

**MAYOR & COUNCIL
REGULAR MEETING
APRIL 12, 2012
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 7:33 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 April 12, 2012. Mayor Greuter announced the location of the fire exits.

Councilmembers Present

Joyce Kanigel
Thomas Mulligan
Joseph Vicente
John Willer

Councilmembers Absent

Thomas Donofrio
Melissa Burnside - Council President

Borough Attorney Ed Wacks was also present.

Everyone present participated in the salute to the flag.

APPROVAL OF MINUTES

Upon motion by Councilman Mulligan, seconded by Councilman Vicente, and carried unanimously upon voice vote, the minutes of the March 22, 2012 Regular Meeting and the April 2, 2012 Special Meeting were accepted as submitted.

CORRESPONDENCE

Mayor Greuter read the March 28, 2012 letter from Cristin Lee, 38 Farview Rd., requesting that a stop sign be installed at the intersection of Farview Dr. and Farview Rd. Police Chief Scheer has considered the request and recommends that a stop sign be installed on Farview Dr., as well as on Summit St. at the intersection of Van Duyne Ave. Councilman Willer expressed concern that cars will have difficulty stopping on the hill. Pending certification from the Borough Engineer, an ordinance will be prepared for introduction at the April 26 meeting for both signs.

Mayor Greuter read a letter from the Rockaway, Marcella and Denville Memorial Association requesting permission to hold its Memorial Day parade on Monday, May 28, at 11:00 a.m. It will begin at the corner of Beach and Main Streets and proceed to the Presbyterian Church Cemetery.

On motion by Councilman Willer, seconded by Councilwoman Kanigel, and unanimously carried by voice vote to accept the correspondence and approve the request.

COUNCIL REPORTS

Personnel Committee - Councilwoman Kanigel

The Historical Committee and Library Board of Trustees continue to work on grants.

Requested a closed session to discuss a personnel matter.

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

Ordinance Committee - Councilman Mulligan

Councilman Mulligan explained Ordinance 05-12 which is scheduled for adoption this evening.

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

Finance and Licensing Committee - Councilman Vicente

Payment of Bills

Upon motion by Councilman Vicente, seconded by Councilman Mulligan, 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.

At the special meeting held on April 2, some celebratory funds were restored to the budget, including the Fire Department banquet and 5K race.

Upon motion by Councilman Mulligan, seconded by Councilman Willer, and carried unanimously upon voice vote, to accept the Finance and Licensing Committee report.

Fire Committee - Councilman Willer

Fire Department

The Fire Department called drills on April 18 and 25 and accepted the resignation of Bob Hopler and Tiffany Hamman.

Upon motion by Councilman Willer, seconded by Councilman Mulligan, and carried unanimously upon voice vote, to approve the actions of the Fire Department.

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

ATTORNEY'S REPORT

Litigation

The attorneys filed the lawsuit against Annex Builders and are waiting for confirmation from the sheriff that they were served.

Tomco's insurance carrier has refused to insure them and defend them in the Donatoni litigation.

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

MAYOR'S REPORT

Mayor Greuter announced his intention to appoint Debbie Bernardo to fill the vacancy on the Board of Health, term to expire December 31, 2012.

Upon motion by Councilman Willer, seconded by Councilman Vicente, and carried unanimously upon voice vote, to concur with the Mayor's appointment of Ms. Debbie Bernardo to the Board of Health, term to expire December 31, 2012.

The EPA will hold an information session on Monday, April 16, at 7 p.m. at the Community Center regarding the ongoing work to clean up the contaminated groundwater of Superfund site. Representatives of EPA, Alliant Techsystems, Inc. and the U.S. Army Corps of Engineers will be available to discuss construction activities.

The pump for Well No. 5 located at 21-25 Union St., Rockaway, New Jersey failed and cannot be repaired. A temporary pump must be utilized until the permanent replacement pump can be installed. The purchase of the replacement pump is an emergency. A resolution will be added to the agenda to purchase the pump from A.C. Schultes, Inc. at a cost of \$35,863.00.

The additional cost for the Borough to "opt-in" to the Licensed Site Remediation Professional (LSRP) program with the NJ Department of Environmental Protection will require the Borough to pay an annual remediation fee of \$2,300 to the DEP.

Mayor Greuter met with area mayors regarding the de-snagging the Rockaway River and asked the Environmental Committee for assistance. The County Shade Tree and Mosquito Commission will also provide assistance.

