



# Mayor and Common Council Borough of Flemington

September 27, 2022

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Council Meeting Room and Online

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## I. Call to Order

1. Statement regarding OPMA

This meeting is called pursuant to the provisions of the Open Public Meetings Law. This meeting of September 27, 2022 was included in a list-of-meetings notice sent to the Hunterdon County Democrat and Courier-News on Jan. 5, 2022, posted on the bulletin board at Borough Hall on that date, and has remained continuously posted as required. In addition, a copy of this notice is and has been available to the public and is on file in the office of the Borough Clerk.

## II. Work Session (7:00 PM)

FIRE DEPARTMENT PRESENTATION

## III. Regular Meeting (7:30 PM)

Flag Salute

Roll Call:

Betsy Driver	Mayor
Jessica Hand	Council Vice President
Malik Johnston	Council Member
Jeremy Long	Council President
Tony Parker	Council Member
Elizabeth Rosetti	Council Member
Kimberly Tilly	Council Member

1. Mayor's Report

2. Council Members' Reports

Council Vice President Hand

Council Member Johnston

Council President Long

Council Member Parker

Council Member Rosetti

Council Member Tilly

3. Public Comments - Session I (up to 3 minutes each, for a maximum of 30 minutes)
4. Approval of Minutes
  1. MINUTES OF SEPTEMBER 12, 2022 REGULAR MEETING
  2. Motion To: **Minutes of September 12, 2022 Executive Session**
5. Consent Agenda
  1. RESOLUTION 2022-197: AUTHORIZING THE APPOINTMENT OF MICHAEL HUMPHREY, ACTING BOROUGH CLERK, AS THE FUND COMMISSIONER FOR STATEWIDE INSURANCE FOR 2022
  2. RESOLUTION 2022-200: APPOINTMENT OF BRADLEY WESTPY FOR FLEMINGTON FIRE DEPARTMENT MEMBERSHIP
  3. RESOLUTION 2022-202: REQUESTING THE DIVISION OF LOCAL GOVERNMENT SERVICES TO APPROVE FUNDS FROM GRANT AWARDS BE ADDED TO THE BOROUGH OF FLEMINGTON 2022 BUDGET

#### Regular Agenda ( Start)

This meeting is being held in conformance with the Open Public Meetings Act.

1. ORDINANCE 2022-13: 2022-13 : 2ND READING & PUBLIC HEARING: ESTABLISHING BUSINESS INSURANCE REGISTRATION
2. ORDINANCE 2022-14: 2022-14 : 2ND READING & PUBLIC HEARING: ADDING HANDICAPPED PARKING SPOT ON CAPNER STREET
3. ORDINANCE 2022-15: 2022-15 : 2ND READING & PUBLIC HEARING: AMENDING SECTION 1404 OF THE BOROUGH CODE- HISTORIC PRESERVATION COMMISSION
4. ORDINANCE 2022-16: 2022-16 : 2ND READING & PUBLIC HEARING: ORDINANCE ACCEPTING A LEASE ON PROPERTY
5. ORDINANCE 2022-17: 2022-17 : 2ND READING & PUBLIC HEARING: ADDING "ABANDONED AND FORECLOSED PROPERTY" CODE
6. ORDINANCE 2022-19: 2022-19 : 2ND READING & PUBLIC HEARING: ACCEPTING EASEMENT FOR PUBLIC SIDEWALKS
7. ORDINANCE 2022-20: 2022-20 : 1ST READING: ESTABLISHING HANDICAP PARKING SPACE ON THE 200 MAIN STREET PROPERTY
8. ORDINANCE 2022-21: 2022-21 : 1ST READING: ADDING SECTION 1-5 TO THE BOROUGH CODE, ENTITLED "VIOLATIONS AND PENALTIES"
9. ORDINANCE 2022-22: 2022-22 : 1ST READING: ADDING AND AMENDING LEAD PAINT AND FIRE PREVENTION CODE REQUIREMENTS
10. RESOLUTION 2022-182: APPOINTING ANDREA SCHELL AS THE MUNICIPAL COURT VIOLATIONS CLERK

11. RESOLUTION 2022-194: AUTHORIZING THE EXPANSION OF THE CONSTRUCTION CONTRACTOR CONTRACT WITH REIVAX CONTRACTING CORP. BY \$99,157, IN CONNECTION WITH THE WATER AND SEWER IMPROVEMENT PROJECT FOR HOPEWELL AND DEWEY AVENUE
12. RESOLUTION 2022-199: RECOGNIZING NATIONAL HISPANIC HERITAGE MONTH, 2022
13. RESOLUTION 2022-201: RENEWAL OF PLENARY RETAIL CONSUMPTION LIQUOR LICENSE #1009-33-002-008 HELD BY CYCLADES ASSOCIATES, LLC
14. RESOLUTION 2022-203: AUTHORIZING A 36-MONTH PAYMENT PLAN FOR A WATER CONNECTION SERVICE FOR BLOCK 43 LOT 6, 150 BROAD STREET
7. Public Comments - Session II (up to 3 minutes each, for a maximum of 30 minutes)
8. Attorney's Report
9. Payment of the Bills

Motion To: **Pay the Bills in the Amount of \$1,264,192.93**

Executive Session for Any Other Applicable Matter Identified During the Regular Meeting (Action May Be Taken)

Adjournment

Motion To: **Adjourn**

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Appointment  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:

**SCHEDULED**

**AGENDA ITEM (ID # 3900)**

DOC ID: 3900

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**Fire Department Presentation Regarding the Potential  
Replacement of the Ladder Truck.**

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Appointment  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:

**SCHEDULED**

**AGENDA ITEM (ID # 3896)**

DOC ID: 3896

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**Minutes of September 12, 2022**

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Board Policy  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:

**SCHEDULED****RESOLUTION 2022-197**

DOC ID: 3894

## **Authorizing the Appointment of Michael Humphrey, Acting Borough Clerk, as the Fund Commissioner for Statewide Insurance for 2022**

**WHEREAS**, the Borough of Flemington (hereinafter "Local Unit") is a member of the Statewide Insurance Fund (hereinafter "Fund"), a joint insurance fund as defined in N.J.S.A. 40A:10-36 et seq.; and

**WHEREAS**, the Fund's Bylaws require participating members to appoint a Fund Commissioner;

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Borough of Flemington (Local Unit) that Michael Humphrey is hereby appointed as the Fund Commissioner for the Local Unit for the **Fund Year 2022**; and

**BE IT FURTHER RESOLVED** that Rebecca Newman is hereby appointed as the Alternate Fund Commissioner for the Local Unit for the **Fund Year 2022**; and

**BE IT FURTHER RESOLVED** that the Local Unit's Fund Commissioner is authorized and directed to execute all such documents as required by the Fund.

ADOPTED: September 27, 2022

ATTEST:

\_\_\_\_\_  
BETSY DRIVER, MAYOR

\_\_\_\_\_  
MICHAEL HUMPHREY, ACTING BOROUGH CLERK

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Board Policy  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:

**SCHEDULED****RESOLUTION 2022-200**

DOC ID: 3901

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## Appointment of Bradley Westpy for Flemington Fire Department Membership

**WHEREAS**, Bradley Westpy has met the necessary qualifications to make an application to join the Flemington Fire Department;

**NOW THEREFORE BE IT RESOLVED**, by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, that approval is granted for Bradley Westpy's membership to the Flemington Fire Department.

Approved: September 27, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Financial Approval  
Prepared By: Michael J. HumphreyInitiator: Michael J. Humphrey  
Sponsors:**SCHEDULED****RESOLUTION 2022-202**

DOC ID: 3904

## Requesting the Division of Local Government Services to Approve Funds from Grant Awards be Added to the Borough of Flemington 2022 Budget

**WHEREAS**, N.J.S. 40A4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget, and

**WHEREAS**, said Director may also approve the insertion of an item of appropriation for an equal amount, and

**WHEREAS**, the Borough of Flemington has received \$263,144.48 for various grants and wishes to amend its 2022 budget to include this amount as revenue,

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the Borough of Flemington requests the Director of the Division of Local Government Services to approve the insertion of this item of revenue in the budget of the year 2022 in the amount of \$263,144.48 which is now available as a revenue from:

Miscellaneous Revenues: Section F: Special Items of General Revenue Anticipated with Prior Written Consent of Director of Local Government Services - Public and Private Revenues Offset with Appropriations:

American Rescue Plan Grant	\$239,533.99
Clean Communities Grant	\$9,111.44
Alcohol Education, Rehabilitation & Enf. Grant	\$2,211.05
Safe & Secure Communities Grant	\$12,288.00

**BE IT FURTHER RESOLVED** that a like sum of \$263,144.48 be and the same is hereby appropriated under the caption of:

General Appropriations: (A) Operations - Excluded from "CAPS": Public and Private Programs Offset by Revenues:

American Rescue Plan Grant	\$239,533.99
Clean Communities Grant	\$9,111.44
Alcohol Education, Rehabilitation & Enf. Grant	\$2,211.05
Safe & Secure Communities Grant	\$12,288.00

Adopted: August 22, 2022

Attest:

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Betsy Driver, Mayor

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Michael Humphrey, Acting Borough Clerk

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. HumphreyInitiator: Michael J. Humphrey  
Sponsors:**TABLED****ORDINANCE 2022-13**

DOC ID: 3877

**Establishing Business Insurance Registration**

**WHEREAS**, Governor Murphy signed P.L. 2022, c.92. on August 5, 2022, which requires business owners and rental unit owners to maintain certain liability insurance policies and to register the compliant certificate of insurance with the municipality annually in which the business or rental units are located; and

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Flemington, in the County of Hunterdon and State of New Jersey, as follows:

**SECTION 1.** Section 4-15 of the Code of the Borough of Flemington, entitled "Business Insurance Registration", is added as follows:

**SECTION 4-15 BUSINESS INSURANCE REGISTRATION**

Section 4-15.1. Business insurance registration required. It is unlawful for any owner of a business, owner of a rental unit or units, or the owner of a multi-family home of four or fewer units, one of which is owner occupied, to operate within the Borough without first registering its certificate of insurance demonstrating compliance with Section 1 of P.L. 2022, c. 92 and paying the registration fee required herein.

Section 4-15.2. Entities covered by this Chapter. The following entities are required to register their certificate of insurance under this Chapter:

- a. Businesses, which shall mean, any person intending to sell or dispose of or to offer to sell or dispose of any goods, wares, merchandise or render any services for fees within the Borough. This shall include businesses operating on a temporary basis within the Borough such as peddlers, solicitors, and transient vendors licensed pursuant to Borough Code Section 4-2 and temporary retail food establishments and mobile food units licensed pursuant to Borough Code Section 4-3.
- b. Owners of single rental dwelling units.
- c. Owners of multiple dwelling rental units.
- d. Owners of multi-family homes that include rental units, even where one unit is owner-occupied.

Section 4-15.3. Registration official. The clerk shall accept, approve, and

file registration applications, and collect registration fees hereunder.

Section 4-15.4. Registration Fees; Expiration; Renewal. The registration fees of this chapter shall be \$15.00 annually. Registrations shall expire on December 31 of each year. Renewals must be submitted by December 1 of each year. After the effective date of this Section, entities covered under this Section shall be required to register by December 1, 2022 and such registration shall be valid for the 2023 calendar year.

Section 4-15.5. Application and insurance requirements.

An application for a business insurance registration shall be accompanied by the required fee and shall be made to the Borough Clerk upon forms provided by the Clerk. It shall contain the following information:

- a. Name and address of the applicant. If the applicant is a corporation, the name and address of its registered agent.
- b. The address of the rental dwelling units or business as applicable. If the registration applies to a transient business or a mobile food unit, a general description of the time frame for operation and area where the business will be operated
- c. A description of the nature of the business and the goods, property or services to be sold or supplied.
- d. A certificate of insurance reflecting the following amounts of insurance in compliance with P.L. 2022, c. 92.
  - i. Except as provided in subsection ii. of this section, the owner of a business or the owner of a rental unit or units shall maintain liability insurance for negligent acts and omissions in an amount of no less than \$500,000 for combined property damage and bodily injury to or death of one or more persons in any one accident or occurrence.
  - ii. The owner of a multifamily home which is four or fewer units, one of which is owner-occupied, shall maintain liability insurance for negligent acts and omissions in an amount of no less than \$300,000 for combined property damage and bodily injury to or death of one or more persons in any one accident or occurrence.

Section 4-15.6. Violations and penalties.

Any person who violates the terms of this Chapter shall pay the license fee plus a fine of not less than \$500.00 but no more than \$5,000.00 plus court costs.

**SECTION 2.** All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

**SECTION 3.** If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

**SECTION 4.** This Ordinance shall take effect after passage and publication in the manner provided by law

Adopted: August 22, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**HISTORY:**

08/22/22

Governing Body

INTRODUCED

Next: 09/27/22

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. Humphrey

Initiator: Michael J. Humphrey  
Sponsors:

**TABLED****ORDINANCE 2022-14**

DOC ID: 3869

## **Amending Chapter VII Traffic, Schedule XII Parking Restricted for Use by Handicapped Persons, by Adding a Spot on Capner Street**

**WHEREAS**, N.J.S.A. 39:4 - 197 confers upon the Borough a right to establish resident handicapped on-street parking in order to preserve and safeguard the public health, safety and welfare; and

**WHEREAS**, pursuant to N.J.S.A. 39:4 -197.6, any municipality may, by ordinance establish a restricted parking zone in front of a residence occupied by a handicapped person if a windshield placard or wheelchair license plates have been issued for a vehicle owned by that person, or by another occupant of the residence who is an immediate member of the family of the handicapped person, by the New Jersey Department of Motor Vehicles pursuant to the provisions of P.L. 1949, c.280 (C.39:4-204 et seq.), provided the permitting does not interfere with the normal flow of traffic; and

**WHEREAS**, the Borough of Flemington Council does deem it necessary to and in the best interest of its residents to provide for resident on-street handicapped parking in front of residences occupied by handicapped persons; now, therefore

**NOW, THEREFORE BE IT ORDAINED** by the Borough of Flemington Council to add the following handicap restricted parking space:

STREET: Capner Street

SIDE: South

LOCATION: From a point 25 feet east of the southernly curb-line of Park Avenue to 62 feet east thereof.

Introduced: August 22, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

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Michael Humphrey, Acting Borough Clerk

**HISTORY:**

08/22/22

Governing Body

INTRODUCED

Next: 09/27/22

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:

**TABLED**

**ORDINANCE 2022-15**

DOC ID: 3885

**Ordinance Amending Section 1404 of the Borough Code  
Regarding the Historic Preservation Commission**

**WHEREAS**, the Borough of Flemington Historic Preservation Commission (the “Commission”) has suggested the following amendments to the ordinances regarding the Commission’s establishment, powers, and review procedures.

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

**SECTION 1.** Section 1404 of the Borough Code, entitled “Establishment of the Historic Preservation Commission” is hereby amended as follows (Additions noted in bold italics ***thus*** and deletions noted with a strikethrough ~~thus~~):

(See attached document)

Introduced:

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Sallie Graziano, Borough Clerk

**HISTORY:**

09/12/22

Governing Body

INTRODUCED

Next: 09/27/22

**ORDINANCE AMENDING SECTIONS 1404 OF THE BOROUGH CODE REGARDING THE HISTOIC PRESERVATION COMMISSION**

**WHEREAS**, the Borough of Flemington Historic Preservation Commission (the “Commission”) has suggested the following amendments to the ordinances regarding the Commission’s establishment, powers, and review procedures.

