REGULAR COUNCIL MEETING

The Regular Council Meeting was held on July 9, 2012 at 7:30 p.m. with Council President Leary presiding. Council members present were Mr. Anderson, Mrs. Russell, Mr. Lynn, Mr. Perza, Mr. Hare, and Mr. Hutchison. Mr. Bonar and Mrs. Williams were absent.

Council staff members present were Police Chief Hosfelt, Mrs. Mitchell, Mr. Koenig, Mrs. Townshend, Deputy Fire Chief West, City Solicitor Rodriguez, and Mrs. McDowell. Mayor Carey was also present.

OPEN FORUM

The Open Forum was held at 7:15 p.m., prior to commencement of the Official Council Meeting. Council President Leary declared the Open Forum in session and reminded those present that Council was not in official session and could not take formal action.

There was no one present wishing to speak during the Open Forum.

The invocation was given by Chaplain Dixon, followed by the Pledge of Allegiance.

AGENDA ADDITIONS/DELETIONS

Mr. Hutchison moved for approval of the agenda as presented, seconded by Mr. Hare and unanimously carried.

Mr. Anderson requested that agenda Item #6-E, City Planner's Report, be removed from the consent agenda. Mr. Hutchison requested that Item #4-B, Update on Dover High School Construction, be removed from the consent agenda.

Mr. Anderson moved for approval of the consent agenda, as amended, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent).

ADOPTION OF MINUTES - REGULAR COUNCIL MEETING OF JUNE 25, 2012

The Minutes of the Regular Council Meeting of June 25, 2012 were unanimously approved by motion of Mr. Anderson, seconded by Mr. Hutchison and bore the written approval of Mayor Carey.

PRESENTATION - LUTHERAN SENIOR SERVICES OF DOVER, INC. - PAYMENT IN LIEU OF TAXES (PILOT)

Mr. Gary Coy, Executive Director of Lutheran Senior Services of Dover, Inc., presented Mayor Carey with a contribution in the amount of $27,227 for payment in lieu of taxes (PILOT) for expenses associated with City services provided to Lutheran Senior Services throughout the year.

Mayor Carey expressed his gratitude and thanked Mr. Coy and Lutheran Senior Services for their contribution.

Mr. Hutchison and Mr. Anderson relayed appreciation for the partnership that Lutheran Senior Services has with the community.

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE REPORT - JUNE 25, 2012

The Legislative, Finance, and Administration Committee met on June 25, 2012 with Chairman Lynn presiding.

Review and Recommendation - Filling Critical Positions - Library Page (4) - Library

Mr. Scott Koenig, City Manager, reviewed a request to fill four (4) Library Page positions at the Dover Public Library. Staff requested that these positions be filled prior to the opening of the new library in order to provide a full complement for a "skeleton" staff at the facility. Referring to the summary sheet provided, he noted that the annual wages and benefits budgeted for the positions totaled $49,797. He advised members that the positions were covered by a bargaining unit contract which was currently in negotiation. Mr. Koenig stated that the current contract stipulated that these employees could work no more than 18 hours per week without receiving City benefits; however, he indicated that it was staff's intent, through the collective bargaining process, to amend these terms. Since negotiations were not complete, he was not able to disclose the terms. He assured members that these positions were critical to the opening of the new library.

In response to Mr. Shevock, Mr. Koenig stated that the Committee's recommendation would be considered by City Council on July 9, 2012 and that he expected to have an answer from the union by that time. Should the union's response not be favorable, he stated that the positions would be advertised and filled at the salary rate specified in the current contract. He explained the importance of moving forward to secure the necessary employees for the new library.

The Committee recommended approval of the request to fill the four (4) Library Page positions, as recommended by staff.

By consent agenda, Mr. Anderson moved for approval of the Committee's recommendation, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent).

FY2013 Hiring Freeze and Recruitments

Mr. Scott Koenig, City Manager, requested administrative authorization to remove the hiring freeze and to fill the vacant positions included in the City's budget, provided that the budget was adopted by City Council. He explained that staff would continue to complete hiring justifications and determine the economic impact when hiring, and the approval of both the City Manager and Controller/Treasurer would be required prior to recruitment. He assured members that Council would be made aware of the positions being filled.

