

MINUTES
ORDINANCE COMMITTEE MEETING
TOWNSHIP OF MONROE
JANUARY 11, 2012

A.) CALL TO ORDER & ROLL CALL

The Ordinance Committee Meeting of the Township of Monroe was called to order at 7:10 PM by **Ordinance Committee Chairman, Cncl. William Sebastian** in the Joe Pace Meeting Room of the Municipal Complex located at 125 Virginia Avenue, Williamstown, New Jersey.

This meeting was advertised pursuant to the Open Public Meetings Act of New Jersey (NJSa 10:4-6 thru 10:4-21). Notices were placed in the official newspapers for the Township of Monroe (i.e.: Gloucester County Times, the Courier Post and the Sentinel of Gloucester County) and copies were posted on the bulletin board at the Municipal Complex.

SALUTE TO THE FLAG

Cncl. Daniel Teefy led the assembly in the Pledge of Allegiance to Our Flag.

ROLL CALL OF PUBLIC OFFICIALS

Cncl. Walter Bryson		Excused
Cncl. Frank Caligiuri	Present	
Cncl. Marvin Dilks	Present	
Cncl. Rich DiLucia	Present	
Cncl. Ron Garbowski	Present	
Cncl. Daniel Teefy	Present	
Ord. Chairman, William Sebastian	Present	
Business Administrator, Kevin Heydel	Present	
Solicitor, Charles Fiore	Present	
Deputy Clerk, Sharon Wright	Present	

B.) APPROVAL OF MINUTES

Cncl. Daniel Teefy made a motion to approve the minutes as submitted of the Ordinance Committee Meeting of December 7, 2011. The motion was seconded by **Cncl. Marvin Dilks** and unanimously approved by all members of Council in attendance.

C.) PUBLIC PORTION

Cncl. Rich DiLucia made a motion to open the Public Portion. The motion was seconded by **Cncl. Frank Caligiuri** and unanimously approved by all members of Council. With no one wishing to speak **Cncl. Ronald Garbowski** made a motion to close the Public Portion. The motion was seconded by **Cncl. Marvin Dilks** and unanimously approved by all members of Council.

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D.) ORDINANCES FOR REVIEW

- O:29-2011 - Administrative/Professional Fees

Solicitor Fiore noted Ordinance O:29-2011 went for First Reading at the December 27th Council Meeting and at that time a recommendation was made to include language dealing with reimbursements in the event only one professional was needed during the meeting and the applicant would be entitled to a refund. A recommendation was made to include "*in the event there is to be a reimbursement of unused funds the CFO shall provide said reimbursement in a timely fashion*". The draft ordinance also stated "*any non-residential party*" and the Mayor had recommended that language be changed to "*any individual and/or entity*" since anyone can come to a Thursday review meeting. Cncl. Rich DiLucia noted that language indicates if the \$750.00 is not all used to pay the professionals it will be reimbursed and he questioned whether it also implies that applicants will be required to pay more if the meeting is longer and the fees are greater. It was explained the fee is not based on time; it is a flat rate of \$750.00 or \$250.00 for each of the three professionals. If one of the professionals does not attend the applicant would receive his money back for that professional. Cncl. Sebastian polled Council and all were in favor of the recommended language changes. Mr. Fiore noted the ordinance would be placed on the January 24th Council Meeting for Second Reading.

E.) MATTERS FOR DISCUSSION

Ordinance Chairman Sebastian advised the issue of Towing has been removed from the meeting agenda.

- Liquor License Fees

Cncl. William Sebastian explained the Clerk recommended Chapter 74 of the Township Code be amended to include "*10% of the annual license renewal fee for person-to-person and place-to-place transfers*" rather than the current set fee of \$200.00. After limited discussion on this Cncl. Sebastian polled Council and all were in favor of moving the proposed changes forward for First Reading at the January 24th Regular Council Meeting.