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

**SECTION 1.** Section 1404 of the Borough Code, entitled “Establishment of the Historic Preservation Commission” is hereby amended as follows (Additions noted in bold italics *thus* and deletions noted with a strikethrough ~~thus~~):

- A. A Historic Preservation Commission (HPC) is hereby established consisting of 5 regular members and 2 alternate members, each of whom shall be appointed by the Mayor, of the following 3 classes:
  - 1. Class A - Persons who are knowledgeable in building design and construction or in architectural history;
  - 2. Class B - Persons who are knowledgeable or have a demonstrated interest in local history.
  - 3. Class C - Persons who are residents of the municipality and who hold no other municipal office, position or employment except for membership on the Planning Board.
  - 4. There shall be at least one regular member from each class. *A majority of members shall be Class C. Class A and Class B members need not be residents of the municipality.*
  - 5. Alternate members shall meet the qualifications of Class C members and shall be designated "Alternate No. 1" and "Alternate No. 2" at the time of appointment.
- B. Terms of Membership.
  - 1. The term of each regular member shall be 4 years and the term of each alternate member shall be 2 years.
  - 2. Alternate Members. Alternate members shall be designated at the time of their appointment as "Alternate No. 1" and "Alternate No. 2."
  - 3. The term of any member in common with the Planning Board shall be for the term of membership on such Board.
- C. Role of Alternate Members. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any Class. A vote shall not be

Attachment: HPC Ordinance FINAL (2022-15 : Amending Section 1404 of the Borough Code - Historic Preservation Commission)

delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, "Alternate No. 1" shall vote.

- D. Vacancies. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term, only. *All vacancies shall be filled within 60 days.*
- E. Compensation. Members of the HPC shall serve without compensation except that reimbursement of reasonable expenses in the execution of official duties may be made by the municipality.
- F. Removal. Any member may be removed by the governing body for cause but only after public hearing and other due process proceedings.
- G. Conflict. No member or alternate member of the HPC shall be permitted to act on any matter in which he or she has either directly or indirectly any personal or financial interest. No member who is so disqualified may act on that particular matter, shall not continue to sit with the Commission on the hearing of such matter, nor shall participate in any discussion or decision.
- H. Organization. The HPC shall elect from its members a chairman and vice-chairman and select a secretary who may or may not be a member of the HPC or a municipal employee.
- I. Funding. The governing body shall make provisions in its budget and appropriate funds for the expenses of the Historic Preservation Commission.
- J. Rules and Procedures. The HPC shall adopt and may amend internal rules and procedures for the transaction of its business subject to the following:
1. A quorum for any action by the HPC shall be 3 members.
  2. All HPC minutes and records shall be public records.
  3. All HPC meetings shall comply with the Open Public Meetings Act (N.J.S.A. 10:4-7 et seq.).
  4. HPC meetings shall be scheduled at least once every month or as often as required to fulfill its obligations to advise the Planning Board, governing body, or construction official.
- K. Role of the HPC.
1. For applications that would otherwise not require Planning Board review, the Zoning Officer shall refer the application to the HPC for a written report on the application *in accordance with ordinance §1631* and its compliance with the Borough's Historic District

regulations. This report shall be submitted to the Zoning Officer, who shall issue a written approval or denial based on the HPC report, pursuant to N.J.S.A. 40:55D-111. The report of the HPC shall also be provided to the applicant and the Planning Board. The report shall be sent to the Zoning Officer within 45 days of the referral to the HPC. Failure of HPC to report within the forty-five-day period shall constitute a determination that the application is consistent with the Historic District regulations and that no condition on the issuance of the permit shall be imposed.

2. For applications that require Planning Board review based on provisions of the Borough Land Development Ordinance, the application shall be referred to the HPC for a written report on the application *in accordance with Borough Code §1631* and its compliance with the Borough's Historic District regulations. This report shall be submitted ~~to the Zoning Officer, who shall issue a written approval or denial based on the HPC report, pursuant to N.J.S.A. 40:55D-111~~ ***the Planning Board which shall issue a written approval or denial as required by the Municipal Land Use Law (“MLUL”), which may or may not incorporate the recommendations of the Historic Preservation Commission (“HPC”) taking into account the HPC report and recommendations, pursuant to N.J.S.A. 40:55D.*** The report of the HPC ***shall be sent to the Planning Board, Zoning Officer, and applicant*** ~~shall also be provided to the applicant and the Planning Board. The report shall be sent to the Zoning Officer within 45 days of the referral to the HPC~~ ***or prior to the scheduled public hearing before the Board on the matter, whichever is sooner.*** Failure of the HPC to report shall constitute a determination that the application is consistent with the Historic District regulations and that no condition shall be imposed on the issuance of any approval.

3. An applicant may appeal any determination of the Zoning Officer to the Borough Planning Board. Said appeal shall occur within 45 days of the final determination by the Zoning Officer.

L. The HPC shall advise the Planning Board from time to time through the process of amending the Historic Preservation Element of the Master Plan.

M. The HPC shall recommend to the Planning Board ***for their approval*** ~~guidelines for review to be utilized in~~ determinations of historic landmark status and ***undertake*** ~~for reviews of~~ development applications or permits affecting historic landmarks or improvements within historic districts ***in accordance with Borough Code §1631.*** ~~The Planning Board may recommend modifications of the guidelines.~~

**SECTION 2.** Section 1405 of the Borough Code, entitled “Powers and Responsibilities of the Historic Preservation Commission” is hereby amended as follows (Additions noted in bold italics ***thus*** and deletions noted with a strikethrough ~~thus~~):

The Historic Preservation Commission shall have the following duties and responsibilities:

- A. To prepare a survey or surveys of historic sites and districts pursuant to criteria established in such survey;
- B. To make recommendations to the Planning Board on the Historic Preservation Element of the Master Plan and on the implications of any other Element on the preservation of historic sites and districts;
- C. To advise the Planning Board on the inclusion of historic sites in the recommended capital improvement program;
- D. To advise the Planning Board on applications for development;
- E. Provide written reports on the application of the zoning provisions of this Ordinance or other land development regulations on historic sites and districts;
- F. Provide technical assistance upon request to property owners on the preservation, restoration, and rehabilitation of historic structures;
- G. To carry out such other advisory, educational, and informational functions as will promote historic preservation in the municipality.
- H. To review applications in accordance with and for compliance with the Historic District Review Ordinance (Ordinance §1631) and Ordinance §1404.***
- I. To review and recommend to the Planning Board the designation of landmark and historic districts in accordance with Borough Code §1404.***

**SECTION 3.** Section 1631 of the Borough Code, entitled “Historic District Review Ordinance” is hereby amended as follows (Additions noted in bold italics *thus* and deletions noted with a strikethrough ~~thus~~):

- A.** Introduction. The requirements of this Historic District Review Ordinance shall apply to all development, including new construction, repair, renovation, alteration, reconstruction, demolition, relocation, and additions to existing buildings, structures, real property, natural objects or configurations or any portion or group of the foregoing which are located in the Flemington Borough Historic District, or specifically identified as historic sites within the Historic Preservation Plan of the Master Plan pursuant to N.J.S.A. 40:55D-28b(10). These requirements do not apply to normal maintenance (including in-kind repair of existing building features, repainting of existing color schemes, in-kind repair of an existing roof, etc.). Prior to construction or alteration of buildings or structures in the Historic District, an Application for Review by the Flemington Historic Preservation Commission must be submitted to the Flemington ***Historic Preservation Commission*** ~~Borough Clerk~~, and the project must be reviewed at one of the Commission's regularly scheduled meetings. See Chapter 14 of the Flemington Borough Land Development Ordinance for additional information

regarding project review.

1. ***Definitions. In addition to the definitions set forth in Borough Code 1201, the following definitions apply as used in Borough Code §§ 1404, 1405 and 1631. Such definitions shall only apply in such Borough Code sections and shall not be applicable in any other section of the Borough Code:***

***Addition shall mean an extension or increase in the size, floor area or height of any building, structure, site, object, or improvement added at some time after the completion of the original.***

***Alteration shall mean any change in the exterior features of any building, structure, site, object or improvement.***

***Application shall mean a request to the Commission made pursuant to this ordinance for the purposes of obtaining approval or other action by the Commission hereunder specified.***

***Building shall mean any man-made structure created principally to shelter any form of human activity as well as its functionally related appurtenances such as a house and a barn.***

***Commission shall mean the Historic Preservation Commission established pursuant to the provisions of Ordinance Sections 1404 and 1405.***

***Construction Official shall mean the officer in charge of granting building or construction permits in the Borough.***

***Contemporary shall mean any buildings, structures, sites, objects, or improvements in a historic district which date from a later period but possess some architectural importance and/or visually contribute to the cohesiveness of the district's streetscapes.***

***Contributing shall mean any buildings, structures, sites, objects or improvements which are integral components of a historic district either because they date from a time period which makes them historically significant or because they represent an architectural type, period or method which is historically significant.***

***Demolition shall mean the partial or total razing, dismantling or destruction, whether entirely or in significant part, of any building, structure, site, object or improvement. Demolition includes the removal of a building, structure, site, object or improvement from its location or the removal or destruction of its facade or surface.***

***Designated historic landmark or historic district shall mean an individual building, structure, site, object, landscape, park, viewshed, improvement or district which has been determined to have historical significance pursuant to the***

*provisions of this ordinance.*

*Emergency repairs shall mean immediate repairs to preserve the continued habitability and/or the health and safety of occupants or others, performed in accordance with Borough codes without first submitting an application. A consultation with the Commission or its staff is still required.*

*Encroaching shall mean any buildings, structures, sites, objects or improvements in a historic district which date from a later period and do not visually contribute to the cohesiveness of the district's streetscapes.*

*Facade shall mean the face or front of a structure or any vertical surface thereof adjacent to a public way.*

*Historic shall mean having historical, cultural, architectural, archaeological, economic, social, or other significance as defined by the provisions of this ordinance.*

*Historical shall mean of, relating to, or having the character of history.  
Historic district shall mean a significant concentration, linkage or continuity of buildings, structures, sites, objects, or improvements united historically by plan or physical development which qualifies for designation under this ordinance including those which were formerly designated.*

*Historic district resources shall mean those resources classified as either significant, contributing, or noncontributing, which are defined as follows:*

- a. Significant shall mean any buildings, structures, sites, objects or improvements which, due to their significance, would individually qualify for historic landmark status;*
- b. Contributing shall mean any buildings, structures, sites, objects or improvements on the site which are integral components either because they date from a time period which makes them historically significant or because they represent an architectural type, period or method which is historically significant;*
- c. Noncontributing shall mean any building, structure, site, object or improvement on the site which do not have significant historical value because they neither date from a time period nor represent an architectural type, period or method which is historically significant*

*Historic landmark shall mean any building, structure, site, object or improvement which qualifies for designation under this ordinance.*

*Historic site shall mean any building, structure, site, landscape, object or improvement determined to be of historical, archeological, cultural, scenic or architectural significance in accordance with the provisions of this ordinance. Improvement shall mean a building or other structure, or any work constituting a manmade alteration of, or addition to, any building, structure, site or object.*

*In-kind shall mean construction or construction materials that match construction or construction materials being replaced on a designated structure or object, thereby maintaining historic composition, design, color, texture and other visual qualities.*

*Integrity shall mean the authenticity of a building, structure, site, object, improvement or district evidenced by the survival of the physical characteristics that existed during its historic or prehistoric period.*

*Inventory shall mean a list of historic properties determined to meet criteria of significance specified herein.*

*Landscape shall mean the visual character of the land, including but not limited to architecture, building setbacks and height, fences, hedgerows, plantings, lawns trees as well as man-made features including, but not limited to, sculptures, patterned walks, fountains, reflecting pools and vistas.*

*Lot shall mean any designated parcel, tract, or area of land established by a plat or otherwise, as permitted by law and to be used, developed, or built upon as a unit.*

*Master plan shall mean the master plan of the Borough of Flemington, as amended from time to time, compiled pursuant to the Municipal Land Use Law.*

*Municipal Land Use Law shall mean the Municipal Land Use Law of the State of New Jersey, P.L. 1975, c. 291 (N.J.S.A. 40:55D-1, et seq.), as amended from time to time.*

*National Register Criteria shall mean the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places, as set forth in 36 C.F.R. 60.4, et seq.*

*Non-contributing shall mean any buildings, structures, sites, objects or improvements in a historic district which do not have significant historical value because they neither date from a period of significance nor represent an*

*architectural type, period or method which is historically significant, or due to alterations, disturbances, additions, or other changes, no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period.*

*Object shall be used as a term to distinguish from buildings and structures those constructions or features that are primarily artistic in nature or are relatively small in scale and simply constructed. Examples include, but are not limited to, fountains, sculptures, statuary and similar items. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment.*

*Ordinary maintenance and repair shall mean the repair of any deterioration, wear or damage to a structure or any part thereof in order to return the same as nearly as practicable to its condition prior to the occurrence of such deterioration, wear, or damage with in-kind material and quality workmanship.*

*Owner shall mean the owner of record as shown on the current tax list of the borough tax collector; the mortgage holder of record, if any, as shown in the mortgage records of the borough; and any purchaser under a land contract.*

*Partial Demolition shall mean the pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.*

*Permit shall mean any required approval issued by the construction official pursuant to applicable building or construction codes for exterior work to be performed on any historic landmark or on any building, structure, object or site located within a historic district, which exterior work will be subject to public view. Said permit shall include but not be limited to a building permit, a demolition permit or a permit to move, convert, relocate or remodel or to change the use or occupancy of any landmark or any building, structure, object or site located within an historic district. "Permit" shall also include all exterior work to be performed on windows, doors, roofing, fences, signs, awnings, porches, railings, steps, lighting and sidewalks and any other work subject to public view which would alter the exterior appearance of historic landmarks or properties located within a historic district or their sites.*

*Person shall mean any individual, natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, firms, companies, corporations, entities or unincorporated groups; or any officers, agents, employees, servants, factors or any kind of personal representatives of any thereof in any capacity, acting either for himself or for any other person, under either personal appointment or pursuant to law.*

***Preservation shall mean the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic landmark. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.***

***Protection shall mean the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury.***

***Reconstruction shall mean the act or process of reproducing, by means of new construction, the form, features and detailing of a non-surviving building, structure, site, object, improvement or landscape for the purpose of replicating its appearance at a specific period of time and in its historic location when documentary and physical evidence is available.***

***Rehabilitation shall mean the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historic values.***

***Replacement shall mean the act or process of replicating any exterior architectural feature that is used to substitute for an existing deteriorated or extensively damaged architectural feature.***

***Restoration shall mean the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time. It may sometimes mean the removal of later work or the replacement of missing earlier work.***

***Secretary of the Interior's Standards shall mean the publication issued by the U.S. Department of the Interior, National Park Service, entitled: "The Secretary of the Interior's Standards for the Treatment of Historic Properties," 36 C.F.R. 68, revised and supplemented from time to time.***

***Site shall mean the location of a significant event, a prehistoric or historic occupation or activity, a building or structure, or a burial ground or cemetery, whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure.***

***Significant shall mean any buildings, structures, sites, objects or improvements in a historic district which, due to their extraordinary significance, would individually qualify for historic landmark status.***

*Staff means the Historic Preservation Consultant, the Zoning Officer and such other consultants or officials as may from time to time be retained and/or employed to provide application review services to the Commission.*

*Streetscape shall mean the visual character of the street including, but not limited to, the architecture, building setbacks and height, fences, storefronts, signs, lighting, parking areas, materials, sidewalks, curbing and landscaping.*

*Structure shall be used as a term to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter, such as a bridge, a walkway, driveway and sometimes referred to as a type of improvement, meaning a combination of materials that becomes a part of, is placed upon, or is affixed to real estate.*

*Survey shall mean the inventory of buildings, structures, sites, objects, improvements and districts located within the Borough of Flemington which is conducted by the Commission for the ascertainment of their historical significance pursuant to the provisions of this ordinance.*

*Survey data shall mean the raw data produced by the survey; that is, all the information gathered on each property and area investigated.*

*View, vista or viewshed shall mean the view by the public of a building, structure, site, object, improvement or landscape from any point on a street, road or walkway which is used as a public thoroughfare, either vehicular and/or pedestrian.*

- B.** The purposes of the Historic District Review Ordinance include:
1. Safeguarding the heritage of Flemington Borough by preserving its historical, cultural, social, economic and architectural resources;
  2. Encouraging the continued use of historic buildings, structures and sites and to facilitate their appropriate re-use;
  3. Maintaining and developing a harmonious setting for the historically significant buildings, structures, sites, objects and District;
  4. Preventing the unnecessary demolition or relocation of historic resources;
  5. Preventing new construction or development which is not in keeping with or that negatively impacts the ambience and character of the Historic District;

6. Encouraging the proper maintenance, per the Borough's existing Property Maintenance Code Chapter 9B, and preservation of buildings, structures and sites within the Historic District so as to promote Flemington Borough as an attractive area to live, work and visit;
7. Protecting and enhancing property values;
8. Promoting civic pride in and appreciation of Flemington Borough's historic resources for the education, pleasure and welfare of its citizens and visitors; and
9. Fostering beautification and private reinvestment.

