

**WORK SESSION
JUNE 2, 2020**

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 7:40 P.M via Zoom.

PRESENT: Mayor Mirabelli, Councilwoman Andre, Councilman Dierkes, Councilman Messler, Councilwoman Pacifico, Councilwoman Pater, Council President Turner, Attorney John Post and Administrator Atkins. Also present were CFO Jill Goode, Recreation Director Frank Masella, Police Chief Joseph Giannuzzi, Borough Engineer Mike Disko and DPW Director Matthew DeAnna.

Discussion was held regarding recreation refunds. Recreation Director Frank Masella recommends issuing refunds due to member cancellations. The proper resolution will be prepared for the June 16, 2020 meeting.

Discussion was held regarding a request from the Borough Engineer to determine which street to apply for the NJDOT grant application. The Council approved the Engineer's recommendation to apply for funds to repave Mill Lane and Rutgers Road. The proper resolution will be prepared for the meeting of June 16, 2020.

The following resolution was introduced by Councilman Messler and seconded by Councilwoman Andre.

RESOLUTION 70-2020

WHEREAS, the Union County Board of Chosen Freeholders established the "Union County Cares Act – Coronavirus Relief Fund Program designed to assist local municipalities with expenses and losses incurred due to the COVID-19 pandemic; and

WHEREAS, the Borough of Mountainside wishes to apply to Union County for the Union County Cares Act - Coronavirus Relief Fund Program.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, that the proper Borough officials are hereby authorized to file an application with the County of Union for the Cares Act – Coronavirus Relief Fund Program.

Roll Call: Andre, Dierkes, Messler, Pacifico, Pater, Turner. Nays: 0

Discussion was held regarding a request from the Finance Officer for a Chapter 159 resolution to include special items of revenue into the 2020 municipal budget for the Infrastructure & Municipal Aid Grant in the amount of \$50,000.00. The proper resolution will be prepared for the meeting of June 16, 2020.

The following resolution was introduced by Councilman Turner and seconded by Councilwoman Andre.

RESOLUTION 71-2020

WHEREAS, on May 19, 2020, Mountainside Adopted Resolution 66-2020 for the Authorization to Issue Estimated Tax Bills; and

WHEREAS, when this resolution was adopted, the Union County budget was not yet adopted and an estimated levy for county taxes was used since the county tax amount was unknown at this time; and

WHEREAS, since Union County has now adopted their budget and in order to calculate a more accurate estimated rate, the Tax Collector and the Chief Financial Officer have recommended the entire estimated tax levy for 2020 be revised; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside on this 2nd day of June, 2020, as follows:

The entire estimated tax levy for 2020 is amended and hereby set at \$36,522,930.05.

Roll Call: Andre, Dierkes, Messler, Pacifico, Pater, Turner. Nays: 0

Discussion was held regarding municipal building security upgrades. The upgrades would include enclosing the front areas of the recreation and construction offices. The work would be done by KCH Contracting with the lowest quote of \$15,959. The borough will apply for grants to fund this project.

Discussion was held regarding a request from the Tax Collector to authorize tax overpayment refunds due to duplicate payments. The proper resolution will be prepared for the meeting of June 16, 2020.

The following resolution was introduced by Councilwoman Andre and seconded by Councilman Turner.

RESOLUTION 72-2020

WHEREAS, the Mayor has recommended a compensation adjustment for the following Municipal Employee:

Cable TV35 Coordinator	\$20.00 Hourly Not to exceed 16 hours a week without advance approval
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NOW, THEREFORE, BE IT RESOLVED that the foregoing compensation adjustment be implemented effective retroactive to January 1, 2020.

Roll Call: Andre, Dierkes, Messler, Pacifico, Pater, Turner. Nays: 0

Discussion was held regarding upcoming bid recommendations. Engineer Mike Disko advised the Council that two bid openings are scheduled for June 11th and he would like to award them at the next meeting. An update was provided regarding the Elizabethtown Gas main replacement project.

Discussion was held regarding not opening the municipal pool this season. The Recreation Committee and Director recommended to Council not to open the pool based on pending pandemic regulations, guidelines and the financial costs. The Council unfortunately agreed with the recommendation.

