

May 3, 2021

The regular meeting of the Mayor and Council of the Borough of Bay Head was conducted on May 3, 2021 at 7:00 pm using the GoToMeeting platform.

Mayor Curtis called the meeting to order and welcomed everyone.

Tonight, we will attempt to go through the meeting as usual. There are six public comment sessions scheduled as part of this meeting. One for resolutions, three for each ordinance, one for the budget hearing and one during the public discussion portion of the meeting. At the appropriate time, I will open the floor to public comment. If a member of the public wishes to comment they must state their name. I will recognize each person separately and relinquish the floor to that person. Once I have relinquished the floor, the person who wishes to comment must once again state their name and provide their address for the record. I will continue this process until all comments are heard. I will then close the floor to public comment and move to the next item on the agenda.

Mayor Curtis asked everyone to stand and join in the Pledge of Allegiance to the Flag.

Mayor Curtis read the following statement:

Ladies and gentlemen, pursuant to the applicable portions of the New Jersey Open Public Meetings Act, adequate notice of this meeting has been given. This meeting is listed on an annual schedule of meetings of this Governing Body which was posted on the bulletin board at 83 Bridge Avenue on January 7, 2021 and was published in *The Ocean Star* on January 15, 2021 and the *Asbury Park Press* on January 14, 2021.

The roll was called for attendance. Present were Mayor Curtis, Councilmembers Gates, Cornell, Barnes, Shaning, MacPherson and Borough Attorney, Jean Cipriani. Councilmember Lyons and Borough Administrator, Chris Parlow were absent.

Councilmember Barnes moved to approve the regular and executive minutes of April 5, 2021. The motion was seconded by Councilmember Gates and passed on roll call vote. YEAS: Gates, Cornell, Barnes, MacPherson, Shaning. NAYS: None.

Mayor Curtis: Tonight we will conduct the process to adopt our Municipal Budget and called for Ordinance, Second Reading, Public Discussion and Vote.

Ms. Applegate read Ordinance 2021-05 by title:

AN ORDINANCE OF THE BOROUGH OF BAY HEAD, OCEAN COUNTY, STATE OF NEW JERSEY, TO EXCEED 2021 BUDGET CAP APPROPRIATIONS LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A:4-45.14)

Councilmember Barnes moved to approve this ordinance be adopted on second reading and final passage. The motion was seconded by Councilmember Gates.

Mayor Curtis opened the meeting to the public for a public hearing on this ordinance.

There being no questions or comments the public hearing was closed.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of this Ordinance is attached to these minutes.

Mayor Curtis called for Resolutions concerning the Budget. The title of each resolution was read by the Clerk:

Resolution 2021-78
Authorizing the 2021 Budget to be Read by Title Only

Resolution 2021-79
Authorizing Self-Examination of Budget for 2021

Councilmember Barnes moved the resolutions be adopted. The motion was seconded by Councilmember MacPherson.

Mayor Curtis asked if there were any questions from the public concerning the resolutions.

Mr. Brennan, 157 Osborne Avenue: Resolution 2021-78 allows the Budget to be read by Title Only. Where can I find a copy of the budget?

Mr. Antonides: It is posted on the Borough website under Finance Department.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of each resolution is attached to these minutes.

Mayor Curtis: We will conduct the public hearing on the budget but first I would like to introduce William Antonides, CFO. I also want you to know this is strictly the Boroughs and does not include the Board of Education.

Mr. Antonides: The budget is within both of our caps. The appropriations cap, which limits the amount we can actually spend, and also the tax levy cap, which is the amount that we can raise by taxes. The tax levy cap is \$4,602,000 so we are under our allowable levy cap by \$336,000. The municipal tax rate for 2021 is \$.244 per \$100 of assessed valuation, an increase of \$.013 over the 2020 tax rate of \$.231. The owner of home assessed at the average of \$1,585,342, the municipal tax bill increase would be \$206.09, paying \$3,868.23 in municipal taxes this year. Some major items that have caused the tax increase this year include contribution to the state pension for Public Employees Retirement System up by 13 percent and Police and Fireman's Pension up 20.8 percent. Also we had to purchase body cams which are now required and NJ Transit legal bills.

Mayor Curtis opened the meeting to the public for the hearing on the Budget.

There being no questions or comments the public hearing on the 2021 Budget was closed.

