



Minutes  
Meeting of the Municipal Council  
Wednesday, November 8, 2017  
REGULAR MEETING

**Executive Session - 5:00 p.m.**

2017-329 Resolution Authorizing a meeting which excludes the public

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Yvonne Clayton, Councilmember
<b>SECONDER:</b>	Amy Quinn, Deputy Mayor
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Eileen Chapman	Councilmember	Present	
Yvonne Clayton	Councilmember	Present	
Jesse Kendle	Councilmember	Present	
Amy Quinn	Deputy Mayor	Present	
John Moor	Mayor	Present	
Cindy Dye	City Clerk	Present	
Michael Capabianco	City Manager	Present	
Frederick Raffetto	City Attorney	Present	
Melody Hartsgrove	Deputy City Clerk	Present	

called the meeting to order at 7:00 PM.

**PUBLIC PARTICIPATION**

Motion made by Council Member Clayton and seconded by Council Member Chapman to open the meeting to the public.

The following members of the public spoke: Jordan Modell, Derek Bloom, Brett Lowell, Randy Thompson, Wendy Glassman, Paul Vail, Felicia Simmons, Ruth Ann Harrison, Louise Murray, Rita Marano, Jerry Scrano, Michael Knipp , Dan Sciannameo, Nancy Fasano.

Motion made by Council Member Chapman and seconded by Council Member Clayton to close meeting to the public.

**MINUTES**

Motion made by Deputy Mayor Quinn and seconded by Council Member Chapman .

1. **Motion to:** Executive Minutes of Oct 25, 2017 4:30 PM
2. Municipal Council - Work Session - Oct 25, 2017 6:00 PM
3. Municipal Council - Regular Meeting - Oct 25, 2017 7:00 PM

**CONSENT AGENDA RESOLUTIONS**

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Eileen Chapman, Councilmember
<b>SECONDER:</b>	Yvonne Clayton, Councilmember
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

2017-330 Special Event Applications

2017-331 Resolution Authorizing a Refund due of an Overpayment of Sewer Block 1905 Lot 3 - 829 Dunlewy Street

2017-332 Resolution Approving Award of Contract for Regional Contribution Agreement Project (915 Sunset Avenue)

2017-333 Resolution Approving Award of Contract for Regional Contribution Agreement Project (1202 Fourth Avenue)

2017-334 Resolution Approving Award of Contract for Regional Contribution Agreement Project (700 Second Ave)

2017-335 Resolution Authorizing the Disposition of Surplus Property - Electronics

2017-336 Resolution Approving Disposition of Surplus Property - Public Works

2017-337 Accepting Mental Health Grant

**INDIVIDUAL RESOLUTIONS**

2017-338 Resolution Authorizing the Transfer of Appropriations in the Fiscal Year 2017 Budget

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Eileen Chapman, Councilmember
<b>SECONDER:</b>	Yvonne Clayton, Councilmember
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

2017-339 Resolution Authorizing Payment of Bills

Council Member Chapman abstain from 17-01527

<b>RESULT:</b>	<b>ADOPTED [4 TO 1]</b>
<b>MOVER:</b>	Eileen Chapman, Councilmember
<b>SECONDER:</b>	Yvonne Clayton, Councilmember
<b>AYES:</b>	Eileen Chapman, Yvonne Clayton, Jesse Kendle, Amy Quinn
<b>NAYS:</b>	John Moor

2017-340 Authorizing Project Management and Construction Coordination and Inspection Services to T&M Associates for the 2015 Road Program

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Amy Quinn, Deputy Mayor
<b>SECONDER:</b>	Yvonne Clayton, Councilmember
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

2017-341 Resolution Authorizing Change Orders with Black Rock Enterprises for the Road Program

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Yvonne Clayton, Councilmember
<b>SECONDER:</b>	Eileen Chapman, Councilmember
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

2017-342 Resolution Amending the Metered Parking Requirements in the Downtown and Waterfront Areas of the City, Effective Every Saturday During the Time Period From November 25, 2017 Through December 23, 2017

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Eileen Chapman, Councilmember
<b>SECONDER:</b>	Yvonne Clayton, Councilmember
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

2017-343 Resolution Authorizing the City of Asbury Park to Grant a Revocable License Agreement for Encroachment Over a Certain Portion of the Right-Of-Way Area (Air Space) Adjacent to the Property Located at 306 (a/k/a 308) Main Street (Block 2508, Lot 9)

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Yvonne Clayton, Councilmember
<b>SECONDER:</b>	Jesse Kendle, Councilmember
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

## **ORDINANCES**

### Introduction

2017-41 Ordinance of the City of Asbury Park Supplementing Traffic and Parking Regulations Chapter VII Establishing Section 7-7.5 General Provisions

Public hearing is scheduled for December 13, 2017.

<b>RESULT:</b>	<b>INTRODUCED [UNANIMOUS]</b>
	<b>Next: 12/13/2017 7:00 PM</b>
<b>MOVER:</b>	Yvonne Clayton, Councilmember
<b>SECONDER:</b>	Amy Quinn, Deputy Mayor
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

2017-42 Ordinance of the City of Asbury Park Amending and Supplementing Chapter VII of the Code of the City of Asbury Park Regarding Traffic and Parking Regulations

Public hearing is scheduled for December 13, 2017.

<b>RESULT:</b>	<b>INTRODUCED [UNANIMOUS]</b>
	<b>Next: 12/13/2017 7:00 PM</b>
<b>MOVER:</b>	Amy Quinn, Deputy Mayor
<b>SECONDER:</b>	John Moor, Mayor
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

Second Reading/Public Hearing

2017-43 Amending and Supplementing Chapter 12 Section 8 "Short Term Rental Regulations"

**CITY ATTORNEY STATEMENT REGARDING ORDINANCE NO. 2017-43**

**(JON BIONDO’S ORDINANCE) - 11/8/17**

- Before the Mayor and Council open up the Public Hearing concerning Ordinance No. 2017-43, I would like to make a few comments.
- Specifically, on October 10, 2017, an Ordinance to Amend and Supplement Chapter 12, Section 8, of the Code of the City of Asbury Park, as it relates to **short-term rental regulations**, was submitted by Petition through the “Initiative” process to the Municipal Clerk by Jon Biondo and a Committee of Petitioners. The Petition contained a total of **246** signatures.
- The Ordinance proposed by Petition relates to the same topic (that is, the short-term rental of real property within the City of Asbury Park) as that set forth in Ordinance No. 2017-40, which was introduced by the Mayor and Council on October 11, 2017, and which is also on this evening’s agenda for a second reading and public hearing.
- The Ordinance submitted by the Committee of Petitioners, however, is significantly different than Ordinance No. 2017-40, as proposed by the Mayor and Council.
- The Ordinance submitted by the Committee of Petitioners was put forth under the “Initiative” process, which is permitted in municipalities, like Asbury Park, which are governed under the Faulkner Act.
- In those municipalities, the voters may propose and initiate any Ordinance for adoption in accordance with the procedural requirements set forth in the Act.
- According to those requirements, the Initiative Petition must be signed by a specified percentage of the legal voters of the City who voted in the last election at which members of the general assembly were elected (which, at the time of submission of the Petition, was 2015).

- Following the submission of the Petition, the Municipal Clerk was required to determine the sufficiency of the Petition within 20 days of the Petition's filing, or by October 30, 2017.
- By law, if the Petition is found to be sufficient, then the Municipal Clerk shall submit the same to the Council without delay, and the initiated Ordinance shall be deemed to have had a first reading and provision shall be made for a public hearing thereon.
- In our case, by letter which was hand delivered to the Committee of Petitioners on October 25, 2017, the Municipal Clerk provided notice that the Petition had been approved (or certified), and that a public hearing regarding the proposed Ordinance (which has now been numbered as 2017-43) had been scheduled for this evening, November 8, 2017, during the Regular public portion of tonight's Council meeting.
- By law, the Governing Body has a period of 20 days from October 25, 2017 to consider the Ordinance which was proposed by Initiative. That would take us to November 14, 2017.
- It should be noted that this evening's Council meeting is the only regularly scheduled Council meeting to be held between the date the Petition was certified (October 25<sup>th</sup>) and November 14<sup>th</sup>.
- By law, if the Council shall fail to pass the Ordinance requested through the Initiative process by November 14<sup>th</sup>, then the Municipal Clerk shall submit the same to the voters.
- Given the number of signatures contained in the Petition which were verified as belonging to qualified voters within the City of Asbury Park, which number amounted to **214** of the **246** total signatures contained in the Petition, the law provides that, should the Governing Body fail to adopt the Ordinance by the November 14, 2017 deadline, then that Ordinance shall be submitted to the voters at the next general election, in accordance with N.J.S.A. 40:59A-192(b). The next general election shall be held in November of 2018, or one year from now.
- Therefore, in accordance with the procedures which I have just recited, Ordinance No. 2017-43 is now being opened up to the public for a public hearing. At the conclusion of the public hearing, the Council may, or may not, determine to take action on that Ordinance. The Council's action or inaction on this Ordinance will determine whether the matter is put to the voters at the general election in November of 2018.
- Finally, there will be another public hearing this evening on the other Ordinance relating to the same topic of short-term rentals, known as Ordinance No. 2017-40, which Ordinance was introduced by the Mayor and Council on October 11, 2017. I will be making a separate statement regarding that Ordinance at the appropriate time.
- With all that having been said, Ms. Hartsgrove, would you kindly ask for a motion and a vote to open up the public hearing on Ordinance No. 2017-43.

Motion made by Council person Clayton and seconded by Deputy Mayor Quinn to open the public hearing and the following members of the public spoke: Ruthanne Harrison, Pam Lamberton.

Council Member Kendle made a motion and seconded by Council Member Chapman to close the public hearing.

<b>RESULT:</b>	<b>DEFEATED [0 TO 5]</b>
<b>MOVER:</b>	Yvonne Clayton, Councilmember
<b>SECONDER:</b>	Amy Quinn, Deputy Mayor
<b>NAYS:</b>	Chapman, Clayton, Kendle, Quinn, Moor

2017-40 An Ordinance Amending and Supplementing Chapter XIII, Entitled “Property Improvement and Neighborhood Preservation – Property Maintenance Code,” of the “Code of the City of Asbury Park, New Jersey,” Regulating and Establishing Registration Requirements for Short-Term Rentals in the City of Asbury Park, New Jersey

**CITY ATTORNEY STATEMENT REGARDING**

**REDD vs. BOWMAN, 223 N.J. 87 (2015) - 11/8/17**

**(TO BE READ PRIOR TO CONSIDERATION OF ORDINANCE NO. 2017-40)**

- With regard to Ordinance No. 2017-40, which was introduced by the Mayor and Council on October 11, 2017, and which relates to the same topic as the prior Ordinance that the Council just considered, Mr. Jon Biondo, on behalf of the Committee of Petitioners, spoke publicly at the microphone at the October 25, 2017 Council meeting, asserting that the New Jersey Supreme Court decision in the matter known as Redd vs. Bowman, 223 N.J. 87 (2015), effectively prohibits the Asbury Park Mayor and Council from enacting legislation on the same topic as that which is contained in the Ordinance which was submitted through the “Initiative” process under the Faulkner Act and which has now been certified by the Municipal Clerk.
- On behalf of the City, I have had the opportunity to review the Redd vs. Bowman case, and I respectfully disagree with Mr. Biondo’s conclusion in that regard.
- The issue in Redd vs. Bowman was whether an Initiative Petition filed under the Faulkner Act requiring the City of Camden to create and maintain its own police force, and prohibiting the municipality from replacing its police force with a County-wide police force, unlawfully restricted the municipal governing body’s legislative authority, or was preempted by certain State fiscal statutes.
- In a lengthy opinion, the New Jersey Supreme Court found that the Ordinance proposed by Petition in Camden did not constitute an improper divestment of the municipal governing body’s legislative power, and also found that it was not preempted by the State statutes referenced, so theoretically, the Ordinance proposed by Petition could go on the ballot. However, given that three (3) years had passed from the time the initiated Ordinance was submitted to and certified by the Camden City Clerk, to the time that the Supreme Court made its determination in the case, and given that the intervening circumstances had changed so dramatically (specifically, the Camden Police Department had already been dissolved and replaced with the County police force), the Supreme Court found that the Ordinance proposed by Petition (though certified) was essentially “stale” and could not be put before the voters.
- It should be noted that there were not competing Ordinances at issue in the Redd vs. Bowman case. The Court was not presented with, nor did it rule upon, circumstances where one Ordinance was submitted by Initiative and a different competing Ordinance on the same topic was simultaneously or shortly thereafter adopted by the local Governing Body. As such, there was no determination made in that case holding that a municipal Governing Body would be precluded from acting in those circumstances.

- Based upon my review of that case, I simply do not find it relevant to the situation presented in Asbury Park, and do not consider it to prevent the Mayor and Council from adopting their own Ordinance (2017-40), if they so choose, even though a different Ordinance on the same topic (2017-43) will now be sent to the voters for their consideration in November of 2018.
- Finally, as opposed to the “Referendum” statutes, which affirmatively impose a “stay” on an Ordinance which is subject to a referendum Petition, there is nothing in the Faulkner Act statutes governing “Initiative” which imposes a stay on the Governing Body’s ability to adopt an Ordinance on a certain topic after an Initiative Petition has been presented or certified on the same or similar topic. As such, there is no statutory prohibition either, which would prohibit the Council from taking action this evening regarding Ordinance No. 2017-40.
- With that said, Ms. Hartsgrove, would you kindly ask for a motion and a vote to open up the public hearing on Ordinance No. 2017-40.

Mayor Moor made a motion and seconded by Deputy Mayor Quinn to open the public hearing and the following members of the public spoke: Robert White, Michael Knipp, Rita Marano, Linda Phillips, Paul Edgecomb. Tomasina Shanks, Pam Lamberton, Conrad Niblet, Kathleen Guliano, Nancy Fasano, Felicia Simmons, Jerry Scrano, John Mastra.

Motion made by Councilman Kendle and seconded by Councilwoman Chapman to close the public hearing.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Amy Quinn, Deputy Mayor
<b>SECONDER:</b>	Yvonne Clayton, John Moor
<b>AYES:</b>	Chapman, Clayton, Kendle, Quinn, Moor

**ADJOURNMENT**

The meeting was adjourned at 9:15 PM

Respectfully submitted by:

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Cindy A. Dye, RMC, City Clerk