

BOROUGH OF BRADLEY BEACH
COUNCIL BUSINESS MEETING MINUTES

DECEMBER 6, 2023 AT 6:30 P.M.

IN ACCORDANCE WITH THE PROVISIONS OF THE OPEN PUBLIC MEETINGS ACT, PUBLIC MEETINGS MAY BE HELD IN PERSON OR BY MEANS OF COMMUNICATION EQUIPMENT TO INCLUDE STREAMING SERVICES AND OTHER ONLINE MEETING PLATFORMS (N.J.S.A. 10:4-8b).

THIS MEETING WAS HELD IN-PERSON AND THROUGH THE ZOOM MEETING PLATFORM, BEING BROADCAST FROM BOROUGH HALL, 701 MAIN STREET, BRADLEY BEACH, NJ 07720. PUBLIC PARTICIPATION FOR THIS COUNCIL BUSINESS MEETING OF DECEMBER 6, 2023 WAS AVAILABLE IN PERSON OR THROUGH THE ZOOM LINK POSTED TO THE WEBSITE. THE REMAINDER OF COUNCIL MEETINGS DATES (RESOLUTION 2022-265 ADOPTED DECEMBER 13, 2022) FOR CALENDAR YEAR 2023 WERE ADVERTISED IN THE COAST STAR AND THE NEW COASTER ON DECEMBER 15, 2022 AND THE ASBURY PARK PRESS ON DECEMBER 17, 2022.

WITH ADEQUATE NOTICE HAVING BEEN GIVEN, THE MUNICIPAL CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THIS MEETING.

A regular meeting of the Mayor and Council of the Borough of Bradley Beach was held in the Meeting Room, 701 Main Street, Bradley Beach, New Jersey on the above date.

CALL TO ORDER

Mayor Fox opened the meeting with a salute to the flag.

Sunshine Law was read.

The meeting has been noticed publicly according to the Open Public Meetings Act requirement for the “Annual Notice” and posted on the official bulletin board in the Borough Office.

ROLL CALL AT 6:30 P.M.

Present at the December 6, 2023 Council Business Meeting:

**Councilwoman DeNoble, Councilman Gubitosi, Councilwoman Mahoney, Councilman Weber,
Mayor Fox
Acting Borough Administrator, Meredith DeMarco
Municipal Clerk, Erica Kostyz
Borough Attorney: Gregory Cannon Esq.
Borough Engineer: Bennett Matlack
Police Department: Lieutenant Detective Terry Browning, Captain James Arnold
Deputy Municipal Clerk: Michele Whille (ZOOM Facilitator)**

Mayor Fox:

We are in the early throws of the 2023 Holiday season. Being this is our last meeting of the year; I would like to highlight and recognize some of our collective accomplishments and a few of our challenges we still face going into 2024.

Infrastructure:

- 1) The Phase II Sewer project- done and dusted
- 2) The McCabe/Ocean Park Outfall pipe – big project, well done
- 3) Sump-pump water line remediation on selected blocks- big success with residents.
- 4) The Fletcher Lake Bridge renovation- much needed and timely.
- 5) Planning phases of the Sylvan Lake Outfall pipe- in progress.
- 6) Biase- roof replacement and potential slight remodeling complete.
- 7) Lake Terrace Park- a needed facelift is occurring as we speak.

Beachfront:

- 1) We assessed our handicap access and made some good improvements, including handicap lockers and mat extensions, more to come.
- 2) In adding the above, we also built an additional thirty-three lockers for our residents and visitors.
- 3) We have applied for a coastal resilience grant that will create more security on our south side of town
- 4) Also shaded portions of the promenade playground.

Grants:

- 1) Recreation Grant- we will start on that construction in 2024.
- 2) Lake Terrace Park- attained and construction in process.
- 3) Applied for both an unused asset and coastal resilience “boardwalk” grant

Main Street and Related:

- 1) We worked a pilot electric vehicle trolley this summer- good success
- 2) The Theater- renovations finally beginning for a 2024 re-opening.
- 3) Riley Park was busy much of the year, particularly the summer, by upping our events, this benefited our Main Street businesses.
- 4) We worked with the Bradley Beach Business and Community on a number of Initiatives: one of which was the 130th Anniversary of Bradley Beach celebrations.

On Affordability:

After “holding the line” in 2021 and 2022, we had a tough 2023 relative to municipal tax. Our 3-year average is a little below 5%; but we are working hard to keep 2024 at the lowest possible level.

319 LaReine Avenue Church:

Progress was made here, although not enough and slow. We are progressing and will keep a focus on this.

These points do not at all cover our important Boards, Committees, and Commissions.

Environmental

**Environmental
Fletcher Lake
Sylvan Lake
Shade Tree**

Wellness/ Community Events

**Recreation
Mayors Wellness Committee
Tourism
Arts Council**

Two key Boards

**Library Board
Land-Use Board**

Exclamation points on the Fire and First Aid volunteers.

Bradley Food Pantry- 170 volunteers,

BBBCA - 200 member non-profit.

Over a dozen Ordinance changes - highlight steps to regulate AirBNB.

Almost 300 resolutions that provided a mechanism to get things done.

We will have the opportunity to go into more depth in the next six weeks or so. So stay tuned.