**C. General Guidelines. *The following guidelines shall be utilized by the HPC in reviewing and making recommendations pursuant to and subject to the limitations of Borough Code 1404(K)(2).***

1. Building Design. All development that is situated within the Flemington Borough Historic District and all development that affects individual historic sites shall be designed to reflect the design vocabulary, massing, proportion, directional expression, height, width, scale, orientation, windows, roof, details and materials of vernacular 18th and 19th and early 20th-century styles found in the Borough of Flemington. These styles include Georgian, Federal, Greek Revival, Gothic Revival, Italianate, Second Empire, Queen Anne, Shingle, Romanesque Revival, Colonial Revival, Neoclassical and Tudor Revival styles. Acceptable styles and examples from the relevant periods can be found within the following references, which are maintained for review in the Borough Hall and the Public Library:
  - a. Historic District Guidelines; Flemington Historic Preservation Commission (~~McCormick Taylor, 2006~~): See for definitions of general architectural, style and building terminology, as well as more detailed design recommendations.
  - b. What Style Is It? A Guide to American Architecture (Poppeliers, John C., John Wiley & Sons, Inc., ~~1983~~)
  - c. A Field Guide to American Houses (McAlester, Knopf ~~1984~~)
  - d. Identifying American Architecture (Blumenson, Norton)
  - e. The Secretary of the Interior's Standards for the Treatment of Historic Properties ([www.nps.gov/history/hps/tps/standards\\_guidelines.htm](http://www.nps.gov/history/hps/tps/standards_guidelines.htm)): See for definitions

regarding historic preservation terminology including

"preservation," "restoration," "rehabilitation,"  
"reconstruction," "renovation," etc.

2. Procedures for review by the Flemington Historic Preservation Commission are contained within Chapter 14 of the Flemington Borough Land Development Ordinance.
3. New buildings are not required to copy historic examples. Individual architectural expressions that incorporate the stylistic tenets of historical buildings are acceptable, provided that the design principles in the above references are adhered to. New buildings shall show a harmony of design with their surroundings, and any shapes, massing, materials, signs, lighting, colors and other characteristics which might cause a new building to call excessive attention to itself and create disharmony within the historic district, shall be avoided.
4. All buildings shall be related harmoniously to the context of the site, the neighborhood as a whole and to existing buildings and other structures in the vicinity that have a visual relationship to the proposed building or buildings. The achievement of such relationship may include the enclosure of space in conjunction with other existing/proposed buildings or the creation of focal points. With respect to public spaces, building design/orientation may have to be adjusted in order to maintain a positive spatial relationship or to preserve visual access to community focal points, either natural or man-made.
5. The selection of building design elements, for example in the use of materials, windows, color, texture, and other design considerations, should ensure that such treatment is generally consistent with traditional and vernacular 18th and 19th and early 20th- century architectural styles. If the applicant is an existing building, the design elements shall be consistent with the existing building's style and configuration.
6. Building additions and renovations should be designed to reflect the existing building in terms of scale, materials, massing, window and door configuration and color.
7. Appearance of the side and rear elevations of buildings shall receive architectural treatments comparable to that of any proposed front façade only if said elevations are generally within the public view.
8. Buildings should, where appropriate, strengthen the particular design features of their neighborhood by, for example, reinforcing the "street wall", or continuing a particular design feature or statement.

Such construction should complement the existing historic building designs in the Borough.

9. Buildings deemed to be "Significant" and indicated as such on the Flemington Historic District Map, shall be reviewed with particular care and have special requirements that are described later in this section (see Subsection C17). These are buildings that have been determined to be particularly important to the character of the Historic District.
10. Buildings located on Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, are also considered to be particularly important to the character of Flemington and the Historic District, partly through their location along the busiest thoroughfare and partly from the quality of buildings along this route. Many of these structures are indicated to be "Significant" on the Flemington Historic District Map. Because of the importance of this area to the character of the Borough, all of these buildings will be reviewed **for strict compliance with the Historic Guidelines** ~~with particular care.~~ ~~Some Buildings~~ that are deemed particularly prominent or visible **by the Historic Preservation Commission** shall be reviewed using the same criteria as "Significant" structures, even if they are not listed as such on the Historic District Map.
11. Contemporary designs for new buildings and for additions to existing buildings or landscaping in the Historic District are not discouraged if such designs are compatible with the character, scale and materials of the neighborhood and its environment.
12. New additions or alterations to buildings should be done in such a manner that they reflect the materials, massing and scale of the existing building. In addition, alterations and additions should be designed such that they are reversible, i.e. that if they were to be removed in the future, the essential form and integrity of the original building would be unimpaired.
13. Exterior alterations should not destroy the distinguishing qualities or character of the property and its environment, and the removal or alteration of any historical material or architectural features is not permitted.
14. Deteriorated architectural features should be repaired rather than replaced wherever possible, and in the event, replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities.

15. Repair or replacement of missing architectural features should be based on accurate duplication of original features, substantiated by physical or pictorial evidence rather than on conjectural designs or the availability of different architectural features from other buildings.
16. Wherever possible, there should be compliance with the standards set forth in the “Secretary of the Interior’s Standards for the Treatment of Historic Properties”, as periodically amended and available through the National Park Service.
17. Alternative Materials. The use of nonhistoric, alternative materials may be considered under certain circumstances. These materials include, but are not limited to: vinyl or composite siding (smooth finish only); vinyl, fiberglass or composite railings and porch columns, particularly when these materials are paintable; fiberglass or composite trim, brackets or moldings; composite porch floor decks; vinyl, clad, or aluminum windows and doors; fiberglass/asphalt shingle roofing; etc. The use of these materials will be limited on all buildings or structures deemed to be "Significant" on the Flemington Historic District Map, or that are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, as indicated in Subsection C10 above. Specifically, the use of vinyl siding or windows and doors of alternative materials will be prohibited on the public sides of "Significant" structures. Where visible roofs need to be replaced on "Significant" structures, using replacement materials and methods that match the historic materials is preferable. If the use of historic materials is not feasible, particular care will be taken in selecting alternative materials that match the historic appearance as closely as possible. Composite materials that are painted and that match the configuration of the historic materials are considered to be more acceptable than other replacement materials. Buildings in other parts of the Historic District that are considered to be "Contributing", "Non-Contributing" or "Encroaching" will be permitted to use alternative materials, provided that the following conditions are met:
  - a. Vinyl or composite siding shall be smooth (i.e. not textured) and shall be of a scale and color compatible with the buildings in the immediate vicinity of the applicant property. Existing decorative trim shall not be removed or covered by new vinyl siding or trim casing. This trim shall be retained and repaired so that the building's distinguishing historic features shall remain.

- b. Replacement windows and doors shall fit the existing openings exactly and shall be configured to match the historic appearance and detail. Existing window and door openings shall not be "infilled" or made smaller to accommodate standard window or door sizes.
  - c. Alternative materials may only be used to replace existing porches if the historic porch is not repairable, if the new porch configuration and appearance closely matches the original, and if the new materials that are clearly visible from a public way are painted. The Commission will consider additional new materials as they become available.
  - d. Alternative materials may be considered for visible roofs when existing slate, copper, wood shakes, etc., are shown to be beyond repair. The alternative materials on the visible facades shall match the existing appearance as closely as possible. Alternative materials are acceptable to be used on roofs that are not visible from public streets.
18. Sustainable Energy Sources and Energy Efficiency. This Ordinance is not intended to discourage the installation and use of sustainable energy sources, including solar panels, geothermal wells and wind turbines, provided that the installations meet all required building, zoning and safety codes, etc., and that they are installed to have as minimal an impact on the visible portions of the historic property as possible. Particular care shall be taken to reduce the impact on buildings listed as "Significant" on the Flemington Historic District Map or that are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue.
19. This Ordinance is not intended to discourage the improvement of the energy efficiency characteristics of the historic structures in Flemington. However, where energy efficiency improvements are being considered, care should be taken to reduce negative impacts on the historic character of the building. In particular on all buildings or structures deemed to be "Significant" on the Flemington Historic District Map, or that are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, it is important to keep, repair or restore existing character-defining features that affect energy efficiency, including original doors and windows. Energy efficiency improvements for these features can be achieved

through weather-stripping, interior storm windows, appropriate exterior storm windows or doors and other appropriate measures. See the Borough's "Historic District Guidelines" for suggestions.

20. Additional Matters Considered. In regard to all applications, additional pertinent matters may be considered, but in no instance shall interior arrangements be considered except as it may result in exterior changes important to the integrity of the historic structure, such as additions, chimneys, roof design, blocking of windows or similar changes.

**21. *Emergency reviews of applications to the Historic Preservation Commission may be requested for construction or repair work that is required to be undertaken before the next scheduled meeting of the Historic Preservation Commission. The applicant shall notify the Historic Preservation Commission and request an emergency review and the Historic Preservation Commission shall determine if an emergency review is required and the format of the review. Any work done by the applicant prior to formal approval by the Historic Preservation Commission shall be at the sole risk of the applicant.***

**a. *In the event an applicant requires an emergency review, the applicant shall pay all fees incurred by the Commission to properly advertise an emergency meeting of the Commission.***

**D. Building Massing and Scale of New Buildings and Additions. *The following guidelines shall be utilized by the HPC in reviewing and making recommendations pursuant to and subject to the limitations of Borough Code 1404(K)(2).***

1. Scale of Building. The size of a proposed building or addition and the mass of a proposed building or addition in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with the other buildings and built features to which it is visually related.
2. On proposed buildings and additions, long, horizontal facades should be broken down into segments having vertical orientation and tall vertically oriented facades shall be broken down into horizontal components through use of appropriate design features in proportions complementary to the overall architecture and design.
3. New buildings or additions with expansive blank walls are prohibited, particularly on sides of the building facing public ways.

4. New buildings and additions should be designed so that facades are the prominent architectural feature and the roofs are visually less dominant in the total design. Architecturally accurate roof styles shall be consistent with the surrounding historic context.
5. A pedestrian scale should be achieved at ground level and along street frontages and entryways through the use of such scale elements as windows, doors, columns, plazas, awnings, canopies, and site furnishings.
6. In new infill construction, the alignments of proposed facades shall be consistent with the existing setback of nearby buildings to the extent permitted by this Ordinance.
7. Height. The height of any proposed structure and landscaping shall be visually compatible with adjacent structures.
8. Proportion of Building's Front Façade. The relationship of the width of any new building or addition to the height of the front elevation shall be visually compatible with the nearby buildings and structures.
9. Proportion of Openings. The relationship of the width of windows to the height of windows in a new building or addition shall be visually compatible with the nearby buildings and structures.
10. Rhythm of Solids to Voids on Facades Fronting on Public Places. The relationship of solids to voids in facades of new or altered buildings shall be visually compatible with the nearby buildings and structures.
11. Rhythm of Spacing of Structures on Streets. The relationship of any new structure to the open space between it and adjoining structures shall be visually compatible with the nearby buildings and structures.
12. Rhythm of Entrance and/or Porch Projection. The relationship of new or renovated entrances and porch projections to the street shall be visually compatible with the nearby buildings and structures.
13. Roof Shapes. The roof shape of a new building or addition shall be visually compatible with nearby buildings and structures.
14. Walls of Continuity. Features of a proposed building or addition, such as walls, open-type fencing, evergreen landscape masses, shall form cohesive walls of enclosure along a street, to the extent necessary to maintain visual compatibility of any structure with the nearby buildings and structures.

15. Directional Expression of Front Elevation. A new or altered building shall be visually compatible with nearby buildings and structures, whether this is a vertical, horizontal or nondirectional character.

**E. Facade Treatment. *The following guidelines shall be utilized by the HPC in reviewing and making recommendations pursuant to and subject to the limitations of Borough Code 1404(K)(2).***

1. The Flemington Historic Preservation Commission is particularly concerned with elevations of buildings that are visible from public ways. Rear and side elevations that are not visible will have greater flexibility in terms of design and materials.
2. Multi-tenant buildings shall provide uniform store fronts, doorways, windows, awnings and other design features for all ground floor tenants. Upper floors of said buildings shall at a minimum be coordinated with the ground floor through common materials and colors.
3. New buildings should use windows of similar sizes and shapes or incorporate other façade elements that establish the same pattern as other buildings in the immediate area.
4. Design elements that carry through a block such as store front patterns, window spacing, entrances, canopies or awnings, etc., should be incorporated into new or renovated facades.
5. Exterior mounted mechanical and electrical equipment (e.g. air conditioning units, satellite dishes, etc.) shall be located so that they are not visible from public ways, or shall be completely screened from public view with opaque architectural elements that are unobtrusive and visually compatible with the character of the Historic District and the nearby structures.
6. Facade renovations should be consistent with the original architectural style of the building. Original details should be retained; when it becomes necessary to introduce new features, they should harmonize with existing features. If windows and doors must be replaced, new windows and doors that match the original design should be used. Window and door sizes and shapes should not be altered by any building renovation. Changes to window and door sizes and configurations may be considered if a building is being restored to an earlier, documented, historic appearance. In buildings that are listed as Significant or which are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell

Avenue, replacement doors, windows and trim on the visible facades should match the original materials. On other buildings, alternative materials may be used. See Subsection C10 for more information.

