

**BOROUGH OF BUENA  
REGULAR COUNCIL MEETING  
MINUTES  
DECEMBER 11, 2023  
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**MEETING CALLED TO ORDER:** 7:06 P.M.  
**MEETING ADJOURNED:** 8:16 P.M.

**CALL MEETING TO ORDER: FLAG SALUTE**

**ROLL CALL OF ATTENDANCE:**

<b>Council Member</b>	<b>Present</b>	<b>Absent</b>
GIOVINAZZI	X	
ALVAREZ	X	
ADAMS	X	
BARSUGLIA	X	
ANDALORO	X	
FABRIZIO	X	

**ALSO IN ATTENDANCE:** Acting Clerk Pamela Johnston, Borough Engineer Mark DeBlasio, Engineer Joseph Mohnack, Administrator Maryann Coraluzzo, Road Supervisor Bill Nimohay, Assistant Solicitor Alan Giebner, Clerk 1 Nicole Koch

**The regular meeting of Mayor and Council of the Borough of Buena was held December 11, 2023 commencing at 7:06 p.m. at the Borough Hall with Council President Adams presiding. Councilman Adams announced that this meeting was being held in compliance with the Open Public Meetings Act and notices of this meeting have been provided, via email, to the Press of Atlantic City and the Daily Journal on November 18, 2022 AS well as being posted on the bulletin board in Borough Hall.**

**MAYOR'S REPORT:** FIRST ORDER OF BUSINESS.

**PUBLIC PORTION OF THE MEETING:**

PUBLIC COMMENT PROVIDES AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO INFORM THE MAYOR AND GOVERNING BODY ABOUT THEIR VIEWS. THE MAYOR AND GOVERNING BODY PRESCRIBES TO COUNCIL'S BY-LAWS AND THE NEW JERSEY STATUTES ON OPEN PUBLIC MEETINGS WHEN ENGAGING DURING PUBLIC COMMENT. AS SUCH, EACH INDIVIDUAL SHALL HAVE A 5 MINUTE LIMIT TO COMMENT; HE/SHE CANNOT YIELD TIME TO ANOTHER INDIVIDUAL; HE/SHE MAY ONLY APPROACH THE PODIUM ONCE DURING PUBLIC COMMENT FOR ANY ONE TOPIC; VULGAR OR OFFENSIVE LANGUAGE IS PROHIBITED AND MAYOR AND COUNCIL WILL NOT ENGAGE IN DIALOGUE WITH THE PUBLIC DURING THIS TIME. THE GOVERNING BODY MAINTAINS MODEL COURTESY AND RESPECT AND REQUIRES MEMBERS OF THE PUBLIC TO DO THE SAME.

**PUBLIC PORTION OPENED:**

<b>Council Member</b>	<b>By</b>	<b>2nd</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recuse</b>
GIOVINAZZI			X				
ALVAREZ		X	X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO			X				
FABRIZIO			X				

**Blaise Menzoni, co-owner of Taste of Earth,** introduced himself and added that he is also the owner of a successful mortgage company. Mr. Menzoni addressed concerns regarding the location and parking noting that online ordering will be facilitated to assist with lowering traffic. He also indicated that he is applying for a delivery license through the State.

**Attorney Cheryl Lynn Walters, representing Taste of Earth, LLC,** mirrored Mr. Menzoni's statements

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regarding implementing online purchasing to help reduce traffic lines.

**PUBLIC PORTION CLOSED:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA		X	X				
ANDALORO	X		X				
FABRIZIO			X				

=====  
**Discussion carried from Workshop Meeting:**

- **RFP for Class V Cannabis Retail Licenses**

Council President Adams explained that the state required Buena Borough to offer all available cannabis retail licenses noting the first three released by the State Cannabis Committee were cultivation, retail, and manufacturing. The State will offer three additional licenses to include wholesale, distribution, and delivery. State law requires all licenses to be permitted in an industrial zone. Discussion ensued regarding the RFP scoring procedure. Councilman Fabrizio and Councilwoman Andaloro both noted that they are not in favor of increasing the number of licenses. Councilwoman Barsuglia commended Taste of Earth for attending meetings as well as their involvement with the community. Council President Adams explained he is not in favor of cannabis however; it is legal and is interested in the revenue that it could bring to the Borough. Councilman Alvarez requested clarification where licenses have been awarded. The locations are as follows: a cultivation and manufacturers license on Wheat Road in an industrial zone, a micro cultivation license in an industrial zone on Wheat Road, the Borough received RFP responses to issue retail licenses in a B3 zone on Wheat Road near Route 40. Councilman Giovinazzi introduced himself as a new councilmember stating he wants what is best for the Borough.

**MOTIONED TO OPEN THE PUBLIC HEARING:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO		X	X				
FABRIZIO			X				

**Joanne Rosemont requested Central Avenue Manhole Covers Update**

Road Supervisor Nimohay stated he spoke with the Atlantic County Engineer and the contractor, West Bay has the equipment and will deliver it to the staging site and the work will begin upon delivery.

**PUBLIC PORTION CLOSED:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA		X	X				
ANDALORO	X		X				
FABRIZIO			X				

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**MOTIONED TO OPEN THE PUBLIC HEARING ON:**

**ORDINANCE NO. 741 AN ORDINANCE AMENDING ORDINANCE NO. 22, CHAPTER 18 OF THE CODE OF THE BOROUGH OF BUENA ENTITLED FIRE COMPANIES**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ		X	X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO			X				
FABRIZIO			X				

**DISCUSSION:** None.

**MOTIONED TO CLOSE THE PUBLIC HEARING:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA		X	X				
ANDALORO	X		X				
FABRIZIO			X				

**ORDINANCE NO. 741 ADOPTED:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA		X	X				
ANDALORO	X		X				
FABRIZIO				X			

**WHEREAS**, on February 26, 1961, the Borough Council adopted Ordinance 22 an Ordinance establishing two separate Boards of Commissioners, and two separate fire districts in accordance with N.J.S.A. 40A:14-70, known as Fire District Number 1 and Fire District Number 2; and

**WHEREAS**, Borough Council considered an Ordinance to dissolve Fire District Number 2 and after approval of the dissolution by the Department of Community Affairs, Local Finance Board on July 14, 2021, Council thereafter adopted an Ordinance dissolving Fire District Number 2; and

**WHEREAS**, the Borough Council received and considered a petition to dissolve all fire districts and commissioners so as to allow the Borough Council act as and for the supervision of all fire suppression and prevention services within the Borough and after approval of the dissolution by the Local Finance Board, Borough Council considered the cost savings to the taxpayers in dissolving the fire district and Commissioners and adopted an Ordinance dissolving the last fire district in accordance with N.J.S.A. 40A:14-68; and

**WHEREAS**, as the Borough Council shall now take over the duties and obligations previously held by the Fire Commissioners, it is necessary to consider the amendment of Ordinance 22, Chapter 18 of the Code of the Borough of Buena to reflect the dissolution of the fire districts and commissioners and establish the Fire

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Department under the Borough of Buena.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Buena that Ordinance 22, Chapter 18 of the Code of the Borough of Buena entitled Fire companies be deleted in its entirety and replaced as follows:

## **Chapter 18. Fire Department**

### **Article I. Fire Suppression/ Prevention Services**

#### **Section 18-1 ESTABLISHMENT AND FUNDING**

- A. The Council of the Borough of Buena shall supervise and control all fire suppression and prevention services within the Borough of Buena and recognizes the Minotola Volunteer Fire Company (MFC) as and for its sole fire suppression and prevention company with no other firefighting organization to be formed within the Borough without the consent of the Borough Council.
- B. The Borough Council shall appropriate such sums of money as shall be deemed necessary to aid MFC in performing its duty on behalf of the Borough.

#### **Section 18-2 FIRE CHIEF**

- A. There shall be a Fire chief elected by the membership of the MFC that are eligible to vote pursuant to the by-laws of the MFC. The Fire Chief shall serve for a one (1) year term
- B. The Fire Chief shall have all of the following qualifications in order to serve:
  - 1. Must be qualified to serve as an active firefighter in the MFC and documented experience in fire service for at least 3 consecutive years.
  - 2. Must be in good standing at the time of nomination
  - 3. Must have the ability to read, write and speak the English Language
  - 4. Must have a valid New Jersey Driver's License during the entire term of service as Chief
  - 5. Must have New Jersey Division of Fire Safety Fire Officers Requirements

- a. Certifications:

- 1. Fire Fighter I
    - 2. Hazardous Materials Awareness
    - 3. Hazardous Materials Operations ,
    - 4. IMS Level 1 and IMS Level 2
    - 5. Hazardous Materials on Scene Incident Commander.

