

November 6, 2019

A regular meeting of the Board of Commissioners of the Borough of Deal, New Jersey was held on November 6, 2019 at 9:00 A.M.

Mayor Cohen lead the salute to the flag.

It was stated that in conjunction with the "Open Public Meeting Law", p.l. 1975 ch. 231, a notice required by this statute has been satisfied as per a resolution passed on December 9, 1997 at 5:05 P.M. at Borough Hall at a regular meeting of the Board of Commissioners, Borough of Deal, and Monmouth County, New Jersey.

Present: Mayor Cohen, Commissioner Ades & Commissioner Simhon  
Also Present: Paul Farnicola, Borough Attorney

It was moved by Commissioner Ades, seconded by Commissioner Simhon and carried that the minutes of the previous meeting held on October 4, 2019 be approved as recorded.

Ordinance 1198 to amend Chapter X – Traffic Ordinance was introduced on October 4, 2019 and the public hearing is scheduled for today, November 6, 2019. Mayor Cohen moved to open the meeting to public comment on Ordinance #1198, seconded by Commissioner Simhon and approved. The Mayor invited public comment. Mary Ann Cronheim, 88 Monmouth Drive, asked the Commissioners if this was for a personal spot on Wyckoff. Mayor Cohen stated that it would be. Mrs. Cronheim asked how that will be defined on the signage. Mayor Cohen stated that there were no issues with the prior handicap spot but could add a separate placard. Mrs. Cronheim also stated a separate placard should be given to the homeowner to identify his car. There were no other comments from the public and the public session was closed by the same vote.

### **ORDINANCE #1198**

#### **AN ORDINANCE AMENDING CHAPTER X OF "REVISED GENERAL ORDINANCES OF THE BOROUGH OF DEAL, 1982"**

Commissioner Simhon moved to adopt Ordinance 1198, seconded by Commissioner Ades. Roll Call: Ayes 3; Cohen, Ades & Simhon.

The following Resolutions were discussed and enacted:

Commissioner Simhon offers the following Resolution:

#### **Resolution 19-153**

WHEREAS, bids were received for the improvements to the Brighton Avenue Brook Drainage pipe within the Borough of Deal; and

WHEREAS, the Borough solicited proposals and received bids from four (4) vendors that includes the installation of larger storm water pipe along Brighton Avenue into an existing structure on Ocean Avenue, along with the milling and paving of a portion of Brighton Avenue; and

WHEREAS, proposals were received ranging in cost from a high of \$954,535.00 from T.R. Weniger, Piscataway, NJ, and a low bid of \$743,310.75 from Fernandes Construction, Monroe, NJ.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Borough of Deal hereby award the improvements to the Brighton Avenue

November 6, 2019

Brook storm water drainage pipe including the mill, paving and curb work for Parker Avenue, and Drummond Road as outlined in the specifications to Fernandes Construction, Monroe, NJ in the amount of \$743,310.75.

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades & Simhon

Commissioner Ades offers the following Resolution:

**Resolution 19-154**

**ESTABLISHING POLICIES AND PROCEDURES FOR THE PAYMENT OF CLAIMS  
AND CLAIMANTS SIGNATURE FOR PAYMENT**

WHEREAS, N.J.S.A. 40A:5-16(a) set forth the requirement, prior to payment of any local unit monies, for a claimant or vendor certification from the party claiming payment, that the bill or demand for payment is correct, and

WHEREAS, N.J.AC. 5:30-9A.6 and 5:31-4.1 allows local units greater discretion in implementing the claimant certification requirement, as well as nullifying the requirement in most circumstances; and

WHEREAS, as a continued internal control, N.J.S.A. 40A:5-16(b) requires local units to have a "written or electronic certification of some officer or duly designated employee of the local unit having knowledge of the facts that the goods have been received by, or the services rendered to, the local unit" prior to any disbursement of funds; and

WHEREAS, pursuant to N.J.A.C. 5:30-9A.6 and 5:31-4.1, the Borough of Deal desires to clarify and set forth revised requirements for Claimant "Vendor" Certifications.

