

City of New Castle Delaware
Regular City Council Meeting
Meeting Held in Person and via Zoom
Tuesday, March 12, 2024
7:00 p.m.

Call to Order: 7:00 PM

Roll Call

Present: Council President Suzanne M. Souder
Councilperson Nermin Zubaca
Councilperson Andrew Zeltt
Councilperson Joseph F. Day, III
Councilperson Brian M. Mattaway

Also present: Max Walton, Esquire, City Solicitor
Mayor Valarie Leary
Chief of Police Richard P. McCabe
Good Will Fire Company Captain Timothy Moore
City Planner Christopher Rogers

Council President Souder called the March 12, 2024, City Council meeting to order at 7:00 p.m. The assembly stood for the Pledge of Allegiance. Roll call followed and a quorum to conduct business was declared.

Minutes

A motion to approve the minutes of the February 13, 2024, City Council meeting was made, seconded and unanimously carried.

The minutes of the February 13, 2024, City Council Public Hearing were not available and approval of those minutes was deferred to the April City Council meeting.

Approval of the Treasurer's Report

In Ms. Carlin's absence, Council President Souder presented the unaudited Treasurer's Report as of February 29, 2024:

Total unrestricted funds	\$ 9,626,335.04
Total restricted funds	2,231,530.02
Total cash	\$11,857,865.66

Council President Souder noted that Ms. Carlin will be stepping down as City Treasurer, and in honor of her retirement Resolution 2024-08 was read into the record.

Presentation of Honorary Resolution 2024-08 – A Resolution to Honor Retiring City Treasurer Janet Carlin

A motion to approve Resolution 2024-08 was made, seconded and unanimously passed.

Reports from the City Administrator and Staff

Report from Acting City Administrator Souder

- Floating Pier – The floating pier is moving forward. Mr. Walton reviewed the contract with Atlantic Subsea and it was signed by the City. Due to a DNREC restriction of installing pilings during Shad spawning between March 15th and June 30th, installation will begin subsequent to June 30th.
- Paving at 6th and Delaware Streets – Work on the curb replacement is in progress, and paving will commence when that work is completed and the weather warms up enough.
- FEMA Flood Insurance Rating Recertification – New Castle, along with most municipalities in Delaware, needs to update its Chapter 130 of the City Code to follow new regulations regarding the placement of mechanical features in new construction. Maintaining this rating saves residents money on flood insurance. Council will have a first reading of Ordinance 546 to update the Code.
- Flood Resiliency Committee – There has been no recent update from the Natural Resources Conservation Service (NRCS) project. At the last committee meeting Kevin Donnelly of the New Castle County Conservation District stated this is the biggest NRCS project in Delaware and opined that completion of the project is seven years out. Mr. Donnelly complimented the committee on its work on the project. Additionally, the committee is in the process of recommending updates to the city website relative to flood mitigation.
- City Website Update – University of Delaware students have begun the project to update the city website to add data on pending building projects.

Council Communications

Councilperson Day

- New Castle Litter Crew – Councilperson Day reported that two events for the New Castle Litter Crew were held and both were very well attended. The February 18th event focused on 7th Street and Washington Street with approximately 25 volunteers. The March 3rd event focused on Ferry Cutoff with approximately 32 volunteers. The next event will be March 24th at 3:00 p.m. Volunteers will meet at the Little League and concentrate on the area of Frenchtown Road.
- Outreach Events – Councilperson Day attended the outreach event at Buttonwood School.
- Trustee Board Meeting – Councilperson Day attended the March Trustee meeting.
- Senior Center Audio Visual Update – The lowest bid for new audio visual equipment at the New Castle Senior Center was rebid, and the new quote is \$5,163 lower than the original estimate. The updated estimate is \$31,959.00.

Councilperson Zeltt

- New Castle Litter Crew – Councilperson Zeltt thanked Councilperson Day for creating the Litter Crew, noting that he attended the March 3rd event.