- b. Training:

- 1. Incident Command Systems (ICS) I-100 Introduction to ICS,
      - 2. I-200 ICS for Single Resources and Initial Action Incidents (classroom instructor led),
      - 3. Incident Management Systems (IMS I-700 and I-800 (both classes may be on line)

- c. Compliance with current State of New Jersey Division of Fire Safety Fire Officer Qualifications.

#### **Section 18-2 LINE OFFICERS**

- A. There shall be one (1) Deputy Chief; One (1) Assistant Chief, not more than three (3) Captains as determined by the Borough Council upon recommendation of Fire Chief and not more than three (3) Lieutenants as determined by the Borough Council upon recommendation of Fire Chief.
- B. The Deputy Chief, and Assistant Chief shall have all of the following qualifications in order to serve:
  - 1. Must be qualified to serve as an active firefighter in the MFC and documented experience in fire service for at least 3 consecutive years.

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2. Must be in good standing at the time of nomination
3. Must have the ability to read, write and speak the English Language
4. Must have a valid New Jersey Driver's License during the entire term of service as Deputy Chief and Assistant Chief
5. Must have New Jersey Division of Fire Safety Fire Officers Requirements:

a. Certifications:

1. Firefighter 1
2. Hazardous Materials Awareness
3. Hazardous Materials Operations
4. IMS Level 1 and IMS Level 2
5. Hazardous Materials on Scene Incident Commander

b. Training

1. Incident Command Systems (ICS) I-100 Introduction to ICS
2. I-200 ICS for Single Resources and Initial Action Incidents (classroom instructor led)
3. Incident Management System (IMS I-700 and I-800 (both classes may be on line)

c. Compliance with current State of New Jersey Division of Fire Safety Fire Officer Qualifications.

C. The Captains and Lieutenants shall have all of the following qualifications in order to serve:

1. Must be qualified to serve as an active firefighter in the MFC and documented experience in fire service for at least 3 consecutive years.
2. Must be in good standing at the time of nomination
3. Must have the ability to read, write and speak the English Language
4. Must have a valid New Jersey Driver's License during the entire term of service as Chief
5. Must have New Jersey Division of Fire Safety Fire Officers Requirements

a. Certifications:

1. Firefighter 1
2. Hazardous Materials Awareness
3. Hazardous Materials Operations
4. IMS Level 1

b. Training

1. Incident Command Systems (ICS) I-100 Introduction to ICS
2. I-200 ICS for Single Resources and Initial Action Incidents (classroom instructor led)
3. Incident Management System (IMS I-700 and I-800 (both classes may be on line)

C. Compliance with current State of New Jersey Division of Fire Safety Fire Officer Qualifications.

**Section 18-3 MEMBERSHIP AND JUNIOR MEMBERSHIP**

- A. Membership applications shall be open to all persons and application forms approved by the Director of Public Safety shall be completed. No person shall be discriminated against including race or gender, who shall have acquired the following Certifications: Fire Fighter 1, Hazardous Materials Awareness, Hazardous Materials Operations and have receive the following required training: I-100 Introduction to ICS, I-200 ICS for Single Resources and Initial Action Incidents (classroom instructor led), I-700 National Incident Management System, An Introduction, I-800 National Response Framework (both classes may be on line). All applications shall present a New Jersey Motor Vehicle Commission Drivers Abstract which shall be reviewed by the MFC trustees and recommendations to accept or reject a

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candidate shall be made to Borough Council within 30 days of receipt of applications. Borough Council shall finally approve or disapprove all members to MFC. All potential members shall undergo background investigations and physical evaluations. No person shall be approved as a member should there be a criminal conviction on their record or physically unable to perform the duties of firefighter.

- B. On a yearly basis all members shall be evaluated in March by the MFC trustees to determine if a member has maintained an activity level of 20 LOSAP points for two consecutive years and to confirm that no member has been convicted of any criminal activity.
- C. There shall be established the Junior Fireperson's Auxiliary per N.J.S.A. 40A:14-95. Qualifications and eligibility for said membership shall be in accordance with N.J.S.A. 40A:14-96
- D. Exempt Members. Any MFC member who holds a Borough issued exempt certificate or a qualifying certificate issued by the New Jersey State Firemen's Association shall be entitled to be an exempt member of the MFC. Exempt members shall have all of the rights and privileges of active membership.
- E. Honorary Members. Upon a vote of 2/3 of the membership, a MFC member may be granted an honorary membership who is an exempt member and who holds a qualifying certificate or who has been a member of the MFC for 20 years or more. Honorary Members shall not be required to comply with fire duty attendance requirements, except such member shall not qualify for LOSAP unless he/she has met the LOSAP point requirements as set forth herein.

**Section 18-4 APPROVAL OF BY-LAWS**

It is recognized that the membership of the MFC are also considered quasi-employees of the Borough of Buena when acting in their capacity as firefighters and therefore, the By-Laws of MFC shall be submitted for the approval of Borough Council and review by the Borough Solicitor and Insurance Carrier. Any amendments recommended by the MFC Trustees shall be submitted to the Public Safety Director and Borough Council for review and approval.

**Section 18-5 OWNERSHIP OF BUILDINGS AND EQUIPMENT**

- A. Building Ownership and Use. The land and improvements within which the MFC operates is and shall remain the property of the Borough of Buena. The Borough shall maintain insurance thereon including liability and property damage coverage as provided through the Borough insurance carrier. Notwithstanding said ownership, no person shall be permitted in any area of the building not otherwise open to the public without first notifying the Chief or his representative and without being accompanied by or having special permission by the Chief or his representative. The Borough may utilize other portions of the building for public purposes provided it does not substantially interfere with proper firefighting services. No use of the building or grounds shall be permitted for private purposes without express consent of the Public Safety Director and Borough Council and only upon notification to and with the approval of, the Borough's insurance carrier.
- B. Firefighting Equipment, Clothing and Apparatus. All firefighting equipment, clothing, apparatus purchased by the Borough, or the predecessor Fire Commissioners shall remain the property of the Borough of Buena. Except as may be authorized by Borough Council, no person shall use any fire equipment or apparatus for any private purpose. No person shall willfully and without authority take away or conceal any asset specified herein.

No fire apparatus of the Borough shall be permitted to leave the Borough of Buena without the consent of the Chief and Borough Public Safety Director except in response to a call for in a neighboring community or official business relating to firematic services, including training. No apparatus is to leave the Borough on official business except in response to a fire call without the consent of the Chief and Public Safety Director, but in no event shall any equipment be permitted outside of the Borough if, in the judgment of the Chief, in doing so would jeopardize the protection of the Borough and its residents.

The use of fire equipment and apparatus for Borough sponsored events, such

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Parades or public relations events is permitted provided it is first approved by the Chief and Public Safety Director and the Borough's insurance carrier.

- C. Location and Storage of Fire Equipment and Apparatus. Except for gear assigned to each firefighter, all Borough equipment and apparatus shall be safely and conveniently housed by the MFC at the Minotola Fire Station, or such other building as approved by Borough Council and the Fire Chief.
  
- D. The Borough has one or more "Command Vehicles" authorized by Borough Council and the Public Safety Director which are used solely by the Chief and such Line Officers assigned to said vehicle by the Chief. Command Vehicles are vehicles used solely for the purposes of transportation to and from fire scenes or for official fire business and are permitted to be taken by the Chief and Line Officers to their home and other locations to allow for immediate response to fire calls, however the Command Vehicles shall not be used for personal use. Command Vehicles may also contain such equipment as is necessary for proper operation of the MFC.

