

OLD BUSINESS – None

NEW BUSINESS

A. **Ordinance 2016-422:** Introduction
The Mayor read the Ordinance by Title.

**VILLAGE OF LOCH ARBOUR
ORDINANCE 2016-422**

AN ORDINANCE OF THE VILLAGE OF LOCH ARBOUR, COUNTY OF MONMOUTH, STATE OF NEW JERSEY ADOPTING CERTAIN REGULATIONS OF DRONE TECHNOLOGY AND UNMANNED AIRCRAFT FOR THE VILLAGE OF LOCH ARBOUR

WHEREAS, the Village of Loch Arbour (hereinafter, the "Village") deems it appropriate, necessary, and proper for the good government, order, the protection of persons and property, and for the preservation of the public health, welfare, and safety of the Village and its inhabitants, to adopt certain regulations pertaining to the use of Drone Technology and unmanned aircraft in the Village; and

WHEREAS, Drone Technology includes "drones," which are unmanned aircraft that can fly under the control of a remote pilot or by a global positioning system (GPS) guided autopilot mode, can fly at altitudes below the navigable airspace (*i.e.*, generally 400 feet), and are equipped with surveillance technologies (*e.g.*, high definition cameras, night vision cameras, and infrared-see-through scopes,); and

WHEREAS, as a result of its declining cost, Drone Technology and unmanned aircraft have become increasingly available to private citizens for personal, recreational, and other potential uses; and

WHEREAS, drones and unmanned aircraft can be used to fly above areas where people may congregate, above residences, in the backyard of residences, to hover outside residences, and to fly above roads and through traffic in a manner that is inherently dangerous to the public health, welfare, and safety; and

WHEREAS, it is evident that the rapid development, implementation, and use of Drone Technology and unmanned aircraft throughout the United States, as set forth herein, poses a serious threat to the health, safety, and welfare of the Village's inhabitants, seasonal population, and visitors in general, as well as the economic activity and public safety of the Village and the region; and

WHEREAS, the federal government and the State of New Jersey have thus far failed to adopt specific and comprehensive legal restrictions on the use of Drone Technology, the federal government has thus far only issued general guidelines regarding legal restrictions on the use of the type of unmanned aircraft designated as "model aircraft," and, therefore, at this time, there are no meaningful regulations protecting the public, health, and welfare from Drone Technology and unmanned aircraft particular to and specific to the needs of the Village; and

BE IT ORDAINED by the Board of Commissioners of the Village of Loch Arbour, Monmouth County, State of New Jersey, as follows:

Section 1. Definitions.

“Aircraft” means any apparatus invented, used, or designed to navigate or fly in the air.

“Firearm” has the meaning ascribed to the term in N.J.S.A. 2C:39-1.

“Operate” means to pilot, steer, direct, fly or manage an unmanned aircraft through the air whether from within the aircraft or remotely. The term operate includes managing or initiating a computer system that pilots, steers, directs, flies or manages an unmanned aircraft.

“Sensing Device” means a device capable of acquiring images, audio and other data from its surroundings. Sensing devices include, but are not limited to, cameras, microphones, thermal detectors, chemical detectors, radiation gauges, and wireless receivers in any frequency (including cellular, WiFi, or other data frequencies).

“Small Unmanned Aircraft” means an unmanned aircraft that weighs less than or equal to 0.55 pounds, excluding toy aircraft.

“Toy Aircraft” means (a) a glider or hand-tossed unmanned aircraft that is not designed for and is incapable of sustained flight; and (b) an unmanned aircraft that is capable of sustained flight and is controlled by means of a physical attachment such as a string or wire.

“Unmanned Aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the Aircraft.

“Weapon” means an instrument, article or substance that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

Section 2. Regulations.

