

March 31, 2010
Hawthorne, NJ

The Special Meeting of the Municipal Council of the Borough of Hawthorne was held on the above date at 6:00 p.m., in the Council Meeting Room of the Municipal Building, 445 Lafayette Avenue, Hawthorne, New Jersey. Present were Councilpersons Bennett, Lane, Matthews, Mele, Sinning, Wojtecki and Bertollo. Also present were Mayor Goldberg, Borough Administrator Maurer, Director of Revenue and Finance Hewitt, Borough Attorney Pasquale and Borough Clerk Witkowski. Borough Engineer Boswell was absent.

FLAG SALUTE

Council President Bertollo invited all present to join him in the flag salute.

STATEMENT

Council President Bertollo stated adequate notice of this meeting had been provided by the Annual Schedule of regular meetings heretofore adopted and posted on the Public Bulletin Board at the Municipal Building, faxed to the Hawthorne Press, Herald News, The Record, The Gazette, and all persons who have requested the mailing of such schedule, and a copy of said schedule has remained on file in the office of the Borough Clerk from and since December 16, 2009.

PUBLIC COMMENT

Council President Bertollo opened the meeting to the public. He stated if anyone desired to be heard, please raise your hand to be recognized, come forward to the microphone and state your name and address. He stipulated this was for agenda items only. Seeing no one, Council President Bertollo entertained a motion to close the public portion, moved by Councilman Matthews, seconded by Councilman Bennett. On roll call, all voted yes.

ADOPTION OF ORDINANCES:

Ordinance No. 2006-10 for Adoption

AN ORDINANCE TO FURTHER AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF HAWTHORNE TO REVISE AND REPLACE CHAPTER 95, FEES, SECTION 8, SUMMER RECREATION AND SECTION 194, SWIMMING POOL

Council President Bertollo opened the meeting to the public and asked anyone who desired to be heard to come forward and state your name and address for the record.

Seeing no one, Council President Bertollo entertained a motion that the public hearing on Ordinance No. 2006-10 be closed and that it be resolved that this ordinance was posted on the bulletin board on which public notices are customarily posted and published in the Hawthorne Press. Copies of said ordinance were made available to the general public.

Now, therefore, be it resolved that this ordinance be adopted and the Clerk is authorized to advertise the same according to law.

Council President Bertollo entertained a motion to adopt Ordinance No.2006-10, moved by Councilman Matthews, seconded by Councilman Mele. On roll call, all voted yes.

Ordinance No. 2007-10 for Adoption

AN ORDINANCE TO FURTHER AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF HAWTHORNE, CHAPTER 225, ZONING, ARTICLE X, I-1 INDUSTRIAL ZONES, SO AS TO CLARIFY SECTION 225-74, PERMITTED USES, IN THE ZONING DISTRICT

Council President Bertollo opened the meeting to the public and asked anyone who desired to be heard to come forward and state your name and address for the record.

Seeing no one, Council President Bertollo entertained a motion that the public hearing on Ordinance No. 2007-10 be closed and that it be resolved that this ordinance was posted on the bulletin board on which public notices are customarily posted and published in the Hawthorne Press. Copies of said ordinance were made available to the general public.

Now, therefore, be it resolved that this ordinance be adopted and the Clerk is authorized to advertise the same according to law.

Council President Bertollo entertained a motion to adopt Ordinance No.2007-10, moved by Councilman Bennett, seconded by Councilman Wojtecki. On roll call, all voted yes.

INTRODUCTION OF ORDINANCES

ORDINANCE NO. 2013-10

AN ORDINANCE TO FURTHER AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF HAWTHORNE SO AS TO AMEND CHAPTER 225, ZONING, SO AS TO SET FORTH HOUR OF OPERATION REQUIREMENTS FOR BUSINESSES OPERATING IN RESIDENTIAL ZONES IN THE BOROUGH OF HAWTHORNE

BE IT RESOLVED, that Ordinance No. 2013-10 does now pass a first reading and that said Ordinance be further considered for final passage at a meeting of the Governing Body in the Municipal Building, 445 Lafayette Avenue, Hawthorne, New Jersey, on April 21, 2010, and at said time and place all persons interested will be given an

opportunity to be heard concerning the same, and the Clerk is hereby authorized and directed to publish said ordinance in the Hawthorne Press once, at least one week prior to said hearing, with a notice of its introduction and of the time and place, when and where said ordinance would be considered for final passage.

