

**Pennington Borough Council  
Regular Meeting – June 4, 2018**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Gnatt, Lawver, Marciante and Mills in attendance. Mr. Griffiths was absent.

Also present were Borough Administrator Eileen Heinzl, Public Safety Director Bill Meytrott, Public Works Superintendent Rick Smith and Borough Attorney Walter Bliss.

Mayor Persichilli announced that notice of this meeting has been given to the Hopewell Valley News, Trenton Times and was posted on the bulletin board in Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Mayor Persichilli asked everyone to stand for the Flag Salute.

**Open to the Public – Agenda Items Only**

Mayor Persichilli read the following statement.

The meeting is now open to the public for comments on items on the agenda for which no public discussion is provided. In an effort to provide everyone interested an opportunity to address his or her comments to the Governing Body, a public comment time limit has been instituted for each speaker. **Please come forward and state your name and address for the record. Please limit comments to the Governing Body to a maximum of 3 minutes.**

There were no comments from the public.

**Approval of Minutes**

Council Member Chandler made a motion to approve the minutes of the May 7, 2018 Regular Meeting, second by Council Member Lawver with all members present voting in favor.

**Presentations**

**Stonybrook Regional Sewer Authority**

Mayor Persichilli invited Mr. John Kantorik and Mr. Harry Compton to come forward. Mr. Kantorik stated that Council Members received a handout and he would be going through the information in that packet. Mr. Kantorik stated that this presentation is to update Council on where they stand on budgets and available capacity. Mr. Kantorik reviewed ten years of data regarding participant charges. Mr. Kantorik stated that for the last five years they have averaged a 1.3% increase in charges to all participants. Mr. Kantorik stated that the ten year average is about 1%. Mr. Kantorik reviewed a summary of 2017 actual charges and 2018 estimated charges for each participant. Mr. Kantorik stated that for Pennington Borough last year the actual total including base charge and debt service adjustment was \$318,611 and this year the estimate is about \$325,000 which is a \$6,900 increase, about 2.2%. Mr. Kantorik explained how the estimated numbers are calculated and stated that the percentage is up because the numbers are based on flow. Mr. Kantorik referred to a chart in the packet that tracks rainfall and actual flow to the Pennington Plant. Mr. Kantorik stated that three out of four years were very dry, but this last year with the increase in rainfall, the flow numbers have gone up accordingly.

Mr. Marciante asked if this increase indicates leaks in the system and he also asked where Pennington fits in with regard to other systems. Mr. Kantorik stated the in the realm of systems, Pennington falls in the middle, it is not the best system but it is not the worst either. Mrs. Chandler asked how the flow is impacted by rainfall. Mr. Kantorik stated that leaks in the system affect flow as well as sump pumps that are discharging in to the sanitary sewer system. Mr. Lawver asked when participants try to address problems with infiltration what percentage is attributed to leaky pipes versus sump pump discharge. Mr. Kantorik stated that every system is completely different and older systems have many more connections that can cause problems whereas newer connections with new building codes tend to have fewer problems with connections and more with the actual sewer line. Mr. Kantorik stated that municipalities that have made repairs to the main lines but have not delved into what is happening on the private property side have not gotten very far. Mr. Marciante asked if Pennington took water usage and sewer usage and compared would that provide a relatively good view of what is being lost. Mr. Kantorik stated that is one way to look at it and it is a reasonable starting point but it is not an easy process. Mr. Kantorik stated that in Pennington, the flows for water have been going down and since the population has not changed this causes the system to look better than it used to be. Mr. Kantorik stated that Pennington is better than it used to be due to fixing of large leaks but trying to compare numbers is difficult because of the variables year to year.

Mr. Kantorik stated that fixing a leak in one area causes the ground water to rise and could cause problems elsewhere so unless the Borough is willing to do massive replacement including all of the lateral connections; things will just be getting moved around for a while.

Mr. Kantorik reviewed a Capacity Status report that is done every month and shows a picture of the last

twelve months, which is not how it will always be. Mr. Kantorek spoke briefly on how the available capacity is calculated and what will happen when BMS moves out and their committed flow is available. Mr. Lawver asked if there was any way for Pennington Borough to assume BMS's committed flow once they move out. Mr. Kantorek stated that would be a legal question and not an engineering question. Mr. Kantorek stated that there is a special agreement that was made originally with Mobil and when they sold the property to BMS the agreement was transferred to BMS. Mr. Kantorek stated that the future of the committed flow is a legal question.

Mr. Kantorek reported on the path to additional capacity. Mr. Kantorek stated that the handout shows what steps have been completed and what steps are yet to be completed. Mr. Kantorek stated that the project has been designed to handle nitrates if there is a problem down the road even though the permit was approved without a nitrate treatment system. Mr. Kantorek stated that since last year when they came to update Council the design documents have been completed, and with that all of the required permits for construction have been obtained. Mr. Kantorek stated that the project is currently out for bids originally due in May but several contractors asked that the bid period be extended because of the amount of work involved and so now bids are due June 7<sup>th</sup>.

Mr. Kantorek stated that the contract calls for 18 months for construction but it all depends on the contractor. Mr. Kantorek stated that best case scenario would be winter of 2020. Mr. Kantorek stated that last year the project estimate was \$8.3 million and it is now \$10.1 million. Mr. Kantorek stated that the good news is that all of the funding is coming from a 2004 bond issue and the rest is Stonybrook retained earnings. Mr. Kantorek stated that there is no additional debt service for construction of this project so what the Borough is paying right now includes the 2004 bond issue. Some discussion took place regarding what areas would be covered under the additional capacity.

Mayor Persichilli thanked Mr. Kantorek and Mr. Compton.

### **Committee Reports**

**Planning & Zoning / Open Space** – Mrs. Gnatt reported that Open Space did not meet but the Planning Board did meet. Mrs. Gnatt stated that the Pennington School came before the Planning Board with an application for two projects. Mrs. Gnatt stated that the first project was to put two temporary trailers on the property to house administrative staff during renovation of the administrative offices on the campus and the second was for a ball stop along the first base line of the baseball field on Burd Street. Mrs. Gnatt stated that the ball stop would measure 40 feet high by 125 feet long. Mrs. Gnatt stated that the application for the trailers was approved and they will be located west of the Burd Street parking area. Mrs. Gnatt stated that these trailers will be temporary during the renovations which were scheduled to begin late May or early June. Mrs. Gnatt stated the renovations are planned to be finished by the end of 2018 at which time the trailers will be removed. Mrs. Gnatt stated that no additional employees will be needed and there will be no additional demand for parking. Mrs. Gnatt stated that the second part of the application which was the ball stop was denied. Mrs. Gnatt stated that a variance was required for a front yard setback and the ball net which would be 40 feet high by 125 feet long with 3 forty foot high poles and 40 foot high black netting was being proposed by the school for safety reasons. Mrs. Gnatt recited the definition of a Bulk Variance and stated that the board felt that there was insufficient testimony showing the safety concerns to weigh against the significant visual impact to the neighbors.

Mrs. Gnatt stated that the Board watched and completed a required training video on Stormwater Management.

Mr. Marciante stated that any future development that the Pennington School undertakes should be hinged with parking requirements. Mr. Marciante stated that all parking for staff and students should be provided on campus.

**Public Safety / Personnel** – Mr. Marciante had no report.

**Public Works/Shade Tree/ Senior Advisory** – Mr. Lawver stated that he would like to commend the Planning/Zoning Board for their decision. Mr. Lawver stated that he attended the hearing and he is always impressed by how professional the Board is with their responsibilities. Mr. Lawver stated that he would like to remind everyone of the summer trash schedule of trash collection only on Monday during the month of August. Mr. Lawver stated that he would like to thank Kit Chandler who with the help of the Environmental Commission is delving into broader trash trends that may allow expansion of the once a week collection to longer than just one month a year. Mr. Lawver stated that this is in the very early stages and nothing will happen until later this year.

