

Livestream From Facebook @ facebook.com/LivingstonTownshipNJ – 7pm

Notice of this meeting has been given in accordance with the "Open Public Meetings Law."

"Annual Notice" was faxed to the West Essex Tribune and the Star-Ledger on January 2, 2020.

"48-hr. Notice" was faxed to the West Essex Tribune and the Star-Ledger on April 28, 2020 and posted on the Livingston Township website (livingstonnj.org).

Statement of Decorum

While the Township Council is in session, I would like to remind the Public that this is a public meeting via livestream. During the Public Comment section everyone who wishes to ask a question will have the opportunity to pose their question / statement via email to the meeting administrator (livcomments@livingstonnj.org). Please type your name and address first, followed by your question / statement.

The emails will be read aloud, one at a time, and responded to in consecutive order. After your question / statement is addressed you may respond with a follow up comment also. Please be patient and respectful, recognizing that this is a new process for all of us.

1. Roll Call
2. Silent Meditation and Pledge of Allegiance
3. Presentation
4. 2020 Municipal Budget
 - a) Res 20-121 Introduction of 2020 Municipal Budget 5/11/20
 - b) Res 20-122 Establishing 2020 Municipal Open Space Tax Rate Packet
 - c) Res 20-123 Authorizing Calculation of 2020 Reserve for Uncollected Taxes Packet
5. Essex County Update/Questions
6. Closed Session
 - a) Personnel (Appointments) Packet
 - b) Attorney Client Privilege (Residential Adult Inclusionary Zoning)
 - c) Attorney Client Privilege (Zoning – Drive Thrus and Drive Ups)
7. Legal Fees
 - a) Murphy McKeon Packet
 - b) McCarter & English Packet
8. New Business
 - a) Pop-up Drive In Movie Nights – Ad Hoc Committee Packet
 - b) Coronavirus / COVID 19 Update
9. Public Comments on Agenda Items
- 10.* Resolution - Consent Agenda [Includes All Items Marked "***"] R-20-120
- 11.* Approval of Minutes
 - a) Regular Minutes April 27,2020 Packet
 - b) Closed Session Minutes April 27, 2020 Packet
 - c) Special Meeting Minutes May 1, 2020 Packet
- 12.* Approval of Licenses
13. Final Hearing Ordinances
14. Proposed Ordinances
 - a) Ord. 6-2020 Authorizing the Establishment of a Government Energy Aggregation Program Packet
 - b) Ord. 7-2020 Amending Chapter 170 of the Code of the Township of Livingston to Establish the Section 170.107.1 Mixed Use Overlay District Packet
 - c) Ord. 8-2020 Exceed Calendar Year 2020 Municipal Budget Appropriation Limits and to Establish CAP Bank Packet
 - d) Ord. 9-2020 Amending Chapter 170 of the Code of the Township of Livingston Permitted Uses 5/11/20
15. Resolutions
16. Public Comment
17. Recess

GLENN R. TURTLETAUB
Township Clerk

RC 5/11/20
46

R-20-122

**RESOLUTION ESTABLISHING 2020
MUNICIPAL OPEN SPACE TAX RATE**

WHEREAS, a referendum was approved by the residents of the Township of Livingston in November, 2002 to establish a Municipal Open Space, Recreation, Farmland and Historic Preservation Trust Fund; and,

WHEREAS, a referendum was approved by the residents of the Township of Livingston in November, 2008 to permit the Municipal Open Space, Recreation, Farmland and Historic Preservation Trust Fund to continue in perpetuity; and,

WHEREAS, The Municipal Open Space, Recreation, Farmland and Historic Preservation Trust Fund is to be funded through an annual tax levy not to exceed three cents (\$0.03) per one hundred dollars (\$100) of assessed valuation;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey that the 2020 Municipal Open Space, Recreation Farmland and Historic Preservation Trust Fund tax levy shall be one-half cent (\$0.005) per one hundred dollars (\$100) of assessed valuation.

