COUNCIL COMMITTEE OF THE WHOLE
AGENDA

OCTOBER 10, 2017 - 6:00 P.M.

CITY HALL COUNCIL CHAMBERS
15 LOOCKERMAN PLAZA
DOVER, DELAWARE

PUBLIC COMMENTS ARE WELCOMED ON ANY ITEM AND WILL BE PERMITTED AT APPROPRIATE TIMES. WHEN POSSIBLE, PLEASE NOTIFY THE CITY CLERK (736-7008 OR E-MAIL AT CITYCLERK@DOVER.DE.US) SHOULD YOU WISH TO BE RECOGNIZED.

PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE

1. **AGENDA ADDITIONS/DELETIONS**

2. **PROPOSED RESOLUTION NO. 2017-12 NAMING OF THE BICENTENNIAL PLAYGROUND**
   (STAFF RECOMMENDS ADOPTION OF RESOLUTION NO. 2017-12)

3. **ADJOURNMENT OF PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE MEETING**

UTILITY COMMITTEE

1. **AGENDA ADDITIONS/DELETIONS**

2. **AMERICANS WITH DISABILITIES ACT (ADA) TRANSITION PLAN: PEDESTRIAN FACILITIES IN THE PUBLIC RIGHT-OF-WAY**
   (STAFF RECOMMENDS APPROVAL TO SOLICIT PUBLIC COMMENT ON THE PROPOSED TRANSITION PLAN)

3. **AGREEMENT FOR ESTABLISHMENT OF WASTEWATER SERVICE - WINDING CREEK**
   (STAFF RECOMMENDS EXECUTING THE AGREEMENT WITH TIDEWATER ENVIRONMENTAL SERVICES, INC. AND ALLOWING THE WASTEWATER CREATED BY THE WINDING CREEK DEVELOPMENT TO BE ACCEPTED BY THE CITY OF DOVER)

4. **ADJOURNMENT OF UTILITY COMMITTEE MEETING**

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE

1. **AGENDA ADDITIONS/DELETIONS**

2. **ANNUAL REVIEW OF INVESTMENT POLICY**
   (STAFF RECOMMENDS APPROVAL OF THE SUBMITTED CHANGES)

3. **PROPOSED ORDINANCE #2017-14 - CITY OF DOVER ETHICS INITIATIVE**
   (CONSIDERED BY COMMITTEE ON SEPTEMBER 12, 2017)

4. **ADJOURNMENT OF LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE MEETING**

ADJOURNMENT OF COUNCIL COMMITTEE OF THE WHOLE MEETING

/TM
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THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. PURSUANT TO 29 DEL. C. §10004(E)(2), THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS, WHICH ARISE AT THE TIME OF THE MEETING.

City of Dover

MAYOR AND COUNCIL

PROPOSED COUNCIL RESOLUTION NO. 2017-12

A RESOLUTION PROPOSING THE NAMING OF BICENTENNIAL PLAYGROUND

WHEREAS: parks and playgrounds offer opportunities for relaxation, exercise, contemplation, and interaction with nature; and

WHEREAS: The City of Dover has an extensive system of park and recreation facilities that add to the quality of life in the community; and

WHEREAS: providing quality affordable recreation and leisure services that promote healthy lifestyles for residents of Dover is a goal of the Parks and Recreation Department; and

WHEREAS: City Staff engaged the Bicentennial Village community in assessing their recreational needs and opportunities; and

WHEREAS: as a result of that initiative plans were developed and funding was secured to create a playground facility for 2-5 year olds in the community; and

WHEREAS: this new facility deserves to have a proper identity linking it to the community it serves.

NOW, THEREFORE, BE IT RESOLVED:
The Dover City Council designates this facility the "BICENTENNIAL PLAYGROUND" and instructs the Department of Public Works in conjunction with the Department of Parks and Recreation to install a proper sign in recognition thereof.

ADOPTED:
Y:\Dave Hugg

ROBIN R. CHRISTIANSEN
MAYOR

TIMOTHY A. SLAVIN
COUNCIL PRESIDENT

Actions History
10/10/2017 - Introduction – Council Committee of the Whole/Parks, Recreation, and Community Enhancement Committee

ACTION FORM

PROCEEDING: Utility Committee	**AGENDA ITEM NO.:**
DEPARTMENT OF ORIGIN: Public Works	**DATE SUBMITTED**: 09-29-17
PREPARED BY: Sharon Duca, P.E., Public Works Director/City Engineer	
SUBJECT: Americans with Disabilities Act Transition Plan: Pedestrian Facilities in the Public Right-of-Way	
REFERENCE: N/A	
RELATED PROJECT: N/A	
APPROVALS: City Manager, Controller	
EXHIBITS: Transition Plan and Presentation	
EXPENDITURE REQUIRED: $ N/A*	**AMOUNT BUDGETED**: $ N/A*
FUNDING SOURCE (Dept./Page in CIP & Budget): N/A	
* - Improvements will occur through the annual Capital Improvement Plan – Street, Concrete and Alley Program, as well as the Street Division operations account. Actual costs and quantities of materials will vary based on each street being improved.	
TIME TABLE: The Transition Plan will be available for public comment for thirty (30) days after advertisement. Following the public comment, Transition Plan will be brought back to Utility Committee for recommendation to Council. Final approval of plan will come from Council by way of a resolution.	
RECOMMENDED ACTION: Staff recommends approval from Utility Committee to solicit public comment on the proposed Transition Plan.	

BACKGROUND AND ANALYSIS

The Americans with Disabilities Act was enacted by the Federal Government on July 26, 1990. One of the requirements of this Act was for each government agency to produce a Transition Plan to ensure reasonable, accessible paths of travel in the public right-of-way for everyone, including people with disabilities.

This proposed Transition Plan would make the City of Dover (City) compliant with the aforementioned regulation. Per Title II, Article 8, the following must be included in the plan:

1. A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities. *(To be completed after acceptance of plan).*
2. A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible.
3. The schedule for taking the necessary steps to achieve compliance with Title II.
4. The name of the official responsible for the plan's implementation.

The attached presentation and Transition Plan provides an overview on how the requirements listed above will be addressed by the City. One aspect of the Transition Plan is to allow for public comment on the document. The City will publicly advertise this document and provide directions for the public to provide feedback.

Staff recommends that we advertise this Transition Plan to the public for a minimum of thirty (30) days to obtain input from the citizens. Once the public comment period is over, staff will assemble the comments, make alterations to the plan (if necessary) and present to the Utility Committee for recommendation to Council.

City of Dover

Americans with Disabilities Act Transition Plan: Pedestrian Facilities in the Public Right-of-Way

Public Works Department
Effective Date: TBD

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Introduction

The purpose of this plan is to ensure that the City of Dover creates reasonable, accessible paths of travel in the City owned and State owned right-of-ways for everyone, including people with disabilities. The City of Dover has made a significant and long-term commitment to improving the accessibility of their pedestrian facilities. The purpose of the Transition Plan is to identify physical barriers and prioritize improvements that should be made throughout the City of Dover. This Transition Plan describes the existing policies and programs to enhance the overall pedestrian accessibility.

Legal Requirements

The federal legislation known as the American with Disabilities Act (ADA), enacted on July 26, 1990, provides comprehensive civil rights protections to persons with disabilities in the areas of employment, state and local government services, and access to public accommodations, transportation, and telecommunications.

Title II specifically applies to "public entities" (state and local governments) and the programs, services, and activities they deliver. Title II Article 8, requires public entities to take several steps designed to achieve compliance. The plan shall, at a minimum include:

1. A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities.
2. A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible.
3. The schedule for taking the necessary steps to achieve compliance with Title II.
4. The name of the official responsible for the plan's implementation.

Transition plans provide a method for a public entity to schedule and implement ADA required improvements to existing streets and sidewalks. Following the acceptance of the Transition Plan, an ADA Policy Statement will be distributed to the public, as depicted in Attachment D.

I. Obstacles to the Public Right-of-Way

The City of Dover will identify and assess obstacles in the public right-of-way through the use of our Graphical Information System software by June 30, 2018. This will be updated on a regular basis.

In order to remove these identified barriers to accessibility, the City of Dover utilizes many different approaches in removing barriers in the public right-of-way, including proactively identifying and eliminating the barrier, responding to public complaints, and ensuring the appropriate design and build-out of new construction following the most recent design guidelines.

A. Barrier Removal Priorities

The City of Dover bases barrier removal priorities on two factors: location and the accessibility condition of the intersection.

1. Location Priority

The City of Dover has identified its location priority as follows:

1. Intersections serving government buildings, schools, medical facilities and parks.
2. Intersections serving commercial buildings, employment centers and the Downtown Development District.
3. Intersections serving other areas.

2. Accessibility Condition

Using the data collected from the Graphical Information System software, an accessibility condition barrier is to be determined as follows:

1. No ramp where one is needed.
2. Sidewalk width less than 36”.
3. No truncated domes.
4. Poor slope = cross slope >3%, running slope > 8.33% (1” on 12”).
5. Sidewalk connectivity not present.

3. Priority Rank

In order to determine the overall priority of an intersection, the following matrix will be used.

	Location Priority		
	1	2	3
Access Condition	Locations serving Government Facilities *	Locations serving Commercial & Employment Centers**	Locations serving Other Areas
Red	1	2	3
Yellow	1	2	3
Green	1	2	3

* Government Buildings, Schools, Medical Facilities, Parks.

** Commercial Buildings, Employment Centers, Downtown Development District.

The priority of improvements is based on identifying which of the intersections are in a high, medium, or low priority locations and the amount of accessibility conditions found that need to be removed. The accessibility condition barriers will be designated as follows:

Red - Two or more barriers
Yellow - One barrier
Green - Compliant

B. Public Complaint Process

The public complaint process is an integral part of the Transition Plan. Public complaints, or requests, may often drive the prioritization of improvements. To file a complaint, or a request regarding accessibility of a sidewalk, or curb ramp, contact the ADA Coordinator in writing and describe the issue in detail, including the location. The ADA Coordinator will route this information to the appropriate City of Dover Department of Public Works Division for inspection and possible action. That Division will then respond to the ADA Coordinator with its findings and the ADA Coordinator will record the formal response and reply to the complainant/requestor with the action that will occur. All complaints, or requests will be kept on file and will include the response. The complaints procedure is referenced in Attachment D, the ADA Policy Statement.

C. New Construction and Alterations

In order to ensure the correct design of curb ramps, sidewalks, and crosswalks in new construction and alterations, the City of Dover follows the latest version of DelDOT

design specifications. Whenever there is an intersection improvement project, new construction project, or repaving project, any affected curb ramps, sidewalks, and crosswalks will be rebuilt to these ADA design guidelines, where feasible and reasonable.

II. Schedule

As opportunity allows, the City of Dover will make efforts to improve the ADA Accessibility of pedestrian facilities in the public right-of-way. At this time, the City of Dover has a capital improvement program in place whereby each road that is improved will include the repair of any ADA deficiencies. Note that this repair schedule is flexible, as changes may occur due to additional funding availability, improvements due utility companies, etc. There will be times when it is technically infeasible to provide compliance, such cases include, but are not limited to, when there is not enough flat area available for handicap movements at the top of the ramp because it is obstructed by a building, or the slope of a hill is so steep that it would prevent an adjacent sidewalk to be constructed to ADA compliance. In matters such as these, the city will reach out to the DelDOT ADA Coordinator for a variance.

Additionally, given a sidewalk inventory as broad and comprehensive as the City's pedestrian network, the City will follow the concept of Program Access under Title II of the ADA. Essentially, this concept allows the City the ability to not install a sidewalk at a specific location as long as a reasonable path of travel is available.

