

MINUTES OF THE MEETING OF THE COUNCIL OF THE BOROUGH OF ESSEX
FELLS, ESSEX COUNTY, NEW JERSEY

Held at the Essex Fells Municipal Building in said Borough on May 17, 2022 at 7:05 p.m.

Present

Mayor Edward A. Davis
Councilman Michael Cecere
Councilman BJ D'Avella
Councilman Greg Hindy
Councilman John King
Councilwoman Maggie O'Connor

Absent

Councilman William Sullivan

Also Present

Borough Administrator/Borough Clerk Francine T. Paserchia
Borough Attorney Robert Oostdyk

Mayor Davis called the meeting to order. He stated that in compliance with the Open Public Meetings Law (Chapter 231, Public Laws of 1975) notice of this meeting was transmitted to The Progress and The Star Ledger and was filed with the Borough Clerk and is posted on the Bulletin Board of the Borough Hall.

Mayor Davis led the Council in the Pledge of Allegiance and gave the Invocation.

Councilman Hindy moved, Councilman D'Avella seconded approval of the minutes of April 19, 2022 and May 3, 2022

And was carried on call of the roll:

<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>
Michael Cecere	None	William Sullivan
BJ D'Avella		
Greg Hindy	<u>Abstain</u>	
John King	None	
Maggie O'Connor		

Appointments

- Zoning Board of Adjustment – Alternate Member
Allison Semaya, 199 Roseland Avenue
- Zoning Board of Adjustment – Alternate Member
William G. Kovacs, 40 Gordon Road
- Essex Fells Volunteer Fire Department – Junior Member
Abigail Woods, 30 Essex Road
- Essex Fells Volunteer Fire Department – Junior Member
Ava Cusack, 16 Holly Lane

Mayor Davis asked the Clerk to report on written communications.

The Clerk reported receipt of the following:

A. Written:

April 2022 Department Reports:

- Construction Department Cash Receipt & Permit Fee Log Report
- Police Department and Municipal Court Reports
- 2022-2023 Essex Fells Elementary School Budget Statement
- NJDOT Fiscal Year 2023 State Aid Programs

Mayor Davis said if there were no objections to the above, they will be placed on file. Hearing no objection, it was so ordered.

Public Affairs

- **Current Landscaping and Tree Removal Registration**

Current list provided to council as per Mayor Davis.

- **Financial Disclosure Statements – Due April 30th**

Administrator reminded everyone that the deadline for compliance was April 30th.

All were in Agreement.

Mayor Davis announced introduction on first reading of Ordinance 2022-1062

Councilman King moved, Councilman Hindy seconded a motion to introduce on first reading and publish according to law an ordinance entitled 2022-1062, ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF ESSEX FELLS AND PROHIBITING THE RENTAL OF PROPERTY FOR SHORT TERM OCCUPANCY, hearing to be held on June 21st, 2022 at 7:00 p.m.

WHEREAS, the Borough Council find that the rental of residential dwelling for short-term occupancy has been identified as a community concern due to the potential for increased traffic, noise, high occupant turnover, and increased density in residential neighborhoods; and

WHEREAS, the number of individuals occupying such short-term rentals has the potential to exceed standards for the design capacity of such structures and to cause health and safety risks for the occupants, neighbors and nearby properties; and

WHEREAS, the purpose of this chapter is to safeguard the peace, safety and general welfare of the residents of the Borough and their visitors and guests by eliminating noise, traffic and parking congestion, vandalism, overcrowding, neighborhood uncertainty, high occupant turnover, diminution of neighborhood character, and other secondary effects that have been associated with the short-term rental of residential properties; and

WHEREAS, the short-term rental market nationwide has expanded with the use of professional brokers and internet listing services. This increase requires an expansion of enforcement mechanisms to deter parties who facilitate and solicit short-term rentals. Because there are numerous homeowners, real estate offices, brokers, and other agencies that actively promote short-term rentals to potential Borough visitors through the internet and other forms of advertisement, it is necessary to prohibit the promotion and advertisement of short-term rentals.