**Section 18-6 DUTIES AND RESPONSIBILITIES OF OFFICERS**

- A. **Chief of Department.** In addition to all of the duties and responsibilities of all members of the MFC, the Chief shall:
  - 1. Timely review and submit all NFIRS Reports as required by the State of New Jersey
  - 2. Develop a schedule of the testing and certification of the following:
    - a. SCBA Training (January)
    - b. RTR Training (January)
    - c. Cascade Training (January)
    - d. Fit-testing (January)
    - e. Blue Light Awareness refresher (January)
    - f. Emergency Action Plan (EAP) review/awareness (January)
    - g. Bloodborne Pathogens/HazMat Awareness (February)
    - h. SOG/SOP Review (March)
    - i. Ladder Testing
    - j. Hose Testing
    - k. Pump Testing
    - l. SCBA Air Testing
    - m. SCBA Equipment Testing Hydro-Static Testing for SCBA (as required)
    - n. Apparatus Maintenance (as required)
    - o. Monthly Drill Schedule
    - p. Aerial Testing
    - q. CPR Training/Certification (as required)
    - r. CPR Training/Certification (as required)
    - s. Turn-out gear Inspection (as required)
    - t. Turn-out gear Cleaning/Maintenance (as required)
    - u. Any other required testing/certifications of any new equipment purchased. Scheduling of testing and certifications set forth herein above may be modified subject to scheduling and availability in the discretion of the Chief provided said scheduling does not impact the proper operation of the MFC and its members.
  - 3. The Chief shall submit the Schedule of testing and certification to the Director of Public Safety for submission to Borough Council
  - 4. The Chief shall have general supervision of the MFC at all times, including but not limited to responding to an alarm at drills and at such other times when the MFC membership is assembled. The Chief shall always take prompt and efficient measures to control the fire scene and shall have full power and control and command over all apparatus and members of the MFC and all fire, rescue. In the absence of the Chief, the command shall devolve pas per the by-laws of the MFC.
  - 5. The Chief shall keep and maintain all records as to attendance at all alarms and drills for each member. The Chief shall also be responsible to certify LOSAP points for all

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members to the Borough for qualification for LOSAP

6. The Chief shall provide monthly reports on the second Monday of each month during the regular meeting of Borough Council of all matters regarding the maintenance and operation of MFC as well as all reports of alarms and attendance to calls. Written reports shall be submitted to the Director of Public Safety prior thereto.
7. The Chief shall provide an annual report with recommendations, if any, for the improvement of the effectiveness of the MFC.
8. The Chief shall transmit to the Borough Council and Chief Financial Officer on or before November 1 of each year a proposed annual budget in the form as presented by the CFO.

**B. Deputy Chief and Assistant Chief.** The Deputy Chief and Assistant Chief are directly responsible to the Chief and shall have general supervision at all fire calls, alarms, hazardous material emergencies and fire drills in the absence of the Chief.

**C. Captains and Lieutenants.** The Captains and Lieutenants shall be directly responsible to the Chief and shall have general supervision at all fire calls, alarms, hazardous material emergencies and fire drills. Captains and Lieutenants shall have such other duties as required in the MFC by-laws.

**Section 18-7 LENGTH OF SERVICE AWARD PROGRAM (LOSAP)**

**A. Program Established.** Whereas, the Commissioners of Fire District No 1 and No 2, now dissolved, have adopted Resolutions creating the Length of Service Award Program (LOSAP) to provide tax deferred income benefits from the Borough to active volunteer members of the existing fire companies within the Borough and have created a points system that reflects the range of volunteer services that may be provided to the MFC and Landisville Fire Company members. Upon the dissolution of Fire District No. 1 and its Commissioners, evaluation and redistribution of annual LOSAP qualification points was assigned to Fire District No. 2. The following sets forth the established criteria which shall be adopted as follows:

**B. Criteria.** The LOSAP shall provide for annual contributions to each eligible member who meets the criteria as follows:

- (1) Eighty (80) points are required for a member to be eligible for an annual contribution.
- (2) Five (5) years of service are required for vesting.
- (3) The annual contribution per member shall be \$1,504.74.

**C. Categories, Distribution and Assignment of Annual Qualification Points.** The Commissioners of Fire District No.2 adopted Resolution 2020-016 setting forth the categories, distribution and assignment of LOSAP annual qualification points. The following sets forth the established criteria which shall be adopted as follows.

- (1) **Incidents.** One and one half (1.5) points shall be awarded for each fire call member response between the hours of 0700hrs-2259hrs and two and one half (2.5) points shall be awarded for each fire call member response between the hours of 2300hrs-0659 hrs No Max.
- (2) **Drills.** Two points shall be awarded for each drill attended. No Max
- (3) **Training.** One point shall be awarded for the first hour of training and on quarter (.25) points foreach additional one-half hour attended 30 point max.
- (4) **Meetings.** One point for each meeting attended 10-point max.
- (5) **Special Assignments.** One point for the first hour of the special assignment and one



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quarter (.25) points for each additional one-half hour attended 10 points max

- (6) **Any person completing Firefighter II after January 1, 2021** shall be eligible to receive eighty (80) points upon successful completion of the course and receipt of State Certification. Said points shall be awarded once in the year attaining such certification.

**BE IT FURTHER ORDAINED** that all Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, are and the same are hereby repealed.

This Ordinance shall take effect immediately upon final passage and publication as provided by law.

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**MOTIONED TO OPEN THE PUBLIC HEARING ON:**

**ORDINANCE NO. 742      AN ORDINANCE OF THE BOROUGH OF BUENA, COUNTY OF ATLANTIC, NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 195 ENTITLED “STREETS AND SIDEWALKS” BY ADDING ARTICLE III ENTITLED “RIGHT-OF-WAY PERMITS”**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO		X	X				
FABRIZIO			X				

**DISCUSSION:** None

**MOTIONED TO CLOSE THE PUBLIC HEARING:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO		X	X				
FABRIZIO			X				

**ORDINANCE NO. 742 ADOPTED:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ		X	X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO				X			
FABRIZIO				X			

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**WHEREAS**, the Borough of Buena ("Borough") is aware that certain technological developments have made access to its Municipal Rights-of-Way desirable by certain telecommunications companies for the placement of small cell wireless facilities ("Small Cells"); and

**WHEREAS**, it is "axiomatic that municipal corporations are required to exercise ordinary care to maintain their streets and sidewalks... [n]or may a municipality in any way surrender or impair its control over the streets" McQuillan Mun. Corp. (3<sup>rd</sup> Ed), Section 30.73; and

**WHEREAS**, the Borough acknowledges that its streets "are used for the ordinary purposes of travel and such other uses as customarily pertain there-to which, in recent years, are numerous and various. It thus follows that these public ways must be kept free from obstruction, nuisances, or unreasonable encroachments which destroy, in whole or in part, or materially impair, their use as public thoroughfares"Id.; and .

**WHEREAS**, the Borough has determined that its public Rights-of-Way, such as they are or may be, themselves constitute a valuable resource, finite in nature, and which exists as a common right of the public to pass and repass freely over and across said lands without unreasonable obstruction or interference, and which therefore must be managed carefully; and

**WHEREAS**, the Federal Telecommunications Act preserves local government's ability to "manage the public Rights-of-Way...on a competitively neutral and non-discriminatory basis" 47 U.S.C. .253(c); and .

