

**MAYOR & COUNCIL
REGULAR MEETING
OCTOBER 11, 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 7:30 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 October 11, 2012. Mayor Greuter announced the location of the fire exits.

Councilmembers Present

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

Councilmembers Absent

Joseph Vicente

Borough Attorney Ed Wacks was also present.

Everyone present participated in the salute to the flag.

PROCLAMATION

Mayor Greuter read a proclamation declaring October 10, 2012 as "Put the Brakes on Fatalities Day" and calling upon everyone to put lifesaving behaviors into practice to improve safety on the roadways in our community and throughout the state.

APPROVAL OF MINUTES

Upon motion by Councilman Donofrio, seconded by Council President Burnside, and carried unanimously upon voice vote, the minutes of the September 27, 2012 Regular Meeting were accepted as submitted.

CORRESPONDENCE

Mayor Greuter reported that he received a letter thanking the Borough for providing music at the Gazebo.

COUNCIL REPORTS

Personnel Committee - Councilwoman Kanigel

Public Works laborer Frank Rodimer did a nice job replacing a piece of damaged antique fence on Church St.

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

Public Works/Public Utilities Committee - Councilman Donofrio

The Hillside Ave. tank repainting and the salt dome/recycling center improvements projects are being worked on. The road resurfacing has been completed.

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

Ordinance Committee - Councilman Mulligan

The outdoor dining ordinances will have the public hearing and adoption this evening. Minor changes were made to Ordinance 16-12 to reflect current insurance language and to remove the prohibition of dogs at outside tables. Mr. Wacks agreed that these changes were not significant.

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

Fire Committee - Councilman Willer

Payment of Bills

Upon motion by Councilman Willer, seconded by Council President Burnside, 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.

Fire Department

The Fire Department called drills on October 4, 5, 15 and 24 and an officers' drill on the 29th and accepted the application of Andrew Stein for fire and first aid and requested permission for the equipment to participate in the Rotary Halloween Parade.

Upon motion by Councilman Willer, seconded by Councilman Donofrio, and carried unanimously upon voice vote, to approve the actions of the Fire Department and to grant permission for the Department to participate in the Rotary Halloween Parade.

The new fire truck arrived last week. Fire Chief Mark Howarth, who was in the audience, reported that the Department will suggest the names of several brokers to sell the old truck.

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

Public Safety Committee - Council President Burnside

Referring to the proclamation read earlier by Mayor Greuter, Council President Burnside reported that the Borough averages 30 motor vehicle accidents per month.

The canopy at the Police Station is being installed.

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

ATTORNEY'S REPORT

Mr. Wacks reported that the attorneys have worked on two ordinances for consideration: one to combine the two land use boards and one to eliminate the Board of Recreation Commissioners and create a committee.

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

MAYOR'S REPORT

Mayor Greuter thanked the Chief Howarth for the recent Fire Department dinner and he attended a "pajama day" at Bright Horizons Preschool.

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

CONSENT AGENDA ITEMS

Upon motion by Council President Burnside, seconded by Councilman Mulligan, and carried unanimously upon call of the roll, the following resolution was adopted:

RESOLUTION 147-12: DESIGNATE 2013 FLOATING HOLIDAY

BE IT RESOLVED, by the Mayor and Council of the Borough of Rockaway, County of Morris, New Jersey, that Friday, July 5, 2013 be and is hereby designated as the floating holiday for the year 2013.

DATE: October 11, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

ORDINANCE NO. 22-12, Introduction & First Reading

**ORDINANCE OF THE BOROUGH OF ROCKAWAY
MAYOR AND COUNCIL
CANCELLING ORDINANCE 14-07**

Council President Burnside moved that this ordinance be taken up and passed on first reading and that the Borough Clerk be authorized to have the ordinance published in accordance with the law in *The Citizen* and the *Daily Record* for hearing and final passage on November 8, 2012.

Said motion was seconded by Councilman Mulligan and passed as follows upon call of the roll:

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

ORDINANCE NO. 16-12, 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 THE CODE OF THE BOROUGH OF ROCKAWAY
TO ADD A NEW CHAPTER,
CHAPTER 177, OUTDOOR DINING**

WHEREAS, the Mayor and Council of the Borough of Rockaway recognize that there is a demand for outdoor dining at the Borough's restaurants and other food establishments licensed by the Health Department of the Borough of Rockaway; and

WHEREAS, the Mayor and Council recognize that outdoor dining can contribute to a vibrant street life and provide residents and visitors with additional dining options; and

WHEREAS, the Mayor and Council seek to streamline the approval process for outdoor dining establishments and to promulgate standards applicable to such establishments to assure that public health and safety are maintained.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, County of Morris and State of New Jersey, that the following amendments be made to the Code of the Borough of Rockaway:

Section I

1. The Code of the Borough of Rockaway is hereby amended by adding thereto the following new Chapter 177, Outdoor Dining, to read as follows:

"Chapter 177, Outdoor Dining.