BE IT NOW, THEREFORE, ORDAINED by the Mayor and Council of the Borough of Essex Fells, in the County of Essex and State of New Jersey, as follows:

Section 1. The Revised General Ordinances of the Borough of Essex Fells shall be amended by the inclusion of new Chapter 223, which shall be entitled “Short Term Rental of Residential Property” which shall read, in its entirety, as follows:

CHAPTER 223

SHORT TERM RENTAL OF RESIDENTIAL PROPERTY

§223-1 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ADVERTISE or ADVERTISEMENT

Any written, electronic or oral publication, dissemination, solicitation or circulation which is intended to directly or indirectly induce any person to enter into an agreement for the short-term rental of a dwelling. This definition includes, but is not limited to, mailings, print advertisements internet listings, e-mail publications or other oral, printed or electronic media.

DWELLING

Any single- or multi-family residential building or structure in the Borough, or any part thereof, which is occupied in whole or in part, or intended to be occupied in whole or in part, as a home residence or sleeping place for one or more individuals.

FACILITATE

A person facilitates if, acting with knowledge that an operator managing agency or rental agent is renting a dwelling on a short-term basis, the person knowingly provides the operator managing agency or rental agent with means or opportunity for the commission of said offense.

PERSON

An individual, corporation, association, firm, partnership, limited liability company, or other legal entity.

RENT

The consideration or remuneration charged, whether or not received, for the occupancy or use of a dwelling, whether to be received in money, goods, services, labor, other use of other dwelling(s), or otherwise.

RENTAL

An agreement between persons whereby money or other consideration is charged in exchange for the right to occupy or use all or part of a dwelling.

SHORT-TERM RENTAL

Any rental of a dwelling or part thereof for less than 30 consecutive days.

SOLICIT

A person "solicits" if, with the intent to promote or facilitate the short-term rental of a dwelling, such person commands, encourages, requests or solicits another person to engage in a short-term rental agreement.

§ 223-2 Prohibited conduct.

A. No person shall use, possess or occupy a dwelling on a short-term rental basis. No person shall enter a short-term rental agreement for a dwelling.

B. No person owning, leasing, or having control of a dwelling shall allow it to be used, occupied or possessed as a short-term rental.

C. No person shall advertise, solicit or facilitate a short-term rental agreement for a dwelling.

§ 223-4 Violations and penalties.

A. Any person who violates any provision of this chapter shall be subject to the following penalties:

(1) For a first violation. A fine of \$750 per day for each violation for each dwelling unit and/or 10 days in jail at the discretion of the Municipal Court Judge, or both;

(2) For a second violation. A fine of not less than \$750 nor more than \$1,200 per day for each violation for each dwelling unit and/or 20 days in jail at the discretion of the Municipal Court Judge, or both;

(3) For a third and subsequent violation. A fine of not less than \$1,200 nor more than \$2,000 per day for each violation for each dwelling unit and/or 30 days in jail at the discretion of the Municipal Court Judge, or both.

B. Each day that a person violates; a provision of this chapter shall be considered as a separate and distinct violation.

§ 10.25 Enforcement.

This chapter may be enforced by Essex Fells Police Department, Building Department Inspectors together with any other municipal officials authorized to enforce Borough ordinances.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

And was carried on call of the roll:

Ayes
Michael Cecere
BJ D'Avella
Greg Hindy
John King
Maggie O'Connor

Nays
None

Abstain
None

Absent
William Sullivan

Mayor Davis announced a public hearing on second reading of Ordinance 2022-1059

The Clerk offered proof of publication of the ordinance, indicating that it

was published in The Progress issue of May 12, 2022

The public hearing was held and **AN ORDINANCE AMENDING CHAPTER 155 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF ESSEX FELLS REGULATING GENERATORS**

BE IT ORDAINED by the Borough Council of the Borough of Essex Fells, County of Essex, State of New Jersey as follows:

Section 1. Chapter 155 of the Revised General Ordinances of the Borough of Essex Fells entitled “Generators,” is hereby by the following amendment to subsection A of Section 155-3 “Conditions for permanent placement” which shall read as follows:

- 2. Only one permanent generator with an output of not more than 22kw is allowed.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

And was carried on call of the roll:

<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>
Michael Cecere	None	William Sullivan
BJ D’Avella		
Greg Hindy	<u>Abstain</u>	
John King	None	
Maggie O’Connor		

Mayor Davis announced a public hearing on second reading of Ordinance 2022-1060

The Clerk offered proof of publication of the ordinance, indicating that it was published in The Progress issue of May 12, 2022