Responding to Mr. Hare, Mr. Koenig noted that approximately 365 positions were included in the FY13 budget and felt that 365 correctly positioned employees were necessary in order to accomplish the work of the City. He indicated that internal scrutiny was needed to ensure that employees were placed properly. Mr. Koenig noted that there were approximately 10 vacant positions currently budgeted and stated he believed that these 10 positions should be filled.

In response to Mr. Lynn, Mr. Koenig relayed no objection to creating a process that would allow for department heads to appeal to the Legislative, Finance, and Administration Committee if they fail to receive approval to fill vacancies from the City Manager.

Objecting, Mr. Hare felt department heads who report to the City Manager should abide by the decision of the City Manager.

Mr. Hutchison indicated his support for the City Manager being granted the leadership and responsibility of working within the City's budget to fill positions throughout the City.

Responding to Mr. Shevock, Mr. Koenig stated that his request applied to being granted authority to recruit for positions that were requested by Council-appointed department heads.

Mr. Anderson questioned if the appeal process would be made available for City Manager-appointed department heads. He indicated his concurrence with Mr. Hare and explained that the City Charter provides for the City Manager to have a certain level of authority and that City Council should refrain from interfering.

The Committee recommended removing the hiring freeze and granting the City Manager the authority to recruit for vacant positions within the confines of the budget.

By consent agenda, Mr. Anderson moved for approval of the Committee's recommendation, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent).

Reduced Rates for All-Electric Homes in December, January, and February *(Requested by Ted George During Open Forum at City Council - Deferred by Committee on June 11, 2012 Due to Time Constraints)*

During the Open Forum Segment of the April 9, 2012 City Council Meeting, Mr. Ted George requested that members consider providing an electric rate discount during the months of December, January, and February for those customers with all-electric homes.

Mr. Ted George, 77 Billings Drive, advised members that from the 1970s until 1984, a 20% rate discount was granted to customers with all-electric homes from December 1st through February 28th each year. He proposed that the current kilowatt usage rate of 14.5¢ be reduced to 11.6¢.

In response to Mr. Rushe, Mr. George estimated that 200 customers would qualify for the discount.

Mr. Shevock noted that many households have higher electric bills during the summer due to air conditioning units. He questioned the effect that such a reduction would have on City revenues. Responding, Mr. George stated that during a bad winter, he has had an electric bill of approximately $400; therefore, the 20% discount would provide a savings of $80.

In response to Mr. Shevock's questions, Mrs. Donna Mitchell, Controller/Treasurer, reminded members that there was a current proposal to decrease the residential electric rate by 9% and that the draft FY13 budget reflected a Power Cost Adjustment (PCA) credit that averaged 8%; therefore, a residential customer would realize a net decrease of 1%.
Responding to Mr. Lynn, Mr. George recalled that the discount was discontinued in 1984 due to the City's need for funds to expand the Police Department, Public Works Department, etc.

The Committee recommended that the proposal to reduce electric rates for all-electric homes be referred to staff for cost analysis and review.

By consent agenda, Mr. Anderson moved for approval of the Committee's recommendation, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent).

By consent agenda, Mr. Anderson moved for acceptance of the Legislative, Finance, and Administration Committee Report, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent).

SAFETY ADVISORY AND TRANSPORTATION COMMITTEE REPORT - JUNE 27, 2012
The Safety Advisory and Transportation Committee met on June 27, 2012 with Chairman Hutchison presiding.

Request for Two (2) Hour Parking Designation - Gooden Avenue *(Dr. Richard Taylor)*
Members reviewed a letter submitted by Dr. Richard Taylor requesting a two (2) hour parking designation for Gooden Avenue. He indicated that he owns the professional building located on the corner of S. Bradford Street and Gooden Avenue. With the construction and expansion of Kent General Hospital, the City placed a two (2) hour parking limit on South Bradford Street; however, Gooden Avenue has no such limit. Dr. Taylor advised members that employees of Kent General Hospital have been parking along Gooden Avenue for 8 - 10 hours per day. The patients of his facility require short-term parking and are having difficulty finding available space near the practice. As a result, he requested that members authorize a two (2) hour parking limit on Gooden Avenue.

Mr. Scott Koenig, City Manager, advised members that the two (2) hour parking limit on Bradford Street was implemented several years ago as a result of the hospital and office/medical buildings in the area. He noted that the same restrictions were implemented on State Street, near the hospital. He assured members that neighborhood residents were permitted to obtain a residential parking permit, allowing them to exceed the two (2) hour restriction. He stated that staff had no objections to Dr. Taylor's request and, upon Council's approval, appropriate signage would be erected and notification provided to the property owners in the area.