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

CLERK'S REPORT

Bingo/Raffle License Approvals

Approved two-year senior (special) bingo license for St. Cecilia's Senior Citizens for May 19, 2012 to May 19, 2014.

Amended the on-premise pull raffle and bingo licenses for Camp Sunshine & Snowflake to reduce the number of events.

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

RESOLUTIONS 75-12, 76-12, AND 77-12

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

RESOLUTION 75-12: 2011 TONNAGE GRANT APPLICATION

WHEREAS, the Mandatory Source Separation and Recycling Act., P.L. 1987, c. 102, has established a recycling fund from which tonnage grants may be made to municipalities in order to encourage local source separation and recycling programs; and

WHEREAS, it is the intent and the spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and expand existing programs;

WHEREAS, the New Jersey Department of Environmental Protection is promulgating recycling regulations to implement the Mandatory Source Separation and Recycling Act; and

WHEREAS, the recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and

WHEREAS, the resolution authorizing this municipality to apply for such tonnage grants will memorialize the commitment of this municipality to recycling and indicate the assent of Mayor and Council to the efforts undertaken by the municipality and the requirements contained in the Recycling Act and recycling regulations; and

WHEREAS, such a resolution should designate the individual authorized to ensure the application is properly completed and timely filed.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Rockaway that the Borough of Rockaway hereby endorses the submission of the recycling tonnage grant application to the New Jersey Department of Environmental Protection and designates Sylvia Banbor, Recycling Coordinator, to ensure that the said Application is properly filed.

BE IT FURTHER RESOLVED that the monies received from the recycling tonnage grant be deposited in a dedicated trust fund to be used solely for the purpose of recycling.

DATE: April 12, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

RESOLUTION 76-12: AWARD PROFESSIONAL SERVICES CONTRACT (LICENSED SITE REMEDIATION PROFESSIONAL)

WHEREAS, there exists needs for the professional services of Licensed Site Remediation Professional ("LSRP") to the Borough of Rockaway; and

WHEREAS, said needs or certain specified professional services are to be rendered or performed by a person or persons authorized by law to practice a recognized profession whose practice is regulated by law within the meaning of N.J.S.A. 40A:11-2, et seq. as amended; and

WHEREAS, the performance of said professional services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal base of specialized training and study; as distinguished from general academic instruction or apprenticeship and training; and

WHEREAS, said professional services cannot reasonably be described by written specifications; and

WHEREAS, a Certificate of Availability of Funds has been filed by the Borough of Rockaway Chief Financial Officer; and

WHEREAS, the Borough of Rockaway has a need to acquire said professional services as a contract without public advertising pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, the services to be performed are "Professional Services" as defined in N.J.S.A. 40A:11-5(1)(a)(i) and therefore excepted from the Local Public Contracts Law requirements for competitive bidding.

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

1. The Borough of Rockaway, in accordance with the Local Public Contracts Law, hereby authorizes and approves the award of a professional services contract at cost not to exceed \$450.00 as noted on the schedule below to (a) prepare and file the Licensed Site Remediation Professional (LSRP) Notice of Retention to the NJ Department of Environmental Protection for the Borough to "opt-in" to the LSRP program; (b) sample groundwater to assess current conditions; (c) conduct a site visit to locate and inspect groundwater monitoring wells; (d) assess the location of the public supply wells relative to the former underground storage tank excavation; (e) observe the treatment system currently operating at the Public Works Yard; (f) provide a scope and cost estimate for sampling the wells, or if needed, to repair and/or place one or more of the groundwater monitoring wells to enable sampling. A copy of the contract is on file in the Office of the Clerk and incorporated herein by reference with terms and conditions as stated on the attached schedule. Said contract is hereby ratified and confirmed, and upon passage of this Resolution, the Mayor and Borough Clerk be and the same are hereby authorized to enter into said contract.
2. That this Contract is awarded without competitive bidding as a professional services contract under the provisions of the Local Public Contracts Law (N.J.S.A. 40A:11-1, et seq.) because such service is a recognized profession licensed and regulated by law.
3. That the Mayor and Council of the Borough of Rockaway, New Jersey hereby authorize and direct the execution of the aforesaid contracts for the period commencing on the date set forth therein.
4. That an executed copy of the Contract and a copy of this resolution shall be filed in the Office of the Borough Clerk and be available there for inspection in accordance with law.
5. That this resolution shall take effect immediately.

