

April 19, 2021

Note: This meeting was held by teleconference for the public.

Minutes of the public meeting of the Mayor and Council of the Borough of Dunellen held on April 19, 2021.

Mayor Jason F. Cilento called the meeting to order at 7:00 p.m. and he led the Pledge of Allegiance.

Municipal Clerk William Robins read the Sunshine Statement and called the Roll.

Present: Jason Cilento, April Burke, Jessica Dunne, Stacy Narvesen, Tremayne Reid, Trina Rios and Daniel Sigmon

On the motion of Mrs. Burke and seconded by Mrs. Rios it was moved to accept the Minutes of the Meeting of April 5, 2021.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

Proclamation Supporting 2021 UDrive. UText. UPay. Distracted Driving Crackdown

Proclamation

Supporting the 2021 *U-Drive. U-Text. U-Pay.* Distracted Driving Crackdown April 1 - 30, 2021

Whereas, distracted driving is a serious, life-threatening practice that is preventable; and

Whereas, distracted driving can result in injuries and deaths to all road users (motorists, pedestrians and bicyclists); and

Whereas, distracted driving occurs when drivers divert their attention away from the task of driving to focus on another activity instead; and

Whereas, in 2018 alone distracted driving-related crashes resulted in 2,841 deaths and 400,000 injuries on our nation's roads; and

Whereas, in New Jersey distracted driving was listed as a contributing circumstance in 50-percent of all motor vehicle crashed in 2018; and

Whereas, the State of New Jersey will participate in the nationwide *Distracted Driving 2021 Crackdown* from April 1 - 30, 2021 in an effort to raise awareness and decrease driver distraction through a combination of enforcement and education; and

Whereas, the national slogan for the campaign is *UDrive. UText. UPay*; and

Whereas, a reduction in distracted driving in New Jersey will save lives on our roadways.

Therefore, be it resolved that the Governing Body of the Borough of Dunellen, County of Middlesex, State of New Jersey, declares its support for **the *Distracted Driving 2021 Crackdown*** both locally and nationally from April 1 - 30, 2021 and pledges to increase awareness of the dangers of distracted driving.

On the motion of Mrs. Rios and seconded by Mr. Sigmon it was moved to accept the following:

ORDINANCE 2012-12

The following ordinance is being Introduced for first reading at a meeting of the Governing Body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on April 19, 2021. It will be further considered for final passage, after public hearing thereon, at a meeting of said governing body to be held in the Municipal Building, 355 North Avenue, Dunellen, New Jersey, in said County, on May 3, at 7:00 p.m., or as soon as is possible after review and comment by the Dunellen Planning Board. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the Clerk's office for members of the general public who have requested the same.

AN ORDINANCE BY THE BOROUGH OF DUNELLEN IN THE COUNTY OF MIDDLESEX, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING SECTION 115 OF THE BOROUGH OF DUNELLEN MUNICIPAL CODE

WHEREAS, in 2020 New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called "cannabis" for adults at least 21 years of age; and

WHEREAS, on February 22, 2021, Governor Murphy signed into law P.L. 2021, c. 16, known as the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" (the "Act"), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

WHEREAS, the Act establishes six marketplace classes of licensed businesses, including:

- Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;

- Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- Class 4 Cannabis Distributor license, for businesses involved in transporting cannabis plants in bulk from on licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
- Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and
- Class 6 Cannabis Delivery license, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchased items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

WHEREAS, section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”), cannabis distributors or cannabis delivery services allowed to operate within their boundaries, as well as the location, manner, and times of operation of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

WHEREAS, section 31b of the Act authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality; and

WHEREAS, section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

WHEREAS, pursuant to section 31b of the Act, the failure to do so shall mean that for a period of five years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

WHEREAS, at the conclusion of the initial and any subsequent five-year period following a failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

WHEREAS, the Governing Body of the Borough of Dunellen has determined that, due to present uncertainties regarding the potential future impacts that allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and on the Borough of Dunellen in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough of Dunellen's residents and members of the public who visit, travel, or conduct business in the Borough of Dunellen, to amend the Borough of Dunellen's zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Borough of Dunellen; and

WHEREAS, officials from two prominent non-profit organizations that have been established for the purpose of advising New Jersey municipalities on legal matters such as have been presented by the Act (those organizations being the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys) have strongly urged that, due to the complexity and novelty of the Act; the many areas of municipal law that are or may be implicated in decisions as to whether or to what extent cannabis or medical cannabis should be permitted for land use purposes or otherwise regulated in any particular municipality; and the relatively short duration in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning districts subject to unspecified conditions, the most prudent course of action for all municipalities, whether or not generally in favor of cannabis or medical cannabis land development and uses, would be to prohibit all such uses within the Act's 180-day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts;

NOW THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, as follows:

1. Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in the Borough of Dunellen, except for the delivery of cannabis items and related supplies by a delivery service. The types of businesses which are hereby prohibited from operating anywhere in the Borough of Dunellen include all Cannabis Cultivators, Cannabis Manufacturers, Cannabis Wholesalers, Cannabis Distributors, Cannabis Retailers and Cannabis Delivery Services except as set forth herein.

2. Section 115 of the Borough of Dunellen Municipal Code is hereby amended by adding to the list of prohibited uses, the following: "All classes of cannabis establishments or cannabis distributors or cannabis delivery services as said terms are defined in section 3 of P.L. 2021, c. 16, but not the delivery of cannabis items and related supplies by a delivery service."

3. Any article, section, paragraph, subsection, clause, or other provision of the Borough of Dunellen Municipal Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

4. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only

to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

5. This ordinance shall take effect upon its passage and publication and filing with the County of Middlesex Planning Board, and as otherwise provided for by law.

Mr. Bruder noted that the source for this draft of the ordinance is from the New Jersey League of Municipalities, and explained that municipalities have 180 days (until August 21, 2021) to "opt-out" of the statute permitting the sale and distribution of cannabis. Because this is a zoning ordinance, we have to send it to the Planning Board. If you "opt-out" now, you can choose to opt-in at any time you want. Mr. Bruder also reminded the Council that there should not be any discussion upon Introduction as the public has a right to hear any discourse on any ordinance.

Dr. Dunne asked about the process of opting-in. Mr. Bruder responded that there is no clarity on this on the NJ League of Municipalities' website, but his sense is that it would be by ordinance.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Burke and seconded by Mrs. Rios it was moved to accept the following:

ORDINANCE 2021-13

AN ORDINANCE OF THE BOROUGH OF DUNELLEN REQUIRING LICENSING OF MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

The following ordinance is being Introduced for first reading at a meeting of the Governing Body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on April 19, 2021. It will be further considered for final passage, after public hearing thereon, at a meeting of said governing body to be held in the Municipal Building, 355 North Avenue, Dunellen, New Jersey, in said County, on May 3, 2021 at 7:00 p.m. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the Clerk's office for members of the general public who shall request the same.

WHEREAS, pursuant to N.J.S.A. 40: 48-1 and N.J.S.A. 40:48-2, a governing body of a municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good of the government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants,

and as may be necessary to carry into effect the powers and duties conferred and imposed by these subtitles, or by any law; and

WHEREAS, neither the State of New Jersey’s statutory scheme regulating therapists, N.J.S.A. 45:11-53 et seq., known as the Massage and Bodywork Therapist Licensing Act” nor the companion New Jersey Administrative Code provisions, N.J.A.C. 13:37A-1.1 et seq. which are designed to effectuate the statutory provisions, abrogate a municipality’s ability to regulate the opening and maintenance of massage parlors and the practices of massage therapists therein; and

WHEREAS, the governing body of the Borough of Dunellen hereby finds that the business of operating a massage business is business affecting the public health, safety and general welfare of the municipality and its inhabitants; and

WHEREAS, the governing body hereby finds as a fact that the operation of any establishment, public or private, as a massage parlor or any similar type of business where physical contact with the recipient of the services provided is by a person of the same or opposite sex, which physical contact induces or results in sexual contact, behavior or conduct, proscribed or otherwise, is a matter of public concern since the same affects the general health and welfare of the citizens of this municipality; and

WHEREAS, in light of the recent pandemic and information learned therefrom, any business practices engaging in close physical contact can perpetuate the spread of illnesses and, as such, regulating businesses such as massage parlors where employees are in direct contact with patrons, is in the best interests of the citizens of this municipality; and

WHEREAS, the provisions hereinafter enacted and described are deemed to be a necessity in the public interest, and these findings of fact and description of legislative intent are hereby declared as a matter of legislative determination.; and

WHEREAS, based on the foregoing, the governing body finds that it is within the public interest to regulate massage establishments and massage therapists located and / or practicing within the Borough;

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

1. A new Chapter 191 of the Borough of Dunellen Municipal Code entitled “Massage Establishments and Massage Therapists” is hereby added to read as follows:

§ 191-1 Purpose.

The purpose of this chapter is to establish regulations and permit requirements for the operation of massage and bodywork therapy establishments in order to protect and preserve the health, safety and welfare of the citizens of the Borough of Dunellen, and the patrons of such

establishments, and to minimize and control adverse utilization of such establishments to preserve the quality of life, protect and preserve the character of the Borough.

§ 191-2 **Definitions.**

For the purpose of this chapter, the following terms, phrases and words shall have the meanings stated herein.

MASSAGE AND BODYWORK THERAPIES

The systems of activity of structured touch which include, but are not limited to, holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique and use of visual, kinesthetic, auditory and palpating skills to assess the body for purposes of applying therapeutic massage and bodywork principles. Such application may include, but is not limited to, the use of therapies such as heliotherapy or hydrotherapy, the use of moist hot and cold external applications, explaining and describing myofascial movement, self-care and stress management as it relates to massage and bodywork therapies. Massage and bodywork therapy practices are designed to affect the soft tissue of the body for the purpose of promoting and maintaining the health and well-being of the client. Massage and bodywork therapies do not include the diagnosis of illness, disease, impairment or disability.

MASSAGE AND BODYWORK THERAPIST

A person certified and/or licensed to practice massage and bodywork therapies pursuant to the provisions of the Massage, Bodywork and Somatic Therapist Certification Act, N.J.S.A. 45:11-53.

MASSAGE AND BODYWORK THERAPY ESTABLISHMENT

Any establishment, business or operation wherein massage and bodywork therapies are administered or are permitted to be administered, which shall include the operation of an outcall massage and bodywork therapy service.

§ 191-3 **Permits required.**

A.

Massage and bodywork therapy establishment permit required. No person, firm, corporation, organization or other entity shall own, maintain, operate or conduct a massage and bodywork therapy establishment or utilize any premises in the Borough of Borough as or for a massage and bodywork therapy establishment unless or until such person or entity first obtained a permit for such establishment or premises from the Borough of Borough in accordance with the terms and provisions of this chapter.

B.

Massage and bodywork therapist registration/documentation required. No person shall practice massage and bodywork therapies, unless he/she has a valid and subsisting massage and

bodywork therapist permit or license issued to him/her by the New Jersey Board of massage and bodywork therapy, pursuant to the terms and provisions of N.J.S.A. 45:11-53 et seq., and evidence of same has been submitted to the Borough of Dunellen in accordance with the terms and provisions of this chapter.