7. The use of overly dramatic and/or intrusive lighting designs and fixtures is not permitted.

**F. Building Materials, Colors and Texture. *The following guidelines shall be utilized by the HPC in reviewing and making recommendations pursuant to and subject to the limitations of Borough Code 1404(K)(2).***

1. On existing buildings, original materials shall be retained wherever possible. No existing brick or stone shall be covered for cosmetic reasons, and the repair and restoration of existing materials deemed of architectural value is strongly encouraged. Great care shall be taken in the cleaning and repair of existing materials. The gentlest, effective means shall be used in all cases. "Sandblasting" and other abrasive cleaning techniques, as well as harsh chemical cleaning methods are not to be used under any circumstances.
2. Where appropriate, building renovations shall incorporate elements of the original structure into the renovation design.
3. The use of brick, stone, clapboard, shakes and other façade materials of a traditional and vernacular nature is strongly encouraged. In general, a maximum of 2 principal facade materials shall be permitted for new structures.
4. Flat, metal panels and mirrored glass surfaces are prohibited on all existing, historic buildings, as are flush metal, composite or wood doors on visible facades. On buildings indicated as "Significant" on the map of the Flemington Historic District or buildings located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, the use of vinyl or aluminum siding on facades visible from public ways shall also be prohibited.
5. The painting of buildings in patterns, checks, stripes or overly bold colors is not permitted.
6. The use of colors generally associated with traditional building design is required on all buildings. Accent or complementary colors which harmonize with the main façade colors shall be permitted for trim, awning and other building details. Acceptable

paint colors from the relevant periods can be found within the following reference, which is maintained for review in the Planning Office: Paint in America, the Colors of Historic Buildings (Moss, Roger, John Wiley & Sons, Inc., 1994)

7. Relationship of Materials, Texture and Color. The relationship of materials, texture and color of the facade and roof of a building shall be visually compatible with the predominant materials used in the buildings to which it is visually related, especially those immediately adjacent.
- G. Demolition. *The following guidelines shall be utilized by the HPC in reviewing and making recommendations pursuant to and subject to the limitations of Borough Code 1404(K).***
1. The integrity of historic districts depends on the preservation and retention in situ of the original historic structures. The demolition or partial demolition of any structure deemed Contributing or Significant in the Historic District is not permitted, except when public health or safety is at risk, as certified by a licensed structural engineer, ***or there are other reasons deemed to be crucial for the future development and prosperity of the Borough consistent with the Borough's Master Plan, adopted redevelopment plan, or other adopted economic planning and policy documents.***
  2. Applications to demolish any structure within the Historic District must be presented to the Flemington Historic Preservation Commission and must address the following issues, as well as any other factors the Historic Preservation Commission considers to be relevant:
    - a. The structure's historic, architectural and aesthetic significance;
    - b. Its current use ***and potential uses.***
    - c. Its ***overall*** condition, ***including a report from a structural engineer licensed in the State of New Jersey and with experience dealing with historic structures indicating its condition and suitability for preservation and re-use.***
    - d. Its importance to the municipality and the extent to which its historical or architectural value is such that its removal would be detrimental to the public interest;
    - e. The extent to which it is of such old, unusual or uncommon design, craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty;

- f. The extent to which its retention would promote the general welfare;
- g. The extent to which its retention would encourage study and interest in Flemington's history, stimulate interest and study in architecture and design, educate citizens in American culture and heritage, or make the municipality a more attractive and desirable place in which to live; and
- h. The probable impact of its removal upon the character and ambience of the Historic District.
- i. The impact of its removal upon future development or redevelopment of the site.***

**H. Relocation of Structures Out of the Flemington Historic District.**

1. The integrity of historic districts depends on the preservation and retention in situ of the original historic structures. Therefore, the review of applications for the relocation of any structure currently located within the Flemington Historic District to a location outside of the District will be undertaken with the greatest care. The relocation of any structure deemed Contributing or Significant in the Historic District is generally not permitted, except when public health and safety is at risk.
2. Applications to relocate any structure currently located within the Flemington Historic District to a location outside of the District must be presented to the Flemington Historic Preservation Commission and must address the following issues, as well as any other factors the Historic Preservation Commission considers to be relevant:
  - a. The structure's historic, architectural and aesthetic significance;
  - b. Its current use;
  - c. Its condition, ***including a report from a structural engineer licensed in the state of New Jersey and with experience dealing with historic structures indicating its condition and suitability for relocation and re-use.***;
  - d. The extent of the historic and architectural loss to the site and District that results from moving the structure from its original location;
  - e. The reasons for not retaining the structure at its present site;
  - f. The proximity of the proposed new location to Flemington

Borough, including the accessibility by the residents of Flemington Borough and other citizens;

- g. The probability of significant damage to the structure during the relocation.
- h. The extent to which its retention would encourage study and interest in Flemington's history, stimulate interest and study in architecture and design, educate citizens in American culture and heritage, or make the municipality a more attractive and desirable place in which to live; and
- i. The probable impact of its relocation upon the character and ambience of the Historic District.
- j. The impact of its relocation upon future development or redevelopment of the site.***

**I. Relocation within Flemington Borough.**

1. The integrity of historic districts depends on the preservation and retention in situ of the original historic structures. Therefore, the review of applications for the relocation of any structure currently within the Flemington Historic District to another location within the District will be undertaken with the greatest care. The relocation of any structure deemed Contributing or Significant in the Historic District is not permitted.
2. Applications to relocate any structure currently located within the Flemington Historic District to another location within the District must be presented to the Flemington Historic Preservation Commission and must address the following issues, as well as any other factors the Historic Preservation Commission considers to be relevant:
  - a. The structure's historic, architectural and aesthetic significance;
  - b. Its current use;
  - c. Its condition;
  - d. The extent of the historic and architectural loss to the site and District that results from moving the structure from its original location;
  - e. The reasons for not retaining the structure at its present site;
  - f. The probability of significant damage to the structure during the relocation;

- g. The extent to which its retention would encourage study and interest in Flemington's history, stimulate interest and study in architecture and design, educate citizens in American culture and heritage, or make the municipality a more attractive and desirable place in which to live;
- h. The probable impact of its relocation upon the character and ambience of the Historic District; and
- i. The compatibility, nature and character of the current and of the proposed surrounding areas as they relate to the intent and purposes of this Ordinance.
- j. *The impact of its relocation upon future development or redevelopment of the site.***

J. Other Requirements.

1. Signage. Appropriately designed signage can be an important design feature in the Historic District. A member of the Historic Preservation Commission is appointed by the HPC Chair to the SRC (Sign Review Committee) and participates in the review of proposed signage on properties within the Historic District, whether or not they will be attached to a structure. Relatively small, painted signage either mounted to the face of the building as part of the storefront design, or perpendicular to the face of the building, is encouraged. Large, contemporary, neon or neon-like, or plastic internally illuminated signs are not permitted, as are signs that conceal important architectural features. All signs must also meet the requirements of the Flemington Land Development Ordinance, Chapter 26, Zoning.
2. Awnings. Appropriately designed awnings may be acceptable on residential and nonresidential buildings. All awnings shall be constructed and installed so that the frame and fabric of the awning is integrated into the overall building design. Awnings shall not extend beyond a dimension appropriate with the size and scale of the subject building. Awnings shall not be placed so as to conceal or disfigure any architectural feature or detail. Awning materials shall be limited to cloth, canvas and similar materials; metal and aluminum awnings are prohibited. Plastic and/or internally illuminated awnings are also prohibited. Awnings may be solid or striped, but colors shall complement the façade colors. If the building has several tenants, the overall awning design should be consistent and compatible across the entire façade.

3. **Public Art.** All art visible from public ways, including murals, outdoor sculpture, etc., that is being permanently attached or applied to structures in the Historic District shall be reviewed by the Flemington Historic Preservation Commission for compatibility with the design of the building and neighboring structures.
4. **Street Furniture.** The installation of all street furniture, including benches, fencing, trash cans, lighting, planters, etc., that is visible from public ways must be reviewed by the Flemington Historic Preservation Commission. The items should be selected to fit the scale, materials and character of the Historic District.
5. **Building and Accessibility Codes.** The Flemington Historic Preservation Commission does not review applications for compliance with relevant building or accessibility codes. Compliance with these codes is the responsibility of the applicant. The Flemington HPC review in no way supersedes or alters building code or accessibility requirements, although these codes, including the Rehabilitation Subcode and Barrier Free Subcode of the Uniform Construction Code of the State of New Jersey, take into account existing conditions and the special characteristics of historic buildings. Any changes to the exterior of a building in the Flemington Historic District that are necessitated by requirements of building and handicapped accessibility codes should be designed to complement the character and style of the existing building to the greatest degree possible.

**K. Violations and Penalties.**

1. Any person who undertakes an activity which would cause a change in the exterior architectural appearance of any improvement within the Flemington Historic District or on a n y individually listed structure by addition, alteration, relocation, demolition or replacement without obtaining the approval of the Flemington Historic Preservation Commission shall be deemed to be in violation of this Ordinance.
2. Upon learning of the violation, the Construction Official for Flemington Borough shall personally serve upon the owner of the lot or property whereon the violation is occurring a notice describing the violation in detail and giving the owner 10 days to abate the violation by restoring the property, structure or improvement to the condition it was in prior to the violation occurring. If the owner cannot be personally served within the municipality with this notice, a copy shall be posted on the site and a copy sent to the owner at his or her last known address as it

appears on the municipal tax rolls.

3. In the event that the violation is not abated within 10 days of service or posting on site, whichever is earlier, the Construction Official shall cause to be issued a summons and complaint, returnable in the Municipal Court, charging violation of this Ordinance and specifying the wrongful conduct of the violator. Each separate day the violation exists past the initial 10-day abatement period shall be deemed to be a new and separate violation of this Ordinance.
4. The penalty for violation past the initial 10-day abatement period shall be as follows:
  - a. For each day up to 15 days, not more than \$50.00 per day.
  - b. For each day 16 to 30, not more than \$75.00 per day.
  - c. For each day beyond 30 days, not more than \$100.00 per day.
5. If any person undertakes activity which would cause a change to the exterior architectural appearance of any structure within the historic district or of any structure individually listed as historically significant within the Borough of Flemington by addition, alteration or replacement without first having obtained the approval of the Historic Preservation Commission, he or she shall be required to immediately stop the activity, apply for approval and take any necessary measures to preserve the historic structure affected, pending a decision. If the proposed project is denied, the historic structure shall be immediately restored to its pre-activity condition. The Construction Official is authorized to seek injunctive relief regarding a "stop action" on the activity in the Superior Court, Chancery Division, not less than 10 days after the delivery of notice pursuant to Subsection K2 above. Such injunctive relief shall be in addition to the penalties authorized in Subsection K4 above.

***L. Designation of Historic Landmarks and Historic Districts***

1. ***The Commission shall maintain and expand, when appropriate, a comprehensive survey of the Borough of Flemington to identify historic landmarks and historic districts that are worthy of protection and preservation.***
2. ***Criteria for Designation. The criteria for evaluation and designating historic landmarks and historic districts shall be guided by the National Register Criteria as currently published and amended from time to time. The Commission or any person may recommend designation of historic landmarks or historic districts that are in accordance with the National Register Criteria or that possess one or more of the following attributes:***
  - a. ***Character, interest, or value as part of the development,***

- heritage or cultural characteristics of the borough, State or Nation; or*
- b. Association with events that have made a significant contribution to the broad patterns of our history; or*
  - c. Association with the lives of persons significant in our past; or*
  - d. Embodiment of the distinctive characteristics of a type, period or method of construction, architecture, or engineering; or*
  - e. Identification with the work of a builder, designer, artist, architect or landscape architect whose work has influenced the development of the borough, State or Nation; or*
  - f. Embodiment of elements of design, detail, material or craftsmanship that render an improvement architecturally significant or structurally innovative; or*
  - g. Unique location or singular physical characteristics that make a district or landmark an established or familiar visual feature; or*
  - h. Ability or potential ability to yield information important in prehistory or history.*
- 3. Procedures for Designation. Proposals to designate a property as historic pursuant to this ordinance may be made by the governing body, the Commission, or the planning board, in accordance with the following procedures:**
- a. Nomination report for historic landmark. A nomination to propose an historic landmark shall include the following information which addresses the criteria for designation as set forth herein:*
    - i. A photograph of the proposed landmark; and*
    - ii. A copy of the municipal tax map showing the property on which the proposed landmark is located; and*
    - iii. A physical description of the proposed landmark; and*
    - iv. A statement of significance.*
  - b. Nomination report for historic district. A nomination to*

*propose an historic district shall include the following information which addresses the criteria for designation as set forth herein:*

- i. A building-by-building inventory of all properties within the district identifying significant, contributing, non-contributing, or encroaching; and*
  - ii. A photograph of each property and building within the district; and*
  - iii. A copy of the municipal tax map of the district showing boundaries; and*
  - iv. A physical description of the proposed district; and*
  - v. A statement of significance.*
- c. Schedule a hearing. Following receipt of a nomination to propose an historic landmark or historic district, the Commission shall schedule a public hearing on the proposed designation.*
- d. Notification requirements. At least 20 days prior to the public hearing, the Commission shall, by personal service or certified mail, perform the following:*
- i. Notify the owner(s) of record of a property that has been proposed for historic landmark designation, or the owner(s) of record all properties located within a district that has been proposed for historic district designation, that the property or district, as applicable, is being considered for such designation and the reasons therefor;*
  - ii. Advise the owner(s) of record of the significance and consequences of such designation, and of the rights of the owner(s) of record to contest such designation under the provisions of this ordinance;*
  - iii. Notify the owner(s) of record of the date, time and location of the hearing concerning the proposed designation of the property or district; and*
  - iv. Serve any further notices as may be required under the provisions of the Municipal Land Use Law.*
- e. Public notice of hearing. At least 20 days prior to the public hearing, the Commission shall also cause public notice of the hearing to be published in the official newspaper of the borough.*

- f. Public report. At least 20 days prior to the public hearing, a copy of the nomination report shall also be made available for public inspection in the municipal offices of the borough.*
- g. Public hearing. At the public hearing scheduled in accordance with this ordinance, the Commission shall review the nomination report and accompanying documents. Interested persons shall be given the opportunity to be heard and to comment on the proposed nomination for designation.*
- h. Commission report. If the proposed nomination is approved by the Commission, then the Commission shall forward a report to the Planning Board for review, which shall contain a statement of the Commission's recommendations and the reasons therefor with regard to proposed designations considered at the hearing, including a list and map of properties approved for designation.*
- i. Report to governing body. The Planning Board shall review and provide a report with recommendations to the governing body as soon as possible, but within 60 days.*
- j. Final designation. As soon as possible after its receipt of the report of the planning board, the governing body shall act upon the proposed designation list and map and may approve, reject or modify by ordinance the designation recommendations made by the planning board. In the event that the governing body votes to reject or modify any planning board recommendations for a proposed designation, the governing body shall record in its minutes the reasons for not following such recommendation.*
- k. Public notice of designation. Notice of designation shall be made public by publication in the official newspaper of the borough and by distribution to all municipal agencies reviewing development applications and permits. A certificate or letter of designation shall be sent to the owner(s) of record.*
- l. Incorporation of designated landmarks into Borough records. Upon adoption of a resolution by the governing body designating an historic landmark or an historic district, the said designation shall supplement, rather than supersede, the existing zoning district in which the affected historic landmark or historic district is located. At that time, the designation list and map shall be incorporated into the*

*master plan and zoning ordinance of the borough as required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. Designated properties shall also be noted as such on the records for those properties as maintained by the engineering and zoning offices, as well as the offices of the construction official, the borough tax assessor and the borough clerk. In addition to the requirement for notation in the foregoing borough records upon the designation of a landmark or historic district by the governing body, within 90 days of the adoption of this Ordinance, there shall be entered upon the property records in the offices of the Tax Assessor, the Construction Code Official, the Borough Engineer, the Zoning Officer and the Borough Clerk a notation which identifies the designation of each property located within or historic district as constituted on the date of adoption hereof.*

*Each tax/assessment search requested for a property located within an historic district shall note thereon the subject property is so located. Similarly, all forms maintained and issued by the Construction Code Official, Borough Engineer, Zoning Officer and Borough Clerk responsive to requests for information, permits, and like documents, shall contain a notation which identifies, as applicable, the designation of a property within an historic district as constituted on the date of the adoption hereof and as new landmarks as historic district designations occur hereafter.*

- m.** *Amendments. Amendments to historic landmark or historic district designations may be made in the same manner as they were adopted in accordance with the provisions of this ordinance.*

**M.** *Appeals.*

*Whenever the Commission shall make a final decision regarding the grant or denial of a permit, the decision shall be subject to appeal to the Planning Board operating as the Zoning Board of Adjustment as provided under N.J.S.A. 40:55D-70. An appeal from the decision of the Planning Board operating as the Zoning Board of Adjustment shall be made in the same manner as permitted and prescribed by law for appeals from any other decisions made by such Boards in accordance with applicable law.*

**N.** *Escrow Review Fees*

*The Commission may require an applicant for a demolition or relocation permit to post a review escrow fee in an amount not to exceed \$1,000.00 if the review of said application will be complicated and require*

*consultation with a professional engineer or architect. Such escrow account will be managed consistent with the Municipal Land Use Law (N.J.S.A. 40:55D-53.1 et seq.) and Ordinance Section 2800.*

**SECTION 4.** All ordinances of the Borough of Flemington, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**Section 5.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**Section 6.** This Ordinance shall take effect upon final passage and publication as required by law.

