

INDEPENDENCE TOWNSHIP COMMITTEE
Meeting held at the Municipal Building, Great Meadows, NJ.
September 16, 2019 4:00 p.m.

This is a special meeting of the Township Committee of Independence Township, Warren County, New Jersey. This meeting was called to order by Mayor Robert Giordano at 4:10 p.m. with the following announcement: "Adequate notice of this meeting was given in accordance with the Open Public Meetings Act by providing a schedule of regular meetings to the Star Gazette and The Express Times, posting a copy thereof on the Township bulletin board and filing a copy thereof in the office of the Municipal Clerk." The Pledge of Allegiance to the American Flag was led by Mayor Giordano.

ROLL CALL:

Present: Mayor Robert Giordano, Mr. Cogle, Bonnie Kelsey, Mike Pennington, Tim Norton and Debi Hrebenak. Also present were Attorney Leslie Parikh

Absent: None recorded

Resolution 19-76

RESOLUTION 2019-76
RESOLUTION OF THE TOWNSHIP OF INDEPENDENCE FURTHER
MEMORIALIZING THE IMMEDIATE SUSPENSION WITHOUT PAY OF THE
CHIEF OF POLICE

WHEREAS, on September 9, 2019, the Township Committee of the Township of Independence passed Resolution No. 2019-74, which is attached hereto as **Exhibit A**; and

WHEREAS, Resolution No. 2019-74 was passed in response to the Committees' receipt of a September 5, 2019 Internal Affairs Investigation Report (the "September 5, 2019 Report") from the Warren County Prosecutor's Office; and

WHEREAS, the September 5, 2019 Report was prepared after an investigation (the "Investigation") was conducted by the Warren County Prosecutor's Office regarding the Chief's conduct on February 9 and 10, 2019; and

WHEREAS, the September 5, 2019 Report sustains numerous allegations against Chief Aiello; and

WHEREAS, the specific findings set forth in the September 5, 2019 Report are also summarized in Resolution No. 2019-74; and

WHEREAS, the September 5, 2019 Report supports the conclusion that the Chief's conduct on February 9 and 10, 2019, created a risk to the safety, health and order of the public and constitutes the second occasion wherein the Warren County Prosecutor's Office sustained the allegation that Chief Aiello conducted himself in a manner that posed a threat to the safety of the community; and

WHEREAS, the September 5, 2019 Report likewise sustains the allegation that Chief Aiello violated Independence Township Police Procedures and Policies, Township Policies and Attorney General Guidelines pertaining to honesty, integrity, truthfulness and cooperation during its Investigation; and

WHEREAS, as set forth Resolution No. 2019-74, the Appointing Authority and the Governing Body have found it appropriate to suspend Chief Aiello, without pay, pursuant to N.J.A.C. 4A:2-2.5(b), pending the outcome of removal proceedings; and

WHEREAS, prior to any imposition of a suspension without pay, the Chief was given the opportunity to contest same by submitting in writing why that action should not occur by 12:00 PM Monday, September 16, 2019; and

WHEREAS, on Friday, September 13, 2019, a written objection to a suspension without pay was provided by counsel on behalf of Chief Aiello and is attached hereto as **Exhibit B**; and

WHEREAS, **Exhibit B** was reviewed and considered by the Appointing Authority in consultation with legal counsel; and

WHEREAS, it remains the recommendation of the Appointing Authority that the Chief of Police, Keith Aiello, be immediately suspended without pay as of September 17, 2019; and


WHEREAS, the Mayor and Committee are in agreement with such action.

NOW, THEREFORE, BE IT RESOLVED that the Chief of Police, Keith Aiello, is hereby placed on an immediate suspension without pay as of September 17, 2019, pending the outcome of further disciplinary proceedings.

ATTEST:

**TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF INDEPENDENCE**


Deborah M. Hrebenak, RMC/CMR
Registered Municipal Clerk


Robert M. Giordano, Mayor

Certification

I, Deborah M. Hrebenak, Municipal Clerk/Administrator of the Township of Independence, do hereby certify that the foregoing Resolution is a true and exact copy adopted by the Township Committee of the Township of Independence on September 16, 2019.


Deborah M. Hrebenak, RMC/CMR
Registered Municipal Clerk

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EXHIBIT A

RESOLUTION 19-74
RESOLUTION OF THE TOWNSHIP OF INDEPENDENCE MEMORIALIZING THE
IMMEDIATE SUSPENSION WITHOUT PAY OF THE CHIEF OF POLICE

WHEREAS, New Jersey Attorney General's Policy and Procedures (the "Attorney General Guidelines") state that any complaint against a law enforcement executive must be referred to the County Prosecutor's Office; and

WHEREAS, the Warren County Prosecutor's Office opened an investigation (hereinafter "the Investigation") relating to certain actions of the Chief of Police, Keith Aiello, which occurred on February 9, 2019 and into February 10, 2019; and

WHEREAS, as a result of the Investigation, on February 13, 2019, pursuant to Resolution 2019-22, Chief Aiello was placed on an administrative leave with pay pending the outcome of the Investigation; and