§ 191-4 Applications; fees.

A.

Every applicant for a massage and bodywork therapy establishment permit shall file an application with the Borough Clerk upon a form to be provided by said Clerk and pay an annual fee for the sum of:

(1)

\$250 per massage table;

(2)

\$100 per massage chair; and

(3)

\$500 per shower fixture or room, whichever is greater in number.

B.

Upon receipt of a completed application for a massage and bodywork therapy establishment, full payment of the fees herein, and registration of all massage and bodywork therapists who shall provide services and/or be employed at the massage and bodywork therapy establishment, the Borough Clerk shall issue a license to operate, but not prior to the application being processed and approvals granted by all responsible parties. Responsible parties are granted up to 30 days to review and act on the application following receipt of the completed application. Notwithstanding anything to the contrary herein, prior to performing any services as a massage and bodywork therapist at any establishment herein described, the therapist must first register, as herein required.

§ 191-5 Application requirements.

A.

Application for a massage and bodywork therapy establishment permit. Any person, firm, corporation, organization or other entity applying for a massage and bodywork therapy establishment permit shall submit the required application, together with the associated fees, which shall include the following information:

(1)

The type of ownership of the establishment (i.e., whether individual, partnership, corporation or otherwise).

(2)

The name, style and designation under which the establishment is to be conducted.

(3)

The address and all telephone numbers and email address(es), where the establishment is to be maintained, operated, and conducted.

(4)

A complete list of the name(s) and address(es) of all massage and bodywork therapists, along with a copy of each therapist's certificate and/or license issued by the State of New Jersey issued to the applicant pursuant to N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37-16.1 et seq., name(s) and address(es) of other employees at the establishment, and the name and residence address of the manager or other person principally in charge of the day-to-day operation of the establishment.

(5)

The following personal information concerning the applicant, if an individual; concerning each stockholder holding direct or beneficial interest in stock of the corporation, each officer and director, if the applicant is a corporation; concerning each partner, including limited partners, if the applicant is a partnership; concerning the members, if the applicant is a limited-liability company; and concerning the manager or other person principally in charge of the day-to-day operation of the establishment:

(a)

The name, residence address and residence telephone number. It shall be an ongoing responsibility of the applicant to notify the Borough, in writing, of any change in name, address or telephone number of the individuals identified.

(b)

The two previous addresses immediately prior to the present address of the individuals identified.

(c)

Written proof of age.

(d)

Height, weight, sex and color of hair and eyes.

(e)

Two front-faced portrait photographs of the individuals taken within 30 days of the date of the application, and at least two inches by two inches in size.

(f)

The establishment or similar business history and experience, including, but not limited to, whether or not such person has previously operated such an establishment, along with the location of such prior operations, whether or not such person has previously applied for a license or permit for such an establishment, and if same was denied, revoked or suspended, and the reasons therefor.

(6)

Floor plans for the proposed facility.

(7)

The names and addresses of three adult residents of the State of New Jersey who will serve as character references for the applicant. These references must be persons other than relatives and business associates of the applicant.

B.

Registration/documentation of a massage and bodywork therapist. Any person registering as a massage and bodywork therapist shall submit the following information.

(1)

The name, residence address and residence telephone number of the therapist. It shall be an ongoing responsibility of the therapist to notify the Borough, in writing, of any change in name, address or telephone number.

(2)

A copy of a certificate and/or license issued by the State of New Jersey issued to the applicant pursuant to N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37-16.1 et seq.

(3)

Two front-faced portrait photographs of the individual taken within 30 days of the date of the application, and at least two inches by two inches in size.

(4)

It shall be an ongoing responsibility of any person registered, or requiring registration as hereunder outlined, to notify the Borough, in writing, of any change in name, address or telephone number of the individuals identified.

§ 191-6 Building requirements; inspections.

Upon receipt of an application for a massage and bodywork therapy establishment permit, the Borough Clerk shall refer the application to the Police Department, the Health Officer and/or the Zoning Officer, and any other department deemed appropriate, which departments may examine the application and inspect the premises where the proposed massage and bodywork therapy establishment is to be maintained, operated or conducted. No massage and bodywork therapy establishment shall be issued a permit or be maintained, operated or conducted in the Borough unless an approval by the Borough Clerk's Office, after review and approval by the Police Department, Health Department and such other departments that shall inspect the premises, has been granted indicating that the establishment complies with the minimum requirements of this ordinance as well as the zoning and health codes for businesses operating in the Borough of Dunellen.

§ 191-7 Display of permits.

The massage and bodywork therapy establishment shall display the permit issued by the Borough, and the certificate and/or license issued by the State of New Jersey to each and every massage and bodyworks therapist pursuant to N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37-

16.1 et seq. employed and/or conducting business at the establishment, in an open and conspicuous place within the premises of the establishment.

§ 191-8 Operating requirements.

A.

Every portion of the massage and bodywork therapy establishment, including all appliances and apparatus, shall be kept clean and operated in a sanitary condition.

B.

Price rates for all services shall be prominently displayed in the reception area in a location available to all prospective customers.

C.

All employees, including massage and bodywork therapists, shall be clean and wear clean, nontransparent outer garments.

D.

Dressing areas for employees and customers shall be available on the premises. Such dressing areas shall be shielded from public view and provide the individual utilizing same privacy from all other individuals. If the dressing area is also used as the therapy/massage room, then adequate procedures shall be in place to safeguard the privacy of the individual using same as a dressing area. In no case shall these dressing areas be locked when both a client and any employee are present.

E.

All massage and bodywork therapy establishments shall provide clean, laundered sheets and towels in sufficient quantity, which shall be laundered after each use thereof and stored in a sanitary manner.

F.

The sexual or genital area of customers must be covered by towels, cloths or undergarments when in the presence of an employee or massage and bodywork therapist.

G.

It shall be unlawful for any person knowingly, in a massage and bodywork therapy establishment, to place his or her hand upon or touch with any part of his or her body, to fondle in any manner, or to massage a sexual or genital area of any other person.

H.

No massage and bodywork therapist, employee or manager shall perform, or offer to perform, any act which would require the touching of the customer's sexual or genital area.

I.

All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the establishment is in operation. Bathtubs and showers shall be

thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry. The massage and bodywork therapy establishment shall maintain for inspection logs of not less than the 30 most recent days evidencing: i) date/time that repairs, maintenance and cleaning of each portion of the establishment occurred; and ii) the identity of the person(s) who performed such repair, maintenance or cleaning.

J.

Oils, creams, lotions and other preparations used in administering massage and bodywork therapies shall be kept in clean, closed containers or cabinets.

K.

Animals, except for Seeing Eye dogs, shall not be permitted in the massage and bodywork work area.

L.

Each massage and bodywork therapist shall wash his or her hands in hot running water, using antibacterial soap or disinfectant before administering massage or bodywork therapy to each customer.

M.

No massage and bodywork therapy establishment shall permit any activity or behavior prohibited by the laws of the State of New Jersey, particularly, but not exclusive of laws proscribing prostitution, indecency and obscenity, including the sale, uttering or exposing and public communication of obscene material.

N.

Hours of operation of any massage and bodywork therapy establishment shall not commence prior to 9:00 a.m., and shall not extend beyond 9:00 p.m.

O.

During hours of operation, the public entryway into the massage and bodywork therapy establishment shall not be locked, barricaded or otherwise fashioned in such a way as to limit or impede the immediate access into the establishment.

P.

It shall be the responsibility of the owner(s) of the massage and bodywork therapy establishment and the holder of the license for the massage and bodywork therapy establishment to ensure that all employees, including massage and bodywork therapists, comply with all provisions of this chapter.

§ 191-9 Advertising and solicitation practices.

A.

No person shall advertise or offer to provide massage-related services for compensation within the Borough of Dunellen unless licensed as a massage and bodywork therapy establishment pursuant to this chapter.

B.

All advertisements for massage therapy services to be provided within the Borough of Dunellen shall include the massage and bodywork therapy establishment's name as indicated on the permit application submitted to the Borough, address, and telephone number.

§ 191-10 Inspection of establishment.

The Health Official shall, from time to time, and at least once a year, make an inspection of each massage and bodywork therapy establishment within the Borough for purposes of determining whether or not the provisions of this chapter are being complied with. The Police Department shall also, from time to time, conduct inspections of each massage and bodywork therapy establishment to determine if there are any violations of this chapter and/or violations of any other ordinance of the Borough of Dunellen or the laws of the State of New Jersey on the premises. Such inspections, unless it appears that a violation of the temporal limitations on hours of operation exists, shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any massage and bodywork therapy establishment to fail to allow such inspection officer access to the premises or to hinder such officer in any manner. If any massage and bodywork therapy establishment reasonably appears to be operating outside of the hours permitted hereunder, the Health Official, Construction Official, Fire Marshal and/or Police Department may immediately enter the premises notwithstanding any limitations to entry herein.

§ 191-11 Sleeping quarters.

No part or portion of any massage and bodywork therapy establishment shall be used for or connected with any bedroom or sleeping quarters, nor shall any person sleep in such massage and bodywork therapy establishment, except for limited periods incidental to and directly related to a massage and bodywork therapy treatment. This provision shall not preclude the location of a massage and bodywork therapy establishment in separate quarters of a building housing a hotel, motel or other separate business.

§ 191-12 Violations and penalties; suspension or revocation of permit.

A.

Unless otherwise provided by law, any person violating the any of the provisions of this chapter shall, upon conviction thereof, and at the discretion of the municipal court, be punished by imprisonment for a term not exceeding 90 days or by a fine of not less than \$750 nor more than \$2,500, or both, for a first violation. A second violation of any provision of this chapter shall be punished by imprisonment for a term not exceeding 90 days or by a fine of not less than \$1,500, nor exceeding \$3,000, or both. A third or subsequent violation of this chapter shall be punished by imprisonment for a term not exceeding 90 days or by a fine of less than \$2,500, nor exceeding \$5,000, or both.

B.

Any conviction of a massage and bodyworks therapist or any employee of a massage and bodywork therapy establishment of a violation of any activity or behavior prohibited by the laws of the State of New Jersey alleged to have occurred at or within a massage and bodywork therapy establishment, particularly, but not exclusive of laws proscribing solicitation, prostitution, indecency and obscenity, including the sale, uttering or exposing and public communication of obscene material, shall devolve upon the owner and/or manager of such establishment, it being specifically declared by that, following such a conviction of a massage and bodyworks therapist or employee, the offensive activity or behavior of such massage and bodyworks therapist or employee is imputed upon the owner and/or manager as an accessory to such a violation.

C.

All applicable permit fees still apply.

D.

Suspension/revocation.

(1)

In addition to any of the penalties provided herein or prescribed by law, and notwithstanding the filing of a summons and/or criminal complaint in the municipal court or Superior Court, any violation of the following provisions shall subject the massage and bodywork therapy establishment to the suspension or revocation of the applicable permit:

(a)

Fraud, misrepresentation or false statement made by the applicant in the application for the permit.

(b)

Fraud, misrepresentation or false statement made by the applicant in the course of carrying on the permitted business in the Borough.

