

## **EAST PALESTINE VILLAGE COUNCIL MONDAY JUNE 10, 2013 7PM**

Mayor Zuch called the meeting to order, present were Atty. Beagle, Mr. Cohen, Mr. Elzer, Mr. Figley and Mr. Tyger. Mrs. Wisser was absent. The minutes from the Legislation Committee Meeting and the Regular Council Meeting on May 28<sup>th</sup> were approved on a motion by Mr. Cohen, seconded by Mr. Tyger. All in favor. In reference to the department reports, Mr. Elzer asked what the twenty five zoning violations were that the Police Department mailed notices about and Chief Dickey stated they were letters for high grass. Mr. Elzer also asked if the 54 traffic citations were normal and Chief Dickey stated that was actually a little low compared to usual. The May department reports were approved on a motion by Mr. Elzer seconded by Mr. Cohen. All in favor. There were no agenda items, clerks report, or Mayors report.

**MANAGER:** Manager Pete Monteleone presented a plaque to John Hamner of CSI Environmental expressing gratitude on behalf of Village Council for all of their work in organizing and donating time and equipment for the spring clean up, for installing new drainage for EPYSA at the baseball fields, helping coordinate the curbside recycling program, and for all of their help with keeping the Street Fair clean. Monteleone stated he met this week with Ohio Edison, they will be painting the poles by mid July and also they went to Columbiana to see if their old poles would work to replace our missing poles, they believe they are compatible and Columbiana has agreed to give them to us at no charge and hopefully the banners will be up soon. The Wheathill project is moving along well. The alley paving is complete and looks great, the street levy was crucial to getting that done. He stated he would like to have a meeting soon to pick the streets to be paved next year and get the legislation done ahead of time and the chip and seal will begin in July. The weather isn't cooperating; the work on the roof at the brick pavilion hasn't started yet. The pool is open and doing well. The Rebecca St. culvert project will begin this week. We have been out sweeping the streets and they look good. Mr. Figley stated there is a good crew on the street sweeper. Mr. Elzer stated the Manager Monteleone and Clerk Misti Martin have passed their one year anniversaries and are doing an incredible job. Mr. Figley stated he hears a lot of "thank yous" on the streets but he said the thanks go to the citizens for passing the street levy. He said we are working hard to get the streets done and it is a challenge and we will need that levy to be passed again. Mayor Zuch thanked Manager Monteleone and Mr. Figley for working well together and accomplishing so much in such a short period of time.

**LAW DIRECTOR:** Atty. Smith stated she had no report, but Mr. Elzer asked if Council could email each other as a group without violating the Sunshine Laws. Atty. Smith stated that she would not say you absolutely cant, in her opinion if Don emailed Ellen its fine, but if three of them are in a chat about a particular subject and have scheduled to that even though its electronic in essence it's still a meeting and they are putting themselves at risk, she would try to avoid those instances to avoid concern of a Sunshine Law violation. Mr. Elzer asked if he found a problem and sent an email to council, would that be considered a chat, and Atty. Smith said no, she would consider that a notice. Mr. Cohen stated that as long as it's not pre arranged or they are taking deliberate action in those emails it isn't a meeting and there is no reason they can't have email correspondence between the six of them. There is only one case in Ohio that has ever dealt with this and they said it is perfectly proper for a council or board to engage in an email exchange because emails are not simultaneous, but Atty. Smith said they could be. Mr. Cohen stated that having three members in a chat room or instant messaging that is a different story. Mr. Elzer asked if Atty. Smith agreed with Mr. Cohen. She said she agrees that sending out information is ok, that as long as it isn't pre arranged its ok, but if they begin to talk simultaneously about the same subject it could be dangerous, a deliberate plan that everyone is getting online at a specific time to discuss a specific subject is a violation. If three of council is online at the same time and you remove the walls of the computer and it is if you are sitting together. The case law hasn't kept up with technology. Mr. Cohen stated that the one Ohio case that applies to this states that unsolicited emails from one member to all other members is clearly not a pre arranged meeting under Ohio Sunshine Law. Mr. Elzer stated that the Sunshine Laws create obstacles in communication and Atty. Beagle stated that what Mr. Elzer had was a group email and that doesn't fit any element of what the courts are saying, the only thing she wanted to make sure of is that they didn't come up with an action through email, that they would come to council for that. She never felt that she was talking to everyone at one time. She stated her main concern is to not be in a discussion and then come to a meeting having already made a decision. Mr. Figley asked Atty. Smith if three of four council could be together as long as they are not talking business and Atty. Smith said that is correct. Mr. Cohen said he would say that they may be able to talk about business as long as it's not pre arranged, and in 2002 the Sunshine Laws were revised and this subject was intentionally left out. Finance Director Traci Thompson asked if these emails could be part of a public records request, Atty. Beagle said no, and Atty. Smith said she would have to check into it.

