

**MAYOR & COUNCIL
REGULAR MEETING
FEBRUARY 14, 2013
7:30 p.m.**

The Regular Meeting of the Mayor and Council of the Borough of Rockaway, in the County of Morris, New Jersey, was held in the Community Center, 21-25 Union Street, Rockaway, N.J. with Mayor Russell Greuter presiding. Mayor Greuter called the meeting to order at 7:30 p.m.

Mayor Greuter read the following statement: In accordance with Section 5 of the Open Public Meetings Act, Chapter 231, Public Laws, 1975, be advised that notice of this meeting was made by posting on the Bulletin Board, Town Hall, and sending to the officially designated newspapers, a list of meeting dates annually, indicating that the meeting would take place at the Community Center at 7:30 p.m. on February 14, 2013. Mayor Greuter announced the location of the fire exits.

Councilmembers Present

Thomas Donofrio
Joyce Kanigel
Thomas Mulligan
Joseph Vicente
John Willer
Melissa Burnside - Council President

Councilmembers Absent

Borough Attorney Edward Wacks, Esq., was also present

Everyone present participated in the salute to the flag.

APPROVAL OF MINUTES

Upon motion by Councilman Vicente, seconded by Councilman Donofrio, and carried unanimously upon voice vote, the minutes of the January 24, 2013 Regular Meeting and the January 26, 2013 and February 2, 2013 Budget Meetings were accepted as submitted.

COUNCIL/COMMITTEE REPORTS

Councilwoman Kanigel - Finance and Licensing Committee

Library - The Library may submit a grant application to the County Preservation Trust.

Payment of Bills - Upon motion by Councilwoman Kanigel, seconded by Councilman Willer, and carried unanimously upon voice vote, that the bills presented to the Borough of Rockaway for payment by the Borough, as evidenced by proper vouchers, be referred to the Committee or unit contracting for same, and, when endorsed by them and approved by appropriate action of Council, that they are to be paid.

Upon motion by Council President Burnside, seconded by Councilman Donofrio, and carried unanimously upon voice vote, to accept the Finance and License Committee report.

Councilman Donofrio - Public Works/Public Utilities Committee

Public Works – The Department has been busy snowplowing and repaired the third water main break within a month.

Upon motion by Councilman Vicente, seconded by Councilman Mulligan, and carried unanimously upon voice vote, to accept the Public Works/Public Utilities Committee report.

Councilman Mulligan - Ordinance Committee

Ordinances - Councilman Mulligan briefly explained the ordinances that will be adopted this evening.

Upon motion by Councilman Vicente, seconded by Councilman Donofrio, and carried unanimously upon voice vote, to accept the Ordinance Committee report.

Councilman Vicente - Personnel

Personnel - Councilman Vicente discussed the grievance process. He developed a spreadsheet to define the dates for the various steps.

Interviews have begun for the Chief Financial Officer/Treasurer position and applications are being collected for the Recreation Director and Laborer positions.

Master Plan - The Zoning Officer felt that the Master Plan did not need to be reviewed at this time and recommended that the possible expansion of the Business Center designation be referred to the Land Use Board.

Upon motion by Councilman Vicente, seconded by Councilman Willer, and carried unanimously upon roll call vote, to refer the possible expansion of the Business Center designation to Beach Street to the Land Use Board.

Upon motion by Councilman Donofrio, seconded by Councilman Mulligan, and carried unanimously upon voice vote, to accept the Personnel Committee report.

Councilman Willer - Fire Committee

Community Development - The Borough will sit on the Housing Committee. The Borough's presentation is scheduled for March 4; there are only six applications for Improvements.

Fire Department - The Fire Department called drills on February 19 and 26, and accepted the applications of Tom Cryan for active duty and granted Jeff Weiler, Jr.'s application for membership.

Upon motion by Councilman Vicente, seconded by Councilman Donofrio, and carried unanimously upon voice vote, to accept the Fire Committee report.

Council President Burnside - Public Safety Committee

Public Safety - The Rockaway Rotary Club nominated Chief Douglas Scheer for Paul Harris recognition.

Upon motion by Councilman Vicente, seconded by Councilman Mulligan, and carried unanimously upon voice vote, to accept the Public Safety Committee report.

ATTORNEY'S REPORT

The attorneys received a check for \$700.27 from an individual who damaged a police car in December.