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. HumphreyInitiator: Michael J. Humphrey  
Sponsors:**TABLED****ORDINANCE 2022-16**

DOC ID: 3886

## **An Ordinance Authorizing an Agreement for the Acquisition of Leasehold Interest, and Non-Exclusive Ground Lease Agreement, Between the Borough of Flemington and 307(L) Flemington Land Holdings, LLC for Property Known as Block 44, Lot 6 in the Borough of Flemington**

WHEREAS, 307(L) Flemington Land Holdings, LLC (“Lessor”) is the fee owner of the real property commonly known at 307 US Highway 202, Flemington, NJ 08822 (Block 44, Lot 6); and

WHEREAS, Lessor was granted preliminary and final major site plan approval with variances to construct signage, a living wall, solar trees, and associated site improvements pursuant to Flemington Borough Planning Board Resolution No. 2019-5 (the “**Resolution**”),

WHEREAS, pursuant to a condition of the Resolution, the Borough has use of the signage for eight (8) seconds every two (2) minutes to display public messaging; and

WHEREAS, the Borough desires to lease from Lessor and Lessor desires to lease to the Borough, subject to the terms and conditions set forth in a Non-Exclusive Ground Sublease Agreement (attached in substantially the same form as Exhibit “A” hereto), a portion of Lessor’s Property where the monument display is located in order to facilitate Lessor’s performance of its obligations and exercise of its rights under the Resolution; and

WHEREAS, Lessor desires to promote the Borough by having the Borough’s official seal on the Lessor’s property; and

WHEREAS, the Lessor’s property will contain public service messages and emergency messaging which will provide a public purpose; and

WHEREAS, this Non-Exclusive Ground Sublease Agreement will promote and facilitate this public purpose; and

WHEREAS, the Local Lands and Buildings Law, N.J.S.A. 40A:12-5, requires that the lease of real property by a public entity be authorized by Ordinance, and it is the desire of the Borough Council to enact this Ordinance authorizing same to comply with the terms and conditions of the Local Lands and Buildings Law.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Mayor and Council of the Borough of Flemington, County of Hunterdon, and State of New Jersey, as follows:

**Section 1.** The Mayor and Borough Council hereby authorizes the lease of a long-term leasehold interest in property owned by 307(L) Flemington Land Holdings, LLC at Block 44, Lot 6. The Council further authorizes the execution of such documents as may prove

necessary for the Non-Exclusive Ground Sublease Agreement. Said lease of land by the Borough shall be subject to a Non-Exclusive Ground Sublease Agreement between the Borough and 307(L) Flemington Land Holdings, LLC. The lease of the interest in the property known as Block 44, Lot 6, also known as 307 US Highway 202, Flemington, NJ 08822, shall be for a period of twenty five (25) years.

**Section 2.** Repealer. Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

**Section 3.** Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Mayor and Council hereby declares its intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Borough to meet the goals of the Ordinance.

**Section 4.** Effective Date. This Ordinance shall take effect upon proper passage in accordance with the law.

Introduced:

Adopted:

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

HISTORY:

09/12/22

Governing Body

INTRODUCED

Next: 09/27/22

## NON-EXCLUSIVE GROUND SUBLEASE AGREEMENT

Between

**307(L) FLEMINGTON LAND HOLDINGS, LLC**

and

**BOROUGH OF FLEMINGTON**

This **NON-EXCLUSIVE GROUND SUBLEASE AGREEMENT** (this “**Sublease**” or “**Agreement**”) is made effective this \_\_\_\_ day of \_\_\_\_\_, 2022 (“**Effective Date**”), and entered into by and between **307(L) FLEMINGTON LAND HOLDINGS, LLC** (“**Sublessor**”) and the **Borough of Flemington** (“**Sublessee**”)

### Background

A. Sublessor holds a leasehold interest in certain parcel of land being Block 44, Lot 6 on the Hunterdon County Tax Maps and commonly known as 307 US Highway 202, Flemington, NJ 08822, such leasehold interest being further described in detail on **Exhibit “A”** attached hereto and made a part hereof (“**Sublessor’s Property**”); and

B. Pursuant to that certain Resolution Memorializing the Grant of use/”D” variances, bulk/”C” Variances and Preliminary and Final Major Site Plan Approval to Allow the Construction of Signage, A Living Wall, Solar Trees and Associated Site Improvements, Resolution No. 2019-5 (the “**Resolution**”), as memorialized at the Borough of Flemington Planning/Zoning Board meeting on December 10, 2019, at page 5, the Sublessee would have use of the signage for eight (8) seconds every two (2) minutes, and Sublessor would assist the Sublessee in creating the copy that would be displayed on the signage on behalf of the Sublessee; and

C. Sublessee desires to sublease from Sublessor and Sublessor desires to sublease to Sublessee, subject to the terms and conditions hereinafter set forth, a portion Sublessor’s Property identified more particularly on **Exhibit “B”** attached hereto (the “**Premises**”) in order to facilitate Sublessee’s performance of its obligations and exercise of its rights under the [Resolution Agreement](#); and

[B-D. Pursuant to N.J.S.A. 27:5-8, the New Jersey Department of Transportation \(“NJDOT”\) requires a permit be issued for off-premises advertising; and](#)

~~C.E.~~ Sublessee desires to promote the Borough of Flemington by having the Borough’s official seal on the Sublessor’s property; and

~~D.F.~~ The Sublessor’s property will contain public service messages and emergency messaging -which will provide a public purpose; and

~~E.G.~~ This Sublease Agreement will promote and facilitate this public purpose.

**NOW, THEREFORE**, in consideration of the undertakings contained in this Sublease, the sum of One (\$1.00) Dollars duly paid by Sublessee to Sublessor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **GRANT:** Sublessor leases and grants to Sublessee non-exclusive rights to the Premises, including the rights of use of the Premises in order to facilitate Sublessee's performance of any and all of its obligations and exercise any of its rights under the Agreement, together with rights of and ingress and egress to the Premises on and across Sublessor's Property.
2. **TERM:** The term of this Sublease (the "**Term**") shall commence on the Effective Date ("**Commencement Date**") and shall expire on the date which is twenty-five (25) full calendar years after the Effective Date, unless this Sublease is earlier terminated in accordance with its terms.
3. **RENT:** Rent for the Premises shall be \$1.00 per year ("**Rent**"), commencing on the Commencement Date and continuing on each anniversary thereof during the Term.
4. **INDEMNITY:** Sublessee does hereby indemnify and agree to hold Sublessor harmless against all claims or damages to person or property by reasons of accidents resulting from the gross negligence or willful misconduct of the Sublessee, its agents, employees, or workmen in connection with its use and occupancy of the Premises and activity conducted thereon. Sublessor does hereby indemnify and agree to hold Sublessee harmless against all [loss, injury, liabilities, obligations, damages, penalties, costs, charges and expenses \(including attorneys' fees\)](#), claims or damages to person or property by reasons of accidents resulting from the negligence, gross negligence or willful misconduct of the Sublessee, its agents, employees, or workmen in connection with its use and occupancy of the Premises and activity conducted thereon. [In the event that any action or proceeding shall be brought against the Sublessor by reason of any claim covered by this paragraph, the Sublessee, upon written notice from the Sublessor, will at the Sublessee's sole cost and expense resist or defend same.](#)
5. **INSURANCE:** The Sublessor shall obtain commercial general liability insurance, adding Sublessee as an additional named insured, on an occurrence basis with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and Property damage liability, and the Sublessor shall indemnify Sublessee against any loss or damage resulting from the Sublessee's entry upon the Property. Failure of the Sublessor to obtain Insurance will be an event of default by Sublessor ("**Event of Default**") and Sublessee may terminate this Sublease on not less than ten (10) business days' notice to Sublessor.
6. **SUBLESSEE DEFAULT:** If Sublessee defaults in the payment of Rent, or defaults in the performance of any of the other covenants and conditions hereof, Sublessor may give Sublessee notice of such default, and if Sublessee does not cure any such default within ten (10) days after giving of such notice, then it shall constitute an event of default by Sublessee ("**Event of Default**") and Sublessor may terminate this Sublease on not less than ten (10) business days' notice to Sublessee. In addition, and notwithstanding anything herein to the contrary, this Sublease shall terminate immediately and automatically upon termination of the Agreement. Upon termination of this Sublease, Sublessee shall be obligated to restore the entire Premises to substantially the

same condition as on the Effective Date, reasonable wear and tear and casualty damage excepted, resulting from Sublessee’s use of or entry onto the Premises.

7. **SUBLESSEE TERMINATION RIGHTS:** If the public purpose of this Sublease ceases to exist, then the Sublessee may terminate this Sublease on not less than ten (10) business days’ prior written notice to Sublessor.

8. **ESTOPPEL CERTIFICATE:** Within ten (10) business days after written request by Sublessor or Sublessee, the other party will execute, acknowledge and deliver to Sublessor or Sublessee a certificate stating: (a) that this Sublease is unmodified and in full force and effect, or, if the Sublease is modified, a copy of the modification agreement; (b) the date on which sums payable under this Sublease have been paid; (c) that no notice has been received by such party of any default that has not been cured, or, if such a default has not been cured, what such party intends to do in order to effect the cure, and when it will do so; (d) that such party has no claim or offset against the other party, or, if it does, stating the circumstances that gave rise to the claim or offset; (e) that such party has not assigned, and is not aware of any prior assignment by the other party of this Sublease or any interest therein, or, alternatively, stating the date of the assignment and assignee (if known to such party); and (f) such other matters as may be reasonably requested by Sublessor or Sublessee. Any certificate may be relied upon by any prospective purchaser of Sublessor or its assets and any prospective lender to Sublessor. If Sublessor submits a completed certificate to Sublessee, and Sublessee fails to object to its contents within ten (10) business days after its receipt of the completed certificate, the matters stated in the certificate will conclusively be deemed to be correct. Furthermore, Sublessee irrevocably appoints Sublessor as Sublessee’s attorney-in-fact to execute and deliver on Sublessee’s behalf any completed certificate to which such party does not object within ten (10) business days after Sublessee’s its receipt.

9. **NOTICE:** All notices required to be sent under this Sublease shall be sent to the following by (a) certified mail, return receipt requested, (b) hand delivery, or (c) overnight delivery by a commercial carrier (such as Federal Express or UPS):

**Sublessor:**

**307(L) Flemington Land Holdings,  
LLC**  
3400 West Chester Pike, Suite 100  
Newtown Square, PA 19073  
Attn: Heather Havener

**Sublessee:**

**Borough of Flemington**  
38 Park Avenue  
Flemington, NJ 08822  
Attn: Clerk[\_\_\_\_\_]

With a copy to:  
Tara St. Angelo, Esq.  
Gebhardt & Kiefer, P.C.  
1318 Route 31 North  
Annandale, NJ 08801

10. **MEMORANDUM OF LEASE:** Sublessor and Sublessee acknowledge that this Sublease and the interests contained in this Sublease run with the land. While this Sublease is not intended to be recorded, upon request of Sublessor, Sublessee agrees to execute a memorandum of this Sublease, in recordable form and as is otherwise reasonably acceptable to Sublessor, and further

Attachment: Flemington - Municipal Lease\_TAS revisions 6.24.22-1 (2022-16 : Ordinance Accepting a Lease on Property)

agrees to execute any documents necessary to evidence or effectuate this Sublease, including any documents necessary to effectuate its purpose.

11. **FINANCING; SALE; TRANSFER:** Sublessor shall have the absolute and unfettered right to, and nothing herein shall prevent, restrict or limit Sublessor from selling, leasing, licensing, conveying or sub-granting all or any portion of, or granting a security interest in this Sublease or Property or the Premises, by assignment or otherwise, without prior notice to or consent of Sublessee which consent shall not be unreasonably withheld to any and all such sale, transfer, lien or encumbrance, upon the express and written assumption and/or compliance by the assignee of all of the obligations of the Sublessor herein named whereupon Sublessor shall be fully discharged from any and all obligations under this Sublease occurring after such transfer and Sublessee shall look solely to the assignee of the Sublessee's interest in this Sublease for the performance of such obligations. Sublessee agrees, upon request, to promptly execute any instrument, document or agreement reasonably requested by Sublessor's assignee(s), transferee(s), or lender(s) in connection with any transaction contemplated by the previous sentence.

12. **SUBORDINATION; ATTORNMENT; NON-DISTURBANCE.** This Sublease and all of the terms, covenants and provisions hereof and all rights, remedies and options of Sublessee (and its successors and assigns) thereunder are and shall at all times be subject and subordinate in all respects to the terms, covenants and provisions of (i) ground leases or underlying leases which may now exist or hereafter be executed affecting Sublessor's Property, (ii) the lien of any mortgage which may now exist or hereafter be executed affecting Sublessor's Property, and (iii) the lien of any mortgage which may hereafter be executed in any amount for which Sublessor's Property, ground leases or underlying leases, or Sublandlord's interest or estate in any of said items is specified as security. Subject to the foregoing, if any assignee or transferee (including any lender or its transferees in connection with any foreclosure of Sublessor's interest or otherwise, or any other lessee or sublessee, by virtue of any transaction, including without limitation any recognition agreement) (each, a "**Purchaser**") shall become the holder of Sublessor's interest in Property or the Premises, and Sublessee is not in default under this Sublease, (a) this Sublease shall not be terminated or affected thereby and shall continue in full force and effect as a direct Sublease between Purchaser and Sublessee; (b) Purchaser shall not disturb Sublessee's possession or use of the Premises (as defined herein) or materially affect Sublessee's rights hereunder; and (c) Sublessee agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, whereupon, subject to the observance and performance by Sublessee of all the terms, covenants and conditions of this Sublease on the part of Sublessee to be observed and performed, Purchaser shall recognize the leasehold estate of Sublessee under this Sublease for the remaining balance of the Term with the same force and effect as if Purchaser were the Sublessor under this Sublease; provided, however, that Purchaser shall not be: (i) liable for the failure of any prior Sublessor (any such prior landlord, including Sublessor, a "**Prior Sublessor**") to perform any of its obligations under the Sublease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Sublease to correct any conditions that (x) continue to exist as of the date Purchaser shall become the owner of the Property and (y) violate Purchaser's obligations as Sublessor under the Sublease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same; and (ii) subject to any offsets, defenses, abatements or

counterclaims which shall have accrued in favor of Sublessee against any Prior Sublessor prior to the date on which Purchaser shall become the owner of the Property.

13. **MISCELLANEOUS:**

a. Sublessor and Sublessee agree that each section of this Sublease is severable from the remainder, and, if any portion of this Sublease is declared to be void or unenforceable, the remainder of the Sublease shall continue in full force and effect.

b. The liability of Sublessor under this Agreement shall be and is hereby limited to Sublessor’s interest in the Sublessor Property and no other assets of Sublessor shall be affected by reason of any liability which Sublessor may have to Sublessee or to any other person by reason of this Agreement, the execution thereof, or the acquisition of Sublessor’s interest herein.

c. Sublessor covenants that if, and so long as, Sublessee pays Rent and performs the covenants hereof, Sublessee shall peaceably and quietly have, hold and enjoy the Display for the Term, subject to the provisions of this Sublease.

d. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

e. The parties agree that there are no prior or contemporaneous oral agreements pertaining to the Premises by and between Sublessor and Sublessee other than the Resolution. The Sublease embodies the entire agreement between the parties and may not be modified in any respect, except in writing, signed by the parties.

f. This Agreement may be executed in one or more counterparts, all of that shall be considered one and the same Agreement and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

[SIGNATURE PAGE FOLLOWS]

Attachment: Flemington - Municipal Lease\_TAS revisions 6.24.22-1 (2022-16 : Ordinance Accepting a Lease on Property)

**IN WITNESS WHEREOF**, the said parties have set their hands and seals hereto the day and year first above written.

**SUBLESSOR:**

307(L) FLEMINGTON LAND HOLDINGS, LLC

By: \_\_\_\_\_  
Name: Thaddeus J. Bartkowski, III  
Title: Manager

**SUBLESSEE:**

BOROUGH OF FLEMINGTON

By: \_\_\_\_\_  
Name:  
Title:

Attachment: Flemington - Municipal Lease\_TAS revisions 6.24.22-1 (2022-16 : Ordinance Accepting a Lease on Property)

Exhibit "A"

**Sublessor's Property**

ALL THAT certain tract, piece or parcel of land and premises situate in the Township of Flemington, County of Hunterdon and State of New Jersey and being more particularly described as follows:

BEGINNING at a point in the easterly line New Jersey State Highway Route 31, said point being the common corner to Lots 4 & 5, Block 44 with the northerly line of the hereinafter described Lot 6, Block 44 and running thence;

1. Along the southerly line of Lots 4, 5 & 7, Block 44, South 70 degrees 10 minutes 36 seconds East, a distance of 231.30 feet to a point, thence;
2. South 19 degrees 49 minutes 24 seconds West, along the westerly line of Lot 7, a distance of 95.72 feet to a point, thence;
3. Continuing along the southerly line of the same, South 70 degrees 10 minutes 36 seconds East, a distance of 96.18 feet to a point in the northwesterly right-of way of New Jersey State Highway Route 202; thence
4. Along said line, South 56 degrees 18 minutes 27 seconds West, a distance of 13.02 feet to a point of curvature in the same; thence
5. Along a curve to the right, with a radius of 140.00 feet, a total arc distance of 146.77 feet, and having a Chord bearing and distance of South 86 degrees 20 minutes 26 seconds West 140.14 feet, to a point of tangency; thence
6. North 63 degrees 58 minutes 13 seconds West, a distance of 66.23 feet to a point of curvature; thence
7. Along a curve to the right, with a radius of 140.00 feet, a total arc distance of 205.25 feet, and having a Chord bearing and distance of North 22 degrees 10 minutes 36 seconds West 187.36 feet, to a point in the southeasterly right-of-way of New Jersey state Highway Route 31; thence
8. Along said line of Route 31, North 19 degrees 49 minutes 24 seconds East, a distance of 15.64 feet to the point and place of beginning.