**STREET: NO REPORT**

**SAFETY/PARK/REC/CEM:** Mr. Cohen stated there are NO PARKING signs on the East side of the park circle and people are still parking there and it is causing a safety hazard and what can be done about it. Chief Dickey stated that as the officers see the violations, they are addressed. Mr. Cohen stated that the Safety/Park/Rec/Cemetery Committee will meet at 6PM prior to the next regular council meeting on June 24 to address questions regarding the Fire Department and have the Fire Chief there.

**DEVELOPMENT: NO REPORT**

**UTILITY: NO REPORT** (Mrs. Wisser was absent)

**FINANCE:** Mr. Tyger asked that the third reading for the supplemental appropriations be passed as an emergency tonight.

At this point Mayor Zuch gave an explanation of tonight's legislation and Mr. Elzer gave an explanation of the two pieces of legislation concerning registration. He stated the first one is requiring anyone doing business within the Village to register with them with a \$25.00 fee; this covers anyone within the Village or coming into the Village to do work. The second one requires anyone having commercial property to register annually with the location and what the property is being used for. The Police and Fire Departments need to know who to contact for problems or in case of emergency. Mr. Cohen stated that there is a business downtown that makes corn hole games, and said that they would be covered under this new ordinance or if someone opens an alpaca store that sells items made from them they would be covered and then asked Mr. Elzer and Atty. Smith if they agreed and they said yes. He then told them they were wrong, he stated from ORC 715.63 under the general powers of municipal corporations to regulate license "no municipal corporation may require the owner of any product of their own raising or any article manufactured by them a license to vend or sell by himself or his agent". Mr. Cohen said that in reference to the second part of the ordinance, it is about licensing anyone entering into the village limits for soliciting. Mr. Cohen said that we already have an ordinance about soliciting, Mr. Elzer said it's not enforced and Mr. Cohen said that is his point, we need to enforce what we have before we pass more. Atty. Smith stated it is different because it says "not having been requested or invited to do so", she stated her understanding after meeting with Mr. Elzer is in talking about people in sales or service, it means contractors or landscapers. Manager Monteleone stated that we do enforce the soliciting ordinance, that when we hear of them or they come to the office, we send them to the PD to register. Mr. Cohen stated we can't do anything beyond what the ORC allows us to do in regards to licensing. Mr. Elzer asked if the problem was with the term license instead of registration and Mr. Cohen said it makes no difference, The State of Ohio sets forth the businesses we are allowed to license and regulate and for that reason the proposed ordinance is invalid and we can't do it. Mr. Elzer said there are communities who reject businesses all of the time. Mr. Cohen said we already have the ordinances to do this, we a section called Business Regulation and it lists the businesses and we are allowed to regulate them, and that list parallels the ORC. He said he has researched other communities and no one does this outside of what the ORC says they can do. Atty. Smith said she would look at it further, that possibly the word "licensure" should be removed, and that she feels the Village can gather information and that is part of the goal. Mr. Cohen said that all businesses are required to get a vendors license and most communities require them to be presented to the municipality. Mr. Elzer said the problem is what if they don't do that, and Mr. Cohen said what if they don't do any of this and Mr. Elzer said part of the reason for this was to give the Village some "teeth". Mr. Cohen said he isn't disagreeing with the concept, but we couldn't do this if we wanted to. Atty. Smith said she knows what the goal is and will look at it and see what can be done; there may be a way to make it through. Mr. Cohen stated that if we are going to have any type of ordinance like this, we have to refer to ORC 715.63, the proposed ordinance directly contradicts 12 or 15 that we already have on the books. Mr. Elzer stated we still need to accomplish the goal, to find out who is here and what they are doing. Mr. Cohen stated that most communities require a certificate of occupancy from their building inspector; Mr. Elzer said that is done here every decade by the state and that doesn't give us any information. Mr. Elzer asked if Finance Director Traci Thompson received any information from the vendor's license from the state and she said no and he said the Police and Fire Department don't either. Mr. Cohen said that during his research of Village and City websites, a lot of them were trying to compile a list of businesses and were asking them to voluntarily contact the municipalities and it is that way because they can't go out and register or license them. Mayor Zuch asked Mr. Cohen what he wanted to do with this legislation, and Mr. Cohen said at the very least it needs re drafted but he feels it should be tabled. Mayor Zuch asked about the second piece of the registration legislation. Mr. Cohen asked what the purpose of it was and Mr. Elzer said for contact and use information. Mr. Cohen said you can find property owners on the county website and Mr. Elzer said it is

very difficult and rather than the Fire Department having to look it up on the computer when they get a call, it would be nice if they could just look at a list. Mr. Cohen asked if what Mr. Elzer is proposing is that every person who owns property in business or industrial districts have to pay \$25 once a year for the privilege of owning that property, Mr. Elzer said it's not for the privilege, it's for registration. Mr. Cohen asked how that isn't a real estate tax. Mr. Elzer said the reason they are being charged isn't because they own the property, but that is what is causing them to be charged. Atty. Smith said she would look into it, but doesn't believe it goes with the land itself and its not levied or voted on. Mayor Zuch asked if they wanted to table both of them. Atty. Beagle stated that we have something we want and are trying figure out how to get it instead of filling a need. Why can't we get these people to cooperate with us instead of demanding it through a registration? Mr. Elzer asked that if the legislation is revised after the first reading, would it have to start over again and Atty. Smith stated it depended on to what degree it was revised, she stated that since they had until January she suggested to make a motion to remove those two pieces of legislation from the agenda and then re introduce it later for further discussion. Mr. Elzer made a motion to amend the agenda to remove the two pieces of legislation regarding licensure and business property legislation from tonight's agenda, seconded by Mr. Cohen. All in favor.

