

FAIR HAVEN BOROUGH COUNCIL
MAY 13, 2019

The meeting was called to order by Mayor Lucarelli at 7:00 p.m. The Flag Salute was followed by a Moment of Silent Meditation; the Mayor asked that Garry Allers and family be kept in everyone's thoughts with the loss of Jeannette Allers this past weekend. Garry was a former DPW Employee and Jeanette was involved with the Fire Department Auxiliary for 25 years.

The Sunshine Law Statement was read.

ROLL CALL

On Roll Call the following were present: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen. Others present: Administrator Casagrande, Attorney Alfieri and Fred Heyer, Borough Planner.

PROCLAMATIONS

Mayor Lucarelli read a proclamation for National Safe Boating Week (May 18-24).

Liz deBeer came forward and provided orange ribbons to the governing body. The Mayor read a proclamation for and National Gun Violence Awareness Day (June 7th). Mrs. deBeer said she did not understand why this proclamation needed to be prepared and read again this year, but the problem has not gone away and we need to keep awareness going.

WORKSHOP SESSION

Tree removal appeal from 6 Denise Court. The Borough's Forrester, Bill Brooks, submitted a memo in response to the letter from Devin Martignoni, homeowner. Motion to approve the tree appeal with a \$150 fee due and owing moved by Councilman Rodriguez, second by Councilman Banahan with Ayes by all present.

Mayor Lucarelli said that Attorney Alfieri and the Planners, Heyer Gruel Associates, worked on the matter of restaurant classification and the Borough's ordinance. At the April 29th Council Meeting, the public brought up a concern about classification of restaurants in the Borough of Fair Haven. Research was done on the repeal of the fast food language and further information was provided in Council's packets. Attorney Alfieri said there were two primary issues raised on April 29th. The first was a question about placing a moratorium to stop fast food restaurants until the Zoning Ordinance was reviewed; the Municipal Land Use Law is clear that there are no moratoriums that can put into place unless there is a health issue. The second was the section of the ordinance inadvertently omitted in 2002 and if it would remain law. The Council and public were advised that the Land Use section was repealed in 2002 and new ordinance sections were added through the years. There have been two codifications since 1976; one in 2002 and the other in 2009 so the fast food definition and section is non-existent. A new ordinance would have to be introduced, the Planning Board would review and make recommendations and the ordinance would then be adopted into law. There have been two telephone conferences on the matter with the Planners since the April 29th meeting and Mr. Heyer will speak to the research and their information.

Fred Heyer, Heyer Gruel Associates, advised that the initial thought on the issue to regulate restaurants in the Borough was provided to the governing body in their packets as well. There are currently three categories in the Borough's Code. After looking at the Borough's ordinance and reviewing each category and definition, it was noted that the only difference between Category 2 and Category 3 was the ability to consume food/drink in a vehicle. Fair Haven does not allow drive thru facilities in the commercial zones. The key factor is intensity of automobile use which discourages fast food businesses. Mr. Heyer advised that it is dangerous to distinguish between a local establishment and chains; the Borough can set guidelines and amend the language in the category section to be more clear. The intent was to prohibit automobile drive in and drive thru. Attorney Alfieri advised that the Municipal Land Use Law does not allow moratoriums on applications submitted.

Councilman Rodriguez asked Mr. Heyer asked if someone purchased a Rook Coffee establishment, could they come to town and open; he was advised that Rooke Coffee is a single owner opening various establishments not a franchise. It was requested that the ambiguity in language be eliminated so that the ordinance can be read and understood by the professionals and the public. Mr. Heyer said that the ordinances should be looked at "on the ground" to avoid unintended consequences such as something that is conforming becoming non-conforming. Councilman Banahan said the concern seems to be if the establishment is a chain; most of the concern brought up is with regard to traffic and trips.

Mayor Lucarelli thanked both Attorney Alfieri and Fred Heyer for their time. He asked that a committee be formed to review the language and the matter go back to the Land Use Committee for further review and discussion. Councilman Peters suggested looking at our parking ordinances as well because the requirements are high; the Borough is trying to encourage walking vs. driving.

There was discussion on what constitutes a fast food restaurant and making the language clear in the categories in the Code that will govern future applications.

