, 2014</i>	<i>\$2,428</i>
<i>July 1, 2015</i>	<i>\$2,525</i>
<i>July 1, 2016</i>	<i>\$2,626</i>
<i>July 1, 2017</i>	<i>\$2,731</i>
<i>July 1, 2018</i>	<i>\$2,840</i>
<i>July 1, 2019</i>	<i>\$2,954</i>
<i>July 1, 2020</i>	<i>\$3,072</i>
<i>July 1, 2021</i>	<i>\$3,195</i>
<i>July 1, 2022</i>	<i>\$3,323</i>
<i>July 1, 2023</i>	<i>\$3,456</i>
<i>July 1, 2024</i>	<i>\$3,594</i>
<i>July 1, 2025</i>	<i>\$3,738</i>
<i>July 1, 2026</i>	<i>\$3,887</i>
<i>July 1, 2027</i>	<i>\$4,043</i>

*Section 3.*

*Date Introduced: June 23, 2008*

*Projected Adoption Date: July 14, 2008*

*Projected-Effective Date: August 1, 2008*

Impact fees are a one-time fee imposed upon the owner(s) of any new, remodeled, restored or enlarged residential, commercial, institutional or industrial structure or structures or any combination thereof which results in an increased water usage. The impact fee schedule has been discussed for the past three years, and never acted upon. The fee schedule contained in the proposed ordinance is the same schedule that was proposed in 2006.

The ordinance was introduced on June 23, 2008.

Mr. Baird advised this ordinance strictly addresses water impact fees. Impact fees will increase from \$1,845 per EDU to \$1,919 per EDU in year one with an automatic 4% impact fee annual increase through July 1, 2027.

Mr. Crouch moved to adopt Ordinance 2008-10 as presented, seconded by Mr. Ambrose. Motion passed by unanimous roll call vote.

*Adoption of Ordinance 2008-11/Chapter 119/Electric Tariff/Net Metering Service*

*The City of Milford hereby ordains as follows:*

*Chapter 119 Electrical Standards**Section 1.*

*An Ordinance to Amend the Code of the City of Milford, Chapter 119, thereof, entitled Electrical Standards, for the purpose of implementing a Net Metering Service Policy.*

*Section 2.*

*Chapter 119, Impact Fees, is hereby amended by adding a new Section, Net Metering Service, to read as follows:*

*Net Metering**Service "NMS"**AVAILABILITY*

*This rider is available to customers served under the following service classifications, Residential "RES" and Small General Service "SGS". The primary intent of this installation is to offset part or all of the Customer's electricity requirements. Capacity cannot be more than 25 kilowatts for residential customers and 500 kilowatts for non-residential customers. The primary source of fuel must be solar, wind, hydro, or another approved source of renewable energy. This rider is applicable to generation interconnected and operated in parallel with the City of Milford transmission and/or distribution facilities. Application for the installation of any generation system in excess of 25 kilowatts shall be made under a special contract.*

*Any customer who elects this rider must apply by filling out the Generation Interconnection Application at least 60 days in advance of the proposed activation date. Approval of the application by the City must be granted prior to activation the electric generation facility.*

*CONNECTION TO THE CITY'S SYSTEM*

*The electric generation system cannot be connected to the City's system unless it meets all applicable safety and performance standards set forth by the following: The Technical Considerations Covering Parallel Operations of Customer Owned Generation of 25 kW or Less dated January 1, 2007, National Electric Safety Code, Underwriters Laboratories, and the City of Milford Electric Service Handbook. The Customer must, at his/her expense, obtain any and all necessary permits, inspections, and approvals required by any local public authorities and any other governing regulations in effect at that time.*

*DELIVERED VOLTAGE*

*The delivered voltage and delivery point of the Customer's electric generation shall be at the same delivered voltage and delivery point that would be supplied by the City if the Customer purchased all of its electricity from the City.*

*CONTRACT TERM*

*The contract term shall be the same as the Customer's applicable rate tariff.*

*RATE*

*The monthly billing shall be as stated in the applicable rate tariff. Under this rider, only the per kWh charge for electricity delivered by the Customer is affected. The Customer will pay for all kWh delivered by the City of Milford. If the Customer has delivered electricity to the City system, a credit will be issued to the Customer for the kWh delivered at the City's current wholesale rate. The City will provide for customers to be credited in kilowatt hours valued at an amount per kilowatt hour equal to the sum of delivery service charges and supply service charges for residential customers, and the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non-residential customers for any excess production of their generating facility that exceeds the customer's on-site consumption of kWh in a billing period. Excess kWh credits shall be credited to subsequent billing periods to offset a customer's consumption in those billing periods until all credits are used or until the end of a 12-month period, ending either December 31 or July 31 to be chosen at the discretion of the customer. If a customer does not choose a date, the City will default a date of December 31. Any unused credits at the end of the 12-month period shall be forfeited to the City at the City's avoided cost of wholesale power, which means the average locational marginal price of energy in the City's transmission zone, for use solely to augment existing funding for the Green Energy Fund. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the City. The customer-generator retains ownership of renewable energy credits (REC) associated with electric energy produced and consumed by the customer-generator. RECs associated with NEG convey to the City.*