Rufino Fernandez, Mayor

Glenn R. Turteltaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney

Adopted: May 11, 2020

RE 5/11/20
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**RESOLUTION AUTHORIZING
THE CALCULATION OF THE 2020
RESERVE FOR UNCOLLECTED TAXES
PURSUANT TO N.J.S. 40A:4-41c(2)**

WHEREAS, N.J.S. 40A:4-41c(2), enacted into law (P.L. 1997, c. 28) and amended by Chapter 56 of P.L. 2010, provides alternate methods of calculating the reserve for uncollected taxes; and

WHEREAS, N.J.S. 40A:4-41c(2) permits the governing body of any municipality in which tax reductions have resulted from tax appeal judgements of the County Tax Board pursuant to R.S. 54:3-21 et seq., or the State Tax Court pursuant to R.S. 54:48-1 et seq., to elect to calculate the current year reserve for uncollected taxes by reducing the certified tax levy of the prior year by the amount of the tax levy reductions resulting from those judgements; and

WHEREAS, this election shall be made by resolution, approved by a majority vote of the full membership of the governing body prior to the introduction of the annual budget pursuant to N.J.S. 40A:4-5; and

WHEREAS, the Township of Livingston has determined that it is advantageous to utilize the method provided under N.J.S. 40A:4-41c(2)

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Livingston, that the maximum percentage to be used for the reserve for uncollected taxes in the 2020 budget is _____% based on N.J.S. 40A:4-41c(2).

BE IT FURTHER RESOLVED, that two (2) certified copies of this resolution be filed with Director of the Division of Local Government Services.

Rufino Fernandez, Mayor

Glenn R. Turtleaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Township Attorney

Adopted: May 11, 2020

RC 5/11/20
10.

R-20-120

RESOLUTION

**Accepting, Approving and/or Adopting the
Consent Agenda of May 11, 2020**

WHEREAS, the Township Council of the Township of Livingston has determined that certain items on its agenda which have the unanimous approval of all Councilmembers and do not require comment shall be termed the "Consent Agenda"; and

WHEREAS, the Township Council has determined that to increase its efficiency, the Consent Agenda shall be adopted with one resolution;

NOW, THEREFORE, BE IT RESOLVED by the Township Council that the items on the regular agenda for May 11, 2020, attached hereto, which are preceded by an "*" are the Consent Agenda and are hereby accepted, approved and/or adopted.

Approved as to form:

Rufino Fernandez, Jr. Mayor

Sharon L. Weiner
Township Attorney

Glenn R. Turtletaub, Township Clerk

Adopted: 5/11/20

RC 5/11/20
14a

ORDINANCE No. 6-2020

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AUTHORIZING THE ESTABLISHMENT OF A GOVERNMENT ENERGY AGGREGATION PROGRAM

WHEREAS, the Government Energy Aggregation Act, N.J.S.A. 48:3-93.1 *et seq.* governs the establishment of a government energy aggregation program, which is a government-operated purchasing cooperative through which multiple energy consumers purchase energy together under the auspices of a government aggregator; and

WHEREAS, the New Jersey Board of Public Utilities (“BPU”) has promulgated rules (N.J.A.C. 14:4-6) for the implementation of government energy aggregation programs; and

WHEREAS, pursuant to the Government Energy Aggregation Act, N.J.S.A. 48:3-93.1 *et seq.*, the Township seeks to establish a Government Energy Aggregation Program (“Program”) for the provision of electricity within the Township, for the purpose of obtaining power supply cost savings for residential and business participants in the Township; and

WHEREAS, the Livingston Township Council intends to serve as the Lead Agency conducting a Government Energy Aggregation Program in the Township of Livingston and, in that capacity and consistent with applicable rules, to solicit proposals and enter into a contract for the provision of electric generation services on behalf of residential and business customers within the boundaries of the Township, to the extent that such a contract will produce power supply cost savings to residents and businesses; and

WHEREAS, the Livingston Township Council will from time to time during the Effective Period as defined below solicit proposals from electric power suppliers for electric generation services through the Program in which the Livingston Township Council will act as Lead Agency of the Livingston Community Energy Aggregation Program; and

WHEREAS, the Livingston Township Council will from time to time during the Effective Period as defined below issue one or more Request for Proposals for electric generation services and energy aggregation services on behalf of the Livingston Community Energy Aggregation Program pursuant to the Local Public Contract Law Regulations, the Government Energy Aggregation Act and the Electric Discount and Energy Competition Act; and

WHEREAS, the Livingston Township Council is interested in mandating that a fraction of the energy provided by the Livingston Community Energy Aggregation Program come from renewable energy sources, and will therefore include provisions for the inclusion of renewable energy in the Request for Proposals for electric generation services and energy aggregation services on behalf of the Livingston Community Energy Aggregation Program; and

WHEREAS, the Livingston Township Council will only award contracts for said electric generation service and energy aggregation services to electric power suppliers that are deemed qualified and that submit price bids lower than the prevailing price for utility-provided basic generation service;

WHEREAS, pursuant to applicable BPU rules, the Township needs to enter into Electric Distribution Company Aggregation Agreements with PSE&G and JCP&L; and

WHEREAS, N.J.S.A. 48:3-93.1 *et seq.* requires the Program to be established by ordinance.