NOW THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Borough of Deal that the Borough will no longer require a Claimant's "Vendor" Certification with the exception of the following circumstances:

- a. Reimbursement or advance of employee expenses
- b. Service(s) provided exclusively and entirely by an individual (sole proprietor).
- c. For any payment greater than or equal to \$1,000.

Seconded by Commissioner Simhon

Roll Call: Ayes 3; Cohen, Ades & Simhon

Commissioner Simhon offers the following Resolution:

**Resolution 19-155**

WHEREAS, the US Department of Transportation (USDOT) and the Federal Motor Carrier Safety Administration (FMCSA), under 49 CFR Part 382, has updated the controlled substance and alcohol use and testing policy; and

WHEREAS, the Board of Commissioners has determined that there is a need to continually review and update the Borough's personnel policies and procedures (contained in the Borough Employee Manual) on a regular basis to ensure that employees and prospective employees are treated in a manner consistent with these laws and regulations; and

November 6, 2019

WHEREAS, a recommendation to amend the following policies should be revised to maintain a high standard of employment conduct:

1. Section One: CDL Drug and Alcohol Testing Policy.

NOW, THEREBY, BE IT RESOLVED by the Board of Commissioners that the Personnel Policies and Procedures Manual attached hereto is hereby adopted to include any updates; and

BE IT FURTHER RESOLVED that these personnel policies and procedures shall apply to all Borough officials, appointees, employees, volunteers and independent contractors. In the event there is a conflict between these rules and any collective bargaining agreement, personnel services contract or Federal or State law, the terms and conditions of that contract or law shall prevail. In all other cases, these policies and procedures shall prevail; and

BE IT FURTHER RESOLVED that this manual is intended to provide guidelines covering public service by Borough employees and is not a contract. The provisions of this manual may be amended and supplemented from time to time without notice and at the sole discretion of the Board of Commissioners; and

BE IT FURTHER RESOLVED that to the maximum extent permitted by law, employment practices for the Borough shall operate under the legal doctrine known as "employment at will"; and

BE IT FURTHER RESOLVED that the Borough Administrator and all managerial/supervisory personnel are responsible for these employment practices. The Personnel Administrator and the Borough Attorney shall assist the Borough Administrator in the implementation of the policies and procedures in this manual.

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades & Simhon

Commissioner Simhon offers the following Resolution:

**Resolution 19-156**

**Resolution Calling for Study Commission to Review the  
Open Public Records Act**

WHEREAS, the Borough of Deal strongly believes in and supports open transparent government, and that citizens and residents have the right to be informed about the workings of government in order to best participate in a democracy; and

WHEREAS, on January 8, 2002 then Acting Governor DiFrancesco signed into law the Open Public Records Act (OPRA) which mandates that government records shall be available, with limited exceptions, for public access and simplifying the procedures for requesting such specific records; and

WHEREAS, the intent of the law was to provide the public with easy access to government records with an uncomplicated process for obtaining the records and eliminating bureaucratic red tape; and

November 6, 2019

WHEREAS, over the course of 18 years OPRA has been a positive light, but it has also been fraught with abuse and misuse, and has become an unanticipated financial cost to the taxpayers of New Jersey; and

WHEREAS, the Borough of Deal has labored under a well-intended law that has spiraled out of control, due to the volume and nature of requests, the cost to taxpayers in responding to the requests, and the potential liability in having to pay disproportionate prevailing party attorney's fees should the requests turn into litigated matters, as well as the liability in determining which documents shall be released, with or without redaction, while attempting to maintain individual privacy; and

WHEREAS, it is not only the volume of OPRA requests that challenge our resources, but it is also the cost associated with reviewing, retrieving, and processing the OPRA request(s) by public entity personnel and counsel and possibly defending our action(s) before the Government Records Council or in Superior Court; and