WORKSHOP DISCUSSIONS:

2024 Beach Locker Rental Fees:

Mayor Fox gave a PowerPoint presentation covering the following:

- **Background Statistics**
- **Prior, current, and proposed locker fees**
- **Comparative Towns/Costs**
- **Renewal Process**
- **Summary of the current registration/renewal process and the benefits.**

Councilman Weber verified people can still pay in person if they do not wish to renew online.

Councilman Gubitosi inquired if the prices of a box of new lockers has increased.

DPW Supervisor, Biagio Cofone confirmed the price for new lockers has increased.

Councilwoman DeNoble asked how long the lockers last and if any additional lockers or replacement lockers will be added this year.

Mr. Cofone responded the lockers can last for several years and it is not planned to add any additional lockers.

Councilman Gubitosi asked if the Governing Body should consider keeping the rates the same for one more year.

Mayor Fox stated any excess revenue generated will help to offset some surprise costs that the Borough has incurred (ex. Outfall Pipe repair).

Further discussion ensued regarding the surplus.

Public Comment:

In Person:

Mea Molin, 302 Fourth Avenue, requested the assignment of lockers involve tenure for residents.

Nancy Meadow, 805 Beach Avenue, expressed concerns the presentation did not include a pay in person option.

Eileen Shissias, 112 Fourth Avenue, requested the Borough accommodate residents first for locker location.

Discussion ensued between the Governing Body and Mr. Cannon regarding the Public Trust Doctrine.

Linda Duffy, 312 Brinley Avenue, requested the Borough send renewal notifications earlier.

Cindy Lukenda, 218 Fourth Avenue, suggested placing the lockers between the promenade and the dunes.

ZOOM:

Paul Neshamkin, 411 ½ LaReine Avenue, suggested Senior Citizens get a discount.

It was decided to charge \$600.00 for new lockers and \$190.00 for renewals.

Resolution 2023-275 Establishing the 2024 Beach Locker Rental Fees.

ON MOTION by Fox/Weber to adopt Resolution 2023-275.

ROLL CALL:

AYES: DeNoble, Gubitosi, Weber, Mayor Fox

NAYS: Mahoney

ABSENT: None

ABSTAIN: None

ADOPTED

PRESENTATIONS:

Best Practices Inventory – Presented by Acting Borough Administrator Meredith DeMarco via Power Point.

Best Practices have been posted to the website for public view.

The following residents commented on this presentation:

Cindy Lukenda, 218 Fourth Avenue

Mea Molin, 302 Fourth Avenue

Nancy Meadow, 805 Beach Avenue

MINUTES APPROVAL

ON MOTION by Fox/Weber to approve the Council Business Meeting Minutes of November 8, 2023.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

APPROVED

ON MOTION by Fox/Gubitosi to approve the Executive Session Minutes of November 8, 2023.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

APPROVED

ON MOTION by Fox/DeNoble to approve the Special Meeting/Executive Session Minutes of November 30, 2023.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: Weber

APPROVED

Public Comments on Agenda Items:

In Person:

Eileen Shissias, 112 Fourth Avenue, had bill list inquiries pertaining to the payroll company, Mairin Bellack, and Settembrino Architects all of which were addressed by the Borough Administrator.

Robyn Flipse, 408 Lake Terrace, asked if there are any items on the agenda this evening that can make the Borough vulnerable to a lawsuit.

Mr. Cannon declined to answer that question publicly.

Anita Nazario, 116 Newark Avenue, inquired how overtime hours are tracked for special events.

Ms. DeMarco addressed this inquiry.

Nancy Meadow, 805 Beach Avenue,

- Regarding Resolution 2023-291, Ms. Meadow requested the public also be informed of pending litigations within the Borough.
- Regarding Resolution 2023-289 requested there are two meetings every month.
- Expressed complaints regarding expenditures on the bill list.

Thomas McGuire, 610 Brinley Avenue, inquired about Resolutions 2023-290 through 2023-292. The Governing Body addressed inquiries.

William Psiuk, 110 Fifth Avenue, requested Ordinance 2023-12 be tabled.

Discussion ensued between Mr. Psiuk, Councilman Gubitosi, Mr. Cannon, and Mr. Matlack regarding the copy of Ordinance 2023-12 that the Land Use Board received for review.

Dennis Mayer, 312 Second Avenue, requested Ordinance 2023-12 be tabled for further review.

Beth Kepler, 504 Central Avenue, stated she is in support of Ordinance 2023-16 Chapter 5 Amendments.

Shana Greenblatt-Janoff, 414 Monmouth Avenue, read a statement in support of Ordinance 2023-16 Chapter 5 Amendments.

Rona Parker, 27 Atlantic Avenue, read a statement opposing Ordinance 2023-16, Amendments to Chapter 5.

Mary Backstrom, 218 Fourth Avenue, stated she is in favor of Ordinance 2023-16 and feels everyone needs to be more respectful of one another at Council Meetings.

Thomas J. Coan, 612 Third Avenue, stated he is pleased the Shade Tree Commission is getting an Alternate appointment and commented on Resolutions 2023-285, 2023-286, and 2023-286.

ZOOM:

Kelly Reilly, 304 Second Avenue, spoke on behalf of the documents the Land Use Board received for review of Ordinance 2023-12 and feels there was a lack of transparency.

ORDINANCE INTRODUCTION(S): None

ORDINANCE ADOPTION(S):

ORDINANCE 2023-12

AN ORDINANCE REPLACING CHAPTER 450: “ZONING” OF THE BOROUGH’S REVISED GENERAL ORDINANCES TO UPDATE THE BOROUGH’S ZONING REGULATIONS.