The Mayor determined the 4th of July fireworks would be postponed and possibly rescheduled due to the restrictions of the pandemic.

ORDINANCE: Second Reading (Public Hearing)

**ORDINANCE 1285-2020
AN ORDINANCE TO PERMIT RESTAURANTS TO UTILIZE TEMPORARY OUTDOOR DINING
AREAS IN LIGHT OF THE COVID-19 PANDEMIC**

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the COVID-19 virus in the State of New Jersey; and

WHEREAS, since then, Governor Murphy has issued numerous Executive Orders related to the COVID-19 pandemic, including Executive Order 107, which permits restaurants to operate during their normal business hours, but restricts their activities to only offering delivery and/or take-out services; and

WHEREAS, although Executive Order 107 currently remains in effect, the Governing Body of the Borough of Mountainside (“Governing Body”) believes that it is appropriate to make preparations in the anticipation that the restrictions and regulations in the Governor’s Executive Orders related to restaurant operations during the COVID-19 pandemic may be relaxed and/or modified in the coming weeks or months; and

WHEREAS, in the anticipation that the Governor’s Executive Orders related to the COVID-19 pandemic may be relaxed and/or modified to allow restaurants to resume their dine-in operations at reduced capacities and/or with social distancing requirements, the Governing Body believes that it is appropriate to establish a mechanism that will enable restaurants to more easily comply with any applicable capacity and/or social distancing requirements by making use of temporary outdoor dining areas.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Mountainside (the “Borough Council”) as follows:

SECTION I – PURPOSE

The purpose of this Ordinance is to help put the restaurants located within the Borough of Mountainside (the “Borough”) in a better position to comply with any potentially forthcoming

executive orders or regulations from the Governor’s Office that would allow restaurants to resume their dine-in operations at reduced capacities and/or with social distancing requirements.

This Ordinance seeks to accomplish this purpose by permitting restaurants to utilize tasteful and aesthetic outdoor dining areas on adjacent property and/or sidewalks, under the direction and approval of the Borough’s Restaurant Review Committee, which is created herein. The enforcement of existing provisions of the Revised General Ordinances of the Borough of Mountainside, 2020 (the “Borough Code”) that are inconsistent with this Ordinance shall be suspended during the effective period of this Ordinance, but only to the extent of such inconsistency, and only with respect to restaurants operating an outdoor dining area pursuant to this Ordinance.

SECTION II – APPLICABILITY

This Ordinance shall apply to all “restaurants” within the Borough, where “restaurant” is defined as an establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of food for its customers and in which no other business, except such as is incidental to such establishment, is conducted.

SECTION III – SUBMISSION OF APPLICATIONS

Any restaurant wishing to establish and utilize an outdoor dining area pursuant to this Ordinance (the “Applicant”) must submit an application to the Borough’s Restaurant Review Committee. There shall be no fee required to be submitted with such application. The application shall be on prescribed forms and shall be filled out completely and submitted with the following attachments and exhibits:

- A. Scaled layout of tables, chairs, and other structures such as low barriers if proposed (such as bollards), showing dimensions of tables, chairs, other structures, and overall area (including all sidewalks);
- B. A detailed narrative and plan of relevant information, describing method of service, proposed hours of service outdoors, use of personal protective equipment (“PPE”) and proper social distancing, and method of litter control and trash handling for outdoor service;
- C. Photographs or diagrams of tables, chairs, and other furniture or structures to be utilized, showing style, design, materials, size and colors;
- D. A narrative as to how tables, chairs, umbrellas and/or benches will be secured overnight;
- E. Proof of insurance that complies with the requirements of Section VI of this Ordinance;
- F. An executed indemnification agreement that complies with the requirements of Section VII of this Ordinance;
- G. An executed maintenance agreement that complies with the requirements of Section VIII of this Ordinance;

- H. Written consent of the landlord/property owner in the event the Applicant is a tenant leasing, or otherwise occupying, the premises in which the restaurant is located but which is not owned by the Applicant.