- Dog Park – Councilperson Zeltt reported that a Request for Proposal (RFP) is being drafted for design of the Dog Park. Separate RFPs will be drafted for construction and clearing the area. The RFPs will be reviewed by the City Solicitor and City Administrator before being put out for bids.

Councilperson Zubaca

- April Council Meeting – Councilperson Zubaca stated that he will be unable to attend the April 9th Council meeting due to its conflict with the Muslim holiday Eid al-Fitr (Festival of Breaking Fast).
- Battery Park Playground – Councilperson Zubaca noted Battery Park is a smoke-free park, and stated that he has seen people smoking in the vicinity of the playground. He suggested that signage regarding the area being smoke free be repositioned or made larger to reinforce the message of no smoking.
- Colonial School District Referendum – Councilperson Zubaca noted that the Referendum for Colonial School District passed in February. He expressed his hope that the increased funding will be reflected in improved grades and student and staff morale. Councilperson Zubaca urged citizens to be prepared as the new taxes roll out.
- Trustees Election – Councilperson Zubaca urged all residents to vote in the upcoming Trustees election.
- Litter Crew – Councilperson Zubaca thanked Councilperson Day for his efforts to clean up the city.
- Paving – In response to a question from Councilperson Zubaca regarding paving at 5th Street, Council President Souder stated that would depend on whether the new gas lines have been installed.
- Flood Resiliency Committee – In response to a question from Councilperson Zubaca, Council President Souder opined that Mr. Donnelley’s projection for the completion date was seven years from now.

Councilperson Mattaway

- Litter Crew – Councilperson Mattaway thanked Councilperson Day for his efforts with the Litter Crew.
- Council President Souder – Councilperson Mattaway thanked Council President Souder for her work as acting City Administrator.
- Rodney Street Tennis Program – Councilperson Mattaway announced that on Saturday, May 4th, the City of New Castle will partner with the Rodney Street Tennis Program to offer a free tennis clinic for children ages 5 and up at the Appleby Tennis Courts in Battery Park. No racquet is necessary. Additional information will be forthcoming in The Crier and The Weekly as well as advertising with the local school population. Councilperson Mattaway acknowledged the partnership of the Good Will Fire Company and the New Castle Police Department for their support in this summer endeavor.

- Blood Drive – The Good Will Fire Company is hosting a blood drive on Saturday, June 1st in New Castle. Councilperson Mattaway urged citizens to donate and/or support this effort.

Business From the Mayor

- Litter Crew – Mayor Leary commended Councilperson Day for this initiative. She also thanked the Lions Club for joining in the event. Concerns with storm drains detected during the clean-up have been reported to DelDOT.
- Restaurant Week – Restaurant Week was a great success. Many of the local restaurants have been nominated for Best of Delaware. Mayor Leary noted that this year AK’s Halal Bites and Taqueria Atexquita participated in the event.
- Outreach Event – Mayor Leary thanked Consuella Petty for opening the Buttonwood School for the recent Saturday Outreach Event. She noted that the Buttonwood School is available for events.
- Open Mic Night – The next Open Mic Night is Sunday, March 17th to raise funds for Friendship House.
- Sheriff’s House – Mayor Leary reported that the National Park Service has not yet informed her of a date for the resident’s preview nor for the actual date for the open house in April.
- United States America 250 – The United States America 250 Commission is sponsoring a contest for students in grades 3-12 called “America’s Field Trip” that will invite students to submit essays, artwork and other creatives on their perspective of what America means to them. The winners will be invited to go on a field trip to New York and other places throughout the United States. The deadline is May 17, 2024. More information can be found at: America250.org/fieldtrip.