Councilman Weber spoke in support of this ordinance and reiterated the several meetings that have previously occurred in other Council Meetings.

Councilman Gubitosi agreed with Councilman Weber and stated the Council is responsible for making the law and collaborated with the Land Use Board concerning this ordinance. Councilman Gubitosi also stated the professionals have found the changes consistent with the Master Plan. Borough Engineer, Bennett Matlack, reported on all twelve of the Land Use Board's recommendations for the public at the request of Councilman Gubitosi.

Councilman Gubitosi gave his recommendations and suggestions for edits and changes.

Further lengthy discussions ensued regarding transformer boxes.

Councilman Gubitosi asked Mr. Cannon if the adoption can still take place this evening with minor edits.

Mr. Cannon suggested the safest thing to do would be to re-introduce the ordinance.

Councilwoman Mahoney gave the following statement:

I believe the changes Council is making to Chapter 450 are in keeping with the Master Plan.

The Land Use Board cited that the changes made by the Council were inconsistent with overall Goal F in Bradley Beach's Master Plan, however, by increasing the square footage of property needed to accommodate a garage apartment and by lowering the roof height to 27 feet on smaller lots, the council is encouraging the use of lots as single family homes and protecting the privacy of the homes around them, by not encroaching on the air, trees, privacy, and sightlines of the surrounding homes. New Jersey Municipal Land Use Law 40:44D-2 e promotes the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions, and preservation of the environment.

Allowing garage apartments on corner lots of at least 7500 sq feet is not inconsistent with this.

These changes allow for the infill of housing stock, where smaller, more affordable homes that are knocked down, can be replaced in kind. Some may say, no one is going to pay \$750K for a lot on which they can only build a two-story, two bedroom, two bath house. But once sellers and developers realize that that is all that can and will be allowed to be built, the prices will come in line, making Bradely Beach more affordable, and offering a variety of housing options. This too is in line with the Master Plan, and the New Jersey Municipal Land Use Law. As MLUL states, we are to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private according to their respective environmental requirements in order to meet the needs of all New Jersey Citizens.

Finally, these changes were considered consistent with the Master Plan by our own Professionals.

ON MOTION by Fox/Weber to open the public hearing for the adoption of Ordinance 2023-12.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

Public Comment:

William Psiuk, 110 Fifth Avenue, feels this ordinance will affect homes in the east/west section of the Borough with non-conforming lots as this will cause problems for homeowners wanting to make any changes.

A lengthy and intense discussion ensued between Mr. Psiuk, Councilman Gubitosi, and Mr. Matlack concerning the east/west side of town.

Rona Parker, 27 Atlantic Avenue, asked if this ordinance has been approved by the Land Use Board.

Councilman Gubitosi, Councilman Weber and Mr. Cannon addressed this inquiry.

Linda Duffy, 312 Brinley Avenue, stated she has safety concerns pertaining to the north end of town.

Thomas J. Coan, 612 Third Avenue, stated he approves of this ordinance and supports the adoption.

Bob Broders, 614 Fifth Avenue, stated he is not in favor of this ordinance and feels it will interfere with any additions he may plan to make for his home.

Discussion ensued between Councilwoman Mahoney, Mr. Matlack, and Mayor Fox regarding the time limit for homeowners to file a permit that want to make changes to their homes.

Dennis Mayer, 312 Second Avenue, feels this ordinance will affect resident investments.

Rich Despina, 600 Third Avenue, feels placing a time limit on this ordinance is forcing residents to make changes to their homes prematurely.

Councilman Gubitosi stated the goal of this ordinance is to protect the Borough.

Councilman Gubitosi asked what the time limit is to file an application which was addressed by Mr. Matlack.

Zoom:

Kelly Reilly, 304 Second Avenue, suggested this ordinance be tabled to further discuss it holistically to include the legal rights of the Land Use Board to be part of these changes.

ON MOTION by Weber/Mahoney to close the public hearing and adopt Ordinance 2023-12.

Councilman Weber stated this ordinance is for the good of the town and will keep the density in check.

Mayor Fox feels this is worthy of further discussion and feels this should be tabled for further review.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber

NAYS: Mayor Fox

ABSENT : None

ABSTAIN : None

ADOPTED

ORDINANCE 2023-15

AN ORDINANCE AMENDING CHAPTER 123: “BEACHFRONT AREAS AND ADJACENT WATERS” OF THE BOROUGH’S REVISED GENERAL ORDINANCES TO INCLUDE NEW ARTICLE IV: “FLETCHER LAKE BRIDGE” TO PROHIBIT ALL MOTORIZED OR POWERED VEHICLES OF ANY TYPE ON THE FLETCHER LAKE BRIDGE.

ON MOTION by Fox/DeNoble to open the public hearing for the adoption of Ordinance 2023-15.

ROLL CALL:

AYES: DeNoble, Gubitosi, Weber, Mayor Fox
NAYS: None
ABSENT: Mahoney
ABSTAIN: None

Public Comment:

Robyn Flipse, 408 Lake Terrace, expressed concerns on enforcement of this ordinance.

Mea Molin, 302 Fourth Avenue, also expressed concerns on enforcement of this ordinance.