Mr. Lawver stated that a meeting was held with the residents of Burd Street, about 20 people attended. Mr. Lawver stated that the residents were heard, a concept plan for the project was shared and a follow up letter outlining the results of the meeting was mailed offering one final chance for input from residents. Mr. Lawver stated that the Borough did not hear anything different than what was heard at the meeting so based on the feedback, the Borough is instructing Van Note Harvey Associates to incorporate into the Burd Street design the installation of curbs on both sides of the street, the installation of three new speed humps/tables at Laning, at Welling and mid-block between Welling and Ingleside. Mr. Lawver stated that these instructions will carry through to Phase II of the Burd Street project which will take place in 2021. Mr. Lawver stated that these measures are to adjust speed on Burd Street. Mr. Lawver stated that

additional non-structural controls will be explored and conversations have already begun such as communicating with Mercer County about the possibility of changing the Burd Street/Ingleside intersection to a three way stop. Mr. Lawver stated that there was some discussion about adding four way stops to Welling and Burd and Laning and Burd and those options will be evaluated going forward.

Mr. Lawver stated that the Teamsters contract is still being negotiated, another meeting is scheduled for June 5, 2018 and hopefully there will be resolution soon.

Mr. Lawver stated that the Senior Advisory Board met, nothing earthshattering to report other than the upcoming newsletter which will have a full calendar of programming.

Mr. Lawver stated that he had nothing to report on Shade Tree.

Mrs. Chandler asked if the speed humps that are planned will be similar to the other ones on Burd Street. Mr. Lawver stated that they will be 6 inches high but he drove over the existing speed hump faster than normal and it could be argued that it could be even harsher, maybe keeping the 6 inch height but with less of a ramp. Mr. Lawver stated that is a conversation that needs to involve the Fire Department and Rick Smith because it is a matter of safety and wear and tear on equipment. Mr. Marciante stated that the curbing on both sides will narrow the road and that will aid in reducing speeds. Mr. Lawver agreed that parked cars become speed control devices.

**Library / Parks and Recreation** – Mrs. Mills reported that on May 16<sup>th</sup> a volunteer appreciation reception was held at the Library and it was very well attended. Mrs. Mills stated that the library is planning to build a kiosk in memory of Kathleen McIlvaine and a tree will be planted to recognize Pam Switliks years of service to the library. Mrs. Mills stated that on June 3<sup>rd</sup>, Mike Thompson presented “Pop Sam and the Chief-Memories of Pennington, NJ at Mid Twentieth Century”. Mrs. Mills stated that she tried to attend this event and you could not get in the door. Mrs. Mills stated that she is going to suggest that they hold this program again. Mrs. Mills stated that on June 9<sup>th</sup>, the Library will hold a Lego-Outdoor Free Play for kids which is part of Hopewell Valley’s come outside and play program. Mrs. Mills stated that the 2018 Adult and Children Summer Reading Club will take place June through August. Mrs. Mills stated that on June 27<sup>th</sup> from 6pm to 7pm there will be a kick off for Libraries Rock, there will be music by Mike and Laura Tusay and food will be available from Mama Dudes Food Truck and she will be selling strawberry shortcake. Mrs. Mills stated that Music Making Fun will be held on June 29<sup>th</sup> where kids can make their own compositions and learn about instruments. Mrs. Mills stated that ongoing programs are adult coloring books and supplies, story time on Wednesdays and adult book discussion groups on the first Thursdays.

Mrs. Mills stated that the Memorial Day Parade and concert were held and the third Thursday concerts will be held on July 19<sup>th</sup> and August 16<sup>th</sup>. Mrs. Mills stated that Parks and Recreation is preparing for the July 4<sup>th</sup> races.

Mrs. Heinzl stated that she advised Kim Ha that the Borough Council should really have input on the Little Library Kiosk and she will be providing a proposal and sketch as to where it will be placed. Mrs. Heinzl stated that it should be decided who will maintain the kiosk and where it will be located.

**Finance** – No report due to Mr. Griffith’s absence.

**Historic Preservation / Board of Health / Environmental / Economic Development** – Mrs. Chandler stated that the Board of Health met and Stephanie Carey reviewed the presentation that was made to Borough Council at the last meeting.

Mrs. Chandler stated that the Environmental Commission did not meet but they were present at Pennington Day. Mrs. Chandler reported that the No Idling signs have been delivered and they will be meeting to discuss where the signs should be located.

Mrs. Chandler stated that the Howe’s Arboretum group met for the final wrap up. Mrs. Chandler stated that Council Members received a copy of the final report prepared by Mike Van Clef. Mrs. Chandler stated that the next step is to work with the School District to see if there is a way to move forward with the project.

Mrs. Chandler stated that Economic Development met and had a lively conversation about restaurants and what can be done to attract more restaurants into town. Mrs. Chandler stated that they have some ideas and they are an energized group.

Mrs. Chandler stated that Historic Preservation received a Certificate of Eligibility from the State of New Jersey, Department of Environmental Protection. Mrs. Chandler stated that based on the available documentation it was determined that the Pennington Crossroads Historic District is eligible for listing in the New Jersey National Register of Historic Places for its significance in the area of community development, architecture and archeology. Mrs. Chandler stated that the Pennington African Cemetery is included as a contributing but non-contiguous resource to the district. Mrs. Chandler stated that this is one of the steps that the Commission has been working on towards obtaining the Certified Local Government Certification.

**Council Discussion**

There were no items scheduled for discussion.

**Ordinances for Introduction**

Mayor Persichilli read Ordinance 2018-10 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE 2018 - 10**

**AN ORDINANCE BY THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF  
NEW JERSEY AMENDING THE PENNINGTON CROSSROADS HISTORIC DISTRICT TO  
INCLUDE THE PENNINGTON AFRICAN CEMETERY.**

**WHEREAS**, the Pennington African Cemetery (also referred to as the AME Cemetery) was included in the 1987 proposed Historic District and referenced in the Historic Preservation Plan section of the 1998 Pennington Borough Master Plan, and the March 30, 2010 Historic Preservation Master Plan Element identified the AME Cemetery as an additional potential site for inclusion in the Historic District; and

**WHEREAS**, the Pennington Borough Council adopted Ordinance No. 2011-8 on May 2, 2011 to implement the Historic Preservation Element of the Borough's Master Plan, to provide guidance to property owners in achieving preservation of historic resources, and to advance public purposes including the identification and designation of historic districts and historic sites to preserve their historic, architectural, cultural, archaeological, and aesthetic significance; and

**WHEREAS**, Ordinance No. 2011-8, codified as Chapter 119, entitled "Historic Preservation" in the "Code of the Borough of Pennington," provided for the designation of historic sites and districts in Section 119-4, and created the Pennington Crossroads Historic District in Section 119-4.D; and

**WHEREAS**, the Pennington African Cemetery Association requested that the Pennington African Cemetery, Block 1002, Lot 46, on the tax map of the Borough of Pennington, be included in the Pennington Crossroads District; and

**WHEREAS**, pursuant to Section 119-4.C(3) of the "Code of the Borough of Pennington," the Pennington Historic Preservation Commission and the Pennington Planning Board considered that request at a joint meeting on April 11, 2018, at which time a public hearing was held; and

**WHEREAS**, both the Historic Preservation Commission and the Planning Board voted unanimously to recommend to the Mayor and Council of the Borough of Pennington that the Pennington Crossroads Historic District be amended to include the Pennington African Cemetery, in accordance with Section 119-4.C(4); and

**WHEREAS**, the Council of the Borough of Pennington wishes to amend the Pennington Crossroads Historic District to include the Pennington African Cemetery, Block 1002, Lot 46.

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey as follows:

1. The Pennington African Cemetery, Block 1002, Lot 46 on the tax map of the Borough of Pennington, be and hereby is designated an historic site and Section 119-4.D designating the Pennington Crossroads Historic District is hereby amended to include the Pennington African Cemetery, Block 1002, Lot 46.
2. The map delineating the boundaries of the Pennington Crossroads Historic District designated as Chapter 119, Attachment 1:1 is hereby amended to include the Pennington African Cemetery, Block 1002, Lot 46, and replaced with a new map attached hereto as Exhibit "A".
3. In the event any portion of this Ordinance is found to be invalid for any reason by a court of competent jurisdiction, such judgment shall be limited in its affect only to that portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion hereof.
4. This Ordinance shall take effect upon its passage and publication as provided for by law.

Council Member Chandler made a motion to introduce Ordinance 2018-10, second by Council Member Mills with all members present voting in favor.