§ 177-1. Purpose.

The purpose of this Chapter is to permit, subject to the terms and conditions of this Chapter and all applicable related ordinances, daytime and early evening outdoor dining on private property and sidewalks adjacent to local food and eating establishments for the enjoyment of patrons without disturbing the immediate neighborhood or pedestrian traffic. The regulations established by this Chapter are intended to promote and protect the public health, safety and general welfare of the residents of the Borough. These general purposes shall include, among others, the following specific purposes:

- A. To ensure that adequate space will be provided for emergency access to the establishment and for pedestrian circulation through areas where outdoor dining is permitted and to ensure adequate access to adjoining properties and businesses.
- B. To encourage the establishment of outdoor dining areas as one means of developing a pleasant and distinctive community atmosphere.

§ 177-2. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

ADJACENT BUILDING – The building whose principal façade fronts on the outdoor café.

ON-SITE CAFÉ – An outdoor café located entirely on private property.

OUTDOOR CAFÉ – A dining area with tables and chairs located outside the walls of a building housing a restaurant.

PERSON – Any individual, partnership, corporation, limited liability company, association, or other legal entity.

RESTAURANT – A commercial establishment where food and drink (including alcoholic beverages, if properly licensed) are prepared and served in a ready-to-consume state.

SIDEWALK CAFÉ – An outdoor café located in whole or in part on a public sidewalk.

§ 177-3. Outdoor dining license.

Subject to the terms and conditions of this Chapter, upon obtaining a license from the Borough Zoning Officer as provided herein, any person may operate an outdoor café within the Borough of Rockaway, in any zone in which a restaurant use is permitted, on private property or a sidewalk adjacent to an existing restaurant lawfully operated by such person. The establishment of an outdoor café pursuant to this Chapter shall not require the holder of said license to apply for site plan approval or to acquire any new and/or additional parking as a result of the grant of said license and the operation of an outdoor café.

§ 177-4. Exemption from licensing requirement; expansion of nonconforming uses prohibited.

- A. Notwithstanding any other provisions of this Chapter, any on-site café for which site plan approval has been granted by the Planning Board shall not be required to obtain an annual license as required herein and shall not be subject to the restrictions of this Chapter, except as otherwise required by said site plan approval.
- B. Any restaurant that is not a principal permitted use in the zoning district in which it is located may continue an outdoor café that is (a) a preexisting nonconforming use, as defined in the Municipal Land Use Law (MLUL), or (b) previously approved by the Borough of Rockaway Board of Adjustment. No outdoor café may be licensed hereunder if it represents an unlawful expansion of a nonconforming use, as determined by the Borough of Rockaway Board of Adjustment, in which event a variance must be obtained.

§ 177-5. Location and size limitations.

- A. An outdoor café must be located contiguous to and directly in front of a restaurant as hereinabove defined. The term "directly in front of" shall confine the outdoor café to the area represented by an extension of each side of the adjacent building or portion of the adjacent building occupied by the restaurant (whichever is smaller) projected directly to the curblin immediately in front thereof. No outdoor café may be located in a rear yard or side yard. An on-site café must be located on a pre-existing hard, level, manmade surface, such as concrete, asphalt or pavers. Elevated decks, porches, verandas and the like shall not qualify for licensing under this Chapter and shall require site plan approval. Restaurants located on corner lots may locate an outdoor café in either of the two front yards of the lot [but not both] and may use the sidewalk space fronting either side of the restaurant [but not both] for sidewalk cafe operations.
- B. Notwithstanding any other provision of this Chapter, an outdoor café licensed hereunder may not exceed 250 square feet in total area. The square footage of an outdoor café shall be measured from the façade of the building so that there is no "gap" between the building and the café.

§ 177-6. Application for license.

Application for the license required hereunder shall be made to the Zoning Officer and shall be signed by the applicant. The application shall contain the following information:

- A. The name, residence address and telephone number of each individual, owner or partner of the applicant. If the applicant is a limited liability company, the name, residence address and telephone numbers of all members and the name of the managing member, if any, shall be provided. If the applicant is a domestic corporation, the names, residence addresses and telephone numbers of the directors and officers owning a ten-percent or greater interest in the corporation and the chief operating executive of the corporation shall be provided. If the applicant is a nondomestic corporation, the same information as for a domestic corporation plus the name, residence address and telephone number of the managing officer for service of process within the State of New Jersey shall be provided and a copy of the qualification of said nondomestic corporation to conduct business in the State of New Jersey shall be submitted with the application.