Responding to Mr. Davis, Mr. Koenig stated that he would obtain details regarding the parking garage recently built, such as the number of available spaces, and whether hospital staff were authorized to use the parking garage, prior to the City Council Meeting scheduled for July 9, 2012. Mr. Keller stated that, according to a security guard at Kent General Hospital, the parking garage was for use by visitors and patients only.

In response to Dr. Taylor, Mr. Koenig stated that if the change in parking designation were approved by Council on July 9, 2012, he anticipated that staff could implement the change during the week of July 16, 2012.

The Committee recommended approval of the request for a two (2) hour parking designation on Gooden Avenue.

By consent agenda, Mr. Anderson moved for approval of the Committee's recommendation, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent).

Update Dover High School Construction

On behalf of Mrs. Ann Marie Townshend, Director of Planning and Community Development, Mr. Scott Koenig, City Manager, read the following statement into the record:

- *Monthly coordination meetings are continuing. The last one was held on June 21st.*

- *The School District completed the Signal Warrant Analysis for the East Entrance and submitted it to DelDOT* [Delaware Department of Transportation] *for review. DelDOT issued comments on June 22nd. The Signal Warrant Analysis indicates that the east entrance does not meet the warrants for a signal. As we have expressed to the Committee, this is a serious concern to the Planning Office, especially given the number of students who will live in the developments on the north side of Route 8 who will be expected to walk to school. The Planning Office will continue to pursue this matter with DelDOT and the School District and involve other City staff and elected officials if and when appropriate. We will continue to keep the Committee apprised of progress on this.*

- *DelDOT sent a letter to the Papens, who own the farm on Hazlettville Road just west of Cannon Mills, indicating that the Route 8/Hazlettville Road Connector is being moved out in the Capital Transportation Plan to future years. The letter indicates that the road is not necessary for the opening of the new Dover High School. At the Dover/Kent County MPO* [Metropolitan Planning Organization] *TAC* [Technical Advisory Committee] *meeting on June 13th, I expressed concern on behalf of the City that this road was ranked as the City's 2nd highest transportation priority, and that this determination was made by DelDOT without the benefit of any discussion with the City nor communication to the City regarding the matter. I expressed concern regarding traffic on Route 8 with the opening of the High School if this road is not in place at the time of the school opening or shortly thereafter. Natalie Barnhardt, DelDOT's Chief Engineer, has offered to meet with City staff. This meeting will be set up in the near future.*

Mr. Koenig advised members that buses would be entering and exiting the school onto Route 8 at the east entrance and, according to the site plan at this time, this would be a non-signalized intersection. He noted that there would be a signal at the west entrance, which was intended to be the main entrance to the High School. This road would be extended and then come to a dead end, since the apartment complex planned at that location had not progressed toward construction, and connection to the end of Cannon Mills would not occur until the construction of the apartments. He stated that the construction of the road that was to connect the school to Hazlettville Road had been delayed by DelDOT; however, due to the concerns of staff regarding traffic on Route 8, he assured members that this matter would continue to be pursued.

Responding to Mr. Hutchison, Mr. Koenig stated that the new Dover High School was scheduled to open in the fall of 2014.

Mr. Hutchison requested that Senator Brian Bushweller and Representative Darryl Scott be provided any correspondence regarding traffic issues relating to the high school. Noting concerns of Mr. Perza regarding the need for sidewalks in the area, Mr. Hutchison requested that this issue be considered as important as the signal issue.

In response to concerns of Mr. Lynn, Mr. Koenig explained that a site plan is initially presented to the Planning Commission to obtain conditional approval and the information presented on the site plan is subject to additional review. Although a plan may originally include a signal, the signal will not be approved by DelDOT if it does not meet warrants. He stated that the signalization and sidewalks for this project were now matters for DelDOT to address. Prior to Council becoming involved with this matter, Mr. Koenig suggested awaiting the results of staff's meeting with DelDOT's Chief Engineer.

Mr. Lynn requested that the City Manager be authorized to stress the importance of the signalization at the east entrance/exit rather than having to approve a signal sometime in the future after a tragedy occurs. Concurring, Mr. Hutchison felt that the installation of sidewalks was just as important as the signal.

The Committee recommended that City Council send a letter to the Delaware Department of Transportation (DelDOT) requesting the installation of a traffic signal at the east entrance of the new Dover High School and sidewalks on the north side of Route 8 in that area.