WHEREAS, the Borough of Deal received and responded to 196 OPRA requests in 2017, 204 OPRA requests in 2018, and to date has received and responded to 219 OPRA requests as of November 5, 2019; and

WHEREAS, the Borough of Deal municipal staff has spent approximately 109 hours responding to OPRA requests received in 2019 to date, and a yearly average of approximately 200 hours since 2017; and

WHEREAS, due to the often-conflicting case law and Government Record Council decisions, as well as the unique characteristics of OPRA request, the Borough of Deal must often times rely on the municipal attorney to review certain OPRA requests, resulting in additional fees; and

WHEREAS, with limited exceptions OPRA has not been amended to address the clear and apparent advancement in technology that has changed the way government records are created, stored, and/or transmitted; the various interpretive decisions; privacy concerns; abuse for commercial gain; and/or the ever-increasing cost to taxpayers; and

WHEREAS, as the current law approaches its twentieth (20th) anniversary it has outgrown its original intended use and has become ripe for comprehensive review and reform;

NOW, THEREFORE BE IT RESOLVED that the Board of Commissioners of the Borough of Deal appeals to the legislature to form a Commission comprised of Mayors, Municipal Clerks, Municipal Managers, Attorneys, Police Chiefs, open government advocates, privacy experts, members of the media, citizens and other appropriate stakeholders, to review and examine the effects of OPRA on local government and the needs to be fulfilled by the law, and use the Commission's findings to perform a comprehensive reform of OPRA; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to Assemblyman Eric Houghtaling, Assemblywoman Joann Downey, Senator Vin Gopal, Assembly Speaker Craig Coughlin, Senate President Stephen Sweeney, Senator Weinberg, Executive Director of the Government Records Council, the Governor of the State of New Jersey, the Municipal Clerks Association of New Jersey and New Jersey State League of Municipalities.

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades & Simhon

November 6, 2019

Commissioner Ades offers the following Resolution:

**Resolution 19-157**

WHEREAS, due to the fact the Board of Commissioners will be holding one meeting for the month of November; and

WHEREAS, payroll and miscellaneous expenses must be approved for payment.

NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of the Borough of Deal that payroll and associated deductions for the period ending November 30, 2019 be approved in the amount not to exceed \$300,000.00; and

BE IT FURTHER RESOLVED that the miscellaneous expenses not to exceed the amount of \$300,000.00 be paid at this time.

Seconded by Commissioner Simhon

Roll Call: Ayes 3; Cohen, Ades & Simhon

A report of the monthly activities, time and sick use for the Police Department in October was received from Chief Ronen Neuman.

A report of the Building Department for the month of October was received from Allison Gavin.

A report of the disbursement checks for the Municipal Court for October was received from Mary Ellen Supon.

A notice of public hearing was received from the Monmouth County Planning Board for the Monmouth County Open Space Plan 2019 as part of the Monmouth County Master Plan.

A letter was received from the NJ SEM advising that they have awarded the new gas supply contract starting December 2019.

A letter was received from the NJ League of Municipalities advising the Board is proposing a 2% dues increase for the calendar year 2020.

A Notice of Public Hearing was received from the Monmouth Municipal Joint Insurance Fund for the 2020 proposed budget.

A letter was received from the Monmouth County Clerk advising of their existing program "Honoring Our Heroes" initiative encouraging local businesses to offer special discounts or services to veterans.

A raffle application was received from Wag On Inn Rescue for an event on July 25, 2020 at the Deal Golf & Country Club. The Board of Commissioners approved the raffle license.

Commissioner Ades offers the following Resolution:

BE IT RESOLVED, by the Board of Commissioners of the Borough of Deal, New Jersey that the following bills reported by the finance committee be ordered paid and vouchers drawn for same as listed on page 19-11 of the Warrant Register in the amount of \$494,869.41.

