

REGULAR MEETING – MARCH 9, 2009 – 7:30 P.M.

Pledge of Allegiance.

Roll Call: Commissioner McGovern, Mayor Mahon.

Absent: Commissioner Gorman – came in later.

Borough Clerk reads the following statement:

This is a regular meeting of the Board of Commissioners of the Borough of Avon-By-The-Sea and notice of time, date and place has been transmitted to the area newspapers, Avon Board of Education, Avon Public Library and the Avon Post Office in compliance with the rules and regulations of the Open Public Meetings Law.

Fire Exits are located in the directions I am indicating. In case of fire, you will be notified by an alarm bell. If so notified, please move in a calm, orderly manner to the nearest smoke free exit. Thank you.

Motion by McGovern seconded by Mahon that the minutes of the meeting of February 23, 2009 be approved as written.

The Vote:

Aye: All

No: None

Mayor announces that this is the time advertised for second reading and hearing on Ordinance No. 3-2009 entitled:

**“AN ORDINANCE REPEALING 128-3 OF THE
MUNICIPAL CODE OF THE BOROUGH OF
AVON-BY-THE-SEA, MONMOUTH COUNTY.”**

WHEREAS, no municipality may enact an ordinance, resolution or other form of legislation creating an offense of public intoxication or any equivalent offense; and

WHEREAS, pursuant to New Jersey State Statutes, any ordinance, resolution or other form of legislation creating an offense of public intoxication or any equivalent offense is repealed; and

WHEREAS, the Borough of Avon-by-the-Sea desires to repeal 128-3 of the Municipal Code of the Borough of Avon-by-the-Sea because it conflicts with New Jersey State Statute.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Borough of Avon-by-the-Sea that 128-3 of the Municipal Code of the Borough of Avon-by-the-Sea be and same hereby is repealed.

The Vote:

Aye: ____

No: ____

Would anyone like to be heard on the above ordinance? No one.

Motion by McGovern seconded by Mahon that the above Ordinance No. 3-2009 be approve on second reading and its passage published in a newspaper as required by law.

The Vote:

Aye: All

No: None

Mayor announces that this is the time advertised for second reading and hearing on Ordinance No. 4-2009 entitled:

“ AN ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14) ”

WHEREAS, the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous year’s final appropriations, subject to certain exceptions; and

WHEREAS, N.J.S.A. 40A:4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and

WHEREAS, the Borough Commissioners of the Borough of Avon-By-The-Sea in the County of Monmouth finds it advisable and necessary to increase its CY 2009 budget by up to 3.5% over the previous year’s final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and

WHEREAS, the Board of Commissioners hereby determines that 1% increase in the budget for said year, amounting to \$29,527.87 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Avon-By-The-Sea in the County of Monmouth, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2009 budget year, the final appropriations of the Borough of Avon-By-The-Sea shall, in accordance with this ordinance and N.J.S.A. 40A:4-45.14 be increased by 3.5% amounting to \$103,347.55, and that the 2009 municipal budget for the Borough of Avon-By-The-Sea be approved and adopted in accordance with this ordinance; and

BE IT FURTHER RESOLVED, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and

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

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

The Vote:

Aye: All

No: None

Would anyone like to be heard on the above ordinance? No one.

Motion by McGovern seconded by Mahon that the above Ordinance No. 4-2009 be approve on second reading and its passage published in a newspaper as required by law.

The Vote:

Aye: All

No: None

Mayor announces that this is the time advertised for second reading and hearing on Ordinance No. 5-2009 entitled:

**“ AN ORDINANCE REPEALING AND AMENDING,
IN ITS ENTIRETY, CHAPTER 32 OF THE CODE
OF THE BOROUGH OF AVON-BY-THE-SEA,
ENTITLED “POLICE DEPARTMENT”.”**

32.1 DEPARTMENT GENERALLY

The Police Department of the Borough of Avon-by-the-Sea, as heretofore established, shall be continued without interruption and shall be under the jurisdiction of the Board of Commissioners of the Borough of Avon-by-the-Sea.

32.2 THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY

The Director of the Department of Public Safety shall be a member of the Board of Commissioners and shall serve as a member of Police Committee.

32.3 APPROPRIATE AUTHORITY

The Board of Commissioners shall serve as the Appropriate Authority as set forth in N.J.S.A. 40A:14-118. The Board of Commissioners shall be responsible for the overall performance of the Police Department. The Board of Commissioners shall establish policy, shall approve rules and regulations for the government of the Police Department and for the discipline of its members.

32.4 POLICE COMMITTEE

The Police Committee shall be responsible for providing recommendations to the Board of Commissioners for the hiring and promotion of police officers. The Police Committee shall consist of the Director of the Department of Public Safety, the Borough Administrator and the Chief of Police. The Police Committee shall perform its duties as set forth in the Rules and Regulations of the Borough of Avon-by-the-Sea Police Department.

32.5 COMPOSITION

The Police Department shall consist of a Chief of Police and of such officers, patrolmen and other members as the Board of Commissioners from time to time shall deem necessary for the preservation of peace and good order within the Borough and as authorized by law.