(c)

Any violation of any provisions of this chapter.

(d)

A conviction of a crime involving moral turpitude, a felony, an offense involving sexual misconduct, or any crime involving dishonesty.

(e)

Conducting the permitted business in the Borough in an unlawful manner or in such manner as to endanger the health, safety or general welfare of the public.

(2)

Such suspension or revocation shall be upon notice issued by the Borough Clerk after conferring with the Police Chief, Code Official, Zoning Officer and/or Health Official or their respective designees.

(3)

The said permit(s) may be suspended by the Borough Clerk if, in his/her discretion and opinion after consultation with the Police Chief, Code Official, Zoning Officer and/or Health Official or their respective designees, the conduct of the permittee is detrimental to the health, safety and general welfare of the Borough of Dunellen.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Narvesen and seconded by Dr. Dunne it was moved to accept the following:

ORDINANCE 2021-14

The following ordinance is being Introduced for first reading at a meeting of the Governing Body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on April 19, 2021. It will be further considered for final passage, after public hearing thereon, at a meeting of said governing body to be held in the Municipal Building, 355 North Avenue, Dunellen, New Jersey, in said County, on May 3, 2021 at 7:00 p.m. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the Clerk's office for members of the general public who shall request the same.

I. PURPOSE:

The Borough of Dunellen (the "Borough") subscribes to the belief that the abuse of alcohol and/or drugs including controlled substances and cannabis items by Borough employees is incompatible with the Borough's obligation to endeavor to provide a safe and productive work environment for its employees and for its citizens to ensure their safety and trust in the Borough. The Borough further believes that healthy, drug-free employees are a greater asset to the Borough, to society and to themselves. The goal of the Borough Alcohol- and Drug-Free Workplace Policy ("Policy") is to maintain a work force free from prohibited drugs and alcohol abuse. The possession, use or distribution of drugs/alcohol in the workplace poses an unacceptable risk to employees, the public and the Borough of Dunellen. Accordingly, the Borough of Dunellen hereby establishes the following policies and procedures, which shall apply to all Borough employees, inclusive of the Department of Public Works. This policy shall not apply to the Police Department, which is governed by its own separate policy.

II. AUTHORITY:

This Policy is intended to comply with all applicable federal and state statutes and regulations governing workplace and anti-drug testing including, but not limited to the following:

A. Procedures for Transportation Workplace Drug and Alcohol Testing Programs: 49 CFR, Part 40.

B. Controlled Substances and Alcohol Use and Testing (Omnibus Transportation Employee Testing Act): 49 CFR, Part 382.

C. New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act: N.J.S.A. 24:6I-31 et seq.

III. POLICY:

- A. It is the responsibility of all employees to maintain personal health so that they are physically and mentally capable of performing in the workplace. The abuse of drugs or alcohol is an unsafe and counterproductive practice which will not be tolerated by the Borough. NOTE: In this Policy, the terms "abuse" and "substance abuse" will be used interchangeably to mean the use or abuse of or dependency on illegal drugs, alcohol or drugs that can be prescribed but are used in a manner inconsistent with the prescription.

- B. Any employee of the Borough reporting for work and found to be under the influence of alcohol or drugs including controlled substances and cannabinoid metabolites or using drugs or alcohol while at work or in possession of alcohol or drugs, manufacturing, selling, offering for sale, trading or providing illegal drugs or alcohol will be subject to disciplinary action, up to and including termination. This Policy is in effect for all employees while on Borough property, which includes the parking lots, or while engaged in Borough business. The sale, possession, manufacture, distribution, dispensation, use or purchase of prohibited drugs and/or alcohol on Borough property or while conducting Borough business is prohibited. Borough property includes all areas in which the Borough operates its equipment, property owned or leased by the Borough, Borough vehicles and employee-owned vehicles in use on Borough time or property as well as lockers, desks, equipment, work space and storage facilities owned or leased by the Borough. (Borough-sponsored activities which may include the responsible service of alcoholic beverages are not included in this provision, provided that abuse does not occur.)
- C. In an effort to ensure that the Borough is an alcohol and drug-free workplace and to comply with Department of Transportation (“DOT”) regulations, a drug testing program will be in effect for any person designated in a DOT regulation as subject to drug testing and/or alcohol testing including, by way of example and not limitation, individuals currently performing a safety-sensitive function, e.g. persons performing duties requiring a commercial driver’s license, and applicants for employment subject to pre-employment testing. This Policy will provide for pre-employment, random, post-accident, reasonable suspicion, return-to-duty and follow-up testing. The Borough has retained a Medical Review Officer or Agency (hereinafter referred to as the “MRO”) to manage and administer the testing program.
- D. Any employee reporting for work impaired and unable to properly perform his/her required duties will not be allowed to work. If possible, the supervisor will first seek another supervisor's opinion regarding the employee's status. Also, where applicable, the supervisor will subsequently consult privately with the employee about the observation. If, in the opinion of the supervisor(s), the employee is considered impaired, the employee will be required to be tested for alcohol, drugs, and controlled substances including cannabinoid metabolites. Supervisors that observe behavior constituting reasonable suspicion are required to send the employee for alcohol, drug, or controlled substance testing and do not have the option of sending the employee home as an alternative. (Under no circumstances should an impaired employee be allowed to drive.) The Borough will make arrangements to have the employee driven to the test site and home.
- E. Prescription drugs prescribed by the employee's licensed medical practitioner may be taken during working hours. The employee is, however, required to notify the supervisor if the use of properly prescribed prescription drugs may adversely affect the employee's work performance. The employee must provide a letter from the prescribing physician that states that the use of the medication will not adversely affect job performance. The abuse of prescription drugs will not be tolerated.

F. The Borough will provide an Employee Assistance Program (EAP) for its employees (including supervisory personnel), which will include a program of education and training on the effects of drug/alcohol abuse. The Borough will make available to all employees informational material related to the cause and effects of substance abuse and additionally will provide a community service hot-line telephone number, which can be used by its employees whenever assistance is required. Supervisory personnel, who will be in a position to determine whether an employee must be drug/alcohol tested pursuant to the policies herein, will receive a minimum of one hour of training on the specific physical, behavioral and performance indicators of probable drug/alcohol abuse. It is the responsibility of all employees to seek assistance from the EAP before drug/alcohol problems lead to violations of this policy and/or disciplinary action.

G. The Borough has determined to take action against its employees who unlawfully use, manufacture, distribute or possess alcohol, drugs and/or controlled substances during or outside assigned working hours in order to prevent illegal activities and to protect employees, the public and the Borough and its property from any danger which may result from the illegal use of alcohol, drugs and/or controlled substances.

H. The Borough has further determined that it will not employ or use the services of any employee who refuses to be tested for drugs/alcohol and will discipline any employee who fails a drug/alcohol test as permitted by law, which may include termination of employment.

I. All employees are required to acknowledge, in writing, their receipt of this policy. All employees will be provided with a copy of this Policy.

IV. DEFINITIONS:

As used in this Policy, the following terms shall have the respective meanings indicated below:

ADULTERATED SPECIMEN: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

ALCOHOL CONCENTRATION: The quantity of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this Policy.

ALCOHOL CONFIRMATION TEST: A subsequent test using an Evidential Breath Test (EBT) following a screening test with a result of alcohol concentration level of 0.02 or greater, that provided quantitative data about the alcohol concentration.

ALCOHOL SCREENING TEST: An analytic procedure to determine whether an employee has a prohibited concentration of alcohol in a breath or saliva for an alcohol test.

CANCELLED TEST: A drug or alcohol test that has an identified problem that cannot be or has not been corrected, or which this Policy otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

CONFIRMATION (OR CONFIRMATORY) DRUG TEST: A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

CONFIRMATION (OR CONFIRMATORY) VALIDITY TEST: A second test performed on a urine specimen to further support a validity test result.

DESIGNATED EMPLOYER REPRESENTATIVE (“DER”): An employee designated by the Borough to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation process. The DER also receives test results and other communications for the Borough, consistent with the requirements of this Policy. The Borough Administrator is the DER under this Policy.

DILUTED SPECIMEN: A specimen with creatinine and specific gravity values that are lower than expected for human urine.

EMPLOYEE: A person employed by the Borough, which includes those who require a commercial driver’s license to be maintained, employees in safety-sensitive positions, including all DPW employees, foremen and supervisors, police dispatchers, SLEO I, and Crossing Guards. CDL holders will be one pool and all other employees will be in the second pool.

FAIL A DRUG/ALCOHOL TEST: The confirmation test result shows positive evidence of the presence of a prohibited or legal drug/alcohol in an employee's system.

LEGAL DRUGS: Drugs prescribed by a licensed medical practitioner for the employee and over-the-counter drugs which have been legally obtained and are being used by the employee as directed and for the purpose for which they were prescribed or manufactured.

MEDICAL REVIEW OFFICER (“MRO”): A licensed medical practitioner who is responsible for receiving and reviewing laboratory results generated by the Borough of Dunellen drug testing program and evaluating medical explanations for certain drug test results.

PROHIBITED DRUGS: The drugs for which tests are required under 49 C.F.R., Part 40 and DOT Regulations including marijuana metabolites, cocaine metabolites, amphetamines, phencyclidine (PCP) and opioids, except when prescribed by a licensed medical practitioner. This exception applies only when the drug is used as prescribed or authorized by the individual to or for whom the drug was prescribed or where such use is otherwise permitted by law. In addition, specimens may be tested by the Borough’s

testing agent at the Borough's request for steroids as well as other currently abused chemicals.

SAFETY-SENSITIVE POSITION: A position where the presence of alcohol and/or drugs in an employee may place the employee, co-employees and the public in danger of injury to life or limb, such as, but not limited to, when operating a motor vehicle, power tools, heavy machinery, working in high places or at or near busy roads.

SPLIT SPECIMEN: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the donor requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

SUBSTITUTED SPECIMEN: A specimen with creatinine and specific gravity that is so diminished that it is not consistent with human urine.

V. PRE-EMPLOYMENT TESTING:

- A. All prospective employees selected for a position will be required to undergo post-offer, pre-employment testing for the presence of alcohol and prohibited drugs. A negative test result is a condition of employment and a positive test result will result in the individual being dropped from further consideration for employment with the Borough at that time or in the future.
- B. The Borough shall not refuse to hire or employ any person because that person does or does not smoke, vape, aerosolize or otherwise use cannabis items.
- C. Failure to keep an appointment with the MRO to undergo testing for the presence of alcohol and/or prohibited drugs, which was previously agreed to by both the prospective employee and the MRO, will be viewed as a refusal to submit to testing and will result in the individual being dropped from further consideration for employment with the Borough at that time or in the future. The drug test will be performed in accordance with Appendix D (Pre-Employment Drug Testing Policy & Procedure), which is attached hereto.