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

SECTION 1. The Township hereby establishes a Government Energy Aggregation Program, in accordance with the provisions of the Government Energy Aggregation Act, N.J.S.A. 48:3-93.1 *et seq.*

SECTION 2. The Township Council shall authorize the Mayor to execute and the Clerk to attest to the execution of and Electric Distribution Aggregation Agreement, in a form acceptable to the Township attorney, with JCP&L and with PSE&G.

SECTION 3. The Livingston Township Council will act as Lead Agency of the Livingston Community Energy Aggregation Program and, in that capacity, and consistent with applicable rules, will solicit proposals for electric generation service and energy aggregation services on behalf of Township residents and businesses, and enter into a contract for such services provided that the lowest qualified bid price is below the prevailing price for utility-provided basic generation service.

SECTION 4. As Lead Agency the Livingston Township Council will execute a master performance agreement that obligated the participants in the Livingston Community Energy Aggregation Program to purchase electricity at terms and conditions stated therein with a third party supplier who has been awarded the contract by the Lead Agency on behalf of participating members of the Livingston Community Energy Aggregation Program, and provided that such contract shall be at prices reasonably forecast and estimated by the Livingston Township Council to provide savings to participants relative to the price charged for basic generation service by PSE&G and JCP&L.

SECTION 5. The authorization provided to the lead agent shall be valid until October 1, 2025 (the "Effective Period"), at which time the Livingston Community Energy Aggregation Program will be subject to renewal at the discretion of the Livingston Township Council.

SECTION 6. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 8. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

SECTION 9. This Ordinance shall take effect twenty days from final passage and publication in accordance with the law.

RUFINO FERNANDEZ, JR., Mayor

GLENN R. TURTLETAUB, Township Clerk

Approved as to form:

SHARON L. WEINER, Township Attorney
Introduced: May 11, 2020

RE 8/11/20
146.

ORDINANCE NO. 7-2020

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING CHAPTER
170 OF THE CODE OF THE TOWNSHIP OF LIVINGSTON
TO ESTABLISH THE SECTION 170-107.1 MIXED USE OVERLAY DISTRICT

WHEREAS, the 2018 Master Plan recommends that appropriately located parcels in the B Central Business District could contain buildings of two (2) or more stories, with residential units above retail or compatible service businesses, so as to add residential vitality to the downtown and further recommends that such buildings, particularly at “gateways” to the community, should be elevator-served if more than two (2) stories; and

WHEREAS, the Housing Element & Fair Share Plan of the Master Plan recommends that such mixed use be achieved by overlay zoning.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey, as follows:

Section 1. The zone districts list in §170-85 of the Code of the Township of Livingston, as heretofore amended, is further amended by adding an MU-1 Mixed-Use Overlay District, and the Zoning Map referenced in §170-86 of the Code of the Township of Livingston, as heretofore amended, is hereby further amended to indicate an MU-1 Mixed-Use Overlay District for Lots 50, 51 and 52 in Tax Block 2700.

Section 2. A new §170-107.1 is hereby added to create a new MU-1 Mixed-Use Overlay District as follows:

§170-107.1. MU-1 Mixed-Use Overlay District.

A. Purpose: The purpose of the MU-1 Mixed-Use Overlay District is to permit the provision of inclusionary residential development over permitted ground floor non-residential uses.

B. Primary intended uses:

(1) On the ground floor

(a) retail sales and services permitted in the B Central Business District not exceeding 3600 sq. ft. in the aggregate; of which a medical, dental or other professional office not exceeding 1100 sq. ft. shall be in a separate single-floor building.