Mr. Wacks recommended that an ordinance be adopted to memorialize the Borough Engineer's recommendation that limitations be placed on the length of time that water capacity is reserved by applicants to the Land Use Board. He will draft an ordinance for the Ordinance Committee to review.

Upon motion by Council President Burnside, seconded by Councilman Mulligan, and carried unanimously upon voice vote, to accept the Borough Attorney's report.

MAYOR'S REPORT

Mayor Greuter read a press release announcing that Saint Clare's Emergency Medical Service will begin 24/7 coverage on Monday, February 18, 2013 at 6:00 a.m.

Mayor Greuter asked the Council to review the listing of Borough-owned properties for possible sale and to determine the minimum bid and if the parcels should be sold individually.

Upon motion by Councilman Mulligan, seconded by Councilman Donofrio, and unanimously carried via voice vote, to table the discussion until the budget meeting on February 16 so that additional information may be obtained from the Tax Assessor.

Upon motion by Councilman Mulligan, seconded by Councilman Vicente, and carried unanimously upon voice vote, to accept the Mayor's report.

RESOLUTIONS (CONSENT AGENDA ITEMS)

Upon motion by Councilman Willer, seconded by Councilman Mulligan, and carried unanimously upon call of the roll, the following resolutions were adopted:

RESOLUTION: 33-13 REFUND YEAR 2011/2012 STATE TAX APPEAL

BE IT RESOLVED, by the Mayor and Council of the Borough of Rockaway, County of Morris, to refund 2011/2012 State appeal for Block 81.03, Lot 5 in the amount of \$1,218.39 to William S. Winters, Esq. for Calbert & Jessica Valencia, 135 Andrea Drive, Rockaway, N.J. 07866.

DATE: February 14, 2013

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

RESOLUTION 34-13 – RESCIND RESOLUTION 18-13, AUTHORIZE SALE OF SURPLUS PERSONAL PROPERTY NO LONGER NEEDED FOR PUBLIC USE (TRAILER)

WHEREAS, on January 10, 2013, the Mayor and Council of the Borough of Rockaway adopted Resolution 18-13, Authorize Sale of Surplus Personal Property No Longer Needed for Public Use (Trailer), for the sale of a used 30-foot office trailer to the Township of Randolph, 502 Millbrook Avenue, Randolph, New Jersey 07869, for \$1.00 and other good and valuable consideration; and

WHEREAS, the Township of Randolph has informed the Borough of Rockaway that the trailer is no longer needed.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Rockaway, County of Morris, State of New Jersey that Resolution 18-13, Authorize Sale of Surplus Personal Property No Longer Needed for Public Use (Trailer), for the sale of a used 30-foot office trailer to the Township of Randolph, 502 Millbrook Avenue, Randolph, New Jersey 07869, is hereby rescinded.

DATE: February 14, 2013

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

RESOLUTION: 35-13 RESOLUTION OPPOSING A-1196

WHEREAS, Public safety employees and volunteers should be adequately compensated for on-duty accidents and illnesses; and

WHEREAS, New Jersey's current Workers' Compensation law is already one of the broadest in the country; and

WHEREAS, A-1196, as currently drafted, will make it almost impossible to contest claims from injuries and illnesses caused off-the-job; and

WHEREAS, this bill places the burden of proof on governmental employers to establish that an injury or illness, such as cancer, heart attack or hyper tension did not occur on the job; and

WHEREAS, the actuary for the Municipal Excess Liability Joint Insurance Fund (MEL) has estimated that A-1196 could easily double municipal Workers' Compensation expense of \$400 million per year; and

WHEREAS, the MEL and the League of Municipalities have offered to sit down with the supporters of this legislation to develop less expensive ways of improving the compensation to first responders.

NOW, THEREFORE, BE IT RESOLVED that the Governing Body of the Borough of Rockaway urge the legislature to reject A-1196 and urges the supporters of this legislation to work with the MEL and the League of Municipalities to develop less expensive ways to improve compensation to first responders; and

BE IT FURTHER RESOLVED that copies of this Resolution be forwarded to the Honorable Governor Chris Christie, the Honorable Speaker of the General Assembly Sheila Oliver, the Honorable President of the State Senate Stephen M. Sweeney, and our own State Senator and Representatives in the General Assembly, and to the New Jersey State League of Municipalities.

DATE: February 14, 2013

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

RESOLUTION 36-13: APPOINT ANIMAL CRUELTY INVESTIGATOR

BE IT RESOLVED, as recommended by the Health Officer, the Mayor and Council do hereby appoint Erika Barkman, Animal Control Officer, as the Animal Cruelty Investigator for the Borough of Rockaway effective February 1, 2013.