Being Lot 6, Block 44 as shown on the plan entitled "ALTA/NSPS Land Title Survey and Limited Topography, Block 44 – Lot 6", dated 07/22/21 and revised to 09/15/21, prepared by Stout & Caldwell Engineers, LLC. Said property being formerly described as Tracts 1 & 2 in Deed Book 2450, Page 596. Containing within said bounds 36,335.84 S.F. (0.83 AC) of land. Subject to any and all Restrictions and Easements of Record



**EXHIBIT B**

**Premises**

[To be inserted]

Attachment: Flemington - Municipal Lease\_TAS revisions 6.24.22-1 (2022-16 : Ordinance Accepting a Lease on Property)

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. Humphrey

Initiator: Michael J. Humphrey  
Sponsors:

**TABLED**

**ORDINANCE 2022-17**

DOC ID: 3887

**Adding Section 9B-10 of the Code of the Borough of  
Flemington Entitled “Abandoned and Foreclosed Property  
Registration and Maintenance” Regarding the Registration of  
Vacant and Foreclosed Properties to be Consistent with P.L.  
2021, C. 444**

**WHEREAS**, the Borough of Flemington (the “Borough”) is challenged to identify and locate responsible parties of foreclosing parties who can maintain the properties that are in the foreclosure process or that have been foreclosed; and

**WHEREAS**, the Borough finds that the presence of vacant and abandoned properties can lead to a decline in property value, create attractive nuisances and lead to a general decrease in neighborhood and community aesthetic; and

**WHEREAS**, pursuant to N.J.S.A. 40:48-2, the governing body of a municipality is authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the Municipality by law; and

**WHEREAS**, pursuant to P.L. 2021, c. 444, the governing body of a municipality is authorized to adopt or amend ordinances creating a property registration program for the purpose of identifying and monitoring properties within the municipality for which a summons and compliant in an action to foreclosure on a mortgage has been filed, regulate the care, maintenance, security and upkeep of such properties, and impose a registration fee on the mortgagee of such properties; and

**WHEREAS**, the Borough has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole; and

**WHEREAS**, the Borough has a vested interest in protecting neighborhoods against decay caused by vacant and abandoned properties and concludes that it is in the best interests of the health, safety, and welfare of its citizens and residents to impose registration and certification requirements on abandoned, vacant, and foreclosure properties located within the Borough; and

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Flemington, in the County of Hunterdon and State of New Jersey, and it is hereby enacted and ordained by the authority of same as follows:

**SECTION 1.** Section 9B-10 of the Code of the Borough of Flemington, entitled "Abandoned and Foreclosed Property Registration and Maintenance," is hereby added as follows:

**§ 9B-10.1. Definitions**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

**VACANT AND ABANDONED REAL PROPERTY** - As defined in accordance with N.J.S.A. 40:48-2.12s3(b)(8), shall mean property that is not legally occupied by a mortgagor or tenant, which is in such condition that it cannot be legally reoccupied, because of the presence or finding of at least two of the following:

- (a) overgrown or neglected vegetation;
- (b) the accumulation of newspapers, circulars, flyers, or mail on the property;
- (c) disconnected gas, electric, or water utility services to the property;
- (d) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (e) the accumulation of junk, litter, trash, or debris on the property;
- (f) the absence of window treatments such as blinds, curtains, or shutters;
- (g) the absence of furnishings and personal items;
- (h) statements of neighbors, delivery persons, or government employees indicating that the property is vacant and abandoned;
- (i) windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken, and unrepaired;
- (j) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
- (k) a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- (l) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
- (m) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
- (n) a written statement issued by a mortgagor expressing the clear intent of all mortgagors to abandon the property; or
- (o) any other reasonable indicia of abandonment.

**APPLICABLE CODES** - means to include, but not be limited to, the Borough of Washington Code of Ordinances ("Borough Code"), and the New Jersey Building Code.

**CREDITOR** - As defined in accordance with N.J.S.A. 40:48-2.12s2(d), means state-chartered bank, savings bank, savings and loan association or credit union, any person required to be licensed under the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (N.J.S.A. 17:11C-51 through 17:11C-89), and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers. For purposes of this section, a "creditor" shall not include the State, a political subdivision of the State, or a State, county, or local government entity, or their agent or assignee, such as the servicer.

**ENFORCEMENT OFFICER** - means any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector or building inspector, or other person authorized by the Borough of Washington to enforce the applicable code(s).

**FORECLOSURE** - means the legal process by which a mortgagee terminates a mortgagor's interest in real property either to obtain legal and equitable title to the real property pledged as security for a debt or to force a sale of said property to satisfy a debt. For purposes of this article, this process begins upon the service of a summons and complaint on the mortgagor or any interested party. For purposes of this article, the process is not concluded until the property is sold to a bona fide purchaser not related to the mortgagee in an arm's length transaction whether by Sheriff's sale, private sale following a Sheriff's sale, or private sale following the vesting of title in the mortgagee pursuant to a judgment.

**MORTGAGEE** - means the creditor, including but not limited to, lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests, or obligations under the mortgage agreement, excluding governmental entities as assignee or owner.

**PROPERTY MANAGEMENT COMPANY** - means a local property manager, property Maintenance Company or similar entity responsible for the maintenance of abandoned real property.

**VACANT** - means any building or structure that is not legally occupied.

#### **§ 9B-10.2. Applicability:**

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the Borough above and beyond any other state, county or local provisions for same.

#### **§ 9B-10.3. Establishment of a Registry.**

Pursuant to the provisions of Section 9B-10.4, the Borough of Flemington Code Enforcement Official or its designee shall establish a vacant and abandoned property registry containing the information required by this Article.

**§9B-10.4. Registration of Property.**

- a) Any creditor who holds a mortgage or equity line on real property within the Borough that has commenced foreclosure proceedings shall be required to register under this Section. Any creditor who holds a mortgage or equity lien on real property located within the Borough shall perform an inspection of the property to determine vacancy or occupancy, upon the commencement of foreclosure as evidenced by a foreclosure filing. The creditor shall, within ten (10) days of the inspection, register the property with the Borough Code Enforcement Official, or its designee, on forms or website access provided by the Borough, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.
- b) If the property is occupied but remains in foreclosure, it shall be inspected by the creditor or his designee monthly until (1) the mortgagor or other party remedies the foreclosure, or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall, within ten (10) days of that inspection, update the property registration to a vacancy status on forms provided by the Borough.
- c) Registration pursuant to this Section shall contain the name of the creditor and the servicing entity, if any, the direct mailing address of the mortgagee and the servicing entity, a direct contact name and telephone number for both parties, facsimile number and e-mail address for both parties, the folio or tax number, and the name and twenty-four (24) hour contact telephone number of the property management company responsible for the security and maintenance of the property.
- d) A non-refundable annual registration fee in the amount of \$500.00 per property, shall accompany the registration form or website registration. On each anniversary date of the initial registration, the creditor shall submit a renewal registration and fee as follows: 1) \$500 per property annually for any property that is required to be registered because a summons and complaint in an action to foreclose was filed by the creditor; and (2) an additional \$2,000 per property annually if the property is vacant or abandoned pursuant to the definition in the ordinance when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned pursuant to the definition in the ordinance at any time thereafter while the property is in foreclosure.

- e) If the property is not registered, or the registration fee is not paid within thirty (30) days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the annual registration fee shall be charged for every thirty-day period (30), or portion thereof, that the property is not registered and shall be due and payable with the registration.
- f) All registration fees must be paid directly from the creditor, Mortgagee, Servicer, or Trustee. Third Party Registration fees are not allowed without the consent of the Borough and/or its authorized designee.
- g) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.
- h) Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they remain in foreclosure.
- i) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.
- j) Failure of the creditor to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this Chapter is a violation of the Chapter and shall be subject to enforcement.
- k) Pursuant to any administrative or judicial finding and determination that any property is in violation of this Chapter, the Borough may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.
- l) Registration of foreclosure property does not alleviate the creditor from obtaining all required licenses, permits and inspections required by applicable code or State Statutes.
- m) If the mortgage and/or servicing on a property is sold or transferred, the new creditor is subject to all the terms of this Chapter. Within ten (10) days of the transfer, the new creditor shall register the property or update the existing registration. The previous Mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that creditor's involvement with the Registrable Property.

- n) If the creditor sells or transfers the Registrable Property in a non-arm's length transaction to a related entity or person, the transferee is subject to all the terms of this Chapter. Within ten (10) days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the Mortgagee was at the time registration was required, including but not limited to unregistered periods during the Foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous creditor will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that creditor's involvement with the Registrable Property.

**§9B-10.5. Maintenance Requirements:**

- a) Properties subject to this Article shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- b) Properties subject to this Article shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.
- d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s).
- g) Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable Code(s) and issuance of a citation or Notice of Violation in accordance with this Chapter, Chapter 59 ("Nuisances, Public Health"), Chapter 75 ("Streets and Sidewalks"), and Chapter 91 ("Weeds and Obnoxious Growths") of the Borough Code. Pursuant to a finding and

determination by the Borough's Code Enforcement Officer or a Court of competent jurisdiction, the Borough may take the necessary action to ensure compliance with this section. .

- h) In addition to the above, the property is required to be maintained in accordance with the applicable Code(s).

**§9B-10.6. Security Requirements:**

- a) Properties subject to this Chapter shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by reglazing of the window.
- c) If a mortgage on a property is in default, and the property has become vacant or abandoned, a property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this Chapter, and any other applicable laws.

**§9B-10.7. Public Nuisance:**

All vacant and abandoned real property is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the Borough.

**§65-14. Violations and Penalties:**

Any person who shall violate the provisions of this Chapter shall be cited and fined in the amount of not less than \$500.00 or exceeding \$1,250.00.

Any person who is convicted of violating this Section within one year of the date of a previous violation of the same Section, and who was fined for the previous violation, shall be sentenced by a Court to an additional fine as a repeat offender. The additional fine imposed by the Court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of this Section, but shall be calculated separately from the fine imposed for the violation of this Section.

**§9B-10.8. Inspections for Violations:**

Adherence to this Section does not relieve any person, legal entity or agent from any other obligations set forth in any applicable Code(s), which may apply to the property. Upon sale or transfer of title to the property, the owner shall be responsible for all violations of the applicable Code(s).

**§9B-10.9. Additional Authority:**

- a) If the Enforcement Officer has reason to believe that a property subject to the provisions of this Section is posing a serious threat to the public health safety and welfare, the Code Enforcement Officer may temporarily secure the property at the expense of the mortgagee and/or owner, and may bring the violations before a Court of competent jurisdiction as soon as possible to address the conditions of the property.
- b) The Code Enforcement Officer shall have the authority to require the mortgagee and/or owner of record of any property affected by this section, to implement additional maintenance and/or security measure including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- c) If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the Code Enforcement Officer may direct the Municipality to abate the violations and charge the mortgagee with the cost of the abatement.
- d) If the mortgagee does not reimburse the Borough for the cost of temporarily securing the property, or of any abatement directed by the code enforcement board or special magistrate, within thirty (30) days of the Borough sending the mortgagee the invoice, then the Borough may lien the property with such cost, along with an administrative fee of \$500.00 to recover the administrative personnel services.

**§9B-10.10. Opposing, Obstructing Enforcement Officer; Penalty:**

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the Code Enforcement Office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable Code(s) or a Court of competent jurisdiction.

**§9B-10.11. Immunity of Enforcement Officer:**

Any enforcement officer or any person authorized by the Borough to enforce the Sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this Chapter.

**SECTION 2. Severability.** Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**SECTION 3. Repealer.** All prior Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistencies.

**SECTION 4. When Effective.** This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

Adopted: August 22, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**HISTORY:**

09/12/22

Governing Body

INTRODUCED

Next: 09/27/22

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. Humphrey

Initiator: Michael J. Humphrey  
Sponsors:

**TABLED****ORDINANCE 2022-19**

DOC ID: 3892

## **An Ordinance Accepting an Access Easement for the Public Over Sidewalks Located on Block 22, Lot 4**

**WHEREAS**, the Mayor and Council of the Town of Clinton, County of Hunterdon, State of New Jersey, wish to accept a Access Easement for a portion of Block 22, Lot 4 located in Borough of Flemington, Hunterdon County (the "Property"), a copy of which is attached hereto as an exhibit; and

**WHEREAS**, the Property is part of a larger mixed-use development, know as the Union Hotel Redevelopment, which was approved by the Flemington Borough Planning Board pursuant to Resolution No. 2021-08 adopted on April 27, 2021 (the "Resolution"); and

**WHEREAS**, the Town has inspected and approved the installation of certain waterline improvements on the Property as set forth in the attached Easement; and

**WHEREAS**, the site plan for the proposed development includes a vehicular drop-off lane on Bloomfield Avenue to allow access to the main lobby of the proposed building, which requires demolition and relocation of a portion of the public sidewalk; and

**WHEREAS**, as set forth in the Resolution, an easement for the public used of the relocated sidewalk is a condition of approval; and

**WHEREAS**, N.J.S.A. 40A:12-4 authorizes the municipality to accept such easement; and

**WHEREAS**, attached hereto is a form of easement that have been reviewed by the Borough Engineer and Borough Attorney; and

**WHEREAS**, it appears to the Mayor and Council that the public interest would be served by accepting the easement described herein.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Flemington, County of Hunterdon, State of New Jersey as follows:

1. The Borough of Flemington hereby accepts the above-referenced easement over a portion of Block 22, Lot 4 (Borough of Flemington, Hunterdon County, New Jersey) as more particularly described in the deed of easement attached hereto.

2. The Borough Mayor, Clerk, and such Borough Professionals as are necessary, are hereby authorized and directed to take such actions to effectuate the provisions of this Ordinance including but not limited to executing the above-referenced easement in a form substantially similar to that attached hereto and made a part hereof.

3. The Borough Clerk shall, within sixty (60) days of the effective date of this Ordinance, file a copy of this Ordinance certified by her under the seal of the municipality, to be a true copy thereof, together with proof of publication thereof, in the office of the Clerk of the County of Hunterdon in accordance with the provisions of N.J.S.A. 40:67-21.