Business from the Council President

- Council President Souder acknowledged the passing of New Castle resident Ted Joslin. Mr. Joslin was the writer of Cobblestones and called himself “The Teditor”.
- Good Will Industries – Council President Souder met with representatives of Good Will Industries and was informed that their operation in the Centerpoint Industrial Park will be expanded to include grinding of recycled glass that can be reused. They are working to obtain the necessary permits from DNREC and subsequently from the City. Mr. Bergstrom will assist them as he can.
- Ordinance 543 – Council President Souder stated that the State Legislature already decided the issue of whether marijuana should or should not be legal when it passed the Delaware Marijuana Control Act and marijuana sales will become legal in 2025. The legislation permits municipalities to prohibit or otherwise regulate the operation of marijuana related businesses within their jurisdiction. As proposed, Ordinance 543, in accordance with the powers granted by the State, would permit marijuana product manufacturing facilities and marijuana testing facilities and prohibit marijuana retail sales and cultivation facilities in the City of New Castle. Council President Souder asked that public comments on Ordinance 543 be relevant to the Ordinance.

- Questions Regarding Ordinance 543 – Council President Souder received answers to two questions that were raised about Ordinance 543 at the February Council meeting from the City Solicitor’s office:
 1. Would Ordinance 543 ban the home cultivation of marijuana for personal consumption? *Answer:* Home cultivation is still illegal under Delaware Law.
 2. Could we also ban the sale of CBD products in New Castle? *Answer:* There is no equivalent provision under State Law for prohibiting the hemp-based CBD products, as there is with marijuana products. Hemp is considered an agricultural commodity and is defined as a grain under Delaware Law. CBD products derived from hemp are regulated like food products. This is true at the Federal level as well.
- Public Comments – Council President Souder stated that during public comments, Council will attempt to answer simple questions but will not engage in an extended discussion on any item not on the Agenda.

Resolution 2024-12 – A Resolution to Approve MSC Loan from Delaware Drinking Water Revolving Fund for the School Lane Treatment Facility PFAs Treatment System Improvements.

Council President Souder introduced Mr. Scott Blomquist, General Manager of MSC. Mr. Blomquist noted that in accordance with its Charter, MSC must request approval from Council to obtain a loan. Mr. Blomquist explained that MSC is preparing to modify the existing filtration system at the School Lane Water Treatment Facility to remove PFAS compounds to change it from carbon to resin and is requesting approval to obtain a loan from the Drinking Water State Revolving Fund. The principal balance of the loan (\$1,135,728) will be 100% forgiven.

Mr. Blomquist responded to questions from Council:

- The life cycle of resin is approximately seven + years as opposed to two years for carbon.
- MSC is required to sample monthly.
- Total pumpage per year is approximately 50%.
- MSC is involved in all aspects of new development for capacity.
- The quality of water inside the city is the same in all areas.
- Construction is expected to take approximately six months.

Council President Souder read the Resolution.

A motion to approve Resolution 2024-12 was made, seconded and unanimously passed.

Report from Chief McCabe

Chief McCabe reported on the following:

- The annual report is posted on the Department website. Chief McCabe explained how the data is represented and how incidents are documented. He noted that in the last few years there has been a trend for issues to come from internal policing, and data does not support the argument that the Department is unable to police itself.
- On February 20th Officers discovered an individual unresponsive in a vehicle who was under the influence of drugs in Dobbinsville. The individual was charged.