Council President Bertollo entertained a motion to approve introduction, moved by Councilman Matthews, seconded by Councilman Mele.

Council President Bertollo asked if there was any discussion. Councilman Matthews asked if there was a difference between the Ordinance placed in front of each Councilman on the dais and the Ordinance that was included in each Councilman's packet. Attorney Pasquale stated that the difference is a result of the Ordinance Committee meeting on March 30, 2010. There is an additional sentence after, "No business may have hours of operation with opening before 12:00 noon." The sentence, "No deliveries to such business shall likewise commence prior to 6:00 a.m. and all deliveries must be completed before 10:00 p.m.", the same hours of operation limitations were extended to delivery operations. Deliveries cannot take place prior to 6:00 a.m. or after 10:00 p.m. Monday through Saturday or before 12:00 noon on Sundays. There are issues with regard to certain businesses that by necessity, such as a newsstand, that require delivery before 12:00 noon on a Sunday. In that case, relief must come from a reviewing board, as the Ordinance does not give any automatic rights.

The second issue is at the end of the provision which indicates that a business already established and in operation as of the date of this Ordinance is not allowed to increase or expand hours beyond the limits of this Ordinance where the hours of operation are already less than those hours. For example, if a deli is open from 7:00 a.m. until 10:00 p.m., the deli can open and be operational at 6:00 a.m. but they cannot decide that they want to open at 5:00 a.m.

Councilman Lane questioned the delivery times. If someone decides that they want a delivery at 9:30 p.m.. and this delivery could take one hour to unload the goods from a tractor trailer, should the 10:00 p.m. time be changed to 8:00 p.m. in order that the delivery is completed and there would be quiet time in the Residential Zone. Attorney Pasquale stated that there are two ways to approach this. One is to say 8:00 p.m. or all deliveries must be completed by 10:00 p.m. Administrator Mauer stated that we summons unloading at 9:30 p.m. and the delivery representative states that they were here at 8:00 p.m., how could it be proved that the delivery truck was at the site at 8:00 p.m. If the Ordinance states a completion time, then the delivery must be completed by that specific time. Attorney Pasquale stated that he does not know what type of businesses would have outgoing shipments, and should they be limited to those hours as well. You would be running the business if you are shipping out. However, delivery is an issue that needs to be addressed and Attorney Pasquale agrees with Administrator Mauer whereby the delivery must be completed by a certain time. The language of no delivery shall commence prior to 6:00 a.m. and all deliveries must be completed by 10:00 p.m. is incorporated into the Ordinance.

Councilman Lane drafted and read additional language to be considered for this Ordinance based on another town's ordinance. "Whereas, the Borough of Paramus is obeying the County's Blue Laws; and whereas, no business shall take place on Sundays; and whereas the Mayor and Council in consideration with the peace and quiet of the residents; and whereas they Mayor and Council have determined and set forth measures to protect our residents in a residential zone for over night hours, the protection of the residents during the sleeping night hours between 10:00 p.m. and 6:00 a.m. for the peace and quiet." Councilman Lane asked if a statement similar to this should be incorporated into the Ordinance. Attorney Pasquale stated that there are times where the "whereas" language explains why we are taking a particular action, however, in this case, Attorney Pasquale believes it is well implicit that peace and good order in a residential zone in particular is important in that it is not necessary. Language could be added along the lines of wherein it is within the police power to establish hours of operation of businesses; the Ordinance could be dressed up with this language. Ultimately, what goes into the Code Book is that language that has been written. Attorney Pasquale does not think this language is necessary, but it can be added if it is the will of the Council. Councilman Lane stated that he refers to Attorney Pasquale's expertise, if he believes that part of this could be necessary, then why would it not be codified and put into the law. Attorney Pasquale stated that the word "whereas" simply introduces the language to be added and sometimes the word is, in fact, what ends up in the Code Book. Councilman Lane stated that once this Ordinance is adopted, and approved by Council, if the "whereas" is not codified, it would not be part of the book and no one would see it, it would just be part of the record. Attorney Pasquale stated the "whereases" are often part of the Book and sometimes they are not, it depends on how it is drafted. Councilman Lane stated that he would leave this to Attorney Pasquale to determine if it is necessary and confers to his colleagues to see if it is necessary. Attorney Pasquale stated he does not have a problem with this, however he does not feel it is necessary.