- A. No person shall Operate an Unmanned Aircraft in a manner that is prohibited by a federal law or regulation that governs aeronautics, including the Federal Aviation Administration regulations.
- B. No person shall Operate an Unmanned Aircraft in a manner that interferes with a law enforcement, firefighter or emergency services operation.
- C. No person shall Operate an Unmanned Aircraft within 50 feet of a public right-of-way.
- D. No person shall Operate an Unmanned Aircraft in a careless or reckless manner that poses an apparent or actual threat of harm, or actual harm to persons or property.
- E. No person shall Operate an Unmanned Aircraft in a manner that harasses, annoys, or assaults pedestrians or vehicle operators, and/or threatens their safety or welfare.
- F. No person shall Operate an Unmanned Aircraft over any private real property located within the Village in which the resident and/or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, a private residence or office, and its surrounding yard, parking lot and landscaping).
- G. No person shall use a sensing device on an Unmanned Aircraft to record or transmit any images, audio or other data of any person or private real property located within the Village under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, and inside an enclosed yard).
- H. No person shall Operate an Unmanned Aircraft that is equipped with a Firearm or other Weapon.
- I. No person shall Operate an Unmanned Aircraft outside the visual line of sight of the operator.
- J. No person shall Operate an Unmanned Aircraft while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug or any combination thereof, as those terms are defined in N.J.S.A. 39:4-50.
- K. No person shall Operate an Unmanned Aircraft whenever weather conditions would impair the operator's ability to do so safely.
- L. No person shall Operate an Unmanned Aircraft between the hours of 8:00 p.m. and 8:00 a.m.

Section 3. Insurance Requirement.

- A. It shall be unlawful for any person to Operate an Unmanned Aircraft in Village airspace unless such person maintains a liability insurance policy that insures the owner and/or operator of the Unmanned Aircraft and provides, at minimum, the following limits:
 - 1. \$100,000 for personal injury or death of one person;
 - 2. \$300,000 for personal injury or death to more than one person in one accident, with a maximum of \$100,000 for each person; and
 - 3. \$50,000 for property damage.
- B. Each policy of liability of insurance required under this section shall (1) be issued by an insurer authorized to do business in the State of New Jersey; and (2) name the Village as an additional insured.
- C. This section shall not apply to Small Unmanned Aircraft.

Section 4. Exceptions.

- A. Any person authorized to Operate an Unmanned Aircraft pursuant to a certificate of waiver, certificate of authorization or airworthiness certification under Section 44704 of Title 49, United States Code shall be authorized to Operate an Unmanned Aircraft in Village airspace in accordance with the terms of such certificate of waiver, certificate of authorization or airworthiness certification.
- B. This Chapter shall not prohibit the Constitutional use of Unmanned Aircraft by any law enforcement agency or emergency services organization of or servicing the Village, the County of Monmouth, the State of New Jersey, or the United States Government for lawful purposes and in a lawful manner.
- C. This Chapter shall not prohibit any federal, state, county or municipal agency from the use of Unmanned Aircraft for any lawful and authorized purpose pursuant to any applicable regulation.
- D. This Chapter shall not apply to Toy Aircraft.

Section 5. Violations and penalties.

A violation of this Chapter shall be punishable by a fine of between \$100.00 and \$500.00 for a first offense, and for a second or subsequent offense a fine of between \$500.00 and \$1,000.00.

Section 6. Repealer.

All ordinances, or parts of ordinances, inconsistent with this Chapter are hereby repealed to the extent of such inconsistency.

Section 7. Severability.

If any word, phrase, clause, section, or provisions of this Chapter shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

Section 8. Effective date.

This Ordinance shall take effect after final adoption and publication as required by law.

UPON MOTION, of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that said Ordinance #2016-422 be adopted on first reading, directing the Clerk to post and publish as required by law and setting the date for the public hearing as August 3, 2016.

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola

Nays: Commissioner Cheswick

Absent: None

B. Resolution 2016-10: UPON MOTION of Mayor Fernicola, seconded by Commissioner Cheswick, carried, that the following resolution be adopted:

WHEREAS, there exists a need for a Certified Tax Assessor to perform the statutory duties of Village Assessor pursuant to N.J.S.A. 40A:9-146; and,

WHEREAS, Renee Frotton has served the Village as its Assessor with a term expiring June 30, 2016 and,

WHEREAS, the Mayor and Commissioners of the Village of Loch Arbour upon the conclusion of her term with the Village of Loch Arbour, which expired June 30, 2016, have decided to go in a different and new direction.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour that Erick Aguiar be hereby appointed as the Certified Tax Assessor for the Village of Loch Arbour for the four-year term effective July 1, 2016 and through June 30, 2020, inclusive, and until his successor be duly appointed, at the salary provided in the Salary Ordinance and resolutions of the Village.

