REGULAR MEETING MAY 9, 2023

The Council of the City of Middleburg Heights, Ohio met in Council Chambers at City Hall on Tuesday, May 9, 2023 for the purpose of conducting a REGULAR MEETING. President of Council David Bortolotto called the meeting to order at 7:00 p.m.

PRESENT: Matthew Castelli Mayor

David Bortolotto
Tim Ali
Dan Sage
Bill Meany
Matthew McGregor
Michael Ference

President of Council
Councilman At Large
Councilman Ward 1
Councilman Ward 2
Councilman Ward 3

Mary Ann Meola Clerk of Council

STAFF

ATTENDING: Santo Incorvaia Law Director
Jason Stewart Finance Director

Jim Herron Service Director
Chuck Bichara Economic Development Director

Mark Elliott Recreation Director
Bob Downey Executive Assistant

ABSENT: John Grech, Councilman Ward 4

#### PLEDGE OF ALLEGIANCE

#### MINUTES

Motion by Mr. Ali to approve the minutes of the regular meeting of April 25, 2023. Seconded by Mr. McGregor.

ROLL CALL: YEAS 6, NAYS 0, MINUTES APPROVED

MINUTES APPROVED

### COMMUNICATIONS

Notice of Legislative Authority from Ohio Division of Liquor Control requesting license transfer to Thirst and Ten Sports Grille. No objections from Police Chief Tomba.

Mr. Bortolotto made a motion to approve the liquor license transfer without objections. Seconded by Mr. Meany.

ROLL CALL: YEAS 6, NAYS 0, MOTION APPROVED

MOTION 2023-21 RETURN LIQUOR TRANSFER REQUEST WITHOUT OB-JECTION (THIRST & TEN)

#### **AUDIENCE PARTICIPATION**

Ms. Martha Ratkowski, 6719 Stroud Road, said she was reading over the agenda this evening, and had questions regarding the legislation pertaining to peddlers, solicitors and canvassers. She said she went to the NOPEC website where you can add your name to a list for No Knock. Ms. Ratkowski said the website itself lists to stop solicitors from "Knocking At Your Door", but the legislation that is being proposed is for peddlers, solicitors and canvassers. She wondered how canvassers were added to that.

Mr. Incorvaia said Chapter 709 of our Codified Ordinances as it reads today is entitled peddlers, solicitors and canvassers. He said the legislation tonight, will simply add another section to that chapter that will in essence be a "Do Not Knock" section. Mr. Incorvaia said that Chapter is already in place.

Ms. Ratkowski wondered how NOPEC got involved in our city government where they hold this list and we are able to enforce it based on a sign up list that residents opt in to.

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Mr. Incorvaia said it is a service that NOPEC apparently provides to communities, they provide the same service to in this general area. He said he knows they 3 provide it to Parma, Brook Park, Brunswick and is sure there are many other areas 5 where they provide this service as well. He said the city could keep its own list, 6 or use this service at no cost.

Ms. Ratkowski asked how this would affect Girl Scouts, people collecting for March of Dimes, etc., since those are essentially canvassers. She also referred to political candidates looking to introduce themselves to the neighborhood.

- 10 Mr. Incorvaia said it wouldn't affect political candidates, they can still do that. 11
- Ms. Ratkowski confirmed that they wouldn't be considered canvassers.
- 13 Mr. Incorvaia said no, not under the law. He said you are permitted to knock on a door and solicit a signature on a petition, and are also permitted to get across your 15 point of view. 16
- Ms. Ratkowski referred specifically to March of Dimes, adding that her mother 17 would collect for them every now and then. 18
- Mr. Incorvaia said the chapter itself requires certain either licensing or 19 20 registration, and excludes charitable organizations.
- 21 Ms. Ratkowski wondered if council has considered the shootings that have been 22 happening across the country, where people are turning around in driveways and 23 getting shot for going to the wrong house, etc. She said or even political 25 canvassers, where an individual was shot. Ms. Ratkowski wondered if putting 26 this in place would somehow make the public feel as if they were entitled to keep 27 people off of their property at all costs. 28
  - Mr. Incorvaia said he's not sure it would make someone feel entitled to keep people off their property at all costs. He said this is a tough question, and this type of situation is going on throughout our country. Mr. Incorvaia said we hope and wouldn't expect it to happen here, but said he understood her point.
  - Ms. Ratkowski said it could happen here without the ordinance. She just thought that maybe the ordinance might make some people feel as though, and knows we have a stand your ground law anyway, but didn't know if that includes your driveway or your front door.
  - Mr. Meany said if someone felt that way, then they probably shouldn't sign up for this. He said certainly we recognize that things are possible anywhere. Mr. Meany said if you are in the state of mind where you are concerned with someone coming to your door this would help that. He said the city would provide a list of anyone who registers, and that list will have those individuals that do not want that. Mr. Meany said a sticker would be provided to you by NOPEC and there would also be a list of the people that register with the city and an individual should not go up to that house.
  - Discussion continued.

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- Ms. Ratkowski said she is making herself more familiar with NOPEC, and she saw on their website that they offer small business loans. She said she wondered how a business that's purpose is to negotiate better pricing for public utilities gets money from to loan out money.
- Mr. Meany said the state of Ohio, passed the rules and regulations to govern NOPEC. He said the city didn't have anything to do that, it was all handled in Columbus for all aggregates.
- 56 Mayor Castelli said certainly we can't understand what's in people minds, but a no solicitation sign does not give anybody the right to commit any act of violence 58 to anyone walking in their neighborhood.

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Ms. Ratkowski said she agrees, but especially in today's climate she didn't know what people are thinking.