Administrator Casagrande suggested looking at the establishments that have come to town and distinguish if what is being proposed would have affected the applicant or made it so they could not have opened. She said that the Borough Clerk did an amazing amount of research on the ordinances and providing the information to Attorney Alfieri so he could create and provide Council with his memo. Councilman Rodriguez volunteered to help with the review of ordinances. There is no easy way, but we need to make sure that the code and language are correct. Councilwoman Koch said that language or ordinance changes could open doors to other businesses looking to come to town and occupy space in the Acme Shopping Center. It was asked if it is possible to review the ordinance that Rumson adopted because it could help satisfy the community's concerns. Fair Haven's conditional use is that it is permitted as long as it meets certain criteria; it must be clear and objective enough. Substantive language cannot be used. Prohibited use disallows something completely. It can make sense if the use is objectionable and the town does not currently have it. Zoning must be developed with reasonable deference. Councilman Peters said what the Borough is trying to do is have a viable business community. Mr. Heyer said that Fair Haven is a traditional, compact area that is walkable with less traffic. Big buildings are not needed; the Borough, through code, can control the size and scale of what is built in the Borough. Mayor Lucarelli suggested cleaning up the current language and consider other ordinances. We do not want to spot zone as it is a slippery slope. This matter will be discussed with Todd Lehder, Chairman to the Planning Board and Zoning Board, when the applications before the boards slow down a bit. The Mayor said we do not have a major highway going through town or a large retail section. We are protected from drive thru establishments, but not chain fast food establishments. The Borough needs to proceed with caution. Administrator Casagrande advised that there is a Land Use Committee that is reviewing the Habitable Floor Area Ratio and another Land Use Committee reviewing the Fair Share Housing requirements; we should not task those members with something additional. Councilwoman Koch said that she would be willing to serve on the committee and asked Mr. Heyer if the Borough could come up with an ordinance that addresses the criteria discussed this evening. Mr. Heyer said there could be separate standards for small businesses. There are ways to review what is "on the ground" and what we are trying to accomplish. Councilman Rodriguez said that we need to do better than what we currently have in the code with clear language. The Zoning Officer can review the matter and make recommendation to the governing body; the Master Plan feeds into this as well. Councilman Peters said that we need to look at retail in 2019 and the services that have become important now and what could be important in the future. Mayor Lucarelli asked that Mr. Heyer, Attorney Alfieri and Zoning Officer Nick Porucynsky review what is on the books and bring recommendations to the Mayor and Council to make the language clearer for further discussion at the May 28th meeting. This will be the first step with step #2 being policy.

The next matter pertained to the amendment of the introduced 2019 budget. Due to the dollar amount that the Solid Waste and Recycling bids came in at, an amendment is required to cover the cost in this year's budget. An additional amount of money was budgeted in the introduced budget, but the lowest bid came in at \$296,000 not including alternates. This year would be a "mixed" year because we have paid half the year at the current contract's rate and will have to pay the remainder of the year at the new contract rate. The introduced budget will have to be amended by \$60,000, we will have to advertise the amendment and hold a hearing on the amendment at our May 28th Council Meeting. We can also adopt the budget on May 28th. Councilman Peters said the Borough privatized trash collection in 2008 and he has watched the cost savings since that date. He is displeased at the rate increasing so much, however, we have saved \$3.5 to 4 million in costs over the years. Mayor Lucarelli said the contract amount that came in is light compared to other municipalities.

RESOLUTION

1. Resolution No. 2019-107, Approve 2019 Budget Amendment

WHEREAS, the local municipal budget for the CY 2019 was introduced on the 8th day of April, 2019; and

WHEREAS, the public hearing on said budget has been held as advertised, and

WHEREAS, it is desired to amend said approved budget.

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Fair Haven, County of Monmouth, that the following amendments to the approved budget of CY 2019 be made:

	From - Approved Budget	To - Amended Budget
Current Fund-Anticipated Revenue		
General Revenue		
6. Amount to be Raised by Taxes for Support of Municipal Budget:		
A) Local Tax for Municipal Purposes including Reserve for Uncollected Taxes	\$ 6,597,550.00	\$ 6,657,550.00
7. TOTAL GENERAL REVENUES	\$ 9,409,035.69	\$ 9,469,035.69
Current Fund Appropriations		
8. General Appropriations		
(A) Operations within "CAPS"		
PUBLIC WORKS:		
Solid Waste Collection		
Other Expenses	\$ 225,000.00	\$ 285,000.00
Total Operations (Item 8A) within "CAPS"	\$6,021,680.00	\$ 6,081,680.00
Total Operations Including Contingent within "CAPS"	\$6,024,680.00	\$ 6,084,680.00
Detail:		
Other Expenses	\$3,096,680.00	\$ 3,156,680.00
(H-1) Total General Appropriations for Municipal Purposes within "CAPS"	\$6,737,930.00	\$ 6,797,930.00
(L) Subtotal General Appropriations (Items (H-1) and (O))	\$8,884,035.69	\$ 8,944,035.69
9. TOTAL GENERAL APPROPRIATIONS	\$9,409,035.69	\$ 9,469,035.69
(A) Operations:		
(a+b) Within "CAPS" - Including Contingent	\$6,024,680.00	\$ 6,030,680.00
TOTAL GENERAL APPROPRIATION	\$9,409,035.69	\$ 9,469,035.69

BE IT FURTHER RESOLVED, that two (2) certified copies of this resolution be filed forthwith in the Office of the Director of the Division of Local Government Services for certification of the CY2019 local municipal budget so amended.

BE IT FURTHER RESOLVED, that this complete amendment in accordance with the provisions of NJSA 40A:4-9, be published in the Asbury Park Press in the issue of May 16, 2019 and that said publication contain notice of the public hearing on said amendment to be held at the Municipal Building on May 28, 2019 at 7:00 PM

Offered for adoption by Councilwoman Sorensen, second by Councilwoman Koch

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

PUBLIC COMMENT ON AGENDA ITEMS

The meeting was opened to the public for comments or questions at 7:50 p.m. Shervyn VonHoerl, River Road, said the Borough is paying for recycling and asked if we could recycle at a broader range to include #5 and #6 plastics. Administrator Casagrande advised that the Borough is looking at #4 and #5 based on the Environmental Commission's recommendation. The transfer station separates out the 5, 6 and 7 plastics which go to another vendor. Most residents recycle anything that has a recycling emblem on it. Councilman Peters said he is a fan of compliance and the Environmental Commission has discussed this topic at various meetings and there have been varying opinions. The Borough is getting a pretty high percentage on recycling. The public was reminded that recycling should not be placed in plastic bags, the items must be loose in the recycling can. Mayor Lucarelli said another alternative is to have dual stream where the cardboard is collected separately from the bottles and cans. Cardboard must be dry and not have food particles (i.e. pizza boxes); we are looking at alternatives for recycling.

Sara Swijter, Dogwood Lane, said that if Councilman Peters seemed confused and there are no guides for recycling and no one is sure as to what is proper and not proper to recycle. The Borough's website can be confusing and there is not any recycling guidance. Administrator Casagrande advised Mrs. Swijter to reach out to Betty Ann Berube, Administrative Assistant with any questions and she can provide the information.

Bea Sena, Lake Avenue, thanked Fred Heyer for coming to this meeting and Attorney Alfieri for their hard work on the topic of restaurants. She said that she went to the Zoning Board meeting with confusion regarding the 2002 codification. She asked where the ordinance was that rewrote the restaurant definition. She asked the Zoning Board what the restaurant definition is and what ordinance they were using was. She asked when the adoption of the rewritten ordinance was. Many people have done research on this matter. At the last meeting, she advised that the 2002 codification had pages missing from it. There was never any discussion about a rewritten restaurant definition and it was never brought to the public. Mrs. Sena said that she wants an introduction and adoption date of the ordinance for restaurants, if it can be found. Attorney Alfieri said nothing has been found. The Borough can supply what was provided in 2009 when recodification was done for the current Code Book being used. Administrator Casagrande said that she was not here in 2009 when the code was re-codified, but Mary Howell was the Borough Administrator at the time, Allyson Cinquegrana was the Clerk, Engineer Gardella and Attorney Alfieri and some current Council served then and were part of the recodification process. Mrs. Sena said that it is up to the governing body to make sure that what was presented was what they wanted to be law. She was advised that the current code went to the Planning Board and other departments for review. Mrs. Sena said that she reviewed the online agendas from 2007 to current to see what Land Use Ordinances were discussed to address restaurants. Attorney Alfieri advised that the 2009 codification is what was on the books already. Mrs. Sena wanted to see the governing body's discussion and any public comment made on the restaurant language. If a law is being changed without Mayor and Council's knowledge, it is not law. Attorney Alfieri said the governing body cannot change what has been done in the past, so we have to move forward by fixing what is currently on the books as the Borough's Code.