- B. Any trade, corporate, business or fictitious name under which the applicant intends to do business pursuant to this article.
- C. The address and description of the place where the applicant intends to establish or operate an outdoor café, including a designation of the proposed outdoor café as an "on-site café", "sidewalk café", or both.
- D. A statement of the maximum seating capacity of the outdoor café and of the restaurant located in the adjacent building. A minimum of 10 square feet per seat is required for each table in the outdoor café. The number of tables may not exceed 6.
- E. The name and address of the owner of the adjacent building.
- F. The written authorization and approval the owner of the adjacent building.
- G. The applicable fee.
- H. A copy of a valid food establishment license issued by the Borough of Rockaway Health Department.
- I. If applicable, a copy of the liquor license and diagram of the licensed premises issued to the establishment.
- J. If the applicant is the owner of the adjacent building, proof from the Borough of Rockaway Tax Collector that taxes and assessments have been paid through the current quarter.
- K. Three sets of a proposed layout plan containing scaled drawings clearly illustrating the actual dimensions of the outdoor café to be utilized, and the building, street, and sidewalk upon which it fronts and on or adjacent to which it is to be located and the number, type of materials, color and location of all tables, chairs, umbrellas or other furnishings or fixtures intended to be located in the outdoor café. The perimeter of the outdoor café shall be defined and set off by a portable-type enclosure, which shall be illustrated on the layout plan and which may include live plantings. The physical delineation shall separate the area to be used as an outdoor café from the pedestrians traversing the adjacent sidewalk. The perimeter enclosure shall not contain doors or windows nor air conditioning or heating equipment and shall be open at all times to the air from a height of not more than three feet. Awnings and umbrellas without any form of lettering, marking or advertisement are permitted. The scaled drawings shall also illustrate the following:
 - (1) The location of any doors leading from the restaurant to the outdoor café. No such doors may be obstructed in any manner.
 - (2) The number of feet and location of unobstructed space permitting free passage of pedestrian traffic around or through the outdoor café, and the number of feet from the curb or from a parking area.
 - (3) The location of all fire hydrants, parking meters, utility poles, benches, handicap ramps, street furniture, trees and any other fixtures permanently located on the sidewalk in front of the restaurant or within 10 feet thereof on either or any side.
 - (4) The type and location of any proposed lighting fixtures for the outdoor café. Outdoor lighting shall be permitted only to the extent required to provide safe pedestrian flow and passage. Small individual table lighting is encouraged.
 - (5) The name and address of the person who prepared the layout plan.

§ 177-7. Review of application.

The Zoning Officer shall review the application for completeness and compliance with the terms of this Chapter. If the application is complete, the Zoning Officer shall act upon the same within 15 business days of the submittal of the application or within 10 business days after the application becomes complete. If the application is not complete, the Zoning Officer shall so notify the applicant within 10 business days of the submission and specifically detail the areas in which the application lacks compliance with the requirements of this Chapter. The Zoning Officer may also refer the application to the Chief of Police, the Fire Marshal, Health Officer, and the appropriate Uniform Construction Code Inspector(s) for their review and recommendation.

§ 177-8. Conditions for issuance of sidewalk café license.

- A. A license for a sidewalk café shall not be issued unless the applicant has furnished the following to the Borough:

- (1) A maintenance agreement pursuant to which the applicant, in consideration of the issuance of the license, shall agree, at the option of the Borough, either to repair at its sole cost and expense any damage caused to the sidewalk by the operation of the sidewalk café, or to reimburse the Borough in full for all costs and expenses incurred by it in making any such repairs. The agreement shall also provide that at the end of the license period, or in the event that the license is temporarily or permanently suspended or revoked, the applicant shall vacate the sidewalk space and remove any property placed thereon at its own cost and expense. Failure to do so on 5 days' written notice shall grant the Borough the right to remove any property on the sidewalk. The applicant shall reimburse the Borough for the cost of removing and storing the same. The Borough may require a bond to be filed by the applicant in an amount to be determined by the Borough to secure the applicant's financial obligations under the maintenance agreement.
 - (2) An indemnification agreement pursuant to which the applicant, in consideration of the issuance of the license, shall agree to forever defend, protect, indemnify and save harmless the Borough, its officers, agents and employees, from and against any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs resulting from injury to person(s) or property as a direct or indirect result of the operation of the sidewalk café or for injury to person(s) or property occurring on the premises occupied by the sidewalk café.
- B. The applicant shall provide to the Borough a certificate of insurance evidencing that it is covered by general liability insurance, which shall conform to the following requirements:
- (1) The policy shall be a comprehensive general liability policy, with coverage limits of at least two million (\$2,000,000.00) dollars each occurrence and aggregate to satisfy all claims arising from bodily injury or property damage as a direct or indirect result of the operation of the sidewalk café.
 - (2) The policy shall be issued by an insurance company duly authorized to transact business in New Jersey and shall name the Borough of Rockaway, 1 East Main Street, Rockaway, New Jersey 07866, its agents, officers, servants, representatives and employees as additional insureds.
 - (3) The insurance coverage required by this Chapter shall at all times be maintained for the full amount. The policy of insurance required by this section shall contain a clause obligating the company issuing the same to give not less than 30 days' written notice to the Borough Clerk before cancellation or amendments of any of the terms thereof. Notice of cancellation shall not relieve the company issuing such policy of liability for any injury or claim arising before the cancellation becomes effective. The cancellation of any such policy shall have the immediate effect of suspending the license of such person to operate the sidewalk cafe covered thereby until a new policy complying with the provisions of this section is filed with the Zoning Officer and a letter in writing confirming the new effective date of the license is issued by the Zoning Officer.
 - (4) Every insurance policy required hereunder shall contain a provision for continuing liability thereunder to the full amount thereof notwithstanding any recovery thereon, that the liability of the insured shall not be affected by the insolvency or the bankruptcy of the insured, and that until the policy is canceled the insurance company shall not be relieved from liability on account of nonpayment of premium or of any act or omission by the named insured. Such policy of insurance shall be further conditioned for the payment of any and all judgments up to the limits of such policy.
- C. As a condition of the issuance of an outdoor dining license, the Borough may require (1) the applicant to bring sidewalks into conformity with Borough requirements pursuant to Chapter 217, Streets and Sidewalks, of the Code of the Borough of Rockaway, or (2) the improvement of the area of outdoor café and the immediate vicinity to make the same safe for the public.