SECTION IV – RESTAURANT REVIEW COMMITTEE ESTABLISHMENT AND APPROVAL OF APPLICATIONS

The Borough's Restaurant Review Committee shall be comprised of: the Borough Administrator, Zoning Officer, Borough Engineer, Police Chief (or designee), and the Fire Chief (or designee). The Restaurant Review Committee shall, prior to approving any application submitted, consult with the Borough's Health Officer (or designee) to ensure that the proposed outdoor dining area complies with all applicable health and sanitary laws and regulations.

The Restaurant Review Committee may approve each application as submitted or may approve the application with amendments and conditions or may disapprove such application. It is expressly

understood that the Restaurant Review Committee shall have the discretion, right and power to waive one or more of the above-referenced application requirements.

Following approval from the Restaurant Review Committee, the Borough's Zoning Officer shall issue a permit authorizing the applicant to establish and utilize an outdoor dining area, subject to the rules and regulations set by this Ordinance, as well as any additional conditions imposed by the Restaurant Review Committee.

Appeal of any disapproval, conditional or amended approval of an application submitted pursuant to this Ordinance may be made to the Borough Council.

SECTION V – RULES AND REGULATIONS

- A. The outdoor dining area shall be operated and maintained in accordance with the Applicant's sketches, narrative, and plan as finally approved.
- B. The outdoor dining area shall be actually operated and maintained by the same person or entity who operates and maintains the related restaurant of which the outdoor dining area is a part and an extension.
- C. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way as to impede the safe and speedy ingress and egress to or from any building or structure.
- D. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way that less than four feet of paved sidewalk remains for the exclusive use of pedestrians, nor shall any such furniture, apparatus, decoration or appurtenance project or protrude into, on or above the required pedestrian passageway.
- E. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way that interferes with vehicular safety, or with necessary access for fire-fighting equipment and ambulances or personnel. However, nothing in this Ordinance shall preclude the use of a portion of a parking area for all or a

- F. portion of an outdoor dining area, provided the Restaurant Review Committee is satisfied that public safety and accessibility will not be impaired or unduly affected.
- G. The Restaurant Review Committee may require low barriers of a temporary nature (such as bollards) to be placed at the edge of the outdoor dining area during business hours in order to protect the outdoor patrons from vehicle movements within parking areas or streets adjacent to the establishment.
- H. The Restaurant Review Committee may require minimum signage, including the size, shape, material and related characteristics thereof, to be placed in and/or around the outdoor dining area for any of the following purposes:
 - 1. Defining the boundaries of the outdoor seating area or any waiting area;
 - 2. Setting forth rules or guidelines applicable to restaurant patrons;
 - 3. Promoting safety for vehicular and/or pedestrian traffic; or
 - 4. Any other purpose deemed appropriate and/or necessary by the Restaurant Review Committee.
- I. The sidewalk or other area utilized for the outdoor dining area shall be kept clean and free of litter. Trash receptacles shall be provided as needed.
- J. Noise shall be kept at such a level as to comply with the appropriate section of the Borough Code.
- K. Outdoor dining areas shall not be permitted to operate in a manner or during times which unduly interfere with the peace and quiet of nearby residences, as determined by the Restaurant Review Committee. The Borough may revoke, or amend the conditions of, a previously issued permit to eliminate such interference.
- L. Outdoor dining areas shall be permitted to operate only during the hours that the associated restaurant is permitted to operate. Within 30 minutes after the closing of the outdoor dining area, the operator shall have all furniture, apparatus, decoration and appurtenances and any other items used in connection with the operation of such outdoor dining area appropriately covered, secured, or stored so as to avoid a public hazard or nuisance.
- M. Operators of outdoor dining areas shall be required to comply with all applicable regulations of the Borough's Board of Health.
- N. The Borough reserves the right to revoke, or modify the conditions of, any outdoor dining area permit issued under this Ordinance to address any compliance, safety, or health issues, or in order to ensure consistency with any other applicable county, state, or federal laws, directives, or guidance.

SECTION VI – INSURANCE REQUIRED

No outdoor dining area permit shall be issued unless the applicant provides a certificate of insurance, issued by a company duly authorized to transact business under the laws of the State of New Jersey, evidencing insurance which provides for the payment of not less than \$500,000 to satisfy all claims for damage by reason of bodily injuries to or the death of any person as a direct or indirect result of the operation of the restaurant's outdoor dining area or for injury to any person occurring on the premises occupied by such restaurant, and further provides for the payment of not less than \$10,000 to satisfy all claims for property damage occurring as a direct or indirect result of the operation of such restaurant's outdoor dining area. Such certificate shall provide that the insurance company shall notify the Borough ten (10) days prior to cancellation of, or substantial change in, coverage, and shall name the Borough as an additional insured thereunder.