ON MOTION by Fox/DeNoble to close the public hearing and adopt Ordinance 2023-15.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT : None
ABSTAIN : None

ADOPTED

ORDINANCE 2023-16

AN ORDINANCE AMENDING CHAPTER 5: “ADMINISTRATION OF GOVERNMENT” OF THE BOROUGH’S REVISED GENERAL ORDINANCES TO REPEAL THE MAYOR’S TEMPORARY APPOINTMENT POWER UNDER CODE SECTION 5-14(J)

Councilman Gubitosi:

This Amendment to 5-14(J) has received a lot of attention over the past month, and rightfully so.

The question everyone wants answered is: “Who has the right to make the permanent appointment of our Business Administrator, the Mayor or the Council?” As recently as last week the Mayor sent an email to the Council requesting that we remove the adoption of this amendment from tonight’s Agenda. He stated that the Council cannot “dilute the legal powers and authorities granted to Mayors in this form of Government” and that this would “encroach on the authority granted to my office by State Law and Borough Charter.”

What is disappointing is that some people, fueled by the Mayor’s rhetoric, have made these same statements as part of personal assaults on this Council’s motives. A small group of individuals have publicly posted unfair accusations against the Council on social media. These individuals are certainly entitled to their opinions. Unfortunately, their opinions do not include facts.

The following are four simple questions which people should ask. Anyone who cares about the facts, should read the answers:

1. When is a “Strong Mayor” NOT a “Strong” Mayor? Our Faulkner Act, Small Municipality, form of Government is often referred to as a “Strong Mayor” form of Government. The role of our Mayor is indeed “strong” because he serves both as our Chief Executive and as a member of our Legislative Branch, the Council. Our form of Government also provides for a Council which is empowered with many rights, including the right to approve Mayoral appointments of various “officer” positions. When a Mayor attempts to avoid the “Checks and Balances” that are built into our laws, he has moved beyond “Strong,” and is heading towards “Dictator.”
2. When do three finalists equal one finalist? The Mayor presented three finalists to the Council for their consideration to hire as a Business Administrator. The Council interviewed the three finalists and then selected the one that the Council believed to be the most qualified candidate, and the one who they believed could best serve Bradley Beach. In hindsight, the Council now realizes that the Mayor was really only presenting one finalist, the only one that he was willing to nominate.
3. When is a Loophole not a Loophole? The Mayor knew that the Council did not support his candidate, and he also knew that he needed the Council’s Consent under the law. So, the Mayor used the Borough’s own Ordinances, not the Faulkner Act to “Temporarily” appoint an “Acting Officer” for “up to 90 days”. After making this “Temporary Appointment” he then created a two-year contract, reaching an annual salary of \$130,000. The Mayor then admitted in a public Council Meeting that he intends to continue to reappoint his choice for Business Administrator every 90 days, indefinitely. He requests that we do not refer to this manipulation of our laws as a “Loophole.” This Question might also be known as: “When does 90 days equal two years?”
4. When does “Temporary” equal “Permanent”? This unintended application of the Borough’s Ordinance temporarily appointing the same person indefinitely creates a full-time, permanent appointment, with benefits. This action is clearly designed by the Mayor to usurp the Council’s authority, not the other way around.

The Council’s motive is simple. These four answers explain why the Council must pass this amendment to Ordinance Section 5-14(J) tonight. In order to “close the Mayor’s loophole.” We must remove the authority that a prior Council gave to a prior Mayor, years ago. The current Mayor’s actions constitute a clear abuse of this “Temporary Appointment” authority. Therefore, this Council must remove the authority previously granted to the Mayor.

Councilman Weber stated this ordinance is not a reflection on the current Acting Business Administrator and is about keeping any future Mayor from abusing the power of using a loophole to make recurring temporary appointments.

Councilwoman Mahoney:

In 1992, Bradley Beach moved from a Commissioner form of Government under the Walsh Act to a Faulkner Act Small Municipality form of Government.

One of the positives of all forms of Government under the Faulkner act is that it enables citizens to enjoy the powers of Initiative, Referendum, and Recall. By petition, voters may propose or repeal legislation or act to remove an elected official from office. All this can be accomplished by the people without action by the local Governing Body. This right is exercised by preparing a conforming petition signed by 10% of the registered voters who turned out in the last General Election in an odd-numbered year. Once the petition is submitted, the local Governing Body can vote to pass the requested ordinance, and if they refuse, it is then submitted directly to the voters.

Just as the people have power, the Mayor and Council have power too.

Bradley Beach has adopted the Small Municipality form of Government, which does conform to the Strong Mayor format. With the Mayor Acting as Chief Executive. This form of government is very similar to the US Federal form of government. So much so, in fact, that our Mayor alone, much like the President of the United States, can nominate for certain appointments, but can only make that appointment with advice and consent of its branch counterpart, the Council, much like the President of the United States can only make certain appointments after Senate approval. As we all learned in Civics Class or even School House Rock, there need to be checks and balances.

