

**WORKSESSION/REGULAR MEETING
OF CITY COUNCIL OF THE CITY OF CAPE MAY, NJ
Monday, November 14, 2011 – 7pm**

The regular meeting of City Council of the City of Cape May was called to order by Mayor Mahaney at 7:00 P.M. Monday, November 14, 2011, in the Cape May City Hall Auditorium. The Clerk called the roll and the Pledge of Allegiance was recited.

Present:	Mayor Edward J. Mahaney, Jr. Councilmember William H. Murray Councilmember Terri L. Swain Deputy Mayor Jack Wichterman
Absent:	Councilmember Deanna Fiocca
Also Present:	City Attorney Anthony Monzo City Manager Bruce MacLeod City Clerk Diane L. Weldon Deputy Clerk Louise Cummiskey

Mayor Mahaney announced that under the Open Public Meetings Law, notice of this meeting was sent to the Cape May Star and Wave and The Press and a copy of the agenda was delivered to each Member of Council and was posted on the City Hall Bulletin Board.

Minutes do not reflect the actual order in which the events occurred.

PRESENTATION: Cape May Beach Replenishment Project

Dwight Pakan, Project Manager, U.S. Army Corp of Engineers, William T. Dixon, Supervisor, State of New Jersey, DEP, and Chris Constantino, DEP offer a power point presentation which explains the project. Representatives of the Contractor, Great Lakes and the subcontractor, A. Henry are also in the audience

Questions are entertained from Council and the public. Councilmember Murray comments that the project was previously explained to council in closed session and all his questions have been answered.

Paul Johnston, 11 Broadway, Cape May, NJ and Cove Restaurant, Cape May, NJ thanks the panel for coming tonight to explain the project. Mr. Johnston asks about the backpassing and why it is being performed. Mr. Dixon explains the process to Mr. Johnston and advises that this backpassing process is experimental.

AGENDA ADDITION/DELETION OF LATE AGENDA ITEMS TO BE CONSIDERED FOR ACTION:

Mayor Mahaney makes a motion to add Resolution 241-11-2011 which will approve a contract with the IAFF. However, the resolution will not be acted on until after closed session.

Motion: Mahaney

Second: Swain

Roll Call:

Fiocca Absent

Murray Yes

Swain Yes

Wichterman Yes

Mahaney Yes

WSMMC Budget Presentation: Joanne Klineburger and Susan Tischler come to the table. Ms. Tischler offers council a budget proposal. Mayor Mahaney thanks WSMMC for their contribution to the Trolley service and commends them on the informational booklet.

238-11-2011 Resolution introducing and approving the 2012 budget of the Washington Street Mall Business Improvement District of the City of Cape May

Motion: Murray

Second: Wichterman

Roll Call:

Fiocca Absent

Murray Yes

Swain Yes

Wichterman Yes

Mahaney Yes

ORDINANCES FOR INTRODUCTION:

245-2011 An Ordinance amending Section 469-2 of the Cape May City Code concerning licensing of tours

Mayor asks for motion to introduce Ordinance 245-2011.

Motion: Wichterman

Second: Swain

Roll Call:

Fiocca Absent

Murray Yes

Swain Yes

Wichterman Yes

Mahaney Yes

ORDINANCES FOR PUBLIC HEARING AND ADOPTION:

242-2011 An Ordinance Prohibiting Smoking in Cape May City Public Parks, Beaches, Promenade and Recreation areas

Mayor asks for motion to introduce Ordinance 242-2011.

Motion: Wichterman
Second: Murray

Mayor opens public hearing.

Nicki McGlade, McGlade's Restaurant, speaks in opposition to the passage of this Ordinance.

John Caffrey, member of NJ GASP and visitor to Cape May speaks in favor of the passage of this Ordinance.

Matt Tennison talk show host, speaks in opposition to the passage of this Ordinance.

John Cook, Chamber of Commerce, Board of Directors is objecting to the passage of this Ordinance.

Bob Progner, Sea Crest Inn, speaks in opposition to the passage of this Ordinance.

Robert Zlotnick, resident of Northfield in Atlantic County, speaks in favor of the passage of this Ordinance.

Nate Chait, Atlantic City, NJ, speaks in favor of the passage of this Ordinance.

Heidi Cummings, Cape May, NJ, is curious as to why so many out-of-towners are here tonight. She would like to take a certain area, declare it non-smoking, and see the impact rather than declare the entire beach become non-smoking.

Susan Tischler, 507 Washington Street Mall, Cape May, NJ, speaks against the passage of this Ordinance. She would like to see designated beaches which are smoking and non-smoking which respects the rights of all people.

Alan Kantz of Summit, NJ, and a member of GASP is here tonight to strongly support the passage of this Ordinance.