4. At least one (1) week prior to the time fixed for further consideration of this Ordinance for final passage, a copy thereof together with the notice of the introduction thereof and the time and place when and where the Ordinance will be further considered for final passage shall be mailed to every person whose lands may be affected by this Ordinance so far as may be ascertained. Said notices shall be mailed by the Borough Clerk in accordance with the provisions of N.J.S.A. 40:49-6.

5. This Ordinance shall take effect immediately after final passage, approval and publication as provided by law.

6. All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

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

Adopted: September 12, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**HISTORY:**

09/12/22

Governing Body

INTRODUCED

Next: 09/27/22

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:

**SCHEDULED****ORDINANCE 2022-20**

DOC ID: 3903

## **Establishing Handicap Parking Space on the 200 Main Street Property**

**WHEREAS**, N.J.S.A. 39:4 - 197 confers upon the Borough a right to establish resident handicapped off-street parking in order to preserve and safeguard the public health, safety and welfare; and

**WHEREAS**, pursuant to N.J.S.A. 39:4 -197.5, any municipality may, by ordinance establish restricted parking spaces in front of residences, schools, hospitals and other public buildings and in shopping and business districts for use by persons who have been issued special vehicle identification cards by the Division of Motor Vehicles pursuant to the provisions of section 2 of P.L.1949, c. 280 (C. 39:4-205), when using a motor vehicle on which is displayed a certificate, for which a special vehicle identification card has been issued, pursuant to section 3 of said law (C. 39:4-206).; and

**WHEREAS**, the Borough of Flemington Council does deem it necessary to and in the best interest of its residents to provide for handicapped parking on the property of 200 Main Street to occupied by handicapped persons; now, therefore

**NOW, THEREFORE BE IT ORDAINED** by the Borough of Flemington Council to add the following two handicap restricted parking space:

STREET:                    200 Main Street

LOCATION:    On the Driveway Entrance

Introduced: September 27, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. HumphreyInitiator: Michael J. Humphrey  
Sponsors:**SCHEDULED****ORDINANCE 2022-21**

DOC ID: 3905

**Adding Section 1-5 to the Code of the Borough of  
Flemington, Entitled "Violations and Penalties"**

**WHEREAS**, Mayor and Council wish to amend the Borough Code to provide for a "catch-all" provision setting forth maximum penalties for violations of the Borough Code where a penalty is not specifically set forth.

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Flemington, in the County of Hunterdon and State of New Jersey, as follows:

**SECTION 1.** Chapter 1 of the Borough Code, entitled "General", shall be and hereby is amended by adding a new section, 1-5, "Violations and Penalties" as follows:

A. Whenever no specific penalty is provided in the Code of the Borough of Flemington or in any other ordinance of the Borough for the punishment of an act which is prohibited or which is declared to be unlawful or an offense or for the nonperformance of an act which is required to be done, the violation of any such provision shall be punished by a fine not exceeding \$1,250, by a period of community service not to exceed 90 days, or by imprisonment for a term not exceeding 90 days; provided, however, that when the maximum penalty fixed by an applicable state statute is less, by force of said statute or by judicial construction, than any penalty fixed in the Code, then the limitation of such state statute shall be applicable.

B. A separate offense shall be deemed committed on each day during or on which a violation of the Code or of any other ordinance of the Borough, punishable by fine or imprisonment, or both, occurs or continues.

C. The imposition of a fine or imprisonment as punishment for a violation of the Code or of any other ordinances of the Borough shall not be deemed to be in lieu of any other provision therein providing for revocation or suspension of any license or permit issued thereunder.

D. The provisions of this section shall be applicable to the violation of any ordinance adopted as an amendment of or addition to the Code of the Borough of Flemington and in which no other penalty provision is included.

**SECTION 2.** All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

**SECTION 3.** If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

**SECTION 4.** This Ordinance shall take effect after passage and publication in the manner provided by law.

Introduced: September 27, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Council Ordinance  
Prepared By: Michael J. HumphreyInitiator: Michael J. Humphrey  
Sponsors:**SCHEDULED****ORDINANCE 2022-22**

DOC ID: 3907

## **Amending and Supplementing Chapter 9 of the Flemington Borough Code Regarding Requirements for Inspection for Lead-Based Paint and Fire Prevention in Residential Dwellings**

**WHEREAS**, the Borough of Flemington regulates residential units, including rental units, through Chapter 9 of the Borough Code, entitled "Buildings and Housing;"

**WHEREAS**, pursuant to P.L. 2021, c.182, all municipalities are required to inspect single-family, two-family, and multiple rental dwelling units located within the municipality at tenant turnover for lead-based paint hazards; and

**WHEREAS**, the requirements for certain fire inspections for rental and for sale units are inconsistent with Chapter 8 of the Borough Code, entitled "Fire Prevention Code;" and

**WHEREAS**, it is in the best interests of the residents of the Borough of Flemington to amend the Borough Code at this time to require inspections for lead-based paint in residential rental dwellings to conform with this State law and to amend provisions to be consistent with the Borough's Fire Prevention Code.

**NOW THEREFORE BE IT ORDAINED**, by the Mayor and Borough Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, as follows:

**Section 1.** Section 9-2.3, entitled "Inspections," is hereby amended and supplemented as follows (additions noted in bold italic *thus* and deletions noted in strikethrough ~~thus~~):

The Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or ~~his~~ **any of their** designees of the Borough of Flemington are hereby authorized and directed to make inspections to determine the condition of dwellings, dwelling units, rooming units, and premises located within the Borough of Flemington in order that they may perform their duties of safeguarding the health and safety of the occupants of dwellings and of the general public. For the purpose of making such inspections the Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or ~~his~~ **any of their** designees of the Borough are hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming units, and premises. The owner or occupant of every dwelling, dwelling unit, and rooming unit, or the person in charge thereof, shall give the Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or ~~his~~ **any of their** designees of the Borough free access to such dwelling, dwelling unit or rooming unit and its premises at all reasonable times for the purpose of such inspection,

examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, or its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this section or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this section.

**Section 2.** Section 9-2.4, entitled "Violations," is hereby amended and supplemented as follows (additions noted in bold italic **thus** and deletions noted in strikethrough ~~thus~~):

Whenever the Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or ~~his~~ **any of their** designees of the Borough determines that there are reasonable grounds to believe that there has been a violation of any provision of this ~~section~~ **Chapter**, or of any rule or regulation adopted pursuant thereto, they shall give notice of such alleged violation to the person or persons responsible therefor as hereinafter provided. Such notice shall:

- a. Be put in writing;
- b. Include a statement of the reasons why it is being issued;
- c. Allow a reasonable time for the performance of any act it requires; and
- d. Be served upon the owner or his agent, or the occupant, as the case may require; provided that such notice shall be deemed to be properly served upon such owner or agent, or upon such occupant, if a copy thereof is served upon him personally; or if a copy thereof is sent by registered mail to his last known address; or if a copy thereof is posted in a conspicuous place in or about the dwelling affected by the notice; or if he is served with such notice by any other method authorized or required under the laws of this State. Such notice may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this section and with rules and regulations adopted pursuant thereto.

**Section 3.** Section 9-2.5, entitled "Hearing Provisions," is hereby amended and supplemented as follows (additions noted in bold italic **thus** and deletions noted in strikethrough ~~thus~~):

Any person affected by any notice which has been issued in connection with the enforcement of any provision of this section, or of any rule or regulation adopted pursuant thereto, may request and shall be granted a hearing on the matter before the Building Inspector and/or the Health Officer and/or the

sanitary inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees of the Borough provided such person shall file in the office of the Borough Clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within 10 days after the day the notice was served. Upon receipt of such petition the borough clerk shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than 10 days after the day on which the petition was filed; provided that upon application of the petitioner the Borough Clerk may postpone the date of the hearing for a reasonable time beyond such ten-day period, if in his judgment the petitioner has submitted a good and sufficient reason for such postponement. After such hearing the Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees shall sustain, modify, or withdraw the notice, depending upon their findings as to whether the provisions of this section and of the rules and regulations adopted pursuant thereto have been complied with. If the Building Inspector and/or Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official or **and / or Lead-Based Paint Inspector** or his **any of their** designees sustains or modifies such notice, it shall be deemed to be an order. Any notice served pursuant to this section shall automatically become an order if a written petition for a hearing is not filed in the office of the Borough Clerk within 10 days after such notice is served. The proceedings at such hearing, including the findings and decision of the Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees shall be summarized, reduced to writing, and entered as a matter of public record in the office of the Borough Clerk. Such record shall also include a copy of every notice or order issued in connection with the matter. Any person aggrieved by the decision of the Building Inspector and/or Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of the state. Whenever the building inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees finds that an

emergency exists which requires immediate action to protect the public health, or safety, they may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but upon petition to the Borough Clerk shall be afforded a hearing as soon as possible. After such hearing, depending upon their findings as to whether the provisions of this section and all the rules and regulations adopted pursuant thereto have been complied with, the Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees shall continue such order in effect, or modify it, or revoke it.

**Section 4.** Section 9-2.6, entitled "Power and Authority of Building Inspector, Health Officer, and / or Sanitary Inspector and / or the Fire Marshall / Fire Official or his designee," is hereby amended and supplemented as follows (additions noted in bold italic **thus** and deletions noted in strikethrough ~~thus~~):

Power and Authority of Building Inspector, Health Officer, and / or Sanitary Inspector and / or the Fire Marshall / Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees

The Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees are hereby authorized and empowered to make and adopt such written rules and regulations as ~~he~~ **they** may deem necessary for the proper enforcement of the provisions of this **chapter section**; provided, however, that such rules and regulations shall not be in conflict with the provisions of this **chapter section**, nor in anywise alter, amend or supersede any of the provisions thereof. The Building Inspector and/or the Health Officer and/or the Sanitary Inspector and/or the Fire Marshal/Fire Official **and / or Lead-Based Paint Inspector** or his **any of their** designees shall file a certified copy of all rules and regulations which they may adopt in their office and in the office of the Clerk of the Borough.

**Section 5.** Section 9-3 of the Borough Code, entitled "Smoke Detectors," is renamed "Fire Prevention Inspections for Sale and Rental Properties" and amended as follows (additions noted in bold italic **thus** and deletions noted in strikethrough ~~thus~~):

9-3.1. Definitions

No change.

§ 9-3.2. Approved **Smoke Detectors, Carbon Monoxide Detectors, and Portable Fire Extinguishers** Required.

~~Each dwelling unit shall have a minimum of one electric or battery operated smoke detector device for each sleeping area. Any such detector shall bear a seal, tested and listed by an approved rating organization and shall comply in design to all applicable State, Federal or industrial requirements.~~

***The following requirements shall be applicable to and satisfied by applicants for a certificate of smoke alarm, carbon monoxide alarm, and portable fire extinguisher compliance (CSACMAPFEC) prior to the issuance of a certificate of compliance:***

***a. Smoke alarms. Smoke alarms shall be maintained in accordance with NFPA 72, their listing, and manufacturer specifications. Smoke alarms shall be located as specified in N.J.A.C. 5:70-4.19. Smoke alarms located and maintained in accordance with approvals contingent with a certificate of occupancy issued in accordance with the State Uniform Construction Code Act that concurrently satisfy the requirements of N.J.A.C. 5:70-4.19 shall also satisfy this section.***

***b. Carbon monoxide alarms. Carbon monoxide alarms shall be maintained in accordance with NFPA 720, their listing, and manufacturer specifications. Carbon monoxide alarms shall be located as specified in N.J.A.C. 5:70-4.19. Carbon monoxide alarms located and maintained in accordance with approvals contingent with a certificate of occupancy issued in accordance with the State Uniform Construction Code Act that concurrently satisfy the requirements of N.J.A.C. 5:70-4.19 shall also satisfy this section.***

***c. Portable fire extinguishers. A portable fire extinguisher shall be installed and maintained in accordance with N.J.A.C. 5:70-4.19(e).***

***d. Fire alarm systems. Residential premises that contain installed fire alarm systems as defined in the Uniform Construction Code may be required to submit***

**documentation of testing and maintenance evidencing that the system is maintained in good working order prior to the issuance of a CSACMAPFEC. The Fire Official and his/her designee shall assure such documentation meets or exceeds the criteria contained within NFPA 72. Fire alarm systems may only be substituted for requirements of N.J.A.C. 5:70-4.19 when installed in accordance with the State Uniform Construction Code Act and when received a proper certificate of approval or been installed prior to the receipt of a certificate of occupancy.**

§ 9-3.3.Compliance With Section. <<https://ecode360.com/34748237>>

The owner of each dwelling unit **that is sold, leased, or otherwise made subject to a change of occupancy for residential purposes shall have a CSACMAPFEC obtained by the owner prior to said change of occupancy in accordance with N.J.A.C. 5:70-2.3 which evidences compliance with N.J.A.C. 5:70-4.19.** ~~shall cause the same to be brought into compliance with terms and provisions of this section by January 1, 1980, provided, however, after the effective date of this section:~~

a. No dwelling unit shall be sold or the occupancy thereof changed unless and until the dwelling unit has been brought into compliance with the terms and provisions of this section;

b. No structural change or repair of a value in excess of \$500.00 shall be made to a dwelling unit unless and until the dwelling unit is brought into compliance with the terms and provisions of this section; and

c. No certificate of occupancy shall be issued by the construction official for a dwelling unit unless and until the applicant therefore shall have first complied with all the terms and conditions of this section.

§ 9-3.4. ***Intentionally left blank*** ~~Installation and Maintenance.~~

~~Smoke detectors shall be capable of being installed and maintained by the person or persons entitled to occupy the dwelling unit. Smoke detectors shall consist of an assembly incorporating the detector, control equipment and the alarm sounding device in one unit. They shall have a power supply consisting of a monitored battery or a cord connection to an electrical receptacle which is fitted with a plug restrainer device. The plug in receptacle shall not be controlled by any switch other than that of the main power supply. Two or more single station smoke detectors assemblies may be~~

~~interconnected so that actuation of one causes all integral or separate audible alarms to operate.~~

§ 9-3.5. ***Intentionally left blank. Activation of Smoke Detectors.***

~~Upon activation, the smoke detector shall provide an audible alarm which is to be so distributed and have such character so that it can be heard in all rooms of the dwelling unit with its doors closed. The audible signals shall be distinctive from other audible signaling devices which may be used for other purposes in the dwelling unit. The smoke detector shall be designed for and capable of either self restoration or manual restoration to normal conditions for operation. No provisions shall be made for deactivation of the audible alarm other than by reactivation of the system.~~

§ 9-3.6. Modification of Provisions.

No change.

§ 9-3.7 Certification by Owner Prior to Sale. <<https://ecode360.com/34748237>>

No change.

§ 9-3.8 Tax Collector to Issue Statement to Persons Requesting Tax Search.

<<https://ecode360.com/34748237>>

No change.

§ 9-3.9 Certificate of Continued Use. <<https://ecode360.com/34748237>>

No change.

§ 9-3.10. Inspections. <<https://ecode360.com/34748237>>

During the month of March, 1980, the fire official or agents designated by him shall inspect each dwelling unit to determine compliance with this section. Thereafter, ***each dwelling unit shall be inspected upon a change in residential occupancy (i.e. upon sale or tenant turnover. However, the fire official shall inspect each dwelling unit at least once every three years.*** ~~The fire official or agents designated by him shall inspect dwelling units on a schedule to be determined by the fire official provided, however, that an inspection shall be made by the fire official at least once every three years.~~

**§9-3.11. Fees. Fees for the issuance of a CSACMAPFEC shall be charged in accordance with Borough Code Section 8-15.**

**Section 6.** Section 9- of the Borough Code entitled "Application for Landlord's Registration Statement," shall be amended by adding additional application requirements by adding subsections (i) and (j):

- (i) Owners / landlords of dwelling units subject to the lead-based paint inspection requirements of Borough Code Section 9-5 shall provide up-to-date information on any anticipated tenant turnover dates and results of previously conducted lead-based paint inspections.
- (j) copies of any lead-free certifications issued pursuant to N.J.A.C. 5:17.
- (k) information regarding the most recent inspection for a certificate of smoke alarm, carbon monoxide alarm, and portable fire extinguisher compliance (CSACMAPFEC).

