REGULAR COUNCIL MEETING

The Regular Council Meeting was held on December 11, 2017 at 7:30 p.m. with Council President Slavin presiding. Council members present were Mr. Anderson, Mr. Sudler, Mr. Neil, Mr. Lewis, Mr. Cole, Mr. Polce (departed at 7:49 p.m. and returned at 7:51 p.m.), Mr. Hare, and Mr. Lindell.

Staff members present were Police Chief Mailey, Ms. Peddicord, Mrs. Mitchell, Mr. Hugg, Fire Chief Carey, City Solicitor Rodriguez, and Mrs. McDowell. Mayor Christiansen was also present (departed at 7:42 p.m.).

OPEN FORUM

The Open Forum was held at 7:00 p.m., prior to commencement of the Official Council Meeting. Council President Slavin declared the Open Forum in session and reminded those present that Council was not in official session and could not take formal action.

Mr. Eric Abernathy, speaking about homelessness, advised that there had been two deaths on the street in the past three weeks and a total of four deaths in the past year and a half. He stated that a homeless man was found dead in his tent the previous Saturday morning. Mr. Abernathy noted that it is a sad situation when people die on the street because they have no place to live and no where to go. He stated that he hoped something could be done for the homeless before this happens again.

Mr. La Mar Gunn thanked the City for the Christmas tree lighting event, noting that he saw many smiles on the faces of young people that evening. He advised that the Central Delaware branch of the NAACP supplied gifts and other items for the kids that had attended. Mr. Gunn also noted that he saw the Council President on the basketball court over the weekend at a Dover High game.

Speaking as the President of the Central Delaware NAACP, Mr. Gunn advised that he filed a complaint with the Ethics Commission and attended their meeting in November. He expressed concerns with the membership of the Commission and the process. Mr. Gunn suggested that members take the time necessary to hear complaints and that some sort of training be provided for the members.

Mr. Gunn stated that he believes the Ethics Commission's meetings are being held in violation of the Delaware Freedom of Information Act (FOIA). He advised that he filed a petition with the Delaware Attorney General (as on file in the office of the City Clerk) requesting that they issue some sort of decision as to whether or not the City's Ethics Commission has been, through a pattern of practice, holding meetings in violation of Delaware FOIA and, if so, what recommendations they would make to improve or change things that have recently been decided.

The invocation was given by Mayor Robin R. Christiansen, followed by the Pledge of Allegiance.

AGENDA ADDITIONS/DELETIONS

Mr. Hare moved for approval of the agenda, seconded by Mr. Neil and unanimously carried.

Mr. Anderson moved for approval of the Consent Agenda, seconded by Mr. Neil and carried by a unanimous roll call vote.

ADOPTION OF MINUTES - REGULAR COUNCIL MEETING OF NOVEMBER 27, 2017

The Minutes of the Regular Council Meeting of November 27, 2017 were unanimously approved by motion of Mr. Anderson, seconded by Mr. Neil and bore the written approval of Mayor Christiansen.

CERTIFICATE OF RECOGNITION - REAGAN AND PAYTON GARNSEY AND THE BUCKETS OF LOVE FOUNDATION

The City Clerk read the following Certificate of Recognition into the record:

CERTIFICATE OF RECOGNITION

presented to

Reagan and Payton Garnsey and the Buckets of Love Foundation

In 2017, with the help of family and friends, sisters Reagan and Payton Garnsey established the Buckets of Love Foundation. This non-profit organization is dedicated to spreading joy to those children in Delaware who are receiving care in hospitals or residing in homeless shelters.

The goal of the Buckets of Love Foundation is to bring smiles to the faces of needy children by providing them with buckets filled with age-appropriate toys and crafts. The Foundation, with Reagan and Payton at the helm as co-founders and CEO's, has developed a website, created a video and Facebook page, launched a letter-writing campaign, held numerous promotional events, and assembled and delivered buckets to needy children. Since its inception, the organization has raised over $3,305 in donations, impacting 60 individuals.

The City of Dover recognizes Reagan and Payton Garnsey and all of those involved in the Buckets of Love Foundation for their commitment to improving the lives of children in Delaware. They have demonstrated that age is no barrier when striving to make the world a better place, and it is hoped that their example will inspire others to perform acts of kindness and use their talents selflessly to serve the less fortunate.

On behalf of the Mayor, Council, and citizens of the City of Dover, Mayor Christiansen presented the Certificate to Reagan and Payton Garnsey.

PRESENTATION - BICYCLE FRIENDLY COMMUNITY DESIGNATION

Mrs. Margery Cyr, Library Director, advised that the League of American Bicyclists has recognized the City of Dover with a Bronze Bicycle Friendly Community^{SM} (BFC^{SM}) award, joining over 400 visionary communities from across the country. With this announcement on November 30, 2017, Dover joins 65 new and renewing Bicycle Friendly Communities in all 50 states, that are transforming neighborhoods across the country. She noted that the bicycle friendly community program is revolutionizing the way communities evaluate their quality of life, sustainability, and transportation networks, while allowing them to benchmark their progress toward improving their bicycle friendliness. With this impressive round, there are now over 400 bicycle friendly communities in all of the states.

Mrs. Cyr advised that the Bronze award recognizes Dover's commitment to improving conditions for bicycling through investment in bicycling promotion, education programs, infrastructure, and pro-bicycling policies. Mr. Bill Nesper, Executive Director of the League of American Bicyclists, says, "We applaud these communities for making bicycling a safe and convenient option for transportation and recreation. We are encouraged by the leaders who see bicycling as a way to build more vibrant, healthy, sustainable, and connected communities, and to be part of the revolution to many complex challenges faced at both the community and the national levels. We look forward to continuing to work with these communities as we move closer to our mission of creating a bicycle friendly America for everyone."