The public hearing was held and **ORDINANCE AMENDING CHAPTER 286 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF ESSEX FELLS AND ESTABLISHING A RATE FOR WHOLESALE WATER**

CONSUMPTION NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Essex Fells, in the County of Essex and State of New Jersey, as follows:

Section 1. Chapter 286, Section 286-34, of the Revised General Ordinances of the Borough of Essex Fells entitled "Per-gallon rate" shall be amended by the following amendment to subsection B which shall read in its entirety as follows:

B. The rate for contractual wholesale customers shall be \$2.776 or each thousand gallons of water purchased. This rate shall be effective beginning in the second quarter of 2021.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

And was carried on call of the roll:

<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>
Michael Cecere	None	William Sullivan
BJ D'Avella		
Greg Hindy	<u>Abstain</u>	
John King	None	
Maggie O'Connor		

Mayor Davis announced a public hearing on second reading of Ordinance 2022-1061

The Clerk offered proof of publication of the ordinance, indicating that it was published in The Progress issue of May 12, 2022

The public hearing was held and CALENDAR YEAR 2022 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. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget up 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 Council of the Borough of Essex Fells in the County of Essex finds it advisable and necessary to increase its CY 2022 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 Borough Council hereby determines that a 3.5% increase in the budget for said year, amounting to \$43,693.07 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS, the Borough Council hereby determines 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.

NOW THEREFORE BE IT ORDAINED, by the Borough Council of the Borough of Essex Fells, in the County of Essex, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2022 budget year, the final appropriations of the Borough of Essex Fells shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by 3.5%, amounting to \$152,925.76, and that the CY 2022 municipal budget for the Borough of Essex Fells be approved and adopted in accordance with this ordinance; and,

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

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

And was carried on call of the roll:

<u>Ayes</u> Michael Cecere BJ D'Avella Greg Hindy John King Maggie O'Connor	<u>Nays</u> None <u>Abstain</u> None	<u>Absent</u> William Sullivan
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Councilman King moved, Councilman Hindy seconded, approval of the following resolutions on consent:

2022-71

WHEREAS, the recipient at the address listed has requested a refund for overpayments made for water,

WHEREAS, the Tax Collector has determined that the recipient is entitled to said refund,

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Essex Fells, County of Essex that the Tax Collector be authorized to refund the following:

<u>Block</u>	<u>Lot</u>	<u>Address</u>	<u>Recipient</u>	<u>Amount</u>
3.01	13	76 Devon Road	Chan, Charles 1 Roseland Avenue Roseland NJ 07068	\$79.04

2022-72

WHEREAS, the homeowner at the addresses listed have requested a cancellation of interest on taxes,

WHEREAS, the Tax Collector has determined that the homeowners are entitled to said cancellation,

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Essex Fells, County of Essex that the Tax Collector be authorized to refund the following:

<u>Block</u>	<u>Lot</u>	<u>Address</u>	<u>Recipient</u>	<u>Amount</u>
10.06	16	19 Essex Road	Broast, Joan	\$272.29

9.03 7 239 Oldchester Road McGregor, James & Karen \$247.76

2022-73

A RESOLUTION AUTHORIZING THE PURCHASE AND INSTALLATION OF PARTS AND EQUIPMENT FOR POLICE VEHICLES FROM TRIANGLE COMMUNICATIONS, LLC

WHEREAS, the Borough of Essex Fells wishes to purchase parts and equipment for installation and use in police department vehicles; and

WHEREAS, this equipment can be purchased under the New Jersey State Contract #17-Fleet-00739,762,770, and 792; and

WHEREAS, Public bids are not required when the purchase is made under a state contract in accordance with N.J.S.A 40A:11-12 of the Local Public Contracts Law; and

WHEREAS, the maximum amount of the contract is \$17,062.23 and the Borough's Chief Financial Officer has certified that the funds are available; and

WHEREAS, The Borough Council wishes to authorize a contract for the purchase of the equipment and labor from Triangle Communications, LLC

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Essex Fells, in the County of Essex and State of New Jersey as follows:

1. A contract is hereby awarded to Triangle Communications, LLC. for the purchase and installation of parts and equipment for use in police department vehicles in an amount not to exceed \$17,062.23.

2. The contract is awarded in accordance with the unit pricing, terms and conditions contained in New Jersey State Contract 17-Fleet-00739,762,770, and 792 in an amount not to exceed \$17,062.23.