BE IT FURTHER RESOLVED that a certified copy of this Resolution shall be supplied to:

1. Erick Aguiar

2. Matthew Clark, Donmouth County Tax Administrator

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola
Nays: None Absent: None

C. **Resolution 2016-11:** UPON MOTION of Commissioner Cheswick, seconded by Mayor Fernicola, carried that the following resolution be adopted:

WHEREAS, the Village of Loch Arbour has a need to contract with another municipality to increase service to the property owners of Loch Arbour relating to the Office of the Tax Assessor:

WHEREAS, the Village determined it would be in the best interest of its residents to enter into an agreement with the City of Asbury Park to share the Tax Assessor Office Infrastructure for said services:

WHEREAS, the Village is authorized to enter into this agreement with the City of Asbury pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 to - 35, for the purpose of sharing the services of the Tax Assessor Office Infrastructure.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour, County of Donmouth, State of New Jersey, as follows:

1. The Mayor is hereby authorized to execute, and the Clerk to attest, to a uniformed shared services agreement with the City of Asbury for a Shared Service Agreement relating to the Office of the Tax Assessor.
2. A certified copy of this resolution shall be provided to the City of Asbury.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola
Nays: None Absent: None

D. **Resolution 2016-12:** UPON MOTION of Commissioner Cheswick, seconded by Mayor Fernicola, carried that the following resolution be adopted:

WHEREAS, N.J.S.A. 40A: 5-4 requires the governing body of every local unit to have made an annual audit of its books, accounts and financial transactions; and,

WHEREAS, the Annual Report of Audit for the year 2015 has been filed by a Registered Municipal Accountant with the Municipal Clerk as per the requirements of N.J.S.A. 40A: 5-6, and a copy has been received by each member of the governing body; and,

WHEREAS, the Local Finance Board of the State of New Jersey is authorized to prescribe reports pertaining to the local fiscal affairs, as per R.S. 52:27BB-34; and,

WHEREAS, the Local Finance Board has promulgated a regulation requiring that the governing body of each municipality shall, by resolution, certify to the Local Finance Board of the State of New Jersey that all members of the governing body have reviewed, as a minimum, the sections of the annual audit report entitled:

GENERAL COMMENTS
RECOMMENDATIONS:

and,

WHEREAS, the members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled:

GENERAL COMMENTS
RECOMMENDATIONS

as evidenced by the group affidavit form of the governing body; and,

WHEREAS, such resolution of certification shall be adopted by the governing body no later than 45 days after the receipt of the annual audit, as per the regulations of the Local Finance Board; and,

WHEREAS, all members of the governing body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board; and,

WHEREAS, failure to comply with the promulgations of the Local Finance Board of the State of New Jersey may subject the members of the local governing body to the penalty provisions of R.S. 52:27BB-52 - to wit:

R.S. 52:27BB-52: "A local officer or member of a local governing body who, after a date fixed for compliance, fails or refuses to obey an order of the director (Director of Local Government Services), under the provisions of this article, shall be guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, and in addition, shall forfeit his office."

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Village of Loch Arbour hereby states that it has complied with the promulgation of the Local Finance Board of the State of New Jersey dated July 30, 1968 and does hereby submit a certified copy of this resolution and the required affidavit to said Board to show evidence of said compliance.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola
Nays: None Absent: None

E. Resolution 2016-13: UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the following resolution be adopted:

WHEREAS, Clean Ocean Action has requested permission to hold its annual C.O.A.S.T. Campaign at the Village Beach Club on Saturday, July 23, 2016 and Sunday, July 24, 2016 for up to four (4) hours each day.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour that permission is hereby granted to Clean Ocean Action to hold its annual C.O.A.S.T. Campaign at the Village Beach Club on Saturday, July 23, 2016 and Sunday, July 24, 2016 for up to four (4) hours each day.