DATE: April 12, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

CERTIFICATION FOR AVAILABILITY OF FUNDS

I, JOHN J. DOHERTY, Borough Treasurer, of the Borough of Rockaway, in the County of Morris, Jersey, do hereby certify that funds in the amount as stated in their contracts are currently available for the purpose of awarding a contract for the furnishing of goods or services to the following entity:

H2M Associates, Inc., 199 Cherry Hill Rd., Parsippany, NJ 07054, (862) 207-5900, ext. 2221, at a cost not to exceed \$450.00.

Ordinance#: 3-01-05

DATE: April 12, 2012

BY: John J. Doherty, Treasurer

PROFESSIONAL SERVICES SCHEDULE

LICENSED SITE REMEDIATION PROFESSIONAL:

Sui Leong, P.E., LSRP
H2M Associates, Inc.
199 Cherry Hill Road
Parsippany, NJ 07054
(862) 207-5900, ext. 2221

1.	Licensed Site Remediation Professional	\$165.00 per hour
2.	Senior Scientist/Engineer	165.00 per hour
3.	Project Manager/Senior Geologist	145.00 per hour
4.	Staff Engineer/Scientist	85.00 per hour
5.	CAD Operator	85.00 per hour
6.	Technician/Administrative Assistant	58.00 per hour
7.	Mileage	\$0.55 per mile or IRS min./mile
8.	Other Direct Expenses	Cost plus 10%

RESOLUTION 77-12: AWARD CONTRACT (DEPARTMENT OF PUBLIC WORKS – PUMP FOR WELL NO. 5)

WHEREAS, pursuant to N.J.S.A. 40A:11-6 a contract may be negotiated or awarded without public advertising for bids where an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services, provided that the procedures set forth in that statute are followed; and

WHEREAS, Well No. 5 located at 21-25 Union St., Rockaway, New Jersey is a major supply of potable water for the Borough of Rockaway; and

WHEREAS, the pump for Well No. 5 has failed and cannot be repaired; and

WHEREAS, a temporary pump must be utilized until the permanent replacement pump for Well No. 5 can be installed; and

WHEREAS, the Superintendent, Department of Public Works, has certified that this situation constitutes an actual emergency affecting the public health, safety or welfare, of the Borough and its residents; and

WHEREAS, A.C. Schultes, Inc., 664 S. Evergreen Ave., Woodbury Heights, NJ 08097 (856-845-5656), has disassembled and inspected the vertical turbine pump that was recently removed from Well No. 5 and submitted a proposal to return Well No. 5 to proper operating condition; and

WHEREAS, a Certificate of Availability of Funds has been filed by the Borough of Rockaway Chief Financial Officer.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Rockaway, County of Morris, State of New Jersey, that the Borough of Rockaway Mayor and Council hereby find that an emergency condition exists with respect to pump for Well No. 5 located at 21-25 Union St., Rockaway, New Jersey, and that a contract to repair and replace the pump must be awarded on an emergent basis.

BE IT FURTHER RESOLVED, that a contract not to exceed \$35,863.00 for repair and replacement of the pump at Well No. 5, install and remove a temporary pump, and inspect and clean Well No. 5 is hereby awarded to A.C. Schultes, Inc., 664 S. Evergreen Ave., Woodbury Heights, NJ 08097 (856-845-5656) as specified by quote dated April 12, 2012.

BE IT FURTHER RESOLVED, that a copy of the said contract shall be available for public inspection at the offices of the Borough Clerk.

DATE: April 12, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

CERTIFICATION FOR AVAILABILITY OF FUNDS

I, JOHN J. DOHERTY, Borough Treasurer, of the Borough of Rockaway, in the County of Morris, Jersey, do hereby certify that funds in the amount as stated in their contracts are currently available for the purpose of awarding a contract for the furnishing of goods or services to the following entity:

A.C. Schultes, Inc., 664 S. Evergreen Ave., Woodbury Heights, NJ 08097 (856-845-5656), at a cost not to exceed \$35,863.00.