- JIF/MEL Model Indemnification Ordinance

Business Administrator, Kevin Heydel explained during a JIF seminar that was attended by members of Council a recommendation was made for all municipalities to adopt an Indemnification Ordinance. Mr. Fiore explained in situations where public employees, police officers or council members are sued it is generally alleged that there have been violations of Federal Civil Rights 1983 Actions and claims made that some sort of intentional act has taken place. Under most insurance policies legal defense is not provided for intentional acts, violations of civil rights, etc. and this ordinance clarifies and states in the capacity as an elected official or in whatever public position held a legal defense will be provided at no cost to the

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official/employee. In many instances, especially in a police officer setting, towns will say they cannot provide a defense and the employee will need to hire their own attorney. Under this ordinance the JIF will provide employees with a defense; however in the event the court finds the act to be intentional they will not be covered for the damages; only for the legal defense part of it. Mr. Fiore explained if a police officer is sued for excessive force usually the town is sued for negligent retention by the chief, negligent training by the chief or their superior and for the most part the suit is all part of one big pot. This has been the subject matter of litigation over the years because if the town says they will not cover a police officer that officer sues the town for declaratory judgment forcing the town to defend him anyway. The experience with the JIF is that they felt it would be in their best interest to provide in house counsel for this, as it cleans up some issues that have been floating around over the past few years. **Cncl. Sebastian** questioned whether Mr. Fiore reviewed the sample ordinance and if the optional language in Section 2 should be included. Mr. Fiore advised he did review the ordinance and it is fine. He recommended the ordinance include the optional language in Section 2, as it is clearer and refers to Title 59. Mr. Fiore noted directors are considered to be employees but when he was sued a couple of years ago in his capacity as the Director of Law JIF took the position that he was not covered and that issue still has not been resolved. Our form of government is a little different as he is a paid professional but also a director so technically he would be an employee and that distinction should be made at some point in time. Mr. Fiore noted this ordinance does not address that issue and he would never ask Council to include it he just wanted to bring it to their attentions, as he must handle lawsuits though his own malpractice insurance. **Cncl. Sebastian** noted the notation on the sample ordinance recommends local units that have already adopted an indemnification ordinance to review it with their counsel and he questioned whether that was implying that municipalities should eliminate the ordinance since that is not covered by the JIF or that if there is no ordinance it should be adopted in order for that to be covered by the JIF. Mr. Fiore explained some towns have ordinances indemnifying their solicitors and noted he would never suggest that. **Cncl. Sebastian** pointed out by this note the JIF was suggesting if that was in place the general counsel and insurance advisor would be consulted. Mr. Fiore noted we do not have such an ordinance in place and he would not suggest going there. **Business Administrator, Kevin Heydel** noted the JIF is looking at how the maximum protection could be offered to the township, which is why they are saying to look internally at our ordinance to see if this is the liability and indemnification the town is willing to accept. **Cncl. Sebastian** polled Council and all were in favor of Mr. Fiore preparing the recommended Indemnification Ordinance for First Reading at the January 24th Regular Council Meeting.

- **E-Mail Policy**

Solicitor Fiore spoke of having a conversation with Prosecutor Sean Dalton regarding his memo, which was previously shared with Council, dealing with the Open Public Meetings Act., as it applies to emails. He noted the law is in a flux because it is subject to interpretation. One troubling issue is rolling emails, which is an email sent to one person, who forwards it to

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another and then emails are firing back and forth. At some point in time Mr. Fiore felt the law will be interpreted and a determination made that rolling emails are a violation of the Open Public Meetings Act. He noted the safe way to look at emails is that you are doing business, which is unfortunate and unfair and is probably beyond the transparency in government that the Open Public Meetings Act is supposed to deal with. He added it prevents people from using our technology but it does not prevent anyone from picking up the phone. He added what constitutes a political caucus, as there could be a quorum in Shoprite if four members of Council run into each. Mr. Fiore advised the County is preparing a model email policy ordinance that will be circulated to all municipalities and hopefully that draft will be completed by the next Ordinance Committee Meeting. Mr. Fiore spoke of including disclaimer language in emails such as "*this does not constitute official action, this is for informational purposes*". Cncl. Sebastian questioned if Council wants to schedule a committee meeting and wants to discuss available dates can an email dealing with that be sent to the Clerk and then have her send it to the individuals. Mr. Fiore replied yes, with the disclaimer that it is for informational purposes, it does not constitute official action of the township. He added depending upon who and how it is interpreted down the line establishing dates may be interpreted as doing business. Mr. Fiore noted Sean Dalton is currently reviewing our emails to see if they are in violation of the law. He advised Council that their township email accounts, personal email accounts and even their work email accounts are subject to OPRA if township business is being conducted on them. He added phone texts could also be subject to OPRA. Mr. Fiore explained if all seven members of council received an invitation to a political caucus they could attend as they are not conducting township business. Cncl. Sebastian suggested having a council corner on the township website so they could communicate to each other in a way that is open to everyone. Mr. Fiore spoke of how the issue of emails started when the council in another town within the county was polled for the purpose of paying a gas bill. That was considered conducting business over the internet and they were fined \$100.00. Cncl. Sebastian's email that was referenced in the paper as a violation was dealing with establishing a date and time for a meeting. No action was taken but a council person had indicated that he felt it was a good idea and that is what the newspaper said was an apparent violation of the Open Public Meetings Act. Council felt setting up a meeting is not an action and should not be a violation. Cncl. Sebastian noted Mr. Fiore will work on what should or should not be included in emails and that will be discussed at the next Ordinance Meeting.

