SPECIAL COUNCIL MEETING

A Special Council Meeting was held on May 6, 2013 at 7:30 p.m. with Council President Leary presiding. Council members present were Mr. Dixon, Mr. Lynn, Mr. Perza, Mr. Bonar, Mrs. Williams, Mr. Hare, and Mr. Hutchison.

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

AGENDA ADDITIONS/DELETIONS

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

APPEAL FOR PENSION BENEFITS - STEVE WARREN AND DEWEY RAY LAVENDER

Members were provided a Committee Action Form (CAF) and support documentation related to the appeal for Pension Benefits (*as on file in the Office of the City Clerk)*, as well as correspondence to Mr. William Pepper, Deputy City Solicitor, dated November 20, 2012 from Wier & Allen, P.A, which was provided by Mr. Steve Warren and Mr. Dewey Ray Lavender *(as on file in the Office of the City Clerk)*. Mr. Scott Koenig, City Manager, reminded members that in September 2012, the City of Dover received a request from the law firm of Wier and Allen, P.A. to immediately grant a pension to Mr. Steve Warren and Mr. Dewey Ray Lavender. In November 2012, this matter was placed on the City Council agenda; however, it was removed at the request of Mr. Wier. When the support for this agenda item was placed on the City's website, Wier and Allen, P.A. charged the City with invasion of privacy and violation of the Freedom of Information Act. In December 2012, a meeting was held with Mr. Wier, City staff, and the City Solicitor to verbally discuss the matter. Since the December 2012 meeting, the law office of Michele D. Allen, LLC has assumed the handling of this matter. In April 2013, Ms. Allen submitted a letter dated April 9, 2013 proposing a resolution to the matter.

Mr. Koenig reviewed a brief history of this matter, as follows: Mr. Warren began working for the City of Dover on or about August 26, 1980. Mr. Lavender began working for the City on or about March 17, 1981. Both men remained employed with the City of Dover into the 1996 calendar year and were vested in the City's General Employee Pension Plan. In 1996, Duke Fluor Daniel (D/FD) Operating Services took over the operation of the City's power plant. The agreement between the City and D/FD provided a variety of options for the affected employees. Some employees, including Messrs. Warren and Lavender, were offered employment with D/FD Operating Services. Both men accepted the offers of employment and received a "sign on" bonus valued at 50% of their unused City sick leave. The balance of the unused City sick leave would be paid at the time of City retirement.

Mr. Koenig advised members that on March 5, 1996, Mr. Lavender executed a Statement of Intent/Action with respect to his General Employees' Pension Contribution. He chose the option that provided, as follows: "I am terminating my employment with the City of Dover and am a vested employee. I elect to retain my pension contributions in the Pension Plan and, in accordance with Section 2-190(c) of the General Employees' Pension Plan. I may apply for pension benefits to the General Employees' Pension Board of Trustees upon attaining the age of 65." Since Mr. Lavender's date of birth is January 24, 1961, he is eligible for a pension on January 24, 2026.

Mr. Koenig advised members that on March 12, 1996, Mr. Warren executed a Statement of Intent/Action with respect to his General Employees' Pension Contribution. He chose the option that provided, as follows: "I am terminating my employment with the City of Dover and am a vested employee. I elect to retain my pension contributions in the Pension Plan and, in accordance with Section 2-190(c) of the General Employees' Pension Plan, I may apply for pension benefits to the General Employees' Pension Board of Trustees upon attaining the age of 65." Since Mr. Warren's date of birth is October 11, 1955, he is eligible for a pension on October 11, 2020.

Mr. Koenig noted that in 1996, §2-190(c) of the City of Dover Code of Ordinances provided: "*Any participant with a minimum of ten years of continuous service and whose employment is terminated, for reasons other than for cause, prior to the date he becomes eligible for retirement benefits under sections 2-181, 2-182, 2-183 or 2-187 of this code, upon attaining the age of sixty-five (65) years of age, shall be eligible for retirement benefits under the provisions of section 2-185 of this code upon application to the pension board of trustees. The form of the benefit will be based on the formula which was in effect at the time of termination*." He indicated that the current version of this provision is now codified as §2-335(c) of the Dover Code.