§ 177-9. Issuance of license; term of license; renewals.

If the applicant has complied with all requirements for the issuance of a license, the Zoning Officer shall issue a license strictly subject to the terms and conditions of this Chapter. Such license shall allow the operation of an outdoor café on any day of the year and shall be renewed annually during the month of January.

§ 177-10. Transfer of license prohibited.

The license is personal to the applicant, and any change or transfer of ownership of the applicant shall terminate the license and shall require a new application and a new license in conformance with all of the requirements of this article.

§ 177-11. Inspections; display of license.

Acceptance of the license by the applicant shall operate as a consent to the health, fire, police and building officials of the Borough to inspect the outdoor café for continued compliance with the terms and conditions of this Chapter and any federal, state, county or local law, article or regulation affecting the same. The licensee is required to display the license prominently in the front window of the adjacent building, facing the outdoor café.

§ 177-12. Revocation or suspension of license.

Any license issued hereunder is issued solely as a revocable license, which shall be subject to revocation or suspension by the Borough for failure of any licensee to comply with this article or for violation of any other applicable federal, state, county or municipal law, regulation or article. Any license issued hereunder is issued upon the express understanding that the licensee obtains no property right thereunder, nor any interest in the continuation of said license. It shall be unlawful for any person to operate an outdoor café without the applicable license or after the suspension or termination of the applicable license.

§ 177-13. Additional rights of the Borough.

In addition to the powers of suspension or revocation as set forth above, the Borough reserves the right to modify, suspend or revoke any license on 10 days' written notice if the Borough determines that pedestrian traffic is, in fact, impeded or made unsafe because of the operation of the outdoor café or because of any other safety issue which the Borough determines adversely affects the Borough because of such operation. The license may also be suspended or revoked on 5 days' written notice in the event that the Borough determines that it is necessary to utilize the sidewalk area or any part thereof for a public purpose, for the maintenance or installation of underground utilities or for any other reason related to municipal functions. In the event of an emergency, which emergency is certified by the Borough Clerk, the license may be suspended or revoked without notice.

§ 177-14. Rules, regulations and specifications.

- A. The outdoor café shall be operated and maintained by the same person who operates and maintains the related restaurant of which the outdoor dining area is a part and an extension. Service in the outdoor café shall be provided by persons engaged or employed for that purpose, and shall be furnished to seated patrons only. Food service shall be available at all times in which the outdoor café is open for business.
- B. All food and drinks served or consumed at an outdoor café shall be prepared and stored in the interior of the restaurant. No heating or cooking of food shall be permitted in outdoor cafés.
- C. The number of patrons served in the outdoor café shall be limited to the maximum number indicated on the outdoor café license. No persons other than those being served and restaurant personnel shall be within the outdoor café area except for those persons passing through the outdoor café area to enter or exit the adjacent building.
- D. No outdoor café shall be open for business prior to 7:00 a.m. nor remain open for business after the closing of the restaurant in the adjacent building, but in no event later than 10:00 p.m. All persons occupying the outdoor café shall vacate the same no later than 10:30 p.m. All equipment, tables, chairs, umbrellas, etc., pertaining to the outdoor café shall be removed from the outdoor café and secured within the confines of the adjacent building if the outdoor café is not used for a period in excess of 10 consecutive calendar days.
- E. Each licensee is responsible for keeping the area of the outdoor café and the adjacent walks, streets and other areas free and clear of any debris or litter occasioned by the café. Areas must be cleaned as needed and at the time that business is closed and at the beginning of each business day, but not earlier than 7:00 a.m. The surface of the outdoor café shall be washed and kept free of all debris. All foreign substances shall be removed from the sidewalk surface.
- F. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor café shall be located in such a way as to impede the safe and speedy ingress and egress to or from any building or structure. A minimum of three (3) feet of unobstructed paved surface must be available for pedestrian movement, including the unimpeded passage of emergency responders and handicapped individuals, around or through the outdoor café.
- G. No furniture, apparatus, decoration or appurtenance used in connection with the operation of a outdoor cafe shall be located in such a way that the paved sidewalk for the exclusive use of pedestrians (the "required pedestrian passageway") is less than one-half the width of the paved sidewalk or three (3) feet, whichever is greater, nor shall any such furniture, apparatus, decoration or appurtenance project or protrude into, on or above the required pedestrian passageway; provided, however, that awnings and outdoor umbrellas may extend not more than one foot beyond the enclosure delineating the outdoor café but the bottom edge of the same must be not less than seven (7) feet above the adjacent sidewalk. In the case of an outdoor café that abuts a private parking lot, the required pedestrian passage shall be maintained between the edge of the parking lot and the surface on which the outdoor café is located.