With regard to 5-14J, at first blush it seems to well handle the situation where we are in need of an Officer in case of an emergency. And perhaps it would if our checks and balances were in place. However:

- 1. We are in a situation where an appointment was made without the advice and consent of Council as prescribed by 40:69A-149.8 and**
- 2. That appointment is going to be held over for an indeterminate amount of time, without the advice and consent of Council after the 90-day temporary appointment term expires. This Governing Body does in fact have a provision to handle officer vacancies. The Mayor can enter into a Professional Services Agreement, like we did with Mr. Fahrenbach. And after the Mayor's threshold of spend is met, the Council can approve the continuation of the Professional Services Agreement. However, in reality, would it not be best if appointments were handled according to Municipal Charter requirements, whereupon the Mayor nominates candidates for offices and then appoints after receiving the consent of Council, who were duly elected?**

The Faulkner Act burdens the Mayor and City Council with working cooperatively for the benefit of the Municipalities' residents. Since the Mayor does not intend to get the Council's advice or consent to extend the 90-day appointment, and seeing as 5-14J allows the Mayor to circumvent working cooperatively with Council. I agree in striking 5-14J from the ordinance.

Mayor Fox read a memo he sent last week to the Council which stated he would prefer to settle this in a more harmonious manner by working together rather than creating more divisions. If Council is still intent on placing this on the agenda, I would suggest we jointly seek judicial intervention to advise on whether this action is consistent with our form of government the Faulkner Act.

Mayor Fox read a portion of a memo sent to the Council last week requesting to proceed in a more harmonious manner by working together rather than creating more divisions; if Council is still intent on placing this on the agenda, he suggested to jointly seek judicial intervention to advise on whether this

action is consistent with our form of government the Faulkner Act. Mayor Fox stated his concern eliminating this portion of the ordinance is no consideration around continuity of Government and creates an adverse employment action and will place the Borough at legal risk and feels this is arbitrary and capricious.

Councilwoman DeNoble feels the Council advice and consent rights are being stripped and this is not productive.

ON MOTION by Fox/Mahoney to open the public hearing for the adoption of Ordinance 2023-16.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber

NAYS: Mayor Fox

ABSENT: None

ABSTAIN: None

Public Comment:

Thomas J. Coan, 612 Third Avenue, stated he is in favor of this ordinance and read a hiring memo from the Mayor to the Council October 1, 2023.

Beth Kepler, 504 Central Avenue, expressed opinions regarding what she feels is a loophole pertaining to this appointment.

Mea Molin, 302 Fourth Avenue, feels the Mayor is not listening to what the Council and the residents want.

Rona Parker, 27 Atlantic Avenue, asked the Borough Attorney if he is advising the Council on this matter.

Mr. Cannon responded to Ms. Parker's inquiries.

Brigitte McGuire, 610 Brinley Avenue, stated she is in favor of this ordinance.

Linda Duffy, 312 Brinley Avenue, expressed her opinion regarding Ms. DeMarco's credentials.

Email Comment:

Gregory Fehrenbach, 408 Bradley Boulevard, former Interim Administrator:

As all of you might expect, I am opposed to Ordinance Number 2023-16 as I was opposed to Ordinance Number 2023-4.

Before I explain why, I want to clearly state on the record,

From before the time I offered to be the Interim Borough Administrator, I have not chosen a side in this community conflict. I am on my own side as a professional local government manager, Borough property owner and taxpayer. I am a stakeholder in this community, and I have my own positions on individual community issues. I have worked diligently to listen to all sides of issues for the betterment of this Borough's government.

What does this ordinance do?

In its essence, the proposed ordinance amendment removes the ability of the elected chief executive officer to make appointments to keep the government operating when a key officer or staff member, who must be appointed with the advice and consent of the council, leaves office. A vacancy in such an office can occur as the result of death, resignation, retirement, or removal from office. This can occur during calm periods or stormy times such as now exists within the governing body or during a hurricane or a Nor'easter.

Why would I as a resident of this community be opposed to this Ordinance?

There are several reasons which I will attempt to briefly enumerate:

This action is violative of this Municipality's Charter intent.

When chosen by the voters of Bradley Beach, the current Small Municipalities form is to have a separately elected Chief Executive with appointive powers among other executive authorities.

The Charter clearly and unequivocally places the power of appointment in the Chief Executive Officer. This is no different from the other Optional Municipal Charter forms such as the Council-Manager form or the Mayor-Council form.

Attempts to take away these appointive powers clearly violate the charter.

This ordinance replicates Ordinance 2023-04 of last summer in intent as I previously described.

These are Judge English's words regarding the Council's prior attempts control appointments and to change the form of government: "...Borough Council lacks legal justification for its adoption of Ordinance No. 2023-04 which revises Section 5-14 (J) of the Borough Code. This revision enabled Borough Council to blur the clear distinctions envisioned by the Faulkner Act. The adoption of Ordinance 2023-04 was both willful and unreasonable, amounting to an arbitrary and capricious abuse of discretion."

The Judge was unequivocal in issuing his criticizing judgment of this Council. Was Judge English's critical comment regarding the Council's last attempt to change the charter by ordinance not clear enough to be understood?

If this ordinance is passed, the action of the governing body members voting in the affirmative are inviting, no demanding, another lawsuit to defend the Charter adopted by the voters of Bradley Beach.

Removal of the ability of a Chief Executive Officer to make acting appointments disables the Government from being able to carry out its mandated governmental services.

If the statutory appointing authority is prevented from making acting appointments and the Council fails to grant advice and consent to an appointment, there is then no appointment.

According to the Borough Ordinance, the positions affected by this condition would then be Borough Administrator, Auditor, Engineer, Tax Assessor, Tax Collector, Attorney, and Municipal Clerk (Section 5-11.A.(5)), all of which are leadership or technical positions, without being filled would disable the government.

In this governmental form, the Council does not have appointment powers for the vast majority of positions.