*METERING*

*An electric meter service will be installed at the Customer's location to measure the energy consumed and the energy delivered to the City system. The City will furnish, install, maintain, and own all metering equipment. Cost will be determined under the Additional Costs and Responsibilities clause below.*

*ADDITIONAL COSTS AND RESPONSIBILITIES*

*The Customer will be required to pay for any additional transmission and distribution costs, the cost of metering,*



*transformation, system protection, and any related safety/protective equipment in excess of what would normally be paid for by the City. Protective equipment will be installed by the Customer to provide safety for personnel, provide adequate protection for the City's electric utility system and to the Customer's property, and to prevent any interference with the City's supply of energy to other utility customers. This equipment will be owned, installed, and maintained by the Customer.*

#### **FAILURE TO COMPLY**

*The City may disconnect the Customers service from the City's electric system if the Customer fails to comply with any of the stipulations of this rider, The Technical Considerations Covering Parallel Operations of Customer Owned Generation of 25 kW or less dated January 1, 2007, National Electric Safety Code, Underwriters Laboratories, the Generator Interconnection Application and the City of Milford Electric Service Handbook.*

#### **RULES AND REGULATIONS**

*The General Rules and Regulations of the City of Milford for electric service shall apply to service rendered under this service classification. All minimum billings, charges for kWh, kW, Purchased Power Adjustment, Public Utility Tax, Renewal Energy Charge, etc. will be covered under the applicable rate tariff. If the total generating capacity of all customer-generation using net metering systems served by the City exceeds 1 percent of the capacity necessary to meet the City's aggregated customer monthly peak demand for a particular calendar year, the City may elect not to provide net metering services to any additional customer-generators.*

#### **Section 3.**

*Introduction Date: June 23, 2008*

*Projected Adoption Date: July 14, 2008*

*Projected-Effective Date: July 24, 2008*

*\*All water usage on the July 2008 Utility Bills shall be charged the rates established by this ordinance.*

This Ordinance amends net energy metering standards to increase the net-metering capacity limit for non-residential facilities to 500 kilowatts per electric meter. This allows all net-metering customers to carryover excess energy credits from month to month during a 12-month period to account for seasonal variance in generation and energy consumption. To encourage generation to meet only existing customer demand, all unused credits at the end of the 12-month period are forfeited to the city to augment existing funding for low-income energy assistance programs.

Net energy metering is a means to encourage private investment in renewable energy resources, stimulates in-state economic growth, enhance continued diversification of Delaware's energy resource mix and reduces the cost of interconnection and administration.

Mr. Baird advised this ordinance updates the city's net metering policy for compliance with Senate Bill 8 passed by the previous general assembly. Net metering addresses metering for customers capable of producing power through renewable sources of energy that come back into the city system.

He added the proposed language is being utilized by all DEMEC members with some slight variations just as they relate to the City of Milford.

Mayor Marabello asked for further explanation of the unused credits. City Manager Baird responded by reading the following section:

*'Excess kWh credits shall be credited to subsequent billing periods to offset a customer's consumption in those billing periods until all credits are used or until the end of a 12-month period, ending either December 31st or July 31st to be chosen at the discretion of the customer. If a customer does not choose a date, the City will default a date of December 31. Any unused credits at the end of the 12-month period shall be forfeited to the City at the City's avoided cost of wholesale power, which means the average locational marginal price of energy in the City's transmission zone, for use solely to augment existing funding for the Green Energy Fund.'*

Mr. Baird explained this means that all the credits provided back to the customer at the wholesale rate the city purchases power and any credits not used are lost and returned to the city to supplement the Green Energy Program. The mayor offered as an example, a customer receiving a net credit each month as a result of solar power who accumulates \$200 over the year, would lose that if it was not utilized. Mr. Baird stated yes, but noted that at the same time, they would receive

those credits each month throughout the year. At the end of the 12-month period, any credits not used are lost. He pointed out that the likelihood of customers being in the 25 kW limit credit range could be a possibility but is highly unlikely. Mr. Crouch moved to adopt Ordinance 2008-11 as presented, seconded by Mr. Workman. Motion carried by unanimous roll call vote.