Ordinance#: 20-08-01, 08-09-01

DATE: April 12, 2012

BY: John J. Doherty, Treasurer

**DECLARATION OF EMERGENCY
PURSUANT TO N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1**

1. I am the Superintendent of Public Works for the Borough of Rockaway (the "Borough"). I make this declaration pursuant to N.J.S.A.40A:11-6 and with respect to the Borough's need for emergency goods and services, which requires the immediate delivery of those goods and services.
2. The circumstances are as follows: The pump for Well No. 5 located at 21-25 Union St., Rockaway, New Jersey failed and cannot be repaired. This is a major supply of potable water for the Borough of Rockaway. Relying on the other two wells to make up the difference could result in their failure. Furthermore, the emergency back-up well at Well No. 6-A is only a back-up- for Well No. 6 and cannot operate when Well No. 6 is in operation. A temporary pump must be utilized until the permanent replacement pump for Well No. 5 can be installed.
3. I am satisfied that this situation constitutes an actual emergency affecting the public health, safety or welfare, that the need for the necessary services could not have been reasonably foreseen, and that this situation has arisen notwithstanding a good faith effort on the part of the Borough to plan for the purchase of goods and services.

Dated: April 11, 2012

Joseph Rossi, Supt., Dept. of Public Works

RESOLUTIONS 73-12 AND 74-12

Upon motion by Councilman Willer, seconded by Councilman Vicente, and carried upon majority vote with Councilwoman Kanigel voting no, the following resolutions were adopted:

RESOLUTION 73-12: OPPOSE SENATE BILL 1451 REGARDING THE OPEN PUBLIC MEETINGS ACT

WHEREAS, legislation has been introduced to reform and modernize the Open Public Meetings Act (S-1451); and

WHEREAS, the governing body of the Borough of Rockaway agrees with and supports the statement that "the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process"; and

WHEREAS, the changes, however, proposed in S-1451 will not only be a cost driver for local and State government but make government less effective; and

WHEREAS, S-1451 includes a number of proposed requirements which involve costly unfunded mandates, impractical requirements and impediments to the democratic process, including the following:

- A new definition of subcommittees that expands subcommittees to be overly inclusive so that, for example, even research projects assigned to one member of a public body could be covered; and
- A new requirement that all subcommittees meetings include notice of their meeting and the preparation of minutes, which would, among other things, necessitate additional administrative support for all meetings of subcommittees as well as increased legal advertising cost; and
- A new requirement that agendas provide a description of all agenda items, including the names of parties to and approximate dollar amounts of any contracts to be acted upon, which will delay the award of contracts and could lead to the loss of grant monies; and
- A new requirement that the governing body may discuss, but not act upon, an item brought up by a citizen at a public meeting if it was not published as an agenda item, that not only runs contrary to the time honored tradition of holding a public meeting for the very purpose of soliciting such input and acting upon it but is impractical, ineffective and unnecessarily inhibits the operations of municipal government; and
- A new requirement for advance notification of estimated start times for the public portion of the meeting and the portion of the meeting from which the public is to be excluded that is unworkable and disruptive; and
- A new requirement that recordings of meetings become a part of the minutes that renders the recordings a permanent municipal record and is not only counter to the already-established records retention schedule of Division of Archive and Records Management for such records but which will be costly to preserve the records to ensure that they are permanent; and
- A new requirement that electronic communications, such as e-mails and text messages, concerning public business among an effective majority of the members that occurred prior to a meeting become part of the minutes and renders the recordings a permanent municipal record, is unworkable and unmanageable as the technology does not always exist to make "hard copies" or digital copies of text messages and the records custodian does not always have access to them, and which is an unprecedented expansion of the meeting concept; and

- A new requirement that public bodies be permitted to exclude the public from discussion of personnel matters only with the written consent of the employee and potentially affected employees which will inhibit the public bodies' ability to take necessary actions on personnel matters and could lead to costly litigation; and
- A new requirement that comprehensive minutes that must include each member's stated reason for their actions or vote, the identity of each member of the public who spoke, and summary of what was said, be made available to the public as soon as possible but no later than 45 days after the meeting that will not only be costly but the historical value of minutes will be lost in order to meet an arbitrary deadline; and

WHEREAS, the provisions of S-1451 place financial, time, manpower and other burdens on municipalities at a time when municipalities are forced to layoff municipal employees, impose furloughs and reduce departmental budgets so that municipalities can meet the strict CAP requirements with decreased revenues and increasing operating expense; and

WHEREAS, the totality of the new requirements of S-1451 will be a significant cost driver for local and State government with no known appropriation contemplated or any alternate means to offset these costs, such a reasonable increase in fees; and

WHEREAS, while the governing body of the Borough of Rockaway strives for and agrees that open and transparent government is essential to the democratic process, the provisions of S-1451 will make government inefficient;

NOW, THEREFORE, BE IT RESOLVED that the governing body of the Borough of Rockaway, County of Morris, and State of New Jersey for reasons stated above, does hereby oppose S-1451, as currently drafted, and strongly urges the State Senate and Assembly to oppose these bills; and

BE IT FURTHER RESOLVED that a copy of this duly adopted resolution be forwarded to Senate President Stephen Sweeney, Senator Loretta Weinberg, Assembly Speaker Sheila Oliver, Assemblyman Gordon Johnson, Assemblyman Upendra Chivukula, the legislators of the 25th State Legislative District, Governor Chris Christie, the New Jersey State League of Municipalities and the Municipal Clerks' Association of New Jersey.