Ms. Applegate read Resolution 2021-80 by title – Amendment to the 2021 Municipal Budget. Councilmember Barnes moved this resolution be adopted. The motion was seconded by Councilmember Gates.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of the resolution is attached to these minutes.

Ms. Applegate read Resolution 2021-81 by title – Adoption of 2021 Municipal Budget. Councilmember Barnes moved this resolution be adopted. The motion was seconded by Councilmember Cornell.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of the resolution is attached to these minutes.

Mayor Curtis thanked Bill Antonides, CFO; Councilmember Lyons and his committee for all their work on the budget.

Mayor Curtis called for Committee Reports.

Councilmember Gates, Public Services, read the Construction Official, Zoning Official and Code Enforcement report of the month of April. A copy of each report is attached to these minutes.

Councilmember Cornell, Public Works: The Public Works Report for the month of April is posted for your review. We took delivery of our new loader. We have been mulching the parks and building grounds. The comfort station has been painted and is now open. Resolution 2021-88 will be offered tonight and that will start the process by our engineer, O'Donnell Stanton to survey and design Lake Avenue, south of Bridge. This work will be done with a DOT Grant so we are limited as to what we can do. We are also working with our engineer on a flood survey. The Environment Commission is also working on this project to try and mediate flooding in town. If you are concerned about a section of town where flooding occurs, please reach out to me. Lastly, Howe Park has been seeded and the grass is growing. We are making progress.

Councilmember Barnes, Legal and Planning: There have been a lot of questions about the interpretation of various ordinances. I have been in discussion with Jean about those. We are also working on a few litigation matters which are ongoing. So legal has been relatively busy. Tonight we have two ordinances up for adoption – one amending Chapter 174, Peace and Good Order and the other amending Chapter 66, Alcoholic Beverages which addresses consumption on private property.

Councilmember Shaning, Public Safety, read the Police Activity report and the Fire Department report for the month of April. A copy of the report is attached to these minutes.

Councilmember MacPherson, Parks, Grounds and Recreation:

Bay Head Summer Camp will be July 5, 2021 to August 13, 2021 and the application will be posted on our website. We are hoping to have it at Bay Head School and all precautions will be taken.

The second annual Memorial Day Parade will be held on May 31, 2021 at 10 am. The parade will include the Bay Head Fire Department and our Police Department driving around town. Last year was the first and everyone is very excited to have it again this year.

April is Child Abuse Month and pinwheels were placed in the Scow Ditch Park by the Blue Star Memorial Garden. Please take one and place in in your garden.

Earth Day was celebrated on April 24th with a number of events in the Municipal Parking Lot. Participating in the event was the Environmental Commission, Public Works, Safe Barnegat Bay, Salt Water Warriors and there was a Farmers Market. I want to thank Karen Benziger, she did a great job.

Hands Around Twilight Lake followed the Earth Day events and was well attended. Thanks to Bev Furze and Ellen Nolan.

Beautification Committee is looking for volunteers so if you are interested or have ideas please join us.

Mayor Curtis called for Clerk's Correspondence.

Ms. Applegate offered the following requests:

Request from Tara Monaghan, 165 Cranberry Avenue to close Holly Avenue, north of Cranberry Avenue on June 25, 2021 for her Wedding celebration.

Request from Andrea Dalton, BHBA to hold their annual Farmers Market on Thursdays, June through September from 1 to 6 pm beside Manasquan Bank.

Application for Raffle License from the Bay Head Home and School Association for their Duck Derby to be held on Saturday, August 7, 2021.

Any approval will be regulated by the Executive Order at the time of the event.

Councilmember Barnes moved to approve the requests which was seconded by Councilmember Shaning. The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None.

Mayor Curtis called for Resolutions.

The title of each resolution was read by the Clerk.

