

**MINUTES
REGULAR MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
FEBRUARY 28, 2005
7:30 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Mayor McKenna and Council Members Beck, Lee, Menna, Murphy, Curley.
Her
ALSO PRESENT: Administrator Sickels, Borough Clerk Vivona, Chief Financial Officer Whalen, Engineer Kosenki and Attorney Pringle.

ABSENT: Councilman Bifani.

SUNSHINE STATEMENT

Mayor McKenna requested the minutes reflect that, in compliance with Public Law 1975, Chapter 231 (Open Public Meetings Act), notice of this meeting has been provided by notifying the Asbury Park Press, the Courier, the Two River Times and the Star Ledger and by placing a notice on the bulletin board and filing same with the Borough Clerk on January 3, 2005.

WORKSHOP

Pay-to-Play Ordinance

The Borough Attorney said that Councilwoman Beck, Councilman Murphy and Councilman Bifani served on the Committee that has been working on this ordinance for the past year. Mr. Pringle said that there are two main components to the ordinance, Section 1 and Section 2 and that Section 1 amends the existing ordinance 2-65 “Payment of Claims by the Borough” that are the procedures for purchasing and payment of bills for the Borough and most of these regulations are promulgated by the Division of Local Government Services. He said that Section 2 adds a new ordinance Section 2-76 “Conflicts of Interest” that sets limitations on wheeling and contributions from developers, professionals and A.B.C. licensees. He said that ordinance Section 2-65 imposes contribution limits on vendors and also sets forth the consequences of exceeding those limits and imposes those consequences on the vendors themselves and ordinance Section 2-76 takes a somewhat different approach by imposing contribution limits on developers, development professionals, A.B.C licensees and pass through contributors that includes State, County and local political organizations, election funds of candidates for offices other than Mayor and Council and the Mayor and Council Members and other political action committees themselves and this section imposes the consequences of exceeding the limitation of contributions on the candidates themselves and the reason for that dichotomy is based on First Amendment considerations. He said First Amendment issues are less of an issue with respect to the restrictions on how much vendors can contribute to a town because they do not really have as strong a claim of a property interest in the right to be a vendor but it is a different situation in regard to the developers or development professionals and A.B.C. licensees because developers have a property in the town and a property interest and to impose limits on their rights to make contributions could be looked at as limiting their rights to free speech and could cause a problem with the Courts and you will see what we have done is imposing indirect consequences on them by restricting the ability of the elected official that received a contribution from them in excess of the threshold to not be allowed to vote on any matters involving them. He said Section 2-65 defines the limits of campaign contributions from vendors. He said it sets forth detailed procedures for identifying which vendors are ineligible based on the contributions they have made and the threshold limitations are referenced in Section 2-76.5(A) and said it is a maximum of \$400 per year per political party on the same ticket regardless of how many candidates are running with an exception if the candidates from the same political party are running entirely different campaigns with separate accounts and are not part of the team. He said it also imposes a \$2,500 cap per party to the Monmouth County political parties or campaign committees and that there is an anti-wheeling provision that limits what can come in from these sources. He said that a vendor that exceeds these limits is declared an ineligible vendor for three years following the excess contributions. He said that the Common Cause ordinance is very hard to understand so we included language defining a whole series of terms and explained some of the language. He said it sets forth a series of pay-to-play purchasing procedures that have to be implemented into the Borough’s purchasing procedures including additional language on the vouchers and resolutions and also makes the vendors certify their compliance with the Borough’s restriction on campaign contributions and also addresses vendors who refuse to certify its eligibility or knowingly submits a false certification of eligibility. He said the Chief Financial Officer will have to keep a list of ineligible vendors and the CFO has to verify the eligibility on each resolution so everyone knows that the bills are only being paid to eligible vendors. He said that each November the Chief Financial Officer would get copies of the E-lect reports and update the list of ineligible vendors that donated over the threshold and that the second set of restrictions in Section 2-76 are when an elected official becomes ineligible to vote on or participate in a matter when a contribution threshold is exceeded and sets conflict

thresholds for contribution from developers, development professionals, A.B.C. Licensees and pass through contributions and said that is the anti-wheeling provision and sets the amount at \$400 to a campaign that is very similar to the vendor restriction. He said that candidates that accept contributions in excess of the threshold would not be able to participate in discussions or negotiations relating to that developer or a matter relating to a development professional. He said the effect of the ordinance would be that Members of the Governing Body would not accept any contributions in excess of the threshold limit to avoid a conflict of interest because it would be difficult to foresee if someone was going to be involved in a project in the future. He discussed the definitions as written in the ordinance of developer, developer professional, development matter and A.B.C. Licensee. He said the next section relates to the conflict of interest thresholds for pass-through contributions and said this is the anti-wheeling provision and read the definitions from the ordinance and said that no single contribution may exceed \$1,000 and the combined amount may not exceed 20 percent of the political contributions that the candidate has received. He said that any elected official that exceeds the pass-through contribution threshold shall have a Conflict of Interest and would not be eligible to participate in any discussions or cast a vote with respect to any and all vendor matters, any and all development matters or any and all matters relating to any A.B.C. Licensees and the duration of ineligibility would be for a period of three years after the year when the pass-through contribution is received. He said the ordinance provides a means so citizens do not have to play detective and the E-lect reports would have to be filed with the Borough Clerk the same time they have to be filed with the New Jersey Election Law Enforcement Commission and gives the citizens assurance that the elected official that accepts pass-through contributions in excess of the threshold would not be able to use their vote to reward the person who made the contribution. He said the ordinance is written to keep elected officials from accepting contributions over the threshold limits and explained Section 2-76.7 and said the candidates would be responsible for keeping track of their contributions throughout the campaign to make sure they are not exceeding the threshold limits and also said there is a cure provision that gives a candidate 30 days to correct a contribution that exceeds the threshold limit. He said that payments before 2005 do not count and explained Section 2-76.9 stating that an elected official must state the reasons for abstention so that it would set forth the reason on the record of the meeting.

Councilwoman Beck said that she would like to thank the new Borough Attorney for the time he has put in on this issue and giving us some guidance and improving the original draft and said Councilman Murphy and Councilman Bifani have worked very hard on this ordinance. She said this puts limits on contributions from anyone that could have an effect on decision making and gives the public the confidence that our Borough is operating with their interest in mind and that outside influences are not shaping the town in the direction it is going. She said that we should act on this as soon as possible after the Members of the Governing Body review it and said it is a very comprehensive and strict pay-to-play ordinance that will build public trust in our Borough.

Councilman Murphy said that he would like to dovetail on what Councilwoman Beck said and thank her and Councilman Bifani for all of their hard work on this ordinance. He thanked Mr. Pringle for his advice and expertise and said that he made the format of the ordinance much easier to understand.

Mr. Pringle said that Atlantic Highlands is working on a similar ordinance and said that he spent quite a bit of time on the telephone with the Borough Attorney for that municipality and said Common Cause has raised an issue about if the conflict of interest issues were preempted by the State's Local Government Ethics Law and said they both agree that it does not. He said the Local Government Ethics Law sets forth an ethics code that applies statewide to all Municipal Officials but applies only to penalties for violations. He said this ordinance does not impose a penalty but establishes who can vote or participate in matters and who cannot and thinks it is totally in the Governing Body's right to establish this.

Mayor McKenna said that he would like to see this introduced by March 14, 2005 and if any Members of the Governing Body have any questions or comments to please submit them to the Committee so they could be discussed and we could move forward with the ordinance.

The Members of the Governing Body discussed various aspects of the ordinance and everyone agreed that we should move forward with the ordinance as soon as possible.

Councilman Curley said that we have to set up a procedure process for what we are going to go out to bid on and at what level. He said that this has been discussed in the Finance Committee meetings.

Mayor McKenna said that he thinks we are just about as strict as we can get and that even on minor matters that are well below the bidding threshold we solicit multiple bids.

The Members of the Governing Body discussed the current State bidding laws.

Presentation by Gary Watson Regarding New Safety Equipment

Mr. Watson said that the Public Utilities Department has been working very aggressively on improving our safety standards and said that we had been recently ranked as having the third highest safety record in the Monmouth County JIF. He said the Borough's Safety Committee has been diligently working on improving safety and showed everyone the new Borough safety uniforms.

Mayor McKenna commended the department and thanked them for their efforts.

APPROVAL OF MINUTES – January 25, 2005

Mr. Menna offered a motion to approve the minutes, seconded by Mr. Murphy.

ROLL CALL:

AYES: Lee, Menna, Murphy, Curley

NAYS: None

ABSTAIN: Beck

There being four ayes, no nays and one abstention, the minutes were declared approved.

MAYORAL APPOINTMENTS

REPORTS OF MAYOR AND COUNCIL MEMBERS

Councilwoman Beck said the Shade Tree Commission is moving forward and has met with representatives from JCP&L regarding tree trimming.

Councilman Curley said the Finance Committee has met and thanked Councilwoman Lee and Councilman Menna for attending their meetings regarding the 2005 Municipal Budget.

COMMUNICATIONS AND PETITIONS

Mayor McKenna read a request from St. Barnabas Health Care System Monmouth Medical Center Foundation to install an awning on the Red Bank Armory and Ice Complex to advertise The Two Rivers Antiques Show and Garden Tour from Friday, June 3, 2005 to Monday, June 5, 2005, pending approval of the Construction Official.

Mr. Murphy offered a motion to approve the request, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the request was declared approved.

Mayor McKenna read a request from the Red Bank Charter School to use the Senior Center for their Spring Dance on Friday, May 20, 2005, pending approval of the Special Events Committee.

Mr. Murphy offered a motion to approve the request, seconded by Mr. Menna.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the request was declared approved.

Mayor McKenna read a request from the Count Basie Theatre to hold a pre-concert reception on Monmouth Street in front of the theatre and closure of Monmouth Street from Maple Avenue to Pearl Street from 6 a.m., May 15, 2005 to 1 a.m., May 16, 2005, pending approval of the Special Events Committee.

Ms. Beck offered a motion to approve the request, seconded by Ms. Lee.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy

NAYS: Curley

There being four ayes and one nay, the request was declared approved.

Mayor McKenna read requests from St. Anthony's Church and Red Bank Elks Lodge No. 233 for raffle licenses.

Mr. Menna offered a motion to approve the requests, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the requests were declared approved.

ORDINANCES – First Reading

2005-6 Mayor McKenna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AUTHORIZING THE ACQUISITION OF A DRAINAGE EASEMENT.”

Ms. Beck offered a motion to adopt the ordinance on first reading, seconded by Mr. Curley.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

2005-7 Mayor McKenna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XVI “FIRE PREVENTION AND PROTECTION”, SECTION 16-3 “DUTIES OF FIRE MARSHAL”, SECTION 16-6 “APPOINTMENTS, TERM OF OFFICE RENEWAL”, SECTION 16-8 “ADDITIONAL REQUIRED INSPECTIONS AND FEES REQUIRED BY THE NEW JERSEY ADMINISTRATIVE CODE”, SECTION 16-9 “REGISTRATION; PERMITS; FEES” AND SECTION 16-10 “TECHNICAL AMENDMENTS.”

Mr. Menna offered a motion to adopt the ordinance on first reading, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

2005-8 Mayor McKenna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER II “ADMINISTRATION”, SECTION 2-36 “POLICE DEPARTMENT” ADDING NEW SUBSECTION 2-36-13 “SPECIAL LAW ENFORCEMENT OFFICERS.”

Mr. Murphy offered a motion to adopt the ordinance on first reading, seconded by Mr. Menna.

Councilwoman Beck suggested that if it is possible with the hiring of additional Police Officers to keep the public bathrooms opened in the parks.

Councilman Murphy said that he would discuss this with the Chief of Police.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

2005-9 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XXV "PLANNING AND DEVELOPMENT REGULATIONS", SECTION 25-10.14 "REGULATIONS CONTROLLING BUSINESS/RESIDENTIAL-1 DISTRICT."

Mr. Murphy offered a motion to adopt the ordinance on first reading, seconded by Mr. Menna.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

2005-10 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XI "BUILDING AND HOUSING", SECTION 11-1 "STATE UNIFORM CONSTRUCTION CODE."

Mr. Murphy offered a motion to adopt the ordinance on first reading, seconded by Mr. Menna.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

2005-11 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XIII "PROPERTY MAINTENANCE", SECTION 13-2 "BASIC NATIONAL EXISTING STRUCTURES CODE, 1984."

Mr. Menna offered a motion to adopt the ordinance on first reading, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

2005-12 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER VII "TRAFFIC", SECTION 7-3.9 "PERMIT PARKING IN DESIGNATED AREAS", SCHEDULE XIX "PERMIT PARKING."

Mr. Curley offered a motion to adopt the ordinance on first reading, seconded by Ms. Lee.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

2005-13 Mayor McKenna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AUTHORIZING THE MAYOR TO EXECUTE A STATE AID AGREEMENT FOR THE RECONSTRUCTION OF BULKHEADS ADJACENT TO THE NAVESINK RIVER AND AUTHORIZING THE CONVEYANCE OF PUBLIC ACCESS EASEMENTS ACROSS BOROUGH PROPERTY TO THE STATE OF NEW JERSEY.”

Ms. Lee offered a motion to adopt the ordinance on first reading, seconded by Mr. Curley.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on first reading.

Public hearing and final adoption scheduled for March 14, 2005.

ORDINANCES – Public Hearing & Final Adoption

2005-3 Mayor McKenna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING THE PLANNING AND DEVELOPMENT REGULATIONS, CHAPTER XXV, SECTION 7.1(1)(1) “GUARANTEES AND IMPROVEMENT PROCEDURES, PEFORMANCE GUARANTEES.”

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the public hearing was declared closed.

Mr. Menna offered a motion to adopt the ordinance on final reading, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on final reading.

2005-4 Mayor McKenna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING THE POLICE REGULATIONS, CHAPTER III, SECTION 10.1 “DRUG FREE ZONE MAP.”

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the public hearing was declared closed.

Mr. Murphy offered a motion to adopt the ordinance on final reading, seconded by Mr. Menna.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on final reading.

2005-5 Mayor McKenna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH SETTING SALARIES FOR THE BOROUGH ATTORNEY AND ASSISTANT BOROUGH ATTORNEY.”

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the public hearing was declared closed.

Mr. Menna offered a motion to adopt the ordinance on final reading, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the ordinance was declared adopted on final reading.

RESOLUTIONS

05-54 Mayor McKenna read “A RESOLUTION REJECTING BIDS FOR REPAIRS TO CHESTNUT STREET WELL ENCLOSURE AND TOWER HILL BOOSTER PUMPING FACILITY.”

Mr. Murphy offered a motion to approve the resolution, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the resolution was declared approved.

05-55 Mayor McKenna read “A RESOLUTION AUTHORIZING THE PUBLIC DISPLAY OF FIREWORKS.”

Mr. Murphy offered a motion to approve the resolution, seconded by Mr. Curley.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the resolution was declared approved.

05-56 Mayor McKenna read “A RESOLUTION OF THE BOROUGH OF RED BANK, MONMOUTH COUNTY AUTHORIZING ACCEPTANCE OF GRANT AGREEMENT BETWEEN THE BOROUGH AND THE COUNTY OF MONMOUTH.”

Mr. Murphy offered a motion to approve the resolution, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the resolution was declared approved.

05-57 Mayor McKenna read “A RESOLUTION ACCEPTING BIDS FOR 2004 ROAD PROGRAM.”

Mr. Murphy offered a motion to approve the resolution, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the resolution was declared approved.

05-58 Mayor McKenna read “A RESOLUTION OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, CANCELING OUTSTANDING PROPERTY TAXES ON PROPERTY KNOWN AS BLOCK 71, LOT 31 ON THE MAP OF THE BOROUGH OF RED BANK.”

Mr. Murphy offered a motion to approve the resolution, seconded by Mr. Curley.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the resolution was declared approved.

05-60 Mayor McKenna read “A RESOLUTION OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, AUTHORIZING A PRIVATE SALE OF PROPERTY NO LONGER NEEDED BY THE BOROUGH.”

Mr. Menna offered a motion to approve the resolution, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the resolution was declared approved.

PROCLAMATIONS

PAYMENT OF VOUCHERS

05-59 Mayor McKenna read “A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$722,308.00.”

Mr. Curley offered a motion to approve the resolution, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the resolution was declared approved.

OLD BUSINESS

NEW BUSINESS

AUDIENCE

Steve Fitzpatrick – 32 Chestnut Street – said that he is glad the Borough is adopting a Pay-to-Play ordinance and read his list of concerns and said Spring Lake has the best Pay-to-Play ordinance. He spoke about various individuals' involvement in the Monmouth County Democratic Party and said he is still worried about wheeling and pass-through contributions.

Mr. Pringle said that the limits are set in the ordinance and they cannot exceed 20 percent of the total amount of money spent on the campaign.

Mr. Fitzpatrick asked if the Borough could go out to bid on all contracts.

Councilwoman Beck said that this has been discussed and Councilman Menna thought the Borough should go out to bid or solicit RFPs for professional services.

Councilman Curley said he thinks we should consider this process for purchasing insurance for the Borough.

Mr. Fitzpatrick read names of developers that were on the E-lect reports from Borough Council Candidates from last year and said there should be a moratorium placed on development in the town.

William Poku – 90 Bank Street – said that he has concerns about overcrowding in the Borough and thinks the Governing Body should tape the meetings and put them in the Library so citizens could watch them. He said owners of single family homes are renting them out and overcrowding them and it is driving the African Americans out of town and that the Borough should increase penalties to remedy the situation. He said the Borough should follow the Master Plan.

EXECUTIVE SESSION

ADJOURNMENT

Mr. Menna offered a motion, seconded by Ms. Beck to adjourn the meeting.

ROLL CALL:

AYES: Beck, Lee, Menna, Murphy, Curley

NAYS: None

There being five ayes and no nays, the motion was declared approved.

Respectfully submitted,

Carol A. Vivona