DATE: February 14, 2013

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

ORDINANCE NO. 01-13, Public Hearing & Adoption

**ORDINANCE OF THE
BOROUGH OF ROCKAWAY, COUNTY OF MORRIS, APPROPRIATING \$62,500.00
FROM THE COUNTY OF MORRIS,
COMMUNITY DEVELOPMENT REVENUE SHARING
FOR MANHOLE REHABILITATION**

BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, County of Morris, State of New Jersey as follows:

SECTION 1: The purpose described in Section 2 of this Ordinance is hereby authorized to be made by the Borough of Rockaway. There is hereby appropriated \$62,500.00 from the County of Morris, Community Development Revenue Sharing for the hereinafter designated purpose.

SECTION 2: The purpose authorized herein is for Manhole Rehabilitation.

SECTION 3: It is the opinion of the Mayor and Council of the Borough of Rockaway, County of Morris, that the appropriation from the County of Morris, Community Development Revenue Sharing and the use of the appropriation for said purpose is in the best interest of the Borough of Rockaway.

SECTION 4: All grant monies received for the purpose described in Section 2 hereof shall be applied to direct payment of the cost of the improvements.

SECTION 5: This Ordinance shall take effect according to law.

DATE: February 14, 2013

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

Mayor Greuter opened the meeting to the public. There being no comments, Mayor Greuter closed the public hearing.

On motion by Councilman Mulligan and seconded by Councilman Willer, the above mentioned ordinance was adopted by the following roll call:

Roll Call: Ayes: Donofrio, Kanigel, Mulligan, Vicente, Willer, Burnside
Nays: None

ORDINANCE NO. 02-13, Public Hearing & Adoption

**CALENDAR YEAR 2013
ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS
AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A:4-45.14)**

WHEREAS, the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous year's final appropriations, subject to certain exceptions; and,

WHEREAS, N.J.S.A. 40A:4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

WHEREAS, the Mayor and Council of the Borough of Rockaway in the County of Morris find it advisable and necessary to increase its CY 2013 budget by up to 3.5% over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

WHEREAS, the Mayor and Council hereby determine that a 3.5% increase in the budget for said year, amounting to \$179,082.86 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS, the Mayor and Council hereby determine that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, in the County of Morris, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2013 budget year, the final appropriations of the Borough of Rockaway shall, in accordance with this ordinance and N.J.S.A. 40A:4-45.14, be increased by 3.5%, amounting to \$179,082.86, and that the CY 2013 municipal budget for the Borough of Rockaway be approved and adopted in accordance with this ordinance; and,

BE IT FURTHER ORDAINED, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within five days of introduction; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within five days after such adoption.

RECORDED VOTE	(Burnside	((
	(Donofrio	(Abstained (
Ayes	(Kanigel	Nays	(
	(Mulligan	((
	(Vicente	(Absent (
	(Willer	((

DATE: February 14, 2013 BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk BY: Russell Greuter, Mayor

Mayor Greuter opened the meeting to the public. There being no comments, Mayor Greuter closed the public hearing.

On motion by Councilman Mulligan and seconded by Councilman Vicente, the above mentioned ordinance was adopted by the following roll call:

Roll Call: Ayes: Donofrio, Kanigel, Mulligan, Vicente, Willer, Burnside
Nays: None

ORDINANCE NO. 03-13, Public Hearing & Adoption

**ORDINANCE OF THE BOROUGH OF ROCKAWAY
MAYOR AND COUNCIL
AMENDING CHAPTER 23, DEFENSE AND INDEMNIFICATION**

WHEREAS, there have been many changes in the Municipal Excess Liability Joint Insurance Fund policies which have highlighted the need for the Borough of Rockaway to indemnify the elected officials, employees and appointees of the Borough of Rockaway against liability; and

WHEREAS, the Borough Attorney has recommended that Chapter 23, Defense and Indemnification, of the Code of the Borough of Rockaway be amended and clarified; and

WHEREAS, the Mayor and Council concur with the recommendation of the Borough Attorney.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, County of Morris, State of New Jersey, as follows:

Section I

1. Chapter 23, Defense and Indemnification, of the Code of the Borough of Rockaway, is hereby repealed in its entirety and modified to read as follows:

"§ 23-1. **Definitions.**

For the purposes of this Chapter, unless the context clearly indicates a different meaning:

"MUNICIPAL OFFICIAL" shall mean a present or former municipal employee, appointee, official, professional appointee, elected official or member of the various boards, agencies and commissions of the Borough of Rockaway, whether full or part time, appointed, elected or hired. The terms of this ordinance and the definition of official, employee and appointee are to be construed liberally in order to effectuate the purposes of this ordinance except that the terms shall not mean (a) any person who is not a natural person; (b) any person while providing goods or services of any kind under any contract with the Borough except for services provided pursuant to an employment contract or a professional services contract; or (c) any person while providing legal, engineering, accounting or other professional services for compensation if the action involves professional negligence and is otherwise covered by the person's professional liability insurance policy or unless said person is a full-time employee of the Borough of Rockaway. The use of the terms "official", "employee" or "appointee" shall include all such persons even if not specifically stated in this ordinance.

§ 23-2. Indemnification - Civil Actions.

Pursuant to the provisions of N.J.S.A. 59:10-1 et seq. and subject to the provisions of this Chapter, the Borough of Rockaway is authorized to and shall provide for the defense of actions brought against its municipal officials, employees and appointees, shall indemnify such officials, employees, and appointees to the extent permissible by law and shall save harmless and protect such persons from financial loss resulting from litigation. Such indemnification shall arise out of any action or legal proceeding of a non-criminal nature directly related, or incidental to, the performance of the duties of the position or office held by such municipal official, employee or appointee. Pursuant to N.J.S.A. 59:10-4, the indemnification and defense provided for in this ordinance shall include exemplary or punitive damages resulting from the official's, employee's, or appointee's civil violation of State or federal law provided such violation does not constitute actual fraud, actual malice, willful misconduct or an intentional wrong as may be adjudicated by a court of competent jurisdiction.

§ 23-3. Indemnification - Criminal Actions.

The Borough shall not defray the cost of defending any criminal action against any municipal official except as may be authorized by state statute or other municipal ordinance or resolution of the Borough of Rockaway, and in those circumstances, the responsibility for defraying the cost of defending such employee shall be applicable only when such criminal proceeding shall have been dismissed or result in a final disposition in favor of the municipal official. However, should the Mayor and Borough Council determine that there is good cause to dismiss the employee arising out of the incident(s) giving rise to the criminal prosecution, the Borough will not reimburse the municipal employee for legal defense and costs in defending this suit, even though criminal proceedings against the employee may be dismissed or the employee found not guilty.

§ 23-4. Notification of Borough; Cooperation with Borough.

The municipal official shall not be entitled to indemnification or reimbursement pursuant to this Chapter unless within ten calendar days of the time such municipal official is served with any summons, complaint, process, notice, demand or pleading, the official delivers the original or a copy thereof to the Borough Attorney or to the Municipal Clerk. The municipal official shall be obliged to cooperate with the Borough in the conduct of the municipal official's defense. Whenever competent and disinterested legal counsel is available to the Borough through any insurance coverage, the municipal official shall be obliged to be represented by such counsel. If the Borough wishes to use the Borough Attorney or the attorney for any board or Council of the Borough to defend that action, the municipal official shall be obligated to be represented by that attorney unless there is a conflict of interest. The refusal of the municipal official to reasonably cooperate with the Borough shall terminate the Borough's obligation to reimburse the municipal official.

§ 23-5. Method to Provide for Defense; Attorney's Fees.

If the Borough Council determines to provide a defense as authorized by this chapter, it may do so by:

- (1) Hiring an attorney of its choice; or
- (2) Reimbursing the municipal official for reasonable attorney's fees and costs incurred in connection with the defense of the act.

A resolution shall be adopted appointing counsel for the defense and determining counsel fees. The hourly rate shall not exceed the then rate paid to the Borough Attorney without a written resolution of the Council. Nothing in this ordinance shall preclude the Borough and/or Borough Attorney from demanding and reviewing periodically any costs and attorney's fees in connection with the defense of the municipal official. In the event a dispute over attorney's fees arises, the Borough reserves the right to submit the dispute to the Fee Arbitration Council of the District or pursue any other course of permissible legal action.

§ 23-6. Exceptions.