Resolution 2021-82

Authorizing extension of the Contract with Suburban Disposal, Inc. for Solid Waste Disposal Collection Services

Resolution 2021-83

Appointing John Skinner as Part-Time Special Law Enforcement Officer, Class II

Resolution 2021-84

Authorizing the Execution of an Employment Agreement with Todd J. Morgano, Part-Time Construction Official, Building Subcode Official and Building Inspector HHS

Resolution 2021-85

Awarding Contracts for Lease of Real Property for the Design, Permitting, Construction and Maintenance of a New, Self Supporting 150' Tree Monopole and Related Facilities at Bay Head Recycling Center to New Cingular Wireless PCS, LLC, and Cellco Partnership d/b/a Verizon Wireless

Resolution 2021-86

Awarding the Execution of an Agreement with the Bay Head Improvement Association for Beach Operations for the 2021 Season

Resolution 2021-87

Authorizing the Execution of an Addendum to the OCCARES Grant Program Agreement with the County of Ocean

Resolution 2021-88

Awarding a Professional Services Contract to O'Donnell Stanton & Associates to provide Surveying, Engineering, Design, Bidding, Construction and Inspection Services for the Lake Avenue & Maple Drive Road Improvement Project

Councilmember Barnes moved the above resolutions be adopted. The motion was seconded by Councilmember Shaning.

Mayor Curtis asked if there were any questions from the public concerning the resolutions presented.

Michael Kaschak, 229 Evergreen Drive: Carol and I are opposed to the cell tower being place at the Recycle Center.

Mayor Curtis: The cell tower has been discussed at numerous meetings for close to a year. No Site is appealing to all people. I will let Declan O'Scanlon, Cell Consultant and Borough Attorney, Jean Cipriani answer questions on that.

Mr. O'Scanlon: Michael, I hear you. I can tell you Bay Head has done an exhausted job. There is an existing site on the water tank, that all the others in the area were based on. They looked and this is the best location within Bay Head. If the tower is not constructed, you will forgo cell coverage. There is not a better or appropriate location.

Mr. Kaschak: What is wrong with the temporary location at the Bay Head Firehouse?

Mr. O'Scanlon: That location is much more impactful being in the middle of town.

Mr. Kaschak: I think it fits really well there.

Councilmember Shaning: Are you new to town?

Mr. Kaschak: 21 years as a full time resident.

Councilmember Shaning: Have you had the opportunity to attend the meetings and hear from the committee of 22 residents and experts discuss this matter?

Mr. Kaschak: It was just brought to my attention.

Councilmember Shaning: I would like everyone to know what an informed, extensive research was done by the Cell Tower Committee.

Angela Vaughan, 253 Evergreen Drive: I overheard someone talking about it at the Recycle Center. We haven't had adequate notice to voice our concerns that we are opposed to the resolution.

Ms. Cipriani: Unfortunately this happens sometimes. By my count this has been discussed at approximately 12 meetings. It has also been posted to the website. A committee was formed to study and make a recommendation. In this case Bay Head has gone far above and beyond the legal requirements. I am sure there are also those who object to the temporary. There is always controversy with cell towers. It is important to note that this resolution, that is on tonight will not become effective until Ordinance 2021-10 is adopted. It is up for introduction tonight and will be scheduled for second reading and public hearing on June 7th.

John Berko, 248 Park Avenue: The committee report was presented at the January meeting, without having people, who would be affected by it review it to be able to comment. I would like to have the opportunity to appear in an in person meeting to discuss. There is no rush to adopt tonight. We would like to discuss how the equipment will be handled; it also abuts the wetlands so please consider postponing for a while.

Ms. Cipriani: The Resolution is not effective until the June meeting. I did hear you and will see what has been provided as to the equipment. I did receive correspondence from your attorney.

Mr. Berko: If legal, I would like the June meeting to be in person.

Joanne Pehlivanian, 332 Western Avenue: It has been very difficult to listen to. The tower behind the Fire Company is fine – they are willing and happy to have it on their property. Why can't it remain there? Are we advertising for other cell companies to come and sit on the tower at Public Works? The Borough Administrator and Mr. O'Scanlon are the ones pushing this. I have been aware but I don't think those west of Twilight Lake know what is happening. I don't think we should have outsiders telling us how our town should be.

Mr. O'Scanlon: I resent your statement. I am here to help the municipality. I haven't pushed anything. The plan is in place to make sure people have cell coverage. We looked at all avenues exhaustively, just for the record.

Ms. Cipriani: The Governing Body based their decision on the evidence in town. The tower needs to be in town. Mr. Berko, the report and the power point presentation is always available. Notice has been sufficient and the Governing Body has tried to make it available to everyone. The report was the work of the committee and Mr. McGoey presented the power point to everyone at the meeting of January 4, 2021.