Mr. Koenig explained that Messrs. Warren and Lavender worked for D/FD Operating Services while that entity operated the power plant and that they participated in that entity's pension plan. When NAES replaced D/FD Operating Services as the operator of the electric plant, Messrs. Warren and Lavender became employees of NAES and participated in the 401(k) available with that company. The plan includes a 50% contribution match.

Mr. Koenig indicated that Messrs. Warren and Lavender had not been employees of the City of Dover since March 1996, nor had they received City paychecks or any other benefits provided to City employees. The City had not supervised either man or had control of their work.

Mr. Koenig advised members that Messrs. Warren and Lavender were claiming entitlement to early retirement under §2-327 of the Code; however, neither was entitled to such benefit. He explained that such benefits are available only to eligible employees in accordance with §2-327(b) of the Dover Code, and that an eligible employee is defined by Section 2-321 of the Dover Code as a person who is *"regularly employed in rendering service to the city on a full-time permanent basis, who is not participating in any other retirement plan to which the City contributes for them, and whose compensation is paid directly by the city. An employee will be considered a full-time employee if he regularly works 40 or more hours each week."* Mr. Koenig indicated that Messrs. Warren and Lavender do not render service to the City of Dover and that they now work for North American Energy Services (NAES). He assured members that they have not worked for the City since March 5, 1996 and March 12, 1996 and do not receive compensation that is paid directly by the City. He stated that Messrs. Warren and Lavender would be eligible to receive a City pension under §2-335(c) of the Dover Code when each reaches age 65.

Mr. Koenig explained that Messrs. Warren and Lavender were part of group of employees who were offered employment at the power plant; therefore, any decisions made as a result of the evening's deliberations would have the potential to affect other former employees in this group.

In response to Mr. Hutchison, Mrs. Kim Hawkins, Director of Human Resources, stated that some employees were close to retirement when D/FD took over the power plant and an agreement was made between the City of Dover and D/FD regarding employment for those specific employees. Once those employees reached retirement, they were no longer a part of that agreement. Elaborating, Mr. Koenig stated that some former power plant employees who were in the early-to-mid phase of their careers applied for and were provided positions in another City Department.

Mr. Hare questioned the salaries for Messrs. Warren and Lavender when they were employed with the City of Dover. Responding, Mrs. Hawkins stated that in March 1996, the hourly rate for Mr. Lavender was $20.40 and $16.71 for Mr. Warren.

Mr. Bonar relayed concerns regarding an incorrect address listed for Mr. Warren on the letter sent to Mr. Warren in 1996 and felt that the document would not be valid due to the improper address. He suggested an interpretation by the City Solicitor regarding this matter. Responding, City Solicitor Rodriguez noted that the letter was signed by Mr. Warren and it was his opinion that the letter was valid. He felt that the address reflected a typographical error.

Ms. Michelle Allen, Attorney, 724 Yorklyn Road, Suite 310, Hockessin, Delaware, stated that she represented both Mr. Warren and Mr. Lavender and felt that the facts presented by the City Manager were generally consistent. Referring to Mr. Hutchison's previous question, she explained that a select seven (7) employees were offered the opportunity to stay and work as City employees, even though they were working at the power plant at the time D/FD took over the contract. She stated that when Mr. Warren and Mr. Lavender received offers from D/FD, they were provided only 24 hours to respond. They were not provided the opportunity to review the contract between the City and D/FD, consult with counsel, or to know that the contract would indicate that the City would reimburse NAES and D/FD dollar for dollar for every penny spent on personnel. More importantly, she stated that neither of her clients were informed at the time that seven (7) select employees were going to be allowed to basically continue to work for the City until they reached their retirement age and became eligible for their City pensions, and then be given the opportunity to continue working at the power plant for D/FD and collect 401(k) and other benefits.