**WHEREAS**, the Federal Telecommunications Act preserves local government's authority over the, "placement, construction and modification of personal wireless service facilities" 47 U.S.C. 332(c)(7)(A); and Federal Telecommunications Act makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless service 47 U.S.C. 332(c)(7)(B)(i)(II);

**WHEREAS**, the Federal Telecommunications Act provides that municipalities "shall not unreasonably discriminate among providers of functionally equivalent services; 47 U.S.C. 332(c)(7)(B)(i)(I); and

**WHEREAS**, recent developments in wireless technology, specifically the development of 5G, involve the placement of Small Cells and Cabinets in the Municipal Right-of-Way. Fitzgerald, Drew Wireless Companies to Offer 5G Plans at Mobile Forum, Wall Street Journal (February 28, 2018); and

**WHEREAS**, New Jersey municipalities must give consent before a Small Cell, i.e. a small antenna, can be placed on existing poles pursuant to N.J.S.A. 48:3-19 and for the erection of new poles within the public Rights-of-Way pursuant to N.J.S.A. 48: 17-10; and

**WHEREAS**, the Federal Communications Council (FCC) has recently adopted an order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment" WT Docket No. 17-79; WC Docket 17-84, which places a shot clock on municipal approval for the placement of Small Cells on Existing Poles and the placement of New Poles in the Municipal Right-of-Way; and

**WHEREAS**, the erection of New Poles and Ground Level Cabinets in the Municipal Right-of-Way raise significant aesthetic and safety concerns; and

**WHEREAS**, the FCC in its recent order provides that municipalities can impose aesthetic requirements on Small Cells where said requirements are: 1) reasonable; 2) no more burdensome than those applied to other types of infrastructure deployment; and 3) published in advance; and

**WHEREAS**, the FCC in its recent order further clarified what it considers "reasonable" aesthetic requirements by stating that "in assessing that this standard has been met, aesthetic requirements that are more

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burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment;" and FCC's requirement that, in order to protect the aesthetics of the Borough's Municipal Right-of-Way, it must treat like infrastructure in a like manner, necessitates the introduction of broader aesthetic requirements that apply to all Poles and Antennas and Cabinets in the Municipal Right-of-Way and not just Small Cells; and

**WHEREAS**, the Borough has determined that the most efficient way to handle this process is to create a Right-of-Way Permit system for all new Poles, Cabinets and Antennas in the Municipal Right-of-Way; and

**WHEREAS**, the Borough Council raised concerns related to the negative aesthetic impacts of above ground utilities on the Borough; and

**WHEREAS**, Ground Level Cabinets attached to small cells trigger certain collocation requirements pursuant to Section 6409(a) of the Middle Class Tax Relief and Jobs Creation Act of 2012 which raises serious concerns as to the ability of local government to protect the public's interest in the Borough's rights-of-way when it comes to aesthetics and the ability of the public to pass and repass over same; and

**WHEREAS**, New Poles also raise concerns as to the public's interest in the Borough's rights-of-way as regards aesthetics and the public's ability to pass and repass over same; and

**WHEREAS**, New Poles and Ground Level Wireless Cabinets also raise concerns related to sight triangles and other safety related issues related to the use of roadways by the public; and

**WHEREAS**, the Federal Highway Administration has acknowledged this problem by stating, "[as demand for the finite space in existing ROW increases, the difficulty and cost of adding new utility facilities and relocating existing utility facilities also increases. Just as significant is how utility service interruptions may add to public discontent with overall highway construction. It is therefore essential for planners, designers, and builders of street and highway projects to avoid unnecessary utility relocations... "Federal Highway Administration, Avoiding Utility Relocations, [https://www.fhwa.dot.gov/utilities/utilit\\_relo/2.cfm](https://www.fhwa.dot.gov/utilities/utilit_relo/2.cfm) (accessed March 7, 2018); and Borough has determined that it is necessary to set forth clear standards in relation to the siting of Poles, Cabinets and Antennas for the benefit of its citizens and any utilities which use or will seek to make use of said Municipal Rights-of-Way.

**NOW THEREFORE BE IT ORDAINED** by the Council of the Borough of Buena as follows: Section 1 Chapter 195 entitled Streets and Sidewalks is hereby amended and supplemented through the addition of Article III entitled "Right-of-Way Permits" as follows:

**195-28 DEFINITIONS**

- a. "Anticipated Municipal Expenses" mean the cost of processing an application for a Right-of-Way Permit including, but not limited to, all professional fees such as engineer and attorney costs to the Borough.
- b. "Cabinet" shall mean a small box-like or rectangular structure used to facilitate utility or wireless service from within the Municipal Right-of-Way.
- c. "Electric Distribution System" shall mean the part of the electric system, after the transmission system, that is dedicated to delivering electric energy to an end user.
- d. "Existing Pole" shall mean a pole that is in lawful existence within the Municipal Right-of-Way.
- e. "Ground Level Cabinets" shall mean a Cabinet that is not attached to an existing pole and is touching the ground.
- f. "Municipal Right-of-Way" shall mean the surface of, and the space above or below, any public street, road, lane, public way or place, sidewalk, alley, boulevard, parkway, drive, and

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the like, held by the Borough as an easement or in fee simple ownership. This term also includes rights-of way held by the County of Atlantic where the Borough's approval is required for the use of same pursuant to N.J.S.A. 27:16-6.

- g. "Pole" shall mean a long, slender, rounded piece of wood or metal.
- h. "Pole Mounted Antenna" shall mean a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited to, small cell equipment and transmission media such as femtocells, picocells, microcells and outside distributed antenna systems.
- i. "Pole Mounted Cabinet" shall mean a Cabinet that is proposed to be placed on an Existing or Proposed Pole.
- j. "Proposed Pole" shall mean a Pole that is proposed to be placed in the Municipal Right-of-Way.
- k. "Right-of-Way Agreement" shall mean an agreement that sets forth the terms and conditions for use of the Municipal Right-of-Way and includes, but is not limited to, municipal franchise agreements.
- l. "Right-of-Way Permit" shall mean an approval from the Borough setting forth applicant's compliance with the requirements of this Chapter.
- m. "Surrounding Streetscape" shall mean Existing Poles within the same right-of-way which are located within five hundred (500) feet of the Proposed Pole.
- n. "Borough Council" shall mean the Borough Council of the Borough of Buena.
- o. "Utilities Regulated by the Board of Public Utilities" shall mean companies subject to regulation by the New Jersey Board of Public Utilities under Chapter 48 of the Revised Statutes.
- p. "Utility Service" shall mean electric, telephone, or cable service.

**195-29 POLE MOUNTED ANTENNAS, ACCESS TO RIGHT-OF-WAY, RIGHT-OF-WAY AGREEMENTS**

- a. No person shall operate or place any type of Pole Mounted Antenna within the Municipal Right-of-Way without first entering into a Right-of-Way Agreement pursuant to the provisions of this Section.
- b. The terms of said Right-of-Way agreement shall include:
  - i. A term not to exceed 15 (fifteen) years;
  - ii. Reasonable insurance requirements;
  - iii. Fine for unauthorized installations;
  - iv. A reference to the siting standards set forth in this Section; and
  - v. Any other items which may reasonably be required.

**195-30 APPLICATION TO UTILITIES REGULATED BY THE BOARD OF PUBLIC UTILITIES, OTHER ENTITIES**

a. Notwithstanding any franchise or Right-of-Way Agreement to the contrary, all facilities proposed to be placed within the Municipal Right-of-Way by a Utility Regulated by the Board of Public Utilities and all other entities lawfully within the Municipal Right-of-Way shall be subject to the standards and procedures set forth in this Chapter and shall require Right-of-Way Permits for the siting of Poles, Antennas and Cabinets in the Municipal Right-of-Way.

**195-31 RIGHT-OF-WAY PERMITS, SITING STANDARDS FOR POLES, ANTENNAS AND CABINETS IN THE RIGHT-OF-WAY**

- a. No Pole, Antenna or Cabinet shall be installed within the Municipal Right-of-Way without the issuance of a Right-of-Way Permit.
- b. Pole Siting Standards
  - i. Height. No Pole shall be taller than thirty-five (35) feet or 110% of the height of Poles in the Surrounding Streetscape, whichever is higher.

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- ii. Distance from the curb line. No pole shall be farther than eighteen (18) inches from the curb line.
  - iii. Location, Safety and Aesthetics. No Pole shall be erected in the Right-of-Way unless it:
    - 1. Is replacing an Existing Pole; or
    - 2. Approved pursuant to a land development application by either the Borough's Land Use Board pursuant a land use application; or
    - 3. Located on the opposite side of the street from the Electric Distribution System; and
    - 4. Is located within the Municipal Right-of-Way located in the R1 zone; and
    - 5. Is two hundred (200) linear feet from any other Existing Pole or Proposed Pole along the same side of the street; and
    - 6. Is not located in an area with Underground Utilities; and
    - 7. Does not inhibit any existing sight triangles; and
    - 8. Allows adequate room for the public to pass and re-pass across the Right-of-Way; and
    - 9. Is finished and/or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties.
  - iv. Poles are prohibited within the Municipal Right-of-Way located in the Public Parks.
- C. Ground Level Cabinet Site Standards
- i. Ground Level Cabinets are prohibited in the Municipal Right-of-Way located in the R-1 and Public Parks.
- d. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards
- i. Pole Mounted Antennas are permitted on Existing Poles, provided that each Pole Mounted Antenna:
    - 1. Does not exceed three (3) cubic feet in volume; and
    - 2. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
    - 3. Does not inhibit sight triangles; and
    - 4. Allows adequate room for the public to pass and repass across the municipal right-of-way.
  - ii. Pole Mounted Cabinets are permitted on Existing Poles, provided that each Pole Mounted Cabinet:
    - 1. Does not exceed sixteen (16) cubic feet; and
    - 2. Is finished and/or painted and otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
    - 3. Does not inhibit sight triangles; and
    - 4. Allows adequate room for the public to pass and repass across the municipal right-of-way.
  - iii. The Borough may also require that an applicant provide a certification from a licensed engineer attesting to the structural integrity of any Pole Mounted Antenna or Pole Mounted Cabinet.