Mrs. Cyr advised that this recognition is a direct response to the work that Bicycle and Pedestrian Subcommittee members, and others, Jim Hutchison, Chris Asay, Jayce Lesniewski, Dave Moses, Gerry Penningon, Fran Riddle, Andy Seigel, Cathy Doyle, Kate Layton, Anthony Aglio, Eddie Diaz, and Carolyn Courtney have done on behalf of the citizens of Dover.

Mr. Jim Hutchison, Chair of the Bicycle and Pedestrian Subcommittee, thanked members for the support of the City, which made the award possible. He advised that the Committee's work over the last five years made Dover eligible for the designation. Mr. Hutchison noted that the committee was formed in 2012 by the Safety Advisory and Transportation committee, which was then chaired by Councilman Hutchison, and in 2013 they were awarded the Honorable Mention Bicycle Friendly Community. He advised that, since that time, they have accomplished a number of other things that have made them eligible for the award, including publishing their new bicycle and pedestrian plan in 2015; the initial mapping of Senator Bikeway, an east-west bike corridor through the City, that allows for a safe conduit for bicyclists from one side of Dover to the other; sponsoring the Dover Duathlon for the third year; development of a safe cycling program, an educational program done in conjunction with Capital School District; sponsoring a contest and receiving funding for the Dover bike rack in front of the library; Bike to Work Day; and the Ride of Silence.

Mr. Hutchison advised that they received $1.8 million in funding from the Delaware Department of Transportation (DelDOT) that is already in the ground and, over the next two to three years, they will be receiving an additional $5 million in funding for moving projects forward. He thanked the Committee members for all of their hard work over the last five years.

PUBLIC HEARING/FINAL ACTION - REQUEST FOR STREET NAME CHANGE - KRISKO CIRCLE (REMAINING SEGMENT OF KRISKO CIRCLE WHICH RUNS IN A WEST-EAST DIRECTION FROM STOVER BOULEVARD JUST EAST OF BAY ROAD) TO ENERGY LANE (PLANNING REFERENCE: MI-17-07)

Mr. David Hugg, Director of Planning and Community Development, briefed members on the requested street name change, submitted by Eastern Shore Natural Gas/Chesapeake Utilities. He reminded members that during their meeting of November 14, 2017, the Utility Committee recommended approval of the requested street name change from Krisko Circle to Energy Lane, as recommended by the Planning Commission.

During the Regular Council Meeting of November 27, 2017, members were advised that, if action was taken to approve the Committee's recommendation, a public hearing would be required. As a

result, Council set a public hearing for this time and place to consider the requested street name change from Krisko Circle to Energy Lane.

Council President Slavin declared the public hearing open. There being no one present wishing to speak, the public hearing was closed.

Mr. Hare moved for approval of the requested street name change from Krisko Circle to Energy Lane. The motion was seconded by Mr. Neil and carried by a unanimous roll call vote.

PUBLIC HEARING/FINAL READING - ORDINANCE #2017-13

A public hearing was duly advertised for this time and place to consider approval of proposed zoning text amendments to Appendix B - Zoning, Article 3 - District Regulations; Article 5 - Supplementary Regulations; and Article 12 - Definitions, of the Dover Code. Council President Slavin reminded members of the public that copies of the proposed ordinance were available at the entrance of the Council Chambers or on the City's website at www.cityofdover.com under "Government."

Mr. Neil moved that the Final Reading of proposed Ordinance #2017-13 be acknowledged by title only, seconded by Mr. Cole and unanimously carried. *(The First Reading of the ordinance was accomplished during the Council Meeting of October 9, 2017.)*

Mr. David Hugg, Director of Planning and Community Development, advised members that this is one in a series of ordinance amendments and it addresses adult daycare facilities, which are neither permitted or prohibited in the current Code. He noted that the Planning Commission unanimously recommended adoption of the ordinance.

Council President Slavin declared the hearing open. There being no one present wishing to speak, Council President Slavin declared the hearing closed.

Mr. Neil moved for adoption of the ordinance, as recommended by the Planning Commission. The motion was seconded by Mr. Lindell and, by a unanimous roll call vote, Council adopted Ordinance #2017-13 (Exhibit #1).

MONTHLY REPORTS - OCTOBER 2017

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

City Assessor's Report
City Council's Community Enhancement Fund Report
City Manager's Report
City Planner's Report
Controller/Treasurer's Budget Report
Fire Chief's Report
Police Chief's Report

EVALUATION OF REQUEST FOR PROPOSALS - HAZARD RESPONSE SERVICES

Members were advised that the Electric Department maintains "time and material" where applicable with potential contractors to ensure that the bidding rules are adhered to for any contractors that might be hired to perform work for the Public Works and Electric Departments. This Request for Proposals was for Environmental Services work in normal situations, emergency situations, and as required by workload. Also included were cleanup activities, soil sampling, asbestos sampling, assistance in environmental compliance with numerous agencies and assistance in disposal, collection, and shipment of hazardous wastes.

Staff recommended awarding a three-year contract to both Clean Venture Inc. and Miller Environmental Group.

Mr. Neil moved for approval of staff's recommendation, seconded by Mr. Cole and carried by a unanimous roll call vote (Polce absent).

EVALUATION OF REQUEST FOR PROPOSALS - VANSANT MAJOR OVERHAUL - EG1701

Members were advised that the Request for Proposals was made to allow for the purchase of materials and services needed to perform required inspections and major overhaul on the VanSant Unit #11 combustion turbine. NAES Corporation staff solicited a Request for Proposal and received nine (9) proposals. This will be the first major inspection on this unit since commercial operations began in 1991 and the project is expected to extend the service life of the VanSant Generation Station by twenty (20) years.