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be supplied to:

- Clean Ocean Action
- Beach Manager, John Bosmans
- Chief Ronen Neuman, Borough of Deal Police Department

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola
Nays: None Absent: None

F. Resolution 2016-14: UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo that this Resolution to Authorize Doug Alt to hold a Free Musical Concert the Village Beach on July 4, 2016 be deleted from the Agenda, due to the fact the event never took place.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola
Nays: None Absent: None

G. Resolution 2016-15: UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the following resolution be adopted:

WHEREAS, Gerald V. Mathews, of the Eastern Surfing Association has requested permission to hold a Surfing Contest on the south end of Loch Arbour Beach on Sunday, May 15, 2016, and,

WHEREAS, this request was made on May 11, 2016 and the next Commissioners Meeting will not be held until June 1, 2016, where this request will be formally placed on the Agenda:

WHEREAS, Commissioner Denis D'Angelo, as Commissioner in charge of beaches, has approved this event.

NOW, THEREFOR, BE IT RESOLVED by Commissioners D' Angelo, Commissioner in charge of beaches, of the Village of Loch Arbour, to hold a Surfing Contest on Sunday, May 15, 2016, subject to the following conditions:

1. A Certificate of Insurance naming the Village as an additional insured must be supplied to the Village on or before May 13, 2016 along with a copy of the insurance policy;
2. All plans must be coordinated with the Borough of Deal Police Department;
3. Adequate personnel must be supplied to ensure the safety of Surfers and Patrons.
4. Execution of the required Hold Harmless Agreement.

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be supplied to:

- Gerald V. Mathews, The Eastern Surfing Association
- Beach Manager, John Bosmans
- Chief Ronen Neuman, Borough of Deal Police Department

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None Absent: None

IT IS THE MOTION of Commissioner Cheswick, seconded by Commissioner D' Angelo, carried that the following Resolution be approved:

WHEREAS, New York SOSA Limited Partnership d/b/a Verizon Wireless, ("Verizon Wireless"), is a provider of commercial mobile service subject to regulation by the Federal Communications Commission; and

WHEREAS, Verizon Wireless has entered into agreements with parties that have the lawful right to maintain poles in the public right-of-way pursuant to which Verizon Wireless may jointly use such poles erected within the public right-of-way in the Village of Loch Arbour; and

WHEREAS, the State of New Jersey law permits joint use provided that there is the consent of the relevant municipality;

NOW THEREFOR BE IT RESOLVED, by the Board of Commissioners of the Village of Loch Arbour, County of Monmouth, State of New Jersey the following:

1. Permission and authority are hereby granted to Verizon Wireless and its successors and assigns to replace a municipal owned pole at the intersection of Edgemont Drive and Ocean Avenue and install a Small Network Node, subject to the following:

A. Verizon Wireless, and its successors and assigns, shall adhere to all applicable Federal, State and Local laws regarding safety requirements related to the use of the public right-of-way.

B. Verizon Wireless, and its successors and assigns, shall comply with all applicable Federal, State and Local Laws requiring permits prior to beginning construction, and shall obtain any applicable permits that may be required by the Village of Loch Arbour.

C. Such permission be and is hereby given upon the condition and provision that Verizon Wireless, and its successors and assigns, shall indemnify, defend and hold harmless the Village of Loch Arbour, its officers, agents and servants, from any claim of liability or loss or bodily injury or property damage resulting from or arising out of the acts or omissions of Verizon Wireless or its agents in connection with the use and occupancy poles located within the public right-of-way, except to the extent resulting from the acts or omissions of the Village of Loch Arbour.

D. Verizon Wireless shall, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$1,000,000, for injury to or death of one or more persons in any one occurrence and \$500,000, for damage or destruction to property in any one occurrence. Verizon Wireless shall include the Village of Loch Arbour as an additional insured.

E. Verizon Wireless shall be responsible for the repair of any damage to paving, existing utility lines, or any surface or subsurface installations, arising from its construction, installation or maintenance of its facilities.

F. Notwithstanding any provision contained herein, neither the Village of Loch Arbour nor Verizon Wireless shall be liable to the other for consequential, incidental, exemplary, or punitive damages on account of any activity pursuant to the this instrument.

G. This instrument shall be adopted on behalf of the Village of Loch Arbour by the Board of Commissioners of the Village of Loch Arbour and attested to by the Village of Loch Arbour Clerk who shall affix the Village of Loch Arbour Seal thereto.

