

Meeting Minutes of Middletown Borough Council
March 7, 2017

The March 7, 2017, regular meeting of the Middletown Borough Council was called to order at 7:00 p.m. in Council Chambers at 60 W. Emaus Street, Middletown, Pennsylvania by Council President Benjamin Kapenstein.

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

Public Comment – Mr. Ryan Burkett, owner of the Vape Shop located at 2B South Union Street, was in attendance to ask about the Borough Ordinance as police officers told him there was an Ordinance but could not give him details. Solicitor Adam Santucci commented that Chapter 138 could be viewed online at the Borough's website under Code of Ordinances. Mr. Santucci further noted that the Ordinance established that a Head Shop could not be within 500 feet of areas zoned for residential use and that he had prepared a revised ordinance that clarifies Vape Shops are not Head Shops and it is on the Agenda for discussion. Mr. Burkett stated that Governor Wolfe imposed a 40% vapor tax and if the ordinance is not changed, he will have to close his business. President Kapenstein asked if the items Mr. Burkett sells are similar to what other Vape Shops sell. Mr. Burkett noted the items other Vape Shops sell and what he sells are identical. President Kapenstein noted this will be discussed later on the agenda and invited Mr. Ryan to stay to answer any questions that might occur.

Martha Black (134 N. Union St) – Ms. Black noted that 29 N. Union Street needs a parking permit and asked who she should see regarding that matter. Council informed Ms. Black to see either the Borough Manager or the Borough Secretary. Ms. Black stated that someone just broke their ankle on the new curbing downtown and requested the curbs be painted with reflective yellow paint. President Kapenstein indicated he would have the Public Works Director take a look and see what could be done.

Rachelle Reid (448 Grant St) – Ms. Reid asked if Tattered Flag had made their payment and whether or not it was on time. President Kapenstein stated Tattered Flag had made their payment and it was on time. Mr. Reid asked how many attorneys the Borough employs. President Kapenstein noted there are several attorneys as there is an attorney for the Zoning Hearing Board, Council, and other committees. Ms. Reid asked what is the average paid in attorney fees. Mr. Klinepeter stated he has provided that information to Dan Miller of the Press and Journal who will be writing an article on the matter. Ms. Reid asked if the Investment Advisory Committee deals with pensions and expressed concern that pensioners would be paying additional fees. Mr. Klinepeter indicated the funds have

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not yet been transferred, the fees were listed in the RFP and the fees are paid by the Borough, not pensioners.

Middletown Business Association – Scott Miller of HIA was in attendance, along with several members of the Middletown Business Association, to update Council on the status of the Association. Mr. Miller noted they are updating bylaws, strategizing to generate revenue, identifying goals, a name and a website and indicated the desire of the Association to collaborate with other businesses within the Borough and will give updates to Council periodically. Councilor Diana McGlone noted she is interested in seeing a Welcome Packet be given to residents and hopes the Association will work with the Borough to highlight businesses in the area. Mr. Miller indicated the Association's interest in this project and noted a meeting would be set up with Councilor Robert Reid to get information on how the previous Welcome Wagon was conducted.

Approval of Bills – Councilor Knull asked about the sling that was purchased from Gerry's Sports Center. Chief Mouchette stated this replaced worn out slings for the officers' rifles and will work with the new rifles when they come in. **MOTION** by Dawn Knull, second by Robert Reid to approve payment of bills as shown on the Accounts Payable List dated March 6, 2017, for the period February 22, 2017, through March 6, 2017, and to ratify approval of such bills already paid and to authorize the appropriate officials to take required actions to make said payments. Motion carried 6-0.

Request for Sponsorship – Kuppy's Cruise In Car Show – Mr. Kenneth Klinepeter noted Kuppy's is requesting permission to close several streets Thursday, September 21, 2017 from 4:00 p.m. to 8:00 p.m. for the purpose of holding a benefit car show downtown. There is a rain date scheduled for September 28. As was discussed at the previous meeting, the Borough could sponsor the event by providing PennDOT with an application to close the streets and attach certificate of insurance. Ms. Carol Kupp indicated the Borough's logo will be on the flyers and t-shirts and thanked Council for their support. **MOTION** by Robert Reid, second by Anne Einhorn to sponsor the Kuppy's Cruise In Car Show benefit by providing PennDOT with an application and certificate of insurance to close Union Street on September 21, 2017 and September 28, 2017 from 4:00 pm to 8:00 pm. Motion 6-0.