DATE: April 12, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

RESOLUTION 74-12: RESOLUTION OPPOSING SENATE BILL 1452 REGARDING THE OPEN PUBLIC RECORDS ACT

WHEREAS, legislation has been introduced to reform and modernize the Open Public Records Act (S-1452); and

WHEREAS, the governing body of the Borough of Rockaway agrees that government records should be readily accessible and transparent but there must be an appropriate balance between the need for openness and transparency in government and citizens' reasonable expectation of privacy; and

WHEREAS, among the costly unfunded mandates and impractical new requirements of S-1452 are the following:

- The expansion of the definition of government record to include records that are required by law to be made, maintained or kept on file by any public agency that will lead to a records custodians to be in violation of OPRA for the non-existence of a government records created before their tenure with the public body; and
- The creation of a definition for "advisory, consultative or deliberative" material that may be contrary to the well established definition in case law leading to costly litigation; and
- The expanding of the definition of government record to include electronic communications, such as e-mails and text messages, concerning public business among an effective majority of the members that occurred prior to a meeting that is unworkable and unmanageable as the technology does not always exist to make "hard copies" or digital copies of text messages, the records custodian does not always have access to the electronic communications and certain cell phone carriers will not provide this information without a subpoena; and
- The inclusion of a subjective definition for "reasonable" that may be contrary to the well established definition in case law leading to costly litigation; and
- A new requirement that any video or audio recordings or public meetings should be available in unedited form will be in direct violation of the Open Public Meetings Act requirement that requires the redacting of discussions in closed session until the matter can legally be released; and

- A new requirement on how to handle redactions and special services fees is time consuming and costly, especially considering that the Government Records Council has already addressed these procedures in their Custodians' Toolkit, which should be codified; and
- A provision that permits the records custodian to advise a requestor that a government record is readily available on the public agency's website; however, the bill requires the records custodian to directly provide the records to the requestor if they do not have access to a computer but does not define what is meant by "access to a computer"; and
- A new costly requirement that when there is a special service charge the requestor must be provided, at no cost, an index generally describing the responsive government records to be provided and to the greatest extent possible the index shall include the name of each record or brief description of the record or general categories of records, a detailed breakdown of how the special charges were assessed and if records are exempt or redacted, the records custodian must provide a description of those records; and
- A provision that prohibits the assessment of a special service charge for requests for budgets, bills, vouchers, contracts and public employee salaries and overtime unless the request is deemed voluminous, which is undefined and subjective; and

WHEREAS, the provisions of S-1452 place financial, time, manpower and other burdens on municipalities at a time when municipalities are forced to layoff municipal employees, impose furloughs and reduce departmental budgets so that municipalities can meet the strict CAP requirements with decreased revenues and increasing operating expense; and

WHEREAS, the totality of the new requirements of S-1452 will be a significant cost driver for local and State government with no known appropriation contemplated or any alternate means to offset these costs, such a reasonable increase in fees; and

WHEREAS, while the governing body of the Borough of Rockaway strives for and agrees that open and transparent government is essential to the democratic process, the provisions of S-1452 will make government inefficient;

NOW, THEREFORE, BE IT RESOLVED that the governing body of the Borough of Rockaway, County of Morris, and State of New Jersey for reasons stated above, does hereby oppose S-1452, as currently drafted, and strongly urges the State Senate and Assembly to oppose these bills; and

BE IT FURTHER RESOLVED that a copy of this duly adopted resolution be forwarded to Senate President Stephen Sweeney, Senator Loretta Weinberg, Senator Barbara Buono, Senator Shirley Turner, Assembly Speaker Sheila Oliver, Assemblyman Gordon Johnson, the legislators of the 25th State Legislative District, Governor Chris Christie, the New Jersey State League of Municipalities and the Municipal Clerks' Association of New Jersey.

