

## **MINUTES**

Niles City Council held its regular meeting of June 15, 2011 at 10:00 a.m. in Conference Room 1 at City Hall, in Niles, Ohio.

The meeting was called to order by President Pro-Tem Stephen Papalas, and the Clerk; Linda a. Yuhasz called the roll:

Lastic-P; Papalas-P; Giancola-P; McCormick-P; Stredney-P; Papas-P; Wilkerson-P; Marino-A  
It was moved by Stredney, seconded by Papas to excuse the absence of President Marino.  
Motion carried.

It was moved by Stredney, seconded by Lastic to accept the Minutes of the June 1, 2011 meeting and place them on file. Motion carried.

## **REPORTS AND COMMUNICATIONS**

FROM The Auditors Office

The Estimated Versus Actual Revenues thru May, 2011

It was moved by Giancola, seconded by Lastic to accept the report and place it on file.  
Motion carried.

FROM The Ohio Environmental Protection Agency

A letter with the results of the sanitary survey conducted by Charlotte Hammer

It was moved by Stredney, seconded by Papas to accept the letter and results and place them on file. Motion carried.

## **MEMBERS OF THE AUDIENCE TO ADDRESS COUNCIL**

Mr. David Neel, 55 Public Square, Cleveland, Ohio: I am here today to speak on behalf of my client, Bob Ludt who for years has complained about (inaudible) noise at McMenemy's. Today is a very good day to address the issue, a lingering problem. The city enacted an ordinance two years ago to curb the noise problem being experienced by many residents of the city including my client, Bob Ludt and also, including Dave Anderson of Weathersfield who is also my client. I think that the ordinance was well intentioned, it should have addressed the problem but it has not. Because of that Mr. Ludt was forced to file a lawsuit against McMenemy's and several individuals. The allegations could be addressed by passage of time. We have allowed two years to go by before even filing a lawsuit. Because the problem which is the creation of one individual who refuses to abide by the law, my clients peaceful enjoyment of his property is severely compromised and so is Mr. Anderson's who lives in Weathersfield, but he experiences the problem. It is loud music at McMenemy's when they have outdoor bands and that is exactly what we were here for two years ago. We think through litigation we will be able hopefully to deal with the problem and not against the city. We have taken a very reasonable approach to addressing this problem. We are not interested into having to sue the city, but I do represent Mr. Ludt and possibly other individuals who are ready to take further action. The ordinance simply says if a citizen of this community is annoyed by loud music and it is plainly audible, that is a violation of the noise ordinance. Of course any complaint of a citizen about a violation of the law should be addressed. Now it hasn't been and mostly recently it hasn't been because of one particular exemption in the noise ordinance. That is the exemption when the loud, raucous, plainly audible music is coming from a fund raiser benefit of a 501(c) (3). Calls to the police department when the Outlaws performed at McMenemy's were meant with "it's a fundraiser and

we can't do anything". It wasn't a fundraiser, from what I have heard, there were collections of maybe a can of food, they asked for donations and contributed to the 501 (c) (3) which raises a whole question whether that event and the noise that came from it is a violation of the law. The way to deal with this particular taking advantage of a loophole in the ordinance is to take out that exemption for charitable fundraisers. At that point, hopefully the ordinance is effective and is enforced and everybody is happy and McMenemy's can turn it down and move the music inside. As long as they comply with the law they are going to be fine. If we take out the exemption, I think the reason it was there was for fundraisers like Relay for Life a legitimate fundraiser, not like what is occurring at McMenemy's. An objection to the removal of that exemption is simply that it doesn't apply to commercial establishments. I know that there are fundraisers, democratic fundraisers at McMenemy's and there are several ways to address that. Have the fundraiser and have the music inside and turn it down a little. Maybe the way to keep the exemption is to exclude from it commercial establishments unless they have a fundraiser sanctioned by the state or all proceeds and profits go to the 501 (c) (3). The language that is currently in the ordinance should be sufficient, but that is not what is happening at McMenemy's now. I have no idea but we are going to find out how much money was donated to the charity and maybe it was ten bucks, but that's not the intent of the law. On behalf of Mr. Ludt and Mr. Anderson, I offer whatever assistance that I can bring to the table to work with Mr. Dull to craft something that is going to be effective.

Councilman Papalas made a motion to instruct the law director to look into this matter in an effort to eliminate the loophole so the problem can be more readily solved. Councilman Stredney seconded the motion. Motion carried.

Councilman Stredney asked Attorney Neel if the ordinance read that when a fundraiser is going on that whoever the fundraiser is for they are in charge of the event. Councilman Stredney thought that was put into the ordinance for events like the Relay for Life. He will sit in on the meeting to address this issue. He asked the safety director what the police have been doing with the complaints from McMenemy's.

Captain Hinton told council at the last Eddie Money concert the dispatchers advised Hinton that there were four complaints. The police working the concert night were advised of the complaints and were told from McMenemy's that it was a charitable event.

Attorney Neel served a public records complaint on the City of Niles on behalf of Mr. Ludt. Attorney Neel said he is ready to sue the city next week because it has yet to comply with his request for records of noise complaints.

Law Director Dull said that they have to discuss the cost because the request is so voluminous.

Mr. David Anderson of 2132 Gardenland, Weathersfield told council that council worked two years on an ordinance and McMenemy's throwing it in their face and they do not care. He hopes that Captain Hinton can start to enforce the law.