- **Title 39 Enforcement Request**

Cncl. Sebastian explained under Title 39 commercial property owners who want laws enforced on their property must give the local police department the authority to go on their property to enforce the law. Permission is not needed if the police are conducting a criminal investigation or chase someone onto a parking lot of private property but in order to enforce no parking areas or handicap parking areas the property owner must give the police written

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permission. When the request came in from Gerald Sinclair Cncl. Sebastian told the clerk to send it to the Police Department and copy the solicitor on it. Mr. Fiore noted this request must be done by ordinance and added to the Township Code under Chapter 267-57 "Private and Semipublic Premises". Cncl. Sebastian questioned if every time a Title 39 request is sent to the township does the code need to be amended. Solicitor Fiore replied yes, it must be in the code to put people on notice; if not the law is not enforceable on private property. Cncl. Sebastian explained when applicants come before the Planning Board or Zoning Board those boards must advise them that they must notify the Police Department under Title 39 in order to have protection afforded to them. In the past the boards were not requiring written permission from applicants but now it has become an issue and there will be many more requests for protection under the law. Mr. Fiore explained every stop sign, traffic control devise, school zone, etc. must be included in the code in order to give notice to the public. **Business Administrator, Kevin Heydel** questioned who pays the fees for advertising and codification of the ordinance. Council questioned if the code would need to be amended right away or could this be held until more requests came in. Mr. Fiore explained in order to enforce Title 39 it must be included in the code when the ordinance is adopted and that the Planning Board could require the applicant to pay the cost associated with amending the code. These fees could come from their escrow account. Cncl. Marvin Dilks questioned whether Title 39 covered Colonial Estates and Friendly Village. Mr. Fiore replied, yes they are included in the ordinance. Mr. Fiore will prepare the amendment to Chapter 267-57 for the January 24th Regular Council Meeting.

- **Peddling and Soliciting**

Cncl. Frank Caligiuri spoke of an incident that involved a misinterpretation of the law and noted he came up with some verbiage that may circumvent the problem. He recommended Section 4 of Chapter 230 be amended to include the following "*residents of Monroe Township engaged in home based businesses similar to those involving the distribution of catalogs, the scheduling, arranging and performing of demonstrations and the taking of orders shall be exempt from the requirements set forth under 230-7*". He noted residents would be exempt of the license, photo ID, the license expiration and renewals every twelve months. He also recommended a Sub-paragraph A, "*residents of Monroe Township engaged in home businesses as described above must comply with other local zoning requirements*" and B. "*residents of Monroe Township engaged in home based businesses as described above must at any time within the performance of business produce a valid form of identification upon request. A valid identification shall be a valid New Jersey driver's license, government ID, passport or equivalent.*" He explained he included that language after speaking with Dan Kozak, who felt the township should not get involved in creating photo IDs, as the intent of the original ordinance was to give the taxpayers of the township an advantage over people invading our township to sell their wares without paying taxes here. This additional provision would enable people paying taxes in the town to have the same privileges as other business owners in town. Cncl. DiLucia noted the ordinance is not only designed to protect

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local businesses but to protect residents from unethical people trying to gain entrance to their homes. He felt the ordinance should define more clearly what a home based business is such as the Boy Scouts, Avon or organizations such as this. That way the ordinance would not be as broad. Mr. Fiore noted examples of businesses can be included in the ordinance. Cncl. Teefy questioned whether the ordinance could say "*nationally recognized organizations*". Solicitor Fiore agreed that could be included in the ordinance. Cncl. Caligiuri recommended the following language "*nationally recognized organizations including but not limited to Avon, Tupperware, Pampered Chef, etc.*" Cncl. Sebastian polled Council and all were in favor of the proposed language changes to Chapter 230 "Peddling and Soliciting.