SECTION VII – INDEMINIFICATION AGREEMENT

No outdoor dining area permit shall be issued unless the Applicant shall have first executed and filed an indemnification agreement in a form approved by the Attorney of the Borough of Mountainside (the "Borough Attorney") pursuant to which the Applicant, in further consideration of the issuance of the permit, 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 arising out of or which may arise out of the Applicant's operation of such outdoor dining area.

SECTION VIII – MAINTENANCE AGREEMENT

No outdoor dining area permit shall be issued unless the Applicant shall have first executed and filed a maintenance agreement in a form approved by the Borough Attorney pursuant to which the Applicant shall agree, at the option of the Borough, to either repair at its sole cost and expense, any damage caused to the sidewalk or other location by the operation of the outdoor dining area or to reimburse the Borough in full for all costs and expenses incurred by it in making any such repairs, with and if so required by the Borough Council.

SECTION IX – EXISTING SIDEWALK CAFES

This Ordinance shall not affect or invalidate any current and valid license to operate a sidewalk cafe issued under the Borough Code. Eligible restaurants shall still be permitted to apply for a license to operate a sidewalk cafe pursuant to Section 4- 7.1 of the Borough Code.

However, applicants for and holders of a license to operate a sidewalk cafe pursuant to Section 4-7.1 of the Borough Code shall continue to be subject to all of the requirements therein, as well as all other applicable provisions of the Borough Code.

SECTION X – REPEAL

This Ordinance is not meant to repeal any provisions of the Code other than those designated for repeal herein, and all ordinances, portions of ordinances and provisions of the Borough Code which are inconsistent or in conflict with the provisions of this Ordinance are repealed only for the purpose and duration set forth in this Ordinance and only to the extent of such inconsistency or conflict.

SECTION XI – SEVERABILITY

The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged invalid and shall not be

deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

SECTION XII - EFFECTIVE DATE

This Ordinance shall take effect upon the date the Governor (or an authorized State agency) issues a directive or Executive Order allowing food establishments, restaurants and bars to consume food and/or drink on-premises.

SECTION XIII - EXPIRATION DATE

This Ordinance shall automatically lapse and have no further legal force or effect (without further action of the Borough Council) on November 1, 2020, unless this Ordinance is further extended on or before such date by Resolution of the Borough Council.

Hearing no one wishing to speak, Councilwoman Andre closed the meeting to the public.

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

Roll Call: Andre, Dierkes, Messler, Pacifico, Pater, Turner. Nays: 0.

BILLS & CLAIMS:

The following resolution was introduced by Councilman Dierkes and seconded by Councilwoman Andre:

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 2nd day of June 2020, 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 \$204,983.78 (Copy of bill list attached).

Roll Call: Andre, Dierkes, Messler, Pacifico, Pater, Turner. Nays: 0

COUNCIL COMMENTS:

The Mayor mentioned the upcoming car show. The Hetfield House was recently painted compliments of the Historical Restoration Committee. Special thanks to Union County for donating 1,200 masks to the borough.

Councilman Messler stated that DPW planted three trees.

AUDIENCE PARTICIPATION:

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

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

WHEREAS, the Open Public Meetings Act of the State of New Jersey permits the public to be excluded from certain matters to be discussed by the Governing Body; and

WHEREAS, the Mayor and Council desire to discuss personnel and litigation which are matters where the exclusion of the public is permitted; and

WHEREAS, public disclosure of the results of this discussion will be made as soon as the matters discussed have been resolved by the Governing Body of the Borough of Mountainside;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that the aforesaid matters shall be discussed in closed session upon adoption of this resolution.

Meeting adjourned to closed session at 8:24 P.M.

The meeting was recalled to public session.

Upon a motion by Councilwoman Andre and a second by Councilwoman Pater, the meeting was unanimously adjourned at 8:50 P.M.

Martha Lopez, RMC
Borough Clerk