- H. Tables, chairs and umbrellas shall be uniform and complementary in color, materials and style and without any form of lettering, marketing or advertisement. No picnic-style tables are permitted. No tables, chairs or other equipment used in the outdoor café shall be attached, chained or in any manner affixed to any building, tree, post, sign, curb, sidewalk or other structure or equipment or property of the Borough within or near the licensed area.
- I. All equipment used in connection with the operation of an outdoor café must be anchored and/or weighted down in such a manner to prevent them from dislodging and injuring pedestrians or damaging vehicles.
- J. Heat lamps, fire pits, chimineas, and other outdoor fireplaces or heating devices as well as air-conditioning fans or cooling devices are prohibited.
- K. No vending machines of any kind are permitted within an outdoor café.
- L. One A-frame sign for the purpose of displaying the menu shall be permitted within the outdoor café. The sign shall comply with the applicable requirements of Chapter 172, Zoning, Article IV, Signs. All other signs are prohibited.
- M. No refuse containers shall be permitted on a public sidewalk.
- N. Smoking is prohibited in all outdoor cafés.
- O. State and local health, safety and sanitation regulations applicable to restaurants generally shall also apply to outdoor cafés, including without limitation the applicable requirements of the New Jersey Sanitary Code, N.J.A.C. 8:24-1 et seq., and N.J.S.A. 24:15-1 et seq.
- P. The licensee must comply with the restaurant requirements as to restroom facilities under the Uniform Construction Code, unless exempt therefrom.
- Q. Noise shall be kept at such a level as to comply in all respects with the provisions of the Borough Code. Music and any form of entertainment are prohibited.
- R. The outdoor area upon which an outdoor café has been authorized to operate pursuant to this Chapter may constitute premises duly licensed for the sale and consumption of alcoholic beverages; provided that the related restaurant of which the café is a part and of which it is an extension is so licensed; and provided further that specific approval has been obtained from the Borough for the extension of the alcoholic beverage consumption license to the outdoor café. Such approval shall be separate from, and must be obtained in addition to, the license to operate an outdoor café pursuant to this Chapter.
- S. Patrons of an outdoor café that does not have a liquor license to sell alcoholic beverages on the outdoor area upon which the outdoor café has been authorized to operate pursuant to this chapter may consume alcoholic beverages provided by such patron (BYOB), subject to the requirements of Chapter 91, Alcoholic Beverages, Article III, Drinking in Public Places, of the Code of the Borough of Rockaway.

§ 177-15. Enforcement.

The provisions of this chapter shall be enforced by the Rockaway Borough Zoning Officer, the Rockaway Borough Health Department or a member of the Police Department or the Fire Marshal. Upon a finding by the Zoning Officer, Health Department or a member of the Police Department or the Fire Marshal that a licensee has violated any provision of this section, the applicant shall be given notice to correct said violation. Upon failure to immediately correct said violation, the Rockaway Borough Zoning Officer may revoke the license to operate an outdoor café. Upon the revocation of such license, the licensee shall be entitled to a hearing before the Mayor and Council within 30 days, upon notice thereof, provided that a hearing is requested by the licensee in writing, within five days of revocation of the license.

§ 177-16. Violations and penalties.

Any person, firm or corporation violating any of the provisions of this Chapter shall, upon conviction thereof, be punishable by one or more of the following: by a fine of not less than \$100 nor more than \$2,000; by imprisonment not exceeding 90 days; or by a period of community service not exceeding 90 days, all in the discretion of the Court."

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: October 11, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

Mayor Greuter opened the meeting to the public.

