

**REGULAR MEETING
NOVEMBER 25, 2014**

In compliance with Chapter 231, OPEN PUBLIC MEETINGS ACT of the State of New Jersey, adequate notice has been given to all members of the Governing Body, the "Local Source" and the "Westfield Leader" the two newspapers designated to receive such notice. The notice is posted on the Borough Hall bulletin board.

Mayor Paul N. Mirabelli called the meeting to order at 8:03 P.M.

**INVOCATION: Councilman Mortimer
SALUTE TO THE FLAG
ROLL CALL**

PRESENT: Mayor Paul N. Mirabelli, Councilman Dierkes, Councilman Messler, Councilman Mortimer, Council President Turner, Administrator Debbie and Attorney Post. Also present were Acting Police Chief Allan Attanasio, Public Works Manager Ronald Romak and Recreation Director Frank Masella. Councilwoman Andre and Councilman Lane were absent.

APPROVAL OF MINUTES:

Upon motion by Councilman Turner and a second by Councilman Mortimer, the minutes of the Regular Session Meeting held on October 21, 2014 were approved. Roll Call: Ayes: Dierkes, Mortimer, Turner. Nays: 0. Abstained: Messler.

Upon motion by Councilman Turner and a second by Councilman Mortimer, the minutes of the Work Session Meeting held on November 4, 2014 were approved. Roll Call: Ayes: Dierkes, Messler, Mortimer, Turner. Nays: 0.

RESOLUTIONS:

The following resolution was introduced by Councilman Dierkes and seconded by Councilman Mortimer.

RESOLUTION 103-2014

WHEREAS, Keith Pires registered his son for basketball, and he later decided not to play; and

WHEREAS, it is recommended by the Recreation Director that Keith Pires be refunded \$75.00.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that the Finance Officer is hereby authorized to refund the amount of \$75.00 to Keith Pires, 1120 Iris Drive, Mountainside, NJ 07092.

Roll Call: Dierkes, Messler, Mortimer, Turner. Nays: 0

The following resolution was introduced by Councilman Mortimer and seconded by Councilman Dierkes.

RESOLUTION 104-2014

RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF MOUNTAINSIDE, IN THE COUNTY OF UNION, NEW JERSEY, COVENANTING TO COMPLY WITH THE PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, APPLICABLE TO THE EXCLUSION FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES OF INTEREST ON OBLIGATIONS ISSUED BY THE BOROUGH OF MOUNTAINSIDE, AUTHORIZING THE MAYOR, BOROUGH CLERK, CHIEF FINANCIAL OFFICER AND OTHER BOROUGH OFFICIALS TO TAKE SUCH ACTION AS THEY MAY DEEM NECESSARY OR ADVISABLE TO EFFECT SUCH COMPLIANCE AND DESIGNATING A \$4,851,900 BOND ANTICIPATION NOTE, DATED OCTOBER 30, 2014 AND PAYABLE OCTOBER 30, 2015, AS A "QUALIFIED TAX-EXEMPT OBLIGATION" PURSUANT TO SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

WHEREAS, the Borough of Mountainside, in the County of Union, New Jersey (the "Borough"), from time to time issues bonds, notes and other obligations, the interest on which is excluded from gross income for Federal income tax purposes, and desires to take such action as may be necessary or advisable to establish and maintain such exclusion; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), contains provisions with respect to the exclusion from gross income for Federal income tax purposes of interest on obligations, including provisions, among others, that require issuers of tax-exempt obligations, such as the Borough, to account for and rebate certain arbitrage earnings to the United States Treasury and to take such other action to establish and maintain such Federal tax exclusion; and

WHEREAS, the Borough intends to issue a \$4,851,900 bond anticipation note, dated October 30, 2014 and payable October 30, 2015 (the "Note"); and

WHEREAS, the Borough desires to designate the Note as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code;

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Mountainside, in the County of Union, New Jersey, as follows:

SECTION 1. The Borough Council hereby covenants on behalf of the Borough, to the extent permitted by the Constitution and the laws of the State of New Jersey, to do and perform all acts and things permitted by law and necessary to assure that interest paid on bonds, notes or other obligations of the Borough (including the Note) be and remain excluded from gross income of the owners thereof for Federal income tax purposes pursuant to Section 103 of the Code.

SECTION 2. The Mayor, Borough Clerk, Chief Financial Officer and other officials of the Borough are hereby authorized and directed to take such action, make such representations and give such assurances as they may deem necessary or advisable to effect compliance with the Code.

SECTION 3. The Note is hereby designated as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code.

SECTION 4. It is hereby determined and stated that (1) the Note is not a "private activity bond" as defined in the Code and (2) the Borough and its subordinate entities, if any, do not reasonably anticipate issuing in excess of \$10 million of new money tax-exempt obligations (other than private activity bonds) during the calendar year 2014.

SECTION 5. It is further determined and stated that the Borough has not, as of the date hereof, issued any tax-exempt obligations (other than the Note) during the calendar year 2014.