III. Responsible Individual

The Department of Public Works will manage this Transition Plan. The ADA Coordinator responsible for the implementation of the City of Dover's ADA Transition Plan for the pedestrian facilities in the public right-of-way is:

Paul Thompson
Construction Manager
Phone: (302)-736-7029
Fax: (302)-736-4217
Email: pthompson@dover.de.us

IV. Public Input

The City of Dover provided opportunities for individuals to comment on this Transition Plan, which included:

Document copies available and notices sent to the Dover Public Library.
Document made available on the City's website and in the City Clerk's Office.

The City of Dover published legal notices in the local newspaper, The Dover Post, starting on TBD. The advertisement provided instructions regarding the timetable for comments and where to send them (see Attachment B). Public comments were accepted for a period of no less than thirty (30) days, and will be accepted throughout the life of this Transition Plan. The public comment form is available on Attachment C. Formal adoption of the Transition Plan took place on TBD.

V. Attachments

A. Current List of Barriers for Removal in Priority Schedule Order

B. Advertisement for Public Feedback

C. Public Comment and Response Form

D. ADA Policy Statement

Attachment A – Current List of Barriers for Removal in Priority Schedule Order

Attachment B – Advertisement for Public Feedback

SOLICITING PUBLIC FEEDBACK – ADA TRANSITION PLAN

CITY OF DOVER

Please take notice that the City of Dover is in the process of compiling an ADA (American with Disabilities Act) Transition Plan. The City of Dover invites the public to become involved in this process through written comments. The Public Comment and Response Form is available on the City of Dover's website; www.cityofdover.com. The City Manager has appointed Paul Thompson, Construction Manager, as ADA Coordinator of the City of Dover ADA Transition Plan for pedestrian facilities in the public right-of-way. He can be reached at 302-736-7029, by fax at 302-736-4217, email: pthompson@dover.de.us, or by filing the Public Comment and Response Form, which will be provided at the Department of Public Works, 15 Loockerman Plaza, Dover, DE, 19901.

Date: TBD

Attachment C – Public Comment and Response Form

CITY OF DOVER DEPARTMENT OF PUBLIC WORKS
PO Box 475 Dover, DE 19903
Phone: 302-736-7025 Fax: 302-736-4217

Date of Comment: _____

Location of Complaint:_____

Name of Person: _____

Address:_____

Phone Number:_____

Email Address:_____

Comment: _____

_____

_____

_____

_____

_____

_____

_____

Response: _____

_____

_____

_____

_____

Attachment D – ADA Policy Statement

CITY OF DOVER
15 Loockerman Plaza
Dover, Delaware 19901

Americans with Disabilities Act Transition Plan (ADA): Pedestrian Facilities in the Public Right-of Way

Introduction:

The purpose of this plan is to ensure that the City of Dover creates reasonable, accessible paths of travel in the public right-of-way for everyone, including people with disabilities. The City of Dover has made a significant and long-term commitment to improving the accessibility of their pedestrian facilities. The Transition Plan will identify physical barriers and prioritize improvements that should be made throughout the City of Dover. This Transition Plan will describe the existing policies and programs to enhance the overall pedestrian accessibility.

Legal Requirements:

The federal legislation known as the American with Disabilities Act (ADA) enacted on July 26, 1990 provides comprehensive civil rights protections to persons with disabilities in areas of employment, state and local government services, and access to public accommodations, transportation and telecommunications.

Title II specifically applies to "public entities" (state and local governments) and the programs, services and activities they deliver. Title II Article 8, requires public entities to take several steps designed to achieve compliance. The City plan will, at a minimum include:

1. A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities.
2. A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible.
3. The schedule for taking the necessary steps to achieve compliance with Title II.
4. The name of the official responsible for the plan's implementation.

The City is in the process of identifying and assessing obstacles in the public right of way through the use of Geographic Information Systems software. Barrier Removal Priorities based on location priority and accessibility conditions will be a part of the inventory process. It is very important that the public be aware that their involvement in this plan is a valuable component to the City in compiling a workable plan of compliance. Your involvement is solicited in developing the ADA Transition Plan.

Public Complaint

Public complaint, suggestions and comments can also be an integral part of the Transition Plan. Public comments may often drive the prioritization of improvements. The Public Comment and Response Form, which is available at the Department of Public Works, 15 Loockerman Plaza, Dover, DE 19901 and at our website; www.cityofdover.com should be completed. The form should be delivered to the ADA Coordinator, Paul Thompson, Construction Manager for the City of Dover, at City of Dover, 15 Loockerman Plaza, Dover, DE 19901, or via email pthompson@dover.de.us.

Public Input:

Public Comment and Response Forms are available on the City of Dover website, www.cityofdover.com. The City of Dover welcomes your participation and unique outlook as to how the City can meet and exceed ADA requirements and recommendations. Public involvement in the City's ADA plan has been a valuable component to the City in compiling a workable plan of compliance. We continue to solicit your additions to the ADA Transition Plan.

An inventory of the City of Dover intersections will be included with this Transition Plan, upon completion.

The plan to complete the ADA requirements is through the annual Department of Public Works operational budget and the capital improvement plan budget and will bring the pedestrian network into compliance.

As stated above, the City will annually include ADA compliance with our paving projects.

Donna Mitchell, Acting City Manager
Dover City Council
TBD

AMERICANS WITH DISABILITIES ACT TRANSITION PLAN: PEDESTRIAN FACILITIES IN THE PUBLIC RIGHT-OF-WAY

CITY OF DOVER
DEPARTMENT OF PUBLIC WORKS

9/27/2017

LEGAL REQUIREMENTS

THE FEDERAL LEGISLATION KNOWN AS THE AMERICAN WITH DISABILITIES ACT (ADA) WAS ENACTED ON JULY 26, 1990, TITLE II, ARTICLE 8 SPECIFICALLY REQUIRES PUBLIC ENTITIES TO TAKE SEVERAL STEPS DESIGNED TO ACHIEVE COMPLIANCE. THE PLAN SHALL, AT A MINIMUM INCLUDE:

- LIST OF THE PHYSICAL BARRIERS IN A PUBLIC ENTITY'S FACILITIES THAT LIMIT THE ACCESSIBILITY OF ITS PROGRAMS, ACTIVITIES, OR SERVICES TO INDIVIDUALS WITH DISABILITIES.

- A DETAILED OUTLINE OF THE METHODS TO BE UTILIZED TO REMOVE THESE BARRIERS AND MAKE THE FACILITIES ACCESSIBLE.

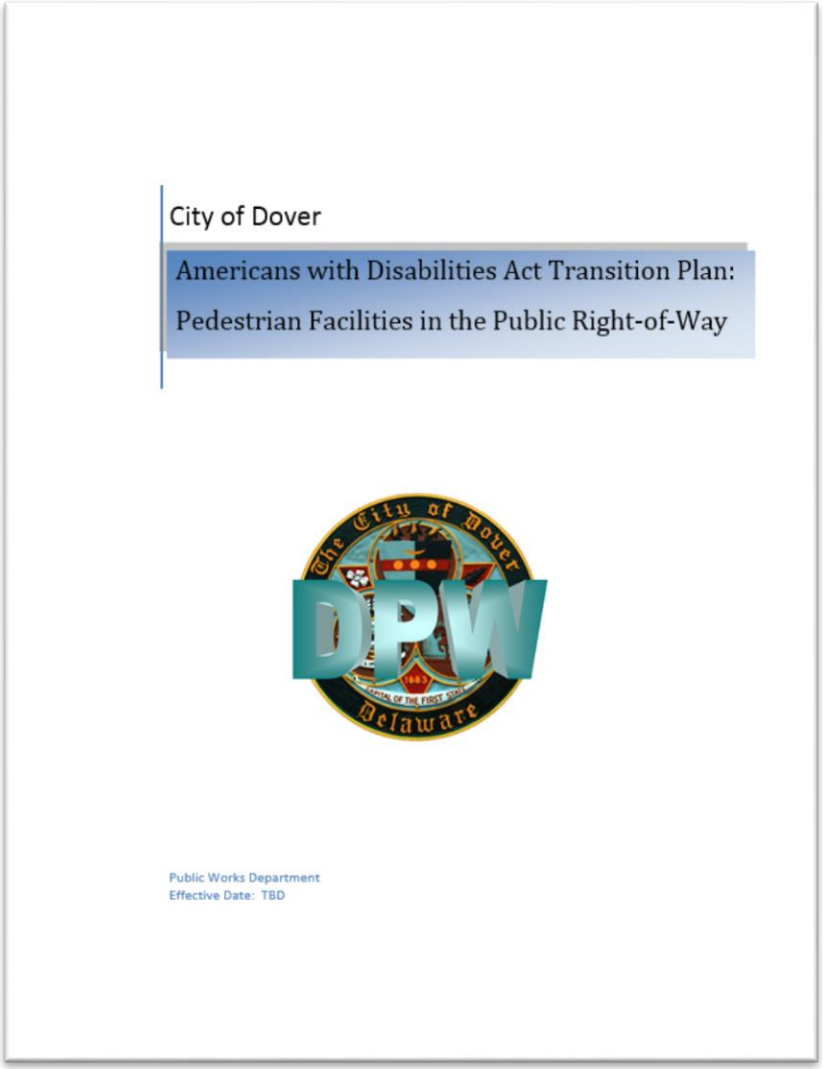
- THE SCHEDULE FOR TAKING THE NECESSARY STEPS TO ACHIEVE COMPLIANCE WITH TITLE II.

- THE NAME OF THE RESPONSIBLE INDIVIDUAL FOR THE PLAN'S IMPLEMENTATION.

PROGRESS TO DATE

- THE CITY WORKED WITH THE UNIVERSITY OF DELAWARE T^2 / LTAP CENTER TO DRAFT A TRANSITION PLAN.

- THE CITY IS IN THE PROCESS OF OBTAINING THE COMPLETE LIST OF PHYSICAL BARRIERS WITHIN OUR SIDEWALK NETWORK. ANTICIPATED TO BE COMPLETED JUNE 30, 2018.


City of Dover

Americans with Disabilities Act Transition Plan:

Pedestrian Facilities in the Public Right-of-Way

Public Works Department
Effective Date: TBD

PROGRESS TO DATE

- METHODS TO BE USED TO ELIMINATE THE BARRIERS TO ADA COMPLIANCE:
  - ANNUAL CAPITAL IMPROVEMENT PLAN – STREET, CONCRETE AND ALLEY PROGRAM. UPGRADE NON-COMPLIANT SIDEWALK DURING STREET REPAVING.
  - DEPARTMENT OF PUBLIC WORKS – STREETS DIVISION. THE OPERATIONAL ACCOUNT WILL BE UTILIZED TO REPAIR APPROPRIATE BARRIERS.

PROGRESS TO DATE

USING THE DATA COLLECTED FROM THE GEOGRAPHIC INFORMATION SYSTEM SOFTWARE, AN ACCESSIBILITY CONDITION BARRIER IS DETERMINED AS FOLLOWS:

a. NO RAMP WHERE ONE IS NEEDED.
b. SIDEWALK WIDTH LESS THAN 36".
c. NO TRUNCATED DOMES.
d. POOR SLOPE – CROSS SLOPE >3%, RUNNING SLOPE > 8.33% (1" ON 12").
e. SIDEWALK CONNECTIVITY NOT PRESENT.

PROGRESS TO DATE

- PRIORITIZATION MATRIX

	Location Priority		
	1	2	3
Access Condition	Locations serving Government Facilities *	Locations serving Commercial & Employment Centers**	Locations serving Other Areas
Red	1	2	3
Yellow	1	2	3
Green	1	2	3

* GOVERNMENT BUILDINGS, SCHOOLS, MEDICAL FACILITIES, PARKS.