DATE: April 12, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

ORDINANCE NO. 05-12, Public Hearing & Adoption

Councilman Mulligan offered the following ordinance as read by title on second reading:

**ORDINANCE OF THE BOROUGH OF ROCKAWAY
MAYOR AND COUNCIL
AMENDING CHAPTER 61, PERSONNEL POLICIES,
OF THE CODE OF THE BOROUGH OF ROCKAWAY**

WHEREAS, it has come to the attention of the Mayor and Council that Chapter 61, Personnel Policies, of the Code of the Borough of Rockaway needs to be amended and clarified.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway as follows:

Section I - Article I, General Provisions

BE IT FURTHER ORDAINED that the following Section is hereby repealed in entirety and modified to read as follows:

§ 61-9.5. Americans with Disabilities Act.

- A. In compliance with the Americans with Disabilities Act, the ADA Amendments Act and the New Jersey Law Against Discrimination, the Borough does not discriminate based on disability. The Borough will endeavor to make every work environment handicap assessable and all future construction and renovation of facilities will be in accordance with applicable barrier-free Federal and State regulations and the Americans with Disabilities Act Accessibility Guidelines, as well as the ADA Amendments Act.

- B. It is the policy of the Borough to comply with all relevant and applicable provisions of the Americans with Disabilities Act, the ADA Amendments Act and the New Jersey Law Against Discrimination. We will not discriminate against any Employee or job applicant with respect to any terms, conditions, or privileges of employment on the basis of a known or perceived disability. We will also make reasonable accommodations to known physical or mental limitations of all Employees and applicants with disabilities, provided that the individual is otherwise qualified to safely perform the essential functions of the job and also provided that the accommodation does not impose undue hardship on the Borough.
- C. The Municipal Administrator shall engage in an interactive dialogue with disabled Employees and prospective Employees to identify reasonable accommodations. All decisions with regard to reasonable accommodation shall be made by the Mayor and Council. Employees who are assigned to a new position as a reasonable accommodation will receive the salary for their new position. The Americans with Disabilities Act does not require the Borough to offer permanent "light duty", relocate essential job functions, or provide personal use items such as eyeglasses, hearing aids, wheelchairs, etc.

Employees should also offer assistance, to the extent possible, to any member of the public who requests or needs an accommodation when visiting Borough facilities. Any questions concerning proper assistance should be directed to the Municipal Administrator.

Section II - Article II, Administration

BE IT FURTHER ORDAINED that the following Section is hereby repealed in entirety and modified to read as follows:

§ 61-16. Personnel authorized access to personnel files.

The official personnel file for each Employee shall be maintained by the Borough Clerk. Personnel files are confidential records that must be secured in a locked cabinet and will only be available to authorized managerial and supervisory personnel on a need-to-know basis. Records relating to any medical condition will be maintained in a separate file. Electronic personnel and medical records must be protected from unauthorized access.

Upon request, Employees may inspect their own personnel files at a mutually agreeable time on the Borough premises in the presence of the Borough Clerk or a designated supervisor. The Employee will be entitled to see any records used to determine his or her qualification for employment, promotion or wage increases and any records used for disciplinary purposes. Employees may not remove any papers from the file. Employees will be allowed to have a copy of any document they have signed relating to their obtaining employment. Employees may add to the file their versions of any disputed item.

Personnel files do not contain confidential Employee medical information. Any such information that the Borough may obtain will be maintained in separate files and treated at all times as confidential information. Any such medical information may be disclosed under very limited circumstances in accordance with any applicable legal requirements.

The Borough endeavors to maintain the privacy of personnel records. There are limited circumstances in which the Borough will release information contained in personnel or medical records to persons outside the Borough. These circumstances include:

- In response to a valid subpoena, court order or order of an authorized administrative agency;
- To an authorized governmental agency as part of an investigation of the Borough's compliance with applicable law;
- To the Borough's agents and attorneys, when necessary;
- In a lawsuit, administrative proceeding, grievance or arbitration in which the Employee and the Borough are parties;
- In a workers' compensation proceeding;
- To administer benefit plans;
- To an authorized health care provider;
- To first aid or safety personnel, when necessary; and
- To a potential future employer or other person requesting a verification of your employment.

Section III - Article III, Employment Practices

BE IT FURTHER ORDAINED that the following Sections are hereby repealed in entirety and modified to read as follows:

§ 61-33.1. Systems privacy (included email, voicemail, computer and Internet usage policy).