- Officers stopped a vehicle for speeding on Wilmington Road and on investigation, a 40 caliber glock pistol that had been manipulated for rapid fire functions, two magazines and 29 rounds were found. The individual had just left his probation office.
- A vehicle was stopped in the Shawtown area for suspicious activity. The owner of the vehicle was in possession of 1-1/2 oz. of non-medical grade marijuana that had been removed from its original packaging and repackaged for sale. He was charged with possession. Chief McCabe added that the suspect has an extensive criminal record with violence.
- Ordinance 543 – Chief McCabe stated that he fully supports Ordinance 543. He noted that the State has not created any guidelines or regulatory language to aid in managing the use of marijuana. A unit is being created to deal this issue and Officers in Departments that are already dealing with staffing issues are being lured away to man this unit by the offer of more money and less stress. The New Castle Police Department has already lost one officer to this program. Chief McCabe stated that studies done in Colorado and Washington where marijuana has been legalized show that the experiment is not working and that crime has increased. He added that the black market has not been eliminated, but has gotten stronger; and it also created a gray market. Chief McCabe also stated that there is a level of violence that is associated with this business and crime and homelessness follows the it. He opined that it might be easier to revisit an Ordinance in six months, but it may not be that easy to revisit someone who has already been granted a license. In response to a question from Councilperson Zubaca, Chief McCabe noted that the Department has dealt with home invasions, shootings, and armed criminals coming into the city that are connected to drugs. There have also been accidental overdose incidents because children have eaten marijuana gummies. Chief McCabe noted that studies have shown that property values near retail marijuana stores have dropped and crime follows the people going into and out of the stores because it is a strictly cash business.
- Legislation
 - HB 206 – Chief McCabe stated that this is a very informative piece of legislation. One of the most significant parts is that it requires all police agencies to become accredited. This Bill is supported by all Police Chiefs, the FOP, the Attorney General’s Office and the Delaware State Police. Chief McCabe explained the importance of accreditation.
 - HB 115 Reforming the Civil Forfeiture Law – Chief McCabe noted that HB115 would eliminate the Special Law Enforcement Assistance Fund (SLEAF). Chief McCabe explained how the SLEAF Fund works, how the funds are currently being used to benefit police departments statewide, how the New Castle Police Department has benefited with investigation assistance from the Fund, and what will happen if the Bill is passed.
 - Bill Requiring a Prohibition on Quotas – Chief McCabe stated that the Department supports the notion of not having quotas and the New Castle Police Department does not have a quota system. However, the legislation as drafted is so restrictive that the Departments cannot use it to gauge any type of personal work ethic. Chief McCabe explained how that law would affect how he can direct

his officers and noted that it would remove the ability to receive funding from highway safety.

- HB 205 – Chief McCabe stated that HB 205 requires that all complaints against officers be public faced regardless of whether they were sustained or not. Chief McCabe explained how this Bill could be used against any officer testifying in court, noting that the argument against it is that with this law the Office of Defense Services is trying to create a platform for the first three minutes of an officer’s cross examination by allowing unproven accusations to be public faced.

Chief McCabe asked that when attending meetings on legislation citizens ask questions about the Bills, speak with the sponsors and ask what the driving force behind the Bill is, and if this a problem here.

Report form Good Will Fire Department

Captain Moore reported that:

- Last month’s report did not reflect EMS transports due to an update in the system. This has been addressed and the current report is accurate.
- Captain Moore invited the public to interact with the staff as they are out training in the community.
- Good Will Fire Company will be working with MSC and the New Castle Police Department to conduct a large water supply drill on Saturday, April 20th to ensure that if there is a large-scale or catastrophic failure to the water system Good Will is still able to successfully do its job. The drill will affect areas at the Wharf, The Strand, the lower end of Harmony Street, East 2nd Street, Chestnut Street to Bull Hill, and the 3rd Street Bridge. Captain Moore explained how the drill will be conducted, and noted that a letter of explanation will go out in the MSC bill. A shuttle will be available to assist residents getting in and out of the affected areas during the drill. Captain Moore assured the Council that the drill does not indicate there is any issue with MSC’s water system.

Public Comment

Victor Bryson – Dobbinsville

- Mr. Bryson thanked Councilperson Day and the volunteers of the Litter Crew for their efforts to clean up the city.
- Mr. Bryson noted his concern with municipal bills and rate increases, opining that MSC workers are paid significantly more than and work less than Public Works staff. He urged Council to increase the pay for Public Works staff.
- In response to a question from Mr. Bryson, Mr. Walton stated that he is not affiliated with the law firm of the former City Solicitor.

Phil Gross – 1301 13th Street

- Mr. Gross said he hopes that the Police Department receives vehicle cameras from the SLEAF Fund, opining that would have prevented him from being charged with theft of signage.