Mr. Hutchison requested that Senator Bushweller and Representative Scott receive copies of the letter to DelDOT.

During the Council Meeting, at the request of Mr. Hutchison, Mr. Koenig read the following draft letter into the record:

Dear Secretary Bhatt:

As we have previously discussed, the new Dover High School is under construction on Forrest Avenue (Delaware Route 8) on the west side of Dover. The location of the school on the City's primary east/west route creates significant challenges to

ensuring that traffic in this area continues to flow smoothly and does not adversely affect the many residents and businesses along the corridor that rely on Route 8 for their daily travel. To this end, monthly coordination meetings among City of Dover staff, DelDOT staff, and the consultants for the Capital School District have helped to keep this large, complex project on schedule and address design concerns before they become problematic.

For the past several months, there has been discussion about the installation of a traffic signal at the east entrance of the school site, which would line up with Heatherfield Way. As required by DelDOT, the Capital School District completed a signal warrant analysis for this location. The analysis indicates that the intersection does not meet the warrants for a traffic signal.

Dover City Council firmly believes that a signal at the east entrance location is imperative in order to provide safe pedestrian access to the Dover High School. We also request that DelDOT install sidewalks along the north side of Route 8 to facilitate safe pedestrian access to this location. There are a number of residential developments on the north side of Route 8, from which students will be expected to walk to school. The absence of a signal at this location and the absence of sidewalks to provide safe access to this signal will likely create an unacceptable safety risk for students and other members of the community accessing the school property. This safety risk extends beyond simply accessing the school at the beginning and end of the school day and also includes access to the athletic fields and the school grounds for events held on the campus before and after hours.

Further, we are concerned that the lack of safe pedestrian access through sidewalks and a signalized crossing will result in unnecessary vehicle traffic due to parents driving their children to school rather than allowing them to walk.

Sincerely,
Thomas J. Leary
Dover City Council

cc: Senator Brian Bushweller, 17th District
Representative Darryl Scott, 31st District
Scott D. Koenig, City Manager
Ann Marie Townshend, Director of Planning & Community Development

Mr. Koenig felt that the letter captured the concerns of the Committee and staff. He noted that this had been an on-going issue and that staff believed it was very important for the City's position to be heard by DelDOT.

Indicating his support, Mr. Lynn expressed his fear that a Dover High School student would be hit by a vehicle and killed and that this would be the action that would warrant DelDOT taking action to install a traffic signal.

Mr. Lynn moved for approval of the Committee's recommendation that City Council send a letter to the Delaware Department of Transportation (DelDOT) requesting the installation of a traffic signal at the east entrance of the new Dover High School and sidewalks on the north side of Route 8 in that area and for authorizing Council President Leary to send the letter to DelDOT on behalf of Dover City Council. The motion was seconded by Mr. Anderson and unanimously carried.

Mr. Hutchison moved for acceptance of the Safety Advisory and Transportation Committee Report, seconded by Mr. Anderson and unanimously carried.

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE REPORT - JULY 9, 2012

The Legislative, Finance, and Administration Committee met on July 9, 2012 with Chairman Lynn presiding. *It was noted that, except for the following time sensitive issue, the Legislative, Finance, and Administration Committee Report from July 9, 2012 would be presented to Council during their Regular Meeting of July 23, 2012 for review and consideration.*

Review of Grant Application - Disaster Recovery for Critical Infrastructure (DEMA)

Mr. Scott Koenig, City Manager, reminded members that the City of Dover requested and received funding from the Delaware Emergency Management Agency (DEMA) State Homeland Security Grant Program (SHSGP) for the purchase and installation of equipment related to improvements in Information Technology (IT) Disaster Recovery and critical infrastructure. He stated that funding for this project was provided under short notice to the City due to other municipalities in the State not completing their projects by the due date set forth by the federal government. He noted that all costs associated with the project would be charged to IT and that 100% of the project costs would be reimbursed to the City upon application for reimbursement. Since the full amount of this grant was not budgeted, it was requested that when funds are reimbursed to the City, they be returned to the IT budget in order to complete budget expenses.

Members were advised that there were no additional ongoing expenses related to this grant since funds would be used to replace existing, outdated equipment and the maintenance costs budgeted to maintain the old equipment would be sufficient to maintain the new equipment.