**195-32 APPLICATION PROCESS**

- a. Pre-Application Meeting- Prior to making a formal application with the Borough for use of the Municipal Right-of-Way, all applicants are advised to meet with the Borough Engineer to review the scope of applicant's proposal.

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- b. The Borough Council shall, by resolution, approve or disapprove every Right-of-Way Permit application based on the recommendations provided to it pursuant to subsections (e) and (f) below.
- c. All applications made under this section shall be expedited so as to comply with the shot clocks set forth in the Federal Communications Council Order titled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by the Removal of Barriers to Infrastructure Investment." WT Docket No. 17-79; WC Docket No. 17-84.
- d. Every application made pursuant to this Chapter must include a stamped survey prepared by a New Jersey licensed surveyor demonstrating that any Proposed Pole is located within the Municipal Right-of-Way. Any such application which does not include such a survey shall immediately be deemed incomplete.
- e. New Poles and Ground Level Cabinets
- i. The Land Use Board shall, pursuant to N.J.S.A. 40:55D-25(B)(3), review applications for the placement of New Poles and Ground Level Cabinets within the Municipal Right-of-Way and advise the Borough Council of its recommendation to approve or disapprove same.
1. If the Land Use Board recommends a denial of an application, it shall set forth the factual basis for such a denial in writing.
- f. Pole Mounted Antenna and Pole Mounted Cabinets
- i. The Borough Engineer shall review application to place Pole Mounted Antenna and Pole Mounted Cabinets within the Municipal Right-of-Way and advise the Borough Council of his or her recommendation to approve or disapprove same.
1. If the Borough Engineer recommends a denial of an application, he or she shall set forth the factual basis for such a denial in writing.
- g. If the Borough Council denies any application made under this Section, it shall do so in writing and set forth the factual basis therefor.

Waiver. The Borough Council may waive any siting standard set forth in Section 195-31 where the applicant demonstrates that strict enforcement of said standard:

- i. Will prohibit or have the effect of prohibiting any interstate or intrastate telecommunications service pursuant to 47 U.S.C. 253(a); or
- ii. Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II); or
- iii. Will violate any requirement set forth by the Federal Communications Council Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment." WT Docket No. 17-79; WC Docket 17-84; or

**195-33 RIGHT-OF-WAY PERMIT FEES AND DEPOSIT TOWARDS ANTICIPATED MUNICIPAL EXPENSES**

- a. Every Right-of-Way Permit application must include a Right-of-Way Permit Fee in the following amounts:
- i. One (1) to five (5) sites- \$500.00
- ii. Each additional site- \$100.00
- b. Deposit Towards Anticipated Municipal Expenses
- i. In addition to the Right-of-Way Permit Fee, the Borough Engineer may, in his or her own discretion, require the posting of a two thousand dollar (\$2,000.00) Deposit Towards Anticipated Municipal Expenses related to an application made pursuant to this Chapter.

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- ii. Applicant's Deposit Towards Anticipated Municipal Expenses shall be placed in an escrow account. If said deposit contains insufficient funds to enable the Borough to perform its review, the Chief Financial Officer of the Borough shall provide applicant a notice of insufficient balance. In order for review to continue, the Applicant shall, within ten (10) days post a deposit to the account in an amount to be mutually agreed upon.
- iii. The Chief Financial Officer shall, upon request by the Applicant after a final decision has been made by the Borough Council regarding his or her pending Right-of-Way Permit application, refund any unused balance from applicant's Deposit Towards Anticipated Municipal Expenses.

**195-34 MISCELLANEOUS PROVISIONS**

- a. Any approval received pursuant to this Chapter does not relieve the applicant from receiving consent from the owner of the land above which an applicant's facility may be located as may be required under New Jersey law.
- b. Applicant must, in addition to receiving a Right-of-Way Permit, also receive all necessary road opening permits, construction permits and any other requirement set forth in the Code of the Borough of Buena or state statutes.
- c. The Borough's consent for use of County Roads, as required pursuant to N.J.S.A. 27:16-6, shall take the form of a Right-of-Way Permit subject to the standards and application process set forth in this chapter. No such applicant shall be required to enter into a Right-of-Way Agreement with the Borough.

**BE IT FURTHER ORDAINED** that should any portion of this Ordinance be deemed unenforceable by a court of competent jurisdiction, the balance hereof shall remain in full force and effect.

**BE IT FURTHER ORDAINED** All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

This Ordinance shall take effect upon final adoption and publication in accordance with law.

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**MOTIONED TO OPEN THE PUBLIC HEARING ON:**

**ORDINANCE NO. 743      ORDINANCE AMENDING ORDINANCE NO. 193 AS AMENDED,  
CHAPTER 82 OF THE CODE OF THE BOROUGH OF BUENA  
ENTITLED OCCUPANCY PERMITS**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI		X	X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA			X				
ANDALORO	X		X				
FABRIZIO			X				

**DISCUSSION:** None

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**MOTIONED TO CLOSE THE PUBLIC HEARING:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ		X	X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO			X				
FABRIZIO			X				

**ORDINANCE NO. 743 ADOPTED:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA		X	X				
ANDALORO	X		X				
FABRIZIO				X			

**WHEREAS**, on May 27, 1975 the Council of the Borough of Buena adopted Ordinance No. 193 Chapter 82 of the Code of the Borough of Buena, entitled Occupancy Permits;

**WHEREAS**, on September 27, 1997 Council of the Borough of Buena amended Ordinance No. 193 in its entirety by Ordinance No. 446; which has been subject to subsequent amendments;

**WHEREAS**, N.J.S.A. 40:48-2 provides, in relevant part, that a municipality may make, amend, repeal and enforce ordinances not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants.

**WHEREAS**, N.J.S.A. 40:48-2.12a provides, in relevant part, that the governing body of any municipality may make, amend, repeal and enforce ordinances to regulate buildings and structures and their use and occupation to prevent and abate conditions therein harmful to the health and safety of the occupants of said building and structures and the general public in the municipality.

**WHEREAS**, N.J.S.A. 40:48-2.12c provides in relevant part that any ordinance adopted pursuant to this act may provide for registration of the owners and management of every building and structure in the municipality which is occupied by two or more families as tenants of the owner or lessor

**WHEREAS**, N.J.S.A. 40:48-2.12f provides in relevant part that any ordinance adopted pursuant to this act may also provide that the municipality may abate a nuisance, correct a defect, or put the premises in proper condition so as to comply with the requirements of any municipal ordinance or state law applicable thereto, at the cost of the owner or lessor, and expend municipal funds for such purpose and charge the same against the premises, and the amount thereof as determined by the governing body of the municipality shall be a lien against the premises.

**WHEREAS**, N.J.S.A. 40:48-2.12m authorizes a municipality to adopt an ordinance requiring a landlord to obtain a certificate of occupancy or inspection before re-renting an apartment to a new occupant. After an apartment is inspected by a municipal inspector, the municipality may issue a certificate of inspection or occupancy if the apartment meets the standards required by law. The municipality may charge a fee to fund the costs of the inspections and the issuance of the certificates.