VI. RANDOM TESTING:

- A. All employees who have commercial drivers' licenses and those in safety-sensitive positions will be subject to random, unannounced alcohol and drug tests on an annual basis. Testing will be done during working hours, except under exigent circumstances. The Borough shall be responsible for the costs of the testing. Split-sample testing will be conducted as provided by this Policy. Selection criteria, number of tests and test frequency will be determined by the language of the applicable Federal Highway Administration ("FHWA") regulations and will be communicated to employees by Borough management or the MRO. However, annually at least twenty percent (20%) of employees will undergo drug testing and

twenty percent (20%) of employees will undergo alcohol testing. Monthly, but no later than quarterly, a prorated number of employees will be tested. This will ensure that the ratios above are conducted over the calendar year. Any employee who is absent will go back into the random pool and another employee will be drawn.

- B. Upon notification of selection, the employee must report to the designated collection site immediately. Failure to report immediately will be treated as a refusal to submit to the test and will result in disciplinary action, up to and including termination.

VII. REASONABLE SUSPICION TESTING AND EMPLOYEE PHYSICAL:

- A. All employees are subject to a fitness-for-duty evaluation, to include urine and breath-testing, when there is reasonable suspicion to believe that the employee is in violation of this Policy. A reasonable cause referral for testing will be made on the basis of documented, objective facts and circumstances which are consistent with the long/short-term effects of substance and/or alcohol abuse.
- B. Examples of reasonable suspicion include, but are not limited to, the following:
 - (1) Physical signs and symptoms consistent with substance and/or alcohol abuse.
 - (2) Evidence of the manufacture, distribution, dispensing, possession or use of controlled substances, alcohol, or drugs.
 - (3) See Appendix C (Prohibited Conduct), which is attached hereto.
- C. Reasonable cause testing determinations will be made by a supervisor or other Borough official who is trained to recognize the signs and symptoms of drug and alcohol use and who can reasonably conclude that an employee may be adversely affected or impaired in his/her work performance due to intoxication, drug use, or controlled substance use. If another supervisor or Borough official is immediately available, he/she will verify that there is reasonable cause before the employee is transported to the MRO's facility. At no time will this determination be made on the basis of third-party reports without verification.
- D. The observations and the determination of the supervisor(s) shall be set forth in a written report, which should be completed prior to testing, but no later than 2 hours after the employee is sent to the testing facility. The written report shall be forwarded to the Administrator who shall keep the report confidential. The report is attached hereto as Appendix E (Supervisor's Report).
- E. NOTE: Employees are cautioned that various over-the-counter and prescribed medications can adversely affect ability to operate vehicles and other equipment. It is the employee's responsibility to report to work each day fit for his or her duties.

- F. Employees who are deemed to require a fitness-for-duty evaluation based on reasonable cause will be sent to a health facility of the Borough's choice. The attending physician will make every attempt to determine the cause of the observed behavior, including authorizing, when his/her medical opinion dictates, an additional alcohol or drug test. Employees will be placed on unpaid medical leave of absence until the results of the examination are received by the Borough. Receipt of a negative drug test result and/or doctor's statement that the employee was and is fit for duty is required prior to return to duty and continued employment. Employees who are returned to duty by this means will be reinstated without prejudice and without loss of pay.
- G. Employees who are medically determined to be temporarily unfit to perform their duties, but who test negatively for alcohol or drugs, will be returned to duty when they obtain the original examining doctor's written statement that they are fit for duty. Any fitness for duty examination will only determine whether the employee is fit for duty and no medical information shall be disclosed.
- H. The drug test shall include scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva and may include a physical evaluation in order to determine an employee's state of impairment conducted by a person certified to opine on the employee's state of impairment, or lack thereof, designated by the related to the usage of a cannabis item. Such testing shall be done by a designated agent of the Borough, who shall follow the procedures set forth in this Policy.

VIII. POST-ACCIDENT TESTING:

- A. Any employee involved in an accident, while on Borough property or while engaged in Borough business, will be required to submit to a post-accident alcohol and drug test if:
 - (1) The employee-driver involved in a motor vehicle accident receives a citation for a moving violation; or
 - (2) There is a fatality as a result of a motor vehicle accident; or
 - (3) The accident meets the DOT criteria for a motor vehicle accident, including but not limited to: (a) bodily injury to any person who requires immediate medical treatment away from the scene of the accident; or (b) one or more vehicles are disabled at the accident scene and require towing or transport by another vehicle;
 - (4) The employee is involved in any motor vehicle accident involving a Borough vehicle; or
 - (5) Any incident or accident which suggests or appears to be the result of being under the influence of drugs, controlled substances, or alcohol.

- B. When post-accident testing is required, the Borough will make every effort to have such testing performed within two (2) hours of notification of the accident. At no time will a period of more than eight (8) hours transpire between notification and testing. Documentation of the entire post-accident procedure should be made by all personnel involved in the notification and testing process.
- C. Receipt by the Borough of a negative alcohol and drug test result is required prior to return to duty. A positive test result may disqualify an employee from further employment or reinstatement at that time or any time in the future and subject the employee to disciplinary action, up to and including termination of employment.
- D. The drug test shall include scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva and may include a physical evaluation in order to determine an employee's state of impairment conducted by a person certified to opine on the employee's state of impairment, or lack thereof, related to the usage of a cannabis item.

IX. RETURN TO DUTY TESTING AND DISCIPLINE:

- A. Any employee who tests positive for alcohol or prohibited substances will not be permitted to return to work, where applicable, until he/she has met the following:
 - (1) The employee must be evaluated by a substance abuse professional. This professional must meet the criteria outlined in the DOT's Alcohol and Drug Rules for Substance Abuse Professionals; and
 - (2) The employee must comply and complete all recommendations made by the substance abuse professional and be able to document same; and
 - (3) The employee must submit to return-to-duty testing, and proof of a negative test result must be received by the Borough. Return-to-duty testing for employees holding CDLs will be conducted by direct observation. See Part X.B.
- B. When the employee is cleared to return to work, he/she will be required to pass an alcohol and drug test. Upon receipt of a negative test result, if an employee is allowed to return to work, he/she will be subject to follow-up testing as required by applicable law and regulations and this Policy. The cost of the follow-up testing will be equally split between the Borough and the employee.
- C. All employees are entitled to voluntarily participate in the Employee Assistance Program ("EAP"). However, if there is a positive test result (prohibited drug or alcohol), participation in the EAP or an alternate program approved by the Borough shall be a prerequisite to continued employment. Refusal to enroll in an EAP or alternate program, or to complete a full course of rehabilitation, shall be cause for immediate termination of employment with the Borough. A positive alcohol test is one with an alcohol concentration level of 0.040 or greater. Employees with a pattern of readings between 0.020 and 0.039

will also be subject to enrollment in a mandatory counseling program as a condition of continued employment with the Borough. Employees will be permitted to use accrued sick or vacation time, if available, to attend any counseling programs.

D. In addition to completing a mandatory course of rehabilitation, employees shall be subject to the following discipline(s):

(1) Following the confirmation of a positive test result, there shall be a suspension without pay of up to 30 days. In the case of an alcohol test result between 0.020 and 0.039, the penalty will be a suspension without pay for the remainder of that day's work shift unless a pattern of this type of abuse has developed. In either case, the suspension(s) shall remain in full force and effect until there is a negative retest provided to the Borough through a certified laboratory (all costs of testing to be borne by the employee), and failure on the part of the employee to present a negative test result within six weeks from the original incident date shall automatically result in his/her termination. After two weeks, the Borough reserves the right, for reasons of operational efficiency, to fill the suspended employee's position and, in such case, the suspended employee would be entitled to the next available opening for which he/she qualifies, provided that all other conditions (rehabilitation and negative test result) are met.

(2) Employees who test positive for alcohol or drugs on a second occasion or found to be in violation of this Policy (confirmation of a positive prohibited drug or alcohol test result) on a second occasion will be immediately dismissed and permanently barred from future employment with the Borough.

E. Except as provided by law regarding a positive test by a holder of a CDL, no employee shall be subject to any adverse action solely due to the presence of cannabinoid metabolites in the employee's bodily fluid, but adverse action may be imposed where the employee's work performance causes a reasonable suspicion that that employee is impaired due to current intoxication, drug or controlled substance use, following a work-related accident subject to investigation, or in cases where employment has been conditioned upon remaining alcohol, drug, or controlled substance free following treatment and the physical evaluation confirms that the employee was impaired during working hours due to the use of a cannabis item.

X. FOLLOW UP TESTING:

A. Any employee returning to work with the Borough after being disqualified for a positive alcohol or prohibited drug test or returning to work after a leave of absence for voluntary substance abuse treatment will be subject to random follow-up testing. The employee will be tested at least six (6) times in the first twelve (12) months after returning to duty and may be subject to follow-up testing without prior notice for up to thirty-six (36) months. However, the employee is not given a fresh start after this period; the verified positive result remains in his/her file. If any employee tests verified positive on a subsequent post-rehabilitation testing, or on any other test

during employment with the Borough, that employee shall be terminated from employment with the Borough immediately.

B. The following paragraphs C-J apply only to employees who hold CDLs.

C. In accordance with 49 C.F.R. § 40.67, an employee will be required to provide a specimen immediately under direct observation if:

(1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to the Borough that there was not an adequate medical explanation for the result;

(2) The MRO reported to the Borough that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or

(3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to the Borough as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

D. Collection of specimens will be done under direct observation if the drug test is a return-to-duty test or a follow-up test.

E. Employees will be subject to direct observation when directed as required by paragraphs C and D of this section; or employees bring materials to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or the temperature on the original specimen was out of range; or the original specimen appeared to have been tampered with.

F. The Borough and/or the collector will explain to the employee the reason for a directly observed collection under paragraphs C, D or E of this section.

G. The observer under direct observation will be the same gender as the employee.

H. Under direct observation, the employee will be requested to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that they do not have a prosthetic device. After the observer has determined that the employee does not have such a device, the observer may permit the employee to return clothing to its proper position for observed urination.

I. The observer must watch the employee urinate into the collection container. Specifically, the observer will watch the urine go from the employee's body into the collection container.

J. If any employee declines to allow a directly observed collection (which is required or permitted under this section) to occur, it will be treated as a refusal to test.

XI. TESTING PROCEDURES:

Collection of the urine specimen shall be done in accordance with federal regulations, as described in 49 C.F.R. §§ 40.41- 40.73, which are outlined in the instructions for employees attached to this Policy as Appendix B (Donor's Checklist for Drug Testing). Collection will be done at a collection site designated by the MRO. A proper chain of custody shall be maintained. Should this chain be broken, the test shall be invalidated and a new collection made.