Staff recommended authorization to complete the project and request reimbursement for all costs associated with the purchase and installation of the backup solution and infrastructure improvements. It was noted that, due to time constraints, staff requested that this matter be considered during the Council Meeting later in the evening for final approval.

Referring to the request for funds to be returned to the IT Department budget, Mrs. Donna Mitchell, Controller/Treasurer, explained that, in accordance with accounting procedures, when grant monies are received, they must be shown as a receipt in revenue. As a result, the expenditure would be over-budgeted; however, there would be revenue to offset this. She noted that when budget revisions are presented later in the year, this would be corrected and funds would be returned to the IT budget.

In response to Mr. Shevock, Mr. Koenig indicated that since the City's project must be completed by September 2012, this matter was put on a "fast track." If Council were to approve the authorization to complete the project, staff would immediately begin working on ordering and purchasing the equipment. Receipt of reimbursement was expected through the DEMA grant within 30-60 days after submission of the City's reimbursement application.

Noting that this project was not budgeted, Mr. Perza requested that staff be certain to complete the necessary paperwork and have it submitted in a timely fashion to assure reimbursement.

The Committee recommended approval of staff's recommendation for authorization to complete the project and request reimbursement for all costs associated with the purchase and installation of the backup solution and infrastructure improvements.

Mr. Lynn moved for approval of the Committee's recommendation, seconded by Mr. Hutchison.

Mr. Perza reiterated his concerns regarding reimbursement, since the project was not budgeted.

Mr. Perza moved to amend the motion by requiring the reimbursement application to be drafted with the submitted application for the grant money and prepared for the City Manager's signature. The motion was seconded by Mr. Anderson.

Responding to Mr. Anderson, Mr. Koenig stated no concerns regarding the amendment. Assuming that the Committee's recommendation was approved, he stated that staff would notify DEMA on July 10, 2012 and begin the paperwork for reporting and explained that a monthly report would be completed to track the progress of the project. He noted that staff was aware that the equipment was available and of the timeline and felt confident that the reimbursement requirements could be met; therefore, he assured members that staff had no objections to the amendment.

Mr. Hare stated that he had no problems with the amendment; however, he reminded members that the City Manager had previously assured members that all necessary paperwork would be completed and that the City would receive reimbursement. He felt that it was incumbent upon members of Council to allow the City Manager to handle this matter without becoming involved and micro-managing. It was Mr. Hare's believe that members of City Council should not become involved with the City Manager's responsibilities unless it were to be discovered that he could not do his job.

The motion to amend by requiring that the reimbursement application be drafted with the submitted application for the grant money and prepared for the City Manager's signature was carried by a roll call vote of five (5) yes and two (2) no (Mr. Hare and Council President Leary).

The motion for the approval of the Committee's recommendation, as amended, authorizing staff to complete the project and request reimbursement for all costs associated with the purchase and installation of the backup solution and infrastructure improvements, with the requirement that the reimbursement application be drafted with the submitted application for the grant money and prepared for the City Manager's signature, was carried by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent).

Mr. Lynn moved for acceptance of the Legislative, Finance, and Administration Committee Report, seconded by Mr. Anderson and unanimously carried.

MONTHLY REPORTS - MAY 2012

By motion of Mr. Anderson, seconded by Mr. Hutchison, the following monthly reports were accepted by consent agenda:

Budget Report
Chief of Police Report
City Assessor's Report
City Manager's Report
Dover Fire Department Report
Capital Investment Plan (CIP) Report

Mr. Anderson noted that the City Planner's Report provides a snapshot of where the City is going, including information on vacant buildings, the economy, the unemployment rate, etc. At the request of Mr. Anderson, Mrs. Ann Marie Townshend, Director of Planning and Community Development, updated members regarding companies that were considering coming to the City. She stated that staff had been working with a food processing company that was interested in the former Sunroc building. She stated that several months of discussions had been held in this regard; however, the company was now considering an alternative site; therefore, staff was hopeful but not as optimistic on this matter as in previous months. She advised members that Mr. Bill Neaton, Economic Development Director, had been working with a call center that had expressed interest in the City and that the City remained one of the top locations being considered for this project. She noted that the former Bank of America building at the Blue Hen Corporate Center was the primary location under consideration.