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**WHEREAS**, N.J.S.A. 40:48-2.12n sets forth the findings of the Legislature that municipal residents have experienced disturbances, damage and public expense resulting from carelessly granted and inadequately supervised rentals to irresponsible tenants by inept or indifferent landlords; that to preserve their peace and tranquility it is necessary and desirable that those communities have adequate means to curb and discourage those occasional excesses arising from irresponsible rentals; and that municipal governing bodies may take effective action to assure that excesses, when they occur, shall not be repeated, and that landlords be held to sufficient standards of responsibility.

**WHEREAS**, Council of the Borough of Buena finds and declares that the Property Maintenance Code sets minimum standards for safety and habitability and the continued occupancy of residential rental units in order to protect the public health, safety and welfare. Minor violations of the Property Maintenance Code shall not prevent the continued occupancy of a residential rental unit.

**WHEREAS**, Council of the Borough of Buena finds and declares that a registration and inspection scheme for residential rental units is a rational exercise of the municipal police power to establish that each residential rental unit substantially complies with the standards set forth in the Property Maintenance Code in order to ensure the safety and habitability of each residential rental unit.

**WHEREAS**, an increase in fees imposed by the proposed **Chapter 82** (Occupancy Permits) is required by the additional administrative burdens placed on the Borough of Buena by this amendment to and enhanced enforcement;

NOW THEREFORE, by it Ordained, by the Council of the Borough of Buena, that Chapter 82 of the Code of the Borough of Buena entitled Occupancy Permits be amended as follows:

**1. Section 82-4 is replaced with the following:**

Section 82-4 – Annual Registration and Application for Permits

A. Annual Registration Statements.

1. Registration of rental units, together with the required fee, shall be made annually to the Housing Inspector of the Borough of Buena, or his designee, during the period of January 1 through February 28 of each calendar year. Each rental unit shall be separately registered. Registration Statements shall be on forms prescribed and furnished by the Housing Inspector or his/her designee. Each Registration shall expire on February 28 of the following year. Each Registration Statement shall include:

- (a) The name, address, and telephone number of the record owner or owners of the premises
- (b) The name address and telephone number of the lessor, if other than the owner.
- (c) The address of the residential rental unit and letter or number designating the unit.
- (d) The number of rooms used exclusively or primarily for sleeping contained within each residential rental unit.

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- (e) The number of occupants of each residential rental unit and the name of the tenant or tenants signing the lease. If the residential rental unit is unoccupied at the time that the application is completed, the owner or agent shall provide this information as soon as the unit is occupied.
  - (f) The registration date and the total amount of the registration fee.
  - (g) The Housing Inspector, in consultation with the Borough Administrator and President of Borough Council, may amend the registration application to require additional information.
2. Annual Registration Statements shall be signed by the applicant and submitted to the Housing Inspector, or his/her designee, along with the required fee. Registration shall be transferable for period which the application fee has been paid, provided the Registration Statement is updated with any changes. Registration Statements shall also be updated upon a change in occupancy so that they remain accurate as to the name, or names, of the tenant and the number of occupants.
- B. Annual Registration Statement – Additional Requirements
- 1. The annual registration statement shall also designate a natural person or agent who resides within the Atlantic County, or a county contiguous to the Borough of Buena, to receive the notice of violation and with the authority to correct any violations of these regulations or of Chapter 81 (Property Maintenance) of the Municipal Code. The designated representative shall also be authorized to receive notice of the filing of Zoning Occupancy and Code Enforcement Complaints relating to the rental unit(s). Registration Statements shall be updated in the event of a change in the designated agent. The landlord shall also supply a current New Jersey driver's license for the authorized agent as proof of the required residency.
  - 2. The original Registration Statement shall be delivered to the Borough Clerk for filing. A copy of the Registration Certificate shall be provided to the owner or applicant of the rental unit, and a copy retained by the Housing Inspector.
  - 3. Each rental unit within the Borough of Buena shall be inspected annually, and upon a change in occupancy except as provided herein, by the Housing Inspector or his/her designee, to ensure that it is in compliance with these regulations and the property maintenance code. The Housing Inspector or his/her designee shall make a report promptly after each inspection.
    - (a) The annual inspection may be conducted at any time during the course of the year, additional inspections may be conducted upon the change in occupancy, or upon the filing of Borough of Buena Zoning Occupancy and Code Enforcement Complaint Form.
    - (b) Upon inspection, the Housing Inspector, shall determine if the rental unit and each room therein meets the requirements of this chapter and the Property Maintenance Code, **Chapter 181** of the Buena Municipal Code. In the event that a unit fails inspection, the owner or applicant shall pay an additional fee for every subsequent re-inspection as provided in § 82-9.
    - (c) The annual inspection requirement is waived for any property that (1) received a change of occupancy inspection within three (3) months or less of the scheduled annual inspection date; and (2) was found at that time to be in satisfactory condition on the initial inspection.

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(d) If the residential rental unit does not comply with applicable regulations and codes of the Borough of Buena, a notice of violation shall be served on the owner or resident agent identifying the violation(s) and a time specified for correction of the violation(s). The Housing Inspector, shall re-inspect the residential rental unit after the notice of violation has been served and the time has expired for correction of the violations.

(e) If a violation still exists after re-inspection, provided that there have been no more than 2 re-inspections, and the housing inspector deems that the owner is making a good-faith effort to correct the violation, he or she may allow for further time and subsequent re-inspection of the residential rental unit; alternatively, the Housing Inspector, shall file a complaint with the Municipal Court for enforcement of the applicable regulations and codes, and imposition of the penalties set forth in Chapter I (General Provisions) Article 3. The Housing Inspector shall also file a complaint with the Municipal Court if a Unit fails still fails to copy with the applicable regulations and codes of the Borough of Buena after the second re-inspection.

(f) No certificate of continued occupancy shall be issued, and no subsequent Annual Registration shall be approved until all violations have been corrected. Any certificate of continued occupancy, once issued, may be revoked or suspended in the event the residential rental unit is subsequently found to be in violation of these regulations and the code.

(g) Any residential rental unit that is damaged by fire or other cause shall be re-inspected to ensure compliance with these regulations and the Property Maintenance Code prior to re-occupancy.

**3. Section 82-9 is amended as follows:**

§ 82-9 A is amended to increase the registration fee to \$100.00;

§ 82-9 B is amended to increase the inspection fee to \$100.00;

§ 82-9 C is amended to increase the re-inspection fee to \$75.00;

§ 82-9 D is amended to increase the registration and inspection fee to \$100.00;

**4. The following is added to Section 82-17:**

For the purposes of this Section the failure to Register a Rental Unit shall be a separate offense each year the Rental Unit remains unregistered. The failure to correct violations cited upon the yearly inspection shall also constitute a separate offense under **Section 82-4 (B) (3) (e)**. The failure to Register a Rental Unit includes any Registration that is not approved due to outstanding violations in accordance with **Section 82-4 (B) (3) (f)**.

**5. The follow New Section 82-19 is added to Chapter 82.**

§ 82-19 Standards for occupancy.

A. No person shall occupy a residential rental unit and no owner shall permit the occupancy of a residential rental unit which has not been registered with the Borough of Buena, or where the certificate of continued occupancy has been revoked or suspended, except as provided immediately below.

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B. Where the certificate of continued occupancy has been revoked or suspended, the housing inspector shall make a determination whether continued occupancy of the residential rental unit is dangerous to the health and safety of the tenant or tenants, and shall permit continued occupancy by the tenants in those cases where continued occupancy is determined not to be dangerous to their health and safety; provided, however, that if said unit is subsequently vacated, it may not be re-rented as long as the certificate of continued occupancy has not been reinstated.

C. The maximum number of occupants shall comply with the International Property Maintenance Code of 2012 as it may be updated. The maximum number of occupants shall be posted in each residential rental unit. It shall be unlawful for an owner to knowingly rent and a tenant to knowingly occupy a residential rental unit with occupants that exceed the number allowed on the premises based on the available sleeping rooms or any modification made by the housing inspector on the basis of the size and layout of the unit.

D. It shall be unlawful for any person to reside in the premises whose name does not appear on the lease unless authorized by the tenant or tenants whose names appear on the lease.

E. The lease for each residential rental unit shall specify that the lease is subject to all provisions of Borough ordinances.