H. The permission and authority hereby granted shall continue for the same period of time as the grant to parties whose poles Verizon Wireless is jointly using.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None Absent: None

REPORTS/DISCUSSION

A. **School Tax Issue** - Mayor Fernicola stated no further updates to the School Tax Issue. The Village is still waiting for a response from the State of New Jersey, Commissioner of the Department of Education.

B. Resolution - UPON MOTION of Commissioner Cheswick, seconded by Commissioner D' Angelo, carried that the following resolution be adopted:

WHEREAS, the Village of Loch Arbour has a Shared Services Agreement with the Borough of Deal for Refuse and Recyclable Pickup in the Village,

WHEREAS, the Agreement states Branches/Brush shall be picked up Monday, Tuesday, Thursday and Friday each week.

WHEREAS, due to the inefficiency of trying to pick up the Branches and Brush every weekday in the Village:

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Village of Loch Arbour that the Shared Services Agreement be amended as follows:

1. Starting September 1, 2016 all Branches and Brush will only be picked up once per week on THURSDAYS. All other specifications will still be in effect.

2. This change will be for a three month trial basis and will be revisited after the trial period.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None Absent: None

Items C and D of Reports/Discussion will be heard when the participants arrive at the meeting.

PUBLIC HEARING

UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried, that the meeting be opened to the public for comments.

Cathy Cunniff, Euclid Avenue, stated the fee structure of the Shared Services Agreement between the Village of Loch Arbour and the Borough of Deal should be revisited, due to the fact that the Branches/Brush pickup schedule has been reduced.

Ms. Cunniff, commented about the location of the garbage truck and the constant running of the truck and the environmental issue with doing so.

Ms. Cunniff, commented about a ticket issued for parking more than six inches away from the curb.

Albert Sarkessian, Edgemont Drive, thanked the Mayor and Commissioners for purchasing an extension of the walkway mat at the Village Beach Club.

Dr. Sarkessian and Mrs. Sarkessian had a lengthy conversation with the Mayor regarding the dilapidated house at 205 Edgemont Drive. The Mayor stated he would reach out to the owner and find out their intentions with regards to the property.

Mark Daisto, Elberon Avenue, stated there is a problem with residents blocking their own driveways in the Village. Mayor Fernicola stated he would contact Chief Neuman to discuss this problem.

Paul Williams, Euclid Avenue, asked the status of the installation of temporary speed bumps on Euclid Avenue. Mayor Fernicola stated the project has been put on hold at this time, due to installing the speed bumps in the cement vs. the asphalt.

Dr. Williams asked the Mayor and Commissioners their opinion about the Historic Preservation Ordinance. The Mayor and Commissioners reserved their comments until after they hear the presentation by Robert Fernicola.

Remo Daisto, Elberon Avenue, is in favor of putting in temporary speed bumps to deter speeding on the beach block of Elberon Avenue.

Cathy Cunniff, Euclid Avenue, stated she is not in favor of putting speed bumps on the beach block of Euclid Avenue.

Simon Williams, Euclid Avenue, commented about the proposed Drone Ordinance.

UPON MOTION, of Mayor Fernicola, seconded by Commissioner D'Angelo, carried, that the meeting be closed to the public for comments.

C. Allenhurst First Aid Squad - The Mayor and Commissioners along with all residents that were present, were given a tour of the new Ambulance that was just purchased by the Borough of Allenhurst.

D. Historic Preservation Report - Robert Fernicola summarized the report of the 5 Member Committee, which were appointed by the Mayor and Commissioners. Dr. Fernicola reported the Committee unanimously agreed a Historic Preservation Ordinance should be adopted in the Village of Loch Arbour. Dr. Fernicola spoke about different Historic Preservation Ordinances adopted in municipalities around the State of New Jersey. Dr. Fernicola specifically referenced the Rocky Hill Historic Preservation Ordinance. He also spoke about the criteria and the guidelines that would have to be adopted, if the Ordinance was adopted. Dr. Fernicola stated an Element must be added to the Master Plan to adopt a Historic Preservation Ordinance in the Village of Loch Arbour.

No Executive Session.

There being no further business, and UPON MOTION of Mayor Fernicola, seconded by Commissioner D'Angelo, carried that the meeting be finally adjourned at 8:00 p.m.

Marilyn Simons, RDC
Village of Loch Arbour