Mayor Infante told Mr. Anderson that the city filed against McMenemy's in court and once they do that it is out of their hands.

Mr. Anderson said that the case was settled and McMenemy's is still breaking the law. The last couple times the police were sent up they turned the music down for ten minutes and then they turn the music up louder. Mr. Anderson said that a lot of favoritism has been shown to McMenemy's.

Safety Director Guarino said that in defense of Chief Simeone who wasn't at the meeting that there was a case that went to court. The chief did nothing to stop that case from going to court, he left it up to the supervisors and they did their job. If he favored someone he would have stopped that from going to court.

Attorney Neel told council that each time there are violations they need to be cited and called into court. That is written into the ordinance and there are a series of steps for each offense. It is not being enforced.

**COMMITTEE REPORTS**

None

**ORDINANCES AND RESOLUTIONS**

**RESOLUTION NO. \_\_ (Draft No. 29-11)**

**A RESOLUTION AUTHORIZING THE APPROPRIATION OF FUNDS FROM THE UNAPPROPRIATED COMMUNITY DEVELOPMENT FUND; AND, DECLARING AN EMERGENCY**

It was moved by Stredney, seconded by Papas to suspend the rule requiring three readings.

**YEAS: 7    NAYS: 0**

Rules are suspended.

It was moved by Stredney, seconded by Giancola that this Draft be adopted.

**YEAS: 7    NAYS: 0**

This Draft No. 29-11 has been adopted on the 15<sup>th</sup> day of June, 2011.

**RESOLUTION NO. \_\_ (Draft No. 30-11)**

**A RESOLUTION AUTHORIZING THE QUARTERLY CASH TRANSFERS; AND, DECLARING AN EMERGENCY**

It was moved by Stredney, seconded by Papas to suspend the rule requiring three readings.

**YEAS: 7    NAYS: 0**

Rules are suspended.

It was moved by Giancola, seconded by Lastic that this Draft be adopted.

**YEAS: 7    NAYS: 0**

This Draft No. 30-11 has been adopted on the 15<sup>th</sup> day of June, 2011.

**RESOLUTION NO. \_\_ (Draft No. 31-11)**

**A RESOLUTION ADOPTING THE TAX BUDGET FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2012; AND, DECLARING AN EMERGENCY**

It was moved by Papas, seconded by Lastic to suspend the rule requiring three readings.

Councilman McCormick questioned Auditor Nader about the general fund in the tax budget. Auditor Nader told council that the last half figures for 2011 were estimated as are 2012. He said as the city sees revenue slowing down the city stops the spending. Even if appropriations are there they won't spend.

Councilman Papalas said that this is why we are not going to be replacing people who retire. We have got to tighten our belts.

Mayor Infante told council that for the last two years we have been losing \$1.5 million dollars interest on our money. Over the last four years the city income tax is down over \$800,000. This year we are looking a little bit better than last year. How do you recoup that \$1.5 million a year in interest until the rates go up? I have been telling the treasurer and Finance Committee that we have to find a place to put our money or wait it out and struggle, cut back, don't replace jobs and cut capitol projects down. We have cut street resurfacing down and we haven't put any capitol expenditures in anyone's budget.

**YEAS: 7    NAYS: 0**

Rules are suspended.

It was moved by Giancola, seconded by Wilkerson that this Draft be adopted.

**YEAS: 7    NAYS: 0**

This Draft No. 31-11 has been adopted on the 15<sup>th</sup> day of June, 2011.

**ORDINANCE NO. \_\_ (Draft No. 32-11)**

**AN ORDINANCE AMENDING CHAPTER 1395 OF THE CODIFIED ORDINANCES OF THE CITY OF NILES, ADDING A CRIMINAL PENALTY SECTION FOR VIOLATIONS OF SAID CHAPTER; AND, DECLARING AN EMERGENCY**

It was moved by Stredney, seconded by Papas to suspend the rule requiring three readings.

Councilman Stredney said that this amendment to the ordinance makes it similar to the other ordinances that he enforces. He didn't have a criminal penalty on this ordinance when he deals with tall grass and trash.

Councilman McCormick asked if this was for residential and commercial. Councilman Stredney said that it was for residential only. Law Director Dull said that commercial properties will be addressed separately.

Mayor Infante asked Mr. Dull if the city could put a minimum on the fine. Mr. Dull said that the city could do that. Councilman Stredney said that each day the violation continues will be a separate offense.

It was moved by Stredney, seconded by Lastic to amend Draft No. 32-11 to read “a minimum of twenty five dollars a day”. Motion carried.

**YEAS: 7    NAYS: 0**

Rules are suspended.

It was moved by Papas, seconded by Stredney that this Draft be adopted.

**YEAS: 7    NAYS: 0**

This Draft No. 32-11 has been adopted on the 15<sup>th</sup> day of June, 2011.

**MISCELLANEOUS REMARKS**

Councilman Wilkerson thanked the police department for the good job they did in apprehending robbery suspects in his neighborhood.

Councilman Stredney and the ward councilmen want to start on the redistricting of the wards. President Pro-Tem Papalas told him that he will speak to President Marino about it.

It was moved by Stredney, seconded by Lastic to adjourn the meeting. Motion carried.

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Linda A. Yuhasz, Clerk of Council

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Stephen Papalas, President Pro-Tem