F. At the time of any change of occupancy inspection, the housing inspector shall provide the owner with the Department of Community Affairs Truth in Renting guide or equivalent listing the responsibilities of owners and tenants. The owner or agent of a residential rental unit shall provide a copy of the guide to all tenants, new and existing, and shall require that each adult tenant who signed the lease acknowledge receipt of the guide by signing the receipt form, a copy of which shall be attached to the lease.

**5. The follow New Section 82-20 is added to Chapter 82.**

§ 82-20 Revocation or suspension of certificate of registration.

A. In addition to any other penalty prescribed herein, an owner may be subject to the revocation or suspension of the certificate of registration issued hereunder upon the happening of one or more of the following:

1. Conviction of a violation of this article in the Municipal Court or any other court of competent jurisdiction.

2. Determination of a violation of this article at a hearing held pursuant to **§ 82-20 B** herein.

3. Continuously renting the unit or units to a tenant or tenants who are convicted of a violation of the Noise Ordinance of the Borough of Buena. Three convictions or more in a ninety-day period shall be considered a continuous event.

4. Continuously permitting the rental unit to be occupied by more than the maximum number of occupants permitted. Three written notices of violations within a ninety-day period, 30 days apart, shall be considered a continuous event.

5. Maintaining the rental unit or units or the property in which the rental unit is a part in a dangerous condition likely to result in injury to person or property.

6. A false, misleading or fraudulent statement made in connection with the registration or inspection of a rental unit or units under this chapter.

7. A pattern of conduct which results in creating, maintaining, permitting or suffering the existence of any of the following conditions at or about the rental unit:

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(a) Disorderly conduct on the part of tenants or occupants or their guests. "Disorderly conduct" shall be as defined in N.J.S.A. 2C:33-2; provided, however, that a conviction of such person or persons under that statute shall not be required in order for the Borough to take action under this section;

(b) A nuisance, as that term is defined by N.J.S.A. 2C:33-12; provided, however, that a conviction of such person or persons under that statute shall not be required in order for the Borough to take action under this section;

(c) The failure to comply with any directive of the Borough concerning the abatement of conduct prohibited by Subsection **A(7)(a)** or **(b)** hereof;

(d) The public manifestation by tenants, occupants or guests of being under the influence of alcohol or controlled dangerous substances; provided, however, that a conviction of such individuals for such violation(s) shall not be required in order for the Borough to take action under this section; and

(e) The possession or consumption of alcoholic beverages by minors.

8. Whenever the Police Department shall have made an arrest of or issued a summons to a tenant, occupant or guest or owner on three or more occasions during any thirty-day period for an offense related to or arising out of the use and occupancy of the same rental unit(s), the same shall be prima facie evidence of a violation of § **82-20** of the Municipal Code, provided that the owner and/or managing agent shall have had written notice of the existence of such circumstances or conditions.

9. It shall be a defense to any proceeding for the revocation, suspension, or other disciplinary action involving a certificate of registration by demonstrating that the owner has taken appropriate action and has made a good faith effort to abate the conditions or circumstances giving rise to the revocation proceeding, including but not limited to the institution of legal action against the tenants, occupants or guests for recovery of the premises, eviction of the tenants or otherwise.

B. Procedure; written complaint; notice; hearing.

1. A complaint seeking the revocation or suspension of a certificate of registration may be filed by any one or more of the following: Chief of Police, Construction Code Official, Housing Inspector, Zoning Officer or any other persons or office authorized to file such complaint. Such complaint shall be in writing and filed with the Borough Administrator or his/her designee. The complaint shall be specific and shall be sufficient to apprise the owner of the charges so as to permit the owner to present a defense. The individual(s) filing the complaint may do so on the basis of information and belief, and need not rely on personal information.

2. Upon the filing of such written complaint, the Borough Administrator or his/her designee shall immediately schedule a date for a hearing, which shall not be sooner than 10 nor more than 30 days thereafter. The Borough Administrator, or his/her designee, shall forward a copy of the complaint and a notice as to the date of the hearing to the owner and the agent, if any, at the address indicated on the registration form. Service upon the agent shall be sufficient.

3. The hearing required by this section shall be held before the Public Officer, as that term is defined by § **181-2** of the Code of the Borough of Buena, who shall render a decision dismissing the complaint, revoking or suspending the certificate of registration or determining that the certificate of registration shall not be renewed or reissued for one or more subsequent registration years. The decision shall be rendered within thirty (30) days of the conclusion of the hearing.

4. All witnesses shall be sworn prior to testifying. The strict rules of evidence shall not apply, and the evidential rules and burden of proof shall be that which generally controls administrative hearings.

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5. The Borough Solicitor or his/her designee shall appear and prosecute on behalf of the complainant in all hearings conducted pursuant to this section

**BE IT FURTHER ORDAINED** All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

This Ordinance shall take effect upon final adoption and publication in accordance with law.

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**MOTIONED TO INTRODUCE AND PASS AT FIRST READING:**

**ORDINANCE NO. 744 AN ORDINANCE REQUIRING THE REIMBURSEMENT OF EXPENSES INCURRED BY THE BOROUGH OF BUENA FOR TRAINING, MEDICAL EVALUATIONS, UNIFORMS AND OTHER EQUIPMENT AND EXPENSES FOR NEW EMPLOYEES IN THE EVENT OF SEPARATION FROM SERVICE WITHIN THREE YEARS OF EMPLOYMENT AND AUTHORIZING THE BUSINESS ADMINISTRATOR TO EXECUTE AN EMPLOYEE REIMBURSEMENT AGREEMENT**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ	X		X				
ADAMS			X				
BARSUGLIA		X	X				
ANDALORO			X				
FABRIZIO			X				

**WHEREAS**, the Borough of Buena expends a great deal of money in the physical and medical evaluations, training, education and uniforms for new employees to assure the Borough has the best trained and physically fit employees possible, which training and education makes the employees more valuable to the Borough and other agencies; and

**WHEREAS** many times new hires leave the Borough employ after receiving costly training and education as well as physical and medical evaluations and obtain employment with other agencies both public and private utilizing the training and education garnered at the taxpayers' expense; and

**WHEREAS**, while the Borough Council finds it understandable for new employees to take positions elsewhere within the first three years of employment in what the employee determines to be in his/her best interest, it is unfair to allow the employee to do so without reimbursing the Borough for costs and expenses incurred to better train and educate said employee which is done so the employee can provide the Borough with an exceptional employment future; and

**WHEREAS**, it is the intent of the Borough Council to establish a policy setting forth those circumstances that shall require the applicant for employment to reimburse the Borough for such expenses hereinbefore described.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Buena that all applicants for employment positions with the Borough shall execute an Applicant Reimbursement Agreement which states as follows:

A. For all municipal employees resigning their position less than two years after appointment or hire and are appointed or hired to a similar position in either the public or private employment which requires said employee to utilize the skills and/or certifications obtained through the Borough of Buena shall reimburse and is liable to the Borough for the total certified costs incurred by the Borough in the examination, hiring and training of the person as well as costs for uniforms and other equipment which cannot be used by other Borough employees or readily sold to recoup the cost.

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B. For all municipal employees resigning their position less than three years but more than two years after appointment or hire and are appointed or hired to a similar position in either the public or private employment which requires said employee to utilize the skills and/or certifications obtained through the Borough of Buena shall reimburse and is liable to the Borough for fifty (50%) percent of the total certified costs incurred by the Borough in the examination, hiring and training of the person as well as costs for uniforms and other equipment which cannot be used by other Borough employees or readily sold to recoup the cost.

C. Should it become necessary for the Borough, their agents, assigns and/or employees to incur costs and expenses to retain the services of an attorney to enforce the Agreement, the Applicant agrees to pay those reasonable costs and attorney's fees expended to enforce the terms of the Agreement

**BE IT FURTHER ORDAINED** that should any portion of this Ordinance be deemed unenforceable by a court of competent jurisdiction, that portion so determined to be unenforceable, shall be void and the balance hereof shall remain in full force and effect.

**BE IT FURTHER ORDAINED** that should any Ordinance or portion thereof be inconsistent herewith, such Ordinance or portion thereof shall be void to the extent of such inconsistencies.

This Ordinance shall take effect immediately upon final passage and publication as provided by law.