Adopt Resolution No. 2017-4 – Mr. Klinepeter stated the proposed resolution would establish an Investment Advisory Committee that would meet with the investment manager to discuss investments and allocations. **MOTION** by Dawn Knull, second by Anne Einhorn to adopt Resolution No. 2017-4, a resolution establishing an Investment Advisory Committee for the Middletown Borough Police Pension Plan, the Middletown Borough Non-Uniform Pension Plan and the Middletown Borough Other Post-Employment Benefits Fund. Motion carried 5-0 with President Kapenstein abstaining.

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Appoint Members to Advisory Committee – Mr. Klinepeter noted as provided in the resolution, the committee structure is two elected officials, two members of the Police Association, two employees represented by the Teamsters Union, and another member not associated with any of these groups. The Police Association and Teamster employees would select their representatives. Council will need to select their representatives and it is recommended those selections be made tonight. Lori Smith and Mike Goodling have agreed to be on the Committee representing the Teamster employees. The Police Association has selected Jeff Weaver and Gary Rux as their representatives. A seventh member needs to be selected and the method of selection will depend on whether or not the Police Pension Board is made up of the same representatives (less the Teamster representatives) as the Investment Advisory Committee. Mr. Klinepeter noted two council members would need to be appointed. Mr. Hamer noted the Mayor, as an elected official, could also serve as a member. **MOTION** by Ian Reddinger, second by Anne Einhorn to appoint Dawn Knull and Robert Reid to serve as Council representatives on the Investment Advisory Committee. Motion carried 6-0.

Approve Investment Policy Statements – Mr. Klinepeter noted that he, Dawn Knull and Bruce Hamer met on March 3, 2017, with Mark Yasenchak and Kecia Cunningham from PFM regarding the proposed Investment Policy Statements. Attached are the proposed Investment Policy Statements for the police pension plan, non-uniform pension plan and OPEB fund for your consideration and approval. These policy statements shall serve as the guidance for PFM in selecting investments for these various funds. PFM is in attendance tonight if there are any questions or concerns regarding the Investment Policy. Alex Goldsmith and Kecia Cunningham were in attendance with Ms. Cunningham noting after reviewing asset allocations on current accounts recommends the OPEB Trust assets currently at 45/55 fixed income be changed to 60/40 which will enable you to meet the obligations due. Mr. Goldsmith noted the other accounts are in line to meet obligations. Mr. Hamer indicated that changes to policy must be done by Council not the Investment Advisory Committee. **MOTION** by Dawn Knull, second by Robert Reid to approve the Investment Policy Statements for the Police Pension Plan as presented, Non-Uniform Pension Plan and Other Post-Employment Benefits Fund as corrected to state Council in place of committee and authorize Ken Klinepeter as Borough Manager to sign the Investment Policy Statements. Motion carried 4-1 with Councilor McGlone voting no and President Kapenstein abstaining.

Authorize Transfer of Pension and OPEB Funds – Mr. Klinepeter indicated U.S. Bank will begin its role as custodian of the pension and OPEB Funds as of April 1, 2017. Funds will need to be transferred to accounts set up at that financial institution so April pension payments can be made on a timely basis. Standard is expected to transfer funds to U.S. Bank on March 15. It is recommended that confirmation/ratification be given to Ken Klinepeter as Borough Manager to sign any documents or authorize/notify Standard,

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United Capital, and Wells Fargo to transfer funds to U.S. Bank at the appropriate time to effect the transition of custodial and investment management services. **MOTION** by Dawn Knull, second by Ian Reddinger to authorize Ken Klinepeter as Borough Manager to sign any documents and/or to otherwise authorize/notify Standard Insurance Company, United Capital, and Wells Fargo to transfer Non-Uniform Pension, Police Pension and Other Post-Employment Benefits funds to U.S. Bank, N.A. at the appropriate time to effect the transition of custodial and investment management services. Motion carried 3-2 with Councilors McGlone and Reid voting against and President Kapenstein abstaining.

Use of Fund 28 for Middletown Volunteer Fire Department – Mr. Klinepeter noted at the January 17, 2017, meeting Council approved a payment to the Middletown Volunteer Fire Department from the Fire Operations Fund (Fund 28) for the first quarter, 2017, in the amount of \$11,025. This payment, in conjunction with the quarterly General Fund contribution of \$26,375 would constitute $\frac{1}{4}$ of the annual budgeted contribution of \$150,000. to the Fire Department. Bruce has determined from an accounting/auditing perspective that it would be a better practice to have the fire department submit operating expense invoices for payment out of Fund 28 rather than writing a check each quarter charged to this fund for the \$11,025. The General Fund 2017 budgeted contribution is \$105,900, which leaves \$44,100 to be used from Fund 28 in 2017 to meet the agreed upon contribution amount and serve as an audit trail as funds need to be used for operating expenses. Mr. Hamer indicated he had discussed this with Jim Wealand of the Fire Department as well. **MOTION** by Ian Reddinger, second by Anne Einhorn to authorize the Middletown Volunteer Fire Department to submit to the Borough of Middletown invoices related to its 2017 operating expenses to be paid from Borough Fund 28 (Fire Operations Fund) through the normal accounts payables procedures with such invoices not to exceed \$44,100. total for the year 2017 and with such payments to be considered as part of the \$150,000. annual allocation to the Middletown Fire Department for the year 2017. Motion carried 6-0.