**Section 7.** Section 9-5 of the Borough Code entitled, "Lead-Based Paint Inspections," shall be added as follows:

§9-5.1. Required Inspections.

- a. Required Initial Inspection. The owner, landlord, and / or agent of every single-family, two-family, and / or multiple dwelling unit offered for rental shall be required to obtain an inspection of the unit for lead-based paint hazards within two years of the effective date of P.L. 2021, c. 182 (i.e. by July 22, 2024), or upon tenant turnover, whichever is earlier.
- b. Required Recurring Inspection. After the initial inspection required by Section 9-5.1 (a) of the Borough Code, the owner, landlord, and/or agent of such dwelling unit offered for rental shall be required to obtain an inspection of the unit for lead-based paint hazards every three years, or at tenant turnover, whichever is earlier.

9-5.2. Standards. Inspections for lead-based paint in rental dwelling units shall be governed by the standards set forth in N.J.S.A. 52:27D-437.1 et seq., and N.J.S.A. 55:13A-1 et seq., as may be amended from time to time.

9-5.3. Exceptions. A dwelling unit in a single-family, two-family, or multiple rental dwelling shall not be subject to inspection and evaluation for the presence of lead-based paint hazards if the unit:

- (i) has been certified to be free of lead-based paint;
- (ii) was constructed during or after 1978; (

- (iii) is in a multiple dwelling that has been registered with the Department of Community Affairs as a multiple dwelling for at least 10 years, either under the current or a previous owner, and has no outstanding lead violations from the most recent cyclical inspection performed on the multiple dwelling under the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.);
- (iv) is a single-family or two-family seasonal rental dwelling which is rented for less than six months duration each year by tenants that do not have consecutive lease renewals; or
- (v) has a valid lead-safe certification in accordance with N.J.S.A. 52:27D-437.16(d)(2). Lead-safe certificates are valid for two years. If the lead-safe certificate has expired, and there will be a tenant turnover, an inspection will be necessary before the three-year inspection cycle deadline.

#### 9-5.4. Lead-Based Paint Inspector.

- a. Creation of Office. The Office of Flemington Lead-Based Paint Inspector is hereby established.
- b. Appointment. The Mayor shall nominate, with the advice and consent of the Borough Council, appoint a Lead-Based Paint Inspector.
- c. Term of Office. The term of office of the Lead-Based Paint Inspector shall run from the date of the appointment to the 31<sup>st</sup> day of December immediately following such appointment.

9-5.4. Application and Notice. Whenever any rental dwelling unit subject to this Section 9-5 is scheduled for a change in occupancy, the then current owner shall provide written notice to the Borough Clerk that an inspection is needed at least 20 days prior to the scheduled change. Such notice shall be made with a completed application on a form to be provided by the Borough Clerk.

9-5.5. Time for inspections. The Borough shall designate 6 days per year, approximately every two months, where the Borough's Lead-Based Paint Inspector shall be available to conduct inspections of dwelling units. If the owner or landlord of a dwelling unit requires inspections outside of such time period, they shall hire a private lead evaluation contractor who is certified to provide lead paint inspection services by the Department of Community Affairs to satisfy the requirements of this section

Inspection fees shall be paid prior to the inspection. No inspections or re-inspections shall take place unless all fees are paid. Scheduled inspections or re-inspections may be canceled by the Borough unless the completed application and required fees have been received by the Borough at least **24 hours prior** to the

scheduled inspection or on the last working day prior to the scheduled inspection. Every inspection where the landlord, tenant, owner or agent has failed to provide access for inspection shall be deemed a failed inspection.

9-5.6. Production of Lead-Safe Certifications. In accordance with N.J.S.A. 52:27D-437.16(e), property owners shall:

- a. Provide evidence of a valid lead-safe certification and the most recent tenant turnover to the Borough Clerk at the time of the cyclical inspection required pursuant to the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.).
- b. Provide evidence of a valid lead-safe certification to new tenants of the property at the time of tenant turnover and shall affix a copy of such certification as an exhibit to the tenant's or tenants' lease.
- c. Maintain a record of the lead-safe certification which shall include the name or names of the unit's tenant or tenants if the inspection was conducted during a period of tenancy.

9-5.7. If lead-based paint hazards are identified, then the owner of the dwelling shall remediate the hazards through abatement or lead-based paint hazard control mechanisms in accordance with N.J.S.A. 52:27D-437.16(d). Upon the remediation of the lead-based paint hazard, the Borough Lead-Based Paint Inspector or designee, as may be applicable, or the owner's private lead inspector, shall conduct an additional inspection of the unit to certify that the hazard no longer exists.

9-5.8. If no lead-based paint hazards are identified, then the Borough Lead-Based Paint Inspector or designee or the owner's private lead inspector shall certify the dwelling as lead safe on a form prescribed by the Department of Community Affairs, which shall be valid for two years and shall be filed with the Borough Clerk and Lead-Based Paint Inspector.

9-5.9. Records. The Borough Lead-Based Paint Inspector shall maintain up-to-date information on inspection schedules, inspection results, tenant turnover and a record of all lead-free certifications issued pursuant to N.J.A.C. 5:17. § 171-29.

9-5.10. Fees for lead-based paint inspections.

a. In addition to all other fees due under this Chapter 9, an additional fees in the following amounts shall be paid for each lead-based paint inspection. Said fee shall be dedicated to meeting the costs of implementing and enforcing this section and shall not be used for any other purpose.

(i) Fees for a New Jersey Certified Lead Paint Inspector / Rick Assessor Inspection and Lead Wipe Sample Analysis shall be set by resolution each year by the

Borough Mayor and Council to reflect actual charges for such services by the appointed Lead-Based Paint Inspector.

(ii) New Jersey Department of Community Affairs Inspection Fee - \$20 per unit. This fee shall be waived if the property owner or landlord can provide proof that the Department of Community Affairs has already assessed such fee pursuant to N.J.S.A. 52:27D-437.10.

b. Alternatively, a dwelling owner or landlord may directly hire a private lead evaluation contractor who is certified to provide lead paint inspection services by the Department of Community Affairs to satisfy the requirements of this section, in which case only a fee for filing a lead-safe certification in the amount of \$25 shall be due.

c. In a common interest community, any inspection fee charged shall be the responsibility of the unit owner and not the homeowners' association, unless the association is the owner of the unit.

9-5.11. Violations and Penalties. In accordance with N.J.S.A. 52:27D-437.19, the penalties for a violation of this section shall be as follows:

- a. If a property owner has failed to conduct the required inspection or initiate any remediation efforts, the owner shall be given 30 days to cure the violation.
- b. If the property owner has not cured the violation after 30 days, the property owner shall be subject to a penalty not to exceed \$1,000 per week until the required inspection has been conducted or remediation efforts have been initiated.

**Mayor and Common Council**

38 Park Avenue  
Flemington, NJ 08822

Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Board Policy  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:

**SCHEDULED****RESOLUTION 2022-182**

DOC ID: 3867

## **Appointing Andrea Schell as the Municipal Court Violations Clerk**

**WHEREAS**, the position of full-time Municipal Court Violations Clerk is currently vacant; and

**WHEREAS**, the Borough accepted applications and interviewed several candidates; and

**WHEREAS**, Andrea Schell was the strongest candidate for the position.

**NOW THEREFORE BE IT RESOLVED**, by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, that Andrea Schell be appointed as the Municipal Court Violations Clerk effective October 12, 2022 at an annual salary of \$40,000.00.

**BE IT FURTHER RESOLVED** that this appointment complies with the provisions of the Borough of Flemington Personnel Policies and Procedures Manual, including an introductory period of six months and at-will employment.

Adopted: September 27, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Financial Approval  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:**TABLED****RESOLUTION 2022-194**

DOC ID: 3883

## **Authorizing the Expansion of the Construction Contractor Contract with Reivax Contracting Corp. by \$99,157, in Connection with the Water and Sewer Improvement Project for Hopewell and Dewey Avenue**

**WHEREAS**, revisions to the elevations of the proposed sanitary sewers on Dewey and Hopewell Avenue resulted in the need for deeper structures and piping than originally planned; and

**WHEREAS**, the proposed downstream sanitary sewer manhole connection on Hopewell Avenue was revised from coring the existing structure to a full structure replacement, resulting in on additional manhole; and

**WHEREAS**, the need exists to expand the construction contract with Reivax Contracting Corp. for the Water and Sewer Improvement Project for Hopewell and Dewey Avenue by \$99,157.00, for the additional time and materials required to complete construction; and

**WHEREAS**, the Chief Financial Officer certifies that there are funds available for this project that was approved on October 25, 2021 for \$711,199.29 Resolution 2021-223;

**NOW, THEREFORE, BE IT RESOLVED** that the Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, approves a change order for \$99,157.00 to Reivax Contracting Corp., for the additional time and materials required to complete construction in connection with the Water and Sewer Improvement Project for Hopewell and Dewey Avenue.

Tabled: September 12, 2022

Adopted: September 27, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor

\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**HISTORY:**

09/12/22

Governing Body

TABLED

Next: 09/27/22

Vote to approve was 3 votes for, 1 vote to abstain. Mr. Parker wished to have more information regarding the cause for the Change Order. Resolution 2022-194 is tabled to a future meeting.

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Board Policy  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:**SCHEDULED****RESOLUTION 2022-199**

DOC ID: 3899

**Recognizing National Hispanic Heritage Month, 2022**

**WHEREAS**, each year Americans observe National Hispanic Heritage Month by celebrating the histories, cultures, and contributions of American citizens whose ancestors came from Spain, Mexico, the Caribbean, and Central and South America; and

**WHEREAS**, observance of Hispanic Heritage began in 1968, was later expanded, and begins many significant anniversaries of independence for Latin American countries; and

**WHEREAS**, The United States has the 2nd largest population of Hispanic and Latinx people in the world; and

**WHEREAS**, Flemington Borough's residents of Hispanic heritage comprise just under 33% of the Borough's total population, according to 2019 Census estimates; and

**WHEREAS**, the Mayor and the Borough Council of the Borough of Flemington ask all individuals to celebrate the great diversity of the American people by recognizing residents and friends of Flemington with Hispanic and Latinx heritage who have helped make our Borough prosperous; and

**WHEREAS**, we encourage the work of those who dedicate their time and efforts to the furthering of a connected and strong local community by recognizing September 15th, 2022 through October 15th, 2022 as National Hispanic Heritage Month;

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Borough Council hereby recognize September 15th, 2022 through October 15th, 2022 as National Hispanic Heritage Month in the Borough of Flemington.

Adopted: September 27, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Governing Body  
Category: Board Policy  
Prepared By: Michael J. Humphrey  
Initiator: Michael J. Humphrey  
Sponsors:**SCHEDULED****RESOLUTION 2022-201**

DOC ID: 3902

**Renewal of Plenary Retail Consumption Liquor License  
#1009-33-002-008 Held by Cyclades Associates, LLC**

**WHEREAS**, the Borough is in receipt of an application to renew the Plenary Retail Consumption Liquor License #1009-33-002-008 held by Cyclades Associates, LLC the License Holder"); and

**WHEREAS**, the license has been inactive since December 2018; and

**WHEREAS**, the License Holder submitted a petition to the New Jersey Division of Alcoholic Beverage Control ("NJ ABC") for a Special Ruling under N.J.S.A. 33:1-12.39 to permit the continued holding of an inactive license (12:39 Petition"); and

**WHEREAS**, the Borough received a copy of the Special Ruling granted by the Director of the NJ ABC, permitting the Borough to review the license for renewal for the 2022-2023 term; and

**WHEREAS**, the Borough Council reviewed the License Holder's 12:39 Petition and notes two misleading and inaccurate statements made by the License Holder in support of its 12:39 Petition and relied upon by the NJ ABC;

**WHEREAS**, the License Holder inaccurately and without any evidence claimed that there is not currently a need in the Borough of Flemington for additional active liquor licenses; and

**WHEREAS**, the Director of the Flemington Business Improvement District has stated that there are many current and potential business owners who have expressed interested in purchasing a Plenary Retail Consumption Liquor License; and

**WHEREAS**, the License Holder inaccurately claimed difficulty in marketing the Liquor License for sale because much of the potential business is diverted from the locations to which the license might be transferred due to the rerouting of certain highway routes;

**WHEREAS**, the Borough of Flemington permits restaurants and bars in many of its zoning districts unaffected by the traffic re-routing and the Borough has experienced recent economic growth in two of its primary business districts; and

**WHEREAS**, it is the opinion of the Borough Council that the License Holder has not in good faith attempted to sell or otherwise active the Liquor License; and

**WHEREAS**, it is the opinion of the Borough Council that the License Holder intentionally provided false and misleading information to NJ ABC; and

**WHEREAS**, the License Holder's refusal to in good faith attempt to market or otherwise activate the Liquor License has an adverse effect on the Borough's economy and redevelopment efforts; and

**WHEREAS**, the Liquor License must be renewed by the Borough to keep the license viable for another year; and

**WHEREAS**, the renewal application was accompanied by the required fees, affidavits, and tax clearance certificate from the New Jersey Division of Taxation; and

**WHEREAS**, no written objection to the renewal of this license was received by the Borough Clerk;

**WHEREAS**, the Borough has alerted NJ ABC to inaccurate statements made by the License Holder and requested that NJ ABC review its decision to grant the 12:39 Petition.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, as follows:

1. That the license as referenced above be renewed for the 2022-2023 license term and that the Borough Clerk be directed to forward a certified copy of this Resolution to the Division of Alcoholic Beverage Control, Department of Law and Public Safety, for processing, and to the applicants; and;

2. That the Borough Clerk be authorized to issue the 2022-2023 license to the proper holder.

3. In the event the NJ ABC retracts its grant of the 12:39 Petition, the Borough Council reserves the right to revoke the Liquor License.

4. The Borough Council reserves the right to not renew the license for the 2023-2024 term in the event the License Holder fails to demonstrate a good faith effort to market or otherwise reactivate the license.

5. This Resolution shall take effect immediately.

Adopted: September 27, 2022

Attest:

By: \_\_\_\_\_  
Betsy Driver, Mayor

By: \_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk

**CERTIFICATION**

I, Michael Humphrey, Acting Borough Clerk of the Borough of Flemington do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Borough Council on September 27, 2022

---

Michael Humphrey  
Acting Flemington Borough Clerk

**Mayor and Common Council**38 Park Avenue  
Flemington, NJ 08822Meeting: 09/27/22 07:30 PM  
Department: Clerk of the Borough  
Category: Appointments  
Prepared By: Rebecca Newman  
Initiator: Michael J. Humphrey  
Sponsors:**SCHEDULED****RESOLUTION 2022-203**

DOC ID: 3906

**Authorizing a 36-Month Payment Plan for a Water Connection Service for Block 43 Lot 6, 150 Broad Street****WHEREAS**, the property located at 150 Broad Street is serviced by a private well; and**WHEREAS**, the homeowner has been notified that the well has been contaminated by the Tirpok site; and**WHEREAS**, the homeowner needs to tie into the public water system for Flemington Borough; and**WHEREAS**, the homeowner is on a limited budget; and**WHEREAS**, the connection fee is currently \$5,473.00; and**WHEREAS**, the homeowner has asked if the Borough would consider a payment plan.**NOW THEREFORE BE IT RESOLVED**, by the Mayor and Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, that a payment plan be authorized for Kristie Axt, 150 Broad Street, Block 43 Lot 6 for the water connection fee in the amount of \$5,473.00 over 36 months for a monthly total of \$152.03.**BE IT FURTHER RESOLVED**, payments will be due by the 15th of the month and late payments will be subject to the same interest rates as delinquent utility bills.

Adopted: September 27, 2022

Attest:

\_\_\_\_\_  
Betsy Driver, Mayor\_\_\_\_\_  
Michael Humphrey, Acting Borough Clerk