WHEREAS, on September 5, 2019, the Appointing Authority received notice that the Warren County Prosecutor's Office completed its Investigation Report stemming from the Chief's conduct on February 9 and 10, 2019; and

WHEREAS, in its Report, the Warren County Prosecutor's Office determined that on February 9, 2019 through February 10, 2019, Chief Aiello violated in significant ways, numerous Independence Township Police Policies, Independence Township Policies, and various New Jersey motor vehicle laws in connection with his operation of a Township owned vehicle during the early morning hours of February 10, 2019 ; and

WHEREAS, the foregoing violations create a risk to the safety, health and order of the public and constitute the second occasion wherein the Warren County Prosecutor's Office sustained the allegation that Chief Aiello operated his Township owned vehicle in a manner that posed a threat to the safety of the community; and

WHEREAS, the Warren County Prosecutor's Office also determined that Chief Aiello failed in his duty to cooperate with the Internal Affairs Investigation conducted by the Warren County Prosecutor's Office and likewise failed in his duty to answer questions completely and truthfully and attempted to influence others to not take action with regard to his own conduct; and

WHEREAS, as a result of the foregoing, the Warren County Prosecutor's office sustained the allegation that Chief Aiello violated Independence Township Police Procedures and Policies, Township Policies and Attorney General Guidelines pertaining to honesty, integrity, truthfulness and cooperation during investigations; and

WHEREAS, the Chief of Police is the highest-ranking officer in the Department, and has an obligation to set an example for those officers below him in rank; and

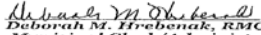
WHEREAS, the example to be set is that law, policy and procedure must be followed, and integrity and honesty shall be maintained within the Department; and

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WHEREAS, the Appointing Authority has found it appropriate to immediately suspend Chief Aiello, without pay, pending the outcome of removal proceedings.

NOW, THEREFORE, BE IT RESOLVED that the Chief of Police, Keith Aiello, will be placed on an immediate suspension without pay as of September 17, 2019, pending the outcome of further disciplinary proceedings. Pursuant to N.J.A.C. 4A:2-2.5(b) the Chief has the opportunity to contest the suspension without pay, and if so chooses, shall do so by submitting in writing why that should not occur by 12:00 PM Monday, September 16, 2019.

ATTEST:

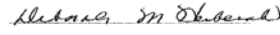

Deborah M. Hrebenak, RMC
Municipal Clerk/Administrator

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF INDEPENDENCE


Robert M. Giordano, Mayor

Certification

I, Deborah M. Hrebenak, Municipal Clerk/Administrator of the Township of Independence, County of Warren, State of New Jersey do hereby certify that the foregoing Resolution is a true and exact copy adopted by the Township Committee of the Township of Independence on September 10, 2019.


Deborah M. Hrebenak
Municipal Clerk/Administrator

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EXHIBIT B

ALTERMAN & ASSOCIATES, LLC

8 South Maple Avenue
Marlton, New Jersey 08053
(856)334-5737 - Phone
(856)334-5731 -- Fax

Please forward all correspondence to the Marlton office

Stuart J. Alterman
Arthur J. Murray
Timothy J. Proff

Haledon Office
22 Church Street
Haledon, New Jersey 07508
(973)956-1621 - Phone
(973)956-1421 - Fax

September 13, 2019

VIA EMAIL ONLY

Leslie A. Parikh, Esq.
Gebhardt & Kiefer
1318 Route 31
Annandale, New Jersey 08801

RE: Chief Keith Aiello – PNDA of 9/9/19

Dear Ms. Parikh:

As you are aware, our office represents Chief Keith Aiello in the above referenced matter. As a threshold matter, we reiterate and continue our objections to any suspension of Chief Aiello for any reason. Moreover, any suspension without pay runs contrary to the law and policies of the State of New Jersey. In addition, the charges levied against Chief Aiello in the PNDA issued on September 9, 2019 are spurious and are wholly without merit. For the reasons set forth below, in the event the Town seeks to continue its farcical and unfounded persecution of Chief Aiello by ordering a suspension in this matter, any suspension must be **with pay**.

A. Any Attempted Suspension of Chief Aiello Must be With Pay.

N.J.S.A. 40A:14-149.1 governs the suspension of an Officer charged with an offense and provides as follows:

Notwithstanding any other law to the contrary, whenever any municipal police officer is charged under the law of this State, another state, or the United States, with an offense, said police officer may be suspended from performing his duties, **with pay**, until the case against said officer is disposed of at trial, until the complaint is dismissed, or until the prosecution is terminated; provided, however, that if a grand jury returns an indictment against said officer, or said officer is charged with an offense which is a high misdemeanor or which involves moral turpitude or dishonesty, said officer may be suspended from his duties, without pay, until the case against him is disposed of at trial, until the complaint is dismissed or until the prosecution is terminated.

N.J.S.A. 40A:14-149.1 (emphasis added).

A suspension without pay of a Municipal Police Officer is impermissible as a matter of law. N.J.S.A. 40A:14-149.1 mandates a suspension with pay even where a criminal or quasi-criminal offense is charged as the basis for the disciplinary proceeding, unless the offense charged is especially grave or an indictment has been returned. Herzog v. Township of Fairfield, 349 N.J. Super. 602 (App. Div. 2002). The Court in Herzog stated that, "where the conduct charged has no criminal or quasi-criminal qualities, a suspension without pay is unauthorized by law." Id. at 605.