XII. DRUG TESTING:

- A. All drug testing required by the Borough will be performed in accordance with DOT guidelines. Drug testing is by urinalysis using split samples. Split-sample testing requires the specimen be divided into two separate specimen containers during the collection process. These two containers are designated as: the primary specimen, which shall contain no less than thirty (30) milliliters of urine; and the split specimen, which shall contain no less than fifteen (15) milliliters of urine. Upon arrival at the laboratory, the primary specimen will be opened and tested. In the first screening test, immunoassay techniques are used to screen urine specimens for classes of drugs. In the second or confirmation test, any positive results found in the first screening will be confirmed using the tandem technique of gas chromatography/mass spectrometry (GC/MS), which positively identifies and quantifies the presence of specific drugs. No test result will be reported by the laboratory to the MRO as a positive drug test result unless both the initial screening test and the confirmation test are positive. The laboratory shall report the test results to the MRO, who shall evaluate the chain of custody, urine custody form and test results.
- (1) All employees (or applicants for employment who have received a conditional offer of employment) selected or directed for drug testing (whether random, reasonable suspicion, post-accident, return-to-duty, or pre-employment) shall complete the Drug Testing Medication Form, which is attached hereto as Appendix F.
- B. The MRO will perform the following duties for the Borough:
- (1) The MRO will review the results of each drug test before it is reported to the Borough.
- (2) The MRO will review and interpret each confirmed positive test result in the following manner to determine whether or not there is an acceptable medical explanation for the confirmed positive result:
- (a) The MRO/ will conduct a medical interview with the employee, either in person or by telephone.
- (b) The MRO will review the employee's medical history and relevant biomedical factors.

- (c) The MRO will review medical records made available by the employee to determine if a confirmed positive result could be attributed to the use of legally prescribed medication.
 - (d) The MRO will require, if it is deemed necessary, that the original specimen be reanalyzed.
 - (e) The MRO will verify that the laboratory report and assessment are accurate.
 - (f) If the MRO determines that there is a legitimate medical explanation for the confirmed positive result, he/she will take no further action other than informing the Borough of his/her determination that the test result is negative.
- (3) If the MRO verifies that a confirmed positive test result is scientifically sufficient and that there is no legitimate medical explanation for the confirmed positive result, the MRO shall immediately contact the Borough's DER (who will instruct the employee's supervisor to immediately suspend the employee pending management review and determination of appropriate action) and the employee. For positive a test result for a cannabis item during working hours, the MRO will ensure that a physical evaluation is completed by an appropriately certified individual to determine whether the employee was impaired during working hours due to the use of a cannabis item.
- (4) The MRO will determine whether and when a rehabilitated employee may return to work.
- (5) The MRO will determine a schedule of post-rehabilitation testing, after consulting with the Borough's designated representative, for an employee returning to work after rehabilitation.
- (6) The MRO will ensure that an employee is tested in strict compliance with the applicable DOT procedures before an employee may return to work after rehabilitation.
- (7) If the MRO so determines, based upon a review of laboratory inspection reports, quality assurance and quality control data and other drug test results, that a particular drug test result is scientifically insufficient, the MRO will conclude that the test is negative, and no further action shall be taken. The MRO may request a reanalysis of the original specimen prior to making this determination. The MRO may request the reanalysis be performed by the same laboratory or that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory certified by the United States Department of Health and Human Services (USDHHS). The laboratory shall assist the MRO in making his/her determination by having its personnel available to the MRO for consultation upon request by the MRO.

(8) Reporting and review of results:

(a) Review by MRO.

The MRO will review all test results prior to the transmission of the results to the Borough to consider possible alternate medical explanations for confirmed positive test results. The MRO shall have the qualifications and responsibilities, including those pertaining to the investigation, confirmation and communication of verified positive and negative test results and the disposition of scientifically insufficient test results, as set forth in the Medical Review Officer section of this Policy.

(b) Positive test results.

1. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact the Borough's DER who shall direct the individual to contact the MRO as soon as possible. The Borough's DER shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee's contact with the MRO is held in confidence.
2. If, after making all reasonable efforts, the Borough's DER is unable to contact the employee, the MRO may place the employee on temporary, unpaid leave.
3. The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:
 - (a) The employee expressly declines the opportunity to discuss the test.
 - (b) The Borough's DER has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than five (5) calendar days have passed since the date the employee was successfully contacted by the DER, without the employee contacting the MRO; or
 - (c) If neither the DER nor MRO, after making and documenting all reasonable efforts, has been able to contact the employee within 10 days of the date the MRO received the confirmed test from the laboratory.

4. Under the split-test method, and if the employee so chooses the split-test method, such test may be conducted, and if there is a positive result, the provisions/procedures and penalties of this Policy shall apply.
5. If a test is verified positive under the circumstances specified in this Policy, the employee may present to the MRO information documenting that serious illness, injury or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for a confirmed positive test. If the MRO then concludes that there is a legitimate explanation, the MRO may declare the test to be negative.
6. Following verification of a positive test result, the MRO shall refer the case to the Borough's DER for other rehabilitation or administrative action.

(c) Verification for opiates.

Before verifying a confirmed positive test result for opiates, the MRO shall determine that there is clinical evidence other than, or in addition to, the urine test of unauthorized use of any opium, opiate or opium derivative, unless confirmation testing for opiates confirms the presence of 6-acetylmorphine.

(d) Authorized reanalysis.

Only the MRO may order a reanalysis of the original primary specimen. The employee may submit a written request for a retest of the original specimen to the MRO for a reanalysis of the specimen within sixty (60) days following the day the employee was informed by the MRO that he/she tested verified positive for drug use. The MRO shall then authorize the reanalysis at the Borough's expense.

(e) Disclosure of results.

Except as provided in this Policy, the MRO shall not disclose to any third party the results of the drug test or any medical information provided by the employee to the MRO as part of the testing verification process without the employee's written consent, except as set forth in (e)1 below.

1. The MRO may disclose such information to the Borough, the DOT or other federal safety agency, law enforcement officials or a licensed medical practitioner responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if:

- (a) In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified for employment; or
 - (b) In the MRO's reasonable medical judgment, the information indicates that continued performance by the employee of his/her safety-sensitive function could pose a significant safety risk.
 - 2. Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that the information may be disclosed to third parties as provided in (e)1 above and the identity of any parties to whom information may be disclosed.
 - 3. In the event the MRO discloses information to any third party pursuant to paragraph (e)(1) above, the MRO shall notify the employee in writing of the disclosure, what information is being disclosed, to whom the information is being disclosed, and the reason for the disclosure.
 - 4. Any third party to whom the MRO discloses information pursuant to this section shall maintain the confidentiality of the information consistent with the law.
- C. The Borough will immediately remove the employee from his/her job as a result of a verified positive drug test and will suspend the employee pending management review and determination of appropriate disciplinary action as outlined in Article IX.D.

XIII. ALCOHOL TESTING:

- A. The DOT Regulations require breath testing for alcohol. This testing must be done using an evidential breath-testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). This testing can only be performed by a Breath Alcohol Technician (BAT) that is certified in the equipment being used.
- B. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a negative test, and no further testing is required. If the initial screening shows an alcohol concentration of 0.02 or greater, a second or confirmation test is required. The confirmation test must be taken fifteen (15) minutes after the initial screening. During that fifteen (15)-minute period the employee being tested is to remain with the BAT and must refrain from eating, drinking, smoking or belching. After the fifteen (15)-minute waiting period, a second breath test will be performed. The results of the second test stand and become the official test result.

- C. If the confirmation test result shows an alcohol concentration of less than 0.02, the official test result is negative, and no action is required. If the result of the confirmation test is 0.02 or greater, action by the Borough is required pursuant to policies set forth herein.
- D. As well as potential disciplinary action, the Borough will take the following actions in response to breath testing results which an alcohol concentration of 0.02 or greater:
 - 1. If the tested employee's alcohol concentration is between 0.02 and 0.039, the regulations call for the removal of the employee from performing safety-sensitive functions for at least 24 hours and until a negative screen is revealed.
 - 2. If the tested employee's alcohol concentration is 0.04 or greater, he/she must immediately be removed from any safety-sensitive duties until he/she has been evaluated by a substance abuse professional (DOT Regulations have specific guidelines for who qualifies as a substance abuse professional), has complied with any recommended treatment and has taken and passed a return-to-duty alcohol test (result must be less than 0.02). The employee is then subject to unannounced follow-up testing. (See Section X, Follow-up testing.)
 - 3. All other actions as set forth in Section IX.D. above.
- E. All applicants and employees are expected to report for alcohol and drug testing as required by this Policy and in accordance with the Borough's testing procedures. Employees are to report to work with no alcohol or illegal drugs in their bodies. Any refusal to submit to alcohol breath testing or urinalysis drug testing as directed by supervisory personnel will be considered a refusal-to-test and will subject the employee to the consequences as set forth in Article XVI.B. below.

XIV. CONFIDENTIALITY OF TEST RESULTS:

The results of any drug test will be reported to the Borough and recorded in a confidential manner. A copy of the individual's test results will be available to the individual upon his/her written request. The results and other medical information will not be reported to the Borough without an employee's written authorization, except as provided for in Article XII, B(8)(e) above.

XV. QUALITY ASSURANCE OF TESTING PROGRAM:

- A. The Borough of Dunellen, through its DER, will take steps in its arrangements for testing to ensure that the laboratory is certified by Substance Abuse and Mental Health Services Administration ("SAMHSA") and meets the requirements of the United States DOT.

- B. The chain of custody for any urine sample shall be maintained at all times. If the chain of custody is broken, after the tamper proof seal is applied, the employee(s) shall be retested at the Borough's expense.
- C. Any employee who receives a positive test result will have the right to ask the MRO to retest the sample at a National Institute on Drug Abuse (“NIDA”) certified laboratory of the employee's choice at the employee's expense. Employees whose sample is retested with a negative test result will be reimbursed the cost of the test and returned to work.
- D. The Borough, through its DER, will make every reasonable effort to ensure that the equipment being used for alcohol breath testing meets all the requirements of the DOT, and all testing is performed by a qualified BAT.

XVI. GROUNDS FOR DISCIPLINARY ACTION; INSPECTION; APPLICABILITY:

- A. Any employee engaging in the manufacture, distribution, dispensing, possession or use of prohibited substances on Borough premises, in Borough vehicles or while on Borough business will face disciplinary action, up to and including termination. Any manufacture, distribution, dispensing, possession or use of prohibited substances by an employee in any manner which adversely affects the employee's job performance or which may cause the public or a government or corporate body to lose confidence in the Borough's ability to perform its responsibilities may result in disciplinary action, up to and including termination. Law enforcement officials could be notified, as appropriate, where criminal activity is suspected. Any employee convicted of violating a criminal drug statute or drunk driving law/statute must notify the Borough's DER within three (3) calendar days of any such conviction.
- B. Any employee who refuses to comply with a request for drug testing shall be considered as having produced a positive test result and will be subject to disciplinary action, up to and including termination as set forth in Section IX.D. Any employee who provides false information, in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution shall face disciplinary action, up to and including termination. If the laboratory detects any substance which has been added to the sample to interfere with the normal testing process, this will be considered a refusal to test, and the same sanctions and penalties, up to an including termination, as set forth in Section IX.D, will apply.
- C. The Borough reserves the right to inspect, investigate and search for controlled substances at any time, without prior notice, on or in any and all Borough premises and vehicles. All coolers are subject to inspection. Refusal by any employee to cooperate with any inspection, investigation or search that is authorized by a

Borough representative or by a court of competent jurisdiction shall result in disciplinary action up to and including termination.

- D. This Policy applies to all employees, except for police officers, who are governed by their own policies.