3. All appropriate Municipal Officials are hereby authorized to take whatever actions may be necessary to implement the terms and conditions of this resolution.

2022-74

WHEREAS, the Borough Tax Collector is appointed pursuant to N.J.S.A. 40A:9-141, which permits a municipality, by ordinance, to provide for the appointment of a municipal tax collector; and

WHEREAS, N.J.S.A. 40A:9-145.7 requires that any person appointed or reappointed as a municipal tax collector must hold a tax collector certificate issued pursuant to NJSA 40A:9-141, section 2 of P.L. 1979, c. 384 (C. 40A:9-145.2), and section 6 of P.L. 1993, c. 25 (C.40A:9- 145.3a); and

WHEREAS, the Borough Tax Collector's term of office is designated pursuant to NJSA 40A:9- 142, which states that "every municipal tax collector shall hold his office for a term of four years from the first day of January next following his/her appointment. Vacancies other than due to expiration of term shall be filled by appointment for the unexpired term."; and

WHEREAS, Brittany L. Thunell was appointed Tax Collector by Resolution 2019-33 to serve as Tax Collector; and

WHEREAS, the Township Administrator recommends the re-appointment of Brittany L. Thunell effective January 1, 2023; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Essex Fells, in the County of Essex, State of New Jersey as follows:

1. The Tax Collector shall receive such salary as determined annually by the Township Council.
2. In accordance with NJSA 40A:9-145.3b., the appointed Tax Collector shall renew his certification every two (2) years and shall complete the required course hours during that time to qualify for renewal of said certificate.

And was carried on call of the roll:

Ayes
Michael Cecere
BJ D'Avella
Greg Hindy
John King
Maggie O'Connor

Nays
None

Abstain
None

Absent
William Sullivan

Councilman Hindy moved, Councilwoman O'Connor seconded, approval of the following resolution:

2022-74-A

RESOLUTION PROVIDING FOR A MEETING NOT OPEN TO THE PUBLIC IN ACCORDANCE WITH THE PROVISIONS OF THE NEW JERSEY OPEN PUBLIC MEETINGS ACT, N.J.S.A. 10:4-12

WHEREAS, the Mayor and Council of the Borough of Essex Fells is subject to certain requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.; and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not open to the public, may be held for certain specified purposes when authorized by Resolution; and

WHEREAS, it is necessary for the Mayor & Council of the Borough of Essex Fells to discuss in a session not open to the public certain matters relating to the item or items authorized by N.J.S.A. 10:4-12b and designated below:

- (1) Matters Required by Law to be Confidential: Any matter which, by express provision of Federal law or State statute or rule of court shall be rendered confidential or excluded from the provisions of the Open Public Meetings Act.
- (2) Matters Where the Release of Information Would Impair the Right to Receive Funds: Any matter in which the release of information would impair a right to receive funds from the Government of the United States.
- (3) Matters Involving Individual Privacy: Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly.
- (4) Matters Relating to Collective Bargaining Agreements: Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.
- (5) Matters Relating to the Purchase; Lease or Acquisition of Real Property or the Investment of Public Funds: Any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.
- (6) Matters Relating to Public Safety and Property: Any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations of possible violations of the law.
- X (7) Matters Relating Litigation, Negotiations and the Attorney-Client Privilege: Any pending or anticipated litigation or contract negotiation in which the public body is, or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.
- (8) Matters Relating to the Employment Relationship: Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the

performance of promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose right could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

- (9) Matters Relating to the Potential Imposition of a Penalty: Any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party bears responsibility.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Essex Fells, in the County of Essex and State of New Jersey, assembled in public session on May 17, 2022 at 7:19 P.M. in the Essex Fells Municipal Building, 255 Roseland Avenue, Essex Fells, New Jersey, for the discussion of matters relating to the specific items designated above.

It is anticipated that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Borough Council that the public interest will no longer be served by such confidentiality.

And was carried on call of the roll:

<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>
Michael Cecere	None	William Sullivan
BJ D'Avella		
Greg Hindy	<u>Abstain</u>	
John King	None	
Maggie O'Connor		

On motion made by Councilman Hindy, seconded by Councilman Cecere and approved unanimously by the Council, the meeting adjourned at 8:29 p.m.

Respectfully submitted,

Francine T. Paserchia
Municipal Clerk