Meghan Chrisner-Keefe, Beechwood Place, asked what legal authority Attorney Alfieri had to give his position on this matter. Attorney Alfieri stated that the ordinance in 2002, as part of the codification, repealed what was in place and the same happened with the 2009 codification. Mrs. Keefe reiterated Mrs. Sena's concern and stated that she was concerned that it is still in effect. Attorney Alfieri said that the ordinance states that the Clerk has the ability to update the code with new supplements, not put something back that was alleged to be left out. Attorney Alfieri said that he did not read what Mr. Reilly, the 2002 Borough Attorney, sent to Mrs. Sena. Mayor Lucarelli said research shows that the 1973 ordinance was repealed in 1998 by Ordinance B417 and this was codified in 2002. An application was received from Dunkin Donuts and there is no fast food ordinance protection on the books. Mrs. Keefe asked about the budget amendment approved this evening and if it will increase the overall budget; she was advised it will increase the overall line by \$60,000. She asked where the Borough is in regard to the COLA ordinance; Councilman Peters said that we are not close to the 3.5% allowable. Mrs. Keefe asked about the pending litigation regarding the Fair Housing Plan, our litigation status and if we are open to litigation or any exposure. Administrator Casagrande said this is a question for Good of the Borough as there is nothing on the agenda for discussion about this topic. Mrs. Keefe said, "with regard to restaurant classification, it seems the Borough was not taking any temporary measures and if so, since River Road is a county road, would they be involved with the redrafting of ordinances?" Attorney Alfieri advised that the County has no input into local zoning regulations, but they could have input on the development aspect.

Mike Sena, Lake Avenue, said he liked what the Planner said about a walkable community and is now hearing that we need to watch out for our business owners. He asked that the Borough be careful when thinking of the new ordinance and that the community be kept as walkable and kid friendly place.

Tracy Cole, Grange Avenue, said she appreciated where Mrs. Sena was coming from and that she researched this as well to try and understand why there are no fast food restaurants in the Borough. She spoke with Brooks Von Arx, Esq. who represented McDonalds in the 1970s which was eventually voted against. She read the ordinance which defined fast food at that time. Fair Haven currently does not have fast food restaurants. She understood there was no straight line and said that it matters to her because she likes the direction the community is going; vehicular traffic with fast food restaurants will jeopardize that. The little law from 1973 did a good job for the Borough and she would like it reaffirmed to preserve the Borough resident's way of life. Mrs. Cole read from 1972 Daily Register articles with comments given when McDonalds came before the Fair Haven Zoning Board. She said she sees an earnest effort to create clarity and is looking to the Mayor and Council to create clarity to the restaurant matter. Trip generation models are needed to help create a pedestrian friendly community.

There being no further comments or questions, the meeting was closed to the public at 8:33 p.m.

APPROVAL OF MINUTES

Councilwoman Sorensen made a motion to approve the Regular Meeting minutes of April 29, 2019, second by Councilwoman Koch

Affirmative: Councilmembers Koch, Rice, Rodriguez and Sorensen
Negative: None
Abstain: Councilmembers Banahan and Peters
Absent: None

Councilwoman Sorensen made a motion to approve the Executive Session minutes of April 29, 2019, second by Councilwoman Koch

Affirmative: Councilmembers Koch, Rice, Rodriguez and Sorensen
Negative: None
Abstain: Councilmembers Banahan and Peters
Absent: None

OLD BUSINESS

HEARING ON THE 2019 MUNICIPAL BUDGET

Mayor Lucarelli said generic facts were given by Administrator Casagrande earlier in the meeting and he opened the hearing for comments or questions regarding the introduced 2019 Municipal Budget at 8:35 p.m. Ruth Blaser, River Road, said the Borough is spending too much money and can do better. There being no further comments or questions, the hearing was closed to the public at 8:36 p.m.

HEARING AND ADOPTION OF ORDINANCES

1. Ordinance No. 2019-04, Amend Salary Ordinance

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN IN THE
COUNTY OF MONMOUTH SETTING THE SALARY RANGES OF OFFICERS,
EMPLOYEES AND ADMINISTRATIVE AND EXEMPT MEMBER OF THE
BOROUGH OF FAIR HAVEN**

On motion of Councilwoman Sorensen, second by Councilwoman Koch with Ayes by all present, Mayor Lucarelli opened the meeting for comments or questions at 8:36 p.m.