XVII. EMPLOYEES VOLUNTARILY SEEKING HELP:

- A. The Borough strongly encourages an employee with a drug/alcohol abuse problem to voluntarily step forward to tell the Borough.
- B. The Borough will assist in referring the employee to community assistance programs. An unpaid leave of absence will be granted for a reasonable period for treatment. Employees with accumulated sick and vacation time will be required to use their accumulated time during a leave of absence.
- C. It is crucial to note that the accommodations specified in this Section apply only when an employee voluntarily comes forward. If an alcohol or substance abuse problem is disclosed to the Borough after there has been a positive test, a violation of a Borough rule or standard, a violation of law, or a violation of this Policy, the same conditions outlined in Section IX.D. of this Policy apply. If an employee fails to remain drug or alcohol-free after the first voluntary rehabilitation, he/she will be discharged from employment with the Borough.

XVIII. TRAINING:

- A. In an effort to educate employees about the dangers of drug use and the Borough's commitment to keeping drugs out of the workplace, each employee will receive information covering the dangers of substance abuse, the Borough's commitment to an alcohol- and drug-free workplace, and the penalties for violation of this Policy.
- B. Supervisory employees will receive at least two hours of training on identifying individuals who might be impaired by the use of drugs.

XIX. EMPLOYEE ACKNOWLEDGMENT:

Each employee or prospective employee shall be given a copy of this Policy and he/she must acknowledge receipt of this Policy as a condition of (continued) employment. A sample of this acknowledgment is attached as Appendix A.

XX. ADMINISTRATION:

- A. The Borough has designated the Business Administrator or his designee to administer the Borough's anti-drug/alcohol program. The Borough, through its insurance carrier utilizes Dynamic Testing for specimen collection and alcohol/drug testing to be done under the Borough's and Dynamic Testing's standard procedures,

as outlined above. Dynamic Testing conducts employee awareness and supervisory training program, as designed and administered by UMDNJ and Dynamic Testing, when available, as more particularly required by the Borough's anti-drug/alcohol program.

- B. The Medical Review Officer and Drug/Alcohol Testing Laboratory shall be those entities utilized by Dynamic Testing.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Burke and seconded by Mr. Sigmon it was moved to accept the following:

ORDINANCE 2021-15

BOROUGH OF DUNELLEN

The following ordinance is being Introduced for first reading at a meeting of the Governing Body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on April 19, 2021. It will be further considered for final passage, after public hearing thereon, at a meeting of said governing body to be held in the Municipal Building, 355 North Avenue, Dunellen, New Jersey, in said County, on April 5, 2021 at 7:00 p.m. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the Clerk's office for members of the general public who have requested the same.

Dunellen Borough Code Chapter 186-8 and Chapter 186-10 are amended as follows:

Ch. 186-8. Circulars and Handbills.

Section A. Definitions.

For the purposes of this chapter, the following terms shall have the meanings indicated:

PRINTED MATTER or PRINTED MATERIALS--All newspaper, shoppers, circulars, leaflets, flyers, and handbills, commercial and noncommercial, and all similar materials.

UNSOLICITED--The printed matter referred to herein which has not been ordered, subscribed to or requested by the recipient.

Section B. Distribution of printed materials in public places.

No person shall throw or distribute any printed material in or upon any sidewalk, street, or other public place within the Borough of Dunellen or in or upon any unoccupied motor vehicle.

Section C. Delivery of printed materials to private premises.

It shall be unlawful for any person to deliver or deposit, or for any person, firm or corporation to cause the delivery or deposit of, any unsolicited printed material to or upon any private premises within the Borough of Dunellen, except in accordance with the terms hereof.

Section D. Permitted delivery to private premises.

Printed matter may be delivered to private premises when delivered in accordance with the following:

- 1) Printed matter shall be placed only within a permanently installed appurtenance to the premises designed and designated for the receipt of such printed matter, or, if there is none, it shall be placed on the ground or floor at a point beneath the place where such premises receives its mail or within a three-foot radius of that point.

- 2) Printed matter, which plainly and conspicuously bears upon it an address to which a written notice indicating the recipient's desire to cease future delivery of the particular item of printed matter may be sent, may at all times be delivered to private premises unless delivery is prohibited pursuant to the terms of Section D.

Section E. Premises to which delivery of printed matter is prohibited.

It shall be a violation of this chapter when unsolicited printed matter is intentionally delivered to a private premises after the owner or tenant of said premises has notified the publisher or the delivery person or, in the case of printed matter referred to in Section C hereof, after the owner or tenant of the premises has provided notice, at the address so indicated, that delivery shall cease or be suspended for a stated period of time.

Chapter 186-10. Violations and penalties.

Any person, firm or corporation convicted of a violation of any provision of this chapter shall be subject to a fine of not more than \$500. Each delivery in violation of the terms hereof shall be deemed a separate offense.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Narvesen and seconded by Mrs. Burke it was moved to accept the following:

Ordinance 2021-11

The following ordinance was Introduced for first reading at a meeting of the Governing Body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on April 5, 2021. It is now being further considered for final passage, after public hearing thereon, at a meeting of said governing body being held in the Municipal Building, 355 North Avenue, Dunellen, New Jersey, in said County, on April 19, 2021 at 7:00 p.m. During the week prior to and up to and including the date of such meeting copies of the full ordinance have been available at no cost and during regular business hours, at the Clerk’s office for members of the general public who have requested the same.

**ORDINANCE OF THE BOROUGH OF DUNELLEN, IN THE COUNTY OF
MIDDLESEX, NEW JERSEY AMENDING BOROUGH CODE CHAPTER 89 TO
AUTHORIZE PAYMENTS IN LIEU OF CONSTRUCTING FRACTIONAL
AFFORDABLE HOUSING UNITS**

WHEREAS, the Borough Code and the adopted redevelopment plan applicable to certain redevelopment areas in the Borough include development standards that require redevelopers to set aside a certain percentage of market rate residential dwelling units as affordable housing for persons of low and moderate income and, in certain instances, the application of the set aside can result in a fraction of a unit of affordable housing; and

WHEREAS, the Borough is desirous of allowing redevelopers to satisfy the affordable housing set aside requirement by making a payment in lieu of constructing a fractional affordable housing unit pursuant to N.J.A.C. 5:93-8.10(c); and

WHEREAS, the Borough Council of the Borough of Dunellen deems that authorizing payments in lieu of constructing fractional affordable units will benefit the citizens of the Borough.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Dunellen, County of Middlesex, State of New Jersey, as follows:

1. §89-13.B(4) of Dunellen's code shall be rewritten as follows:
 - (4) Payments in-lieu of constructing affordable units.
 - (a) The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site shall be in accordance with N.J.A.C. 5:93-8. With the exception of fractional affordable units, Developers are prohibited from making a payment in lieu of constructing affordable units on-site or from constructing required affordable units off-site.
 - (b) Payments in-lieu constructing fractional affordable units. In the event that the inclusionary set-aside percentage (15% for rentals / 20% for-sale) of the total number of residential units does not result in a full integer, the fractional affordable unit shall be addressed as follows:
 - [1] The developer may round the fraction upward to construct a whole additional affordable unit at developer's sole cost; or
 - [2] The developer may round the fraction downward and construct the lesser whole number of affordable units and make a payment in-lieu of constructing the fractional additional unit ("fractional payment in-lieu"); or
 - [3] If the set-aside results in a fractional unit of more than 0.49 units, at the discretion of the Borough Council, the fractional unit shall be rounded up to a full unit and the developer shall construct the additional full unit. In that event, the Borough shall make a contribution to the developer from its

Affordable Housing Trust Fund in an amount that equals the difference between the fractional unit resulting from the set-aside and the additional full unit, multiplied by the cost of construction of an affordable unit as set forth in Section 89-13.B(4)(c)[1]. If the set-aside results in a fractional unit equal to 0.49 units or less, the Borough Council, at its discretion, may make a contribution to the developer as set forth above, but only if accepting such contribution and assuming the obligation to construct the additional unit is acceptable to the developer. The Borough Council shall only exercise its discretion under this subsection if there are sufficient funds available in the Affordable Housing Trust Fund. For development subject to an adopted redevelopment plan, the Borough Council shall exercise its discretion under this subsection at the time the redeveloper obtains Borough Council approval of its concept plan, and at that time the Borough shall reserve sufficient funds from the Affordable Housing Trust Fund for that purpose. The Borough shall make the contribution payment upon application by the redeveloper after the recordation of the affordable housing deed restriction for the project.

[4] The fractional payment in-lieu amount shall be calculated as the fractional unit multiplied by the base payment in-lieu dollar amount established in Section 89-13.B(4)(d)[1] of the Borough Code.

[5] For example: If seven total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above:

[a] In accordance with Section 89-13.B(4)(b)[1], the developer may round up the 0.4 unit to one whole affordable unit so as to construct a total of two affordable housing units at developer's sole cost; or

[b] In accordance with Section 89-13.B(4)(b)[2], the developer may round the fraction downward so as to construct only one affordable unit and shall pay into the Borough's Affordable Housing Trust Fund a fractional in-lieu payment equal to the dollar amount established in Section 89-13.B(4)(d)[1] multiplied by 0.4 units; or

[c] In accordance with Section 89-13.B(4)(b)[3], the Borough Council may make a contribution if it is acceptable to the developer and the developer is willing to build the additional affordable unit, the developer shall round up the 0.4 unit to one whole affordable unit so as to construct a total of two affordable housing units, then the Borough shall make a contribution from the Affordable Housing Trust Fund to the developer in an amount equal to the dollar amount established in Section 89-13.B(4)(c)[1] multiplied by 0.6 units;

[d] If eight total units are developed at an inclusionary site, a 20% set-aside would require 1.6 affordable units, in accordance with Section 89-13.B(4)(b)[3], if the Borough Council exercises its discretion to require the developer to build the additional affordable unit, the developer shall round up the 0.6 unit to one whole affordable unit so as to construct a total of two affordable housing units, then the Borough shall make a contribution from the Affordable Housing Trust Fund to the developer in an amount equal to the dollar amount established in Section 89-13.B(4)(c)[1] multiplied by 0.4 units.

(c) Cost of construction of affordable housing unit. The amount of payments in lieu of constructing fractional affordable units on site shall be based on the cost of constructing new residential units pursuant to this section. The cost of constructing new residential units includes the sum of development hard costs, related soft costs and developer's fees pursuant to the cost containment provisions of N.J.A.C. 5:43-2.4(a)1 through 6 and land costs equal to 25 percent of the first quartile of new construction costs as reported to the Homeowner Warranty Program.

[1] The base dollar amount of the payment in-lieu of constructing an affordable unit at the time of adoption of this chapter shall be \$155,000, or any amount established by the Courts, COAH, or other relevant jurisdiction.

[a] This base amount shall have an annual increase of 2% based upon the date of the adoption of this ordinance and adjusted every five (5) years by the Borough to reflect the most current and accurate market conditions or better cover the cost to the Borough to subsidize affordable housing construction. The payment shall be imposed as a condition of development approval by the Planning Board.

[b] The payment in-lieu amount paid by any developer shall be deposited by the Borough into its duly established affordable housing trust fund and may be spent in accordance with the Borough's approved spending plan, applicable COAH regulations, court orders, and other applicable statutes and legislation.