Mrs. Sterling stated that Ordinance 2018-9 was included in the packages but was inadvertently omitted from the agenda. Mrs. Sterling asked Mr. Bliss if Council could introduce the ordinance and he said they could.

Mayor Persichilli read Ordinance 2018-9 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE 2018-9**

**BOND ORDINANCE PROVIDING A SUPPLEMENTAL APPROPRIATION OF \$225,000 FOR PRELIMINARY PLANNING, ENVIRONMENTAL AND INVESTIGATIVE ANALYSIS AND ANY NECESSARY WORK OR IMPROVEMENTS IN CONNECTION WITH THE BOROUGH-OWNED LANDFILL AND ANY OTHER RELATED PROPERTIES FOR POTENTIAL REDEVELOPMENT PURPOSES IN AND BY THE BOROUGH OF PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY, AND AUTHORIZING THE ISSUANCE OF \$225,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE THE COST THEREOF.**

**BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:**

Section 1. The improvement described in Section 3(a) of this bond ordinance has heretofore been authorized to be undertaken by the Borough of Pennington, in the County of Mercer, New Jersey (the "Borough") as a general improvement. For the improvement or purpose described in Section 3(a), there is hereby appropriated the supplemental amount of \$225,000, such sum being in addition to the \$125,000 appropriated therefor by bond ordinance #2017-4 of the Borough, finally adopted March 6, 2017 (the "Original Bond Ordinance"), including a \$301,604 grant expected to be received from the State of New Jersey Economic Development Authority (the "State Grant"). No down payment is required pursuant to N.J.S.A. 40A:2-11(c) as the improvement or purpose referred to in Section 3(a) is being partially funded by the State Grant.

Section 2. In order to finance the additional cost of the improvement or purpose and in anticipation of receipt of the State Grant, negotiable bonds are hereby authorized to be issued in the principal amount of \$225,000 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. (a) The improvement heretofore authorized and the purpose for the financing of which the bonds are to be issued is preliminary planning, environmental and investigative analysis and any necessary work or improvements in connection with the Borough-owned landfill and any other related properties for potential redevelopment purposes, including all work and materials necessary therefor and incidental thereto, as described in the Original Bond Ordinance.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for the improvement or purpose is \$350,000, including the \$125,000 authorized by the Original Bond Ordinance and the \$225,000 bonds or bond anticipation notes authorized herein.

(c) The estimated cost of the improvement or purpose is \$350,000, including the \$125,000 appropriated by the Original Bond Ordinance and the \$225,000 appropriated herein.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date, unless such bond anticipation notes mature at such later date in accordance with applicable law. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law or other applicable law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 5. The Borough hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvement or purpose described in Section 3(a) of this bond ordinance is not a current expense. It is an improvement or purpose that the Borough may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially

benefitted thereby.

(b) The period of usefulness of the improvement or purpose within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is 40 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$225,000, and the obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.

(d) An aggregate amount not exceeding \$350,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement. Of this amount, \$125,000 was estimated for these items of expense in the Original Bond Ordinance and an additional \$225,000 is estimated therefor herein.

Section 7. The Borough hereby declares the intent of the Borough to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3(a) of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of Treasury Regulations.

Section 8. Any grant moneys received for the purpose described in Section 3(a) hereof shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the Borough is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the Borough for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

Council Member Chandler made a motion to introduce Ordinance 2018-9, second by Council Member Marciante. Mrs. Chandler asked if this ordinance is the next step for the landfill redevelopment. Mrs. Sterling stated that this ordinance will increase the ordinance that is already in place so that there is funding in place for expenses that will then be covered by the grant. Upon a roll call vote all members present voted in favor.

### **Ordinances for Public Hearing and Adoption**

Mayor Persichilli read Ordinance 2018-1 by title.

### **BOROUGH OF PENNINGTON ORDINANCE 2018-1**

### **AN ORDINANCE PERTAINING TO PEDDLING AND SOLICITING AND AMENDING CHAPTER 147 OF THE CODE OF THE BOROUGH OF PENNINGTON**

**WHEREAS**, Pennington Borough Council seeks to revise and supersede the present provisions of Chapter 147 of the Code of the Borough of Pennington, governing peddling and soliciting, with a view toward simplifying and improving regulation to better protect the safety and privacy of residents;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, that Chapter 147 of the Borough Code is hereby deleted in its entirety and replaced by the following:

1. **Purpose.** The purpose of this chapter is to protect the persons, property, privacy and wellbeing of Borough residents. The regulations contained in this chapter are intended to accomplish this purpose by ensuring that before entering upon the properties of residents or approaching them in their homes all peddlers, solicitors and canvassers, whether commercial or non-profit, have a permit to do so. The regulations seek to promote the privacy of residents by enabling them to register their residence on a “do-not-solicit” list maintained by the Borough. Commercial vendors are also required to obtain a permit to approach residents in the streets or other public places of the Borough or to work from a stationary location in a public place.

2. **Definitions.** As used in this chapter, the following terms have the meanings indicated.

A. “Peddling” means the selling or attempted selling of goods or services by a commercial vendor when done from a stationary location on a street or other public place or by traveling from house to house, place to place or street to street. A “Peddler” is an individual engaged in peddling.

B. “Soliciting” means the taking or attempted taking of orders by a commercial vendor for the sale of goods or services to be delivered or performed at a future time when done from a stationary location on a street or other public place or by traveling from house to house, place to place or street to street. A “Solicitor” is an individual engaged in soliciting.

C. “Canvassing” means communicating or attempting to communicate with residents to promote, distribute information about, seek support or solicit money for any religious, charitable, educational, civic, fraternal, political or other not-for-profit organization or cause, when done by traveling from house to house. A “Canvasser” is one engaged in house-to-house canvassing.

D. “Commercial Vendor” means any person providing goods or services whose normal business involves the sale, rental, lease or provision of those goods or services.

3. **Permit Required.**

A. It shall be unlawful for any individual to engage in peddling or soliciting in the Borough of Pennington without first obtaining a permit for that purpose as further provided in this chapter. The permit shall be common for both peddlers and solicitors and be known as a “Solicitor’s Permit.” The only exceptions to this requirement shall be individuals possessing a peddler or similar license pursuant to New Jersey statute, N.J.S.A. 45:24-1, et seq..

B. It shall be unlawful for any individual to engage in canvassing house-to-house in the Borough without first obtaining a permit for that purpose as further provided in this chapter. The permit shall be common for all canvassers and be known as a “Canvasser’s Permit.”

4. **Application Procedure for Solicitor’s Permit.** An individual seeking a solicitor’s permit under this chapter shall file an application with the Borough Clerk on the applicable form supplied by the Borough Clerk or found on the Borough website. The application shall contain (a) the applicant’s name and current address, (b) contact information, (c) any previous name or alias, (d) age, weight, eye color and hair color, (e) date of birth, (f) driver’s license number and state of licensure, (g) vehicle registration and state of registration, if applicable, (h) purpose of requested permit, including nature of business and goods and services to be sold, rented, leased or otherwise provided, (i) name, address and contact information for applicant’s employer, if applicable, (j) name, address and contact information for at least two character references, (k) disclosure whether applicant has ever been convicted of any crime, misdemeanor or disorderly persons offense, with description of the nature, location and date of same, if applicable, (l) social security number and (m) a signed statement under oath swearing to or affirming the truth of the supplied information. The completed application form shall be submitted together with a two-inch square photograph of the applicant, a letter or other written statement from any individual, firm or organization represented by the applicant certifying that the applicant is authorized to act as its representative, and the appropriate permit fee as set forth in Article VI of Chapter 98 of the Code.

5. **Investigation.** The original application for solicitor’s permit and related documents shall be referred to the Pennington Borough Police Department for investigation. The application shall be approved or disapproved by the Director of Public Safety of the Borough or his designee within fourteen (14) days, except the application may be disapproved only if the Director or his designee makes one or more of the following findings with respect to the applicant: (a) conviction of a crime of moral turpitude; (b) prior violation of an ordinance or law pertaining to peddlers, solicitors or canvassers; (c) previous fraudulent acts or conduct; (d) record of breaches of solicited contracts; or (e) concrete evidence of bad character.

