

**City Council of the City of New Castle  
Special Meeting at Town Hall  
201 Delaware Street – New Castle  
Tuesday, September 5, 2017 – 7:30 p.m.**

**Roll Call**

The City Council Meeting was called to order at 8:14pm.

Councilperson Valarie W. Leary  
Councilperson Michael J. Quaranta  
Council President Linda Ratchford  
Councilperson Michael M. Platt  
Councilperson John A. Di Mondì

**Also present:**

Janet Carlin, City Treasurer  
Jamie Rogers, Police Chief  
Daniel Losco, City Solicitor  
William Barthel, City Administrator

Second Reading of Ordinance 511, titled An Ordinance to revise Chapter 230, Article IV, to amend Code Section 230.25.1 in the Zoning Code of the City of New Castle to permit certain telecommunication facilities by special exception from the Board of Adjustment in any zoning district in the City of New Castle other than the Historic Residence District and the Historic Commerce District. (Reading of the ordinance dispensed with, as the Ordinance has been posted.)

**Motion to consider Ordinance 511 was made and seconded.**

**Discussion followed.**

It was requested the City Solicitor Losco explain the purpose behind the Ordinance.

Mr. Losco briefly explained that current zoning law prohibits telecommunications facilities such as towers, antennas, etc. in any location other than designated telecommunications districts. Federal policy is that telecommunications and cellular activities industries are to be encouraged and facilitated, and corrections to gaps in coverage may not be restricted out by local law. Passage of the Ordinance creates the mechanism by which the City cannot be found to be restricting those industries from improving coverage in those areas where such coverage might be found to be impaired.

Mr. Di Mondì moved that the wording in the ordinance, stating that there is unreliable service, be changed to state that there “may be” unreliable service. The motion was seconded.

**The motion was passed by a vote of 4 to 1.**

**The Motion passed, with the Council votes recorded as follows:**

Councilperson Valarie Leary - Yes  
Councilperson Michael J. Quaranta - Yes  
Council President Linda Ratchford - Yes  
Council person Michael M. Platt - No  
Councilperson John A. Di Mondì - Yes

Council President Ratchford brought up the comment from the previous meeting regarding fees, and asked if there was further discussion on the topic.

Councilperson Michael J. Quaranta asked Mr. Losco to confirm whether it is correct that passage of the Ordinance provides private property owners with the ability to enter into a contract with a provider, upon application to and approval from the Board of Adjustment. Mr. Losco confirmed that this is correct.

Mr Losco's advice and thoughts on the topic of the city capturing revenue, related to passage of the Ordinance, in the case of a private property owner entering into such a contract.

Mr. Losco said he has not fully researched this, but believes that a license fee for leasing out rooftop space, for example, would likely be appropriate, as long as such fees were not found to be excessive or punitive in nature, and as long as the city were able to provide a rational basis for such a fee. He would probably be more comfortable with a flat fee, rather than one based on the compensation to the property owner.

It was brought up that there would be no limitation to the number of applications that could be made to the Board of Adjustment, for telecommunications equipment or facilities placement, if the Ordinance were passed. However, the Ordinance language does require that the need for such equipment or facilities would need to be demonstrated, as part of any application.

There was discussion as to the difference between the current lease agreement and franchise fees, and whether the city can charge for the use of the air waves, as well as which companies currently pay franchise and other fees to the city, and the differentiations between the purposes behind those fees.

Mr. Losco discussed possible language changes that could be made to the Ordinance to accommodate business license or other fee requirements by the city, for private property owners contracting out to telecommunication services to place facilities on their property. In the Ordinance, the specific fee amounts would not be stated, as they could be voted on separately, via Resolution. He will need to look into this further before providing a definitive answer as to what specific language would be appropriate for such a Resolution.

Councilperson Leary requested confirmation that historical properties would be excluded from the exception allowed for in the Ordinance. This was confirmed by Mr. Losco.

Mr. Losco confirmed that it is likely that any fee would be assessed to the property owner, not the telecommunication service provider.

Councilperson Di Mondì discussed with Mr. Losco whether or not paragraph 6 needs to be included in the Ordinance. Paragraph 6 was not in the original language of the Ordinance.

It was discussed whether or not an additional item E should be added to the Ordinance, referring to an annual licensing requirement.

It was stated that Councilperson John Di Mondì would like to see the Ordinance with the proposed changes included, and consider the potential impacts of the Ordinance further, before proceeding with a vote.

Mr. Losco explained that, if the Ordinance is passed as is, with no language relating to license fees included, then a new Ordinance would be required in the future, to add any such license fee. He suggested tabling the vote on the Ordinance, so that language related to license fees could be agreed-upon, and voted upon at the same time as the Ordinance.

It was moved and seconded that the vote on Ordinance 511 be tabled, so that language related to some sort of license fee could be incorporated.

Councilperson Quaranta asked Mr. Losco whether such language could be drafted and agreed upon during a quick 15-minute break, so that the vote could take place. Mr. Losco stated that he could come up with the language related to the license fee during such a break.

The motion to table was withdrawn.

**Motion to recess for this purpose, for five minutes. Seconded.**

**Meeting recessed.**

**Council President Ratchford read New Paragraph E:**

“Every owner of privately owned property maintaining telecommunications facilities approved by the Board of Adjustment under this section, shall be subject to an annual licensing fee for each telecommunications carrier maintaining telecommunications facilities on such property, in an amount as Council shall determine by Resolution.”

It was moved and seconded that Paragraph E be added to the language of Ordinance 511 as amendment.

The motion was passed unanimously.

**Ordinance 511, as amended, was passed unanimously.**

Motion made and seconded to adjourn to Executive Session.

Adjournment motion carried at 9:11pm

**Respectfully submitted,**

**Brian G. Whitaker**

**Clerk of the City of New Castle, Delaware**