Ms. Allen members that her clients were the only two (2) employees that would be affected by their request, since there were only three (3) people who chose to remain in the City's pension plan. She stated, therefore, that if City Council were to overrule the decision made by the Pension Board and provide Messrs. Warren and Lavender the ability to have what they believed was their rightful City pension, this would not affect anyone else. She advised members that if the matter were not resolved by City Council, her clients would be forced to seek their rights through another entity. Ms. Allen stated that technically these individuals were employees of the City, explaining that the contracts indicated they were being treated as employees. She stated that, according to the new federal administration, the Department of Labor was currently reviewing whether or not employers are actually properly designating people as employees. It was her opinion that Messrs. Warren and Lavender were not properly designated as NAES employees and were City of Dover employees, if all aspects were considered. Ms. Allen reminded members that these employees had devoted 31 and 32 years of service to the City of Dover and felt that they should be entitled to the same pension rights that were afforded to those select seven (7) employees.

Ms. Allen noted that under §2-342 of the Dover Code, City paramedics were transferred to the County and that it clearly stated that the City paramedic employees who were transferred would be eligible and remain in the City pension plan. She felt that this situation was the same as the situation involving her clients, Messrs. Warren and Lavender, and indicated that they were absolutely entitled to the pension benefits. She advised members that her clients were willing to come to some sort of a compromise so that this matter did not have to be pursued through the courts. If this matter were to go before the court and the court should rule that all of those working at the power plant were actually City of Dover employees, she assured members that this would have a greater implication.

Ms. Allen reiterated that the matter involving her clients was an issue of fairness, reminding members that Mr. Lavender and Mr. Warren were the only two (2) employees remaining, and that they were not provided same information that the select seven (7) employees received. She disagreed with the determination of the City Manager, explaining that in accordance with the City's definitions, an employee's eligibility for pension benefits is determined by whether or not they are rendering full-time services to the City of Dover. Ms. Allen stated that prior to D/FD and NAES contracts, Mr. Lavender and Mr. Warren were performing services identical to those that they are performing today. As to whether or not their compensation was being paid directly by the City, Ms. Allen reminded members that City Council approves a budget every year which reflects that their salaries are paid dollar for dollar, including over-time, uniforms, tools, equipment, etc. She explained that this information would be considered by the courts in making a determination as to whether or not Messrs. Warren and Lavender were employees of the City. In addition, she advised members that, in accordance with Section 3.6 of the NAES Contract, it was clear that the City maintains control over the site personnel at NAES and the plant manager, who supervises these employees, must receive approval by the City.

In response to Mr. Hare, Ms. Allen stated that although City management could not directly dismiss an employee at the power plant, they could certainly control employees through the plant manager, who is selected at the approval of the City. In addition, the City has control over the salaries provided to these employees. City Solicitor Rodriguez indicated that, in accordance with the agreements between the City and D/FD and NAES, the City reimburses for salary and would have control over those employees indirectly.

Elaborating, Mr. Koenig explained that NAES submits a budget to the City that includes a listing of personnel and requires the approval of City Council. He noted that some of the power plant employees are covered by an IBEW union that negotiates separately from the City's IBEW and that the City is not privy to those negotiations.

Responding to Mrs. Williams, Mr. Koenig reminded members that the City hired NAES to provide operating services for the power plant in accordance with the City's energy needs and PJM grid.

Mr. Bonar noted that if a private contractor were hired by the State of Delaware to perform work for the State of Delaware, although they would receive payment from the State of Delaware, the private contractor would not be considered an employee. It was his opinion that this scenario would be the same for those employees working at the power plant. Responding, Ms. Allen stated that several and various factors are considered when determining if an individual is considered an employee.