Mr. Rob Grow, 110 Lakeside Dr., questioned why outdoor dining would be limited to the front of the building.

There being no further 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, Willer, Burnside
Nays: None

ORDINANCE NO. 17-12, 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 172, ZONING,
OF THE CODE OF THE BOROUGH OF ROCKAWAY**

WHEREAS, the Mayor and Council of the Borough of Rockaway have established a streamlined procedure for the licensing of outdoor dining at the Borough's restaurants and other food establishments licensed by the Health Department of the Borough of Rockaway; and

WHEREAS, to eliminate inconsistencies between the Zoning Ordinance and the outdoor dining licensing procedures, certain amendments to the Zoning Ordinance are required.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, County of Morris and State of New Jersey, that the following amendment is made to Chapter 172, Zoning, of the Code of the Borough of Rockaway:

Section I

1. Article VI, Borough Center Commercial District, Section 172-61, Borough Center District design criteria and bulk standards, is hereby modified to delete subsection B in its entirety. Subsection B shall be marked as "[Reserved]", such that the lettering of subsequent subsections shall remain unchanged.

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: October 11, 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 Council President Burnside, the above mentioned ordinance was adopted by the following roll call:

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

ORDINANCE NO. 18-12, 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 91, ALCOHOLIC BEVERAGES,
OF THE CODE OF THE BOROUGH OF ROCKAWAY**

WHEREAS, the Mayor and Council of the Borough of Rockaway wish to continue to afford diners at Rockaway Borough restaurants the opportunity to bring their own wine or malt alcohol beverages to those restaurants; and

WHEREAS, to preserve and uphold the public health, safety and welfare, it is in the best interest of Borough of Rockaway and its residents to promulgate appropriate practices and procedures to be used by "bring your own bottle," also known as "BYOB" restaurants, including those that offer outdoor dining, and to uphold those standards through the implementation of a licensing process.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, County of Morris and State of New Jersey, that the following amendments be made to the Code of the Borough of Rockaway:

Section I

1. Chapter 91, Alcoholic Beverages; Article III, Drinking in Public Places, is hereby amended to add the following:

"§ 91-18.1. "Bring your own bottle" ("BYOB") privilege.

- A. For the purposes of this section, the word "restaurant" shall not include "fast-food/carry-out restaurants" as defined therein. The word "provider" shall indicate the owner(s) and/or operator(s) of the establishment.
- B. Premises with BYOB privileges must comply with all applicable state, federal and municipal rules, regulations, statutes and ordinances pertaining to the consumption of wine or malt alcoholic beverages on a premise that is not licensed or permitted to sell or serve alcoholic beverages.
- C. The consumption of alcoholic beverages other than wine or malt alcoholic beverages shall not be permitted.
- D. There shall be no consumption of wine or malt alcoholic beverages by employees of the premises, but only by patrons who are seated for meal service at a table. No person waiting to be seated for service may consume or possess an open container of an alcoholic beverage while waiting to be seated for service.
- E. Except as otherwise permitted by Paragraph F of this §91-18.1, the consumption of alcoholic beverages by patrons may be permitted only in fully enclosed indoor dining areas of the premises.
- F. The consumption of alcoholic beverages by patrons may be permitted in outside cafés for which a license has been issued pursuant to Chapter 177, Outdoor Dining. Outdoor consumption of alcoholic beverages shall be permitted only by patrons who are seated for meal service at a table within the confines of the outdoor café. With the exception of sidewalk cafés licensed pursuant to Chapter 177, the consumption of alcoholic beverages by patrons on public access ways such as but not limited to sidewalks and/or driveways is prohibited at all times.
- G. The consumption of wine or malt alcoholic beverages shall be permitted only during the hours of 9:00 a.m. prevailing time to 10:00 p.m. Monday through Sunday.
- H. No BYOB provider shall charge any admission fee or cover, corkage or service charge.
- I. Pursuant to N.J.S.A. 2C:33-27, under no circumstances may any BYOB be advertised in any fashion by an unlicensed restaurant or other public place where food or beverages are sold to the general public.
- J. There shall be no storage of alcoholic beverages on the premises. Patrons shall not be permitted to deliver alcoholic beverages to the premises in advance or to leave alcoholic beverages on the premises to be consumed or to be picked up at a later time.
- K. Patrons who desire to consume wine or malt alcoholic beverages in the premises shall bring such beverages with them to the establishment. No delivery of alcoholic beverages by any person, including a licensed alcoholic beverage establishment, shall be permitted.
- L. Alcoholic beverages shall not be permitted to be stored, displayed or maintained on a service bar or service table and must be kept by the patron at the table at which the patron is seated.