Staff recommended awarding major overhaul and inspections to HPI, LLC for the upcoming outage.

Mr. Anderson, noting that approximately $1.2M was budgeted for this project and the bid amount was $434,000, asked if there was another part to the project or if it came in that much under budget. Responding, Mrs. Mitchell stated that an RFP had been considered previously for parts that were on order and these inspections were a component of the total project. She noted that the total project would still be approximately $1.2M and would be paid from the Electric Improvement and Extension Fund which is funded through annual appropriations in the amount of $2.5M to $5M from the operating fund to help pay for projects.

Mr. Anderson asked what the benefit of the project was as opposed to decommissioning this particular turbine. Responding, Mrs. Mitchell advised that there was an economic benefit to doing this overhaul project rather than decommissioning it, as was explained in the Integrated Resource Plan when that was presented.

Mr. Cole moved for approval of staff's recommendation to award major overhaul and inspections to HPI, LLC for the upcoming outage. The motion was seconded by Mr. Anderson and carried by a unanimous roll call vote.

REAPPOINTMENT RECOMMENDED BY MAYOR CHRISTIANSEN - PLANNING COMMISSION - FRED TOLBERT - THIRD DISTRICT - THREE-YEAR TERM TO EXPIRE JUNE 1, 2020

Mayor Christiansen recommended the reappointment of Mr. Fred Tolbert to serve as the Third District representative on the Planning Commission for a term to expire June 1, 2020.

By consent agenda, Mr. Anderson moved for approval of the appointment of Mr. Tolbert, as recommended by Mayor Christiansen. The motion was seconded by Mr. Neil and carried by a unanimous roll call vote.

FINAL READING - PROPOSED ORDINANCE #2017-14

The First Reading of the Proposed Ordinance was accomplished during the Council Meeting of November 13, 2017. Council President Slavin reminded members of the public that copies of the proposed ordinance were available at the entrance of the Council Chambers or on the City's website at www.cityofdover.com under "Government."

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

Mr. Anderson expressed concern with treating retirement accounts that are not being drawn from differently than bank accounts. He stated that he believes that it is a mistake and it still is a concern of his. Mr. Anderson noted that he does not believe that the ordinance really addresses the core of the issues that they have when it comes to the ethics process.

By motion of Mr. Neil, seconded by Mr. Lindell, Council, by a roll call vote of six (6) yes (Neil, Cole, Polce, Hare, Lindell, and Slavin), two (2) no (Anderson and Lewis), and one (1) abstention (Sudler), adopted Ordinance #2017-14 (Exhibit #2).

CITY MANAGER'S ANNOUNCEMENTS

Mrs. Donna Mitchell, City Manager, made the following announcements:

- The passport hours at the library have been expanded to include Fridays beginning December 29, 2017. Two clerks that previously worked the same shift and are now able to split their shifts and extend the hours.

- Leaf collection continues through January 12, 2018 due to the volume of leaves deposited in the right-of-way. The Department of Public Works Streets Division is approximately two and a half days behind schedule.

- The street sign for Ann Avenue has been received and will be placed on Ann Avenue on Tuesday, December 12, 2017 for speed enforcement.

- The Bradford Street water main replacement is scheduled to begin on January 3, 2018.

- The Silver Lake Dam improvements are awaiting final paperwork and closeout so that project is complete.

- The Rolling Acres Pump Station east of Route 13 is anticipated to be completed by the end of calendar year 2017 and the Westover Pump Station off of Hazlettville Road is expected to be completed in mid-January.

- The street program is ongoing on Lincoln Street.

COUNCIL MEMBERS' ANNOUNCEMENTS

Council President Slavin wished Councilman Brian Lewis a very happy birthday on December 23rd. He also reminded members that the meetings for the week of December 25, 2017 had been canceled.

Mr. Sudler thanked the City Manager, Mrs. Mitchell, and the Public Works Director, Mrs. Duca, for a speedy and prompt response to the Anne Avenue constituents that had concerns about speeding. He noted that they appreciate everything that they are doing for them and for hearing their voices. Mr. Sudler also thanked City Council.

Mr. Lindell thanked Mrs. McDowell, City Clerk, Mrs. Mitchell, and Mrs. Duca for their prompt response in helping constituents of the First District to address a couple of issues. He also commended the citizens that serve on the City's numerous committees, noting that they are taking time out of their busy days and not all of them are paid. Mr. Lindell stated that the civilian members work hard and they do the best they can to make every meeting. He also wished his colleagues and constituents a happy holiday season.

Mr. Neil advised that the lighting of the first of eight candles for the Festival of Lights, Hanukkah, would take place the following evening.

Mr. Anderson wished a Happy Hanukkah, Merry Christmas, Great Bodhi, and a Happy Kwanza to those who celebrate. He advised that he would be bringing some interesting information from the NLC conference to their planning workshop.

Mr. Lewis moved for adjournment, seconded by Mr. Neil and unanimously carried.

Meeting adjourned at 8:02 p.m.

TRACI A. McDOWELL
CITY CLERK

All ordinances, resolutions, motions, and orders adopted by City Council during their Regular Meeting of December 11, 2017, are hereby approved.

ROBIN R. CHRISTIANSEN
MAYOR

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Exhibits
Exhibit #1 - Ordinance #2017-13
Exhibit #2 - Ordinance #2017-14

CITY OF DOVER ORDINANCE #2017-13

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

That Appendix B – Zoning, Article 3 – District Regulations, Section 1 – One-Family Residence Zones, of the Dover Code be amended to read as follows:

ARTICLE 3. - DISTRICT REGULATIONS

Section 1. - One-family residence zones [(R-20, R-15, R-10, R-8 and R-7)].
(R-20, R-15, R-10, R-8, R-7.) (See also article 5, Supplementary Regulations; and article 6, Off-Street Parking, Driveways and Loading Facilities.)