The only means by which this Council can gain this authority is by reverting to the Borough form of Government through a Charter Study Commission process, but not by means of this ordinance. The ability of any Council to usurp appointing authority from the CEO does not exist in the other strong executive forms under the Optional Municipal Charter Law previously identified. Likewise, it does not exist here.

Let me be clear, granting advice and consent is a process to make sure the person or firm being appointed has the ability to perform the duties and responsibilities of the position. It does not mean that if a majority of the Governing Body is of the belief that someone else would be better in the position that the Governing Body can then deny the chief executive's appointment and appoint their preference. The Council does not possess appointive powers under the statute.

While this behavior is true of the Borough form of government, it is not true of this Optional Municipal Charter form, which was known at the time it was chosen by the study commission and by the electorate.

In many elected chief executive local governments that have the personality and ideological differences that exist between the elected executive and the elected legislators as exists here, the council typically allows the mayor to make his or her appointments and then requires the executive to then live or die with the electorate, based on the administration's performance.

This is how this Council should behave here.

The Council should avert a guaranteed legal challenge which will cost us, the taxpayers, needlessly.

The Council should place on the 2024 ballot a charter study commission question, in the event the electorate wishes to revisit the question decided 30 years ago.

2024 is just around the corner.

Regarding the action that appears to have created this added attempt to change the governmental form, the appointment of the Acting Borough Administrator:

Previously I was asked my opinion on this appointment, no longer being in the position of Interim Borough Administrator, I will candidly share my professional opinion:

Meredith DeMarco came in second on NJ experience, but had enough for the position.

Meredith DeMarco came in third on overall local government administrator experience, but met the requirements for the position.

Meredith DeMarco came in first on knowing the community and being willing to accept the machinations that often take place here in order to serve the municipality with forethought, fortitude, and desire.

If the Council does not already know this fact, among local government professionals, Bradley Beach's council has a very bad reputation. The Administrator and CFO searches have clearly established this regretful condition as the result of potential candidates dropping out after reading the newspaper or being unwilling to apply in the first place.

Meredith DeMarco came out first in having the fortitude to put up with the endless questioning and "gottcha" approach of some of these questions.

One Administrator candidate would have surely sought other employment after 6-12 months in the position.

One Administrator candidate would have chosen the course of least resistance because the community's welfare would not have been a top priority.

The person chosen beat the other two in the last five categories. I suspect that the governing body, in their heart of hearts, would concur with me that her performance to date has proven that determination to be correct.

Given her performance to date, there is no questions she should remain in her position and fulfill a strong and overwhelming desire among staff that there be a chief operating officer who will be here for the long haul, to provide stability and continuity to this governmental organization.

Had it not been for the ability to appoint an "acting" Borough Administrator, you would not have had the attention to detail and the diligent attempts to address ongoing issues directly and comprehensively as you have witnessed here during recent meetings.

I implore all of you, for the stability of this governmental organization, to address the desire of the Borough staff for a long serving Administrator and to benefit the welfare of all residents and taxpayers, this ordinance should NOT be adopted.

Zoom:

Kelly Reilly, 304 Second Avenue, expressed concerns of the extensive costs and turnover of administrators from 2017 to present.

ON MOTION by DeNoble/Gubitosi to close the public hearing and adopt Ordinance 2023-16.

Councilman Gubitosi stated he was disappointed with Mr. Fehrenbach's comments and feels there were many inaccuracies stated.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber

NAYS: Mayor Fox

ABSENT : None

ABSTAIN : None

ADOPTED

COMMUNICATIONS :

- Shade Tree Commission Appointment Memo – Susan Pearsall, Alternate II Member**

CONSENT AGENDA RESOLUTIONS:

2023-276 Approval of a Lien Redemption for 400 Main Street in the amount of \$5,017.18.

2023-277 Approval of a Lien Redemption for 405 Second Avenue in the amount of \$1,771.90.

2023-278 Approval of a Lien Redemption for 415 Fifth Avenue in the amount of \$51,898.46.

2023-279 Approval of an On-Premises 50/50 Cash Raffle License and an On-Premises Gift Basket Auction Raffle License for 2024 and waiver of the Municipal Raffle License Fees for the Bradley Beach PTA.

2023-280 Approval for Clean Ocean Action to conduct their annual Spring and Fall Beach Sweeps for 2024.

2023-281 Authorizing the Appointments of Special Class II Law Enforcement Officers attending the 57th Class at the Monmouth County Police Academy in January.

2023-282 Appointment of Class III Member for the Land Use Board.

ON MOTION by Fox/Weber to adopt the Consent Agenda Resolutions.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

ADOPTED

INDIVIDUAL RESOLUTIONS:

2023-283 Authorizing Budget Appropriation Transfers for December 2023.

ON MOTION by Fox/Mahoney to adopt Resolution 2023-283.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

ADOPTED

2023-284 Bill List for December 6, 2023.

Councilman Weber requested the Bill List payment to Mairin Bellack reflect the period for which she did work for the Borough.

ON MOTION by Fox/Weber to adopt Resolution 2023-284

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

ADOPTED

2023-285 A Resolution cancelling a certain Funded Appropriation Balance previously adopted by the Borough of Bradley Beach for General Capital Projects in the amount of \$314,826.15.

Councilman Gubitosi commended the Acting BA and Financial Team for their diligence with this resolution.

