

City Council of the City of New Castle
Public Hearing at Town Hall
201 Delaware Street – New Castle
Tuesday, June 27, 2017 – 7:00 p.m.

Roll call

Councilperson Valarie W. Leary
Councilperson Michael J. Quaranta
Council President Linda Ratchford
Councilperson Michael M. Platt (Not in attendance)
Councilperson John A. Di Mondì

Also present:

William Barthel, City Administrator
Jamie Rogers, Police Chief
Daniel Losco, City Solicitor
Jeff Bergstrom, Building Official

A Public Hearing concerning Ordinance 509, an Ordinance to establish a new Chapter 208 in the Code of the City of New Castle relating to illicit discharges and connections to the municipal storm sewer system.

City Council President Ratchford opened the Public Hearing reference to Ordinance 509, which is an Ordinance to establish a new Chapter 208 for the City of New Castle, relating to illicit discharges and connections to the municipal storm sewer system. Ms. Ratchford stated that this was discussed in the June regular Council meeting, and that this is a Public Hearing. Ms. Ratchford then asked if any members of the public would like to speak, which was met by silence.

Ms. Ratchford then asked if any members of the Council or Building Official / City Solicitor had any questions.

Councilperson John A. Di Mondì replied to Ms. Ratchford, inquiring as to how much the ordinance in question, if passed, in compliance. Ms. Ratchford calls on Mr. Bergstrom, Building Official, who informs Mr. Di Mondì that the cost will be ‘negative six figures.’ Mr. Di Mondì restated that his concern was the cost to come into compliance, to which Mr. Bergstrom mentioned that the city was ‘pretty well in compliance, at the moment.’ Councilperson Di Mondì then inquired as to the cost for MSC and Public Works to come into compliance to clean their equipment, to which Mr. Bergstrom replied that there should be no cost, they just need to be careful to use the existing facilities.

Councilperson Di Mondì then inquired if the wash water would be recycled, Jeff Bergstrom stated that the water is run through an oil separator and a sand filter, at which point it could be discharged into the sewer. Councilperson Di Mondì stated that he does not see any major cost, and that the city would have to do things to bring itself into compliance, such as keeping catch basin inlets clear and the possibility of putting inserts into them.

Councilperson Di Mondì inquired as to if any major recycling operations at any city facilities would need to be done, to which Mr. Bergstrom replied that there are no major costs associated with this contract. Councilperson Di Mondì thanked Mr. Bergstrom, and stated that was all that he had wanted to ask.

At this time, Council President Linda Ratchford mentioned that Mr. Bergstrom had some questions. Mr. Bergstrom stated that his questions were directed to Dan Losco, City Solicitor. Mr. Bergstrom stated that a whole body of law would be added, which is part and parcel to the federal program expectations that they have existing policies and procedures, and inquired as to why the city needs to add the legal requirements in Ordinance 509. Mr. Losco replied, stating that the bottom line is that the city would not be able to direct its storm water to the storm water system, and that without an ordinance of this type the city could be refused access.

Mr. Bergstrom referred to section 208-7 titled 'Discharge Connection Prohibitions', under letter A, 'Prohibition of Illicit Discharge.' Mr. Bergstrom then read the text, which states that no person shall discharge or cause to be discharged any materials containing pollutants that violate clean water standards. Mr. Bergstrom expressed concern, asking Mr. Losco if the text should read knowingly discharge' as well as asking if this section relates to industrial compliance or general compliance.

Mr. Bergstrom expressed that if someone discharges something by accident, that is different than knowingly discharging, asking Mr. Losco for his opinion on the subject. Mr. Bergstrom expressed concern that adding the 'knowingly' would result in being unable to charge those in violation, and that he feels that it is more appropriate to impose a strict liability, and that prosecutorial discretion would elect not to prosecute anything that was 'clearly a mistake', and that it would be very difficult from a legal standpoint to prove the mental outlook of the discharger.

At this point, Mr. Bergstrom expressed his hope that the businesses within the city limits, specifically the type of business that would have discharge things into the water system would be mailed some kind of notice or communication in regards to best practices. Mr. Bergstrom stated that he would hate to see the city prosecute someone who innocently discharged into the water system.

Mr. Bergstrom then referred to page 208, Section 8, titled 'Suspension due to illicit discharges in emergency situations.' William Barthel then explained how this allows the code officer to, without prior notice; suspend MS4 access to someone when necessary to prevent a discharge or substantial risk to the water supply or public health or the waterways of the United States. Mr. Bergstrom expressed concern about the wording of 'may' vs. 'shall.'

Mr. Losco responded that Mr. Bergstrom discretion in this matter was acceptable, and that it would be left to the enforcement officer to determine if a complete cease of discharge would be required. Mr. Losco restated that it makes more sense to leave it to the discretion of the enforcement officer.

Mr. Bergstrom mentioned section 208-10, on monitoring discharges. Councilperson Quaranta stated that the bill has two sections, applicability and access to facilities, and inquired about the access to facilities. Mr. Bergstrom then read the text of section 208-10, and mentioned he could not locate anything in the text in reference to advance notice, and questioned if he missed that, or if he did not miss that, what are Mr. Losco's feelings about that? Mr. Bergstrom stated that he was not trying to spring anything on Mr. Losco or 'play got you' with him, but that he wondered if advanced notice would be given to these employers.

Mr. Losco replied with a concern, stating that if he were an illicit discharger - should a notice be mailed to him in advance before inspection? Mr. Losco stated that discharging into the system is a privilege, not a right, and discussion shifted to the need for a probable cause search warrant in the case of entry being refused to an inspector.

Mr. Bergstrom then inquired as to what the city is doing now in absence of the ordinance, and to what the current policy is. Mr. Losco stated that as of now, there is no code section to address this topic. At this point Council President Linda Ratchford summarized, stating that the city has basically been doing this for the past twenty years on its existing permit, without having anything official in the actual code, and that now they are simply complying with that part of the permit, to address what the city has always been doing. Mr. Losco stated that regardless of local code, that there are federal ordinances as well. Discussion then shifted to mention the local code against washing cars in a driveway, Mr. Losco replied that personal vehicles are one thing, while commercial vehicles are another.

Mr. Bergstrom asked if perhaps finding a way that is as cost effective as possible, either through the MSC or the newspaper, to communicate to property owners that there is a new section of code that creates a much larger lens on the discharge of wastewater, and that there are fines and that people need to be in compliance, but expressed again that he does not want to be 'playing got you' with the public and wanted to make sure the public is aware of the changes.

Mr. Losco replied that they have 1-800 'stop it' billboards that went up last year, advertisements playing before movies in theaters, and that people may not read all the way through the regulations, but would not be surprised by them. Council President Linda Ratchford then asked for clarification, if “we” refers to the state and the county, as the city has not purchased any movie theater advertising. Mr. Bergstrom replied that the city shares and co-funds these efforts, and mentioned the billboards and television ads that have been done in specific. Mr. Bergstrom mentioned public education, and that large numbers of impressions are gained by these advertisements.

At this time, Council President Linda Ratchford states that the city will get something in the MSC newsletter for this topic, and asks if anyone has any other questions for the city solicitor and building official.

Councilperson Valarie Leary has **motioned to adjourn**, seconded by Councilperson Quaranta and passed unanimously. Council adjourned at 7:21 pm

Respectfully submitted,

Brian G. Whitaker City Clerk of New Castle, Delaware