Mr. Berko: I commend Mr. McGoey and have spoken to him more than once. You can't expect people to look at a presentation without studying it – it is impossible to look at a detailed report and approve in one meeting. No one saw the report ahead of the meeting. I heard a rumor that stated Mr. O'Scanlon only gets income if the tower is on public land.

Mr. O'Scanlon: I have recommended municipalities not to move forward on many projects. Do I only get paid if the project goes forward – I could bill no matter what but I am not out to take taxpayers money. I will get paid for the work done at the Firehouse. I do not get paid if this project doesn't get done.

Mr. Berko: In a sign of good faith I ask you to put this off. Many haven't heard a word about it.

Ms. Cipriani: You have made your point. We are in May and the process continues. It will not end until the June meeting.

Councilmember Gates: The report is available which shows the process taken. All alternatives were presented.

Mr. Berko: It was a detailed report that the public was not privy to. I called Sacred Heart Church and they weren't asked about placing it on their steeple. I just want everyone to be aware and allowed to present their questions.

Mayor Curtis: We need to move on.

Janet Malone, Bay Avenue: If Bay Head says no to all sites in town – wouldn't the carriers have to find another location?

Mr. O'Scanlon: They have limited options if this site goes away. It was one of the first, 30 years ago. All the other sites were planned around it.

Ms. Malone: Have they looked in Point Pleasant? There is a property on Howe Street.

Mr. O'Scanlon: It would be very unlikely the carriers would end up there with a successful site.

Ms. Malone: Who chose the committee members?

Councilmember Barnes: Mayor – he also asked for volunteers. The committee felt the best location was Public Works. They looked at 8 locations in town.

Ms. Malone: Have you seen the tower in Sea Bright?

Mr. O’Scanlon: I work on that project. The committee looked at every site. That was the goal and the charge of the Mayor and Council and that was what was done.

Rick McGoey, 50 Harris Street: I made the presentation in January.

Walter Goedicke, 229 Park Avenue: I was informed the day after the January meeting. I called and spoke with Mr. McGoey. We need to plan ahead – Lavallette is the model as to what will happen with other shore towns.

Paul Brennan, 157 Osborne Avenue: Resolution 2021-88 stated the street to be worked on would be Lake Avenue and Maple Drive.

Councilmember Cornell: Yes, every year we receive a DOT Grant and this one would be used to resurface Lake Avenue and Maple Drive.

Mr. Brennan: Will the whole road be torn up?

Councilmember Cornell: They will have to first do a survey. The work will not be done until late fall. As to the extent – it all depends on how bad the road is.

Mr. Brennan: Lake Avenue could use some improvement. If costs exceed the grant you may want to look again at Maple Drive which only has four houses on it. It is really an unused alley.

Mayor Curtis: I appreciate your questions and comments.

The motion passed on roll call vote: YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of each resolution is attached to these minutes.

Mayor Curtis called for Ordinance, Second Reading, Public Hearing, Vote.

Ms. Applegate read Ordinance 2021-06 by title:

AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE MUNICIPAL CODE OF THE BOROUGH OF BAY HEAD, SO AS TO AMEND CHAPTER 66, ENTITLED “ALCOHOLIC BEVERAGES”

Councilmember Barnes moved this ordinance be adopted on second reading and final passage. The motion was seconded by Councilmember Shaning.

Mayor Curtis opened the meeting to the public for a public hearing on this ordinance. There being no questions or comments the public hearing was closed.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of this ordinance is attached to these minutes.

Ms. Applegate read Ordinance 2021-07 by title:

AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE MUNICIPAL CODE OF THE BOROUGH OF BAY HEAD SO A TO AMEND CHAPTER 174, ENTITLED "PEACE AND GOOD ORDER"

Councilmember Barnes moved this ordinance be adopted on second reading and final passage. The motion was seconded by Councilmember MacPherson.

Mayor Curtis opened the meeting to the public for a public hearing on this ordinance. There being no questions or comments the public hearing was closed.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of this ordinance is attached to these minutes.

Mayor Curtis called for Ordinance, First Reading.

Ms. Applegate read Ordinance 2021-09 by title:

AN ORDINANCE ESTABLISHING SALARY, WAGES, HOLIDAYS, SICK LEAVE, VACATIONS AND OTHER BENEFITS OF EMPLOYMENT OF CERTAIN OFFICIALS AND NON-UNION EMPLOYEES OF THE BOROUGH OF BAY HEAD, OCEAN COUNTY, NEW JERSEY

Councilmember Barnes moved this ordinance on first reading, which motion was seconded by Councilmember Shaning.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of this ordinance is attached to these minutes.