- (b) parking, as required by §107-107.1.D.(4), may be provided on the ground floor behind or adjacent to such sales or office uses, for residential and non-residential tenants or visitors.
 - (c) Residential use lobby, tenant amenity spaces, mail, and mechanical/storage spaces for the building.
- (2) On the second and third floors a total of 26 residential units of which no less than 4 of the units shall be deed restricted as units available only to low- and moderate-income households. No more than 9 third floor units may be duplex 2-bedroom units. All other third floor units may have lofts; however, such lofts shall not be utilized as sleeping accommodations. Extension of lofts or duplex units into the volume of the pitched roof assembly shall not be deemed to constitute an additional floor of the building.
- (3) Two (2) principal buildings are permitted on the same lot.
- C. Prohibited Uses. Any use other than those permitted in §170-107.1.B above is prohibited.
- D. Required Conditions.
 - (1) Height of building. Not more than 53 feet as measured from the average existing top of curb grade along the S. Livingston Avenue frontage.
 - (2) Building setbacks:
 - (a) From E. Northfield Road curb: 22 feet.
 - (b) From S. Livingston Avenue curb: 12 feet.
 - (c) From the intersection of those two curbs: 35 feet.
 - (d) From Tax Lot 49: 10 feet.
 - (e) From Tax Lot 53: 10 feet.
 - (3) Decks and patios:
 - (a) The second and third floors of the building shall be set back from S. Livingston Avenue such distance as to allow 1500 square feet of the roof above the ground floor to serve as a common amenity deck for the residents.

(b) Up to 3 second floor residential units may have a private patio area on that roof not exceeding 150 square feet each.

(4) Parking:

(a) There shall be no fewer than 63 parking spaces, of which 3 shall be handicap accessible and not more than 30 shall be assigned and restricted to the residential units. One electric charging station may be provided.

(b) Off-street surface parking shall be set back not less than 10 feet from the right-of-way line of S. Livingston Avenue and of E. Northfield Road.

(c) Tandem parking on the ground floor may be provided when both spaces in the pair of spaces are for the same residential unit or commercial tenant.

(5) Landscaping and sidewalks:

(a) There shall be a landscaped street level plaza, open to the public, of not less than 800 square feet as measured from the face of the building and the intersection of the curbs of S. Livingston Avenue and Northfield Road.

(b) Sidewalks shall be provided along S. Livingston Avenue and E. Northfield Road that are not less than 5 feet wide and of materials, design and accompanying landscaping consistent with those of the Business Improvement District.

(6) Minimum lot area: 39,000 square feet.

(7) Maximum building coverage: 52 %

(8) Maximum impervious coverage: 85 %

(9) Elevator: The building with residential units shall be elevator-served.

Section 3. Severability. The various sections, clauses, provisions and portions of this Ordinance are severable, and if any section, clause, provision or portion is declared invalid or unconstitutional by a court of competent jurisdiction all the remainder of this Ordinance shall remain in full force and effect.

Section 4. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

Section 5. This Ordinance shall take effect upon final passage and publication in accordance with law.

RUFINO FERNANDEZ, JR., Mayor

GLENN R. TURTLETAUB, Township Clerk

Approved as to form:

SHARON L. WEINER, Township Attorney

Introduced:

Adopted:

RES 11/20
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ORDINANCE NO. 8-2020

TOWNSHIP OF LIVINGSTON

**ORDINANCE TO EXCEED THE CALENDAR YEAR 2020
MUNICIPAL BUDGET APPROPRIATION LIMITS
AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A: 4-45.14)**

WHEREAS, the Local Government Cap Law, N.J.S. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous year's final appropriations, subject to certain exceptions; and,

WHEREAS, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

WHEREAS, the Township Council of the Township of Livingston in the County of Essex finds it advisable and necessary to increase its calendar year 2020 budget by up to 3.5% over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

WHEREAS, the Township Council hereby determines that a 3.5% increase in the budget for said year, amounting to \$_____ in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS the Township Council hereby determines that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED, by the Township Council of the Township of Livingston, in the County of Essex, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the calendar year 2020 budget year, the final appropriations of the Township of Livingston shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by 3.5%, amounting to \$_____, and that the calendar year 2020 municipal budget for the Township of Livingston be approved and adopted in accordance with this ordinance; and,

BE IT FURTHER ORDAINED, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

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

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

Rufino Fernandez, Mayor

Glenn R. Turteltaub, Township Clerk

Approved as to form:

Sharon L. Weiner, Esq.
Township Attorney

Introduced: May 11, 2020

Adopted: _____, 2020