(d) The developer shall make the fractional payment in-lieu prior to the issuance of first temporary or final certificate of occupancy for the inclusionary development.

2. §89-4.B(2) of Dunellen's code shall be rewritten as follows:

Any development within an area in need of redevelopment or rehabilitation, where a redevelopment agreement that includes specific requirements related to the provision of affordable housing has been executed by the Borough and the designated

redeveloper, shall be exempt from development fees, except for the payment of fractional payments in-lieu pursuant to Section 89-13.B(4) herein.

3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistency.
4. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.
5. This ordinance shall take effect upon final publication as provided by law.

At this point, Mayor Cilento opened the meeting for public comment on the ordinance. No one from the public spoke. This portion was closed.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Narvesen and seconded by Dr. Dunne it was moved to accept the following:

04-19-2021: #1

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The bills, as per the attached list, are hereby authorized for payment.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Rios and seconded by Mrs. Narvesen it was moved to accept the following:

04-19-2021: #2

WHEREAS, the Governor’s Council on Alcoholism and Drug Abuse established the Municipal Alliances for the Prevention of Alcoholism and Drug Abuse in 1989 to educate and engage residents, local government and law enforcement officials, schools, nonprofit organizations, the faith community, parents, youth and other allies in efforts to prevent alcoholism and drug abuse in communities throughout New Jersey.

WHEREAS, The Borough Council of the Borough of Dunellen, County of Middlesex, State of New Jersey recognizes that the abuse of alcohol and drugs is a serious problem in our society amongst persons of all ages; and therefore has an established Municipal Alliance Committee; and,

WHEREAS, the Borough Council further recognizes that it is incumbent upon not only public officials but upon the entire community to take action to prevent such abuses in our community; and,

WHEREAS, the Borough Council has applied for funding to the Governor’s Council on Alcoholism and Drug Abuse through the County of Middlesex;

NOW, THEREFORE, BE IT RESOLVED by the Borough of Dunellen, County of Middlesex, State of New Jersey, hereby recognizes the following:

1. The Borough Council does hereby authorize submission of a strategic plan for the Dunellen Municipal Alliance grant for fiscal year 2022 in the amount of:

DEDR	\$5,914.00
Cash Match	\$1,478.50
In-Kind	\$4,435.50

2. The Borough Council acknowledges the terms and conditions for administering the Municipal Alliance grant, including the administrative compliance and audit requirements.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Burke and seconded by Mr. Sigmon it was moved to accept the following:

04-19-2021: #3

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The following persons are hired for summer employment in the Recreation Department’s Tennis Program. Employment will be between April 24, 2021, and June 5, 2021.

These wages will be taken from the Summer Camp Line 1-01-28-370-000-136.

All wages are per hour, except where noted, and there are no benefits.

Kelly Seader	Tennis Instructor	\$20.00 per hour
Kate Ruskuski	Tennis Instructor	\$20.00 per hour
Allison Egan	Tennis Instructor	\$20.00 per hour

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Narvesen and seconded by Dr. Dunne it was moved to accept the following:

04-19-2021: #4

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

WHEREAS, an emergency has arisen with respect to the need for sewer main repair at the intersection of West Fourth Street and Kline Place; and

WHEREAS, this sewer repair, if left unattended, would have affected the public health, safety and welfare of the residents of Dunellen; and

WHEREAS, the nature of this emergency rendered it impossible to adhere to the normal requirements of the Local Public Contracts Law.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Dunellen, County of Middlesex, State of New Jersey, that in accordance with NJSA 40A:4-48, an Emergency Appropriation be made to Sewer Repair for repair of the broken sewer main at the intersection of West Fourth Street and Kline Place; and

BE IT FURTHER RESOLVED, that Stilo Paving and Excavating be awarded a contract to repair the broken sewer main, at a cost not to exceed \$35,000.00.

Dr. Dunne asked if this is coming out of the sewer budget? Dr. Robins replied that it is.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Dr. Dunne and seconded by Mrs. Burke it was moved to accept the following:

04-19-2021: #5

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

Whereas, emergent conditions have arisen with respect to either funds being needed for salaries and wages and/or payments being due to various vendors, and

Whereas, adequate provisions were not made in the 2021 Temporary Budget, and N.J.S.A. 40A:4-20 provides for creation of emergency temporary appropriations, and

Whereas, the total emergency temporary appropriations adopted in the year 2021 pursuant to the provisions of N.J.S.A. 40A:4-20 (Chapter 96, P.L. 1951 as amended) including this resolution total \$2,001,531 for the Current Fund and \$131,000 for the Sewer Utility,

NOW, THEREFORE BE IT RESOLVED by the governing body of the Borough of Dunellen (not less than two-thirds of all the members thereof affirmingly concurring):

Then, in accordance with N.J.S.A. 40A:4-20:

1. The emergency temporary appropriations listed below will be provided for in the 2021 budget under the titles shown and for the amounts given be and the same are hereby made as follows:

<u>Department</u>	<u>Account</u>	<u>Salaries & Wages</u>	<u>Other Expenses</u>
Administration and Executive	20-100-000	\$12,500.00	\$4,000.00
Legal Advertising	20-100-003		500.00
Telephone	20-100-004		8,000.00
Financial Administration	20-130-000	20,000.00	
Assessment of Taxes	20-150-000	4,000.00	5,000.00
Collection of Taxes	20-145-000	9,500.00	4,000.00
Legal Services	20-155-000	13,500.00	6,000.00
Borough Clerk	20-120-000	12,500.00	2,000.00
Engineering Services	20-165-000		7,000.00
Municipal Planner	21-181-299		4,000.00
Public Buildings & Grounds	26-310-000	2,500.00	13,000.00
Electric & Gas	31-461-000		35,000.00
Planning Board	21-180-000		2,000.00
Group Health Insurance	23-220-000		175,000.00
Other Insurance	23-210-000		70,000.00
Mayor & Council	20-110-000	5,000.00	1,400.00
Gasoline	31-460-299		6,000.00
Water	31-445-000		2,000.00
Postage	20-100-001		1,500.00
Information Technology	20-140-000		10,000.00
Fire	25-265-000		9,000.00
Fire Hydrant Service	25-265-001		18,000.00
Police	25-240-000	410,000.00	22,000.00
Police - Overtime	25-240-001	10,000.00	
School Crossing Guards	25-240-002	16,000.00	
Emergency Management	20-252-000	1,000.00	1,200.00
Road Repairs	26-290-000	120,000.00	18,000.00
Tree Maintenance	26-290-002		12,000.00
Transit Village	26-297-000		500.00
Garbage & Trash	32-465-000		6,000.00
Board of Health	27-330-000	9,000.00	4,000.00
Recreation	28-370-000	14,000.00	2,600.00
Senior Citizens Activities	28-370-001		600.00
Construction Code	22-195-000	24,000.00	750.00
Public Employees Retirement System (PERS)	36-471-000		149,144.00
Social Security	36-472-000		40,000.00
Police and Firemen's Retirement Syst (PFRS)	36-475-000		501,837.00
Municipal Court	43-490-000	31,000.00	3,000.00
Free Public Library	29-390-000	52,000.00	
Municipal Prosecutor	25-275-000	5,000.00	
Intergovernment/Dispatching	42-305-001		30,000.00
Intergovernment/Recycling	42-305-000		40,000.00
Intergovernment/Middlesex Health Services	42-305-002		10,000.00
Capital Improvement Fund	44-901-299		5,000.00

	Subtotal	\$771,500.00	\$1,230,031.00
	Grand Total Current Fund		<u>\$2,001,531.00</u>
Sewers - Postage	55-500-212		\$1,000.00
Sewers - PARSA	55-500-235		130,000.00
	Subtotal		\$131,000.00
	Grand Total Sewer Utility		<u>\$131,000.00</u>

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Rios and seconded by Dr. Dunne it was moved to accept the following:

04-19-2021: #6

**RESCINDING A PORTION OF A COVID-19 SPECIAL EMERGENCY
ADOPTED AT A PREVIOUSLY HELD MEETING OF THE DUNELLEN BOROUGH
COUNCIL**

WHEREAS, through Resolution 11-16-2020: #7-A adopted on November 16, 2020, the Dunellen Borough Council adopted a Special Emergency Resolution to combat operational losses as a direct result of COVID-19; and

WHEREAS, after closing out the Borough’s 2020 financial activity, it has been determined that the revenue shortfall in the Current Fund has been identified in the amount \$118,032.09, which is less than what was authorized in the said COVID-19 Special Emergency Resolutions.

NOW, THEREFORE BE IT RESOLVED by the Borough Council of the Borough of Dunellen (by not less than a majority vote of the full governing body members affirmatively concurring) that:

1. \$111,967.91 of the \$230,00000 projected deficit in revenue for the Current Fund portion of the COVID-19 Special Emergency is rescinded, leaving a revenue deficit of \$118,032.09, and
2. That two (2) certified copies of this resolution will be filed with the Director of the Division of Local Government Services.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Burke and seconded by Mrs. Narvesen it was moved to accept the following:

04-19-2021: #7

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The resignation of Police Officer Matthew Rosofsky is accepted, effective April 29, 2021.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

On the motion of Mrs. Rios and seconded by Mr. Sigmon it was moved to accept the following:

04-19-2021: #7-A

Whereas, on April 19, 2021, the Dunellen Borough Council introduced for first reading Ordinance 2021-12, prohibiting the operation of any class of cannabis businesses within its geographical boundaries and amending Section 115 of the Borough of Dunellen Municipal Code.

Whereas, the entirety of this revision is contained in the attached Plan document.

NOW THEREFORE, BE IT ORDAINED by the Council of the Borough of Dunellen, County of Middlesex, State of New Jersey, as follows:

1. The foregoing recitals are incorporated herein by reference as if fully set forth at length; and
2. That Dunellen Municipal Code Section 115 is hereby amended to prohibit the operation of any class of cannabis businesses within its geographical boundaries; and
3. This Ordinance shall take effect in accordance with applicable law following final adoption and publication thereof.

Now, Therefore, be it Resolved, by the Mayor and Council of the Borough of Dunellen, that Ordinance 2021-12 be forwarded to the Dunellen Planning Board for review and a report containing its recommendation regarding the proposed revised and amended ordinance.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

CONSENT AGENDA:

Mrs. Rios asked where the proposed canning by the American Legion would take place? Mostly at the intersection of Washington and Route 28, likely in front of their building on Prospect Avenue, possibly at Madison and Route 28, and in front of different downtown businesses.