6. **Application Procedure for Canvasser’s Permit.** An individual seeking a canvasser’s permit under this chapter shall file an application with the Borough Clerk on the

applicable form supplied by the Borough Clerk or found on the Borough website. The application shall contain (a) the applicant's name and current address, (b) contact information, (c) purpose of the canvass and a description of any goods or services to be sold or given away as part of the canvass, (d) name, address and contact information for applicant's employer, if applicable, and (e) a signed statement under oath swearing to or affirming the truth of the supplied information. The completed application form shall be submitted together with a two-inch square photograph of the applicant and a letter or other written statement from any individual, firm or organization represented by the applicant certifying that the applicant is authorized to act as its representative. There shall be no fee for a Canvasser's Permit and no investigation required for approval of a Canvasser's Permit.

7. **Display of Approved Permit Upon Request.** Any person to whom a permit has been issued shall carry the same at all times while acting as or carrying on the business of a peddler, solicitor or canvasser and shall display the same upon request.

8. **Expiration of Permits.** All permits issued pursuant to this chapter shall expire on December 31 next succeeding the date of issuance.

9. **Revocation of Permit.** Any permit issued pursuant to this chapter may be revoked by the Director of Public Safety or his designee for conviction of a crime of moral turpitude, falsification of statements made in the application process, violation of any of the terms of this chapter, misrepresentations or fraudulent conduct while engaged in activities authorized by the permit, and other unlawful activity bearing on the safety or privacy of residents.

10. **Appeals of Denial or Revocation of Permit.** An applicant or holder of a permit may appeal the denial or revocation of a permit to Borough Council, which shall hold an informal hearing to resolve the appeal no later than its next regular meeting.

11. **Permitted Hours of Peddling, Solicitation and Canvassing.** No activity permitted in accordance with this chapter shall occur (a) before 9:00 A.M. or after 5:00 P.M. during the period of November 1 through April 30; and (b) before 9:00 A.M. or after 7:00 P.M. during the period of May 1 through October 31.

12. **Do Not Solicit List.**

A. All residents of the Borough may register their name and address with the Borough Clerk together with a request to be placed on one of two "Do-Not-Solicit" lists to be maintained by the Borough. One list shall register residents who do not wish to be approached at their residence or within the perimeter of their property by any Peddler, Solicitor or Canvasser without exception. The second list shall register residents who do not wish to be approached at their residence or within the perimeter of their property by any Peddler or Solicitor only.

B. It shall be unlawful for the holder of a permit to approach or seek personal contact with the occupant of any residence either at the residence or within the perimeter of the property if the residence is registered on a Do-Not-Solicit list applicable to that permittee.

C. Residents shall remain on the Do-Not-Solicit list until they request to be removed or move from the registered address.

D. The Borough Clerk shall maintain copies of the two "Do-Not-Solicit" lists and provide them to all individuals who obtain a Solicitor's or Canvasser's permit.

E. The Borough Clerk shall also maintain copies of the lists on the Borough website.

F. The Borough Clerk shall forward copies of the lists and list updates to the Director of Public Safety for enforcement purposes.

13. **Enforcement.** Enforcement of this chapter, with respect to both soliciting or canvassing without a permit and soliciting or canvassing- at residences on a Do-Not-Solicit list shall be the responsibility of the Pennington Police Department.

14. **Violations and Penalties.** Any individual violating any of the provisions of this chapter shall, upon conviction, be subject to a fine:

- a. First violation - \$50.00
- b. Second violation - \$100.00
- c. Third violation - \$100.00 and prohibition from all future peddling, soliciting and canvassing.

**BE IT FURTHER ORDAINED** that the provisions of this ordinance shall be severable, such that if any provision is deemed invalid the remaining provisions shall remain fully effective.

**AND BE IT FURTHER ORDAINED** that Chapter 98 of the Code, at Article VI, Section 98.30, Miscellaneous Fees, is hereby amended as set forth below.

1. Sub-Section 98-30. B is amended as follows:

“Solicitor’s Permit as required by Chapter 147 of this Code: \$100.

**AND BE IT FURTHER ORDAINED** that this Ordinance shall be effective upon passage and publication as provided by law.

Council Member Lawver made a motion to open the public hearing on Ordinance 2018-1, second by Council Member Gnatt. There were no comments from the public. Mr. Bliss stated that members were provided a copy of a memorandum from the Mid Jersey Joint Insurance Fund regarding a Third Circuit Case. Mr. Bliss stated that he looked at the case which declares as unconstitutional for non-profit solicitors, what we call canvassers, to be subject to a solicitation time restriction that would end before 9:00pm. Mr. Bliss stated that after reading the proposed ordinance he would recommend a universal 9:00 pm solicitation requirement. Mr. Marciante stated that he read the case today and he thinks the Borough should allow solicitation only during daylight hours. Mr. Bliss stated that the Courts reasoning is that non-profits cannot survive without evening solicitations, they need to be able to solicit when there is a high probability of people being at home and they do not have an alternative feasible means of soliciting for funds and that is what motivates the Court. Mr. Bliss stated that the Court did not make any distinction between seasons of the year; they ruled across the board that 9:00 pm is the earliest it can be cut off. Mr. Marciante asked when the case was decided and Mr. Bliss stated 1986. Mr. Marciante stated that the Courts need to address this because modern times have come and now they have a means to communicate other than door to door. Mr. Bliss stated that one of the questions was whether there are alternative means of communication that are financially feasible and it is certainly within the realm of possibility. Mr. Marciante stated that most of the cases that he read had a distinct division between commercial and non-commercial and who was allowed and who was not allowed. Mr. Bliss stated that the case does not address regulation of commercial solicitors. Mr. Marciante stated that if a resident does not want solicitors coming to their door, they should be allowed to be on a list and they should get a sticker and solicitors cannot go to houses on the list. Mr. Bliss stated that was upheld, the only issue in our ordinance is the cutoff for canvassing at night. Mr. Marciante stated that it was suggested that Council adopt this ordinance and address issues as they come up. Mr. Lawver stated that he agrees with Mr. Marciante however, Council already agreed that this ordinance will be revisited in the next two months to address the background check issue which is currently insufficient to provide any certainty about the solicitors coming through. Mr. Lawver stated that rather than stepping up the time restriction he would suggest it be removed entirely. Mr. Lawver asked that Council approve the ordinance today in particular because it allows the Borough to initiate the No Knock Solicitation List. Mr. Lawver stated that no one has a problem with the No Knock List and then when the ordinance is amended to address the background check issue, the hours can also be revisited.

Mr. Bliss stated that the Third Circuit did find it unconstitutional to restrict non-profits to less than 9:00pm. Mr. Lawver stated that he hears that but how rigorously is the time limitation going to be enforced? Mr. Lawver stated that the 7:00pm time limit won’t be enforced during the couple of months that it will take to amend the ordinance. Mr. Marciante stated that he does not want to see people going around town in the dark and knocking on doors. Mr. Bliss stated that the No Knock List will handle that. Mr. Bliss stated that if Council just changes nothing more than section 11, changing the time limit to 9:00 pm universally and left everything else the same it would 1) defend the constitution as Council is required to do and 2) the Borough will have a perfectly fine No Knock Ordinance. Mr. Lawver asked if that would be a significant change requiring reintroduction. Mr. Bliss stated that it would not need to be reintroduced, but the public hearing would have to be carried to the July meeting.

Mrs. Chandler stated that non-profits now have other means so they don’t have to knock on doors at 8:30 or 9:00 at night. Mrs. Mills stated that Council can’t really do anything if that is what the law says. Mr. Lawver stated that the chances of this becoming a problem for the Borough in the next two months is slim so he would suggest adopting the ordinance to get the No Knock List in place and then come back and fix the time and the background checks with an amendment to the ordinance.

Mr. Bliss stated that the problem is that to the extent we know that it is unconstitutional, we are sworn to uphold the constitution and it may turn out to be embarrassing because the time limits in the ordinance are precisely those that were tossed out by the Third Circuit. Mr. Marciante stated that in the case it could not be proven that there was a safety concern involved. Mr. Marciante stated that this ordinance is being presented because there are safety concerns in the area. Mr. Bliss stated that most likely a non-profit entity would serve notice on the Borough allowing time to change the ordinance however he was hung up on the idea of Council doing something that they know is unconstitutional. Mr. Bliss stated that it is not modeling good behavior for Councils to adopt ordinances that have unconstitutional time restrictions when we know we have constituencies out there who will immediately protest.