- A. The Borough respects the individual privacy of its Employees. However, email, voicemail, Internet, Borough-issued cellular devices and computer network are for official business, and use for non-business purposes is prohibited. All email, voicemail and Internet messages are public records subject to possible disclosure to the public pursuant to the provisions of the Open Public Records Act.
- B. Management's right to access information.
- (1) Email, voicemail and computer network systems have been installed by the Borough to facilitate business communications. The contents of the systems are accessible at all times by the Borough. These systems should be treated like other shared filing systems.
 - (2) Email and voicemail messages, to the extent these systems are utilized, are the Borough's records. The Borough reserves the right to monitor, obtain, review and disclose all email messages, computer files, voicemail and Internet messages on the computer and communications systems of the Borough as deemed necessary and appropriate and without prior notice. By using the Borough's email, computer systems, voicemail and the Internet, each user agrees that the Borough has unrestricted access and the right to disclose all information communicated or stored on the email computer systems, voicemail and the Internet.
- C. Care in use of email, voicemail, Internet and computer network systems.
- (1) Employees must exercise a greater degree of caution in transmitting the Borough's confidential information on the email, voicemail, Internet and computer network systems than they take with other means of communicating information, because of the ease with which such information can be redistributed and the public access to such information through the Open Public Records Act. Please make sure that all addressees are appropriate recipients of the information to be distributed, via email, voicemail, Internet, text message or other electronic forms of communication, especially when distributing information to a list of recipients.
 - (2) Except in emergency situations or as part of their officially assigned or regular or permitted duties, Employees are prohibited from taking any photographs, pictures, digital images or audio recordings of any crime scenes, traffic crashes, arrestees, detainees, people or job related incident or occurrence with any personal analog or digital device, camera, imaging device, audio recorder or cellular telephone. This section also applies in off duty scenarios regarding any law enforcement related activities. Any photographs, images or recordings taken with any personal device pursuant to or in violation of this section are considered evidence and are subject to applicable laws, code guideline or directive concerning storage release and disposal.

Employees who have recorded any photographs, images or recordings with any personal device shall notify their supervisors as soon as practical. For the purposes of this section, an "emergency situation" involves a sudden and unforeseen combination of circumstances or the resulting state that calls for immediate action, assistance or relief, and may include accidents, crimes and flights from accidents or crimes.
 - (3) Employees are prohibited from releasing or disclosing any photographs, pictures, digital images of any crime scenes, traffic crashes, arrestees, detainees, people or job related incident or occurrence taken with a personal or agency analog or digital device, camera or cellular phone to any person, entity, business or media or Internet outlet whether on or off duty without the express written permission of the Mayor and Council.
- D. Personal use of email, voicemail, Internet and computer network systems.
- (1) Because the Borough provides email, voicemail, Internet, cell phones, and computer network systems to assist Employees in performing their jobs, Employees should use them for official business. The Borough reserves the right to access and disclose as necessary all messages sent over its systems, without regard to content.
 - (2) Since the contents of email and voicemail may be accessed by the Borough without prior notice to Employees, and since the Borough can monitor Employees' use of its computer network systems, Employees should not use any of the systems to transmit any messages they would not want to disclose to a third party. Employees who maintain personal web pages and web sites, including but not limited to Facebook, YouTube, Myspace, Twitter, etc., shall not post information on such sites that would constitute a violation of the personnel policies of the Borough if expressed or published using any other medium or in any other manner. The posting of words, phrases, photographs, images or any kind of information on a personal web site may be grounds for the imposition of disciplinary action against the Employee if the words, phrases, photographs, images or information adversely reflects on the Employee's fitness for duty, constitutes a violation of the personnel policies, or criticizes or comments upon the action of another employee, official or contractual professional of the Borough. Moreover, Employees should not use these systems for soliciting or proselytizing others for commercial ventures, religious or personal causes, outside organizations or other similar, non-job-related solicitations.