** COMMERCIAL BUILDINGS, EMPLOYMENT CENTERS, DOWNTOWN DEVELOPMENT DISTRICT.

THE PRIORITY OF IMPROVEMENTS IS BASED ON IDENTIFYING WHICH OF THE INTERSECTIONS ARE IN A HIGH, MEDIUM, OR LOW PRIORITY LOCATIONS AND THE AMOUNT OF ACCESSIBILITY CONDITIONS FOUND THAT NEED TO BE REMOVED. THE ACCESSIBILITY CONDITION BARRIERS WILL BE DESIGNATED AS FOLLOWS:

RED - TWO OR MORE BARRIERS

YELLOW - ONE BARRIER

GREEN - COMPLIANT

PROGRESS TO DATE

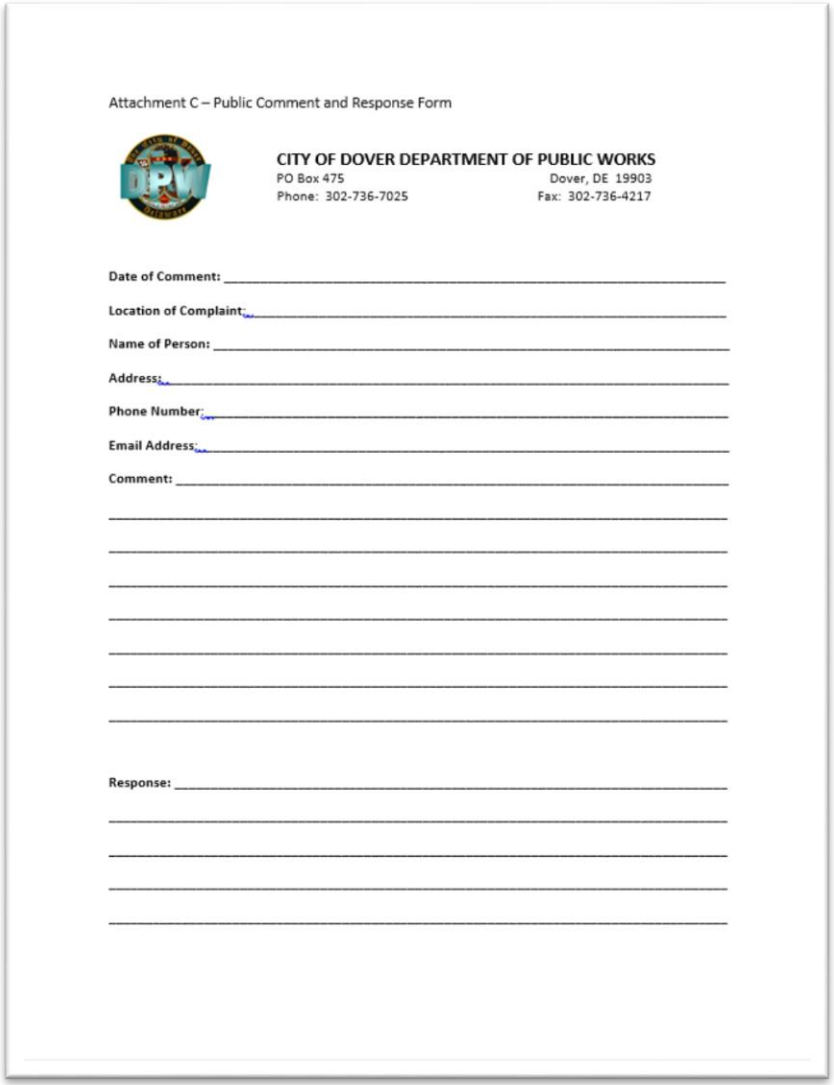
- PROPOSED RESPONSIBLE INDIVIDUAL FOR THE PLAN'S IMPLEMENTATION:

  THE DEPARTMENT OF PUBLIC WORKS WILL MANAGE THIS TRANSITION PLAN. THE ADA COORDINATOR RESPONSIBLE FOR THE IMPLEMENTATION OF THE CITY OF DOVER'S ADA TRANSITION PLAN FOR THE PEDESTRIAN FACILITIES IN THE PUBLIC RIGHT-OF-WAY IS:

  PAUL THOMPSON
  CONSTRUCTION MANAGER
  PHONE: (302)-736-7029
  FAX: (302)-736-4217
  EMAIL: PTHOMPSON@DOVER.DE.US

NEXT STEPS

- ADVERTISE IN A LOCAL NEWSPAPER THAT THIS TRANSITION PLAN HAS BEEN DRAFTED AND STAFF IS LOOKING FOR FEEDBACK FROM THE PUBLIC.
- THE CITY HAS CREATED A PUBLIC COMMENT FORM TO SOLICIT THE INFORMATION. IT WILL BE AVAILABLE ONLINE AND AT THE DPW OFFICE.



Attachment C – Public Comment and Response Form

CITY OF DOVER DEPARTMENT OF PUBLIC WORKS
PO Box 475 Dover, DE 19903
Phone: 302-736-7025 Fax: 302-736-4217

Date of Comment: _____

Location of Complaint: _____

Name of Person: _____

Address: _____

Phone Number: _____

Email Address: _____

Comment: _____

_____

_____

_____

_____

_____

_____

_____

Response: _____

_____

_____

_____

_____

NEXT STEPS

- After receiving all the comments, staff will assemble the comments and provide an update to the Council Committee of the Whole.
- Staff will seek a recommendation to Council.
- Assuming approval from Council:
  - the City will then distribute a ADA Policy Statement to the Public.
  - Staff will finalize the barrier inventory.

NEXT STEPS

- This plan will be a living document.
- The public is encouraged to submit complaints to the ADA Coordinator about accessibility issues.
- ADA Coordinator will delegate the complaint to the appropriate Division within the Department of Public Works, then respond to the request with the action that will occur.
- If the area in question faces a technically infeasible situation, a waiver will be requested from the State's ADA Coordinator.

STREET PROGRAM PROGRESS

MARTIN STREET

BEFORE 2016
STREET PROGRAM



AFTER 2016
STREET PROGRAM



DEPARTMENT OF PUBLIC WORKS

DEDICATED TO THE
DELIVERY OF
SERVICES
WHICH MAKE
THE CITY OF DOVER
A PLACE
WHERE PEOPLE
WANT TO LIVE.



ACTION FORM

PROCEEDING: Utility Committee	**AGENDA ITEM NO.:**
DEPARTMENT OF ORIGIN: Public Works	**DATE SUBMITTED**: 09-29-17
PREPARED BY: Sharon Duca, P.E., Public Works Director/City Engineer	
SUBJECT: Agreement for Establishment of Wastewater Service – Winding Creek	
REFERENCE: N/A	
RELATED PROJECT: N/A	
APPROVALS: City Manager, Controller	
EXHIBITS: Agreement from Tidewater Environmental Services, Inc., Recommendation letter from Kent County Department of Public Works and proximity map of development.	
EXPENDITURE REQUIRED: $ N/A	**AMOUNT BUDGETED**: $ N/A
FUNDING SOURCE (Dept./Page in CIP & Budget): N/A	
TIME TABLE: The City Manager and Tidewater Environmental Services, Inc. will execute agreement within thirty (30) days of Council approval.	
RECOMMENDED ACTION: Staff recommends executing the agreement with Tidewater Environmental Services, Inc. and allowing the wastewater created by the Winding Creek Development to be accepted by the City of Dover.	

BACKGROUND AND ANALYSIS

Winding Creek is an approved subdivision development located within Kent County on Winding Creek Road. This development is located west of the City of Dover (City) incorporated limits. The development was originally approved to establish on-site sewer disposal systems on each residential lot. Kent County has recently changed their code to favor central disposal methodology. Kent County does not currently have a centralized sewer system in the proximity of this development. This agreement will not require the City to amend their current Contract User Agreement with Kent County.

The developer and Tidewater Environmental Services, Inc. (TESI) reached out to the City to analyze the possibility of connecting to our centralized sewer system to accommodate the removal of on-site sewer disposal systems on each lot. The Department of Public Works requested a feasibility study, which was conducted by the developer's engineer and reviewed by staff. The study concluded that the City can handle the incoming flow from this development, however, certain upgrades would need to occur on the existing City owned Hunters Point pump station. The proposed internal and off site sanitary sewer infrastructure to transmit wastewater from Winding Creek to the City's infrastructure will be owned, operated and maintained by TESI. The proposed agreement explains that TESI would bear all expenses for the upgrades at the Hunters Point pump station. This connection will have no cost to the City.

The agreement also states that TESI will be charged a sewer impact fee from the City for each residential lot, and will pay a monthly sewer bill based on the sanitary sewer meter reading. The rate will be at the approved Out of City rate. The potable water for the development will be provided by Tidewater Utilities, which owns a CPCN for the area in question.

It is recommended that this agreement be executed with TESI. This agreement will provide centralized sanitary sewer services for 208 residential lots located outside of the City.

Agreement for

Establishment of Wastewater Service

THIS Agreement for Establishment of Wastewater Service ("Agreement") is entered into this ____ day of _____, 2017, between the City of Dover, Delaware ("The City"), and Tidewater Environmental Services, Inc., ("TESI").

WHEREAS, TESI is a wastewater utility regulated by the Delaware Public Service Commission.

WHEREAS, The City owns, operates and regulates its wastewater utility within and beyond its municipal borders; and

WHEREAS, TESI desires to create a connection from its wastewater system with and into The City wastewater system at The City owned Hunter's Point pump station ("Connection Location") for the purpose of procuring ongoing wastewater service from The City for the Winding Creek subdivision ("Development") located on Winding Creek Road in Kent County, Delaware; and

WHEREAS, The City desires to establish a wastewater system connection with TESI at the Connection Location for the purpose of offering ongoing wastewater service to TESI.

NOW, THEREFORE, in consideration of the following mutual covenants herein the parties agree as follows:

1. Supply of Wastewater Service. The City agrees to accept and treat a wastewater flow from TESI for the total capacity of wastewater generated from the Development.

2. Connection Location Upgrade. Prior to The City accepting wastewater flow from TESI, TESI, at its sole cost, shall design, construct and install upgrades at the Connection Location, based on the following conditions:

a. The City shall approve the design of the Connection Location upgrades, which approval shall not be unreasonably withheld or delayed.
b. If TESI elects to hire a subcontractor to perform the Connection Location upgrades, TESI shall withhold not less than 10% of the total upgrades contract as retainage until The City has accepted the work and has acknowledged, in writing, that the work was performed to The City's specifications.
c. Upon completion, and The City's acceptance of the Connection Location upgrades, ownership of all Connection Location upgrades installed by TESI under the upgrades contract shall be deemed to have been granted and conveyed to The City.

3. Service Connection Construction. TESI agrees to construct at the Connection Location, at TESI's expense, a service connection, meter, meter vault, double check backflow prevention device and associated appurtenances, the design and installation of which shall be subject to the approval of The City, which approval shall not be unreasonably withheld. The service connection, meter, meter vault, double check backflow prevention device and associated appurtenances shall be installed, owned and maintained by TESI. TESI shall be responsible for obtaining all easements and land rights necessary for the installation of the service connection, meter, meter vault, double check valve, backflow prevention device and associated appurtenances.

4. Meter Operation. TESI agrees to annually test the meter device on or before the anniversary date of the commencement of wastewater service, and provide a report to The City. In the event the meter becomes inoperable and requires replacement, TESI, at its expense, agrees to replace the meter within a reasonable timeframe when directed by The City. The point of demarcation of TESI's ownership shall be at the valve after the meter.

5. Force Main. TESI shall own, operate and maintain the wastewater force main from the Development to the Connection Location.

6. Fees.

   a. A one-time fee shall be charged by The City to TESI for each customer connection made in the Development in accordance with The City fee schedule, included in Exhibit A, which may be amended from time to time. The fee shall include (a) The City's fee per equivalent dwelling unit ("EDU") and Administrative Fee per EDU and (b) Kent County Department of Public Works ("Kent County") impact fee per EDU, collectively called the ("Total EDU Fee"). The City shall then pay Kent County the Kent County portion of the Total EDU Fee collected from TESI. The City shall provide TESI a payment receipt for each Development lot showing Total EDU Fee amount, lot number and tax parcel number. The City shall maintain a copy of the payment receipt and submit it to Kent County on a quarterly basis. Failure of The City to pay Kent County shall be considered a material breach of the Agreement.

   b. TESI shall pay The City the Total EDU Fee for each Development connection prior to Kent County issuing a Certificate of Occupancy.

   c. Build-out of the Development is expected to be 208 EDU, or the final amount built by the developer of the Development.

7. Usage Rates. The City shall bill for metered wastewater service at its published Out of City rate, which may change from time to time. Billing shall be on a monthly basis.

8. Wastewater Acceptance. The City shall operate and maintain its wastewater system as efficiently as possible and shall take such actions as necessary to ensure adequate levels of wastewater acceptance and treatment capacity. In the event of a complete or partial failure to receive wastewater, The City agrees to act diligently within the bounds of normal operating procedures to return service to normal.

9. Indemnification. The City and TESI each indemnifies and agrees to defend the other against and holds the other harmless from any and all costs (including reasonable

attorney's fees), damages, claims of liability and losses which arise out of negligence or intentional misconduct of the indemnifying party, its agents or contractors.

10. Counterparts. This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument and may be executed and transmitted by email, which shall be deemed the equivalent of original signatures.

11. Binding. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns.

12. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, all rights and remedies being governed by said laws.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first written above.

THE CITY OF DOVER

ATTEST:

_____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

TIDEWATER ENVIRONMENTAL

SERVICES, INC.

ATTEST:

_____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

FILE

Kent County

Wastewater Facilities Division
(302) 335-6000

Facilities Management Division
(302) 744-2357

Department of Public Works
Division of Engineering

Kent County
Administrative Complex
555 Bay Road
Dover, DE 19901
(Handicapped Accessible)

Phone: 302-744-2430
Fax: 302-736-2100
www.co.kent.de.us

April 11, 2014

Jason Lyon, P.E.
City of Dover, Department of Works Department
P.O. Box 475
Dover, DE 19903

RE: Winding Creek Estates Subdivision
Kent County Planning Division No.: CS-14-04
Kent County Central, Sewer System

Dear Mr. Lyon:

Kent County Levy Court has voiced concern over the proliferation of community on-site sewer disposal systems in the past and voted to prohibit them throughout the County. The Winding Creek Estates Subdivision was approved with such a system prior to the change in County Code. Therefore the Department of Public Works is in favor of changing the disposal method from an on-site solution to a central disposal methodology.

We have reviewed the technical implications of the request and would like to advise the City of the following items:

1) The County's main transmission and treatment systems can accommodate the proposed (208) lot subdivision, without negatively impacting the City of Dover's flow allocations under the current Contract User Agreement.

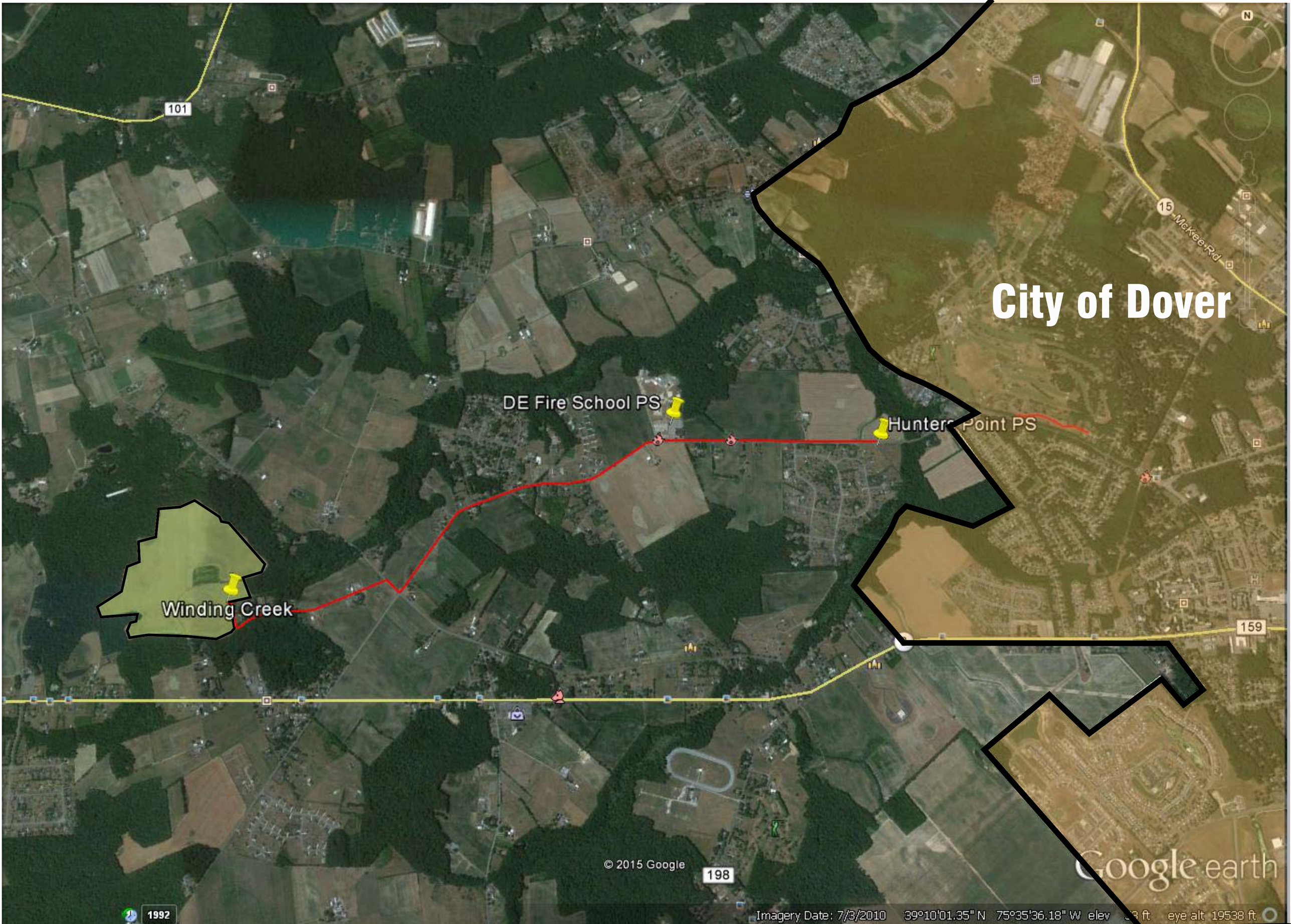
2) The prior statement of capacity does not imply the County will be technically, legally, financially, etc.... responsible for neither the existing nor the proposed sewer system(s) between the subdivision and the County's main transmission system.

I trust the presented information is adequate for your purposes. If you have any further questions, please contact me at (302) 744-2430.

Sincerely,

Hans Medlarz, P.E.
Public Works Director

V:\PublicWorks\ssd_expan&creat\OUTSIDE GROWTH ZONE\Winding Creek Estates\Letter to City of Dover 04032014.docx


101
15
McKee Rd
City of Dover
DE Fire School PS
Hunters Point PS
Winding Creek
159
198
© 2015 Google
Google earth
1992
Imagery Date: 7/3/2010 39°10'01.35" N 75°35'36.18" W elev ft eye alt 19538 ft

City of Dover, DE

Investment Policy Statement

Dated October 10, 2016

1.0 Governing Authority

It is the policy of the City of Dover to invest public funds under its control in a manner that will provide the highest investment return consistent with the maximum safety of principal, while meeting cash flow needs of the City. The investment program shall conform to all state and local statutes governing the investment of public funds.

2.0 Scope

This Investment Policy Statement (the "Policy") applies to all financial assets of the City of Dover for which the City retains direct or indirect daily control. Funds for which the City has retained outside fund manager(s) shall also be governed by this Policy or, in the case of bond proceeds, related governing bond documents.

2.1 Accounts

2.1.1 Cash and Liquidity Accounts: The majority of the City's cash balance available for investment is maintained in the cash and liquidity accounts. These accounts will be managed and invested by investment managers, selected by the City Council through competitive bid, in order to maximize the return to the City while, at the same time, providing for safety of principal and sufficient liquidity for the City to meet its cash needs. The City will manage its short-term investments to ensure sufficient liquidity and prevent their premature sale for the purpose of covering expenditures. Short-term investments should mature at face value in sufficient amounts to meet any liquidity needs.

2.1.2 Reserve Cash (Intermediate) Account: To the extent cash is not expected to be needed on short notice, the City shall invest such funds in the Reserve Cash Account. This fund shall be managed and invested by an investment manager or managers**,** selected by the City Council after a competitive bid, in order to maximize the return on said money to the City while providing for the safety of principal.

All of the City of Dover's funds are accounted for in its Comprehensive Annual Financial Report. Those funds to which this Policy applies include (excluding the Deferred Compensation Plan and Pension Trusts):

2.2 Funds

2.2.1 General Fund
2.2.2 Capital Project Funds
2.2.3 Special Revenue Funds
2.2.4 Enterprise Funds
2.2.5 Internal Service Funds
2.2.6 Any new fund created by the City Council, unless specifically exempted

3.0 Objectives

The primary objectives of the City of Dover's investment activities, in order of importance shall be:

3.1 Safety

Preservation of principal is the foremost objective of the investment program. To attain this objective, funds shall be diversified among securities of high credit quality and liquidity, so that risk of loss of principal is minimized.

3.2 Liquidity

The City's investments shall be made for such periods as to enable the City to meet all operating requirements that may be scheduled or reasonably anticipated.

3.3 Return on Investments

A goal of the investment program shall be to maximize investment return within the constraints of Sections 3.1 and 3.2.

4.0 Delegation of Authority

Authority to manage the City of Dover's investment program is derived from this Policy, which is approved by City Council, and "Dover Code, PART I, Subpart A, Article II, Section 17" (attachment B) which states in part that "The Controller/Treasurer shall be the custodian of all of the City funds."

The City's Controller/Treasurer shall:

1) Review this Policy annually and recommend changes, if any, to City Council;
2) Be charged with implementing the Policy, and may delegate authority to make investments to an investment advisor. The Controller/Treasurer shall be responsible for all investment transactions and shall establish controls to regulate the activities of the investment advisor, if any.
3) Ensure that records of the City's investment activities are kept for ten years.

5.0 Prudence, Ethics and Conflicts of Interest

Any official of the City or investment advisor/manager empowered to make investments on behalf of the City of Dover shall comply with the following:

5.1 "Prudent Person" Rule

Investment decisions shall be made with the judgment and care which persons of reasonable intelligence, under circumstances prevailing at the time the investment is made, would exercise in the management of their own investments assuming that their objectives are those shown in Section 3.0 of this policy.

5.2 Ethics and Conflict of Interest

The delegate authorized to make City investments shall act at all times in an ethical manner, and shall not engage in activity that could impair or be perceived to impair their ability to make impartial investment decisions. They shall disclose to the Mayor and City Council any material interests in financial institutions with which the City has financial dealings, and which may be related to the performance of the investment program. Employees and officers shall refrain from undertaking personal investment transactions with the same individual(s) with whom business is conducted on behalf of the City.

6.0 Authorized Institutions and Dealers

All broker/dealers that desire to become qualified for investment transactions with the City shall meet the following:

1. Primary dealers and regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule)
2. Capital of at least $25,000,000 or capital of $5,000,000 for firms incorporated in the State of Delaware
3. Registered as a dealer under the Securities Exchange Act of 1934
4. Member of the Financial Industry Regulatory Authority (FINRA)
5. Registered to sell securities in the State of Delaware
6. Engaged in the business of effecting transactions in U.S. government, federal agency, and corporate securities for at least five (5) consecutive years

To the extent the City utilizes the services of an outside Investment Advisor, it shall be the responsibility of the Investment Advisor to maintain an approved list of brokers.

7.0 Safekeeping and Custody

To ensure that securities are deposited in an eligible financial institution prior to the release of funds, all trades of marketable securities will be executed by delivery vs. payment ("DVP").

Further, all securities will be held by an independent third-party custodian, in the name of the City, and evidenced by safekeeping receipts in the City's name. The custodian shall provide daily confirmation of held securities as well as a monthly transactions and holdings report.

8.0 Authorized Investments and Trading of Securities

The Controller/Treasurer or authorized delegate may invest only in the types of securities listed below. The maximum stated maturity of any security shall be limited to 10 years at settlement, unless otherwise stated. The maximum average maturity of the portfolio shall be seven years. For asset backed and Agency mortgage backed securities, the maximum maturity shall be defined as the weighted average life ("WAL"). WAL is a convention that estimates the expected weighted amount of time, in years, for the principal amount of an issue to be fully paid. For Agency mortgage backed securities, WAL shall be limited to 10 years, measured at the settlement date, provided by Bloomberg Financial Markets. For asset backed securities, the average life must not exceed two years, except for such securities that are subject to periodic reset of coupon or interest rate - - these may have an average life not to exceed three years.

8.1 United States Government Securities

Marketable securities issued by the U.S. Government and supported by the full faith and credit of the U. S. Treasury either by statue or an opinion of the attorney general of the United States. The maximum maturity shall be limited to 10 years. Up to 100% of the portfolio may be invested in this sector.

8.2 Government Agency Securities

Debt securities issued by government-sponsored enterprises ("GSE"), federal agencies, federal financing banks, and instrumentalities of the U.S. Government. The maximum maturity shall be limited to 10 years. Up to 50% of the portfolio may

be invested in this sector, with a maximum of 20% in any one issuer.

8.3 Certificates of Deposit and Time Deposits

8.3.1 **Domestic Institutions**: Issued or endorsed by a domestic bank, or a savings and loan association, organized and supervised under the laws of the United States and denominated in U.S. dollars; provided, however, that deposits are fully insured or guaranteed by the Federal Deposit Insurance Corporation ("FDIC").

If not insured by the FDIC:

- The banking institution must have assets of not less than $5 billion; and
- Issuers must have a short-term rating in the highest category by Standard & Poor's, Moody's, or Fitch and a long-term rating of at least the "A" category by Standard & Poor's, Moody's, or Fitch.

The maximum maturity of any investment in this sector shall be limited to 10 years at trade settlement. This sector shall not exceed 25% of the total portfolio. No single issuer shall exceed 5% of the City's portfolio.

8.3.2 **Delaware-Domiciled Institutions**: Issued by or endorsed by any bank or savings association domiciled in the State of Delaware and organized and supervised under federal or State of Delaware banking laws which does not meet the requirements of Section 8.3.1 hereto; provided, however, that:

- For each of the latest two years, the bank or association has had a return on total average assets of 0.50% or greater and an average capital ratio (defined as total equity capital to total assets) of at least 1 to 20, or the instrument is secured as set forth in Section 9, "Collateralization of City Deposits," hereto; and
- Not more than the lesser of $10 million or 25% of an issuer's total equity capital, may be invested in any one issuer. (Investments due to mature in one business day may be excluded from the computation of this percentage.)
- The Board expressly affirms that, consistent with these guidelines, Delaware banks and savings associations should be considered as a source of investment.
- The maximum stated maturity of any investment in this sector shall be limited to 10 years at time of purchase. This sector shall not exceed 20% of the total portfolio. No single issuer shall exceed 5% of the City's portfolio.

8.4 Corporate Debt Instruments

Such instruments include commercial paper bankers' acceptances, and non-convertible senior debt securities (bonds and debentures).

8.4.1 Corporate securities must be denominated/issued in US dollars. Many foreign corporations issue debt/securities in the US market, in US dollars.

8.4.2 No single issuer shall exceed 5% of the City's portfolio.

8.4.3 Commercial Paper shall be limited to a final maturity of 270 days. This

sector shall not exceed 25% of the total portfolio. Issuers shall be rated in the highest short-term category by Standard & Poor's, Moody's, or Fitch.

8.4.4. Bankers' Acceptances shall be limited to a final maturity of 365 days. This sector shall not exceed 25% of the City's Portfolio. Issuers shall be rated in the highest short-term rating by Standard & Poor's, Moody's, or Fitch.

8.4.5 Corporate bonds and debentures shall be limited to a final maturity of 10 years. This sector shall not exceed 50% of the total portfolio. Issuers shall hold a long-term rating of at least the "A" category by Standard & Poor's, Moody's, or Fitch.

8.5 Repurchase Agreements

The underlying collateral shall consist of U.S. government and/or GSE securities provided, however, that:

8.5.1 All repurchase agreements must be governed by a written master repurchase agreement;

8.5.2 Agreements will be entered into only with respect to underlying securities in which the investment manager may otherwise invest as described above, and only with a recognized U.S. Government/broker or a bank which meets the requirements set out under paragraph Section 8.3.1 or 8.3.2 above;

8.5.3 In the case of repurchase collateral held in book-entry form in the Federal Reserve System, all deliveries of securities must be made, for the transfer thereof, through the Federal Reserve book-entry system to the account designated by the investment manager for such purpose. Securities held in certificated form must be delivered to the investment manager or a custodian as directed by the investment manager.

8.5.4 Any collateral employed under this paragraph shall be counted towards the applicable maximum limits set forth within these guidelines for such type of investment, and such collateral shall be valued at market at not less than 103 percent of the maturity value of the agreement and marked-to-the-market as requested by the investment manager.

8.5.5 Repurchase agreements shall be limited to a maximum maturity of 90 days from date of purchase. This sector shall not exceed 50% of the total portfolio. No single issuer shall exceed 25% of the City's portfolio.

8.6 Registered Investment Companies (Money Market Funds)

No single fund shall exceed 25% of the City's portfolio. Money market funds shall be rated AAA by Standard & Poor's. A current prospectus must be obtained before investing in any money market fund, and current holdings reports must be maintained at least each month.

8.7 Mortgage-Backed Securities

Mortgage-backed securities issued by the following: Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Association (FHLMC). This sector, combined with the asset backed security sector, shall not exceed 10% of the total portfolio.

8.8 Asset Backed Securities

These investments include auto loan receivables, credit card receivables, home equity loans, and manufactured housing loans. These can be fixed or floating rate and must be rated in the highest long-term category by Standard & Poor's, Moody's, or Fitch. This sector, combined with the mortgage-backed security sector, shall not exceed 10% of the City's portfolio. No single issuer shall exceed 5% of the City's portfolio.

8.9 Municipal Obligations

Taxable and tax-exempt securities issued by state and local governments and public authorities in the United States. The maximum stated maturity of any investment in this sector shall be limited to 10 years at time of purchase. This sector shall not exceed 30% of the City's portfolio. No single issuer shall exceed 5% of the City's portfolio. Issuers shall be rated in at least the "A" category by Standard & Poor's, Moody's, or Fitch. Additionally, Issuers in the short term market (under one year) shall be rated at a minimum of "mig-1", "f1" or "sp-1" for Moody's, Fitch and Standard &Poor's.

8.10 State of Delaware Investments Pool

8.10.1 Delaware Local Government Investment Pool (DELGIP) -The investment in this pool is permitted in relation to the City's cash flow and the guidelines set forth by the State of Delaware. The investment in this pool will not exceed 25% of the total funds available and will be monitored by the City's Finance Department on a monthly basis.

8.10.2 Delaware Local Government Retirement Investment Pool (DELRIP) The investment in this pool is permitted in relation to the City's Post-Retirement Benefits Fund. The investment in this pool will not exceed 25% of the total funds available and will be monitored by the City's Finance Department on a monthly basis.

8.11 Trading Securities

The Controller/Treasurer is hereby authorized to sell securities prior to their stated maturity date in the following circumstances:

1. A security with declining credit may be sold prior to its maturity to minimize loss of principal;
2. A security swap may be executed if it would improve the quality, yield, or target duration of the portfolio;
3. Securities may be sold to provide needed liquidity.

8.12 Internal Control on such transactions

8.12.1 An investment report will be provided to the Council on a quarterly basis.

8.12.2 All investment reporting documents will be provided to the independent auditors.

8.12.3 Investment records will be kept by the City for ten (10) years.

8.12.4 The trading shall not involve any hedge, derivatives and/or borrowing funds for trading purposes.

A summary of permitted investments is below:

Investment Type	Sector Limit	Issuer Limit	Maturity Limit	Credit Quality Minimum
United States Government Securities	100%	100%	10 Years	N/A
Government Agency Securities	50%	20%	10 Years	N/A
Mortgage-Backed Securities	Combined 10% limit	N/A	10 Year WAL	N/A
Asset Backed Securities		5%	2 Year WAL	Highest long-term rating by Fitch, Moody's or S&P
Municipal Obligations	30%	5%	10 Years	Long-term rating of at least "A" by S&P, Moody's, or Fitch For issuers in short term market, rating of at least "mig-1", "f1 or "sp-1" for Moody's, Fitch & S&P
FDIC-Insured Deposits	25%	5%	10 Years	N/A
Certificates of Deposit and Time Deposits (not insured by FDIC)	25%	5%	10 Years	Highest short-term rating by Fitch, Moody's or S&P. Long-term rating of at least "A" by S&P, Moody's, or Fitch
Delaware-Domiciled Institutions	20%	5%	10 Years	N/A
Commercial Paper	25%	5%	270 Days	Highest short-term rating by Fitch, Moody's or S&P
Bankers' Acceptances	25%	5%	365 Days	Highest short-term rating by Fitch, Moody's or S&P
Corporate Bonds and Debentures	50%	5%	10 Years	Long-term rating of at least "A" by S&P, Moody's, or Fitch
Repurchase Agreements	50%	25%	90 days	N/A
Registered Investment Companies (Money Market Funds)	100%	25%	N/A	AAAm by S&P
Delaware Local Government Investment Pool	25%	N/A	N/A	N/A
Delaware Local Government Retirement Investment Pool	25%	N/A	N/A	N/A

9.0 Collateralization of City Deposits

If the City deposits funds in any financial institution, those funds will be subject to the following collateralization requirements. The financial institution shall:

9.1 Collateralize the City's daily ledger balance(s) if, for any quarter during the most recent eight quarters the bank has not met both of the following two criteria:

- Return on total average assets of 0.50 percent or greater.
- Average capital ratio (total equity to total assets) of 5.00 percent or greater.

