

Meeting Minutes of Middletown Borough Council
February 7, 2017

The February 7, 2017, regular meeting of the Middletown Borough Council was called to order at 7:02 p.m. in Council Chambers at 60 W. Emaus Street, Middletown, Pennsylvania by Councilor Dawn Knull.

After the Pledge of Allegiance, the following Council members answered roll call: Anne Einhorn, Dawn Knull, Robert Reid, and Ian Reddinger. Absent: Diana McGlone, Damon Suglia and Benjamin Kapenstein. Also present were Borough Manager Kenneth Klinepeter, Solicitor Adam Santucci, Solicitor James Diamond, and Borough Secretary Grace Miller.

Councilor Dawn Knull turned the meeting over to Solicitor James Diamond of Eckert and Seamans at 7:04 p.m. to proceed with the public hearing on the request for transfer of liquor license.

Public Hearing on Liquor License Transfer – Giant Foods, LLC – Solicitor James Diamond opened the public hearing pursuant to the statutory requirements of the Pennsylvania Liquor Code at the request of Giant Foods, LLC for approval of an intermunicipal transfer of the PLCB liquor license into the Borough at 450 E. Main Street, Middletown, Pennsylvania. This proceeding is limited to determining, for the purposes of the liquor code proceedings, whether the Borough approves the transfer or whether there is any evidence that would show it would affect the welfare, health, peace, and morals of its residents. The applicant will proceed first making an opening statement and present evidence with questions being permitted to the solicitor and Council and then the public shall have the opportunity to present comments or questions in regard to the transfer. The applicant may then make a rebuttal or closing statement and Council can then make a decision as to whether or not to approve the transfer. Solicitor Diamond entered into evidence the following three exhibits labeled Council 1 (C1), Council 2 (C2) and Council 3 (C3):

- C1 – Request of applicant with proposed resolution
- C2 - Proof of Publication from the Press and Journal
- C3 – Proof of Publication from Patriot News of 2 advertisements

Ellen Freeman of Flaherty and O’Hara law firm and Josh Erb, Manager of Special Projects were in attendance on behalf of Giant Foods, LLC to request Borough approval of a resolution permitting the intermunicipal transfer of a restaurant liquor license from outside the Borough to within it to be used at Giant Foods Store within the existing store at 450 E. Main Street, Middletown, Pennsylvania. Ms. Freeman passed out Applicant’s Exhibit 1 – Giant Food Store Proposed Floor Plan. Ms. Freeman noted Giant Foods is planning on remodeling a section of the existing store into a beer garden and eatery to seat 30 patrons. The café will feature food to make as you go, hot food bar, sushi, beer and wine to eat at the café or have the option to take the food home. Ms. Freeman indicated Giant currently operates 33 beer gardens and eateries across Pennsylvania. The restaurant will be located in the back right rear of the store with hours of operation Monday through Saturday from 7a.m. to 10 p.m. and Sunday 9 a.m. to 10 p.m. with a dedicated restaurant manager having RAMP training and all café associates will receive RAMP service training. Giant has a 100% carding policy with a self-imposed 2 beer limit that must be made with the purchase and consumption of food at the café. All beer and wine purchased must

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be made at the café register. Security cameras will cover the area as well as physical monitoring from the manager and staff. Beer purchased to would be a maximum of two six-packs and wine would be a limit of up to 4 bottles. Ms. Freeman asked Mr. Josh Erb when construction will begin and be completed. Mr. Erb noted that construction would begin upon approval from the liquor board and hope for a March/April construction start and would be an approximate 6-week schedule. Ms. Freeman asked what the policy is for locking up the wine. Mr. Erb stated some safeguards are cold beer doors have individual locks and the aisle of beer and wine will be secured by theatre ropes signifying the aisles are closed. Ms. Freeman asked what the employees look for when they card an individual. Mr. Erb stated all associates are RAMP certified and there is an ID card reader where staff swipes the card and the reader signifies whether the card is valid or not. Once validated, staff must enter a birthdate into the computer prior to making the sale. Staff follows the "FEAR" method feel, examine, ask, return ID. Ms. Freeman asked if Giant had any citations or violations involving beer or wine. Mr. Erb stated Giant has not received any such citations or violations. Ms. Freeman noted that at this point the hearing was being turned back over to Council.

Solicitor Diamond asked Council if they had any questions. Councilor Reddinger asked if this could be tabled due to the few members of Council present. Solicitor Diamond indicated if tabled, a new hearing would need to be scheduled along with advertising. Councilor Reed noted that Council has a quorum and a vote should be taken. The solicitor then turned the meeting over to the public for any questions or comments.

Bob Houser (37 Brown Street) - Mr. Houser indicated he used to work at Kmart selling ammunition and had to enter birthdates into the computer to make a sale and at times would have to enter arbitrary dates asking if there were ways around that with the sale of alcohol. Mr. Erb indicated it would come down to associate training. Mr. Houser questioned if staff would be under the age of 18. Mr. Erb stated staff would need to be 18 years or older.

Rachelle Reid (448 Grant Street) – Ms. Reid asked which part of the building was being remodeled. Mr. Erb noted it was the back right area of the store to the left of the produce department.

Solicitor Diamond stated as there were no more comments from the public, Council was closing the evidentiary part of the hearing and turned the meeting back over to Council.

Councilor Knull reconvened the meeting at 7:22 p.m. indicating Council would act on item number 3 of the Agenda to adopt Resolution No. 2017-3 for the liquor license control and opened the floor for a motion. **MOTION** to adopt Resolution No. 2017-3 approving the inter-municipal transfer of restaurant liquor license no. R-9483 from Susquehanna Township to the property located at 450 E. Main Street upon the approval of the Pennsylvania Liquor Control Board. Motion by Robert Reid, second by Anne Einhorn. Motion carried 4 to 0. Solicitor Diamond left the meeting at this point.

Councilor Knull recessed the meeting at 7:25 p.m. turning it over to Solicitor Adam Santucci to proceed with the public hearing on the adoption of Ordinance 1336 – Medical Marijuana.

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Public Hearing on Ordinance 1336 – Medical Marijuana – Solicitor Adam Santucci noted the public hearing is being held on the proposed amendments to the Borough’s zoning ordinance to provide for medical marijuana dispensaries as a matter of right within certain zones in C-1, C-2 and M-1 within the Borough. The proposed amendments have been advertised twice and the proposed ordinance has been shared with Council.

Solicitor Santucci noted there are two Exhibits which will be labeled Exhibit 1 and Exhibit 2 as follows:

Exhibit 1 – Copy of the Ordinance

Exhibit 2 – Proof of Publication from Press and Journal

Solicitor Santucci opened the hearing to Council for any comments or questions. Councilor Knull expressed her concern that laws regarding distance from schools and daycares be followed. Mr. Santucci noted that state law will apply and that supersedes local laws.

Mr. Santucci then opened the floor to the public for questions.

Bob Houser (37 Brown Street) - Mr. Houser posed the question if a medical dispensary was in town and meets the 1,000 foot requirement and then a daycare moves in, does the dispensary have to move? Mr. Santucci stated not if the dispensary was there first.

Rachelle Reid (448 Grant Street) – Ms. Reid asked if a special exception can be given in an R-2 district in a scenario such as having a storefront on the bottom and living quarters above. Mr. Santucci indicated that would require a variance but would not require a special exception if in C-1, C-2 or M-1 areas. At this time Mr. Santucci closed the public hearing and turned the meeting back over to Councilor Knull.

Councilor Knull reconvened the meeting at 7:30 p.m. stating that Council would be acting on item number 4 of the agenda and opened the floor for a motion regarding the adoption of Ordinance 1336. **MOTION** by Anne Einhorn, second by Robert Reid to adopt Ordinance 1336 amending Chapter 260 of Borough Code to provide for the regulation of medical marijuana facilities. Motion carried 4 to 0.

Public Comment

Jenny Miller (227 W. Water Street) – Ms. Miller reiterated how important the historical portion of the zoning overlay is. Ms. Miller provided Council with a list of homes listed on the National Register noting that the National Historical Society is interested in adding the Elks Building to the historical list as well.

Councilor Reid asked if the yellow house in town is a log cabin. Ms. Miller noted it is and needs to be saved. The home is owned by Mr. Webster who does not live locally. Councilor Reid asked that the home be researched to see if it is of any historical value.

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Approve Meeting Minutes – Councilor Anne Einhorn noted that draft minutes sent to Council prior to the meeting did not show that she attended the meeting. The minutes currently before Council were rectified showing Councilor Einhorn attended the meeting. **MOTION** to approve Council meeting minutes for the January 17, 2017 meeting as submitted. Motion by Ian Reddinger, second by Anne Einhorn. Motion carried 4 to 0.

Approval of Bills – **MOTION** to approve payment of bills as shown on the Accounts Payable List dated February 7, 2017, for the period January 13, 2017, through February 7, 2017, to ratify approval of such bills already paid and to authorize the appropriate officials to take required actions to make said payments. Motion by Anne Einhorn, second by Robert Reid. Motion carried 4 to 0.

Discussion -Draft Revisions to Ordinance 943 & 972 Relating to Head Shops – Mr. Ken Klinepeter noted that Councilor McGlone had approached him about the possibility of revising Ordinance 943 and 972 as it relates to Head Shops as there is a vape shop in town who sells items resembling drug paraphernalia for their customers. After some discussion, Council tabled this matter until the next meeting.

Approval to Purchase Streetlights – Mr. Kenneth Klinepeter requested approval to proceed with the LED Streetlight Replacement Project and Emaus Street Extension Project and approval to purchase LED streetlights and related hardware through Costars State Contract No. 008-029 from Wesco Distribution Corporation. **MOTION** to approve the purchase of LED streetlights and related hardware from Wesco Distribution Corporation through Costars State Contract No. 008-029 and approval to proceed with the LED Streetlight Replacement Project and Emaus Street Decorative Light Extension Project for a not to exceed amount of \$375,910 as approved through the First Columbia Bank & Trust Company General Obligation Bond loan. Motion by Robert Reid, second by Ian Reddinger. Motion carried 4 to 0.

Discussion – Electric Service Reconnection Fee – Mr. Klinepeter noted Council had discussed at one of the previous meetings regarding either waving the service reconnection fee or reducing it during the winter months for electric service. Included in your packet is the Borough's ordinance regarding delinquent accounts for review and discussion as to how, or if, Council wishes to revise the resolution. Mr. Klinepeter indicated he would like to broaden the discussion as there other items in the ordinance that could be amended such as putting a resolution in place that would not be as restrictive as an ordinance covering policies for collection of delinquent accounts. Council directed the Borough Manager and Director of Finance and Administration to provide a proposed revised ordinance to Council.

Discussion – Planning Commission Recommendations for Zoning Overlay – Mr. Klinepeter noted the Middletown Planning Commission was given the Zoning Overlay and asked to review and make recommendations. Those recommendations were included in Council's packet for review. Mr. Klinepeter indicated the Planning Commission recommended adoption of the complete overlay as well as alternative recommendations if Council felt the complete overlay was too broad at this time. Mr. Klinepeter noted that the Tri-County Planning Commission would need to review the Overlay once a revised ordinance is in place. Council indicated they would review the recommendations and discuss at the next meeting.

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Discussion on Investment Advisory Committee – Mr. Klinepeter noted the investment firm recommended a committee be established to review investment performance of the police and non-uniform pension plans as well as the OPEB fund. Mr. Klinepeter noted the committee could consist of seven (7) members consisting of two Council members, two representatives from the Police Association, two representatives of the Teamster employees and one neutral member. If Council agrees with creating this committee, staff is requesting authorization to contact the two employee unions to solicit representatives for the committee as well as Council appointing a neutral member that is approved by both the Police Association and Council. Councilor Knull indicated she would prefer not to serve on the committee, but would do so if no one else volunteers. Mr. Klinepeter noted a resolution would need to be adopted that establishes the committee and appoints members. Mr. Klinepeter requested direction from Council as to how staff should proceed. Council directed the Finance Director to contact the Police Association and Teamsters to ask if anyone would be interested in serving on the Investment Advisory Committee.

Approve Authorized Signers – Wells Fargo Accounts – Mr. Klinepeter indicated the existing Wells Fargo Accounts signatories are no longer employed by the Borough and requested a motion to authorize the Council President, Director of Finance and Administration and the Borough Secretary as authorized signers on the accounts. **MOTION** to authorize Council President, Director of Finance and Administration and Borough Secretary as authorized signers on Wells Fargo Accounts No. 8815-4526 and 8437-3184 and to authorize execution of non-corporate agreements for these accounts relating to these approved authorized signers. Motion by Anne Einhorn, second by Robert Reid. Motion carried 4 to 0.

Authorize RFP for Actuarial Services – Non-Uniform Pension Plan – Mr. Klinepeter noted the new pension provider does not employ their own actuaries and an actuary is needed to periodically run calculations on the fund to see whether the amount in the fund is sufficient for payoffs. Mr. Klinepeter noted that by ordinance the Borough is required to have an RFP for actuarial services for the Non-Uniform Pension Plan. **MOTION** to authorize and direct the Borough Manager to cause the preparation for Request for Proposal for Actuarial Services of the Non-Uniform Pension Plan. Motion by Anne Einhorn, second by Ian Reddinger. Motion carried 4 to 0.

Streetscape Letter of Credit – Mr. Klinepeter noted that PennDOT had required a letter of credit for the Streetscape Project and PennDOT has released that letter of credit and requested Council authorize signers for the purpose of redeeming the letter of credit. **MOTION** to authorize the Council President, Director of Finance and/or Borough Secretary to be authorized signers for the purpose of redeeming a Letter of Credit held at First National Bank in the amount of \$179,000. with said funds to remain in Fund 05 – Capital Fund. Motion by Ian Reddinger, second by Anne Einhorn. Motion carried 4 to 0.

Authorization to Close Certain Borough Accounts – Mr. Klinepeter noted that there are 4 bank accounts with small amounts totaling an amount of \$155. and requested signatories be appointed for the purpose of closing those accounts held at the First National Bank and consolidate funds. **MOTION** to authorize the Council President, Director of Finance and/or Borough Secretary to

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be authorized signers for the purposes of closing First National Bank Preferred Interest checking accounts 536039670, 536032279, 536032261, and 513176768 with said funds to remain in the various funds to which they are now assigned. Motion by Anne Einhorn, second by Ian Reddinger. Motion carried 4 to 0.

Councilor Reid asked if the Borough holds funds at any of the local banks. Mr. Klinepeter noted most funds are held in PLIGIT or PDSLAF with some funds being held at the local M&T bank.

Ratification of Accounts Payable Procedures – Mr. Klinepeter indicated some revisions were made to the Accounts Payable procedures and requested Council approval. **MOTION** to approve Accounts Payable Procedures as presented with said procedures to be included as part of the accounting Internal Control Procedures. Motion by Ian Reddinger second by Anne Einhorn. Motion carried 4 to 0.

Public Comment

Jack Still (37 W. Emaus Street) – Mr. Still asked if a display could be placed at the Craft Fair regarding the Hoffer Park anniversary. Ms. Jenny Miller noted the post office will be promoting a special postmark in honor of the 100th anniversary of Hoffer Park which will be displayed at the Craft Fair.

Rachelle Reid (448 Grant Street) – Ms. Reid indicated that 2 years ago an officer kept someone from committing suicide and expressed her displeasure that this officer was not recognized. Councilor Einhorn noted that due to the sensitive nature of the incident, it may not be appropriate. Ms. Reid noted officers should be recognized for their service and asked for their input in helping save money rather than contracting out services or regionalizing. Mr. Santucci noted the officers were asked for input and if Ms. Reid wants to know their position on the issue, she should ask Detective Hovan who is the representative for the Police Association.

Executive Session: Councilor Knull stated the meeting would recess to executive session to discuss real estate, labor relations, legal litigation and personnel with action being taken when the meeting reconvenes. Meeting recessed at 8:10 p.m. for Executive Session and Mayor Curry joined the Executive Session at this time via telephone. Councilor Knull reconvened the meeting at 10:00 p.m.

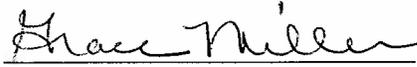
MOTION by Anne Einhorn, second by Ian Reddinger to approve a 2-day suspension for Officer Hovan based on recommendations received and discussed in Executive Session. Motion carried 4 to 0.

MOTION by Ian Reddinger, second by Anne Einhorn to approve revisions in the Civil Service Rules and Regulations to modify the promotional procedures. Motion carried 4 to 0.

HRG Engineering Proposal for Ann Street – Councilor Knull stated this item would be tabled until the next meeting on February 21, 2017.

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Adjournment - **MOTION** by Ian Reddinger, second by Anne Einhorn to adjourn the meeting.
Motion carried unanimously and the meeting was adjourned at 10:02 p.m.



Grace Miller
Borough Secretary