**VISITORS:** Katie Schwendeman, Mary Ann Tyger, Dan Scott, Dianna Elzer, Chuck McGuire, John Martin, Jerry Coblantz, Chief Kevin Dickey, Rich Bolon, John & Bonnie Davis, Carol Cope, John Hamner, and Traci Thompson.

**VISITORS COMMENTS ON CURRENT LEGISLATION:** Mr. John Martin stated he is against the Licensure/business property legislation and that he agrees with Mr. Cohen that a lot of the content is already covered in the zoning laws and stated he didn't know if we had occupancy permits. Mr. Elzer stated the occupancy permit goes with the building and not the business and that goes through the state. Mr. Martin stated he spoke with Bob Belding from Columbiana and that is how they do it. Mr. Cohen stated that we can't do it because we do not have a building and zoning inspector.

**LEGISLATION:** Atty. Beagle introduced **Ord. 15-2013** for a third reading and made a motion that it be read by title only, seconded by Mr. Cohen. All in favor. **An ordinance authorizing the Finance Director to make supplemental appropriations for the Village of East Palestine, Ohio for the Fiscal year beginning January 1, 2013.** Atty. Beagle made a motion to suspend the rules and declare an emergency, all in favor. Atty. Beagle called for a vote on **Ord. 15-2013.** Atty. Beagle-y, Mr. Elzer-y, Mr. Cohen-y, Mr. Figley-y and Mr. Tyger-y. 5 YES to pass. Atty. Beagle introduced **Ord. 16-2013** for a third reading and made a motion that it be read by title only, seconded by Mr. Cohen. **An ordinance providing for the authorization of the Municipal Manager to advertise for the public bid the construction of the Harding Water Well Replacement Project and to further award and enter into a contract with the lowest and best bidder, as relates to the contract, pursuant to the specification and bidding requirements.** Atty. Beagle called for a vote on **Ord. 16-2013.** Atty. Beagle-y, Mr. Elzer-y, Mr. Cohen-y, Mr. Figley-y, Mr. Figley-Y. 5-YES to pass. Atty. Beagle introduced **Ord. 17-2013** for a third reading and made a motion it be read by title only, seconded by Mr. Cohen. All in favor. **An ordinance creating a reserve police unit.** Atty. Beagle called for a vote on **Ord. 17-2013.** Atty. Beagle-y, Mr. Elzer-y, Mr. Cohen-y, Mr. Figley-y, and Mr. Tyger-y. 5 YES to pass. Atty. Beagle introduced **Ord. 19-2013** and made a motion that it be read by title only, seconded by Mr. Cohen. All in favor. **An ordinance adopting the budget and estimated resources for the City of East Palestine, Ohio, for the fiscal year beginning January 1, 2014.** Atty. Beagle introduced **Ord. 20-2013** and made a motion that it be read by title only, seconded by Mr. Tyger. All in favor. **An ordinance providing for the authorization of the Municipal Manager to enter into an offer to purchase real estate with PNC Bank, National Association successor by merger to the First National Bank of East Palestine, Ohio and declaring an emergency.** Mr. Cohen asked why the dollar amount in the legislation was left blank and Manager Monteleone stated he thought council would go into executive session to discuss that and Mr. Elzer said it was for negotiating purposes. Mr. Cohen made a motion to go into executive session to discuss **Ord. 20-2013,** seconded by Atty. Beagle. All in favor. Atty. Smith stated that her understanding of why it was left blank is because per the legislation, it can only be confirmed for purchase upon the approval of council. Mr. Cohen made a motion to come out of executive session, seconded by Mr. Elzer. All in favor. Mr. Cohen made a motion to remove from **Ord. 20-2013** the wording of "at the price of \$\$ \_\_\_\_\_", seconded by Mr. Figley. All in favor. Atty. Beagle made a motion to suspend the rules and declare an emergency. All in favor. Atty. Beagle called for a vote on **Ord. 20-2013.** Atty. Beagle-Y, Mr. Elzer-Y, Mr. Cohen-Y, Mr. Figley-Y, Mr. Tyger-Y. 5 YES to pass.

**ADJOURN:** Mr. Elzer made a motion to adjourn, seconded by Mr. Tyger. All in favor, meeting adjourned.

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