Mrs. Heinzl stated that if Council is going to consider changing the time restriction and carrying the public hearing then the background change should also be addressed. Mr. Lawver asked if the time restriction could be deleted and would that constitute a significant change. Mr. Bliss suggested adopting the ordinance and immediately introducing a parallel ordinance. Mr. Lawver suggested adopting the ordinance and introducing a resolution suspending the time enforcement. Mr. Bliss stated that would effectively do the same thing. Mr. Bliss stated that Council could also do what Mr. Lawver suggested and delete the time restrictions entirely. Some discussion took place with regard to whether the current ordinance has time restrictions. Mr. Lawver stated that he was fine with deleting section 11 which

addresses the time restrictions and coming back with an amendment to address the background checks and the hours for solicitation. Council Member Lawver made a motion to close the Public Hearing, second by Council Member Gnatt with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2018-1, second by Council Member Lawver with all members present voting in favor.

Mayor Persichilli read Ordinance 2018-6 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE 2018-6**

**AN ORDINANCE CONCERNING SHADE TREES AND THE  
BOROUGH SHADE TREE COMMITTEE**

**WHEREAS**, shade trees are an important part of the quality of life in the Borough of Pennington and the Borough Shade Tree Committee provides invaluable assistance to Borough Council in the care and management of trees and the enhancement of the urban forest in this municipality;

**WHEREAS**, Borough Council seeks to clarify certain provisions of the Borough Code with respect to the advisory responsibilities of the Shade Tree Committee, the management of trees, particularly in or near the public right-of-way, and obligations of the Borough and property owners with respect to them;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington as follows:

- 1. Article I of Chapter 13 of the Code of the Borough of Pennington, concerning the Shade Tree Committee, is hereby repealed and the following ordinance substituted:**

**Section 13-1. Establishment, membership and purpose.**

A. The Shade Tree Committee has been established by ordinance effective December 2, 1985, amended April 4, 2016. It shall consist of seven members who shall be residents of this municipality and, when feasible, have experience or expertise in the area of arboriculture or related fields.

B. The purpose of the Shade Tree Committee is to advise Borough Council in the exercise of its authority over the regulation, planting, care and removal of shade and ornamental trees and shrubbery upon and in the streets, highways, public right-of-way and public property of the Borough of Pennington. This authority shall not extend to state highways unless the State Highway Department shall assent thereto, or to county highways, roads, parks and parkways unless a County Shade Tree Commission is operative and gives assent thereto.

**Section 13-1.1. Definitions.**

- A. "Care" as used herein shall include trimming, spraying, watering, mulching and other measures calculated to protect the public safety or the health and well-being of the tree or shrubbery.
- B. "Trees and shrubbery upon and in the public right-of-way and public property of the Borough" shall mean any tree or shrub whose trunk at ground level is wholly or partially in the public right-of-way or on public property.
- C. "Trees and shrubbery on private property" shall mean any tree or shrub whose trunk at ground level is not in the public right-of-way or on public property in whole or in part.
- D. "Public right-of-way" or "right-of-way" is the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines. The street lines are parallel to each other equidistant from the center of the street, in conformance with prescribed street widths as displayed on the Borough Tax Map.
- E. "Urban forest" shall mean all of the trees and other vegetation in and around our cities and towns. It includes trees in home landscapes, schoolyards, parks and greenbelts, utility rights-of-way and cemeteries. It also includes trees along streets and streams and anywhere else that trees can grow in and around a community.
- F. "Community Forestry Management Plan" shall mean a plan developed by a municipality that outlines the goals and objectives for managing trees on municipal property with the intent of minimizing liability to the municipality and maximizing the useful life of the tree resource. The plan is to be approved by the New Jersey Department of Environmental Protection, Division of Parks and Forestry, New Jersey Forest Service.

**Section 13-2. Initial appointment; terms.**

The first Shade Tree Committee members were appointed by the Borough Council within 60 days after December 2, 1985 for the respective periods of one, two and three years. All appointments, except to fill vacancies, made on or after January 1, 2017, shall be for the full term of three years.

**Section 13-3. Organization; expenses.**

The Shade Tree Committee shall organize annually by the election of one of its members as Chair, and the appointment of a Secretary who need not be a member.

**Section 13-4. Vacancies.**

Any vacancies occurring by reason of the death, resignation or removal of any Shade Tree Committee member shall be filled for the unexpired term by the Borough Council.

**Section 13-5. Scope of Responsibilities.**

The Shade Tree Committee in its advisory capacity may:

A. Recommend to Borough Council legislation and other appropriate action governing the regulation, care and removal of trees and shrubbery upon and in the public right-of-way and public property of the Borough, and use of the ground surrounding them, so far as may be necessary for their growth, care and protection. All such recommendations shall be with notice to the Borough's Superintendent of Public Works and subject to such conditions as the Committee deems appropriate consistent with the purposes of this ordinance, after weighing the following considerations:

- (a) the safety of the public;
- (b) the condition or health of the tree;
- (c) the appropriateness of the location of the tree or shrub;
- (d) the significance of the tree for preservation of the urban forest;
- (e) opportunities for planting replacement trees or shrubbery conforming with Shade Tree Committee specifications;
- (f) the immediacy of the need for action;
- (g) the availability of public or private financing for the action contemplated; and
- (h) other factors favoring removal or non-removal of the tree in the best interests of the Borough and its residents.

B. Recommend to Borough Council with notice to the Superintendent of Public Works legislation and other appropriate action to enhance and protect the public property of the Borough and the public right-of-way, including:

- 1. the planting of trees and shrubbery upon or in the public right-of-way or public property; and
- 2. the care or removal of roots, limbs, branches and other growth extending from trees and shrubbery on private property into or over public property or the public right-of-way.

Recommendations for the planting of trees shall be made after visiting the potential site and consulting the list of shade trees recommended for the Borough to identify the type or types of trees and the location and size that may be appropriate. When the potential site is in a public right-of-way adjoining private property, the Committee shall review the list of recommended shade trees in consultation with the adjoining property owner.

C. Recommend to Borough Council, with notice to the Borough's Superintendent of Public Works, the care, treatment or removal of any tree on private property which is believed to harbor a disease or insect harmful to trees or other vegetation readily communicable to neighboring healthy trees or other vegetation in the care of the municipality, and recommend to Borough Council entry upon the private property for that purpose, with the consent of the owner thereof, provided that the suspected condition is first confirmed by a certificate issued by or on behalf of the New Jersey Department of Agriculture.

D. Develop and maintain a list of trees recommended for shade tree plantings in the Borough. The list shall provide a variety of options, taking into consideration the regional climate, the size of the tree and its root systems, and the available space for a planting. Advise the Borough in the crafting and implementation of its "Community Forestry Management Plan."

E. Encourage private property owners to plant, care for and maintain shade trees, ornamental trees and ornamental shrubs on their property as part of the urban forest.

**Section 13-6. Payment for planting or removal of trees.**

A. The planting, care and removal of trees and shrubbery upon and in the public right-of way and public property of the Borough shall be paid for by the Borough provided the work is: (a) included in the annual budget for the Shade Tree Committee approved by Borough Council; (b) authorized by separate action of Borough Council in its sole discretion even when budgeted; and (c) conducted by the Department of Public Works or a contractor retained by the Borough in conformance with the Local Public Contracts Law.

B. The removal of all or part of the roots extending from trees and shrubbery on private property onto public property or into the public right-of-way as needed to protect the public safety or public infrastructure shall also be paid for by the Borough, subject to the same conditions as set forth in the preceding subsection.

C. In other instances involving care or removal of trees and shrubbery on private property pursuant to this ordinance or the Borough Code, the work shall be paid for by the property owner. These instances include the removal of parts of trees and shrubbery on private property extending over public property or into the public right-of-way and the removal of trees determined to be diseased or otherwise dangerous to the public safety. The work in each case shall be performed by the Department of Public Works or a contractor retained by the Borough except with respect to work required to be performed by the property owner pursuant to Section 177-21 of the Code.