Here, Chief Aiello's status as a Municipal Police Officer prohibits suspension without pay in this matter. Moreover, no circumstance exists which would, even nominally, rise to the level of an "especially grave" incident, and certainly, no indictment has been returned. Despite the meritless nature of the charges brought against Chief Aiello, nothing noted within the PNDA or the Warren County New Jersey Prosecutor's Office Report which contains the results of the WCPO review of the charges would permit a suspension of Chief Aiello to be without pay.

N.J.S.A. 40A:14-149.1 and Herzog v. Township of Fairfield constitute adverse legal authority to the Town's attempted suspension without pay. In the event the Town proceeds to effectuate a suspension without pay, further legal action will be

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immediately forthcoming to enforce the provisions of law the Town will have violated by implementing an unpaid suspension. Accordingly, since a suspension of Chief Aiello without pay is contrary to law, any suspension implemented by the Town must be with pay.

B. Suspension of Chief Aiello is Improper.

The letter of September 9, 2019 indicates that "Chief Aiello's suspension will be deemed immediate and without pay pursuant to N.J.A.C. 4A:2- 2.5(a)(1), pending the disposition of any termination hearing." N.J.A.C. 4A:2-2.5 provides in relevant part as follows:

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. An employee who has been appointed on or after September 1, 2011, who does not have a principal residence in New Jersey and who has not received a residency exemption in accordance with P.L. 2011, c. 70, within one year of appointment, is defined by that statute as illegally holding and unqualified for employment, and therefore subject to immediate suspension as unfit for duty. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

N.J.A.C. 4A:2-2.5(a)(1).

There is no indication or basis to find that Chief Aiello is unfit for duty, that he is a hazard to any person if permitted to remain on the job, or that a suspension is necessary to maintain safety, health, order, or effective direction of public services. In fact, suspension of Chief Aiello as the Chief of Police has a negative effect on the

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safety, health, order, and effective direction of public services, and in particular, policing services for the taxpayers of the Town of Independence.

C. N.J.S.A. 40A:14-149.1 Supersedes N.J.A.C. 4A:2-2.5(a)(1).

To the extent that N.J.A.C. 4A:2-2.5(a)(1) expresses incongruence with the mandates of N.J.S.A. 40A:14-149.1, N.J.A.C. 4A:2-2.5(a)(1) is *ultra vires* and as such is invalid. In *re Freshwater Wetlands Prot. Act Rules*, 180 N.J. 478, 489 (2004). Where a regulation is in conflict with the terms and enumerated objectives of a statute, the regulation is invalid as it pertains to the provisions of the statute. Des Champs Laboratories, Inc. v. Martin, 427 N.J.Super. 84 (App.Div.2012).

The provisions of N.J.S.A. 40A:14-149.1, a Statute, supersede the provisions of N.J.A.C. 4A:2-2.5(a)(1), a Regulation. Therefore, the Town must adhere to the provisions of N.J.S.A. 40A:14-149.1, mandating that if any suspension occurs it must be a suspension **with pay**.

Conclusion

The Town's persistent and incessant persecution of Chief Aiello is shameful. Chief Aiello has risen through the ranks of the Independence Township Police Department and has served the Township with distinction for almost twenty (20) years. Prior to the issuance of these malicious insupportable charges, he has had a spotless disciplinary jacket. Also, Chief Aiello is a multi-tour United States Marine Corps Veteran, having served not only the Township with distinction, but our Nation as well.

The charges levied against Chief Aiello in the PNDA issued on September 9, 2019 are spurious and are wholly without merit. Moreover, a suspension without pay is prohibited by N.J.S.A. 40A:14-149.1. Accordingly, in the event the Town seeks to

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continue its tyrannical, farcical, and unfounded persecution of Chief Aiello by ordering a suspension in this matter, any suspension must be **with pay**.

Sincerely,
ALTERMAN & ASSOCIATES, LLC

Timothy J. Proff, Esq.
tproff@alterman-law.com

cc: Chief Keith Aiello (via email)

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A motion was made by Mr. Norton to adopt Resolutions 19-76 as written.
Deputy Mayor Cogle seconded the motion with roll call as follows:

Ayes: Mr. Norton, Mrs. Kelsey, Mr. Cogle, and Mayor Giordano

Nays: None recorded

Abstain: Mr. Pennington

Motion carries with four (4) affirmative votes.

PUBLIC COMMENT: None

ADJOURNMENT: A motion was made by Deputy Mayor Cougle to adjourn the meeting at 4:14 p.m. Mrs. Kelsey seconded the motion with roll call as follows:

Ayes: Mr. Cougle, Mr. Norton, Mrs. Kelsey, Mr. Pennington, and Mayor Giordano

Nays: None recorded

Abstain: None recorded

Motion carries with five (5) affirmative votes.

Respectfully submitted,

Deborah M. Hrebenak, RMC/CMR
Municipal Clerk