There being no comments or questions, the Hearing was closed to the public at 8:36 p.m. on motion of Councilwoman Koch, second by Councilwoman Sorensen with Ayes by all present.

Offered for adoption by Councilwoman Koch, second by Councilwoman Sorensen

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

NEW BUSINESS

INTRODUCTION OF ORDINANCES

1. Ordinance No. 2019-05, Renew Consent for COMCAST Renewal

**AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO
COMCAST OF MONMOUTH COUNTY, LLC. TO CONSTRUCT, CONNECT,
OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS
SYSTEM IN THE MUNICIPALITY OF FAIR HAVEN, MONMOUTH COUNTY,
NEW JERSEY**

**BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL OF THE
BOROUGH OF FAIR HAVEN, MONMOUTH COUNTY, NEW JERSEY, AS FOLLOWS:**

SECTION 1. PURPOSE OF THE ORDINANCE.

The Borough hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the Borough, poles, wires, cables, underground conduits manholes and other television conductors, fixtures, apparatus, and equipment as may be necessary for the construction, operation and maintenance in the Borough of a cable television and com-

munications system.

SECTION 2. DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms in supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. § 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "Borough" is the Borough of Fair Haven, County of Monmouth, State of New Jersey.
- b. "Company" or "Comcast" is the grantee of rights under this Ordinance and is known as Comcast of Monmouth County LLC.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. § 48:5A-1, et seq.
- d. "FCC" is the Federal Communications Commission.
- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of the Borough currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

SECTION 3. STATEMENT OF FINDINGS.

Public hearings conducted by the Borough, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the Borough, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Borough hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE.

The non-exclusive Municipal Consent granted herein shall expire 10 years from the date of expiration of the previous Certificate of Approval issued by the Board.

In the event that the Borough shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Borough shall have the right to petition the OCTV, pursuant to N.J.S.A. § 48:5A-47, for appropriate action, including modification AND/OR termination of the Certificate of Approval; provided, however, that the Borough shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE.

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Borough two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Borough or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

SECTION 6. FRANCHISE TERRITORY.

The consent granted under this Ordinance for the renewal of the franchise shall apply to the entirety of the Borough and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE.

The Company shall be required to proffer service to any residence along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. Any extension of plant

beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application, with a HPM ("homes-per-mile") of 35 dwellings per linear mile from the nearest active trunk or feeder line.

SECTION 8. CONSTRUCTION REQUIREMENTS.

a. Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

b. Relocation: If at any time during the period of this consent, the Borough shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Borough, shall remove, re-lay or relocate its equipment, at the expense of the Company prior to approval of the board.

c. Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

d. Temporary removal of cables: The Company shall, upon request of the Borough, at the company's expense, temporarily raise, lower or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances, subject to the prior approval of the board.

e. Installation of equipment: The Company shall install equipment in the same location and manner as existing public utilities whenever possible, in order to minimize the impact of same on surrounding property.

SECTION 9. CUSTOMER SERVICE.

In providing services to its customers, the Company shall comply with N.J.A.C. § 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the Borough upon written request of the Borough Administrator or Clerk.

a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.

b. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.

c. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association ("NCTA").

d. Nothing herein shall impair the right of any subscriber or the Borough to express any comment with respect to telephone accessibility to the Complaint Officer or impair the right of the Complaint Officer to take any action that is permitted under law.

SECTION 10. MUNICIPAL COMPLAINT OFFICER.

The Office of Cable Television is hereby designated as the Complaint Officer for the Borough pursuant to N.J.S.A. § 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. § 14:17-6.5. The Borough shall have the right to request copies of records and reports pertaining to complaints by Borough customers from the OCTV.

SECTION 11. LOCAL OFFICE.

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. § 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours.

SECTION 12. PERFORMANCE BOND.

During the life of the franchise the Company shall give to the Borough a bond in the amount of Twenty-Five Thousand Dollars (\$25,000). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent

incorporated herein.

SECTION 13. SUBSCRIBER RATES.