ON MOTION by Fox/Mahoney to adopt Resolution 2023-285.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

ADOPTED

2023-286 Resolution amending prior permission granted to the Bradley Beach Fire Department A/K/A United Engine & Truck Company to erect an electronic sign upon the real property located at 905 Main Street, known more specifically as Block 32, Lot 14.

ON MOTION by Fox/DeNoble to adopt Resolution 2023-286.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

ADOPTED

2023-287 Approval for Shore Athletic Club to conduct their Annual Polar Bear Race on Saturday, December 30, 2023.

ON MOTION by Fox/Weber to adopt Resolution 2023-287.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

ADOPTED

2023-288 Approval of the 2024 SCAT Agreement.

ON MOTION by Fox/Weber to adopt Resolution 2023-288

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

ADOPTED

2023-289 Approval of Council Business Meeting Dates for Calendar Year 2024.

Discussion ensued amongst the Governing Body regarding the amount of meetings and changing the format of the meeting. It was decided to add language to item number five on the agenda to state “Workshop and Report-Outs” and add a second meeting to the month of August.

Ms. Kostyz further explained the reasoning and practicality for Council and public benefit leaving the months of November and December at one meeting.

ON MOTION by Fox/Weber to change item number five on the Agenda to Workshop/Report-Out and conduct all meetings as Council Business Meetings.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

ON MOTION by Fox/Weber to adopt Resolution 2023-289.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

ADOPTED

2023-290 Authorizing a Shared Service Agreement with the Township of Ocean to provide Chief Financial Officer Services in accordance with the Division of Local Government Services Regulations

ON MOTION by Fox/Weber to adopt Resolution 2023-290.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox
NAYS: None
ABSENT: None
ABSTAIN: None

ADOPTED

2023-291 A Resolution directing the Borough Administrator and/or the Borough Attorney to provide the Governing Body with a report of all pending claim(s) and/or litigation(s) involving the Borough on a monthly basis.

ON MOTION by DeNoble/Weber to adopt Resolution 2023-291.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber
NAYS: Mayor Fox
ABSENT: None
ABSTAIN: None

ADOPTED

2023-292 A Resolution requesting that the Mayor establish protocols and procedures for the issuance of violations in the Borough, arising from complaints to Agencies of the Municipality to the Borough Council.

ON MOTION by DeNoble/Weber to adopt Resolution 2023-292.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber
NAYS: Mayor Fox
ABSENT: None
ABSTAIN: None

ADOPTED

ANNOUNCEMENTS: None

MAYOR AND COUNCIL REPORTS:

Mayor Fox:

I hope everyone had a wonderful Thanksgiving Holiday. We have a lot to be thankful for in Bradley Beach. The Friday post-Thanksgiving bonfire went off without a hitch, great fun. After postponing the Tree Lighting/Holiday Celebration, we were able to hold it Saturday, it was a successful event for residents and visitors.

This Saturday, the third night of Hanukkah, the Ice Carving and Menorah Lighting will take place at Riley Park- please join the ceremonies start time is 5:45 p.m. There will be music, potato latkes, donuts.

Our thoughts and prayers continue to be with Israel, along with our local Jewish Community. We are mindful of the issue of the hostages, including many Americans. We all hope and pray for resolution.

An important annual ceremony was held on November 11th at 11:00 a.m. at Riley Park. This year our Veteran Honoree was former Army Captain David Broadbent. Thanks to those who joined us at our Veterans Day Ceremony.

On the Infrastructure front:

- 1) The Lake Terrace Park renovation is beginning. This will be a two-month project.**
- 2) We are in the process of addressing some flow issues and Sylvan Lake repairs.**
- 3) We are completing the final remediation wipe down, disinfection, and minor renovations for the Biase Building.**

Library

Winter Reading is back. Read books from December 1st through February 28th for a chance to enter for prizes. Check the website.

Tuesday, December 5th at 6:00 p.m. Getting Out of Our Comfort Zone. Leaving our bubble is uncomfortable. Yesterday, professional world traveler Chris McCormack discussed how to expand your travel opportunities.

Thursdays, December 7th, 14th, and 21st at 3:00 p.m. Box Tops for Education Information Session; Help support the PTA by participating in the Box Tops for Education Program. Information sessions will be held at the Bradley Beach Library every Thursday in December right after school.

Wednesday, December 13th at 7 p.m. "How Money Works Webinar." This webinar is for anyone who wants to learn more about personal finance. You will learn about saving for short and long-term goals, investing wisely, paying off debt, protecting your financial assets, and more.

Recreation

Seniors Holiday Lunch was held today at UVA. Thirty-three, mostly seniors, attended the lunch. The committee did a great job organizing and UVA did not disappoint.

Recreation had a very exciting and busy Sunday morning this weekend for our Breakfast with Santa Event. We had about sixty-five people come and enjoy goodies, crafts, and Santa. Thank you to everyone who came. We cannot wait to do it again next year.

We will be having a Winter Wonderland Dance on Friday December 15th from 4:30 to 5:30 p.m. for grades Pre-K through Fourth and from 6:00 p.m. to 8:00 p.m. for grades Fifth through Eighth.

Our Holiday Veterans Drive will close off on December 15th. If you would like to donate items there is a box in the Front Office at the Municipal Building and the Recreation Center. A list of items can be found in the Recreation Department section of the website. You can also go to Murrays on Main Street, and for just \$3.50, you can purchase a tee shirt that will be delivered to the Veterans Memorial Home at Menlo Park.