9.2 If either criterion in paragraph 9.1 is not satisfied collateral must be pledged and shall consist of one or more of the following securities:

- U.S. Government securities
- U.S. Government agency securities
- Federal Home Loan Board letters of credit
- State of Delaware securities
- Mortgage backed securities as referenced in Section 8.7
- Securities of a political subdivision of the State of Delaware with a Moody's rating of "A" or better

9.3 Ensure that the securities pledged as collateral (except for Federal Home Loan Board letters of credit) have a market value equal to or greater than 102 percent of the ledger balance(s) in the account(s) marked to market each day.

9.4 Ensure that securities pledged as collateral are housed at the Federal Reserve Bank or a mutually agreed upon third party depository. (The trust department of the winning vendor will not be acceptable.)

9.5 Provide reports on a monthly basis to the City Finance Department detailing the collateral pledged.

9.6 Provide a Call Report (Consolidated Report of Condition and Income, FFIEC 031) on a quarterly basis to the City Finance Department.

10.0 Policy Considerations

If securities owned by the City are downgraded by either Standard & Poor's, Fitch or Moody's to a level below the quality required by this Policy, it shall be the City's policy to review the credit situation and make a determination as to whether to sell or retain such securities in the portfolio.

If a security is downgraded two grades below the level required by the Policy, the security shall be sold immediately.

If a security is downgraded one grade below the level required by this Policy and matures within 6 months, the security may be held to maturity. The Controller/Treasurer may determine to sell the security if it is determined that there is a probability of default prior to maturity.

If a decision is made to retain a downgraded security in the portfolio, its presence in the portfolio will be monitored and reported monthly to the Controller/Treasurer.

11.0 Internal Controls

The Controller/Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft, or misuse. The Controller/Treasurer shall also establish a process for an annual independent review by an external auditor to assure compliance with policies and procedures. The internal controls shall address the following:

- Control of collusion
- Separation of transaction authority from accounting and recordkeeping
- Custodial safekeeping
- Prohibition of physical delivery securities
- Clear, written delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers

12.0 Performance Standards

The City of Dover's investment decisions shall be made with the objective of obtaining a rate of return commensurate with the investment risk constraints and the cash flow needs. On a quarterly basis, the Controller/Treasurer shall compare the City's portfolio against the

Merrill Lynch 0-5 Year U.S. Treasury Index, in terms of time-weighted total return and average duration for the period under review.

13.0 Reporting

At the end of each calendar quarter, the Controller/Treasurer will submit a report of all quarter-ending investments to the Mayor and City Council. Reports shall include the following:

- Listing of individual securities held as of last day of reporting period, sorted by sector
- Par, market, and amortized cost values of each security
- Coupon, current yield, and final stated maturity date of each security

14.0 Investment Policy Adoption

The City of Dover's investment policy will be adopted by the City Council after review and recommendation of the Legislative and Finance Committee. The policy will be reviewed at least once every year by the Legislative and Finance Committee, which is charged with considering the existing policy and any recommendations to modify the policy. Any modifications to the policy must be approved by the City Council.

LEGEND

1. Original approval by City Council - November 14, 1988
2. Revised policy approved by City Council - March 7, 2005
3. City Council Approved with No Changes – April 14, 2008
4. Revised policy approved by City Council – July 25, 2011
5. Revised policy approved by City Council – August 12, 2013.
6. Revised policy approved by City Council – September 8, 2014
7. Revised policy approved by City Council – October 10, 2016

ATTACHMENT A

GLOSSARY

AGENCIES: Federal agency securities, otherwise known as "Government Sponsored Enterprises."

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large denomination CD's are typically negotiable.

BANKERS ACCEPTANCE: A short-term credit investment which is created by a non-financial firm and whose payment is guaranteed by a bank.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMMERCIAL PAPER: An unsecured obligation issued by a corporation or bank to finance its short-term credit needs. Maturities typically range from one (1) to 270 days.

COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR): The official annual report for the City of Dover. It includes five combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.

CORPORATE BONDS: A debt security issued by a corporation based in the United States of America. Such bonds usually have a par value of $1,000, have a term maturity, and are traded on a major exchange.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns, in an attempt to limit risk.

FEDERAL CREDIT AGENCIES: Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to $250,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-a-vis member commercial banks.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FMHM mortgages. The term "passthroughs" is often used to describe Ginnie Mae's.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): The aggregate of all funds from political subdivisions that are placed in the custody of the State Treasurer for investment and reinvestment.

MARKET VALUE: The price at which a security is trading and could presumable be purchased or sold.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MORTGAGE-BACKED SECURITIES (MBS): An investment instrument that represents ownership of, and is backed by, an individual interest in a pool of mortgages such as those issued by Ginnie Mae or Freddie Mac. Principal and interest from the individual mortgages is used to pay principal and interest on the MBS.

MUNICIPAL NOTES AND BONDS: Securities issued by a state, city, or local government to finance operations or special projects.

PRUDENT PERSON RULE: An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody

state--the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

QUALIFIED PUBLIC DEPOSITORIES: A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

RATE OF RETURN: A measure of worth, either at security or aggregate portfolio level, over a period of time. There are many return conventions, including but not limited to yield to maturity at cost, yield to maturity at market, yield to worst, time weighted total return, dollar weighted total return.

REPURCHASE AGREEMENT (RP OR REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

REVERSE REPURCHASE AGREEMENT: The purchase of a security by a dealer with the agreement to sell it back to the seller at a fixed price at a later date. Typically used by owners of securities to finance short-term needs without having to liquidate the security.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

TIME DEPOSITS: A savings account or CD held for a fixed term or with the understanding that the customer can withdraw only by giving advanced notice.

TREASURY BILLS: A short-term (less than one year) non-interest bearing discount security issued by the U.S. Treasury department to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

TREASURY BOND: Long-term U.S. Treasury securities having initial maturities of more than 10 years.

TREASURY NOTES: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months or one year.

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1: also called net capital rule and net capital ratio.

Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting

syndicates. Liquid capital includes cash and assets easily converted into cash.

VARIABLE RATE MASTER DEMAND NOTES: A floating rate security with initial maturities and indexed rates chosen by the investor. The interest rate is adjusted periodically, usually off a standard such as that prevailing on a Treasury Bill or the prime interest rate.

YIELD: The rate of annual income return on an investment, expressed as a percentage.

INCOME YIELD is obtained by dividing the current dollar income by the current market price for the security.

NET YIELD or YIELD TO MATURITY is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

CITY OF DOVER PROPOSED ORDINANCE #2017-14
(Moves from one section to another are indicated in green text)

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

That Chapter 30, Code of Conduct and Ethics Commission, of the Dover Code be amended by deleting the text indicated in red strikeout and inserting the blue text, as follows:

Chapter 30 - ~~CODE OF~~ CONDUCT, CONFLICT OF INTEREST, AND ETHICS COMMISSION

~~**ARTICLE I. - IN GENERAL**~~

~~**Secs. 30-1—30-30. - Reserved.**~~

~~**ARTICLE II. - CODE OF CONDUCT**~~ **ARTICLE I. - IN GENERAL**

Sec. ~~30-31~~ 30-1. - Applicability~~; statement of policy~~.

~~(a) *Applicability.*~~ This ~~article~~ **chapter** shall be applicable to all elected and appointed officials and all employees of the city.

Sec. 30-2. - Statement of policy.

(~~b) *Statement of policy.*~~ The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public has confidence in the integrity of its government. In recognition of these goals, there is hereby established a code of **ethical** conduct for all city employees and officials. The purpose of this code of **ethical** conduct is to establish ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the city and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the city. The city council finds and declares as matters of public policy goals and objectives for all city employees and elected and appointed officials, the following:

(1) *Public trust.* In our democratic form of government, the conduct of officials and employees of the city must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(2) *Standards.* To ensure propriety and to preserve public confidence, officials and employees of the city must have the benefit of specific standards to guide their conduct and disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.

(3) *Public service.* In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of ~~officers~~ **officials** and employees of the city should not be unduly circumscribed.

(4) *Performance of duty.* Elected city officials are obligated to uphold the fundamental legal principles of our system of government, as set forth in the United States Constitution, the state constitution, and the city Charter, as well as all applicable provisions of federal, state and local law and court decisions. They are bound to do so, and the failure to so act shall constitute malfeasance in office.

(5) *Fairness.* City officials and employees shall strive for the highest standard of fairness in all of their activities and shall not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

(6) *Use of private information.* In the course of their official responsibilities, city officials and employees are often privy to categories of information which are of a private nature and are legally protected from public disclosure. City officials and employees shall maintain the privacy of such information, and they shall not take advantage of such information for personal gain, or the personal gain of friends or family.

(Code 1981, § 2-8; Ord. of 7-13-1998)

Sec. 30-3. - Acknowledgment of policies, required disclosures, and required annual training.

In order for the mayor, councilmembers, mayoral and council appointees, and city employees to better serve the constituents of the City of Dover in an open, transparent fashion and to further be held accountable for any conflicts of interest, the following actions shall be taken by each of the designated persons:

(a) ***Acknowledgment of policies.*** **Each elected and appointed official and all city employees shall be furnished copies of Chapter 30 - Conduct, Conflict of Interest, and Ethics Commission, either electronically or in hard copy (if requested), before entering upon the duties of their office or employment and shall sign a written acknowledgment of receipt of the copy. The documents shall be read, reviewed, and signed by all appointees by the time of their appointment or re-appointment.**

(b) ***Financial disclosures.*** **The mayor and councilmembers shall file a financial disclosure report with the City of Dover Ethics Commission by August 1st of each calendar year.**

Or

(b) ~~***Disclosure statement***~~ ***Financial disclosure report.*** **Any city employee or elected or appointed official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency (and any city official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the city agency on which he serves as an appointee) shall file a financial disclosure report with the ethics commission ~~a written statement~~ fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this ~~article~~ chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the city. The mayor and council members shall submit proper and necessary documentation by August 1st of each calendar year. [moved from Sec. 30-34 (now sec. 30-20)]**

(c) *Required annual training*. The mayor, councilmembers, mayoral and council appointees, and all city employees shall undergo and receive annual training on the City of Dover's ethics policies and procedures.

Sec. ~~30-32~~ 30-4. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Close relative means a person's parents, spouse, children (natural or adopted), and siblings of the whole and half-blood.

Commission and *ethics commission* mean the city ethics commission as established by this chapter.

Compensation means any money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by the official or employee, or by another.

Employee includes all persons who receive compensation as an employee of the city or a city agency, and shall not include persons that are elected or appointed to serve as mayor, city councilmember or a member of any city committee, commission or board, whether paid or unpaid.

Financial interest. A person has financial interest in a private enterprise if:

(1) He has a legal or equitable ownership interest in the enterprise of more than ten percent (one percent or more in the case of a corporation the stock of which is regularly traded on an established securities market);

(2) He is associated with the enterprise and received from the enterprise during the last calendar year, or might reasonably be expected to receive from the enterprise during the current or the next calendar year, income in excess of $5,000.00 for services as an employee, officer, director, trustee, or independent contractor; or

(3) He is a creditor of a private enterprise in an amount equal to ten percent or more of the debt of that enterprise (one percent or more in the case of a corporation the securities of which are regularly traded on an established securities market).

Matter means an application, petition, request, business dealing, contract, subcontract, or any other transaction of any sort with the city.

Official means any elected or appointed official of the city and all members of any committee, commission or board appointed by the mayor of the city or appointed by the city council.

Official responsibility means any direct administrative or operating authority at any level, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, recommend or otherwise direct action on behalf of the city.

Personal or private interest means an interest in a matter which tends to impair the independent judgment of an official or employee in the performance of his duties with respect to that matter.