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 14. COMMITMENTS BY THE COMPANY.

a. The Company shall provide Expanded Basic or a similar tier of cable television service to one (1) outlet at no cost to each qualified existing and future school in the Borough, public and private, elementary, intermediate and secondary, provided the school building is within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service.

b. The Company shall provide Expanded Basic or a similar tier of cable television service at no cost to one (1) outlet to each qualified existing and future municipal building, police, fire, emergency management facility and public library in the Borough, provided the facility is located within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Borough.

c. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Borough a one-time Technology Grant in the amount of \$5,500 to meet the technology and/or cable related needs of the community.

d. The Communications Act of 1934, as amended [47 U.S.C. § 543 (b)], allows the Company to itemize and/or identify: (1.) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2.) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, education, and/or governmental access channels or the use of such channels; and (3.) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves its external cost, pass-through rights to the full extent permitted by law.

SECTION 15. EMERGENCY USES.

a. The Company will comply with the Emergency Alert System (“EAS”) rules in accordance with applicable state and federal statutes and regulations.

b. The Company shall in no way be held liable for any injury suffered by the Borough or any other person, during an emergency, if for any reason the Borough is unable to make full use of the cable television system as contemplated herein.

SECTION 16. LIABILITY INSURANCE.

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of One Million Dollars (\$1,000,000) covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or “umbrella”) policy in the amount of Five Million Dollars (\$5,000,000).

SECTION 17. INCORPORATION OF THE APPLICATION.

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

SECTION 18. COMPETITIVE EQUITY.

Should the Borough grant municipal consent for a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. § 14:17-6.7.

SECTION 19. SEPARABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

SECTION 20. THIRD PARTY BENEFICIARIES.

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party

beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 21. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

Offered for introduction by Councilwoman Rice, second by Councilwoman Sorensen

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

CONSENT AGENDA
RESOLUTIONS

2. Resolution No. 2019-102, Appoint Zoning Board, Alternate #2

WHEREAS, the Borough of Fair Haven has constituted and appointed a Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-69; and

WHEREAS, Borough of Fair Haven Municipal Code 30-3.2a provides that the Mayor may appoint Zoning Board members with the confirmation of the Borough Council; and

WHEREAS, a vacancy currently exists on the Zoning Board, Alternate #2 position with a term that will expire on December 31, 2020.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fair Haven that Laline Neff is hereby appointed as a Zoning Board Alternate #2 Member with a term to expire on December 31, 2020.

Offered for adoption by Councilman Rodriguez, second by Councilwoman Koch

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

3. Resolution No. 2019-103, Approve Zoning Board Application Fee Refund – Kolarsick Builders, 173 Hunting Lane

WHEREAS, Kolarsick Builders submitted a Zoning Board Application for 173 Hunting Lane, Block 10, Lot 23; and

WHEREAS, the applicant submitted the application fee of \$500 to the Zoning Board secretary; and

WHEREAS, Mr. Kolarsick withdrew his application and has requested a refund of the application fee; and

WHEREAS, the Zoning Board Secretary has provided, in writing, a request for said refund

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Fair Haven that the Chief Financial Officer will refund the application fee in the amount of \$500 to Kolarsick Builders, PO Box 614, Rumson, New Jersey 07760.

Offered for adoption by Councilman Rodriguez, second by Councilwoman Koch

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

4. Resolution No. 2019-104, Authorize Execution of Interlocal Service Agreement with Rumson for Construction Code Services

WHEREAS, the Borough of Rumson presently provides Uniform Construction Code services to the Borough of Fair Haven; and

WHEREAS, the Borough of Rumson will continue to serve as the Interlocal Enforcing Agency pursuant to N.J.A.C. 5:23-4.6 et seq and said services shall include that of the Construction Code Official and of the Building, Electrical, Fire and Plumbing Subcodes; and

WHEREAS, the proposed agreement under the Interlocal Service Act, N.J.S.A. 40:8A-1, is in the best interests of the municipalities and will tend to promote economy and efficiency in governing.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fair Haven that the Mayor and Borough Clerk be and hereby are authorized to enter into an agreement with the Borough of Rumson for the provision of Construction Code Services t the Borough of Fair Haven for the period of January 1, 2019 through December 31, 2022.