Councilman Bennett asked if 6:00 a.m. was rather early to allow deliveries. Council President stated that the Noise Ordinance is 7:00 a.m. to 10:00 p.m. Attorney Pasquale stated that 6:00 a.m. is early in a residential zone for many things, but it is not early for things in a residential zone such as a deli, newsstand or those type restaurants. There are businesses that find their way into a residential zone that have a 6:00 a.m. traditional opening. A lot of the businesses in town that do exist in the residential zone are mom and pop delis and 6:00 a.m. is their normal starting time. The Ordinance Committee felt that 6:00 a.m. is not an unreasonable time for a business to open. You want to have an Ordinance that meets what is and what is likely becoming in various zones, anything common to a residential zone would be compatible with a residential zone. Councilman Lane stated that 6:00 a.m. for the small amount of businesses in a residential zone are grandfathered. This Ordinance would be for any new business, and if the time was changed to 7:00 a.m., an applicant going before the Boards presented their case, the Board states 6:00 a.m., that is in the board's jurisdiction. Attorney Pasquale stated that the Board also has the right under this Ordinance to state a more restrictive time based upon the nature of the use, since this is a use variance anyway. We are not saying that these businesses are allowed in residential zones, they are not specifically allowed. If someone wanted to open a deli or small manufacturing company in a residential zone,

they would have to get board approval and the board, at that point, can establish the time the business can open and there is no reason as to why you would need to have deliveries at 6:00 a.m. There is a provision that allows for more restrictive hours in the discretion of the board. If Council feels that the time should be changed to 7:00 a.m. to be consistent with the noise ordinance, then that is something to be considered.

Councilman Lane continued that this does not have to be necessarily consistent but being consistent would help as far as where enforcement is concerned, people that are out there enforcing what our ordinance says would look at this and question whether it is 6:00 a.m. or 7:00 a.m., it might be better for everything to start at 7:00. Attorney Pasquale stated that he leaves this to Council, it is a policy decision, Council decided 7:00 a.m. Attorney Pasquale stated that 7:00 a.m. would be for all operating and delivery purposes and questioned if the 10:00 p.m. completion time was acceptable and it was.

Council President Bertollo asked if there were any other questions regarding this Ordinance. Councilman Lane thanked Council for considering this Ordinance for the residents of our community.

Prior to roll call, Attorney Pasquale recapped the amendments to this Ordinance. The letter "Q" will be changed to "T", where it states 6:00 a.m., it will now state 7:00 a.m., it will indicate that no deliveries are to commence prior to 7:00 a.m. and all deliveries must be completed before 10:00 p.m.

Councilman Matthews asked if there are any restaurants affected by this Ordinance. Attorney Pasquale said not existing ones, if a restaurant closes at 11:00 p.m., they will remain open to 11:00 p.m.. If their current closing time is 9:00 p.m., they could close at 10:00 p.m. but they could not close at 11:00 p.m. Administrator Mauer stated if they currently close at 11:00 p.m., they could not close at 12:00 a.m.

On roll call, all voted yes.

RESOLUTION

R63-10 Resolution, Introduced by Councilman Bennett

WHEREAS, New Jersey Transit provides train service to the Borough of Hawthorne on the Main Line, and bus service via Bus Route 722; and

WHEREAS, this train and bus service contributes to the quality of life to residents of Hawthorne and neighboring municipalities by facilitating transportation to and from work and for other purposes, as well as reduces traffic congestion and the resulting impact on air quality by taking cars off the road; and

WHEREAS, New Jersey Transit, for budgetary reasons, proposes to eliminate two trains serving Hawthorne during the evening rush hour, namely the eastbound 1211 train and the westbound 1218 train, as well as all service on Bus Route 722; and

WHEREAS, loss of the 1218 train in particular will have adverse impact on the quality of life for residents of Hawthorne because the next-arriving train arrives too late for parents to retrieve children from day care on a timely basis; and

WHEREAS, the loss of Bus Route 722 will have an adverse impact because it leaves the Borough of Hawthorne with essentially no bus service; and

NOW THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Hawthorne that New Jersey Transit is urged either to preserve existing trains serving Hawthorne station;

BE IT FURTHER RESOLVED that New Jersey Transit is urged either to preserve Bus Route 722, or, failing that, to re-route some other remaining bus line so as to provide bus service to Hawthorne;

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to Governor Chris Christie, Senator John Girgenti, Assemblywoman Nellie Pou, Assemblywoman Elease Evans, the Secretary of the New Jersey Senate, the Clerk of the New Jersey Assembly, the New Jersey State League of Municipalities, the New Jersey Conference of Mayors and the Clerks of all Passaic County municipalities.