Mrs. Townshend stated that several other businesses had made contact with the Planning Office or were currently in the land development process. She advised members that the Planning Commission recently reviewed an application to expand the former SuperFresh site for a Redner's Market. In addition, she stated that the Planning Commission also reviewed and approved a site plan that included renovating the former WalMart building into a shopping center. Staff had been working with the owner of the former Atlantic Book Warehouse site and a prospective tenant and it was hoped that this project would be moving forward. She advised members that staff had also been working with a tenant who hoped to occupy the former Golden Corral site. Mrs. Townshend noted that, although such projects were moving slowly, there did appear to be "good things happening" in and for the City of Dover.

In response to Mr. Lynn, Mrs. Townshend stated that the Planning Office did not employ any mechanisms for determining how interested businesses or individuals had learned about the City of Dover; however, she indicated that these types of individuals typically come in with a local realtor. She stated she would consider having individuals/businesses questioned by staff, when contacted, to determine how they became aware of the City.

Responding to Mr. Lynn regarding the action taken by the of the Board of Adjustment in regard to Applicant #V-12-03, Mrs. Townshend clarified that the action to deny the request for variance occurred during the Board's meeting on May 16, 2012 and that, in the future, the City Planner's Report would be prepared in such a way as to avoid any misunderstandings. She explained that the decisions of the Board of Adjustment are final unless they are appealed to Superior Court.

Mr. Anderson moved for acceptance of the City Planner's Report, seconded by Mr. Hare and unanimously carried.

FINAL READING - PROPOSED ORDINANCES

The First Reading of the following proposed ordinances was accomplished during the Council Meeting of June 25, 2012.

Mr. Hare moved that the Final Reading of the proposed ordinances be acknowledged by title only, seconded by Mr. Anderson and unanimously carried.

Ordinance #2012-16 - Amendment to Chapter 114 - Vegetation, to Create a New Article III - Bamboo

Mr. Hare moved for adoption of the proposed ordinance, seconded by Mr. Hutchison and, by a unanimous roll call vote (Mr. Bonar and Mrs. Williams absent), Council adopted Ordinance #2012-16, as follows:

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Chapter 114 – Vegetation, be amended by adding a new Article III – Bamboo, as follows:

Article III. Bamboo

Sec. 114-36. – *Unlawful to plant or grow bamboo*. It shall be unlawful to plant or grow bamboo on any lot or parcel of ground within the city unless:

(a) The root system of such bamboo plant(s) is entirely contained within an above-ground-level planter, barrel, or other vessel of such design, material, and location as to entirely prevent the spread/growth of the bamboo plant'(s) root system beyond the container in which it is planted; or

(b) The root system is contained within a barrier, constructed in accordance with the following specifications, and only after a compliance inspection is performed, and a building permit is issued by the city of Dover:

1. The barrier itself shall be composed of high density polypropylene or polyethylene, 40 mil or heavier;

2. Each portion or sheet of the barrier shall be secured or joined together by the use of stainless steel clamps or stainless steel closure strips designed for such barriers;

3. The barrier shall be installed not less than 30 inches deep;

4. The barrier shall be circular or oblong shaped;

5. Not less than three inches of the barrier shall protrude above ground level around the entire perimeter of the barrier;

6. When installed, the barrier shall slant outward from the bottom to the top.

(c) Whether planted or growing in a container (under subparagraph (a) above) or contained within a barrier (under subparagraph (b) above), all bamboo plants shall be located, trimmed and maintained so that no part of the plant (including stalks, branches, leaves, and/or roots) shall extend nearer than ten feet from any property line.

Sec. 114-37. - Exemptions.

Section 114-36 shall not apply to any landowner or possessor who, prior to the effective date of this article, has planted or caused to grow any bamboo on any property within the limits of the city unless a city code enforcement official determines that any portion of such bamboo has been allowed to grow upon, extend roots across, or extend branches, stalks or leaves over any public way or any private property not owned by or in the possession of such landowner or possessor.

Sec. 114-38. - Complaint/order for removal, repair and compliance.

When it has been determined by the city that any bamboo plant or root is encroaching on the property of an adjacent or abutting landowner, or public way, the city shall, prior to taking any other action to enforce compliance with this article, give written notice to be delivered by certified mail, to the person(s) or legal entity(s) causing such condition to exist, which notice shall:

(1) Specify the nature and location of the violation;

(2) Provide notice of the need to remove and/or correct such condition within 30 days from the effective date of such notice;

(3) Require that the removal and/or correction of such condition includes:

a. The removal and eradication of any bamboo plant or root from any adjoining or nearby lot(s) or public way to which it has spread from its original planting site, and the correction and repair of any property damage sustained to said adjoining or nearby lot(s) or public way, in removing such bamboo; and

b. The containment of the bamboo plant causing said encroachment, by mandatory and full compliance with section 114-36 (a) or (b);

(4) State that upon failure to comply with the notice and order for removal and/or containment, the city may remove and eradicate the bamboo upon the land of any nearby or abutting property owner, public way and/or upon the property of the person(s) or entity(s) planting or causing such bamboo to grow, as provided in section 114-33.