SECTION 6. The Borough will, to the best of its ability, attempt to comply with respect to the limitations on issuance of tax-exempt obligations pursuant to Section 265(b)(3) of the Code; however, the Borough does not covenant to do so, and hereby expressly states that a covenant is not made hereby.

SECTION 7. The issuing officers of the Borough are hereby authorized to deliver a certified copy of this resolution to the original purchaser of the Note and to further provide such original purchaser with a certificate of obligations issued during the calendar year 2014 dated as of the date of delivery of the Note.

SECTION 8. This resolution shall take effect immediately upon its adoption.

Roll Call: Dierkes, Messler, Mortimer, Turner. Nays: 0

The following resolution was introduced by Councilman Turner and seconded by Councilman Dierkes.

RESOLUTION 105-2014

Approval to submit a grant application and execute a grant contract with the New Jersey Department of Transportation for the Highway Safety Fund 2014

SAFE CORRIDOR PROJECT

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Mountainside formally approves the grant application for the above stated project.

BE IT FURTHER RESOLVED that the Mayor, Council and Borough Clerk are hereby authorized to submit an electronic grant application identified as 22-6002123 to the New Jersey Department of Transportation on behalf of the Borough of Mountainside.

BE IT FURTHER SOLVED that the Mayor, Council and Borough Clerk are hereby authorized to sign the grant agreement on behalf of the Borough of Mountainside and that their signature constitutes acceptance of the terms and conditions of the grant agreement and approves the execution of the grant agreement.

Roll Call: Dierkes, Messler, Mortimer, Turner. Nays: 0

ORDINANCES: Second Reading (Public Hearing)

ORDINANCE 1227-2014 (AMENDED)

AN ORDINANCE AMENDING ARTICLE 10, SECTIONS 1008(c), 1009(c), AND 1010(c) OF THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to amend the Floor Area Ratio ("FAR") and side yard setback standards for the residential zoning districts in the Borough; and

WHEREAS, the Borough Planner has made certain recommendations to amend the Borough Code to incorporate these changes; and

WHEREAS, previously by Ordinance 1210-2013, the Borough amended the Borough Code to amend the FAR to .225 for the residential zoning districts in the Borough; and

WHEREAS, upon further recommendation by the Borough Planner, the Mayor and Council have determined that it is in the interest of the Borough to amend the Required Conditions for the residential zoning districts to allow a range of FAR provided certain side yard setback conditions are met; and

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: Article 10, Section 1003 of the Borough Code be and the same is hereby amended by adding new subsection (aa):

(aa) Floor Area Ratio Regulation. A floor area ratio is calculated by dividing the habitable floor area of a dwelling by the lot area. Habitable floor area shall not include garage space, basement whether finished or unfinished, attic space, an open porch or breezeway.

AND BE IT FURTHER ORDAINED THAT Subsection 1008 (c) (3) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1008(c)(3):

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than ten (10) feet or ten percent (10%) of the lot width, whichever is greater except that for a single-family dwelling having a FAR of 0.225 or greater but in no event greater than 0.24, shall have a side yard setback of 15 feet or 15% of the lot width, whichever is greater.

AND BE IT FURTHER ORDAINED THAT Subsection 1008 (c) (8) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1008(c)(8):

(8) Floor Area Ratio. A standard floor area ratio for the R-1 Zone shall be .225. However, for certain applications for single family dwellings having a proposed FAR of greater than 0.225 but in no event greater than 0.24, the side yard setback requirements shall be as determined in section three (3) above.

AND BE IT FURTHER ORDAINED THAT Subsection 1009(c)(3) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1009(c)(3):

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than ten (10) feet or ten percent (10%) of the lot width, whichever is greater except that for a single-family dwelling having a FAR of 0.225 or greater but in no event greater than 0.24, shall have a side yard setback of 15 feet or 15% of the lot width, whichever is greater.

AND BE IT FURTHER ORDAINED THAT Subsection 1009 (c) (8) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1009(c)(8):

(8) Floor Area Ratio. A standard floor area ratio for the R-1 Zone shall be .225. However, for certain applications for single family dwellings having a proposed FAR of greater than 0.225 but in no event greater than 0.24, the side yard setback requirements shall be as determined in section three (3) above.

AND BE IT FURTHER ORDAINED THAT Subsection 1010(c)(3) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1010(c)(3):

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than ten (10) feet or ten percent (10%) of the lot width, whichever is greater except that for a single-family dwelling having a FAR of 0.225 or greater but in no event greater than 0.24, shall have a side yard setback of 15 feet or 15% of the lot width, whichever is greater.

AND BE IT FURTHER ORDAINED THAT Subsection 1010(c) (8) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1010(c)(8):

(8) Floor Area Ratio. A standard floor area ratio for the R-1 Zone shall be .225. However, for certain applications for single family dwellings having a proposed FAR of greater than 0.225 but in no event greater than 0.24, the side yard setback requirements shall be as determined in section three (3) above.