*Agreement/Connolly, Bove, Lodge & Hutz, Law Firm/Bankruptcy Matters*

Mayor Marabello announced that more expertise was needed as a result of some large balances due, and one in particular amounting to over \$13,000.

Mr. Baird advised this letter of agreement will allow the city to engage Connolly, Bove, Lodge and Hutz to represent the city in bankruptcy matters deemed necessary by the City. During the past year, the city has experienced an increase in the amount of bankruptcy notices for individuals and businesses located within the city or who are utility customers. In many instances, staff was able to address the bankruptcy issues and file the necessary reports. However, there are more complex bankruptcy matters the city staff is not able to address in house. These are the instances where outside representation is needed to ensure the city's interests are protected.

The city manager recalled this was last discussed at the June 9<sup>th</sup> meeting and tabled due to the concern with the hourly billing rate range of \$155 to \$675 per hour. He has since spoken with Attorney Jeffrey Wisler regarding his role in bankruptcy cases and the city's role. This would be an advisory relationship available to the city should we have any questions regarding a specific case or general questions regarding bankruptcy cases. The firm would not represent the city on every bankruptcy case. In the majority of cases, city staff is capable of handling those situations. However, they would be engaged as needed when substantial amounts owed.

Mr. Baird added there has not been contact with any other firms who handle bankruptcy cases because this attorney was recommended by our solicitor's firm

Mr. Brooks said that in bankruptcy cases, his understanding is creditors are in line to get their money and when it is divided, it becomes a reduced amount. His main concern is \$13,000 which is a great deal of electric. Mr. Baird agreed adding that in most cases, there are safeguards to prevent this. Deposits are required on commercial accounts or non-owner occupied accounts. However, there are significant users that within a month or two can accumulate bills of \$10,000 or \$20,000 depending on the nature of the business.

When asked if a private citizen is disconnected when their bill is not paid, Mr. Baird explained the same procedure applies to commercial accounts. Unfortunately, by the time, the first billing period has passed and a delinquent notice is provided, additional charges have accumulating during that time.

Mr. Workman asked why other bankruptcy attorneys have not been considered. He noted that in similar situations, bids are required though we are not requiring that in this case. He feels other attorneys should be contacted to compare their rates.

Mr. Crouch confirmed that we are not obligated to pay any money at this time. He noted this firm waived their retainer fee so nothing is charged until the time they are contacted. He added that major lawsuits come before council. His recalled that his non-profit was involved in a bankruptcy case, and though the attorney fees were extremely high per hour, there were minimal hours involved as most of their time involved completing paperwork necessary to present to the bankruptcy court.

Upon the receipt of a notice that a business or individual has filed bankruptcy owing the city a substantial amount, this authorization would allow the city to contact Mr. Wisler who could respond with a plan of action. The city would then get in the line of creditors. Though a few have offices in Sussex County, the majority of bankruptcy attorneys are in Wilmington where the federal court is located. There may be a minimal fee to file the correct documents, but when the funds are issued, often municipalities and governments are first in line. His concern is the current case where \$13,000 is owed and the city need to respond quickly.

Mr. Willard feels some discretion needs to be given to the city manager to determine what cases are worthwhile pursuing. He again emphasized that bankruptcy is a specialized form of law and his partner Jim Yori had recommended Mr. Wisler. There are some local firms that handle bankruptcy cases, but from an immediacy point of view, his concern is this is done as quickly as possible.

Mr. Morrow agreed noting we are already almost two months into this. He feels Mr. Baird is the city manager who is very capable of making decisions on whether an attorney needs to get involved in a bankruptcy case. He feels council does not need to micro-manage in these cases. He recommends the city hire a bankruptcy attorney and proceed with this case immediately. We cannot afford to wait to contact three or four more law firms considering the amount owed.

Mr. Spillane thinks we should bid this work and not take the first offer. He does not know why the city has not filed anything as it is just a simple matter of filing a small form to get in line. Mr. Willard again explained this is a very specialized form of law and upon receipt of the notice, he immediately spoke with his partner who recommended this firm without hesitation. His advice is to hire a bankruptcy attorney and at least obtain an opinion on whether it is worth responding. He added that Connolly, Bove, Lodge & Hutz is a very blue chip firm in Wilmington though he cannot report on less expensive firms.

When asked how this was handled in other cases, Mr. Baird advised that in the majority of these cases, the city staff handles the issue and filed the appropriate paperwork as will continue to be done when appropriate. In this instance, there is more involved because of the amount owed and a decision was made to obtain some legal advice or assistance.