- M. No BYOB provider or employee of a provider shall allow, permit or offer any alcoholic beverages to be consumed by any intoxicated person or by any person under the age of 21 years.
- N. A BYOB provider shall immediately report to the Police Department any incident of underage drinking or the presentation of false identification by an underage person and any incident involving the excessive consumption of alcohol by a patron. The failure to immediately report any such incident will result in the suspension or revocation of the BYOB privilege.
- O. A BYOB privilege may be suspended or revoked by the Mayor and Council for a violation of any of the foregoing regulations or any of the provisions of this section.
- P. Penalty. For a violation of any provision of this section, the maximum penalty upon conviction shall be as set forth in § 91-21 of this Code.
- Q. Suspension or revocation of BYOB privilege. Any violation of the provisions of this section by a BYOB licensee may result, in the discretion of the Borough Council, in the suspension or revocation of the BYOB privilege."

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. Any provision of this ordinance which is in conflict with the provisions of the New Jersey Alcoholic Beverage Law, Rules and Regulations as enacted and as amended from time to time shall be deemed superseded by such law, rule or regulation and that the provisions contained in this ordinance shall be inoperative, null and void to the extent of such inconsistency
5. This Ordinance shall take effect as provided by law.

DATE: October 11, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

Mayor Greuter opened the meeting to the public.

Mr. Grow asked if there would be a fee related to this ordinance and was told no. Councilman Mulligan further clarified that there are no fees associated with the outdoor dining ordinance.

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

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

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

ORDINANCE NO. 20-12, Public Hearing & Adoption

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

**ORDINANCE OF THE BOROUGH OF ROCKAWAY
MAYOR AND COUNCIL
AMENDING CHAPTER 139, FIRE PREVENTION AND PROTECTION,
AND CHAPTER A263, FEES,
OF THE CODE OF THE BOROUGH OF ROCKAWAY**

WHEREAS, the Fire Marshal of the Borough of Rockaway has observed that commercial businesses, including freight depots, recycling facilities, and storehouses, operating within the Borough of Rockaway store non-combustible materials and low hazard wares that do not ordinarily burn rapidly, such as products stored on wood pallets or in paper cartons without significant amounts of paper wrappings; and

WHEREAS, such commercial businesses do not presently meet the provisions established in Chapter 139, Fire Prevention, and are not subject to annual inspections; and

WHEREAS, the Fire Marshal has recommended that routine comprehensive fire inspections within all commercial businesses, be conducted to observe the presence of any flammable or unstable reactive liquids, or oxidizing and organic compounds for the purpose of eliminating the risks of actual occurrences of fires; and

WHEREAS, the Mayor and Council concur with the recommendation of the Fire Marshal and have determined that fees for said inspections shall be assessed to the owner(s).

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 139, Fire Prevention and Protection, § 139-22, Non-life hazard uses, Sub-section A(5) is hereby repealed in entirety and modified to read as follows:

"§ 139-22. Non-life hazard uses.

A. In addition to the registrations required by the Uniform Fire Code, the following non-life hazard uses shall register with the Bureau of Fire Prevention. These uses shall be inspected once per year and shall pay an annual fee to the Borough of Rockaway based upon the square footage of the space from which such use is conducted or upon the number of garages or storage areas within multiple family dwelling units as set forth in Chapter A263:

(5) Storage S-1 (moderate hazard S-1, low hazard S-2):

- S-1 1 and 2 story less than 5,000 square feet per floor
- S-2 (a) 1 story less than 10,000 square feet per floor
- (b) 1 and 2 story more than 10,000 square feet per floor
- S-G Garages or storage areas within multiple family dwelling units"

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

Section II

1. Chapter A263, Fees, Section A263-1, Fees established, Subsection E, Chapter 139, Fire Prevention and Protection, Subsection 2, Non-life hazard uses, is hereby repealed in entirety and modified to read as follows:

"E. Chapter 139, Fire Prevention and Protection.

(2) Non-life hazard uses:

(e) Storage S-1 (moderate hazard S-1, low hazard S-2).

- S-1 1 and 2 story less than 5,000 square feet per floor \$150.00
- S-2 (a) 1 story less than 10,000 square feet per floor \$250.00
- (b) 1 and 2 story more than 10,000 square feet per floor \$350.00
- S-G Garages or storage areas within multiple family dwelling units \$ 20.00 per area"

Section III

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: October 11, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

Mayor Greuter opened the meeting to the public.

Mrs. Joyce Freiermuth, 99 E. Flagge St., stated that the fees are high compared to Denville.