Approve Gaming Grant Request for Reimbursement – Mr. Klinepeter noted partial funding for the Streetscape project comes from a Dauphin County Gaming Local Share Municipal Grant in the amount of \$250,000. Paragraph 3. of the grant agreement between the County and Borough provides that “each request for funding shall be approved by the Grantee’s governing body prior to submission”. As such, Council approval is needed to submit a request. **MOTION** by Diana McGlone, second by Ian Reddinger to direct the Finance and Administration Director to submit reimbursement request(s) to the Dauphin County Industrial Development Authority for any remaining unreimbursed amounts of the Borough’s Gaming Local Share Municipal Grant for the Streetscape project. Motion carried 6-0.

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Approve Change Order No. 5 – Streetscape Project – Mr. Klinepeter stated this change order for \$33,263.92 allows for the milling and overlay of South Union Street as well as for quantity adjustments throughout the project. **MOTION** by Anne Einhorn, second by Dawn Knull to approve Change Order No. 5 for the Streetscape Project to Flyway Construction in the amount of \$33,263.92. Motion carried 6-0.

Councilor McGlone noted the sidewalks along the McNair property were to have been done through Flyway and asked what status is. Mr. Klinepeter noted that Mr. Wilsbach had presented Council with a quote to have the sidewalks done and Council had not made a decision on the matter. Councilor McGlone requested this matter be added to the next agenda.

Approve Payment Application No. 15 – Flyway Construction – Mr. Klinepeter noted this is the final application for payment for the Streetscape Project. However, the Borough will be retaining an amount of \$20,000 to assure completion of outstanding punch list items that include restoration of the parking lot west of Catherine Street which was utilized for construction staging; concrete crack repairs adjacent to the light pole bases; street trees pending survival and thermoplastic crosswalk pavement markings to be repaired/replaced. **MOTION** by Dawn Knull, second by Anne Einhorn to approve payment to Flyway Construction for Contractor Application No. 15 in the amount of \$179,068.72. Motion carried 6-0.

Planning Commission Appointment – Mr. Klinepeter noted the Planning Commission has a vacancy due to Rodney Horton's resignation, which was advertised and received a letter of interest from Joe Passmore to serve on the Planning Commission who staff verified lives in Middletown. **MOTION** by Dawn Knull, second by Robert Reid to appoint Joe Passmore to serve on the Planning Commission with a term to expire December 31, 2017. Motion carried 6-0.

Zoning Overlay – Mr. Klinepeter noted the Planning Commission was given the Zoning Overlay and asked to make recommendations which were previously provided to Council for review and discussion asking if Council had any direction as to how wishes to move forward with this item. Solicitor Santucci noted that when McNees received KSK recommendations it was discussed to implement the overlay in one area, which the Planning Commission has also recommended as an alternative. Mr. Klinepeter recommended not adopting the overlay in its entirety. Solicitor Santucci recommended having a representative from the Planning Commission attend a meeting to explain their recommendations. Councilor Einhorn noted starting small can be more effective. Mr. Klinepeter cautioned about making the overlay too stringent and causing it to be too costly for residents to comply. Council asked the public be notified that the Zoning Overlay will be discussed at the meeting in April.

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Councilor McGlone asked what status is on the proposed loan program. Solicitor Santucci noted that staff is looking at the Homestead Loan Program to see if it can be used as a source and have reached out to DCED to see if grant monies could be used for this program and are waiting to hear back from them. Councilor McGlone noted that loans could be more focused on helping residents to make repairs on their home's façade.