D. When the Shade Tree Committee determines that a tree on private property requires removal in whole or in part because it is diseased or otherwise dangerous to the public safety, the Committee shall give the property owner 10 days' notice that it intends to recommend removal of all or part of the tree to Borough Council. Within that ten-day period the property owner may request a hearing before the Shade Tree Committee and the Committee shall report the property owner's objections to Borough Council. If the public safety requires immediate removal of the tree, no notice shall be necessary.

E. The property owner shall also be responsible for the cost of tree removal in the public right-of-way for which the owner has agreed to provide private financing as part of the review process described in Section 13-5.A.

F. When the expense of the planting, care or removal of a tree or shrubbery, including the purchase of trees and shrubbery and replacement trees and shrubbery, is to be charged to a property owner pursuant to this article, the following provisions apply.

1. When the work is performed by the Borough Department of Public Works, the charges for the work, in addition to out-of-pocket costs, shall be computed according to the pertinent charges for labor and equipment provided in Chapter 98 of the Code, concerning fees.
2. When the work is performed by a contractor retained by the Borough, in accordance with the Local Public Contracts Law, the charge for the work shall be the charges and reimbursements incurred by the Borough, in addition to its out-of-pocket costs.
3. Charges for replacement trees will be at actual cost plus 10%.
4. The amount due for the work and out-of-pocket costs, unless earlier paid directly to the Borough by the property owner, shall be certified by Borough Council to the collector of taxes of the Borough and shall thereupon become a lien upon the affected real estate and be included in the next tax bill rendered to the owner or owners thereof and be collected in the same manner as other taxes against that property.

G. The planting of trees under the Pennington Memorial Tree planting program shall be at the expense of the applicant.

#### **Section 13-7. Public improvements affecting trees.**

No statute giving any person or state, county or municipal board, body or official the power or authority to lay any sidewalk along or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to trees and shrubbery upon and in the public right of way and public property of the Borough without the consent of the Borough Council. In all cases, the Borough Council shall reasonably cooperate with such person, board, body or official for the general public good. If such action causes injury to or demise of the tree, the person or state, county or municipal board, body or official responsible shall pay for a replacement tree meeting the specifications of the Shade Tree Committee pursuant to § 177-6 of the Borough Code.

#### **Section 13-8. Procedure and payment for planting or removal of trees.**

A. During the month of October in each year, the Shade Tree Committee shall certify to the Borough Council the estimated sum necessary for the proper conduct of work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made ~~for~~:

- (1) Expenses of Shade Tree Committee members in discharging official duties, including expenses incident to attendance at professional meetings.
- (2) Purchase and installation of trees and shrubbery.

- (3) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work
- (4) Expense of tree maintenance and removal.

B. The Borough Council shall annually appropriate such sum as it may deem necessary for these purposes.

**Section 13-9. Rules of procedure; meetings.**

The Shade Tree Committee shall adopt rules or procedures, which shall provide for a regular public meeting each month.

**Section 13-10. Development of Master Plan for planting of trees.**

The Shade Tree Committee shall develop and recommend to the Borough Council a Borough Master Plan, setting forth those areas of the Borough in need of shade trees along the public right-of-way, the types of tree which should be planted and the approximate locations. The Master Plan should consider the type of zoning, the climate, soil conditions and other factors necessary to evaluate and develop such a plan. Upon completion of the Master Plan, any recommendations for the planting of trees made pursuant to this section should make reference to this plan, and any variance from the plan should be explained.

**Section 13-11. Prohibition Against Removal of Trees on Public Property or in the Public Right of Way.**

A. No person shall remove any tree or shrubbery or part of a tree or shrubbery upon or in the streets, highways, public right-of-way or public property of the Borough unless expressly authorized by Borough Council in accordance with this article or otherwise pursuant to the Borough Code.

B. Any person violating this prohibition shall, upon conviction thereof, be subject to a fine not exceeding \$1,000. Such person also shall be required to pay for correction of the work as necessary to bring it into compliance with applicable specifications and requirements.

- 2. This ordinance shall be effective upon passage and final publication as provided by law.

Council Member Lawver made a motion to open the Public Hearing on Ordinance 2018-6, second by Council Member Mills. There were no comments from the public. Council Member Lawver made a motion to close the Public Hearing on Ordinance 2018-6, second by Council Member Chandler with all members present voting in favor. Council Member Marciante made a motion to adopt Ordinance 2018-6, second by Council Member Chandler with all members present voting in favor.

Mayor Persichilli read Ordinance 2018-7 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2018-7**

**AN ORDINANCE BY THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY PURSUANT TO N.J.S.A. 40A:12-13(B)(4) AUTHORIZING THE CONVEYANCE TO THE HERITAGE AT PENNINGTON CONDOMINIUM ASSOCIATION, INC. OF EASEMENTS.**

**WHEREAS**, American Properties at Pennington, LLC has received approval from the Pennington Planning Board to construct an 80-unit community known as Heritage at Pennington; and

**WHEREAS**, within said community there are four sidewalk/parking easements which have been conveyed to the Borough of Pennington but which benefit the community's homeowner's association and are not a part of sidewalk and roadway easements which benefit the general public within said community; and

**WHEREAS**, American Properties at Pennington, LLC has requested that said sidewalk and parking easements be conveyed by the Borough of Pennington to the Heritage at Pennington Condominium Association, Inc. since said sidewalk and parking easements benefit the homeowners association only; and

**WHEREAS**, the New Jersey Local Lands and Buildings Law, *N.J.S.A. 40A:12-13(b)(4)* allow for the conveyance by the Borough of Pennington of said easements if the Borough determines to release the public rights in said easement for the benefit of the aforementioned homeowner's association; and

**WHEREAS**, the Borough's Planning Board attorney has reviewed the American Properties at Pennington, LLC approved development plans last revised May 22, 2017 and as a result of said review recommends to the Pennington Borough Council the conveyance of said sidewalk and parking easements from the Borough to the Heritage of Pennington Condominium Association, Inc. in order to be consistent with the aforementioned approved plans.

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey as follows:

5. The Mayor and Borough Clerk are hereby authorized and directed to enter into easement agreements whereby the following sidewalk and parking easements are conveyed by the Borough of Pennington to the Heritage at Pennington Condominium Association, Inc.:
  - a) Sidewalk and parking easements dated November 30, 2017 between American Properties at Pennington, LLC and the Borough of Pennington as recorded in the Office of the Mercer County Clerk on January 17, 2018 in Deed Book 6314, Page 27; (Block 102, Part of Lot 1.67); and
  - b) Sidewalk and parking easements dated November 30, 2017 between American Properties at Pennington, LLC and the Borough of Pennington as recorded in the Office of the Mercer County Clerk on January 17, 2018 in Deed Book 6314, Page 8 (Block 102, Part of Lot 1.66); and
  - c) Sidewalk easement dated November 30, 2017 between American Properties at Pennington, LLC and the Borough of Pennington as recorded in the Office of the Mercer County Clerk on January 17, 2018 in Deed Book 6314, Page 21 (Block 102, Part of Lot 1.41); and
  - d) Sidewalk and parking easements dated November 30, 2017 between American Properties at Pennington, LLC and the Borough of Pennington as recorded in the Office of the Mercer County Clerk on January 17, 2018 in Deed Book 6314, Page 15 (Block 102, Part of Lot 1.68).
6. The Borough Council of the Borough of Pennington hereby finds that said easements are not necessary or required for any public purpose other than internal circulation and parking within the Heritage at Pennington Community and should be properly owned and maintained by the Community's homeowner's association.
7. This Ordinance shall take effect upon its passage and publication as provided for by law.

Council Member Lawver made a motion to open the Public Hearing on Ordinance 2018-7, second by Council Member Chandler. There were no comments from the public. Council Member Lawver made a motion to close the Public Hearing on Ordinance 2018-7, second by Council Member Marciante with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2018-7, second by Council Member Mills with all members present voting in favor.