Offered for adoption by Councilman Rodriguez, second by Councilwoman Koch

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

5. Resolution No. 2019-105, Executive Session – Personnel, Pending Litigation, Acquisition of Property and Contract Negotiations

WHEREAS, the Open Public Meetings, P. L. 1975, Chapter 231 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; and

WHEREAS, the Governing Body may wish to discuss the following matters:

Personnel

1. DPW Staffing

Pending Litigation

1. Yacht Works

Acquisition of Property

1. River Road

Contract Negotiations

1. Solid Waste and Recycling Contract

WHEREAS, minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

NOW THEREFORE BE IT RESOLVED that the public be excluded from this meeting

Offered for adoption by Councilman Rodriguez, second by Councilwoman Koch

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

6. Resolution No. 2019-106, Approve Temporary Emergency Appropriations

WHEREAS, emergent conditions have arisen with respect to the payment of bills in a number accounts and no adequate provision has been made in a Year 2019 temporary budget for the aforesaid purposes; and

WHEREAS, NJSA 40A:4-20 provides for the creation of an emergency temporary appropriation for the purposes above mentioned; and

WHEREAS, the total temporary emergency resolutions adopted in the year 2019 for the Borough pursuant to the provisions of Chapter 96, PL 1951 (NJSA 40A:4-20) including this resolution total \$3,302,492.69 for the Current Fund.

NOW, THEREFORE, BE IT RESOLVED that not less than two-thirds of all members of the Borough Council of the Borough of Fair Haven, New Jersey affirmatively concurring in accordance with the provisions of NJSA 40A:4-20:

1. An emergency temporary appropriation shall be and the same is hereby made for the following purposes:

Account Number	Description	Amount	Reason
Current Account			
9-01-20-130-202	Finance Contractual	\$ 1,000.00	Need until adoption
9-01-20-155-211	Legal Contractual	\$ 25,000.00	Need until adoption
9-01-26-305-202	Solid Waste Contractual	\$205,000.00	Need until adoption
9-01-26-315-235	Vehicle Maint. New Equipment/ Repair	\$ 5,500.00	Need until adoption
9-01-43-486-299	ILSA Tech Support	\$ 2,000.00	Need until adoption
9-01-43-487-299	ILSA Municipal Court	\$ 17,100.00	Need until adoption
TOTAL		\$255,600.00	

2. That said emergency temporary appropriations will be provided for in the 2019 budget under the appropriate titles.

3. That one certified copy of this resolution will be filed with the Director of Local Government Services.

Offered for adoption by Councilman Rodriguez, second by Councilwoman Koch

Affirmative: Councilmembers Banahan, Koch, Peters, Rice, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

7. Resolution No. 2019-108, Payment of Vouchers

BE IT RESOLVED by the Governing Body of the Borough of Fair Haven that the vouchers listed for payment on the May 13, 2019 agenda are hereby approved and the Finance Department is hereby authorized to release payment to the various vendors.

2018 CURRENT ACCOUNT	\$ 4,652.13
2019 CURRENT ACCOUNT	\$ 1,495,717.32
GENERAL CAPITAL	\$ 5,149.92
GRANT FUND	\$ 1,098.74
PAYROLL AGENCY	\$ 13,254.54
OTHER TRUST	\$ 8,437.72
DOG TRUST	\$ 8.40
TOTAL	\$ 1,528,318.77

Offered for adoption by Councilman Rodriguez, second by Councilwoman Koch

Affirmative: Councilmembers Banahan, Koch, Peters, Rodriguez and Sorensen
Negative: None
Abstain: Councilwoman Rice
Absent: None

Reports of Departments

December 2018

-Chief Financial Officer

January 2019

-Chief Financial Officer

February 2019

-Chief Financial Officer

March 2019

-Chief Financial Officer

April 2019

-Municipal Clerk

-Dog License

-Planning Board and Zoning Board

-Tax Collector

-Municipal Court

-Chief Financial Officer
-Police Department

Motion to accept the reports as submitted moved by Councilwoman Sorensen, second by Councilwoman Koch with Ayes by all present.

GOOD OF THE BOROUGH

Mayor Lucarelli opened the meeting to the public for comments or questions at 8:38 p.m. Councilwoman Sorensen said that the Fair Haven Natural Area clean up was a wet, but productive day; she thanked all who came out to help including the Fair Haven Natural Area Committee and gave a special “shout out” to the Department of Public Works for their assistance.