32.6 DUTIES POLICE CHIEF

It shall be the duty of the Chief of Police to command and regulate the affairs of the Police Department under the supervision of the Appropriate Authority. Pursuant to policies established by the Board of Commissioners, as the Appropriate Authority, the Chief of Police shall:

- (a) Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel;
 - (b) Have, exercise, and discharge all functions, powers and duties of the force;
 - (c) Prescribe the duties and assignments of all subordinates and other personnel;
 - (d) Delegate such authority as he may deem necessary for the efficient operation of the force to be exercised under his direction and supervision;
 - (e) Report at least monthly to the Appropriate Authority in such form as shall be prescribed by such authority on the operation of the force during the preceding month, and make such other reports as may be requested by such authority; and
 - (f) Be responsible for the day to day operation of the police department.
2. Be responsible for the observance and enforcement of all laws of the state and ordinances within the jurisdiction of the police department, and the enforcement of the rules and regulations of the police department; and shall perform such other duties as shall be prescribed by the board of commissioners by ordinance or resolution. He shall also be charged with administering and enforcing any special emergency directive for the disposition and discipline of the department and its members and officers.
 3. See that all persons connection with the police department are properly instructed in their duties and give particular attention to the instructions and training of new members of the department. He shall also be charged with the responsibility of ascertaining that each and every officer under his command is held accountable for his or her time and is devoting his or her full attention to the performance of his or her respective duties.
 4. Have under his control all records and property of the police department and designate any member of the department to prepare

reports and keep records in a manner that the chief may prescribe, as well as take charge of the records and property of the police department and any other property coming into the custody of the department.

5. Operate a training program to maintain and improve the efficiency of the members of the department.
6. Perform those duties and responsibilities as set forth in the Rules and Regulations of the Borough of Avon-by-the-Sea Police Department.

32.7 RULES AND REGULATIONS

The Chief of Police shall have the power to make and amend the rules and regulations for the government, discipline, direction and management of the Police Department in order to promote proper discipline and efficiency in the department. The Board of Commissioners, as the Appropriate Authority, is responsible to review and to approve the rules and regulations, which will be binding upon the members of the Police Department.

32.8 APPOINTMENTS

Appointments to the Department and the filling of vacancies therein shall be made by the Board of Commissioners based upon the recommendation of the Police Committee and in accordance with the requirements of the Statutes of New Jersey and Rules and Regulations approved by the Board of Commissioners. The members shall hold office in accordance with Statutes and Rules and Regulations approved by the Board of Commissioners. No person shall be appointed a permanent member of the Police Department unless that person has all the qualifications prescribed by Statute and Rules and Regulations approved by the Board of Commissioners.

The appointments shall be contingent upon such person having successfully completed a police training course at a school approved and authorized by the Police Training Commission in the Department of Law and Public Safety of the State of New Jersey pursuant to the provisions of the Laws N.J.S.A. 52:17B-66 et seq.

To be eligible for appointment to the Police Department, a candidate must meet the following criteria:

- (1) Be not less than 21 years of age at the time of appointment.
- (2) Have a valid New Jersey driver's license.
- (3) Comply with all provisions as set forth in N.J.S.A. 40A:4-122.

32.9 PROMOTIONS

All promotions to superior positions shall be made by Resolution of the Board of Commissioners from the membership of the Department as construed at the time of promotion and from the recommendation of the Police Committee. Provisions shall be made based on the procedure and criteria set forth in the Rules and Regulations of the Borough of Avon-by-the-Sea Police Department.

32.10 POWERS & DUTIES

The rights, privileges, powers and duties of the members of the police department, including temporary officers of special policemen, shall be those prescribed by the laws of the State of New Jersey governing municipal police departments generally, by the ordinances and resolutions of the Borough of Avon-by-the-Sea, and by the rules and regulations which may, from time to time, be adopted by the Board of Commissioners.

32.11 DISCIPLINE, SUSPENSION OR DISMISSAL

Members of the police department may be disciplined, including suspension (with or without pay), demotion or dismissal as set forth in the Rules and Regulations of the Borough of Avon-by-the-Sea Police Department.

32.12 SALARIES

The salaries of the members of the Police Department shall be as established by the Board of Commissioners.

32.13 EMPLOYMENT OF OFF-DUTY OFFICERS

1. The Chief of Police shall be responsible for the assignment of all off-duty police related activities, and the billing of all compensation due the city. The Chief of Police shall be authorized to designate other members of the police department, as needed, to assist him in the assignment of off-duty police related activities. The procedure for assignment of off-duty police related activities shall be as follows:

- (a) The Chief of Police or his designee shall create and maintain a list whereby police officers may volunteer for off-duty police related activities, however, the contract to be executed with regard to such off-duty police related activities shall provide that such police officers shall be compensated at the overtime rate of pay as set forth in Borough Ordinance 142-17.9. The Chief of Police shall advise as to the rates of pay for the officers to be employed.
- (b) The Chief of Police or his designee shall assign all off-duty police related activities from the aforementioned list of officers desiring said assignments; said assignments shall be made on a rotating basis as the assignment becomes available.