- Mr. Gross urged Council to include a derivative of marijuana in Ordinance 543. He added that crime would increase and the perceived view of New Castle would be diminished. Council President Souder stated that in her conversation with the City Solicitor's staff, she was informed that Council does not have the right to regulate what is included.
- Mr. Gross stated that he supports Ordinance 544.

Rod Miller – 3rd Street

- Mr. Miller stated that parking is very difficult, particularly on 3rd Street where renters outnumber residents.
- Mr. Miller said the idea of installing parking kiosks and/or issuing parking permits had been previously discussed, but no action was ever taken.
- Mr. Miller stated he would like Council to champion an effort to get the community more involved in quality of life issues.

Dave Casey – 3rd Street

- Mr. Casey said he was glad that Council understands that CBD is regulated as a grain and that it is healthy. He opined that being anti-commerce is not in the spirit of New Castle.
- Mr. Casey opined that alcohol is involved in violent crime and traffic accidents, but cannabis is not. He concurred that the issues the police face stem from the black market, which he opined is a product of prohibition.

Dorsey Fiske – East 3rd Street

- Council President Souder read an email submitted by Ms. Fiske regarding the Trustees of the New Castle Common.
- Ms. Fiske stated that The Weekly has printed misinformation and innuendo about her.
- Ms. Fiske opined that the Trustees continue to close down information about their workings and limiting access to meetings and public comment.

Old Business

Second reading, discussion, and possible vote on Ordinance 543 – An Ordinance to Amend Chapter 230, Zoning, as it pertains to marijuana-related businesses.

Councilperson Day read Ordinance 543 by title.

Councilperson Day stated that the State gave the municipalities the ability to opt out of the Bill; however it did not give the County the ability to opt out. The municipalities of Rehoboth Beach, Bethany Beach, Dewey Beach and Middletown have opted out because there is no benefit to the municipalities. The municipalities receive no tax monies, but have all of the risk. Councilperson Day clarified that the city is not outlawing marijuana; it would only be making it unavailable for sale within the city.

A motion to approve Ordinance 543 was made.

Councilperson Zubaca questioned if Council has the authority to ban marijuana in the city. He added that he does not want to see increased crime in the city, but is conflicted because it has been accepted at the State level. Mr. Walton stated that the city absolutely has the authority to ban marijuana. Councilperson Zubaca stated that he did not see the difference between a drunk driver and a high driver.

Councilperson Zeltt noted that the business is 100% cash-based, which can lead to situations for more crime, and that is a concern for him. He opined that Council could reconsider the issue once the Federal Government recognizes it.

Councilperson Mattaway stated that the topic is very serious and that he has conducted research to become better educated on the matter. He added that he sees several glaring problems: The Federal law prohibition; the uncertainty around local law enforcement's and local government's ability to intercede; the proliferation of artificial marijuana substances; business enterprises that are 100% cash or promote white-washing of electronic payments; and the recognition of the shortage of law enforcement professionals statewide. Councilperson Mattaway read segments of the current Bill.

Mr. Walton also read a segment of Section 1351 of the Act that authorizes a municipality to "prohibit the operation of a marijuana cultivation facility, marijuana product manufacturing, marijuana testing facilities, or retail marijuana stores through the enactment of an Ordinance". Mr. Walton stated that everything said about local control is accurate; however, if there were a facility that violated a local law, that is grounds for immediate revocation of their license by the State.

Council President Souder concurred with Councilperson Zubaca that alcohol is a factor in crime and traffic incidents; however, noted that the test to determine alcohol level is easy but there is no easy way to test for marijuana. Chief McCabe stated that subsequent to legalizing marijuana Colorado and Washington saw that all the issues that were supposed to be fixed increased: the number of DUI crashes doubled, fatalities and injuries increased, and youth use increased. Chief McCabe stated that drinking and the use of marijuana is not the same thing. He added that the study stated that none of the revenue generated was used by the General Fund and did not benefit the local governments.

Council President Souder also expressed her concern that it is a 100% cash-based business and the potential for increased crime regardless of whether there is an armed guard inside the store or not.