Private enterprise means any activity conducted by any person, whether conducted for profit or not for profit, and includes the ownership of real or personal property. The term "private enterprise" does not include any activity of the city, of any political subdivision, or of any agency, authority, or instrumentality thereof.

Sec. 30-5 - 30-19. - Reserved.

(Code 1981, § 2-9; Ord. of 7-13-1998)

ARTICLE II. - CONDUCT.

Sec. ~~30-34. - Established.~~ 30-20. - Code of ethical conduct; established.

(a) *Appearance of violation.* Each city employee and official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is engaging in acts which are in violation of his public trust and which will not reflect unfavorably upon the city and its government.

(b) *Private interest; gifts.* No city employee or official shall have any interest in any private enterprise, nor shall ~~be~~ **he** incur any obligation of any nature which is in substantial conflict with the proper performance of his duties in the public interest. No city employee or official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

(1) Impairment of independence of judgment in the exercise of official duties;
(2) An undertaking to give preferential treatment to any person;
(3) The making of a governmental decision outside official channels; or
(4) Any adverse effect on the confidence of the public in the integrity of the government of the city.

(c) *Interest in private enterprise.* No city employee or official shall acquire a financial interest in any private enterprise which he has reason to believe may be directly involved in decisions to be made by him in an official capacity on behalf of the city.

~~(d) *Disclosure statement.* Any city employee or official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency (and any city official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the city agency on which he serves as an appointee) shall file with the ethics commission a written statement fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this article. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the city.~~[Moved to Sec. 30-3(b)]

(~~e~~**d**) *Private gain.* No city employee or official shall use his public office to secure unwarranted privileges, private advancement or gain.

(~~f~~**e**) *Confidential information; prohibited activity.* No city employee or official shall engage in any activity beyond the scope of his public position which might reasonably be expected to require or induce him to disclose confidential information acquired by him by reason of his public position.

(~~g~~f) *Disclosure of information.* No city employee or official shall, beyond the scope of his public position, disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.

(~~h~~g) *Sexual favors.* No city employee or official, in the course of his public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a city agency.

Sec. 30-21 - 30-29. - Reserved.

(Code 1981, § 2-11; Ord. of 7-13-1998)

ARTICLE III. - CONFLICT OF INTEREST.

Sec. ~~30-33~~ 30-30. - Prohibitions relating to conflicts of interest. [Moved from Sec. 30-33]

(a) *Restrictions on exercise of official authority.*

(1) *Prohibited participation.* No city employee or official may participate on behalf of the city in the review or disposition of any matter pending before the city in which he has a personal or private interest, provided that, upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his duties with respect to that matter.

(2) *Impairment of judgment.* A person has an interest which tends to impair his independence of judgment in the performance of his duties with respect to any matter when:

a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(3) *Statutory responsibility.* In any case where a person has a statutory responsibility with respect to action or inaction on any matter where he has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided that, promptly after becoming aware of such conflict of interest, he files a written statement with the ethics commission, fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(b) *Restrictions on representing another's interest before the city.*

(1) *Prohibited.* No city employee or official may represent or otherwise assist any private

enterprise with respect to any matter before the city.

(2) *Exception.* This subsection (b) shall not preclude any city employee or official from appearing before the city or otherwise assisting any private enterprise with respect to any matter in the exercise of his official duties.

(c) *Restriction on contracting with the city.*

(1) *Prohibited.* No city employee or official shall benefit from any contract with the city, nor solicit any contract, and shall not enter into any contract with the city (other than an employment contract).

(2) *Ownership of enterprise.* No private enterprise in which a city employee or official has a legal or equitable ownership of more than ten percent (more than one percent in the case of a corporation the stock of which is regularly traded on an established securities market) shall enter into any contract with the city (other than an employment contract) unless such contract was made or let after public notice and competitive bidding.

(d) *Postemployment restrictions.* No person who has served as a city employee or official shall represent or otherwise assist any private enterprise on any matter involving the city, for a period of two years after termination of his employment or elected or appointed status with the city, if he gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of his official duties as a city employee or official, nor shall any former city employee or official disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.

(e) *Unauthorized disclosure of confidential information.* No person shall disclose any information required to be maintained confidential by the ethics commission under section ~~30-34(d)~~ **30-3(b)**, ~~30-35(b)~~ **30-73 or 30-74(b)**.

(f) *Abuse of office.*

(1) *Political contributions.* No elected city official shall agree to sponsor legislation, or to influence in any manner the formulation or passage of legislation, in exchange for political contributions or promises thereof.

(2) *Substantial interest.* No elected city official shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he has a substantial interest. Any such interest shall be disclosed by said elected official prior to a vote on any such legislation, and said elected official shall vote "abstain" when called upon to vote.

(3) *Use of city property.* No city official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided for the use of such official or employee in the conduct of official business as a matter of municipal policy.

(4) *Personal gain.* No city official or employee shall utilize the influence of his office or position for personal pecuniary gain, or to avoid the legal consequences of his personal conduct.

(g) *Criminal sanctions.*

(1) *Penalties.* Any person who knowingly or willfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine as provided for in Appendix F—Fees and Fines.

(2) *Time limitations.* A prosecution for a violation of this section shall be subject to the time limitations of 11 Del. C. § 205.

(h) *Contracts voidable by court action.* In addition to any other penalty provided by law, any contract entered into by any city agency in violation of this chapter shall be voidable by the city agency; provided that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the city agency shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the city agency involved has, or should have, knowledge of such violation.

(Code 1981, § 2-10; Ord. of 7-13-1998; Ord. No. 2009-09, 6-22-2009)

~~**Sec. 30-34. - Established.**~~ [Moved to Sec. 30-20]

~~(a) *Appearance of violation.* Each city employee and official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is engaging in acts which are in violation of his public trust and which will not reflect unfavorably upon the city and its government.~~

~~(b) *Private interest; gifts.* No city employee or official shall have any interest in any private enterprise, nor shall be incur any obligation of any nature which is in substantial conflict with the proper performance of his duties in the public interest. No city employee or official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:~~

~~(1) Impairment of independence of judgment in the exercise of official duties;~~
~~(2) An undertaking to give preferential treatment to any person;~~
~~(3) The making of a governmental decision outside official channels; or~~
~~(4) Any adverse effect on the confidence of the public in the integrity of the government of the city.~~

~~(c) *Interest in private enterprise.* No city employee or official shall acquire a financial interest in any private enterprise which he has reason to believe may be directly involved in decisions to be made by him in an official capacity on behalf of the city.~~

~~(d) *Disclosure statement.* Any city employee or official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency (and any city official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the city agency on which he serves as an appointee) shall file with the ethics commission a written statement fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this article. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the city.~~

(e) *Private gain.* No city employee or official shall use his public office to secure unwarranted privileges, private advancement or gain.

(f) *Confidential information; prohibited activity.* No city employee or official shall engage in any activity beyond the scope of his public position which might reasonably be expected to require or induce him to disclose confidential information acquired by him by reason of his public position.

(g) *Disclosure of information.* No city employee or official shall, beyond the scope of his public position, disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.

(h) *Sexual favors.* No city employee or official, in the course of his public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a city agency.

(Code 1981, § 2-11; Ord. of 7-13-1998)

Sec. 30-35. - Waivers of restrictions and advisory opinions. [Moved to 30-74]

(a) *Authority of ethics commission.* Notwithstanding the provisions of sections 30-33 and 30-34, upon the written request of any city agency or of any individual who is or was a city employee or city official, the ethics commission may grant a waiver to the specific prohibitions contained therein if the ethics commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee or official. Any such waiver may be granted only by written decision of the ethics commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision, provided there was a full disclosure to the ethics commission of all material facts necessary for the waiver decision.

(b) *Waiver information confidential; exceptions.* Any application for a waiver, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:

(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;

(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;

(3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention; and

(4) *Public record.* In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) *Advisory opinion authorized.* Upon the written request of any city employee or official, the ethics commission may issue an advisory opinion as to the applicability of this chapter to any particular fact or situation. Any person who acts in good faith reliance upon any such advisory opinion shall

~~not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion, provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.~~

~~(d) *Advisory opinion confidential; exceptions.* Any application for an advisory opinion, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:~~

~~(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;~~

~~(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this article; and~~

~~(3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention.~~

~~(Code 1981, § 2-12; Ord. of 7-13-1998)~~

Secs. 30-~~36~~ 31—30-70. - Reserved.

ARTICLE ~~III~~ IV. - ETHICS COMMISSION

Sec. 30-71. - Established; composition; removal; terms of office; vacancies; chairperson; quorum; compensation; legal counsel.

(a) *Established; composition; removal.* The city ethics commission is hereby established to administer and implement this chapter. The ethics commission shall consist of five members appointed by the mayor and confirmed by the city council. No member of the commission shall hold any elected or appointed office under the government of the United States or the state, county, or city. Members of the ethics commission may be removed by the mayor, with the concurrence of the city council, for substantial neglect of duty, gross misconduct in office or a violation of this chapter.

(b) *Terms of office; vacancies.* A member of the ethics commission shall be appointed for a term of office of five years and until his successor has been appointed and has qualified. The members shall be appointed for staggered terms of office, and until their successors have been appointed. When a vacancy occurs in the membership of the ethics commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as the original appointment.

(c) *Chairperson; quorum.* The ethics commission shall elect a chairperson from among its membership. Three members of the ethics commission shall constitute a quorum and, if a quorum is present, a vacancy on the ethics commission shall not impair the right of the remaining members to exercise all the powers of the ethics commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least three members; otherwise, the ethics commission may delegate authority to the chairperson to act for the ethics commission between meetings.

(d) *Compensation.* Members of the ethics commission shall receive no compensation.

(e) *Legal counsel.* The city solicitor shall provide legal counsel to the ethics commission and shall be

the legal representative of the ethics commission in connection with its duties hereunder, on a case-by-case basis, or determine that outside counsel is needed and obtain such outside counsel for a particular matter.

(Code 1981, § 2-13; Ord. of 7-13-1998; Ord. No. 2010-23, 8-23-2010)

Sec. 30-72. - Powers and duties.

(a) The powers and duties of the ethics commission shall be:

(1) *Rules of conduct.* To recommend to the mayor and council, from time to time, such rules of conduct for public employees and officials as it shall deem appropriate.

(2) *Advisory opinions.* To issue written advisory opinions, upon the request of any city employee or official, as to the applicability of this chapter to any particular factual situation.

(3) *Referrals to solicitor.* To refer to the city solicitor for investigation any alleged violation of this chapter and, after notice and hearing, to recommend such disciplinary action as it may deem appropriate to such appropriate official or agency as the ethics commission shall determine, or to take such other disciplinary action as authorized by section 30-73(d) or other provisions of the city Charter or this Code. The ethics commission may dismiss, without reference to the city solicitor, any complaint which the ethics commission determines is frivolous or fails to state a violation.

(4) *Report of crimes.* To report to the appropriate federal, state or city authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding, whether advisory or disciplinary.

(5) *Records.* To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of sections ~~**30-35(d) and**~~ 30-73(h) **and 30-74(d)**.

(6) *Procedures.* To follow the procedural rules specified in section 30-73 and to establish such other procedural rules as shall be consistent with the rules prescribed therein.

(7) *Witnesses, evidence.* To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of books, papers, records or other evidence needed for the performance of the ethics commission's duties or exercise of its powers.

(8) *Assistance to city personnel.* To provide assistance to any city employee, official or agency in administering the provisions of this chapter.