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**CONSENT AGENDA:**

**Consent Agenda includes items of business which are not controversial and do not require individual discussion. A Motion approving the Consent Agenda is moved, seconded and voted upon as one item by the Borough Council. If any discussion is requested on a Consent Agenda item, it is removed from the Consent Agenda to the Regular Agenda**

- **RESOLUTION NO 173-23 A RESOLUTION ACCEPTING THE RESIGNATION OF WILLIAM E. HOLMSTROM, JR. AS EMERGENCY MEDICAL TECHNICIAN FROM BUENA EMS.**
- **RESOLUTION NO.174- 23 RESOLUTION TO AMEND TRANSFER APPROPRIATION BALANCES TRANSFER RESOLUTION**
- **RESOLUTION NO.175- 23 RESOLUTION PROVIDING FOR THE PAYMENT OF BILLS DUE TO LACK OF QUORUM OR OTHER CIRCUMSTANCES**
- **RESOLUTION NO. 176-23 A RESOLUTION OF THE BOROUGH OF BUENA PLACING A LIEN ON BLOCK 135, LOT 11, 306 NORTH WEST BOULEVARD, IN ACCORDANCE WITH ORDINANCE 642**
- **RESOLUTION NO. 177-23 A RESOLUTION AUTHORIZING AN EXTENSION TO FILE THE ANNUAL OCCUPANCY RENTAL REGISTRATION AND THE SUSPENSION OF LATE FEES TO APRIL 1, 2024**
- **RESOLUTION NO. 179-23 A RESOLUTION ACCEPTING A CHANGE ORDER TO AMEND A CONTRACT WITH ARAWAK PAVING COMPANY FOR RECONSTRUCTION OF E. FLOWER STREET AND SOUTH BOULEVARD (CONCRETE CURB)**
- **RESOLUTION NO. 181-23 A RESOLUTION AUTHORIZING THE CFO TO REFUND AN OVERPAYMENT IN THE AMOUNT OF \$50.00, TO TONY CAMPANA PLUMBING**
- **RESOLUTION NO.182-23 A RESOLUTION AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW JERSEY DEPARTMENT OF COMMUNITY**

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**AFFAIRS FOR THE AMERICAN RESCUE PLAN FIREFIGHTER GRANT**

- **RESOLUTION NO. 183-23 APPROVAL TO SUBMIT A GRANT APPLICATION AND, IF AWARDED, EXECUTE A GRANT CONTRACT WITH THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS FOR THE AMERICAN RESCUE PLAN FIREFIGHTER GRANT**
- **BILLS PAID AS LISTED**
- **CLERK’S REPORT MINUTES OF THE REGULAR MEETING OF NOVEMBER 27, 2023**

**MOTIONED TO APPROVE THE CONSENT AGENDA:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ			X				
ADAMS			X				
BARSUGLIA	X		X				
ANDALORO		X	X				
FABRIZIO			X				

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**MOTIONED TO TABLE THE FOLLOWING RESOLUTIONS:**

Council Member	By	2nd	Aye	Nay	Abstain	Absent	Recuse
GIOVINAZZI			X				
ALVAREZ		X	X				
ADAMS	X		X				
BARSUGLIA			X				
ANDALORO			X				
FABRIZIO			X				

**RESOLUTION 178-23      RESOLUTION AUTHORIZING THE ACTING CLERK OF THE BOROUGH OF BUENA TO ADVERTISE FOR PROPOSALS TO BE RECEIVED FOR THE ISSUANCE OF ONE (1) CANNABIS CLASS 1 CULTIVATION LICENSE IN THE BOROUGH OF BUENA**

**RESOLUTION 180-23      A RESOLUTION OF THE BOROUGH OF BUENA, COUNTY OF ATLANTIC, AUTHORIZING THE ISSUANCE OF A CLASS v ANNUAL CANNABIS MANUFACTURER LICENSE TO TASTE OF EARTH, LLC, MILLVILLE, NEW JERSEY, CONDITIONED UPON THE ISSUANCE OF AN ANNUAL LICENSE BY THE NEW JERSEY CANNABIS REGULATORY COMMISSION AND THE EXECUTION OF A HOST COMMUNITY AGREEMENT**

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**SOLICITOR’S REPORT:**

RICHARD TONETTA, BOROUGH SOLICITOR  
No report.



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**ENGINEER’S REPORT:**

MARC DEBLASIO, P.E., P.P., C.M.E.  
BOROUGH ENGINEER

**Grant Applications**

1. FY2023 NJDCA Local Recreation Improvement Grant (LRIG)
  - Our office completed and submitted the concept site plan and engineer’s estimate to the Aubrey Group on January 10<sup>th</sup>.
  - It is our understanding that the Aubrey Group has submitted the grant application to the NJDCA which is currently under review.

**Capital Projects**

1. FY2022 and FY2023 NJDOT Municipal Aid - Reconstruction of E. Flower Street and South Boulevard
  - The Borough has been notified by the NJDOT that \$285,000.00 in FY2022 Grant funds have been awarded for the reconstruction of E. Flower Street, E. Summer Road and South Boulevard.
  - The Borough has been notified by the NJDOT that \$261,640.00 in FY2023 Grant funds have been awarded for the reconstruction of E. Flower Street, E. Summer Road and South Boulevard.
  - Due to the fact that the project costs exceed the combined grant amounts and there appears to be a potential sanitary sewer pipe collapse on E. Summer Road, the Borough has decided to proceed with just South Boulevard and E. Flower Street.
  - The bid opening occurred on August 1, 2023 and the apparent low bidder was Asphalt Paving Systems, Inc. in the amount of \$528,395.00.
  - The bids exceeded the Engineer’s Estimate and were rejected. The project will be advertised for re-bid.
  - The project was rebid and the bid opening occurred on October 4, 2023. The apparent low bidder was Arawak Paving Company, Inc. in the amount of \$383,000.00.
  - Work has begun on East Flower Street with the installation of stormwater infrastructure.
2. CDBG ADA Building Improvements
  - Our office has submitted a proposal for this work that is before Council for consideration.
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**COMMITTEE REPORTS:**

***PERMITS/INSPECTIONS/TAX OFFICES: (CHAIRMAN DOUGLAS ADAMS)***

Councilman Adams reported on code enforcement concerns for the month of November. Santa will be at the Minotola Firehouse on December 22 and 23.

***PUBLIC SAFETY/STREET LIGHTS/ANIMAL CONTROL:(CHAIRMAN, DOUGLAS ADAMS)***

Councilman Adams provided his report on the police department to include number of calls, tickets, disputes, and EMS calls for the month.

***FINANCE:(CHAIRMAN, JORGE ALVAREZ)***

Councilman Alvarez reported that the 2024 budget is in process and the next meeting will occur in January 2024.

***PUBLIC BLDGS/GROUNDS/IMPROVEMENTS:(CHAIRWOMAN PATRICIA ANDALORO)***

Councilwoman Andaloro reported that more security measures will be in place at Borough Hall this week and added that the State Fire Inspector will visit Minotola Firehouse next week.

***RECREATION/SPECIAL EVENTS:(CHAIRWOMAN, MARINA BARSUGLIA)***

Councilwoman Barsuglia reported that the Historical Society is holding an event Thursday, December 7 to honor four individuals at Martin’s Catering. She thanked everyone for a successful Christmas Parade on December 2. It was also noted that the Borough applied for the following grant applications: Firefighter’s Grant, and Green Acres additional funding for parks and recreation.

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***ROADS/RECYCLING:(CHAIRMAN JOSEPH FABRIZIO)***

No report.

***ECONOMIC DEVELOPMENT: (CHAIRMAN RICHARD GIOVINAZZI)***

No report.

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***UNFINISHED BUSINESS.***

Councilman Alvarez explained that Catherine Avenue had flooded again. Discussion ensued regarding drainage and piping.

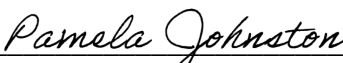
Discussion ensued regarding an engineer traffic study and renting a speed control sign for concerns on Forest Grove Road.

***NEW BUSINESS:***

None.

**NEXT MEETING:** REORGANIZATION MEETING JANUARY 2, 2024 AT 6:00 P.M.

**MEETING ADJOURNED:** M/ ALVAREZ S/ GIOVINAZZI RCVU

  
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Pamela Johnston  
Acting Borough Clerk