32.14 SPECIAL OFFICERS

The Chief of Police shall recommend to the Board of Commissioners candidates for the appointment as special officers. The Board of Commissioners by resolution shall appoint special officers for terms ending not later than the end of the calendar year in which the appointment is made, and may revoke such appointments at any time without cause. Such special officers shall not be members of the police department. The Chief of Police shall have power to call upon the special officers in case of emergency or for any special duty. The special officers shall possess the same qualifications as to citizenship, and, while on such special or temporary employment, shall have the same powers, duties and obligations as members of the police

department. All special officers shall be under the direction of the Chief of Police.

32.15 RULES AND REGULATIONS MANUAL

The Chief of Police shall prepare a manual for the rules and regulations of the government of the Police Department consistent with the policies established by the Board of Commissioners, as the Appropriate Authority. The Board of Commissioners, as the Appropriate Authority shall review and approve the manual.

32-16. REPEALER

All ordinances or parts of ordinances inconsistent with the provisions of this chapter are hereby repealed, provided, however, that this repeal shall not affect any ordinances heretofore adopted fixing the salaries of members of the Police Department.

Would anyone like to be heard on the above ordinance?

It was asked for clarification on this ordinance. Mr. Gallagher said the ordinance has been around a long time. It called for an oversight committee and other things. The Board of Commissioners are now the appropriate authority and the Police Dept. answers to the appropriate authority and they set policies and procedures for the police dept. Also, it establishes a police committee which is made up of the Director of Public Safety, the Police Chief and the Borough Administrator.

Motion by McGovern seconded by Mahon that the above Ordinance No. 5-2009 be approve on second reading and its passage published in a newspaper as required by law.

The Vote:

Aye: All

No: None

RESOLUTION offered by Mahon seconded McGovern that,

WHEREAS, the Borough of Avon-By-the-Sea, New Jersey, has experienced natural hazards that result in public safety hazards and damage to private and public property,

WHEREAS, the hazard mitigation planning process set forth by the State of New Jersey and the Federal Emergency Management Agency offers the opportunity to consider natural hazards and risks, and to identify mitigation actions to reduce future risk,

WHEREAS, the New Jersey Office of Emergency Management provided federal mitigation funds to support development of the Monmouth County Multi-jurisdictional All Natural Hazards Pre-Disaster Mitigation Plan,

WHEREAS, the Hazard Mitigation Plan has been developed by the Mitigation Planning Committee,

WHEREAS, this Hazard Mitigation Plan includes a prioritized list of mitigation actions including activities that, over time, will help minimize and reduce safety threats and damage to private and public property,

WHEREAS, two public meetings were held on July 17, 2007 and November 29, 2007 to introduce the planning concept and to solicit questions and comment; and to present the Plan and request comments, as required to law.

NOW, THEREFORE, BE IT RESOLVED, by the Borough of Avon-By-The-Sea Board of Commissioners:

- 1. The Hazard Mitigation Plan is hereby adopted as an official plan of the Borough of Avon-By-The-Sea; minor revisions recommended by the Federal Emergency Management Agency and/or the New Jersey Office of Emergency Management may be incorporated without further action.**
- 2. The Municipal Office of Emergency Management and the various Municipal Departments identified in the Plan are hereby encouraged to pursue implementation of the recommended high priority activities that are applicable to their departments.**
- 3. Any action proposed by the Plan shall be subject to and contingent upon budget approval, if required, which shall be at the discretion of the Board of Commissioners of the Borough of Avon-By-The-Sea, and this resolution shall not be interpreted so as to mandate any such appropriations.**
- 4. The Municipal Office of Emergency Management is designated to coordinate with other offices and shall periodically report on the activities, accomplishments, and progress, and shall prepare an annual progress report to be submitted to the Monmouth County Office of Emergency Management. The status reports shall be submitted by September 15th of each year.**

The Vote:

Aye: All

No: None

Motion by McGovern seconded by Mahon that the bills in the amount of \$415551.81 be approved for payment.

The Vote:

Aye: All

No: None

Dept. heads give up-dates:

Chief Mahon – hiring special officers for summer

Karl Klug – water plant project coming along. Roof being done.

Jeff Bramhall – most people were very cooperative in moving cars during the storm. Starting work on boardwalk – will be removing sections so be cautious when you are down there. Now accepting applications for summer employment with D.P.W.

Charlie Rooney – library wall - still working with contractor regarding his insurance coverage. Hoping to see work underway by end of month. Water plant is progressing – should be done by April. Norwood Ave. project – bid opening Mar. 19th. Hope to award on Mar. 23rd.

Mayor asks if anyone would like to be heard?

Discussion on pool renovations and dogs on the boardwalk.

Mr. Gallagher said he met with auditor and CFO this A.M. regarding the budget. Hoping to introduce it at next meeting.

Motion by McGovern seconded by Gorman that being there is no further business, the meeting is adjourned.

The Vote:

Aye: All

No: None

Robert Mahon, Mayor

Robert P. McGovern, Commissioner

Francis E. Gorman, Commissioner

**Timothy M. Gallagher, RMC
Borough Clerk**