Mayor Persichilli read Ordinance 2018-8 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2018 - 8**

**AN ORDINANCE BY THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY PURSUANT TO N.J.S.A. 40A:12-13(B)(4) AUTHORIZING THE ACCEPTANCE OF A SIDEWALK EASEMENT ON BLOCK 202, PART OF LOT 1 PENNINGTON BOROUGH TAX MAP.**

**WHEREAS**, American Properties at Pennington, LLC has received approval from the Pennington Planning Board to construct an 80-unit community known as Heritage at Pennington on property located adjacent to the northerly side of West Franklin Avenue; and

**WHEREAS**, a condition of said approval involves the installation of a sidewalk on West Franklin Avenue from Knowles Street towards New Jersey State Highway Route No. 31; and

**WHEREAS**, American Properties at Pennington, LLC in consultation with the Pennington Borough Police Director has agreed that for public pedestrian safety purposes a portion of the aforementioned sidewalk should be installed on the southerly side of West Franklin Avenue at the expense of American Properties at Pennington, LLC so that said sidewalk can be connected to the sidewalk system for the Shoppes at Pennington Complex; and

**WHEREAS**, the owners of said complex, Pennington Investments, LLC, have consented to the installation of a portion of the sidewalk on their above-referenced property (Block 202, Lot 1 Pennington Borough Tax Map) and has further agreed to provide an easement to the Borough of Pennington for a right of way dedication for said sidewalk; and

**WHEREAS**, the New Jersey Local Lands and Buildings Law, *N.J.S.A. 40A:12-13(b)(4)* permits the Borough of Pennington to accept said right of way easement dedication; and

**WHEREAS**, the Council of the Borough of Pennington wishes to facilitate the aforementioned installation of a portion of the West Franklin Avenue sidewalk along the southerly side of West Franklin Avenue for purposes of enhancing pedestrian safety.

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey as follows:

1. The Mayor and Clerk of the Borough of Pennington are hereby authorized and directed to enter into an easement agreement with Pennington Investments, LLC to accept a right of way easement dedication on a portion of Block 202, Lot 1 Pennington Borough Tax Map. The deed of easement shall be prepared by the Pennington Borough Planning Board attorney.
2. This Ordinance shall take effect upon its passage and publication as provided for by law.

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2018-8, second by Council Member Lawver. There were no comments from the public. Council Member Chandler made a motion to close the Public Hearing on Ordinance 2018-8, second by Council Member Lawver with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2018-8, second by Council Member Mills with all members present voting in favor.

**New Business**

**BOROUGH OF PENNINGTON  
RESOLUTION #2018 – 6.1**

**RESOLUTION AUTHORIZING REFUNDS**

**BE IT RESOLVED**, that a refund be issued to Wells Fargo Real Estate Tax Services, P.O. Box 14506, Des Moines, IA 50306-9395, for refund of overpayment of 2018 second quarter taxes, Block 301, Lot 37, also known as 30 Eglantine Avenue, in the amount of \$5,056.92.

**BE IT RESOLVED**, that a refund be issued to Wells Fargo Real Estate Tax Services, P.O. Box 14506, Des Moines, IA 50306-9395, for refund of overpayment of 2018 second quarter taxes, Block 304, Lot 26, also known as 131 East Delaware Avenue, in the amount of \$3,549.40.

**BE IT RESOLVED**, that a refund be issued to Wells Fargo Real Estate Tax Services, P.O. Box 14506, Des Moines, IA 50306-9395, for refund of overpayment of 2018 second quarter taxes, Block 403, Lot 16, also known as 3 Rockwell Green Drive, in the amount of \$4,458.62.

**BE IT RESOLVED**, that a refund be issued to Wells Fargo Real Estate Tax Services, P.O. Box 14506, Des Moines, IA 50306-9395, for refund of overpayment of 2018 second quarter taxes, Block 1002, Lot 18, also known as 8 East Welling Avenue, in the amount of \$4,111.36.

**BE IT RESOLVED**, that a refund be issued Central Mortgage Co. c/o LERETA Attn: Central Refunds, 1123 Park View Dr., Covina, CA 91724, for refund of overpayment of 2018 second quarter taxes, Block 102.01, Lot 4, also known as 86 Woolsey Court, in the amount of \$150.74.

**BE IT RESOLVED**, that a refund in the amount of \$861.16 be issued to Hopewell Fire District #1 for LOSAP contributions made on behalf of Edward Grobelny who has left volunteer service with the Pennington First Aid Squad prior to vesting.

**BE IT RESOLVED**, that a refund in the amount of \$725.00 be issued to John Lovero Jr. (Lovero Construction Company), 1580 Reed Road, Pennington, NJ 08534, for refund of escrow account #90021.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Gnatt	S				Marciante	X			
Griffiths				absent	Mills	X			

Council Member Lawver made a motion to approve Resolution 2018-6.1, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2018 – 6.2**

**RESOLUTION AUTHORIZING PAYMENT OF BILLS**

**WHEREAS**, certain bills are due and payable as per itemized claims listed on the following schedules, which are made a part of the minutes of this meeting as a supplemental record;

**NOW, THEREFORE BE IT RESOLVED**, by the Mayor and Council of the Borough of Pennington that the bills be paid on audit and approval of the Mayor, the Appropriate Council Member and the Treasurer in the amount of \$ 717,901.37 from the following accounts:

Current	\$ 366,671.75
W/S Operating	\$ 69,132.74

Water/Sewer Capital	\$ 267,378.75
Developers Escrow	\$ 13,059.07
Other Trust Fund	\$ 75.00
Grant Fund	\$ 1,500.00
Unemployment Trust Fund	\$ 84.06
<b>TOTAL</b>	<b>\$ 717,901.37</b>

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	S			
Gnatt	X				Marciante	X			
Griffiths				absent	Mills	M			

Council Member Mills made a motion to approve Resolution 2018-6.2, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2018 – 6.3**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2 TO  
JOHN GARCIA CONSTRUCTION COMPANY, INC. FOR WORK COMPLETED ON THE EAST  
CURLIS AVENUE AND WEIDEL DRIVE WATER SYSTEM UPGRADES PROJECT**

**WHEREAS**, John Garcia Constriction Company, Inc. has completed work pursuant to the contract for the East Curlis Avenue and Weidel Drive Water System Upgrades Project (Van Note Harvey Associates Project No: 43327-520-52); and

**WHEREAS**, Van Note Harvey Associates has reviewed John Garcia Construction Company, Inc.'s attached application for payment and recommends payment of same pursuant to the Contractor's Request for Payment No. 2 in the amount of \$191,180.00 less 2% retainage in the amount of \$3,823.60; and

**WHEREAS**, this is a partial payment under the contract; and

**WHEREAS**, funds are available under Ordinance 2016-5 subject to compliance with NJEIT disbursement requirements;

**NOW, THEREFORE BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that payment to John Garcia Construction Company, Inc. in the net amount of \$187,356.40 pursuant to payment request No.2 is hereby authorized subject to submission of acceptable certified payrolls for the time period covered under the payment request application.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Gnatt	X				Marciante	X			
Griffiths				absent	Mills	S			

Council Member Lawver made a motion to approve Resolution 2018-6.3, second by Council Member Mills. Mr. Lawver asked if the service lines have been completed. Mr. Smith stated that they have though they still have to run a line to the school, but the majority of the work is complete. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2018 – 6.4**

**RESOLUTION AUTHORIZING COST SHARING AGREEMENT BETWEEN HOPEWELL  
TOWNSHIP, HOPEWELL BOROUGH AND PENNINGTON BOROUGH CONCERNING  
SHARING OF MATCH REQUIREMENT FOR COUNTY FUNDING OF PRIORITY REPAIRS TO  
READING STREET SENIOR CENTER**

**WHEREAS**, Hopewell Township, Hopewell Borough and Pennington Borough jointly support continued use of the Reading Street Senior Center in Pennington; and

**WHEREAS**, the Reading Street Senior Center serves an important community need in the three

municipalities; and

**WHEREAS**, the governing bodies of the three municipalities have adopted resolutions memorializing their shared commitment to finding solutions to keeping the Reading Street Senior Center open; and

**WHEREAS**, the three municipalities intend to apply for funding from the County of Mercer to cover the cost of priority repairs, recognizing that the grant application requires a fifty percent (50%) match and a description of each municipality’s contribution to that match; and

**WHEREAS**, the repairs and related cost estimates total \$392,694.00; and

**WHEREAS**, the County of Mercer funding will cover fifty percent (50%) of these costs, the balance of \$196,347.00 to be shared by the three municipalities either in cash or in-kind donations; and

**WHEREAS**, the three municipalities agree to split the cash match requirement based on the comparative shares of the use of the building and senior services by their respective residents, Hopewell Township 37.5%, Hopewell Borough 5% and Pennington Borough 7.5%; and

**WHEREAS**, the three municipalities agree to cooperatively work to obtain donations of time and/or materials; and

**WHEREAS**, all parties understand and agree that Exhibit A represents estimated costs and it may be necessary to amend this agreement to reflect either increases or reductions in actual costs; and

**WHEREAS**, all parties understand and agree that if at any future time a new senior center is constructed and the Reading Street Senior Center is abandoned, Hopewell Township and Hopewell Borough will not receive reimbursement for all or any part of their contributions to these repairs and the Center shall remain the sole property of Pennington Borough;

**NOW, THEREFORE BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Mayor with the attestation of the Borough Clerk is hereby authorized to execute the attached Cost Sharing Agreement subject to approval by the Borough Attorney as to form.