This ordinance is scheduled for second reading and public hearing on June 7, 2021.

Ms. Applegate read Ordinance 2021-10 by title:

AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING A LEASE OF A PORTION OF BAY HEAD RECYCLING CENTER FOR THE DESIGN, PERMITTING, CONSTRUCTION AND MAINTENANCE OF A NEW, SELF SUPPORTING 150' TREE MONOPOLE AND RELATED FACILITIES

Councilmember Barnes moved this ordinance on first reading, which motion was seconded by Councilmember Shaning.

The motion passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A copy of this ordinance is attached to these minutes.

This ordinance is scheduled for second reading and public hearing on June 7, 2021.

Mayor Curtis called for Unfinished Business, there was none.

Mayor Curtis called for New Business, there was none.

Councilmember Barnes: Please be aware with the warm weather there may be a spike in bike thief. Please lock your bike.

Mayor Curtis opened the meeting to the public.

Janet Malone, Bay Avenue: Why and who did the balloon test? Why wasn't the public given notice?

Councilmember Barnes: I believe it was done by AT&T.

Ms. Malone: In the Ordinance it states the cell tower will be located the Recycle Center and it is Public Works?

Ms. Cipriani: Recycle Center is most informative for most people.

Ms. Malone: The property address is given as 288 Park, that is wrong.

Ms. Malone: The Statue of Liberty is 150' and so is this proposed tower.

Ms. Malone: I question the balloon test – in the code it states a 10-day notice will be given to residents. Why was the test done?

Mr. O'Scanlon: The balloon test was to give a prospective – the pictures in the report are the results of the balloon test.

Ms. Malone: Would they ever do it again? I didn't know about it until after reading the Ocean Star.

Mr. O'Scanlon: No – the pictures are there giving 4 or 5 prospective.

Ms. Malone: This location is also near a Historic District – NJ Transit. I would like you to look at everything. This is a resort town and it seems a small amount of people make decisions.

Kathleen Tell, 137 Bridge Avenue: Noise Ordinance – I live next door to a house under construction. The licensed contractor only works on weekends and he is the owner's son. I consulted with the Chief and he spoke to Jean and the conclusion was that since he was related to the owner he could work on weekends.

Ms. Cipriani: It was presented to me that he was the contractor and was also the property owner or residing there.

Ms. Tell: He is not the owner or tenant.

Ms. Cipriani: Is someone living there?

Ms. Tell: No, not since 2017 and they don't have a CO.

Ms. Cipriani: I will inquire and follow up with you tomorrow.

There being no further comments the public discussion was closed.

Councilmember MacPherson moved to approve the vouchers for payment. The motion was seconded by Councilmember Barnes and passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None. A list of vouchers is attached to these minutes.

Councilmember Barnes offered the following Resolution to go into Executive Session.

RESOLUTION OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN,
STATE OF NEW JERSEY EXCLUDING THE GENERAL PUBLIC FROM A
MEETING PURSUANT TO THE OPEN PUBLIC MEETINGS ACT

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Bay Head, in the County of Ocean, State of New Jersey, as follows:

1. The public shall be excluded from discussion of an actions upon the hereinafter specified subject matter.
2. The following subject involve:
Contractual matters with Ocean County Utility Authority and
Litigation concerning New Jersey Transit and Burke
3. It is anticipated at this time the above stated subject matter will be made public in 90 days.
4. This Resolution shall become effective immediately.

The motion was seconded by Councilmember MacPherson and passed on roll call vote: YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None.

The time for the public to rejoin the meeting was discussed, deciding to have the public rejoin at 9:30 pm.

The Governing Body went into Executive Session at 9:02 pm. At 9:32 pm they came out of Executive Session and resumed the meeting.

There being no further business, Councilmember Barnes moved the meeting be adjourned. The motion was seconded by Councilmember Cornell and passed on roll call vote. YEAS: Gates, Cornell, Barnes, Shaning, MacPherson. NAYS: None.

Patricia M. Applegate, Municipal Clerk

William W. Curtis, Mayor