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

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

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

ORDINANCE NO. 21-12, Public Hearing & Adoption

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

**BOND ORDINANCE AMENDING SECTION 3 OF BOND ORDINANCE NO. 04-11
 ADOPTED MAY 12, 2011 TO MAKE CHANGES TO THE PROJECTS SET FORTH THEREIN
 AND TO MAKE SUCH OTHER CONFORMING CHANGES AS NECESSARY
 FOR SAID ACQUISITIONS TO BE UNDERTAKEN IN AND BY
 THE BOROUGH OF ROCKAWAY, IN THE COUNTY OF MORRIS, NEW JERSEY.**

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF ROCKAWAY, IN THE COUNTY OF MORRIS, NEW JERSEY (not less than two-thirds of all the members thereof affirmatively concurring), **AS FOLLOWS:**

SECTION 1. Section 3 of Bond Ordinance No. 04-11 adopted May 12, 2011 and entitled: **BOND ORDINANCE PROVIDING FOR VARIOUS IMPROVEMENTS IN THE BOROUGH OF ROCKAWAY, COUNTY OF MORRIS AND STATE OF NEW JERSEY, APPROPRIATING THE AGGREGATE OF \$1,713,175 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$1,627,515 BONDS OR NOTES OF THE BOROUGH TO FINANCE THE COST OF AND FOR MAKING THE DOWN PAYMENT FOR SAID IMPROVEMENTS HEREIN AUTHORIZED** to read as follows:

Section 3. The improvements hereby authorized and the purposes for the financing of which said obligations are to be issued is are as follows:

Improvement/Acquisition	Estimated Cost	Down Payment (Capital Improvement Fund)	Estimated Amount of Bonds & Notes	Period of Usefulness (Years)
1. Portable Message Sign for use by the Police Department, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore.	\$21,000	\$1,050	\$19,950	5
2. Rescue Pumper for Fire Department, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore.	\$560,000	\$28,000	\$532,000	10
3. Acquisition of Fire Department equipment including turnout gear and air bottles, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore.	\$30,175	\$1,510	\$28,665	5
4. Road Resurfacing and sidewalk repair programs, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore.	\$225,000	\$11,250	\$213,750	10
5. Acquisition of Street Sweeper, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore.	\$170,000	\$8,500	\$161,500	5
6. Acquisition of pick-up truck and Sewer Vac Truck, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$80,000	\$4,000	\$76,000	5
7. Acquisition and/or installation of truck wash, hydraulic lift system, and portable vehicle lifts, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$107,000	\$5,350	\$101,650	15
8. Fox Lake Dam repairs, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$320,000	\$16,000	\$304,000	15

9. Repairs and improvements to Police Station Bridge, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$35,000	\$1,570	\$33,250	15
10. Donatoni Park Improvements, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$50,000	\$2,500	\$47,500	15
11. Siding of Community Center, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$15,000	\$750	\$14,250	10
12. Park Lake Dredging, to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$50,000	\$2,500	\$47,500	15
13. Energy updated Borough wide including HVAC and lighting upgrade or replacement, and to include all improvements, equipment, costs and appurtenances related thereto and/or necessary therefore	\$50,000	\$2,500	\$47,500	5
TOTAL	\$1,713,175	\$85,660	\$1,627,515	

SECTION 2. The capital budget of the Borough is hereby amended to conform with the provisions of this ordinance to the extent of any inconsistency herewith. The resolution in the form promulgated by the Local Finance Board of the State of New Jersey showing full detail of the amended capital budget and capital program as approved by the Director, Division of Local Government Services, is on file with the Clerk of the Borough and is available there for public inspection.

SECTION 3. To the extent that any previous ordinance or resolution is inconsistent with or contradictory hereto, said ordinance or resolution is hereby repealed or amended to the extent necessary to make it consistent herewith.

SECTION 4. The provisions of this bond ordinance are severable. To the extent any clause, phrase, sentence, paragraph, or provision of this Ordinance shall be declared invalid, illegal, or unconstitutional, the remaining provisions shall continue in full force and effect.

SECTION 5. This bond ordinance shall take effect twenty (20) days after the first publication thereof after final adoption, as provided by the Law.

DATE: October 11, 2012

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

Mayor Greuter opened the meeting to the public.

Ms. Kathy Haake asked when the Park Lake dam work would be completed; we are still awaiting DEP approval.

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

On motion by Councilman Donofrio and seconded by Council President Burnside, the above mentioned ordinance was adopted by the following roll call:

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

PUBLIC PORTION

Mayor Greuter opened the meeting to the public.

Mr. Grow thanked everyone for their help with the recent river cleanup.

Mrs. Freiermuth stated that Angelo from Joseph & Sons and Kathy Haake cut up a lot of dead wood and cleared trails at the Beach St. River Park.

Ms. Kathy Haake, Rockaway Ave., suggested using Borough-owned property to develop a parking lot for the Beach St. River Park using the funds that were set aside for this purpose.

Fire Chief Mark Howarth, on behalf of the Fire Department, thanked the Council for the funds for the banquet; everyone had a good time.

Mr. Howarth inquired about the status of the Donatoni field litigation; Mr. Wacks reported that we are in mediation.

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

ADJOURNMENT

The meeting adjourned at 8:09 p.m.

Approved: As Submitted

Sheila Seifert, Borough Clerk

Date: October 25, 2012