- E. Forbidden content of email, voicemail, Internet and computer network systems communications.
- (1) Employees may not use the email, voicemail, Internet computer network systems, or Borough-issued cell phone or any other Borough-issued electronic device in any way that may be seen as insulting, defamatory, obscene, harassing, disruptive, or offensive by other persons or as harmful to morale. Examples of forbidden transmissions or downloads include sexually-explicit messages; unwelcome propositions; ethnic or racial slurs; or any other message that can be construed to be harassment or disparaging to others based on their actual or perceived sex, sexual orientation, gender, gender identity, transgender, race color, national origin, citizenship status, ancestry, age, marital status, medical condition, mental or physical disability, veteran status, religious or political beliefs, or any other characteristic protected by federal, state, or local law, ordinance or regulation.
 - (2) Violations of the Borough's policy of the use of email, voicemail, Internet, complete network systems and Borough-issued cell phone or any other Borough-issued electronic device will subject the Employee to discipline, up to and including immediate termination.
- F. Unauthorized access. Employees are prohibited from the unauthorized use of the password(s) of other Employees to gain access to another Employee's messages in the email, voicemail, Internet or computer network systems including but not limited to all secured access software that Employees may have access to.

Section IV - Article XVIII, Driver Criteria Policy

BE IT FURTHER ORDAINED that the following items of Section 61-139, Use of Borough-owned vehicles, are hereby repealed in entirety and modified to read as follows:

§ 61-139. Use of Borough-owned vehicles.

- D. Any Borough Official who is suspected of operating a Borough-owned vehicle while under the influence of drugs or alcohol may be suspended with or without pay or terminated.
- E. Any Borough Official using a cellular telephone while operating a Borough-owned vehicle must use a hands-free driving device.

BE IT FURTHER ORDAINED that the following items are hereby added to Section 61-139, Use of Borough-owned vehicles:

§ 61-139. Use of Borough-owned vehicles.

- G. Any Employee who is operating a Borough-owned vehicle and is involved in an accident must notify the immediate supervisor, Borough Clerk or Administrator within 24 hours. An Employee who fails to report such an instance is subject to disciplinary action, including demotion or termination.
- H. For purposes of this section 61-139, "vehicles" shall be defined to mean: cars, trucks, sports utility vehicles, fire trucks and other emergency apparatus, police cars, construction equipment, including but not limited to, backhoes, snow removal equipment, sewer flushing equipment, or other mechanical equipment such as but not limited to jackhammers.

Section V

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: April 12, 2012

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: Kanigel, Mulligan, Vicente, Willer
Nays: None

PUBLIC PORTION

Mayor Greuter opened the meeting to the public.

Fire Chief Mark Howarth, Mountain Rd., asked for additional information regarding EPA's upcoming April 16 meeting.

Bonnie Hook, 23 Jackson Ave., asked who the Borough's representative is for the EPA meeting. She believes that a professional from the Borough should know what is going on and what the EPA's intentions are. Mayor Greuter will attend the meeting.

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

DISCUSSION/HEARING - MOUNTAIN MAHA GAYATRI LIQUOR LICENSE

Mr. Tom Sateary, attorney for the Mountain Motor Inn, and Mr. Jagdish Patel, owner of the Mountain Inn, were present for the hearing for transfer of the liquor license from Mountain Maha Gayatri, Inc. to Ashish Dhruv LLC. Mr. Sateary explained that Ashish Dhruvi purchased the property in 2001.

Mayor Greuter received a complaint from a man who could not enter the building because of the steps and lack of a handicapped entrance. Mr. Sateary provided a photograph of a handicapped parking space and curb cut which are located at the third entrance in the back. The Governing Body agreed that a curb cut and handicap ramps should be located in the front.

Mr. Sateary will provide written confirmation and a new map indicating that the liquor license will only be used in the motel building.

Upon motion by Councilman Vicente, seconded by Councilman Mulligan, and unanimously carried via roll call vote, to authorize the Borough Attorney to prepare for the April 26 meeting a resolution to transfer the liquor license from Mountain Maha Gayatri, Inc. to Ashish Dhruv LLC

CLOSED SESSION

Upon motion by Councilman Mulligan, seconded by Councilwoman Kanigel, and adopted unanimously upon voice vote, the following resolution was adopted:

RESOLUTION 78-12: CLOSE MEETING TO THE PUBLIC

WHEREAS, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975, permits the exclusion of the Public from a meeting under certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances do exist;

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

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matters.
2. The general nature of the subject matter to be discussed is as follows: Personnel.
3. The minutes of the discussion shall be made public as soon as the matters under discussion are no longer of a confidential or sensitive nature.
4. This resolution shall take effect immediately.

DATE: April 12, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

Mayor and Council went into closed session at 8:22 p.m. and resumed the public meeting at 8:26 p.m.

ADJOURNMENT

The meeting adjourned at 8:26 p.m.

Approved: As Submitted

Sheila Seifert, Borough Clerk

Date: April 26, 2012