Councilwoman Rice reported that through a Sustainable New Jersey grant, Fair Haven received \$10,000 for two water bottle stations at the fields. The Toddler Playground will be installed on May 14th. The Mother/Son Dance was a huge success with 350 participants. There will be a Memorial Day Parade held on Monday, May 27th beginning at 9:00 a.m.

On May 19th there will be the Ridge Road Run for Suicide Awareness; Councilman Rodriguez will be participating and running with members of the Police Department.

Shervyn VonHoerl, River Road, stated that his middle child is on the gender spectrum. The Father/Daughter and Mother/Son events are great, but those that are gender neutral will feel left out. Councilwoman Sorensen said that the Recreation Committee is open to suggestions and he should come to a meeting.

Bea Sena, Lake Avenue, said that a resident expressed concern about speed in the neighborhoods and asked that the streets between Ridge Road and River Road be lowered to 20 mph. Chief McGovern said that whoever is concerned should see him and he will have a study done and make the appropriate recommendation to the governing body, if needed.

Susan O’Brien, River Road, agreed with Mr. VonHoerl’s comments as she had a daughter who could not attend those types of events growing up either.

Sara Swijter, Dogwood Lane, advised that Little Silver adopted a single use plastic bag ordinance and asked if Fair Haven would be interested in this as well. Councilman Peters said the Environmental Commission is looking into this and will make a formal request. Councilwoman Sorensen said that she brought this up to Council in October when a resident approached her. The Environmental Commission is looking at this very closely and they have been visiting local businesses to see how they would be affected if an ordinance were passed.

Ruth Blaser, River Road, asked that the governing body tweak procedurals. She said that she stays until the end of the meeting (even through executive session) and the governing body does not open the meeting back up to the public. Mrs. Blaser was advised by the governing body and the Borough Clerk that the meeting is opened to the public and then adjourned.

There being no further comments or questions, the meeting was closed to the public at 8:47 p.m.

Council went into executive session at 8:53 p.m. and this meeting was reconvened at 9:30 p.m.

RESOLUTION

8. Resolution No. 2019-109, Award Solid Waste and Recycling Contract to Suburban Disposal

WHEREAS, sealed bids were opened on April 25, 2019 in the Borough Hall Council Chambers for Solid Waste and Recycling Collection Services and

WHEREAS, the following bids were received:

	<i>Bidder</i>	<i>Base Bid 3 Year Contract</i>	<i>Alternate #2 Amount</i>	<i>Alternate #3 Amount</i>
1.	Suburban Disposal, Fairfield, NJ	\$888,000.00 (\$296,000.00 Annually)	\$290.00 (60 pulls) \$5,800.00 (Annually) \$17,400 (Lump Sum)	\$90,000.00 (lump sum) \$30,000.00 (annually)
2.	Republic Services, South Plainfield, NJ	\$1,028,708.00 (\$342,902.00 Annually)	\$225.00 (60 pulls)	No Bid

WHEREAS, Richard Gardella, PE, PP, CME, Borough Engineer and Salvatore Alfieri reviewed the bids and hereby recommend that a contract award be made to Suburban Disposal, 54 Montesano Road, Fairfield, NJ in the amount of \$888,000.00 (\$296,000 annually) including Alternate #2 in the amount of \$17,400.00 (\$5,800 annually) and Alternate #3 in the amount of \$90,000.00 (\$30,000 annually); and

WHEREAS, the Chief Financial Officer of the Borough of Fair Haven has certified that funds for the low bid are available in Budget Appropriation 9-01-26-305-202, as attached; and

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Fair Haven that it hereby recommends award of a contract for Solid Waste and Recycling to Suburban Disposal, 54 Montesano Road, Fairfield, NJ and that the Mayor and Borough Clerk are authorized to execute a three-year contract to expire on May 31, 2022.

BE IT FURTHER RESOLVED, that the Borough may consider a contract extension during the third year of said contract.

Offered for adoption by Councilwoman Sorensen, second by Councilman Peters

Affirmative: Councilmembers Banahan, Koch, Peters, Rodriguez and Sorensen

Negative: Councilwoman Rice

Abstain: None

Absent: None

ADJOURNMENT

Motion to adjourn moved by Councilwoman Sorensen, second by Councilwoman Koch with Ayes by all present.

Time of Adjournment: 9:30 p.m.

Respectfully submitted,

Allyson M. Cinquegrana, RMC/CMR
Borough Clerk