Sec. 114-39. – Abatement of bamboo.

(a) If the violation is not remedied within the time set forth in the notice and order as outlined above, the city is hereby authorized to remove or have removed any encroaching bamboo and to take all reasonable steps to eradicate its re-growth from said adjacent or nearby property or public way, and to restore any such lands to its natural condition prior to such removal and eradication (including fill, grading, and seeding).

(b) The city shall also be authorized to remove and eradicate the plant(s) causing the encroachment, upon the responsible party(s)' failure to properly contain the plant after notice.

(c) The cost of corrective action taken by the city shall be billed to the property owner whose property was the source of the encroachment.

(d) If the charges assessed by the city for removal or eradication of the bamboo are not paid, then the city, after having corrected the deficiency and violation, shall place its charges and expenses as specified in the municipal lien docket as a lien against said property, and the city solicitor shall be directed to enforce said lien or to collect the charges imposed by the city by any other means that he may deem desirable and most advantageous.

ADOPTED: JULY 9, 2012

Ordinance #2012-17 - Amending Chapter 26 - Businesses, Article I - In General, Section 26-1 - Sale of Dangerous Substances

Mr. Hare moved for adoption of the proposed ordinance, seconded by Mr. Lynn and, by a roll call vote of six (6) yes, one (1) no (Mr. Anderson), and two (2) absent (Mr. Bonar and Mrs. Williams), Council adopted Ordinance #2012-17, as follows:

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Chapter 26 - Businesses, Article I - In General, Section 26-1 - Sale of Dangerous Substances, be amended to read as follows:

Sec. 26-1. - Sale of dangerous substances.

(a) It shall be unlawful to sell or offer to sell any material, compound, mixture, or preparation which contains any quantity of any substance categorized as Schedule I in accordance with 16 Del.C. ch. 47.

(b) *Penalties*. Violations of this section shall be subject to fines in accordance with Appendix F—Fees and Fines, section 1-17 and revocation of business license under the provisions of Chapter 26—Businesses, Article II—Licenses, section 26-64.

(c) *Enforcement.* Any business that sells or offers for sale any of the prohibited items shall be considered a public nuisance. The provisions of this section may be enforced by any city inspector or officer of the police department after any substance found for sale at a business tests positive for a Schedule I controlled substance in a field test performed by the Police Department.

ADOPTED: JULY 9, 2012

COUNCIL MEMBERS ANNOUNCEMENTS

Council President Leary noted that Mr. Hare recently celebrated a birthday and that Mr. Anderson had an upcoming birthday. He wished them both happy birthdays.

Mr. Lynn announced that a Joint Meeting of the Legislative, Finance, and Administration Committee and the Election Board was scheduled for July 11, 2012 at 6:00 p.m. and that the topic would be redistricting. He encouraged all those who were interested in the City's redistricting to attend the meeting.

Responding to Mr. Hutchison, Mr. Scott Koenig, City Manager, indicated that, according to the last update that he received, the Boys and Girls Club was working toward a field house/building combination to be located near the new Boy Scout facility on New Burton Road. He advised members that the Boys and Girls Club had taken "a back seat" on the City's offer to locate at Schutte Park in order to pursue their option with Kent County. Mr. Koenig noted that if the organization's arrangement with Kent County did not go forward, they may consider locating at Schutte Park.

Mayor Carey thanked the Fourth of July Committee for their hard work on the event, including the parade and fireworks, as well as the Delaware National Guard for their outstanding performance during the evening.

Mr. Hare moved for adjournment, seconded by Mr. Lynn and unanimously carried.

Meeting Adjourned at 7:57 P.M.

TRACI A. McDOWELL
CITY CLERK

All orders, ordinances, and resolutions adopted by City Council during their Regular Meeting of July 9, 2012, are hereby approved.

CARLETON E. CAREY, SR.
MAYOR

/TM/jg
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