1.1 *Uses permitted.* In a one-family residence R-20, R-15, R-10, R-8 and R-7 zones, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

1.11 The raising of field and garden crops, vineyards and orchard farming, the maintenance of nurseries, and the seasonal sale of the products thereof, provided no building is erected and signs conform with article 5, section 4.

1.12 One-family detached dwellings, not to exceed one such dwelling per lot.

1.13 Public buildings, structures and uses, including parks and playgrounds, subject to approval of site plans by the planning commission in accordance with article 10, section 2.

1.14 The following uses are permitted, conditional upon the approval of the planning commission in accordance with the procedures and subject to the general conditions set forth in section 10.1 and to any specified requirements set forth below:

(a) Places of worship, including parish houses; [and] schools, including nursery schools, kindergartens and day care centers in accordance with article 5, Supplementary Regulations, section 14. Child day care facilities; philanthropic and eleemosynary institutions; hospitals and sanitariums for general medical care; and funeral homes subject to the following requirements:

i. Any school permitted under this paragraph [subsection 1.14(a)] shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such thereunder.

ii. Any school permitted under this paragraph [subsection 1.14(a)], other than a kindergarten, nursery school, or day care center, shall occupy a lot with an area of not less than two acres, plus one acre for each 100 pupils for which the building is designed.

iii. Any kindergarten or nursery school permitted under this paragraph [subsection 1.14(a)] shall be limited to a maximum of 50 children in zones R-8 thru R-20 and a maximum of 100 children in all other zones. At least 100 square feet of outdoor play space per child shall be provided. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum height of four feet. The minimum lot area for each ten, or remainder over the multiple of ten, children shall be the

same as the minimum lot area requirement for each dwelling unit in the districts in which such uses are to be located.

iv. No such building or part thereof shall be erected with less than a 50-foot front yard or nearer than 25 feet from any other street or property line.

v. The sum of all areas covered by all principal and accessory buildings shall not exceed 20 percent of the area of the lot.

vi. Courts shall conform to the requirements of article 5, section 3 hereof.

(b) Railroad and public utility rights-of-way and structures necessary to serve areas within the city, subject to such conditions as the planning commission may impose in order to protect and promote the health and safety and general welfare of the community and the character of the neighborhood in which the proposed structure is to be constructed.

(c) Country clubs or other annual membership clubs, catering exclusively to members and their guests, and accessory private playgrounds, golf courses, swimming pools, tennis courts and recreation buildings not conducted as business enterprises, provided that the following operations shall be prohibited:

i. Outdoor entertainment, live or mechanical;

ii. The use of outdoor public address systems for any purpose; and

iii. Exterior lighting producing glare at the lot line other than that essential for the safety of the users of the premises.

No building erected under the provisions of this paragraph [subsection 1.14(c)] shall be so erected nearer than 50 feet to any street or property line.

(d) Adult day care facilities in accordance with Article 5 – Supplementary Regulations, Section 22 – Adult Day Care Facilities.1.15 Accessory uses, limited to the following:

(a) Professional office or studio of an artist, dentist, musician, teacher, or physician, but not including veterinarians, provided that:

i. Such office or studio is incidental to the residential use of the premises and is carried on by a resident thereon with not more than one nonresident assistant; and

ii. Such office or studio shall occupy not more than 30 percent of the area of one floor of the main building.

iii. Studios where dancing or music instruction is offered to groups in excess of four pupils at one time or where concerts or recitals are held are prohibited.

iv. Medical centers, barbershops, beauty parlors, real estate offices, funeral homes or similar uses shall not be considered permitted accessory uses.

(b) Garden house, tool house, playhouse, greenhouse or pool incidental to the residential use of the premises and not operated for gain.

(c) Private garage, provided that, in the case of a one-family dwelling, such garage shall have a capacity of not more than three passenger automobiles. One such space may be leased to a person not [a] resident on the premises.

(d) Keeping domestic animals as pets, provided not more than three (3) dogs over six months old, shall be permitted.

(e) Keeping of chickens for individual domestic purposes subject to the following restrictions:

i. Keeping of chickens shall not be permitted on lots smaller than 10,890 square feet in lot area.

ii. No more than five (5) chickens shall be permitted on a residential lot.

iii. Chickens shall be registered with the Delaware Department of Agriculture.

iv. Chickens shall be penned in a coop that shall be at least four (4) square feet per chicken.

v. All chicken coops shall be located in a rear yard and shall be a minimum of 20 feet from side and rear property lines.

vi. Any odor associated with the chickens shall not be discernable from property lines.

vii. Keeping of roosters shall be prohibited.

viii. Any lot with chickens shall either comply with these requirements by June 1, 2016 or remove the chickens.

(f) Dormitories accessory to schools, provided that such dormitories conform to the bulk regulations of the RG-1 zone. For purposes of computing bulk requirements, each four rooms shall be considered one dwelling unit. Parking shall be calculated as identified in Article 6—Off-Street Parking, Section 3—Required off-street parking spaces, Paragraph 3.1—Schedule of requirements.

(g) Customary home occupations, provided that:

i. No display of products, goods and/or signs shall be visible from the street.

ii. Such home occupation shall be incidental and secondary to the residential use of the premises and shall be conducted in the principal building by the resident or residents that reside therein.

iii. Nonresident assistants or co-workers shall be prohibited.

iv. Such home occupation shall not occupy more than 30 percent of the area of one floor in the principal building.

v. There shall be no exterior effect such as noise, traffic, odor, dust, smoke, gas, fumes, radiation, or electromagnetic interference.

1.16 [1.2] *Site development plan approval.* Site development plan approval in accordance with article 10, section 2 hereof shall be required prior to the issuance of building permits for the erection or enlargement of all structures and related accessory structures. Such approval shall also be required prior to the issuance of certificates of occupancy for a change of use.

1.17 [1.3] *Performance standards.* All uses are subject to performance standards as set forth in article 5, section 8.1.

1.18 [1.4] [*Closed zone.*] Zone R-7 is a closed zone in accordance with article 10, section 5.19.

1.19 [1.5] [*Signs.*] Signs shall meet the regulations found in article 5, section 4, supplementary sign regulations.

(Ord. of 1-8-1979; Ord. of 5-14-1990; Ord. of 12-14-1992(2); Ord. of 7-10-2000; Ord. of 2-12-2001; Ord. No. 2009-12, 9-14-2009; Ord. No. 2011-21, 10-10-2011; Ord. No. 2016-01, 4-11-2016)

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 3 – District Regulations, Section 10 – Institutional and Office Zone of the Dover Code be amended to read as follows:

Section 10. - Institutional and office zone (IO).

10.1 *Uses permitted.* In an institutional and office zone (IO), no building or premises shall be used, and no building or part of a building shall be erected, which is arranged, intended, or designed to be used, in whole or in part, for any purpose, except the following:

(a) Business, professional, or governmental offices.

(b) Banks.

(c) Research, design, and development laboratories.

(d) Public and institutional uses including hospitals, medical clinics, libraries, police stations, courthouses, transit centers, schools, colleges, universities, places of public assembly, philanthropic and charitable institutions, parks, playgrounds, public indoor recreation centers, athletic fields.

(e) Public utility rights-of-way and structures necessary to serve areas within the city.

(f) Child day care centers, provided they are established in accordance with all applicable state regulations pertaining to child care and provided that they are established and maintained in accordance with article 5, section 14 of this ordinance.

(g) Emergency shelters and transitional housing.

(h) Adult day care facilities provided they are established in accordance with all applicable state regulations pertaining to adult care and provided that they are established and maintained in accordance with article 5, section 22 of this ordinance.

10.2 *Conditional uses.* The following uses are permitted, conditional upon the approval of the planning commission in accordance with the procedures and subject to the general conditions set forth in article 10, section 1:

(a) Firearm ranges, prisons, and correctional facilities.

(b) Public incinerators.

(c) Hotels and restaurants.

10.3 *Accessory uses.* The following uses shall be permitted accessory to other permitted uses on a lot.

(a) Clinics, cafeterias, and recreational facilities.

(b) Motor vehicle storage and repair facilities accessory to a public or institutional use.

(c) Restaurants that are on a campus and intended to support users of the campus.

10.4 *Uses prohibited.* The following uses are prohibited:

(a) Landfills, dumps.

10.5 *Enclosed buildings.* All permitted uses and all storage accessory thereto, other than offstreet parking, shall be carried on in buildings fully enclosed on all sides, except for outdoor eating areas associated with restaurants approved by the city planner.

10.6 *Performance standards.* All uses are subject to performance standards as set forth in article 5, section 8.1.

10.7 *Site development plan approval.* Site development plan approval in accordance with article 10, section 2 hereof shall be required prior to the issuance of building permits for the erection or enlargement of all structures and prior to the issuance of certificates of occupancy for any change of use.

(Ord. of 10-24-1983; Ord. of 12-14-1992; Ord. of 7-12-1993, § 7; Ord. of 4-25-1994; Ord. of 10-12-1998; Ord. of 7-10-2000; Ord. of 2-12-2001; Ord. of 4-23-2007(1); Ord. of 4-23-2007(2); Ord. No. 2014-08, 7-14-2014)

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 5 –Supplementary Regulations, Section 14 – Day Care Facilities of the Dover Code be amended to read as follows:

Section 14. – Child day care facilities.

14.1 *General.* In order to promote the development of quality child care outside of the home (day care facilities), the following two basic assumptions have been made:

14.11 The establishment of child day care services and facilities, wherever there is a need, is a necessary public objective; and

14.12 Day care programs for children shall be treated as community facilities and shall be permitted to locate in any zoning district, provided that need has been demonstrated, state licensing requirements have been met and no physical hazard to children can be reasonably anticipated.

14.2 *Definitions.*

Child day care facility. For the purposes of this ordinance, the facilities described furnishing care,

supervision and guidance of a child or group of children unaccompanied by a parent or guardian, for periods of less than 24 hours per day shall be defined as follows:

14.21 Child *day care center.*

(a) Any place, other than an occupied residence, which receives children for compensation for day care or large family day care home; and

(b) Any occupied residence which receives 13 or more children for compensation for day care.

Child day care centers shall be required to obtain conditional use approval by the planning commission in accordance with the procedures and subject to the general conditions set forth in article 10 and to any specified requirement set forth in subsection 14.3 below, except in zoning districts where listed as a permitted use.

14.22 *Family day care home-children.* An occupied residence in which a person provides care for children other than his/her own family and the children of close relatives for compensation. Such care in a family day care home is limited to that care given to six or fewer children with a maximum of three children allowed for after school care. Such child care facility shall be permitted as an accessory use in all residential zones and shall be exempt from obtaining a conditional use permit and site plan approval.

14.23 *Large family day care home-children*. A facility which provides child care for more than six, but less than 13 children with a maximum of three children allowed for after school care. This care may be offered in a private home or in a property converted to the purpose of providing child day care. This form of day care facility requires the submission of a site plan application in accordance with the procedures and subject to article 10, section 2 of the zoning ordinance. If a large family day care home is not to be located in an occupied residence, then a conditional use site plan application shall be required in accordance with article 10 section 1 of the zoning ordinance.

14.3 Zoning criteria.

14.31 *Number of children.* Day care centers shall be limited to a maximum of 50 children in all residential zones.

14.32 *Outdoor play area.* Must meet the state requirement for day care centers.

14.33 *Off-street parking/loading.* One space per each adult attendant, plus one space for every ten children.

14.34 *Signage for child day care facilities*

(a) *Signs in residential zones.*

~~(a)~~ i. *Family day care homes-children and large family day care homes-children.* One wall-mounted sign limited to two square feet.

~~(b)~~ ii. *Child day care center.* One sign, wall-mounted or freestanding, limited in area to 12 square feet. The planning commission shall consider the location of such sign as part of the conditional use review and may approve a lesser amount of sign area if deemed necessary by the commission to protect the general health, safety and welfare of the public in general and the residents of the immediate neighborhood in particular.

(b) *Signs in nonresidential zones.* Child day care centers within nonresidential zoning districts shall be governed by the sign regulations in effect for the particular nonresidential zoning district in which the day care center is located.

14.35 *Licensing requirements.* Child day care facilities must meet state licensing standards and must be inspected by the City of Dover Fire Marshal's Office. A City of Dover Business License and a Public Occupancy Permit is required.

(Ord. of 5-14-1990; Ord. of 4-25-1994; Ord. of 4-23-2007(3))

Editor's note— The subsections of this section have been numbered by the editor to retain format.

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 5 –Supplementary Regulations of the Dover Code be amended by inserting a new Section 22 – Adult Day Care Facilities, as follows:

Section 22. – Adult day care facilities

Adult day care facilities shall be permitted to locate in any zoning district provided that state licensing requirements have been met and such facilities are subject to the following requirements:

22.1 *Definitions*

Adult day care facilities apply to any program that provides health, social and related support services for four or more functionally impaired adults who requires supervision due to cognitive or physical impairment or who cannot independently perform one or more activities of daily living. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence of the facility operator.

Small adult day care facility. A facility that provides services for four adult participants but less than 16 adult participants.

Large adult day care facility. A facility that provides services for 16 or more adult participants.

22.2 *Review Process*

(a) Adult day care facilities are permitted as accessory uses to existing facilities that provide services to adult participants.

(b) *Residential zones.* A conditional use site plan application shall be required in accordance with Appendix B-Zoning, Article 10-Planning Commission section 1 for adult day care facilities in residential zones.

(c) *Non-residential zones.*

i. Site development plan approval in accordance with Appendix B-Zoning, article 10, section 2 hereof shall be required for small adult day care facilities.

ii. A conditional use site plan application shall be required in accordance with Appendix B-Zoning, article 10 section 1 for large adult day care facilities.

22.3 *Zoning criteria*

22.31 Off-street parking. One space per each adult attendant, plus one space for every four adult participants.

22.32 *Signage for adult day care facilities*

(a) *Signage in a residential zone.* One sign, wall-mounted or freestanding, limited in area to 12 square feet. The planning commission shall consider the location of such sign as part of the conditional use review and may approve a lesser amount of sign area if deemed necessary by the commission to protect the general health, safety and welfare of the public in general and the residents of the immediate neighborhood in particular.

(b) *Signs in nonresidential zones.* Adult day care facilities within nonresidential zoning districts shall be governed by the sign regulations in effect for the particular nonresidential zoning district in which the day care facility is located**.**

22.33 *Licensing requirements.* Adult day care facilities must meet state licensing standards and must be inspected by the City of Dover Fire Marshal's Office. A City of Dover Business License and a Public Occupancy Permit are required.

BE IT FURTHER ORDAINED:

That Appendix B - Zoning, Article 12 – Definitions of the Dover Code be amended by inserting the following new definition in its correct alphabetical order:

Adult day care facilities: Apply to any program that provides health, social and related support services for four or more functionally impaired adults who require supervision due to cognitive or physical impairment or who cannot independently perform one or more activities of daily living. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence of the facility operator.

(a) Small adult day care facility: A facility that provides services for four adult participants but less than 16 adult participants.

(b) Large adult day care facility: A facility that provides services for 16 or more adult participants.

BE IT FURTHER ORDAINED:

That Appendix B - Zoning, Article 12 – Definitions – Day care facility of the Dover Code be amended by inserting the following definitions in their correct alphabetical order:

Child day care facility: For the purposes of this ordinance, the facilities described furnishing care, supervision and guidance of a child or group of children unaccompanied by a parent or guardian for periods of less than 24 hours per day shall be defined as follows:

(a) *Child day care center:*

i. Any place, other than an occupied residence, which receives children for day care or large family day care home; and

ii. Any place, including an occupied residence, which receives 13 or more children for day care.

(b) *Family day care home-children:* An occupied residence in which a person provides day care for children other than his/her own family and the children of close relatives. Such care in a family day care home is limited to that care given to six or fewer children with a maximum of three children allowed for after school care. Such child care shall be permitted as an accessory use in all residential zones and shall be exempt from obtaining a conditional use permit and site plan approval.

(c) *Large family day care home-children:* A facility which provides child care for more than six, but less than 13 children with a maximum of three children allowed for after school care. This care may be offered in a private home or in a property converted to the purpose of providing child day care.

ADOPTED: DECEMBER 11, 2017

Ssynopsis

The proposed ordinance Article 5 section 22 will be a new section added to the *Zoning Ordinance* to allow Adult day care facilities to be permitted in any zoning district provided that state licensing and city code requirements have been met. The proposed amendment under Article 5 section 14 of the *Zoning Ordinance* are revisions to the existing ordinance that identifies Child day care facilities. Other amendments revise references and definitions pertaining to these uses.

(SPONSORS: NEIL AND HUGG)

Actions History:
12/11/17 – Public Hearing – City Council
11/20/17 – Public Hearing - Planning Commission
10/09/17 – First Reading – City Council
09/25/17 – Introduction – Council Committee of the Whole/Legislative, Finance, and Administration Committee

CITY OF DOVER ORDINANCE #2017-14

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

That Chapter 30, Code of Conduct and Ethic Commission, be amended to read as follows:

Chapter 30 - STANDARDS OF ETHICAL CONDUCT AND ETHICS COMMISSION

ARTICLE I. – IN GENERAL

Sec. 30-1. - Applicability.

This chapter shall be applicable to all elected and appointed officials and all employees of the city.

Sec. 30-2. – Statement of intent and purpose.

(a) *Intent.* 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. It is the intent of the city that all elected and appointed officials and all employees of the city adhere to high levels of ethical conduct, honesty, integrity and accountability to assure that the public has confidence in all aspects of city government and the city officials that exercise discretionary powers. These standards of ethical conduct are intended to uphold the public trust in the persons in positions of public responsibility who are acting for the benefit of the public. All elected and appointed officials and all employees of the city shall comply with both the letter and the spirit of the standards of ethical conduct and strive to avoid situations that create impropriety or the appearance of impropriety. The standards define and discourage certain actions that may create impropriety or the appearance of impropriety that undermine public trust in elected and appointed public officials and employees.

(b) *Purpose*. The standards of ethical conduct should promote public confidence in the integrity of city officials; state principles of conduct and ethics which are to be applied in public service; inform the public of the standards to which their city officials are expected to adhere; and help motivate city officials and public employees to pursue productive conduct and ethical ideals which exceed minimum standards. 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 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, 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 – Standards of Ethical Conduct and Ethics Commission, either electronically or, if requested, in hard copy, 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 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 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 chapter. The filing of such financial disclosure report shall be a condition of commencing and continuing employment or appointed status with the city. The financial disclosure report shall be submitted by August 1st of each calendar year.

(c) *Disclosure of interest in legislation.*

(1) A councilman who has a financial or other private interest in any legislation shall disclose on the records of the council or other appropriate authority the nature and extent of such interest. This provision shall not apply if the councilman disqualifies himself from voting on such legislation.

(2) Any other city official or employee who has a financial or other private interest in any legislation and who participates in discussion with or gives an official opinion to the council shall disclose on the records of the council or other appropriate authority the nature and extent of such interest.

(3) Any city employee or city officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency, 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 subchapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the city.

(d) *Required annual training*. All city employees and elected and appointed officials shall undergo and receive annual training on the City of Dover's ethics policies and procedures.

Sec. 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.

Public official. All elected and appointed officials and all employees of the city.

Sec. 30-5 – 30-19. – Reserved.

(Code 1981, § 2-9; Ord. of 7-13-1998)

ARTICLE II. – STANDARDS OF ETHICAL CONDUCT.

Sec. 30-20. – *Established.*

High ethical standards among public officials and employees are essential to gain and maintain the confidence of the people, because such confidence is essential to the conduct of free government. Public officials and employees are agents of the people and hold office for the benefit of the public. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully and impartially the duties of their offices, regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach. These standards of ethical conduct are adopted in order to secure this desired high level of public trust, ensure the impartiality of public officials and employees, and impose standards of accountability.

(a) *General responsibilities of officials and employees.*

(1) Officials and employees have the common obligation of serving the public. In performing their duties, they shall treat the public and each other with respect, concern, and responsiveness, recognizing that their common goal of exceptional public service can only be achieved by working together. Disputes that arise among public servants shall be resolved at the lowest possible level; keeping in mind that public money spent on resolving these disputes is money not spent on important public needs.

(2) Officials and employees shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

(3) Officials and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

(4) Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

(5) No official or employee may request or receive, and no person may offer any money, thing of value or promise thereof, other than any city pay received, that is conditioned upon or given in exchange for promised performance of an official act.

(b) *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.

(c) *Private interest; gifts.* No city employee or official shall have any interest in any private enterprise, nor shall 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.

(d) *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.

(e) *Prohibitions relating to conflicts of interest*. No councilman or other official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association 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.

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

a. *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.

b. *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:

i. 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

ii. 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.

c. *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.

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

a. *Prohibited.* No city employee or official may represent or otherwise assist any private enterprise with respect to any matter before the city.

b. *Exception.* This subsection 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.

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

a. *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).

b. *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.

(f) *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.

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

(h) *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.

(i) *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.

(j) *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.

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

(l) *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.

(m) *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.

(n) *Ex Parte Communications*. No official or employee shall encourage, make or accept any ex parte or other unilateral application or communication that excludes the interests of other parties in a matter under consideration when such application or communication is designed to influence official decision or conduct of the official or other officials, employees or agencies in order to obtain a more favored treatment or special consideration to advance the personal or private interests of himself or herself or others. The purpose of this provision is to guarantee that all interested parties to any matter shall have equal opportunity to express and represent their interests.

Any written ex parte communication received by an official or employee in matters where all interested parties should have equal opportunity for a hearing shall be made part of the record by the recipient.

Any oral ex parte communication received under such conditions should be written down in substance by the recipient and also made a part of the record.

A communication concerning only the status of a pending matter is not regarded as an ex parte communication.

(o) *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)

Secs. 30-21—30-70. - Reserved.

ARTICLE III. - 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) *Standards of ethical 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(o) 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 30-74 and 30-73(s).

(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. – Rules of procedure; complaints; hearings; dispositions.

(a) Any person, either personally or on behalf of an organization or governmental body, may file a sworn complaint for the ethics commission with the city clerk. The complaint must be in writing, be signed, and show the address of the person who submitted it. The complaint must state that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true. The complaint must describe the facts that constitute the violation of the standards of ethical conduct in sufficient detail so that the ethics commission and the person who is the subject of the complaint can reasonably be expected to understand the nature of any offense that is being alleged. The commission may request any additional information deemed necessary to screen the complaint or to render a decision. No complaints shall be accepted or considered which relate to actions that took place more than one (1) year prior to the date of filing. The individual filing the sworn complaint has sixty (60) days from the date that the issue is brought to his or her attention to file a complaint.

(b) After the sworn complaint has been filed, none of the parties or their representatives may communicate on an ex parte basis with any commission members pertaining to the complaint. All communications pertaining to the complaint shall be submitted to the city clerk.

(c) Within seven (7) days of receiving a sworn complaint the city clerk shall send copies of the complaint to each member of the ethics commission, the city solicitor, and the official or officials against whom such complaint has been filed. Hereinafter, the complaining party shall be referred to as the "complainant" and the official against whom a complaint has been lodged shall be referred to as the "respondent."

(d) The commission recognizes that distribution to the public of a sworn complaint prior to screening by the commission as required below could harm the reputation of an innocent person and is contrary to the public interest; therefore, the public release of the complaint is prohibited until the screening process has been completed. The commission shall consult in confidence to screen the complaint within fourteen (14) days of receiving the complaint. The commission may immediately dismiss a complaint if:

(1) It has no jurisdiction; or

(2) The alleged violation, if true, would not constitute a violation of the standards of ethical conduct; or

(3) The alleged violation is a minor or de minimis violation; or

(4) The complaint is, on its face, frivolous, groundless, or brought for purposes of harassment; or

(5) The matter has become moot because the person who is the subject of the complaint is no longer an officer, official or employee; or

(6) The respondent had obtained an advisory opinion under section 30-74(c) permitting the conduct; or

(7) The appointing authority of the respondent has already taken action as a result of finding a violation and the commission believes the action was appropriate.

(e) In issues regarding standards of ethical conduct violations, the enforcement process is intended to be corrective rather than remedial unless the violation is a repeated offense. In the event the ethics commission determines a standards of ethical conduct violation has occurred, and it is minor in nature, with the concurrence of the complainant and the subject of the sworn complaint, the commission may dispense with the hearing process and conduct a more informal mediation process in lieu of a hearing.

(f) If the sworn complaint is not dismissed or otherwise resolved pursuant to subsection 30-73(d), the city clerk shall promptly contact the members of the ethics commission, the city solicitor, the complainant, and the respondent in order to ascertain a date and time when a hearing can be convened on such complaint. As soon as a date and time have been agreed upon for a hearing before the ethics commission, the city clerk shall send written notice of such scheduling and a copy of the rules of procedure to the complainant and to the respondent. No copies of the complaint shall be provided to any other parties before the respondent receives the complaint. 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.

(g) The commission may dismiss a complaint if the complainant does not appear at the hearing and if, in the opinion of the commission, it would be unfair to the respondent not to have the opportunity to examine the complainant.

(h) As promptly as possible after the close of the hearing, the commission shall deliberate to determine if the allegations have been proven by clear and convincing evidence. Only ethics commission members who have been present for the hearing may participate in the deliberations, and any findings and recommendations must be adopted by a majority of the commission. The commission may consider, when making findings and recommendations, the severity of the offense, the presence or absence of any intention to conceal, deceive, or mislead, whether the violation was deliberate, negligent or inadvertent, and whether the incident was isolated or part of a pattern.

(i) Within seven days of the conclusion of deliberations, the commission shall issue an order setting forth its findings and recommendations. In the alternative, the commission where it deems it appropriate, may issue an advisory opinion in lieu of making findings and recommendations.

(j) If the respondent is an employee, the commission may, if it determines corrective action is necessary, notify the city manager or the council president and recommend that action be taken, including discipline.

(k) If the respondent is a city official, the commission may propose actions to the city council that are appropriate to the finding as specified in section 30-73(o).

(l) The commission shall send a written copy of its findings and recommendations to the respondent and the complainant.

(m) *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.

(n) *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.

(o) *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.

(p) *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.

(q) *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.

(r) *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.

(s) *Confidentiality of proceedings.*

(1) C*ity 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.

(t) *Appeals; public inspection.* Notwithstanding the confidentiality requirements of subsections (s)(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.

(u) *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.

Sec. 30-74. - Waivers of restrictions and advisory opinions.

(a) *Authority of ethics commission.* Notwithstanding the provisions of section 30-20, 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)

Sec. 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, Chapter 30 - Standards of Ethical Conduct and Ethics Commission, Article II - Standards of Ethical Conduct, Section 30-20 - Established, Subsection (i)(1) - Criminal Sanctions, Penalties of the Dover Code be amended to read as follows:

Chapter 30. Standards of Ethical Conduct and Ethics Commission	Fees and Fines
Article II. Standards of Ethical Conduct	
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. 30-20. Prohibitions relating to conflicts of interest	
Subsec. (i)(1) Criminal sanctions, penalties	Not to exceed $1,000.00

SYNOPSIS

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

(Sponsors: Lindell, Polce, and Slavin)

ADOPTED: DECEMBER 11, 2017

S:\ORDINANCES\2017\ADOPTED\Ordinance #2017-14 - Chapter 30-Code of Conduct and Ethics Commission - ADOPTED 12-11-2017.wpd

Actions History:

12/11/2017 – Final Reading – City Council
11/27/2017 – Final Reading Deferred – City Council
11/13/2017 – First Reading – City Council
10/24/2017 – Considered by Council Committee of the Whole/Legislative, Finance and Administration Committee
10/10/2017 – Deferred by Council Committee of the Whole/Legislative, Finance and Administration Committee

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
(Chapter 30 – Code of Conduct and Ethics Commission)

NAME:

BUSINESS ADDRESS:

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.

_____
Signature