Revisions to Ordinance 943 & 972 Relating to Head Shops – Mr. Klinepeter indicated McNees prepared a revised draft of the Head Shop Ordinance, Chapter 138 which was included in your packet in order to address the concerns of the vape shop owner. McNees wanted you to be aware that Council probably does not need to make the changes to the current ordinance as the current ordinance includes in its definition of Head Shop an “establishment which includes in its stock-in-trade, with intent to deliver or sell for use with drugs or controlled substances...” McNees believes that the Vape Shops would not meet this definition. If Council wishes to adopt the revised draft of Chapter 138, the Motion would be to authorize advertisement of the proposed Head Shop Ordinance, Chapter 138. Solicitor Santucci noted that the Resolution revisions clarifies Vape Shops do not meet the definition of a Head Shop and remove some of the restricted items that are used for tobacco purposes. Councilor Reddinger asked Mr. Burkett if the products he is selling are for tobacco use and if he sells tobacco. Mr. Burkett noted the products he is selling are for tobacco use and he does not sell tobacco. Councilor Reddinger asked if there were other items that could be sold to supplement his income. Mr. Burkett indicated anything he sells could potentially be used for drugs. **MOTION** by Anne Einhorn, second by Diana McGlone to authorize the advertisement of the proposed Head Shop Ordinance, Chapter 138. Motion carried 4-2 with Councilors Reddinger and Reid voting against.

Penn State Outreach – President Kapenstein stated he attended a meeting of faculty and staff at Penn State Harrisburg and they would like to partner with Middletown and co-sponsor events. President Kapenstein recommended having a Penn State student sit with Council although the student would not have voting rights. Councilor Reid recommended having a high school student do the same. Councilor Diana McGlone indicated when a Penn State student was sitting with Council previously, they were chosen by the Student Government Association. President Kapenstein indicated he would move forward with both the High School and Penn State.

Public Comment

Edwin Gaster (54 Nissley St) – Mr. Gaster indicated with Nissley Street being one way asked that the yellow lines be shortened for more parking access on N. Catherine Street. Mr. Gaster recommended the handicapped spot at the library be limited to the hours of operation and residents use it after hours. Councilor Knull noted the library has varying hours due to events with Mr. Klinepeter noting by law hours would need to be listed on the sign. Mr. Gaster suggested a quadrant at the square be for a Minorrh, Hanukkah or other Jewish symbol rather than 4 Christmas trees.

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Jack Still (37 W Emaus St) – Mr. Still noted the library is no longer open on Friday so the sign could be changed to reflect that. President Kapenstein indicated the Public Works Director will take a look at it.

Mike Bowman (109 W Emaus St) – Mr. Bowman asked if anything has been started on the substation. President Kapenstein noted the Public Works Director was developing a plan. Mr. Bowman indicated the library should no longer be owned by the Borough. Solicitor Santucci noted that the desire of prior Council was to give the building to the library. Mr. Bowman recommended removing the handicapped sign at the church located at Ann and Catherine indicating there is already a handicapped spot behind the building.

Jenny Miller (227 W Water St) – Ms. Miller asked about the status of the house on Mattis Avenue and noted the animal population needs addressed. President Kapenstein noted there has been no update on the house and he did not have an answer for the animal population. Ms. Miller noted she will contact the State Preservation Society to get the list of homes needed for the zoning overlay.

Jack Still (37 W Emaus St) - Mr. Still noted roaming animals are against the Borough Ordinance.

Rachelle Reid (448 Grant St) – Ms. Reid questioned Solicitor Santucci about the enforcement of Ordinance 233 regarding pedophiles as the school is in Lower Swatara Township and the pedophile lives in the Borough of Middletown. Solicitor Santucci noted the Ordinance was written prior to the final resolution of the Allegheny case and indicated his opinion had been provided to Council as attorney-client privilege and wasn't sure how Ms. Reid obtained that information. Ms. Reid stated something needs to be done and we need to quit sitting on our hands. Councilor Knull stated she was not sitting on her hands and had contacted many people and pushed as far as she could and is still pushing. Ms. Reid indicated Solicitor Santucci should give the Borough help on this issue. Solicitor Santucci recommended Ms. Reid address the Pennsylvania General Assembly with her concerns.

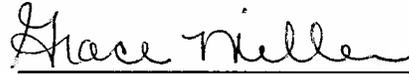
Councilor McGlone noted Mr. Greg Yoder had sent her an updated version of the new website and requested a bio from the Mayor and Council members to put on the website. Councilor McGlone indicated she has received a very good response regarding the Hometown Hero Banners and they should be in place by Memorial Day. Councilor Knull asked who is providing the banners. Councilor McGlone indicated she has different providers and is asking \$85 to cover the cost of the banner, installation, shipping and additional staff work. Mr. Klinepeter recommended Councilor McGlone work with the Public Works Director as there is a limited number of poles to hang the banners on.

Executive Session – Council recessed at 8:40 p.m. to discuss litigation, real estate and labor relations. Council reconvened at 10:12 p.m.

Adjournment – President Kapenstein noted that no actions were taken during the Executive Session and entertained a motion to adjourn. **MOTION** by Dawn Knull, second

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by Ian Reddinger to adjourn the meeting. Motion carried unanimously and the meeting adjourned at 10:13 p.m.



Grace Miller
Borough Secretary