On the motion of Mrs. Burke and seconded by Mrs. Narvesen it was moved to accept the following:

04-19-2021: #8

RESOLUTION REFUNDING SEWER FEES PREVIOUSLY COLLECTED FROM 2018-2020 AND RECLASSIFYING THE PROPERTY IN 2021

WHEREAS, the property located at 244 Columbia Street, known as Block 83, Lot 4, and identified as Sewer Account 2202-0 had been labeled as a two-family home, and

WHEREAS, a recent investigation by the Borough Tax Collector in conjunction with the Borough Assessor has determined that the house was incorrectly identified and is, in fact, a one-family structure, and

WHEREAS, Edwin Collado and A C Saieh-Collado, owners of the property since mid-2018, have paid the sewer fees erroneously billed since they assumed ownership:

Year	Original bill	Amount paid	Correct bill	Amount overpaid
2018	\$210.00	\$210.00	\$170.00	\$40.00
2019	700.00	700.00	350.00	350.00
2020	700.00	700.00	350.00	350.00
		Adjusted by	Correct bill	
2021	\$700.00	(\$350.00)	350.00	No refund, adjustment applied

WHEREAS, Edwin Collado and A C Saieh-Collado have requested a refund of overpaid sewer fees made between 2018-2020 and an adjustment on the sewer fees due for 2021 based on the single-family rate.

NOW, THEREFORE BE IT RESOLVED by the Borough Council of the Borough of Dunellen that a sewer refund for overpayments made in 2018, 2019 and 2020 in the amounts of \$40, \$350 and \$350 respectively, for a total of \$740, be made and charged to the Operations account of the Sewer Utility fund; and

BE IT FURTHER RESOLVED that the Tax Collector is authorized to process said refund and to adjust the Sewer billing for 2021 to reflect 244 Columbia Street as a single-family residence, which will reduce the amount due in 2021 to \$350 for the year.

04-19-2021: #9

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The Treasurer is hereby authorized to issue the following proceeds for tax sale redemption(s):

Payable to: Trade Money LLC

TSC	Block	Lot	Owner/Address	Principal	Interest	Premium	Total
18-10	42	20	Martinez, Cesar & Jenny 816 Center Street	1493.05	126.64	800.00	2,419.69

TOTAL REFUNDED \$ 2,419.69

04-19-2021: #10

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The following FAX Machines and Printer are to be leased through Wells Fargo for a combined price of \$246.00 per month:

Clerk's Office, Account #1-01-20-120-000-205 (\$61.50 per month) (FAX Machine)
Police Department, Account #1-01-25-240-000-205 (\$123.00 per month) (Printer)
Construction Office, Account #1-01-22-195-000-205 (\$61.50 per month) (FAX Machine)
Plus \$75.00 one-time processing fee.

With a total amount of \$3,027.00 per year.

The initial contract is for the period May 1, 2015 through December 31, 2015.

The term of this resolution is for the period April 1, 2021 through March 31, 2022.

A continuation of the contract is subject to the availability of funds in future calendar years.

04-19-2021: #11

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The Dunellen American Legion Post 119 is hereby granted permission to run a penny drive (canning) fund raiser on Saturday, August 14, 2021, Sunday, August 15, 2021, Saturday, August 21, 2021, Sunday, August 22, 2021, Saturday, November 13, 2021, Sunday, November 14, 2021, and Saturday, November 20, 2021, on the corners of North Avenue and Washington Avenue, North Avenue and Madison Avenue, and Grove Street and Prospect Avenue, and outside business establishments (with retailers' permission) in downtown Dunellen, for the purpose of raising funds for the organization's supported charities.

The American Legion Post 119 has been notified that they must also apply to the New Jersey Department of Transportation for a permit to fund raise on state roads, and to the County of Middlesex for a permit to fund raise on county roads, and that this Dunellen Borough Council approval is granted subject to the final approval of the NJDOT and the Middlesex County Department of Transportation.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

Reports:

Mrs. Rios: 1) last weekend, the Dunellen Downtown Management Organization had its first Spring into Fitness event in Washington Park; 2) the Friends of the Dunellen Library had its second this season Open Air Market in the parking lot. There was a band and 20+ vendors; 3) the Library has temporarily fixed one of the holes in its roof; 4) Community Day is May 1st; 5) the Municipal Alliance will be having its Town Hall on April 28th at 7:00 pm; 6) the PTO Tricky Tray is May 15th; 7) Dunellen Arts and Culture Commission will be having Concerts in the Park. Please check the dates on their Facebook page.

Mrs. Burke: 1) thanked Office Rosofsky for his years of service in Dunellen and wished him well. The application process has started and anyone interested can submit to Chief Smith by May 10th; 2) the PBA contract is still under review; 3) the Fire Department Memorial is this Sunday in Washington Park at 10 am, starting at the Fire House and moving to the park by 10:15 am; 4) the next edition of *The Dunellen Report* will be in July, so please submit articles by June and encourage Department Heads to contribute.

Mr. Reid: 1) the DPW roof was repaired; 2) for Community Day on May 1st, we will meet in McCoy Park at 11:00 am.

Dr. Dunne: 1) will be starting on Capital Budget requests this week; 2) she and Mrs. Narvesen attended the Green Brook Flood Control Commission meeting last week. There are two active construction sites in Middlesex Borough. Still anticipating 2025 for entry into Dunellen and real estate acquisition is the number one issue affecting progress. She asks that the public work with the Commission; 3) she reached out to all the Council members regarding improving communication. She would like to talk or meet once a month; 4) COVID numbers are not decreasing; they are increasing. She reminded everyone to be vigilant and get your vaccination if you have not already done so; 5) the Diversity and Inclusion is close to being populated.

Mr. Sigmon: 1) the Baseball and Softball Opening Day Parade and Ceremony will be on Saturday, April 24th. The Parade will begin at 10:00 am at Washington Memorial Park and end at McCoy Park. After the Parade, there will be an Opening Day Ceremony followed by games.

Mrs. Narvesen:

Department of Public Works Report

DPW crew has been busy and doing a good job on their tasks.

- Routinely cleaning up downtown and the All the Parks.
- Painted the yellow curbs where the Parking Authority requested.
- Removed 4 dead trees in town along with some branch trimming.
- Continued picking up leaf bags and branches throughout the town.

- They mulched Gavornik Park, and around the Gazebo at Columbia Park.
- Today was the 3rd round of street sweeping, streets are looking clean. They have been completing the sections on Tuesday mornings.
- Crew will be out tending to potholes this week.

1) She and Dr. Dunne attended a Board of Education Meeting. Nothing significant to report on that, but next week, April 27, they will have their Budget presentation. It will be in-person in the High School Auditorium; 2) at Spring into Fitness, six local fitness businesses gave demonstrations, a presentation by a Children’s Registered Dietician, and lots of food samples.

Mayor Cilento:

He thanked Officer Rosofsky for his service and wished him well. He also thanked CFO Scott Olsen for his hard work on the Budget and for filling in for an employee who was out on sick leave. Scott made sure that things were still functioning in the Borough. The Mayor wants to applaud Scott for that.

Covid-19 Update:

Since my last report on 4/5/2021, we have been made aware of forty more new cases added to Dunellen’s cumulative total of 793; averaging around 3 cases per day. Dunellen’s cumulative death total remains at twelve. COVID-19 vaccinations administered as of today, 20% of our population has had the course initiated (representative of who have received 1 dose of a 2 dose vaccine course), 33% of our population has had at least one dose administered, and 20% has completed the course.

Dunellen and Middlesex County’s cumulative totals can be found at www.discovermiddlesex.com/total-cumulative-cases/

New Jersey COVID-19 Information Hub at: www.covid19.nj.gov.

As of today, all U.S. adults 18+ are eligible to be vaccinated. To sign up for the COVID-19 vaccination: <https://covid19.nj.gov/pages/vaccine>

The state went live with its Vaccination Helpline. The number is (855) 568-0545. The State has also set up a call support line for individuals over 75 years of age that are still waiting to schedule or reschedule their COVID-19 vaccine appointment. That number is 1-856-249-7007. If you know someone who does not have access to the Internet or a computer, please assist them with signing up for the vaccine and/or making a phone call to the above contact information.

If you are in need of assistance due to a mental health crisis because of the impact of COVID-19, please text the crisis line by texting “NJ” to 741741, call the family helpline at 1-800-843-5437 or call the mental health line at 1-866-202-4357.

Our numbers are rising, and we must remain vigilant in our efforts to prevent further spread of COVID-19. Please remember to continue wearing of a mask and when it is your time to get a vaccine, please consider doing so.

Memorial Day Parade:

Reminder that Dunellen will host its annual Memorial Day Parade in-person on Monday, May 31st starting at 10:00 am. The parade's starting point will be located at the American Legion Post 119 on New Market Road. The Dunellen Recreation Department is looking for organizations to walk in the parade and create their own parade floats. For more information, contact Alex Miller, Recreation Director, at amiller@dunellenborough.com. The Memorial Day Ceremony will be held at 11:00 am at Washington Memorial Park.

Dunellen Station (Art Color) Development Update:

The force main directional drilling has been completed. There are some joint fusing and interconnections that remain to be completed. Site work for the development is commencing this week, starting with earthwork.

Capital Improvement Projects:

South Madison: The gas company has been having difficulty with the complexity of the gas main relocation. In response to this, our engineer CME Associates is reviewing alternate storm sewer designs in an attempt to clear the limited areas available through the existing utilities that need to be crossed. Once this is completed, mill and pave will begin.

Firehouse Curb: Soil borings are scheduled for 4/20/2021. The borings are necessary to prepare the construction specifications for the deep curb design and construction.

NJDOT Route 28 ADA Compliant Ramps Project: In speaking with NJDOT, they are working on design standards to be submitted to CME Associates for review. They have not prepared a project timeline to date and once this has been confirmed I will report back to Council.

NJ Local Government Week: Today begins the week-long initiative highlighting the importance of local government and educating the public on our committees, commissions and agencies, as well as highlighting and thanking our public employees for the work they do here in Dunellen. Please follow our social media campaign on the Borough of Dunellen, NJ Facebook page.

Public Comment

Jeff Best, Acting Chief of the Dunellen Rescue Squad, 401 Madison Avenue. He reported that the current Chief has resigned, and he is now Acting Chief. He notes that though we are seeing an upsurge in COVID positive cases, we are seeing a decrease in their severity. However, the Squad has not received, since last September, any information on positive cases that they have transported. Mayor Cilento stated that he will follow-up with Chief Smith.

Liz Lopez-Velez, Madison Avenue, asked about streetlights that are out. Dr. Robins asked her to provide him with the information and he will report this to PSE&G. He can also request additional lights.

Autumn Barbato, 102 Dunellen Avenue, asked about the snow removal ordinance from corners. She asked if the ordinance applies to both commercial and residential properties? She noted that the ordinance places a burden on residential property owners, especially when there is a heavy snowfall. Mayor Cilento replied that recent snow falls have been very heavy, and we have had the DPW go around and remove piles at corners. But it is the homeowner's responsibility to remove the snow. Mr. Bruder also noted that the ordinance does apply to all residents, regardless of the amount of snow that has fallen.

Jeff Best also stated that he too has a corner lot and he had no problem clearing to the street. He asked if residents have an obligation to clear the streets? No, only from the sidewalks, and around the fire hydrants.

On the motion of Mrs. Rios and seconded by Mrs. Narvesen it was moved to accept the following:

04-19-2021: #12

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The Dunellen Borough Council Meeting of April 19, 2021 is adjourned.

Yes: Burke, Dunne, Narvesen, Reid, Rios and Sigmon

The YouTube presentation of this Council meeting can be found at:

<https://youtu.be/OE1RjfhTbVs>