Mr. Lynn confirmed that the manner in which the Department of Labor is approaching the definition of employee is currently in controversy. He stated his personal experience in litigating cases with regard to independent contractors, explaining that the State applies a three (3) factor test to determine if an individual is an employee or an independent contractor and that the Internal Revenue Service (IRS) has a 19-part test. He questioned why these employees were now seeking a pension and when they were first eligible for pension benefits from the City. Responding, Ms. Allen stated that Messrs. Warren and Lavender could have begun receiving pension benefits after 25 years of service. In 1996, Mr. Warren had 14 years of employment with the City and Mr. Lavender 15 years; therefore, Mr. Warren indicated that he needed nine (9) more years (until 2006) and Mr. Lavender would have needed ten (10) more years (until 2007) to be eligible for retirement.

In response to Council President Leary, Mr. Koenig indicated that the Pension Board had not considered the requests of Messrs. Warren and Lavender. Ms. Allen advised members that both Messrs. Warren and Lavender participated in the 401(k) plan offered by the D/FD and NAES.

Responding to Mr. Lynn, City Solicitor Rodriguez confirmed that the request should be considered by the Pension Board prior to any further consideration by City Council, explaining that the decision of the Pension Board could be appealed to City Council. Mr. Koenig explained his understanding that the current function of the Pension Board is to review plan assets and investments rather than reviewing retirement requests (pensions), since pension eligibility is now based on the Dover Code. Based on the provisions of the Code, he assured members that Messrs. Warren and Lavender did not meet the eligibility requirements to receive a pension. He stated that, according to the Deputy City Solicitor, presentation to City Council was the next step for consideration of the requests of Messrs. Warren and Lavender.

City Solicitor Rodriguez noted that he was aware of the recent decision made by the Deputy City Solicitor regarding the role of the Civilian Pension Board and relayed his concurrence with the decision to take retirement requests from the administrative realm of the Pension Board and bring them to City Council for an appeal.

Mr. Lavender, Jr., 1398 Bunker Hill Road, Middletown, advised members that he had been an employee of the power plant for 32 years, currently serving as the Operating Supervisor, and serves on the Management Team. He advised members that he had access to the City's HTE system, which provides critical inventory and financial tools of the City. It was his feeling that if he were not a dedicated or important employee of the City, he would not be provided access to such information. Mr. Lavender stated that in 1996, he and Mr. Warren were not aware that the seven (7) select employees would be afforded an opportunity to retire and receive a City pension after 25 years of service. He explained that he served as an Operating Supervisor and an exempt, managerial employee for the City of Dover and was not afforded this same opportunity or anything similar. Mr. Lavender felt that he, along with Mr. Warren, were discriminated against because, as vested employees of the City, having more than 10 years of service, they should have been afforded the same offer as those employees with 20 years (the select 7). He noted that the D/FD Contract was for 10 years and at its conclusion he and Mr. Warren would have had their 25 years of service; therefore, he questioned why the select seven (7) were singled out and afforded such an opportunity rather than all vested employees (those with more than 10 years of service).

Referring to the City's insurance provider (Excel Insurance), Mr. Lavender stated that the City's bond rating went from average to above average due to the long-term employees. In response to Mr. Lynn's questions, he stated that he and Mr. Warren were not made aware of the select seven (7) until one (1) of them, who served as a Maintenance Coordinator, retired in 2008. He stated that he assumed the responsibilities of that position for almost a year until it was filled and at that point Mr. Lavender discovered the letter that was written in 1996. It was then that he began researching the matter in more detail.

Mr. Lynn questioned the transparency of the action taken regarding the seven (7) individuals who were afforded the opportunity to continue to work for the City. Responding, Mr. Koenig stated that the contractual negotiations between the City and D/FD were handled by Mr. Jim O'Connor, former City Manager, Mr. Bruce Andrews, former Human Resources Director, and Mr. Kirk Betts (Power Supply Attorney). Although there was a process for privatizing the power plant, he was not aware of the specific discussions regarding the seven (7) employees.

In response to Mrs. Williams, Mrs. Traci McDowell, City Clerk, assured members that if this matter had been discussed at a Council Meeting, there would be minutes; however, she was not aware of the process that was taken at that time. Having been a member of Council in 1996, Council President Leary stated that he did not recall Council discussing specific issues involving the employees.

Noting that there may be a "paper trail" regarding the matter, Mr. Bonar felt that members of Council may not have all the information necessary to take action at this time. He requested that Council be given the opportunity to discuss this matter with the City Solicitor and the Human Resources Director in private.

Recalling the process, Mr. Hutchison stated that during the contract negotiations with the City Manager and the outside contractor, City Council, the Mayor, and City staff made a business decision regarding the power plant. As a result of the study and evaluation, it was determined that the City would enter into a long-term agreement with a private company, which resulted in the partnership between the City and D/FD. He stated that the decision was made, due to economic reasons, that the City would no longer continue in the electric business as it related to operations management. He assured members that there was much discussion regarding this matter.

Responding to Mr. Hare, Mr. Lavender reiterated that he was not given ample time to assess the situation when he received the employment letter in 1996. He advised members that several employees who were paid by NAES through the City are receiving City pensions and also collecting from 401(k) plans. He also advised members that when the power plant was assumed by D/FD, there was no change in the staff; City employees continued to serve in their positions.

Mr. Bonar moved to recess into executive session to discuss personnel and legal issues, seconded by Mrs. Williams and carried by a vote of six (6) yes (Dixon, Bonar, Williams, Hare, Hutchison, and Leary), two (2) no (Lynn and Perza), and one (1) absent (Anderson).

Meeting recessed at 8:34 p.m. and reconvened at 9:02 p.m.

Mr. Perza moved to approve staff's recommendation to deny the pension request of Mr. Warren and Mr. Lavender until they attain the age of 65, seconded by Mrs. Williams and carried by a unanimous roll call vote (Anderson absent).

LETTER OF SUPPORT FOR H.B. 197 - AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO VEHICLE SPEED MONITORING SYSTEM

Police Chief Hosfelt advised members that he had been talking with Senator Brian Bushweller, who had agreed to sponsor H.B. 197 - An act to amend Title 21 of the Delaware Code relating to vehicle speed monitoring system, if City Council supported the legislation. He explained that H.B. 197 would establish a two (2) year pilot program that would authorize any Delaware police agency to initiate camera and video enforcement of speed limits within one (1) mile of any work or school zone. He stated that the system would work similar to the red light camera enforcement program by producing recorded images of motor vehicles traveling at a speed of 11 miles over the posted speed limit. Violations would be subject to a civil assessment not to exceed $50 and the procedures for issuing, contesting, and paying a notice of violation would be the same as for traffic light signal violations. Police Chief Hosfelt indicated that the violations would be civil in nature and not subject to points or made a part of an individual's driving records.

Responding to Mrs. Williams, Police Chief Hosfelt stated that the costs would be similar to those of the red light program, whereby the Delaware Department of Transportation (DelDOT) would solicit bids and all equipment would be furnished by the vendor. The only cost for the City would be the work required to approve the violations. Regarding the locations, he felt that the cameras could be installed in all school zones. He stated that there were currently five (5) school zones where the City's motorcycle units run enforcement, noting that there were two (2) other school areas that were not being enforced since there were no children walking to these schools.

Mr. Hare questioned if the system would be in operation when school was not in session. Responding, Police Chief Hosfelt stated that he did not know the answer; however, he noted that there were seven (7) school zones, two (2) of which had signs with restrictions "when children are present"; the other five (5) did not. He stated that he would clarify the times in which the monitoring system would be in operation.

Police Chief Hosfelt noted that the State of Maryland had the system in work zones and stated that he knew from his own experience that the system works.

Mr. Bonar cautioned staff not to consider the anticipated revenues in the budgeting process if the program were approved and that they consider it as money "found."

Mr. Hare moved to approve staff's recommendation to support H.B. 197, seconded by Mr. Bonar and carried by a unanimous roll call vote (Anderson absent).

[Clerk's Office Note: Subsequent to the City Council Meeting, it was brought to the attention of the Clerk's Office that the version of the legislation that was received and provided to members (H.B. 197) was last year's legislation. The current legislation, a proposed Senate Bill ***(Exhibit 1)*** *was distributed to members. This legislation differed from the previous bill in that it stated that the*

pilot program pertains only to Dover and Wilmington (not the entire State) and was sponsored by Senators Bushweller and Ennis and Representatives Bennett, Mitchell, and Scott. There being no objections from Council, a letter of support for the proposed legislation from the City of Dover ***(Exhibit 2)*** *was forwarded to Senator Bushweller.]*

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

Meeting adjourned at 9:10 p.m.

TRACI A. McDOWELL
CITY CLERK

All orders, ordinances, and resolutions adopted by City Council during their Special Meeting of May 6, 2013, are hereby approved.

CARLETON E. CAREY, SR.
MAYOR

/TM/jg
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Exhibits
Exhibit #1 - Proposed Senate Bill - Video Speed Enforcement Program
Exhibit #2 - Letter of Support to Sen. Brian Bushweller - Vehicle Speed Monitoring Systems

SPONSOR: Sen. Bushweller

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO.

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO VEHICLE SPEED MONITORING SYSTEMS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4101, Title 21 of the Delaware Code by making insertions as shown by underlining as follows:

"(e) Video Speed Enforcement Pilot Program. - -

(1) There is hereby established a video speed enforcement pilot program. The pilot program shall permit the City of Dover and the City of Wilmington police agencies, within the limits of their respective jurisdictions, to install and operate, or contract for the installation and operation of, vehicle speed monitoring systems within one-quarter mile of any work zone and/or school; provided, however, that in the event of installation on state-maintained streets or roads, the Department of Transportation must first have approved such installation. Pursuant to the pilot program, the Department of Public Safety and/or the governing body of the City of Dover and the City of Wilmington may provide, by regulation or ordinance, for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with specific speed limits in accordance with the provisions of this subsection. For purposes of this subsection, the term "Court" shall refer to the Justice of the Peace Courts.

(2) Liability -- The owner or operator of a vehicle which has failed to comply with a specific speed limit, as evidenced by information obtained from a vehicle speed monitoring system, shall be subject to a civil or administrative assessment not to exceed $50; provided, however, that the City of Dover and the City of Wilmington may provide for an additional assessment not to exceed: $10 if the civil or administrative assessment is not paid within 20 days; $20 if the assessment is not paid within 45 days; and $30 if the assessment is not paid within 90 days. Court costs or similar administrative fees, not to exceed $35, may also be assessed against an owner or operator who requests a hearing to contest the violation and is ultimately found or pleads responsible to the violation, or who fails to pay or contest the violation in a timely manner. No assessments or court costs other than those specified in this subsection shall be imposed. A violation for which a civil assessment is imposed under this subsection shall not be classified as a criminal offense and shall not be made a part of the driving record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor

vehicle insurance. Assessments collected as a result of a vehicle speed monitoring system shall be paid to either the City of Dover or the City of Wilmington, depending on which controlled and operated the monitoring system.

(3) Definitions -- For purpose of this subsection only:

a. "Owner" means the registered owner of such vehicle on record with this or any other state; provided, however, that in the event that the owner is a vehicle leasing company, the "owner" for purposes of this subsection shall mean the person shown on the records to be the lessee of such vehicle. Vehicle rental companies are excluded from the definition of "owner."

b. "Vehicle speed monitoring system" means a mobile or fixed device with one or more motor vehicle sensors producing recorded images of motor vehicles traveling at speeds at least 11 miles per hour above the posted speed limit.

(4) Summons and notice of violation -- Notwithstanding any other provision of the Delaware Code, a summons for a violation of this subsection may be executed by mailing a copy thereof by first class mail to any Delaware resident or nonresident at the address of the owner of the vehicle as shown on the records of the Division of Motor Vehicles of this or any other state, as appropriate. For purposes of this subsection, any nonresident owner or operator of any motor vehicle which is operated or driven on public streets, roads, turnpikes or highways of this State is deemed to have submitted to the jurisdiction of the Delaware courts. Collection actions, including default judgment and execution, may proceed based upon jurisdiction obtained through the mailing by first class mail of a summons and subsequent court notices pursuant to this subsection. Every initial mailing shall include the:

a. Name and address of the owner of the vehicle;

b. Registration number of the motor vehicle involved in the violation;

c. Violation charges;

d. Location where the violation occurred;

e. Date and time of the violation;

f. Copies of 2 or more photographs, microphotographs or other recorded images taken as proof of the violation;

g. Amount of the civil assessment imposed and the date by which the civil assessment must be paid;

h. Information advising the summonsed person of the manner, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles; and

i. Notice of the summonsed person's ability to rebut the presumption that the summonsed person was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.

(5) Payment by voluntary assessment -- Persons electing to pay by voluntary assessment shall make payments to the entity designated on the summons for payment. Such entity may be the Justice of the Peace Court, or an entity designated by the Court, the Department of Public Safety, or by the City of Dover or the City of Wilmington which controlled and operated the monitoring system. Procedures for payment under this subsection shall be as provided by court rule or policy directive of the Justice of the Peace Court, or by regulation, code or ordinance of the City of Dover or the City of Wilmington, and shall be in lieu of the procedures set forth in § 709 of this title.

(6) Procedures to contest the violation -- A person receiving a summons pursuant to this subsection may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 20 days of the receipt thereof. Upon receipt of a timely request for a hearing, a civil hearing shall be scheduled and the defendant notified of the hearing date by first class mail. A civil hearing shall be held by the Justice of the Peace Court or such other entity designated by the City of Dover or the City of Wilmington on which controlled and operated the monitoring system. The hearing may be informal and shall be held in accordance with Justice of the Peace Court rules or by regulation, code or ordinance of the City of Dover or the City of Wilmington which controlled and operated the monitoring system. Additional administrative collection processes may be established by Court rule, policy directive, regulation, code or ordinance, as applicable. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.

(7) Failure to pay or successfully contest the violation -- If the owner, or an operator identified by the owner, fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles may refuse to renew the registration of the owner's vehicle operated at the time of the violation. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator. Upon receiving a record of failure to comply, the clerk may enter a civil traffic judgment against the owner or operator in the amount of the civil penalty, costs, and any applicable penalty amounts, giving credit for any amount paid. Such judgment may, upon motion, be transferred by the Court to the civil docket. Any judgment so transferred may be executed and enforced or transferred in the same manner as other judgments of the Court and the City of Dover and the City of Wilmington shall have authority to seek such execution, enforcement or transfer.

(8) Proof of violation – Proof of a violation of this subsection shall be evidenced by information obtained from a vehicle speed monitoring system authorized pursuant to this subsection. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate liability for such violation. A certificate, or facsimile thereof, issued by a technician employed to operate the vehicle speed monitoring system and based upon such employee's inspection of photographs, microphotographs, videotape or other recorded images produced by a vehicle speed monitoring system, shall constitute prima facie evidence of the facts contained therein if:

(i) the technician has successfully completed training by the manufacturer of the vehicle speed monitoring system in the procedures for setting up and operating the system; and

(ii) a log is maintained for each day that a vehicle speed monitoring system is in use stating that any manufacturer specified self-tests were successfully performed prior to the system's use; and

(iii) the vehicle speed monitoring system has undergone an annual calibration check by an independent calibration laboratory which has issued a signed certificate of calibration after each annual calibration check.

(9) Presumptions -- The owner of any vehicle found to be in violation of this subsection shall be held prima facie responsible for such violation in the same manner as provided for under § 7003 of this title, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:

a. Furnishes an affidavit by regular mail to the entity indicated on the summons stating that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate(s) thereof had been reported to the police as stolen prior to the time of the alleged violation; or

b. Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation or that the owner failed to comply with the traffic signal either in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession.

A summons may be issued to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated the specific speed limit. There shall be a presumption that any person so identified was the driver at the time of the violation. Such presumption, however, may be rebutted as described in this paragraph.

(10) Notwithstanding any other provision in this subsection, if the motor vehicle which is recorded by a vehicle speed monitoring system failing to comply with a specific speed limit is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of the vehicle shall provide the entity which issued the summons with the name and address of the driver of the vehicle at the date, time and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the entity which issued the summons of the name and address of the driver of the vehicle at the time of the violation, the driver of the vehicle shall be prima facie responsible for such violation in the same manner as provided for under § 7003 of this title and shall be subject to the provisions of this subsection. Failure of the owner of the vehicle found to be in violation of this subsection to provide the name and address of the driver at the time of the violation within the period prescribed shall cause the owner to be held responsible as set forth in paragraph (4) of this subsection.

(11) Any person found responsible for a violation of this subsection shall have a right of appeal only in those cases in which the civil penalty imposed exceeds $75.00, upon giving bond with surety satisfactory to the judge before whom such person was found responsible. Such appeal must be taken and bond given within 15 days from the date the person was found responsible. The filing of an appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court. Additional penalty assessments for late payment/response pursuant to subsection (2) of this section shall be included in calculating the amount of the civil penalty for purposes of determining the right to an appeal."

Section 2. The provisions of this act shall automatically sunset and cease to be effective 2 years after enactment unless legislation to continue the pilot program is enacted.

Ssynopsis

This Act establishes a 2 year pilot program which authorizes the City of Dover and the City of Wilmington police agencies to initiate camera and video enforcement of speed limits within ¼ mile of any work zone and/or school. Similar to the red light cameras currently in use in this State, the vehicle speed monitoring systems authorized under the pilot program will produce recorded images of motor vehicles traveling at least 11 miles per hour above the posted speed limit. Violations shall be subject to a civil assessment not to exceed $50.00, and the procedures for issuing, contesting and paying a notice of violation shall be the same as for traffic light signal violations. Violations are civil in nature and are not subject to points or made a part of a person's driving record.

Author: Senator Bushweller

City of Dover

MAYOR AND COUNCIL

May 20, 2013

The Honorable Brian J. Bushweller
PO Box 1401
Dover, DE 19903

Dear Senator Bushweller:

The City of Dover offers its full support of proposed legislation to amend Title 21 of the Delaware Code relating to vehicle speed monitoring systems. This Act, which establishes a 2 year pilot program authorizing the City of Dover and the City of Wilmington police agencies to initiate camera and video enforcement of speed limits within ¼ mile of any work zone and/or school, would enable the City of Dover Police Department to better utilize its current speed enforcement efforts (motorcycle officers) in other areas of the city, rather than established school zones.

We understand that, similar to the red light cameras currently in use in this State, the vehicle speed monitoring systems authorized under the pilot program will produce recorded images of motor vehicles traveling at least 11 miles per hour above the posted speed limit. Violations shall be subject to a civil assessment not to exceed $50.00, and the procedures for issuing, contesting and paying a notice of violation shall be the same as for traffic light signal violations. Violations are civil in nature and are not subject to points or made a part of a person's driving record.

As always, thank you for your continued support of the City of Dover.

Sincerely,

Carleton E. Carey Sr.

CARLETON E. CAREY, SR.
MAYOR

DAVID L. BONAR
COUNCIL PRESIDENT

CEC/DLB/tam
S:\Correspondence\Council Meeting\2013\05-06-2013 Letter of Support - Related to Vehicle Speed Monitoring Systems-Bushweller.wpd

cc: City Council
Senator Bruce C. Ennis
Representative Andria L. Bennett
Representative John L. Mitchell Jr.
Representative Darryl M. Scott