(9) *Provide information.* To prepare any necessary reports and studies to advance the purpose of this chapter, to provide any necessary materials explaining the duties of individuals covered by this chapter, and to supply instructions and public information materials to facilitate compliance with, and enforcement of, this chapter.

(10) *Request city agencies for assistance.* To request appropriate city agencies to provide such

professional assistance as it may require in the discharge of its duties.

(Code 1981, § 2-14; Ord. of 7-13-1998)

Sec. 30-73. - Complaints; hearings; dispositions.

(a) *Investigation of violations.* Upon the sworn complaint of any person or on its own initiative, the ethics commission may refer to the city solicitor for investigation, any alleged violation of the ~~conflict of interest provisions and of the~~ code of **ethical** conduct provisions **and of the conflict of interest provisions** in sections ~~30-33~~ **30-20** and ~~30-34~~ **30-30**, respectively. The city solicitor shall be the prosecuting attorney in all disciplinary proceedings before the ethics commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of this chapter.

(b) *Proceeding relating to member.* A member of the ethics commission shall be ineligible to participate, as a member of the ethics commission, in any ethics commission proceeding relating to his conduct. A member of the ethics commission who has been found by the ethics commission to have violated this chapter shall be ineligible to serve again as a member of the ethics commission.

(c) *Self-disqualification.* A member of the ethics commission may disqualify himself from participating in any investigation of the conduct of any person upon submission, in writing and under oath, of an affidavit or disqualification stating that he cannot render an impartial and unbiased decision in the case in which he seeks to disqualify himself.

(d) *Actions by ethics commission.* With respect to any violation with which a person has been charged and which the ethics commission has determined as proved, the ethics commission may take any one or more of the following actions:

(1) *Reprimand.* Issue a written reprimand or censure of that person's conduct.

(2) *Discipline.* With respect to a city employee, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by this chapter, but within the limits of the constitution, the laws of the state, the Charter of the city, and ordinances and existing collective bargaining agreements.

(3) *Recommend removal.* With respect to an appointed official, recommend that appropriate action be taken to remove the official from the appointed position.

(4) *Recommend fine.* With respect to an elected city official, recommend that such official be fined in an amount recommended by the ethics commission.

(e) *Rights of person charged.* In any proceeding before the ethics commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of his defense.

(f) *Exculpatory information.* In any proceeding before the ethics commission, if the city solicitor or ethics commission at any time receives any exculpatory information concerning an alleged violation against any person, it shall forthwith make such information available to such person.

(g) *Subpoenas.* Any person charged with a violation of this chapter may apply to the ethics commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on his behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(h) *Confidentiality of proceedings.*

(1) *City employee.* All proceedings before the ethics commission relating to a violation of this chapter by a city employee shall be maintained confidential by the ethics commission, unless:

a. Public disclosure is requested, in writing, by the person charged; or

b. The ethics commission determines after a hearing that a violation has occurred.

(2) *City official.* All proceedings before the ethics commission relating to a violation of this chapter by a city official, appointed or elected, shall be maintained confidential by the ethics commission, unless:

a. Public disclosure is requested, in writing, by the person charged; or

b. The ethics commission determines after a hearing that a violation has occurred.

(3) *Appeals; public inspection.* Notwithstanding the confidentiality requirements of subsections (h)(1) and (2) of this section, the ethics commission shall make available for public inspection the record of all proceedings relating to any decision of the ethics commission which is appealed to the superior court and the ethics commission shall report to appropriate federal, state and/or city authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.

(4) *Confidentiality procedures.* The chairperson of the ethics commission shall, with the approval of the ethics commission, establish such procedures as, in the chairperson's judgment, may be necessary to prevent the disclosure of any record of any proceedings or other information received by the ethics commission, except as permitted by this chapter.

(Code 1981, § 2-15; Ord. of 7-13-1998)

Sec. ~~30-35~~30-74. - Waivers of restrictions and advisory opinions. [Moved from Sec. 30-35]

(a) *Authority of ethics commission.* Notwithstanding the provisions of sections ~~30-33~~ **30-20** and ~~30-34~~ **30-30**, upon the written request of any city agency or of any individual who is or was a city employee or city official, the ethics commission may grant a waiver to the specific prohibitions contained therein if the ethics commission determines that the literal application of such prohibition

in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee or official. Any such waiver may be granted only by written decision of the ethics commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision, provided there was a full disclosure to the ethics commission of all material facts necessary for the waiver decision.

(b) *Waiver information confidential; exceptions.* Any application for a waiver, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:

(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;

(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;

(3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention; and

(4) *Public record.* In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) *Advisory opinion authorized.* Upon the written request of any city employee or official, the ethics commission may issue an advisory opinion as to the applicability of this chapter to any particular fact or situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion, provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.

(d) *Advisory opinion confidential; exceptions.* Any application for an advisory opinion, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:

(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;

(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this ~~article~~ **chapter**; and

(3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention.

(Code 1981, § 2-12; Ord. of 7-13-1998)

Sec. ~~30-74~~30-75. - Judicial review.

In the event that the ethics commission finds that any person has violated any provision of this chapter, said

person shall have a right of appeal to the superior court of any such finding, and of any sanctions imposed with respect thereto, by filing a notice of appeal with the superior court within 30 days of the final action by the ethics commission in a particular case. The appeal shall be on the record without a trial de novo. If the court determines that the record is insufficient for its review, it shall remand the case to the ethics commission for further proceedings on the record. The court's review, in the absence of actual fraud, shall be limited to a determination of whether the ethics commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

(Code 1981, § 2-15.1; Ord. of 7-13-1998)

BE IT FURTHER ORDAINED:

That Appendix F, Fees and Fines, of the Dover Code be amended by deleting the text indicated in red strikeout and inserting the blue text, as follows:

Chapter 30. ~~Code of~~ Conduct, Conflict of Interest, and Ethics Commission	**Fees and Fines**
***~~Article II. Code of Conduct~~* Article III. Conflict of Interest**	
Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.	
Sec. 30-~~33~~30. Prohibitions relating to conflicts of interest	
Subsec. (g)(1) Criminal sanctions, penalties	Not to exceed $1,000.00

ADOPTED: *

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SYNOPSIS

This amendment adds required financial disclosure reports, acknowledgment of receipt of policies, and required ethics training. It also makes minor organization changes to Chapter 30.

(SPONSORS: LINDELL, POLCE, AND SLAVIN)

Actions History

10/10/2017 - Scheduled for Introduction - Council Committee of the Whole/Legislative, Finance, and Administration Committee

Draft

1. Definitions for Section 1:

- **"Fair market value"** means, if a security, the quoted price as of January 1 of the year in which the report is filed, or, if not a security, the price at which the public officer would sell as of January 1 of the year in which the report is filed. *29 Del. C. § 5812(g)*.

- **"Instrument of ownership"** includes, but is not limited to common or preferred stock, rights, warrants, articles of partnership, proprietary interest, deeds, and debt instruments, if convertible to equity instruments. *29 Del. C. § 5812(k)*.

- **"Business Enterprise"** means corporation, partnership, sole proprietorship or any other individual or organization carrying on a business or profession. *29 Del. C. § 5812(a)*.

- **"Position of management"** means officer, director, partner, proprietor, or other managerial position in a business enterprise. *29 Del. C. § 5812(l)*.

- **"Professional organization"** means an individual engaged in, or an association organized pursuant to, federal or State law for the practice of medicine, law, accounting, engineering, or other profession. *29 Del. C. § 5812(m)*.

- **"Constructively controlled"** means:

  (a) a financial interest in the name of another which is controlled by a public officer by virtue of any relationship of the public officer to another person which directly benefits the public officer;

  (b) any financial interest of a public officer held jointly with the spouse or child of such public officer;

  (c) any financial interest of the spouse or minor child of a public officer. *29 Del. C. § 5812 (d)*.

- **"Time or demand deposits"** means checking and savings accounts in banks or deposits or share in savings and loan institutions, credit unions, or money market funds. *29 Del. C. § 5812(p)*.

- **"Debt Instrument"** means bonds, notes, debentures, mortgages, or other securities having a fixed yield if not convertible to equity instruments. *29 Del. C. § 5812(e)*.

- **"Equity instrument"** means any ownership interest in a corporation or other legal entity giving the rights to the holder upon liquidation of the entity. *29 Del. C. § 5812(f)*.

2. Definitions of terms in the remaining sections are in those sections.

FINANCIAL DISCLOSURE REPORT
(29 Del. C., Chapter 58, Subchapter II)

NAME:

BUSINESS ADDRESS:

STATE POSITION:

Section 1. **(See instruction sheet for definitions of underlined terms)**. Report any legal or equitable ownership in excess of $5,000 fair market value or from which income of more than $5,000 was either derived during the preceding calendar year or might reasonably be expected to be derived during the current calendar year, in the following:

(A) Instruments of Ownership: (This includes retirement accounts, 401K, IRA, etc. Do **not** include dollar amounts. List name of company, instrument and nature of ownership, e.g., Fidelity, mutual fund, shareholder; IBM, stock, shareholder).

(B) Business Enterprise: (This includes corporations, sole proprietorships, and partnerships. List name, type of ownership & any position of management, e.g., JW Foods, partnership, director)

(C) Professional Organization: (This includes, but is not limited to, law firms, accounting firms, engineering firms. List the name, address, type of professional practice (do not identify individual clients), & any position of management, e.g., ABC Law Firm, 123 Public Rd., Dover, DE, legal services, partner)

(D) Any of the preceding which are constructively controlled. (e.g., ABC Mutual funds, trustee for minor child).

DO NOT LIST: Time or demand deposits (includes checking or savings accounts) or a debt instrument (CDs) with a fixed yield unless convertible to an equity instrument.

Section 2. List each creditor to whom you were indebted for 90 or more consecutive days during the preceding calendar year in an aggregate amount in excess of $1,000. Do **not** list the amount owed.

Section 3. If any of the following were received during the preceding calendar year, or reasonably expected to be received during the current calendar year, **list the source**.

A. **Any** income (including income from the State) for services rendered exceeding $1,000 from a single source, unless reported in Section 1. (“Income for services rendered” includes salary, wages, consulting fees and professional services.)

B. **Any** capital gain exceeding $1,000 from a single source other than the sale of a residence occupied by the public officer. (“Capital gain” means gains that are reported under Internal Revenue Services laws.)

C. **Any** reimbursement for expenditures exceeding $1,000 from a single source; (“Reimbursement for expenditures” means payments to a public officer for expenses incurred by the public officer.)

D. **Any** honoraria; (“Honoraria” means fees received for speeches, written articles, and participating in discussion groups and similar activities. It does not include reimbursement for expenses.)

E. **Any** gift with a value in excess of $250 from any person. **Identify the amount** of each gift.(“Gift” means: payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received. “Gift” is not: (1) political contributions otherwise reported as required by law; (2) commercially reasonable loans made in the ordinary course of business; or (3) gifts from: spouse; relatives of the public officer or public officer’s spouse within the 3rd degree of consanguinity; or the spouse of any such relative.)

F. **ELECTED OFFICIAL DISCLOSURE FORM INPUT**

Disclose the name and address of every non-profit organization, civic association, community association, foundation, maintenance organization, or trade group incorporated in the State or having activities in the State, or both, of which you are a council member or board member.

TYPE:	**NAME:**	**ADDRESS:**

Section 4. Data in this report is provided as of _____.
(Date)

I HEREBY CERTIFY that I have read the foregoing report, and that, to the best of my knowledge and belief, it is true, correct, and complete. I further certify that I have not and will not hereafter transfer any assets, interests or property while retaining an equitable interest therein for the purpose of concealing said assets, interests or property from disclosure.

_____
Public Officer Signature