Tina Giamio, business owner in Cape May, believes the Ordinance is too severe and is against the passage of this Ordinance.

Bernie Haas, 1016 Illinois Avenue, Cape May, NJ, speaks against the passage of this Ordinance.

Paul Johnston, 11 Broadway, Cape May, NJ, asks who will enforce this Ordinance. He speaks against the passage of this Ordinance and thinks the City of Cape May should find other ways to help people stop smoking.

Dr. Chris Traficante, 1062 Pennsylvania Avenue, Cape May, NJ is concerned about the intrusion of the privileges of individuals and speaks against the passage of this Ordinance.

Deputy Mayor Wichterman comments that the No Smoking Ordinance was his idea and he began researching the issue back in April. He called various municipalities throughout the State of New Jersey that had non-smoking beaches to find out whether such an Ordinance was enforceable and whether there were any problems after the passage of same. Mr. Wichterman advises that since its introduction, he only received a few letters in opposition to this Ordinance. The Deputy Mayor believes we need to tweak the existing Ordinance but he thinks it will be enforceable because people will enforce it themselves. Mr. Wichterman believes the passage of this Ordinance is a good idea.

Councilmember Murray thanks all for coming and expressing their opinions. Mr. Murray comments that there were three main themes expressed by the audience this evening. They are the possible adverse effect on tourism, enforcement, and encroachment on individual liberties. Mr. Murray is very sensitive to any impact on tourism and states that the passage of this Ordinance may in fact have a positive effect on tourism. He believes that enforcement will be self-enforced. Finally, Mr. Murray comments that from time to time, encroachments on individual liberties do occur and he does not think this is an unusual encroachment. There are prohibitions that are necessary for safety and some are tolerable. He believes this encroachment is tolerable.

Councilmember Swain states she has received considerable feedback on this issue. She feels this comes down to the climate that we want to portray in Cape May and she thinks Cape May has become a town of signs advising of prohibited activities. It is important to figure out whom this Ordinance will impact. Ms. Swain believes we must weigh all of the issues and figure out what message we want to convey. In its current form, Ms. Swain would have difficulty voting for this Ordinance.

Mayor Mahaney believes there are many issues that must be resolved in this town, especially the issue of keeping the town affordable for all and maintaining a quality of life for all. The Mayor comments that there are a number of issues of higher priority to be addressed. No one from the public was pushing for the passage of this Ordinance and the Mayor states that he has learned when people aren't complaining about an issue, usually you have met a standard that everyone is willing to live with. Mayor Mahaney believes we should revisit the matter and make some adjustments to the existing legislation.

Motion for adoption

Motion: Wichterman

Second: Murray

Roll Call:

Fiocca	Absent
Murray	Yes
Swain	No
Wichterman	Yes
Mahaney	No

The Motion fails. Mayor Mahaney asks to revisit this matter at the December worksession.

The following Resolutions will be approved by Consent. Deputy Mayor Wichterman offers an explanation of the purpose of the Resolutions for the benefit of the public.

RESOLUTIONS: Council will accept questions from the public on resolutions:

- 234-11-2011 Resolution authorizing professional services contract with Employee Care for an Employee Assistance Program
- 235-11-2011 Payment of bills A
- 236-11-2011 Appointment of Municipal Prosecutor and authorizing the execution of professional services contract for same
- 237-11-2011 Resolution authorizing the bid for lease of Cape May Convention Hall retail stores
- 238-11-2011 Resolution introducing and approving the 2012 budget of the Washington Street Mall Business Improvement District of the City of Cape May already done
- 239-11-2011 Resolution providing for the insertion of a special item of revenue in the budget pursuant to Chapter 159, PL 1948
- 240-11-2011 Resolution of the City of Cape May providing for a meeting not open to the public in accordance with the provisions of the NJ Open Public Meetings Act, *NJS410:4-12*, IAFF

Motion: Wichterman

Second: Murray

Roll Call:

Fiocca	Absent
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

MINUTES:

City Council closed executive session meeting minutes dated September 6, 2011

City Council closed executive session meeting minutes dated October 4, 2011

City Council closed executive session meeting minutes dated October 18, 2011

Motion: Murray

Second: Wichterman

Roll Call:

Fiocca	Absent
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

City Council closed executive session meeting minutes dated September 20, 2011

Motion: Murray

Second: Wichterman

Roll Call:

Fiocca	Absent
Murray	Yes
Swain	Abstain
Wichterman	Yes
Mahaney	Yes

REPORTS RECEIVED BY THE CLERK:

Assessors Office Monthly Report dated November 7, 2011

Under \$500 bill list dated November 4, 2011

Tourism Commission meeting minutes dated September 14, 2011

Zoning Board of Adjustment meeting minutes dated September 22, 2011

Overtime report for October, 2011

Motion: Wichterman

Second: Murray

Roll Call:

Fiocca	Absent
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

LICENSES/APPLICATIONS:

Cape May City Volunteer Fire Department Applications for Enrollment:

- Robert Sheehan
- Dennis Spilker
- Brandon Nash

City Solicitor Monzo has a question on the License Applications for the Volunteer Fire Department as he is unsure as to why Council is being asked to approve the applications. Neither City Ordinance nor the By-laws of the Volunteer Fire Department require approval of the applications by City Council advises Mr. Monzo. However, under LOSAP, there is a requirement that the governing body approve active members to determine eligibility for service credits. Mr. Monzo feels that should be done by Resolution and he suggests we contact the Fire Department for further clarification.

Mayor Mahaney asks Mr. Monzo and Mr. MacLeod to work on the clarification for the next meeting and asks for a motion to postpone the action until the worksession of December 6, 2011.

Mayor Mahaney asks for a Motion to postpone action until the December 6, 2011 Worksession Meeting.

Motion: Murray

Second: Wichterman

Roll Call:

Fiocca	Absent
Murray	Yes
Swain	Yes
Wichterman	Yes
Mahaney	Yes

UNFINISHED BUSINESS:

NEW BUSINESS:

- A) City Attorney – Mr. Monzo clarifies that the IAFF Contract is for a period of six years; however, we are currently two years into the contract so there are four years remaining.
- B) City Manager – Mr. MacLeod clarifies the water/sewer issue that developed during September for the benefit of the public and the press.
- C) City Clerk – Ms. Weldon informs us that beach tags for the year 2012 will be sold beginning 12/1/2011.
- D) Councilmembers – Mr. Murray compliments City Manager Bruce MacLeod for quickly marking the parking meters so tourists would know they were no longer in operation.

Mayor Mahaney thanks Curtis Bashaw for sponsoring a benefit for the West Cape May Christmas Parade. He extends Thanksgiving holiday wishes to everyone. The Mayor advises that this year's Tree Lighting Ceremony will be held on Friday December 2, 2011 at 7:00 P.M. in Rotary Park at the Gazebo and on December 3, 2011 at 5:00 P.M., the annual Christmas Parade will take place.

PUBLIC PORTION: Those wishing to publicly comment shall come forward, give their name and address and speak into the microphone. Each speaker will be limited to five (5) minutes.

George Lesser, 207 Congress Place, Cape May, NJ advises that he is having problems with the sidewalks at the rear of his home which faces S. Lafayette Street. Mr. Lesser advises that the Sycamore trees behind his home have lifted the slate pavers causing a dangerous situation and poor lighting exacerbates the problem. Mr. Lesser called the Shade Tree Commission and was told he could not do anything to harm the trees. He asks what can be done to correct the situation. Mayor Mahaney states that he has spoken to the City's Public Works Department who advise that the slate can be lifted and reset, thereby correcting the situation. The Mayor asks Mr. MacLeod and Mr. Wichterman, in conjunction with the Department of Public Works, to work with Mr. Lesser to correct the situation. Deputy Mayor Wichterman and Councilmember Murray agree.

Paul Johnston, 11 Broadway, Cape May, NJ asks about the new Contract with firefighters and whether or not it will be on the website. The City Clerk advises that we don't usually post them on the website but they are available in the City Clerk's office. Mr. Johnston then asks about the Broadway Pavilion bid and he is advised that the bid packets are available in the Clerk's Office.

COUNCIL & CITY MANAGER COMMENTS

CLOSED: IAFF - 3495

ADJOURNMENT

Motion made by Deputy Mayor Wichterman, seconded by Councilmember Murray to go into closed. session. The regular meeting adjourned at 9:40 P.M.

CLOSED: IAFF

Motion made by Deputy Mayor Wichterman to go back into open session.

Open session begins again at 9:50 P.M. Mayor Mahaney asks the Clerk to read the title of Resolution 241-11-2011.

241-11-2011 Resolution approving a new collective bargaining agreement with the IAFF 3495 representing Firefighters.

Motion: Murray

Second: Wichterman

Roll Call

Fiocca Absent

Murray Yes

Swain Yes

Wichterman Yes

Mahaney Yes

Motion made Deputy Mayor Wichterman, seconded by Councilmember Murray to adjourn. The meeting adjourned at approximately 9:52 P.M.

Edward J. Mahaney, Jr., Mayor

Jack Wichterman, Deputy Mayor

ABSENT

Deanna Fiocca, Councilmember

Terri L. Swain, Councilmember

William H. Murray, Councilmember

Diane L. Weldon, City Clerk