Mr. Crouch agreed it appears council is attempting to micro-manage and feels the city manager should make these decisions. Mr. Willard added there is no term on the agreement so should the city later choose to terminate the agreement, it can be done at anytime.

When asked when the city was notified of the bankruptcy, Mr. Baird noted that the correspondence from Mr. Wisler was dated mid May so he assumes late April or early May.

Mr. Spillane feels this is setting a precedence and prefers the city always get at least three bids on any contract. The city solicitor advised that bidding on professional services is not required by the charter nor on purchases or contracts below \$30,000.

Mr. Morrow moved to approve the Connolly, Bove, Lodge & Hutz Law Firm fee agreement to be used as needed and to move forward with legal action on the \$13,000 bankruptcy case, seconded by Ms. Wilson. Motion carried by a 7-1 roll call vote.

Mr. Spillane stated he votes no because he thought we were supposed to check other fees and he fears we are setting a precedence.

Mr. Workman said that because this firm did not charge a retainer fee and being familiar with the high costs of retainer fees and even though we did not consider other firms, he agrees the city needs to respond as quickly as possible and votes yes.

Mr. Brooks votes yes and agrees with Mr. Workman's comments.

Mr. Morrow votes yes and recommends we proceed as quickly as possible.

The remaining council members voted yes.

#### *Appointment of Planning Commission Liaison*

Mayor Marabello thought that Mr. Spillane was appointed as the planning commission liaison in a previous meeting even though he asked for clarification on the liaison. Mr. Spillane also thought it was voted on that he would continue to go to the meetings until it was decided what his duties would be and whether he could speak before the planning commission

but not vote. He recalled that he did not say no or yes but only asked what his job would be. He continue to go to the planning board since this was first discussed. He was even asked to sit with the planning board though no one told him he was not on the planning board and he is confused why this is even necessary.

Solicitor Willard does not recall the exact action taken. However, he looked for the authority in the code and primarily in the paragraph in the charter that deals with the planning commission. Chapter 57 of the Code states that the mayor and city manager shall be ex officio members which are non-voting members. Mr. Willard has legal concerns with the liaison participating to the extent that making land use decisions are quasi-judicial legislative actions because they are based on facts being presented which result in laws being placed on land.

He explained that when a hearing is opened, council is collectively the judge. Mr. Willard cannot find the authority of a liaison. He feels it is almost better from a record standpoint that council receive a formal report based on their hearing and not have a connection that could be interpreted as participation.

Mr. Spillane is unsure how the liaison came about though they were following what was done in the past. If the council member is unable to speak, he does not feel there is a need for a liaison. If someone needs to talk, it may be better for them to show up as a private citizen.

Mr. Workman explained this person was always the chairman of the planning commission committee and appointed by this body. Mr. Morrow agreed adding they only reported back to council after each meeting. That was considered along with the minutes from the planning commission thought the minutes may not have been completed by the time of the meeting.

According to Mr. Spillane, the planning commission is supposed to report back to council following each meeting. Planning Commission Chairman Brendon Warfel was present. He informed council that the former liaison, John Kramlich, attended the planning commission, but did not participate. He added the reason the liaison would sit with the planning commission at the old city hall was because the crowd was often very large and there was very limited seating.

Mr. Crouch verified it has always been the legal advice of our solicitor that city council not attend the planning commission meeting. Mr. Willard clarified that instead of saying should not go, he is modifying it that they should not participate. He reiterated it is dangerous as he explained before because council is a judicial body and similar to a judge going on his own fact finding mission. The council hearing is the time scheduled for council to hear the facts when all sides are present to provide their evidence. The commission is statutorily established by Delaware Law to make a recommendation. Then council has their time for a hearing.

Mr. Willard repeated that he has some concern with the liaison position though Mr. Kramlich was very passive and did not participate. He had one case in another town where a councilman went to a commission hearing and spoke in opposition of the application which became a big problem.

Mayor Marabello recommends the liaison position be eliminated.

Mr. Ambrose asked if when council is elected, do they lose their rights as private citizens. He provided an example that if something occurs in his neighborhood that is going before the planning commission which he is opposed to, has he advocated his right to express his opinion. Mr. Willard said that if he was counseling councilmen individually, he would say it is not a good idea, but whether or not he has that right, Mr. Willard believes he does. Depending on the outcome at council, he is unsure whether it would taint council's decision depending on the reasons for the objections. To some extent, when a person becomes an elected member of council, that person gives up certain participatory rights to avoid conflicts. The Public Integrity Commission clearly defines areas where there may be conflicts as a result of the possible influence of a council member, for example.

For the record, Mayor Marabello announced that the Planning Commission Liaison position has been officially eliminated.

*Public Comment Period/Adoption of Rules*