The Borough shall not be obligated to provide reimbursement in the following instances:

- (1) Where the act or omission was not within the scope of the municipal official's employment or authority;
- (2) Where the act or omission complained of was because of actual fraud, willful misconduct, actual malice or the commission of a crime;
- (3) Where the legal proceeding is instigated or brought by the Borough of Rockaway against the municipal official;
- (4) Where the legal proceeding involves a question concerning the election laws;
- (5) Where the action is brought against the Borough by the municipal official. If any such legal proceeding shall be dismissed or finally determined in favor of the municipal official or employee, the official or employee shall be reimbursed for the expense of the defense providing (a) the employee proves that the act or omission was within the scope of employment or authority and (b) the Borough fails to prove the act or omission complained of was because of actual fraud, willful misconduct or actual malice.
- (6) Where the defense of the action or proceeding would constitute a conflict of interest between the Borough and the municipal official.
- (7) Where the defense of the action or proceeding is covered by an insurance policy or policies; however, the Borough shall be responsible for the cost of the deductible.
- (8) Where the person is providing legal, accounting or engineering services for compensation and the legal defense is covered by the person's professional liability insurance. However, the Borough shall be responsible for the cost of any deductible of the employee's professional liability insurance policy.
- (9) The municipal official has failed to fully cooperate with the defense.
- (10) Where the act or omission is in violation of the New Jersey Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., or any ethics code adopted pursuant to the statute.

§ 23-7. Exclusive Control as a Condition for Defense.

The Borough shall have exclusive control over the representation of the municipal official and such person shall cooperate fully with the Borough and the designated attorney, provided, however, that the municipal official may at any time at the municipal official's option take control of the representation by waiving all rights to indemnification and all rights to payment for the defense costs.

§ 23-8. Reduction of Reimbursement.

The amount the Borough is obliged to reimburse the municipal official shall be reduced by any insurance coverage payable to the municipal official by the net amount, (that is, any recovery less attorney's fees, disbursements and Court costs), of any money received by the municipal official in any counteraction against the person or persons bringing the action against him or her.

§ 23-9. Approval of Settlement.

If the legal proceeding is terminated by an agreement among or between the parties, then the Borough shall not be obligated to reimburse the municipal official unless the Borough approves the settlement agreement.

§ 23-10. Cause Attributable to Counterclaim or Cross claim.

If the municipal official files a counterclaim or cross claim in the legal proceedings, the Borough shall not be obligated to reimburse for any attorney fees or court costs attributable to such action.

§ 23-11. Time of Payment.

The obligation of the Borough to reimburse a municipal official for expenses shall arise upon the official incurring the expense for the official's defense of the legal proceedings and shall be payable from time to time upon presentation of vouchers by the official for the services rendered and cost incurred.

§ 23-12. **Severability.**

Any article, Section or Subsection of this Ordinance is declared for any reason to be unconstitutional or invalid by a court of confident jurisdiction, such provision(s) shall be deemed severed from the remainder of the Ordinance and shall not affect the enforceability of the remainder of the Ordinance.

§ 23-13. **Repealer.**

Any and all ordinances or parts thereof inconsistent with the provisions of this ordinance are hereby repealed to such extent as they are so in conflict or inconsistent, provided, however, that the adoption of the ordinance shall not prevent or bar the continuance or institution of any proceedings for offenses heretofore committed in violation of any existing ordinance of the Borough of Rockaway.

§ 23-14. **Effective Date; Effect on Prior Actions.**

This chapter shall take effect upon final passage and publication according to law. Any legal proceeding which may be covered by this chapter which has not been reduced to a final judgment as of the date of passage shall be covered by the terms of this chapter."

Section II

1. This Ordinance may be renumbered for codification purposes.
2. All Ordinances of the Borough of Rockaway which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.
3. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.
4. This Ordinance shall take effect as provided by law.

DATE: February 14, 2013

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

Mayor Greuter opened the meeting to the public. There being no comments, Mayor Greuter closed the public hearing.

On motion by Councilman Mulligan, and seconded by Councilman Vicente, the above mentioned ordinance was adopted by the following roll call:

Roll Call: Ayes: Donofrio, Kanigel, Mulligan, Vicente, Willer, Burnside
Nays: None

PUBLIC PORTION

Mayor Greuter opened the meeting to the public.

Fire Chief Sam Passarella discussed the recent activities of the Fire Department.

Mrs. Bonnie Hook, Jackson Ave., asked for clarification regarding the possible expansion of the Business Center zone and the Community Development projects.

There being no further comments, Mayor Greuter closed the meeting to the public.

ADJOURNMENT

The meeting adjourned at 8:14 p.m.

Approved: As Submitted

Sheila Seifert, Borough Clerk

Date: February 28, 2013