Seconded by Commissioner Simhon

November 6, 2019

**Roll Call: Ayes 3; Cohen, Ades & Simhon**

Mayor Cohen moved to open the floor to public comments, seconded by Commissioner Simhon and approved.

Isadora Chamlin, 5 Poplar Avenue, stated to the Board of Commissioners that no one is living on her street and asked for the Commissioner to impress upon the homeowners to leave lights on. Mayor Cohen stated that a letter was sent to homeowners. Commissioner Simhon asked if a higher wattage street light would be better. Mrs. Chamlin stated she did not want to make it like Broadway. Mayor Cohen stated he will write another letter next summer. Mrs. Chamlin asked what was going on at the Deal Casino. Mayor Cohen stated he is waiting to hear back from the architect on redesigning the Casino. Mrs. Chamlin was also advised that the pool was being sandblasted and roof leaks on cabanas were being repaired. Mrs. Chamlin asked if the sand could be combed in front of the beach cabanas. Commissioner Ades stated that we have to be careful with the DEP and asked for a letter to be given to the DEP for her requests.

Barbara Coffey, 85 Norwood Avenue, stated to the Board of Commissioners that she submitted an OPRA request for leases and received redacted records with no renter names. Ms. Coffey provided a paper with OPRA regulations and stated that she wanted the leases with renter names. Ms. Coffey also asked for the agreement for the town reimbursement for legal expenses from the sale of Neptune Avenue. Mayor Cohen stated that he misspoke and though it was apart of the initial agreement. Ms. Coffey also stated the top of the initial agreement was not dated. Ms. Coffey asked for the parking proposal for the Conover Pavilion, Mayor Cohen stated that he just received it. Commissioner Ades stated that there were 220 spots. Ms. Coffey asked if there would be reserved spots for the DSN. Ms. Coffey stated to Commissioner Ades that he nodded his head yes. Commissioner Ades stated that he did not say yes. Commissioner Ades stated that you come here to find fault in what we do, you're not doing right by the people. Ms. Coffey asked Commissioner Ades if that was appropriate. Commissioner Ades stated Yes. Ms. Coffey asked for a written apology from Commissioner Ades, Commissioner Ades stated that he will not apologize. Ms. Coffey asked for the form for the furniture at the cabanas. Mayor Cohen stated that members would not be able to bring their own furniture but will provide tables and chairs throughout the Deal Casino for members and guests to use. Mayor Cohen stated the form will be put together before we open.

Mary Anne Cronheim, 88 Monmouth Drive, stated to the Board of Commissioners that she had nothing to add until the tirade. Mrs. Cronheim stated that we are here for the families. Commissioner Ades stated that you are not representing everyone. Mrs. Cronheim stated that we are citizens, you work for the citizens, you work for us.

Isadora Chamlin, 5 Poplar Avenue, stated to the Board of Commissioners that she agreed with Mrs. Cronheim and that more people should be here.

Barbara Coffey, 85 Norwood Avenue, stated to Commissioner Ades to write her an apology. Commissioner Ades stated he will not. Ms. Coffey stated you do things behind closed doors and it is illegal. Paul Fornicola, Borough Attorney, stated to Ms. Coffey that he just read the regulations provided by Ms. Coffey about the redaction of information for the OPRA request. Mr. Fornicola stated that exemption 24 is about the privacy interest of the residents. Mr. Fornicola stated the leases are only provided for the Borough to verify occupancy for their health and safety. Ms. Coffey stated that he did not provide the reason for redaction.

November 6, 2019

Mayor Cohen asked for any additional comments from the public, which there was none and closed the floor to public comments.

It was announced that the next meeting of the Board of Commissioners, which will be on Wednesday, December 11, 2019 at 9:00 A.M.

There being no further business or comments, it was moved by Mayor Cohen and seconded by Commissioner Simhon that the meeting be adjourned at 10:32 A.M.

SC \_\_\_\_\_

MA \_\_\_\_\_

DS \_\_\_\_\_

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Clerk