- **Parks and Recreation Committee**

Cncl. Dan Teefy questioned whether the issue of an out of town member to the Parks and Rec Commission could be discussed at the next Ordinance Committee Meeting. He explained Nikki Carter the commission's secretary for the last five or six years is getting married and moving to Atco and the commission is concerned that she will be unable to be affiliated with the commission since she will not live in town. **Business Administrator, Kevin Heydel** noted she is the secretary to the commission, not a voting member so there is no residency requirement that applies to her position.

- **Change in Use**

Solicitor Fiore noted there always seems to be a controversy when there is a change of use or occupancy of a business. He explained currently if a shoe store changes to a restaurant the applicant goes to the Zoning Officer who approves the commercial business as no change of use and the new business can move in. Mr. Fiore noted if a business goes from a shoe store to a restaurant there are different parking requirements, different requirements for dumpsters etc and it sets forth an entirely different chain of events. Mr. Fiore recommended the Planning Board consider amending Chapter 175 so that anytime there is a change of use and/or occupancy it should be reviewed by the board. Cncl. Sebastian noted there are different requirements for sub-uses. Chapter 175 has set uses, commercial, residential, business park, etc. and then there are sub-uses under each type of use. For instance a residential use could be a single family home, twin or apartments but it is still residential. Commercial sites may have received approvals for a certain use and then sold as commercial but for an entirely different sub-use, such as Integrity Auto, which was originally approved by the Planning Board as Canal's Liquor Store. That property met the requirements for a liquor store but there are different regulations for auto repair shops, such as parking spaces, oil spills etc. and it never came before the board for review because the property is still being used as a commercial site. Cncl. Caligiuri had no objection to that but felt that if the allowable uses in a commercial zone included an auto repair shop it should be approved. Mr. Fiore noted he was not saying it

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should not be approved but that the board should review and address issues such as parking, lighting etc. that may be different from the original sub-use. Other towns have been doing that and have been strictly interpreting the law for years. Cncl. Sebastian noted we have site plan review to make sure oil is disposed of properly or the septic system is the proper size for the use of the building etc. Cncl. Caligiuri noted the board never sees that since it is handled by outside agency approvals. Cncl. Sebastian noted if the sub-use is changed no one ever looks at those issues, as the County never looks at the septic system and there could be 50 more people working there with no septic, parking spaces etc. Mr. Fiore explained if this were in place PC Helpers would never have been located where it is. That property was originally a residential house in a commercial zone and the interpretation was that because it was in a commercial zone something commercial would now be allowed. Cncl. Caligiuri questioned whether technically that would fall under a use variance. Cncl. Sebastian explained it would if it got that far but the Zoning Officer approved it as a commercial use in a commercial zone and it did not have to go before the Zoning Board. Cncl. Caligiuri noted originally that area was a residential zone and a house was built there. The area was then changed to a commercial zone but that residential use was grandfathered in, which means it is an island residential zone and if they wanted to sell that home to another homeowner they could. The minute it changed to its zoned use, they would need to get a use variance to make it residential again. Cncl. Sebastian added they do not need to go to the Zoning Board to put a commercial on commercial. The zone has always been commercial but the house was there before the area was zoned and an inappropriate use was allowed. The Zoning Board cannot change a zone so if it came in as a pre-existing-non-conforming use, or the Zoning Board allowed them to have a residential use in a commercial zone, the sub-use is residential and the zone remains commercial. The variance goes with the land so if they wanted to continue selling it as a residence they could and nothing requires them to go to any board if the property is sold to a commercial entity because the zone is commercial. Cncl. Caligiuri felt it could be interpreted that way and he agreed that this should be addressed. Cncl. Daniel Teefy felt it would be a change in use that should be reviewed if, for instance, a building that was a furniture store for twenty years changed to a Chinese Restaurant. Cncl. Sebastian noted that is a sub-use change because they are both commercial entities in a commercial zone. Cncl. Caligiuri explained a building in a commercial zone with a permissible use of for instance a cigar store, a garage or a food store could be rented to whatever one the landlord wanted to rent it to as long as it was a permitted use in that zone. He noted it can't hurt anything to review the application but he felt that it is a little redundant. Dan Kozak referred to the Planning Board's review of the former Brodtkin's Corner site and noted if that application had not come before the board the problems the area residents encountered for several years would never have been addressed. Cncl. Caligiuri noted in that particular case the property owner sold half the property to the bank next door so that they would have additional parking. The property owner now has an inadequate amount of parking for his own building and if adjustments are not made that property will never be a taxable property because it will never be able to be used. Cncl. Caligiuri agreed that Cncl. Sebastian's idea for site plan review is a good idea. No further discussion took place on this issue.