Council President Bertollo asked if there were any questions regarding this Resolution. Councilman Wojtecki asked if bus line 722 was to be included. Clerk Witkowski stated that the Resolution states the bus and train service.

Council President Bertollo entertained a motion to approve the Consent Agenda, moved by Councilman Bennett, seconded by Councilman Lane. On a roll call, all voted yes.

MISCELLANEOUS

SOL-1 The Hawthorne Volunteer Ambulance Corps. has requested permission to solicit on public streets, Saturday, May 22, 2010, between the hours of 8:00 a.m. - 12:00 p.m. (previously approved for May 1, 2010).

Council President Bertollo entertained a motion to approve SOL-1. Motion was moved by Councilman Wojtecki, seconded by Councilman Sinning. On roll call, all voted yes, however, Councilman Lane abstained.

BILLS

Council President Bertollo entertained a motion to approve the bills and forward them to the Treasurer for payment. Motion moved by Councilman Wojtecki, seconded by Councilman Sinning. Councilman Mele questioned the Scuffy Bill and the fact that the trucks still picking up garbage still say Scuffys. Attorney Pasquale stated that he sent Council a memo stating that Scuffys is no longer in business, they have surrendered their license as a garbage hauler to the DEP, Future Sanitation has all of their paperwork in

order and have agreed to honor the rest of the contract with the borough through the end of the year, they have posted their bond and insurance. They have been working at risk for approximately two months picking up the garbage without getting paid. We want to pay the bill as several of their lien issues were resolved. A discussion ensued with the way the bill list was presented to Council. On roll call, all voted yes.

SPECIAL COUNCIL MEETING		MARCH 31, 2010	
	Current Fund \$ 419,565.03		\$ 63,785.16
	Water Operating Fund \$ 114,878.87		\$ -
	General Capital Fund \$ 105.40		\$ 4,334.00
	Water Capital Fund		\$ -
	Builders Escrow		\$ -
	Housing Trust		\$ -
	Other Trust I		\$ -
	Other Trust II \$ 12,411.76		\$ -
	Dog Dedicated Fund \$ 4,359.20		\$ -
	GRAND TOTAL		\$ 68,119.16

PUBLIC COMMENT:

Council President Bertollo opened the meeting to the public and asked anyone who desired to be heard to come forward and state your name and address for the record.

James Dusenberry, 81 Roosevelt Avenue addressed Council regarding Ordinance 2013-10, if the time change applies to only to a residential zone. Mayor Goldberg stated that was correct, however if a business abuts to a residential zone, the Ordinance would not apply. Mr. Dusenberry asked if there was any change in the industrial zone and he was told that nothing changed in the industrial zone.

Council President Bertollo asked if any one else wished to be hear. No one desired to be heard.

Council President Bertollo entertained a motion to close the public comment portion of the meeting, moved by Councilman Matthews, seconded by Councilman Sinning. On roll call, all voted yes.

CLOSED SESSION

Council President Bertollo continued that pursuant to N.J.S.A. 10:4-13 and the Attorney General's formal opinion 29-1976 moved that the public be excluded from the remaining portion of the work session in order that the council discusses litigation and personnel. Items to be discussed in closed session can be disclosed to the public when a course of action is determined or a decision has been reached. Motion was made by Councilman Matthews, seconded by Councilman Mele. On a roll call vote, all voted yes

Council went into closed session at 6:30 p.m.

At 7:51p.m., Council President Bertollo entertained a motion to adjourn the regular meeting. Motion moved by Councilman Mele, seconded by Councilman Matthews. On roll call, all voted yes.

John Bertollo
Council President

Susan Witkowski
Borough Clerk