December 15th sign-ups for Mah Jong lessons will be open. The class is six weeks long. It will be every Friday starting January 12th from 12:30 p.m. to 2:30 p.m. The flyer and link to sign up will be on the website.

December 22nd the Recreation Center will be hosting a last minute Wrapping Party. If you need help with getting those last few gifts wrapped up or just some extra space and a place to hide to wrap those extra special gifts feel free to come to the Recreation Center. We will have hot chocolate, coffee, tape, scissors, and holiday music. Just bring your gifts and favorite wrapping paper.

Our Walking Group meets every Thursday at 1:00 p.m. at the Fifth Avenue Gazebo. Hope to see some of you there tomorrow. If you would like any more information or to be added to the email list, please reach out to Courtney at the Recreation Center.

Mayor Fox concluded his report by giving the Weekly Operational Reports for the Fire Department and the First Aid Squad.

Councilwoman Mahoney:

- Gave a report for the Land Use Board Meeting that occurred November 16th.
- Attended the Thanksgiving Schule.
- Attended the Tree Lighting Event.
- Wished everyone Happy Holidays.

Councilman Weber:

- Thanked Rabbi Kellerman for the Thanksgiving Schule
- Due to the late hour, Councilman Weber stated he would report on a variety of topics at the next meeting.

Councilman Gubitosi:

- Gave the weekly Police Activity Report.
- Thanked Rabbi Kellerman for the invite to the Thanksgiving Schule.
- Wished everyone a wonderful and safe Holiday season.

Councilwoman DeNoble:

Councilwoman DeNoble made a motion to send correspondence to State Officials notifying them of the adverse affects the Bill S-3605 will have on overdevelopment in the Borough and surrounding Shore towns, seconded by Councilwoman Mahoney.

Councilman Gubitosi explained how this bill will cause parking challenges in the town.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

- Councilwoman DeNoble attended the N.J. League of Municipalities with Councilman Weber and stated they got new insights to efficiently run the Borough.
- Reported the Tree Lighting event was a great success and thanked all employees that assisted on behalf of the Tourism Commission.
- The Shade Tree Commission meeting will take place November 7th at 7:00 p.m.
- The Board of Education held a meeting on November 21st. Ms. DeNoble congratulated the newly elected officials on the BOE and reported on the school activities.
- Thanked Rabbi Kellerman and the Agudath Achim for the Thanksgiving Schule.
- Wished everyone a Happy Holiday and a healthy New Year.

Public Comment:

In Person:

Beth Kepler, 504 Central Avenue, inquired about the status of the personnel matter involving the Police Chief.

Mr. Cannon reported the Police Chief is on paid administrative leave and no further information will be provided at this time.

A lengthy argument was pursued by Ms. Kepler as to why the Governing Body did not disclose this information to the public and mentioned social media postings she saw pertaining to the Fire Department and First Aid Squad pages pertaining to this situation.

Cindy Lukenda, 218 Fourth Avenue, suggested using the greenhouse property as the new location for the Food Pantry.

William Psiuk, 110 Fifth Avenue, thanked the DPW and the Police Department for their hard work and assistance for the Veteran's Day Memorial Ceremony and the Tree Lighting Ceremony.

Nancy Meadow, 805 Beach Avenue, voiced complaints pertaining to beach badge sales, the Biase Center, the website, receiving emails from Borough officials, the reorganization meeting date.

Mr. Cannon explained there has been new legislation passed regarding reorganization meetings.

Mayor Fox commented that the Administrative staff is doing a great job.

Eileen Shissias, 112 Fourth Avenue, requested reprimand for disrespectful behavior from audience members.

ZOOM: None

Mr. Cannon stated after serving the Acting Borough Administrator Meredith DeMarco with a Rice Notice, she has chosen to have the first two topics of the Executive Session discussed in a public forum.

- **Government Management Associates**
- **Borough Administrator**

Mayor Fox feels it is inappropriate to discuss either of these topics and stated any questions could have been answered with one-on-one meetings.

On advice from her Legal Counsel, Ms. DeMarco stated she will not be answering any questions pertaining to either subject.

Councilman Gubitosi stated this discussion was requested to find out when the transitional period will end for the previous Interim Administrator.

Discussion ensued amongst the Governing Body and Borough Attorney pertaining to the remainder of time Mr. Fehrenbach's will be doing transitional tasks for the Borough on a volunteer basis and potential liabilities and risks having access to Borough records and the building.

Mayor Fox offered to create an outline for the Council explaining Mr. Fehrenbach's assistance with the transitional duties.

EXECUTIVE SESSION:

ON MOTION by Fox/to retire into Executive Session at 11:50 p.m. to discuss a Litigation Matter .

Resolution 2023-293 Retire into Executive Session to discuss a Litigation Matter.

- **McGuire vs. Bradley Beach**

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

ON MOTION by Fox/to return from Executive Session at 12:20 a.m.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

ADJOURNMENT:

ON MOTION by Fox/Mahoney to adjourn the Council Business Meeting.

ROLL CALL:

AYES: DeNoble, Gubitosi, Mahoney, Weber, Mayor Fox

NAYS: None

ABSENT: None

ABSTAIN: None

THE COUNCIL BUSINESS MEETING ADJOURNED AT 12:20 A.M. DECEMBER 7, 2023.


Erica Kostyz, RMC, CMR
Municipal Clerk