Councilperson Mattaway urged residents to become educated on the topic.

The motion on the floor was seconded and a roll-call vote was taken:

Council President Souder – Aye
Councilperson Day – Aye

Councilperson Zeltt – Aye
Councilperson Zubaca – Nay
Councilperson Mattaway – Aye

The motion passed with a vote of four in favor and one opposed.

Discussion, and possible vote on Ordinance 544 – An Ordinance to Amend Article V Supplementary District Regulations 230-28 Off-Street Parking and Loading Requirements Section (A)(15) in a Downtown Gateway District; Subsection (a) Parking Requirements for specific uses are as follows – [5] Apartments.

Councilperson Zubaca asked if current apartment developments could supply data on the number of apartments rented and the number of vehicles in the development. Council President Souder opined that Council could ask; however, she was unsure of whether they had data on the number of vehicles and if they were required to provide that data.

A motion to table Ordinance 544 to the April City Council meeting was made, seconded and unanimously passed.

Second Reading, Discussion, and possible vote Ordinance 545 – An ordinance to require all City of New Castle Boards and Commissions to provide annual reports to the City Council on the activities of the preceding year.

Councilperson Mattaway read Ordinance 545 by title.

Councilperson Day stated he supports the Ordinance and suggested that a date for presentation of the reports be added.

Councilperson Zubaca stated he supports the Ordinance and suggested that the timing of presentation of the reports be established. He asked that Council provide guidance on what should be in the report. Councilperson Mattaway reviewed a number of items that he suggested be included in an annual report. Councilperson Day suggested that each Commission and Board should make a presentation of its report to City Council.

During discussion of strategies, Ms. Reign suggested that report presentations be staggered and offered to work with Council on drafting parameters. Council will discuss the details of information to be included in the annual reports and Councilperson Mattaway will work with Board and Commission Chairs to work out the details.

A motion to approve Ordinance 545 was made and seconded. A roll-call vote was taken:

Council President Souder – Aye
Councilperson Day – Aye
Councilperson Zeltt – Aye
Councilperson Zubaca – Aye
Councilperson Mattaway – Aye

The motion passed unanimously.

New Business

Council Discussion, Possible Motion and Vote on Resolution 2024-9 – A Resolution confirming the Mayor’s Re-Appointment of Jackie Metz to the Board of Health.

Jackie Metz Two Year Term Ending April 9, 2026

Council President Souder read the Resolution.

A motion to approve Resolution 2024-9 as amended was made, seconded and unanimously passed.

Council Discussion, Possible Motion and Vote on Resolution 2024-10 – A Resolution Approving the Appointment of a City Treasurer Pursuant to Section 4 of the City Charter.

Council President Souder read the Resolution.

A motion to approve Resolution 2024-10 to appoint James Whisman to the office of City Treasurer was made and seconded.

Council President Souder explained why the effective date of Mr. Whisman’s appointment is March 15th.

The motion was unanimously passed.

Council Discussion, Possible Motion and Vote on Resolution 2024-11 – A Resolution to Rename the Contract Position of Tourism and Economic Recovery Coordinator to Outreach Coordinator, and to Revise Other Provisions of the Contract.

Council President Souder read Resolution 2024-11.

A motion to approve Resolution 2024-11 was made and seconded.

Council President Souder explained the change of use of available funds and the change of reporting. Mayor Leary responded to several questions and concerns from Council.

The motion on the floor was unanimously passed.

First Reading of Ordinance 546 – An ordinance to amend the City of New Castle code chapter 130 regarding buildings and structures in special flood hazard areas.

Council President Souder read Ordinance 546.

There being no further business to discuss, Council President Souder called for a motion to adjourn.

City Council Regular Meeting
March 12, 2024

A motion to adjourn was made, seconded and unanimously passed and the meeting adjourned at 9:28 p.m.

Respectfully submitted,

Kathleen R. Weirich
City Stenographer

Next Regular Meeting Date: April 9, 2024
Posted: 3/5/2024