AND BE IT FURTHER ORDAINED THAT any structure conforming to the bulk requirements of the land use ordinance in effect prior to the adoption of Ordinance No. 1210-2013, initially creating the FAR for the Borough, shall not be rendered non-conforming by adoption of Ordinance No. 1210-2013. Should such a structure be more than partially destroyed after the adoption of Ordinance No.1210-2013, the property owner shall be entitled to rebuild a structure which is substantially the same as the destroyed structure so long as it conforms to the bulk requirements of land use ordinance in effect prior to the adoption of Ordinance No. 1210-2013.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Mayor Mirabelli opened the meeting to the public for anyone wishing to speak on this ordinance and this ordinance only.

Hearing no one wishing to speak, Council President Turner closed the meeting to the public.

It was moved by Councilman Messler and seconded by Councilman Dierkes that this ordinance be passed on second and final reading and advertised by title only.

Roll Call: Dierkes, Messler, Mortimer, Turner. Nays: 0

First Reading (Introduction)

ORDINANCE 1230-2014

**AN ORDINANCE AMENDING ARTICLE 10, SECTIONS 1003(u)(1) AND 1006(a) OF THE
LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE**

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to amend sections of the Land Use ordinance to address certain circumstances for when a zoning permit is necessary in the Borough; and

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: Article 10, Section 1003(u)(1) of the Borough Code be and the same is hereby is deleted and replaced by a new section (u)(1):

(u) Fences, Retaining Walls, Driveways, Walkways, Patios

(1) A zoning permit in a form approved by the Zoning Official is required for the construction of any fence 6 feet or less in height. A zoning permit is required for the construction of any retaining wall 4 feet or less in height including multiple stepped walls totaling 4 feet or less in combined height. No fence or wall shall exceed 6 feet in height in a residential zone nor 8 feet in height in nonresidential zones. No fence or wall shall be constructed within 6 inches of a property line or street side line. A zoning permit shall be required for any increase in size above the originally existing and Borough approved footprint, regardless of materials used, for driveways, walkways, and ground level patios.

AND BE IT FURTHER ORDAINED THAT Subsection 1006(a) of the Borough Code be and the same is hereby amended and with the addition of the following new sentence at the end of the subsection as follows:

(a) For the construction of sheds or similar structures totaling 100 square feet or less in size and 10 feet or less in height, a zoning permit shall be required in a form approved by the Zoning Official.

AND BE IT FURTHER ORDAINED THAT the proposed zoning permit application is hereby approved in substantially the same form as the version attached hereto.

AND BE IT FURTHER ORDAINED THAT the application fee for a zoning permit shall be \$50.00.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

It was moved by Councilman Dierkes and seconded by Councilman Turner that this ordinance be passed on first reading and advertised in full for a public hearing on December 16, 2014.

Roll Call: Dierkes, Messler, Mortimer, Turner. Nays: 0

MOTIONS:

The following motions were unanimously approved:

1. Approve the appointment of Patrick Klebaur as a Volunteer Firefighter
2. Approve raffle applications from Our Lady of Peace Church for two (2) on premise draw raffles and 50/50 on premise draw raffle

BILLS & CLAIMS:

The following resolution was introduced by Councilman Mortimer and seconded by Councilman Dierkes:

BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that the following bills of the persons named and for the amounts stated below, having been duly audited and found to be correct this 25th day of November 2014, the same be paid after Council's review, if and when funds are available and that the Mayor, Council President, Administrator and Treasurer are hereby authorized and directed to sign and deliver warrants for same in the amount of \$219,087.73 (Copy of bill list attached).

Roll Call: Dierkes, Messler, Mortimer, Turner. Nays: 0

COUNCIL COMMENTS:

Council President Turner thanked the residents for voting on Election Day.

The Borough Tree Lighting is scheduled for December 6th.

The Mayor and Council wished everyone a Happy Thanksgiving.

AUDIENCE PARTICIPATION:

Frances Ehman Bellak, 1238 Poplar Avenue, at several meetings informed the Council that there was a serious soil erosion problem due to water run-off in her neighborhood. The Borough Engineer inspected the properties and agrees there is a problem. Any resolution would require Department of Environmental Protection (DEP) permits and approval which is a long, expensive and complicated process. Mrs. Bellak questioned why years ago the run-off on Central and Cedar was addressed. Mayor Mirabelli explained that DEP regulations have become stricter, making it more difficult to resolve these types of issues. The Borough Engineer will continue to investigate with DEP what options may be available.

Hearing no one else desiring to speak, Mayor Mirabelli closed the meeting to the public.

Upon motion by Councilman Mortimer and a second by Councilman Dierkes, the meeting was unanimously adjourned.

Meeting adjourned at 8:17 PM.

Respectfully submitted,

Martha Lopez, Borough Clerk