**Record of Council Vote on Passage**

<b>COUNCILMAN</b>	<b>AYE</b>	<b>NAY</b>	<b>N.V.</b>	<b>A.B.</b>	<b>COUNCILMAN</b>	<b>AYE</b>	<b>NAY</b>	<b>N.V.</b>	<b>A.B.</b>
Chandler	X				Lawver	S			
Gnatt	X				Marciante	M			
Griffiths				absent	Mills	X			

Council Member Marciante made a motion to approve Resolution 2018-6.4, second by Council Member Lawver. Mr. Lawver stated that the tenth whereas clause states “that all parties agree and understand that all cost overruns will be the responsibility of all parties in accordance with their comparative shares as stated in the agreement” however, in the agreement the numbers are listed as not to exceed. Mrs. Heinzl stated that numbers in the agreement as not to exceed are the high end estimate numbers and should include any cost overruns. Mr. Bliss stated that the whereas clause could be eliminated to make it consistent. Mr. Lawver stated that he doesn’t want to get into a situation down the road if the project runs over and it is on Pennington to cover the costs. Mr. Bliss stated that is a policy choice and not to exceed is generally what we want to protect the till and if it were removed we could have a problem. Mr. Bliss stated that the cost overrun language is probably unnecessary because it makes a commitment that we might not be ready to make. Mr. Lawver stated that the whereas clause should be removed in order to be consistent. Upon a roll call vote all members present voted in favor of the resolution as amended.

**BOROUGH OF PENNINGTON  
RESOLUTION 2018-6.5**

**RESOLUTION AUTHORIZING THE HIRING OF YURI LOKCHINE AS LABORER IN THE DEPARTMENT OF PUBLIC WORKS**

**WHEREAS**, the Borough of Pennington has need for a qualified person to fill the position of Laborer in the Department of Public Works;

**WHEREAS**, the Superintendent of Public Works, the Borough Administrator and the Director of Public Safety reviewed 18 applications for the position; and

**WHEREAS**, eight (8) applicants were selected for initial interviews which were held on May 17<sup>th</sup> and May 18<sup>th</sup>, 2018; and

**WHEREAS**, three (3) of the applicants from the initial interviews were invited back for a second interview on May 25<sup>th</sup>, 2018; and

**WHEREAS**, as a result of the interviews held the Interview Committee has recommended the

hiring of Yuri Lokchine for the position of Laborer I; and

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, as follows:

1. the hiring of Yuri Lokchine as Laborer I in the Department of Public Works is hereby approved;
2. Mr. Lokchine’s salary and other terms and conditions of employment shall be governed by the contract between the Borough and Teamsters Local 35;
3. Mr. Lokchine’s start date shall be determined by the Superintendent of Public Works.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Lawver	S			
Gnatt	X				Marciante	X			
Griffiths				absent	Mills	X			

Council Member Chandler made a motion to approve Resolution 2018-6.5, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2018 – 6.6**

**RESOLUTION AUTHORIZING CHANGE ORDER  
NO. 1 REQUESTING AN EXTENSION OF THE TIME FOR COMPLETION FOR THE EAST  
CURLIS AND WEIDEL WATER UPGRADE PROJECT**

**WHEREAS**, Van Note Harvey Associates has recommended a certain Change Order No. 1 with regard to the Contract between the Borough of Pennington and John Garcia Construction Company, Inc. for the project known as Replacement and Upgrade of Water Distribution System along East Curlis Avenue and Weidel Drive (VNH Project #: 43327-520-52) ;

**WHEREAS**, the contract allows for sixty (60) days from the Notice to Proceed to complete the project; and

**WHEREAS**, during the construction of the project, the construction schedule was impacted by several days of inclement weather, an unmarked utility found in the path of the water main and difficulty excavating the trench; and

**WHEREAS**, Change Order No. 1 would allow for an extension of thirty-two (32) days to complete the project, with a new date of completion of June 15, 2018; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington that the aforesaid Change Order No. 1 adjusting the completion date by thirty-two days to June 15, 2018 under the contract with John Garcia Construction Company, Inc. is hereby approved.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Gnatt	S				Marciante	X			
Griffiths				absent	Mills	X			

Council Member Lawver made a motion to approve Resolution 2018-6.6, second by Council Member Gnatt. Mr. Marciante asked why they are not requesting additional money with the time extension. Mr. Lawver stated that if the Borough was making the request there would be a cost involved but this is the contractor requesting an extension of time. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2018 – 6.7**

**RESOLUTION AUTHORIZING CONTRACT WITH GTBM, INC. FOR PURCHASE  
OF E-TICKET ELECTRONIC TICKETING SYSTEM**

**WHEREAS**, the Pennington Borough Police Department seeks to contract with GTBM of East Rutherford, NJ for the purchase of an E-Ticket system; and

**WHEREAS**, the Pennington Police Department currently utilizes the Info-Cop query software system provided by GTBM, Inc.; and

**WHEREAS**, as per the attached letter from GTBM, the Info-Cop E-ticket turnkey solution and

Info-Cop query software are unique offerings and when deployed together create a system that no other company can provide; and

**WHEREAS**, under the proposed contract GTBM has agreed to provide hardware and software installation, training, warranties, maintenance, 24/7 technical support and ticket paper for a total cost of \$10,047.; and

**WHEREAS**, the proposed contract is not subject to advertising for public bids because the total contract amount does not exceed the bid threshold and competing quotations are not obtainable because the Info-Cop E-Ticket turnkey system is the only available system able to interface with the Info-Cop query software;

**WHEREAS**, approval of this contract complies with the Code of the Borough of Pennington as well as N.J.S.A. 19:44A-20.5 effective January 1, 2006, which prohibit the award of certain professional services contracts to any person or business entity which makes reportable contributions to local political or candidate committees representing member of the governing body; and

**WHEREAS**, GTBM will be required to complete and submit a sworn Business Entity Disclosure Certification which certifies that the firm has not made and shall not make any political contribution prohibited by the relevant provisions of either statute or the Borough Code concerning pay-to-play; and

**WHEREAS**, GTBM shall comply with requirements for Anti-Discrimination and Affirmative Action as set forth in the annexed Exhibit A; and

**WHEREAS**, the Chief Financial Officer of the Borough has certified that funds for these services are available in account #: 8-01-25-240-000-246;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Borough Administrator is hereby authorized to issue an appropriate purchase order and accept as a binding contract the attached proposal by GTBM for a contract price not to exceed \$10,047., subject to review by the Borough Attorney as to form.

**BE IT FURTHER RESOLVED**, that notice of award of the contract shall be published in the official newspaper as required by law.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Gnatt	S				Marciante	M			
Griffiths				absent	Mills	X			

Council Member Marciante made a motion to approve Resolution 2018-6.7, second by Council Member Gnatt with all members present voting in favor.

**Professional Reports**

Mrs. Heinzl stated that the PBPA will be holding a Mega Networking Event on June 6<sup>th</sup> at the Hopewell Valley Vineyard.

There were no other comments from professionals.

**Public Comment**

Mayor Persichilli asked anyone wishing to speak to come forward and state their name and address for the record and to limit comments to the Governing Body to a maximum of 3 minutes.

There were no comments from the public.

Mayor Persichilli stated that there is no need for a closed session unless Council Members would like to discuss the closed session minutes. There was no discussion.

At 8:10pm, with no further business to come before the Borough, Council Member Lawver made a motion to adjourn the meeting, second by Council Member Gnatt.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk