

**REGULAR MEETING
MARCH 19, 2013**

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

Mayor Paul N. Mirabelli called the meeting to order at 8:05 P.M.

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

PRESENT: Mayor Mirabelli, Councilwoman Andre, Councilman Lane, Councilman Messler, Councilman Mortimer, Council President Turner, Administrator Debbie and Attorney Post. Also present were Recreation Director Frank Masella and Public Works Manager Ronald Romak. Councilman Wass was absent.

APPROVAL OF MINUTES:

Upon motion by Councilman Turner and a second by Councilman Lane, the minutes of the Regular & Executive Session Meetings on February 19, 2013 were approved. Roll Call: Ayes: Andre, Lane, Messler, Mortimer, Turner. Nays: 0.

Upon motion by Councilman Mortimer and a second by Councilman Turner, the minutes of the Work & Executive Session Meetings held on March 5, 2013 were approved. Roll Call: Ayes: Andre, Lane, Messler, Mortimer, Turner. Nays: 0.

RESOLUTIONS:

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

RESOLUTION 44-2013

WHEREAS, the Mandatory Source Separation and Recycling Act, P.L. 1987, c.102, has established a recycling fund from which tonnage grants may be made to municipalities in order to encourage local source separation and recycling program; and

WHEREAS, it is the intent and spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and expand existing programs; and

WHEREAS, the New Jersey Department of Environmental Protection is promulgating recycling regulations to implement the Mandatory Source Separation and Recycling Act; and

WHEREAS, the recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including, but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and

WHEREAS, a resolution authorizing this municipality to apply for such tonnage grants will memorialize the commitment of this municipality to recycling and indicate the assent of the Borough of Mountainside to the effort undertaken by the municipality and the requirements contained in the Recycling Act and recycling regulations; and

WHEREAS, such resolution should designate the individual authorized to ensure that the application is properly completed and timely filed;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that Mountainside hereby endorses the submission of a Municipal Recycling Tonnage Grant Application to the New Jersey Department of Environmental Protection, Office of Recycling and designates Ronald Romak, Public Works Manager, to ensure that the said application is properly filed.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 45-2013

WHEREAS, the Borough of Mountainside needs to refund monies to interested parties for overpayment of current year taxes,

NOW, THEREFORE, BE IT RESOLVED that the Treasurer be authorized to issue the following refunds, for the following reasons:

Duplicate payments Due to Banks

CoreLogic
1 CoreLogic Way
Refund Units: DFW 4-3
Westlake, TX 76262

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<u>Block</u>	<u>Lot</u>	<u>Amount</u>
7.C	12	\$3,528.04
15.N	5	\$2,133.81

Wells Fargo Real Estate Tax Service, LLC
Attn: Financial Support Unit-Region 1
1 Home Campus, MAC X2302-04D
Des Moines, IA 50328-0001

<u>Block</u>	<u>Lot</u>	<u>Amount</u>
15.F	12	\$1,797.22

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 46-2013

WHEREAS, receivable balance exist in the records of the Borough; and

WHEREAS, the balance is as follows:

Municipal Alliance Grant \$ 1,838.94

NOW, THEREFORE, BE IT RESOLVED that the Chief Finance Officer cancel this balance from the records of the Borough.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 47-2013

WHEREAS, there exists a need for a Pool Manager and Assistant Managers at the Community Pool for the 2013 season; and

WHEREAS, Recreation Director Frank Masella and the Recreation Committee has recommended that the following individuals be appointed to said positions:

John Tosato, Manager	\$10,718.86
Scott Laudati, Assistant Manager	\$ 6,965.48
Pat Mamrak, Assistant Manager	\$ 6,630.00

WHEREAS, each of the above individuals shall be appointed as temporary employees for the 2013 season;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that the recommendation of Recreation Director Frank Masella and the Recreation Committee be and hereby is accepted and approved pending completion of background checks;

BE IT FURTHER RESOLVED that the salaries for the above positions shall be set forth in the Borough's annual salary Resolution.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 48-2013

WHEREAS, the Recreation Director Frank Masella has requested refunds to the following participants due to program cancellations; and

NOW, THEREFORE, BE IT RESOLVED that the Treasurer be authorized to issue the following refunds:

<u>Recipient</u>	<u>Program</u>	<u>Amount</u>
Bridget Colendenski 364 Creek Bed Road	Basketball/Tennis	\$255.00
Valerie Wass 558 Pheasant Hill Rd	Basketball	\$78.00
Debbie Perez-Santalla 331 Darby Lane	Basketball	\$78.00

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 49-2013

WHEREAS, Roseann Buccino deposited funds in escrow in the amount of \$250.00 for a road opening permit at 590 Woodland Avenue; and

WHEREAS, there remained a balance due to Roseann Buccino for \$250.00; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that the Finance Officer is hereby authorized to refund the amount of \$250.00 to Roseann Buccino, 590 Woodland Avenue, Mountainside, NJ as recommended by the Borough Engineer.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 50-2013

WHEREAS, in accordance with applicable provisions of the Public Contracts Law, the Borough advertised for Bids for Contract 2013-1 for “Channel Cleaning & Erosion Control Improvements on Branch 1 Nomahegan Brook”; and

WHEREAS, on February 21, 2013 the return date for the bids, four bids were received as follows:

<u>Bidder:</u>	<u>Base Bid:</u>
Jo-Med Contracting Corp.	\$83,919.02
Denbar Construction	\$127,059.00
Montana Construction	\$249,500.00
Earthworks, Inc.	\$329,450.00

WHEREAS, the Borough Engineer recommends awarding the Base Bid; and

WHEREAS, the lowest bidder is Jo-Med Contracting Corp. and the Borough Engineer has recommended that Contract 2013-1 be awarded to Jo-Med Contracting Corp., 815 Garden Street, Elizabeth, NJ 07202.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that Contract 2013-1 for “Channel Cleaning & Erosion Control Improvements on Branch 1 Nomahegan Brook” is awarded to Jo-Med Contracting Corp., 815 Garden Street, NJ 07202 in the amount of \$83,919.02.

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Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 51-2013

WHEREAS, N.J.A.C. 5:34-7.15 authorizes contracting units to establish a Commodity Resale System; and

WHEREAS, the County of Union, hereinafter referred to as the Lead Agency, has established a Cooperative Commodity Resale System, System ID# 99016-UCCRS, for the resale of gasoline and/or diesel, and

WHEREAS, the Borough of Mountainside desires to participate in the Union County Commodity Resale System;

NOW, THEREFORE BE IT RESOLVED a copy of this resolution along with copy of the agreement shall be forwarded to the Director of the Division of Local Government Services within the State Department of Community Affairs for approval.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 52-2013

WHEREAS the Mountainside Community Pool Food Concession Contract (“Contract”) dated April 19, 2011 gives the Borough the right to extend the term of the Contract for two additional years, either a year at a time or for the full two year period; and

WHEREAS the Borough of Mountainside has determined to extend the term of the Contract for the second year of the two year period;

NOW THEREFORE BE IT RESOLVED that the term of the Contract be and it hereby is extended for one year, commencing April 19, 2013 subject to the following:

1. The first sentence of Paragraph 2 of the Contract, entitled Management shall provide as follows:

William Malhosky, Kathy Malhosky or Samantha Grindlinger is required to be present in the snack bar area during operating hours.

2. Paragraph 4 of the Contract, Entitled Contract Sum shall provide as follows:

The Contractor agrees to pay the Borough for said contract, the sum of Nine Thousand Nine Hundred Eighty Dollars and Seventy Cents (\$9,980.70) as follows: June 1, 2013 50% of the total price, or \$4,990.35: July 15, 2013 50% of the total price, or \$4,990.35. Payment time shall not affect the time of the contract. All payments must be made in accordance with the Specifications.

2. Paragraph 8 of the Contract Entitled Performance Security shall provide as follows:

Upon signing the contract, Contractor, at its own expense, shall supply to the Borough the first installment either cash or a certified check in the amount of \$2,495.00 before June 1, 2013 and the final installment of \$2495.00 by July 15, 2013, which cash or certified check shall be retained by the Borough Clerk until such time as the Contract has been completed, at which time the performance security will be refunded. If the Contractor fails to perform the Contract, the Borough shall utilize the Performance Security to secure a replacement Contractor to make any outstanding payments to the Borough as may be owned pursuant to this Contract, or both.

The Borough may also deduct the penalties described in Section 2 of this Contract from the Performance Security and also for any damage to equipment or if additional cleaning is necessary after the season is over.

3. All other terms and conditions of the Contract shall continue in full force and effect.

4. B&K Concessions, the other party to the Contract, shall signify its acceptance of this extension by affixing the signature of its authorized signatory to a copy of this Resolution.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 54-2013

**RESOLUTION AUTHORIZING EXECUTION OF THE CONSENT JUDGEMENT FOR SETTLEMENT
IN THE ACTION ENTITLED, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,
v. OCCIDENTAL CHEMICAL CORPORATION, ET AL, DOCKET NO. ESX-L-99868-05(PASR)**

WHEREAS, certain claims have been asserted against the Borough of Mountainside, as a Third-Party Defendant, in the action entitled New Jersey Department of Environmental Protection v. Occidental Chemical Corporation, et al, bearing Docket No. ESX-L-9868-05, pending in the Superior Court of New Jersey, Law Division, Essex County (the "Litigation") regarding alleged environmental contamination of the Newark Bay Complex; and

WHEREAS, certain Third-Party Defendant municipalities and municipal utilities authorities, including the Borough of Mountainside, are members of a group known as the Municipal Joint Defense Group in the Litigation; and

WHEREAS, the Municipal Joint Defense Group, on behalf of its members, engaged in settlement negotiations with the State of New Jersey ("State Plaintiffs") towards the resolution of the Litigation through the entry of a Consent Judgment; and

WHEREAS, the parties have substantially settled the Litigation and are negotiating the final details of the Consent Judgment; and

WHEREAS, the term of the settlement require the Borough of Mountainside to execute/sign off on the Consent Judgment prior to the Consent Judgment being lodged and published in the New Jersey Register for public review and comment; and

WHEREAS, the terms of the settlement require the Borough of Mountainside to pass a resolution authorizing its participation in the Consent Judgment and either authorizing the payment of \$95,000 to the State of New Jersey or authorizing the State of New Jersey to deduct the sum of \$95,000 from State Aide representing the Settlement Funds as the term is defined by the Consent Judgment on or before March 23, 2013; and

WHEREAS, a copy of the Consent Judgment is in the Clerk's office and is incorporated by reference hereto.

NOW, THERFORE, BE IT RESOLVED by the Borough of Mountainside as follows:

1. The Borough of Mountainside is hereby authorized and directed to sign the signature page of the Consent Judgment, which will be adopted in substantially the form contained in the draft copy on file, and thereafter

immediately transmit the said original signature page to Daren R. Eppley, Esq., DeCotiis Fitzpatrick & Cole, LLP, 500 Frank W. Burr Blvd., Teaneck New Jersey 07666.

2. The Borough of Mountainside hereby authorizes payment of the \$95,000 settlement amount, when due, in the manner provided for in the Consent Judgment.
3. Notwithstanding the above authorizations, nothing contained within this resolution shall preclude or prevent the Borough of Mountainside from pursuing recovery and reimbursement for the whole or any portion of the Settlement Funds from any insurance carrier(s) identified now or in the future.
4. This resolution shall take effect immediately.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 55-2013

WHEREAS, the Borough Master Plan and development regulations was last re-examined by the Planning Board in 2009; and

WHEREAS, as a part of this re-examination, 2009 Master Plan Re-examination Report recommended that investigation and study should be undertaken with respect to possible zoning amendments to be undertaken in the L-I Zone to provide for revitalization of the properties therein; and

WHEREAS, recent litigation has involved the lack of affordable housing to be found in the Borough; and

WHEREAS, recent development in the Borough and a growing tendency to “over build” on residential lots, resulting in structures not consistent with the character of the neighborhood, has prompted the Governing Body to seek the input of the Planning Board; and

WHEREAS, the Governing Body, pursuant to N.J.S.A. 40:55D-89, desires that the Planning Board now undertake a general re-examination of the Borough master plan and development regulations; and

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Mountainside, County of Union, State of New Jersey, as follows:

1. The Planning Board is hereby authorized pursuant to N.J.S.A. 40:55D-89 to undertake a general re-examination of the Borough Master Plan and development regulations; and
2. Pursuant to N.J.S.A. 40:55D-89, the Planning Board is to prepare and adopt by resolution a report on the findings of such re-examination, a copy of which shall be sent to the county planning board; and
3. The reexamination report shall state:
 - a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.
 - b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.
 - c. The extent to which there have been significant changes in the assumptions, policies, and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition, and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.
 - d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.
 - e. The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.
4. Pursuant to N.J.S.A. 40:55D-89, upon completion, a notice that the report and resolution have been prepared shall be sent to the municipal clerk of the municipalities that adjoin the Borough.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

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

RESOLUTION 56-2013

BE IT FURTHER RESOLVED, that the Borough of Mountainside fully supports and approves the Multi-Jurisdictional Hazard Mitigation Plan prepared for Union County by James Lee Witt Associates, dated December 8, 2010.

I, Martha Lopez, Borough Clerk of the Borough of Mountainside, in the County of Union, do hereby certify that the above is a true copy of Resolution #56-2013 passed at a Regular Council Meeting of said Borough, held on the 19th day of March 2013.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

ORDINANCES: First Reading (Introduction)

ORDINANCE 1207-2013

**CALENDAR YEAR 2013
ORDINANCE TO ESTABLISH A CAP BANK
(N.J.S.A. 40A:4-45.14)**

WHEREAS, the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et.seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said final budget appropriations to 2.0% unless authorized by ordinance to increase it to 3.5% over the previous year's final appropriations; and,

WHEREAS, a municipality may, by ordinance, bank the difference between its final budget appropriations and the 3.5% increase authorized by this ordinance when said difference is not appropriated as part of the final budget; and,

WHEREAS, the Borough Council of the Borough of Mountainside, County of Union, hereby determines that this difference in the amount of \$115,508.84 that is not appropriated as part of the final budget shall be retained as an exception to the final appropriations in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED, that any amount authorized herein above that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

It was moved by Councilman Mortimer and seconded by Councilman Turner that this ordinance be passed on first reading and advertised in full for a public hearing on April 16, 2013.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

The following resolution was introduced by Councilman Turner and second by Councilman Lane.

RESOLUTION 53-2013

Municipal Budget of the Borough of Mountainside, County of Union for the Calendar Year 2013;

BE IT RESOLVED, that the following statements of revenues and appropriations shall constitute the Municipal Budget for the year 2013;

BE IT FURTHER RESOLVED, that said Budget Summaries be published in the Local Source in the issue of March 28, 2013;

The Governing Body of the Borough of Mountainside does hereby approve the following as the Budget for the year 2013;

Notice is hereby given that the Budget and Tax Resolution was approved by the Mayor and Council of the Borough of Mountainside, County of Union, on March 19, 2013. A hearing on the Budget and Tax Resolution will be held at the Municipal Building on April 16, 2013 at 8:00 o'clock (PM) at which time and place objections to said Budget and Tax Resolution for the year 2013 may be presented by taxpayers or other interested persons.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

ORDINANCE 1208-2013

AN ORDINANCE TO APPROPRIATE THE SUM OF FIFTY-SEVEN THOUSAND DOLLARS (\$57,000) FOR IMPROVEMENTS TO THE RECREATION FACILITIES OF THE BOROUGH OF MOUNTAINSIDE FROM CAPITAL SURPLUS

WHEREAS, the Governing Body of the Borough of Mountainside have decided to make improvements to the recreation facilities of the Borough of Mountainside; and

WHEREAS, funds up to the amount of \$57,000.00 may be needed; and

WHEREAS, the Governing Body of the Borough of Mountainside concurs that these improvements to the recreation facilities are necessary;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside that the sum of \$57,000.00 be and is hereby appropriated for the improvements to the recreation facilities.

BE IT FURTHER ORDAINED that the amount of \$57,000 be appropriated from the Capital Surplus.

BE IT FURTHER ORDAINED that the Borough of Mountainside may be reimbursed by the grants, insurance proceeds or FEMA proceeds and when this money is received, these funds will reimburse back the Capital Surplus.

It was moved by Councilwoman Andre and seconded by Councilman Turner that this ordinance be passed on first reading and advertised in full for a public hearing on April 16, 2013.

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

MOTIONS:

The following motions were unanimously approved:

1. Approve raffle applications from Center of Hope Hospice for an on premise 50/50 draw raffle, off premise draw raffle and on premise draw raffle
2. Approve raffle applications from Lions Eye Bank of NJ for two (2) on premise draw raffles
3. Approve raffle application from Mountainside Education Foundation Inc. for an on premise 50/50 draw raffle

BILLS & CLAIMS:

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

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 19th day of March 2013, 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 \$1,741,319.58 (Copy of bill list attached.)

Roll Call: Andre, Lane, Messler, Mortimer, Turner. Nays: 0

COUNCIL COMMENTS:

Mayor Mirabelli thanked Public Works and the snow removal company for keeping our roads clear during recent snow days.

Councilman Lane informed the public that the Mountainside Volunteer Fire Department is recruiting new members and how to apply.

Councilman Turner sent his condolences on the passing of Watchung Mayor Jerry Mobus.

Councilwoman Andre announced that the Mountainside Rescue Squad was also recruiting new members and invited the public to attend the Annual Easter Hunt on March 23rd.

Councilman Messler invited the community to attend the Mountainside Youth Baseball Opening Day Parade on April 13th.

AUDIENCE PARTICIPATION:

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

Upon a motion by Councilman Lane and a second by Councilman Turner the meeting was unanimously adjourned.

Meeting adjourned at 8:27 P.M.

Respectfully submitted,

Martha Lopez, Borough Clerk