Mayor Castelli said candidly, if someone was going to do something like that, he didn't think the sticker would make up their mind either way. He said that would obviously be a dangerous person to do something like that.

Mr. McGregor said he can't speak for anyone else, but when he campaigns, if he

Mr. McGregor said he can't speak for anyone else, but when he campaigns, if he sees a no solicitation sign, he does not go, he walks past it. He said he is going to respect their privacy and their property and continue on to the next house is his theory.

Ms. Ratkowski said it is a different day than it was 10 years ago. She said even Door Dash drivers are getting yelled at in the street, and Amazon drivers are told to get out of the neighborhood and go back where you came from.

Mr. Bortolotto said Ms. Ratkowski's point is well taken. He said part of the value of a no stop list would be for seniors that you may not want elderly parents or neighbors to be harassed by anyone trying to sell them things.

Dr. Conrad Lindes, 13375 Old Pleasant Valley Road, referred to the same legislation that is on for tonight, and said it is interesting that NOPEC is volunteering to keep this list for free. He said if we stop and think about this, how would NOPEC benefit? Dr. Lindes said a couple years ago, NOPEC somehow made a mistake and people were paying more to NOPEC than if one just went with the utility company. He said as it is, the cities relationship with NOPEC gives NOPEC a competitive advantage. Dr. Lindes said the only thing that keeps NOPEC honest is when other utilities can knock on the door and offer people an alternative. He said by supposedly helping the city, what NOPEC is doing by pushing this legislation, is assuring it will not have any competition knocking on the door. Dr. Lindes said he doesn't think it's necessarily good to give any company an advantage in the market place, adding that isn't good for consumers in the long run.

Mr. Ali asked Mr. Incorvaia to confirm if he was wrong, but said NOPEC is willing to share the list with the city. He said if we have access to that list, then we can share it with whoever registers. Mr. Ali said if they can't knock on the door, than neither can the competition. He said we aren't pushing and do not recommend NOPEC. Mr. Ali said there are so many people that he knows now, because Mr. Incorvaia suggested the Apples to Apples many moons ago, people are going to that to see who is offering what. Discussion continued.

Mayor Castelli said he thinks there is a lot of confusion on what NOPEC is. He said NOPEC is not a private company that is for profit, they are a conglomerate of communities voted in by the public to be able to do bulk purchasing that creates an extended period of time at a more stable price. Mayor Castelli said it doesn't mean it's going to be the best price, and certainly won't ever be the worst price. He said if you want to go to Apples to Apples you can do that. Mayor Castelli said the unfortunate thing with Apples to Apples, is that the terms and conditions are not listed. He said you might not always understand the terms and conditions when you go with another provider, but everybody has the option to do that if they wish. Mayor Castelli said he would never tell somebody what to do. He goes with NOPEC because he doesn't want to worry every so many months, going to try and figure out what the best price is. Mayor Castelli said their consumer advocacy organization is there to protect the consumer interest. He said they have been involved in some lawsuits to protect consumers, and in the last several years if you were in NOPEC you actually got money back because of a lawsuit with some of the private organizations. Mayor Castelli said the good news

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is, that private organizations are allowed to provide energy to the community and people are allowed to select them if they choose. He said NOPEC is just an option, that is an organization that is not for profit and that voters chose to at least 3 go out and try to get bulk pricing at a decent price for an extended period of time. 4 5 Mayor Castelli said he thinks what confuses people is the opt in. He said you 6 don't choose to opt in you are automatically in if your community voted for it. Mayor Castelli said people are confused as to why they are automatically 8 enrolled. He said at the end of the day, you can opt out at any time. Mayor Castelli said if someone wants to spend the time looking at different pricing and 10 do that, he would encourage them to opt out. He said if someone wants to have a 11 12 stable price, and want to go with an organization that is going to give decent bulk 13 pricing then NOPEC is the solution. Mayor Castelli said it just gives you the 14 15

Mr. McGregor said the city is not promoting. He said they have hosted several 16 educational and informational meetings because about two months ago he had 17 numerous residents concerned because all the articles came out saying that utility 18 19 prices were going to go up. Mr. McGregor said a representative from NOPEC 20 came to us and explained all of this, and then there were also meetings at the 21 recreation center. He said they are in no way saying to go do this. Mr. McGregor 22 said the city was just trying to give the residents options. Mr. McGregor said he 23 wants full transparency so that you understand that we didn't do that. He said he 24 takes offense that you would say that because it would be in the minutes that we 25 26 did something that we didn't.

- 27 Dr. Lindes said you got windows from NOPEC.
- Mayor Castelli said we get grants every year.
- 30 Mr. McGregor said we got grants.
- Mayor Castelli said the city, the taxpayers get grants every year.
- Mr. McGregor said to save energy, to save bills and to save costs.
  - Dr. Lindes said then something did come back.
- Mr. McGregor said you are saying we promoted it, and that is false.

  Dr. Lindes said ok, he applearing
  - Dr. Lindes said ok, he apologizes.
- Mr. McGregor said you made that statement and he wanted to make sure you understood.
- Mayor Castelli said he thinks these are all good points. He said bringing up who should house the list, is something we could certainly look at. Mayor Castelli said right now it does say NOPEC, it is something that we don't have to do is what he thinks we liked about it. He said he is open to looking at that if there is a concern as to who is housing it.
- Discussion continued.
- Mayor Castelli said what we need to do is give out accurate, factual information.
- He said if you want to do Apples to Apples to find a supplier, and spend the time doing that you will probably be able to figure out ways to save money. Mayor
- Castelli said for individuals that want something that is reliable, and stable, then maybe NOPEC is the right option. He thinks it is important to make sure we have
- the right information out there.
- Mr. Sage said another thing to keep in mind, is that joining NOPEC wasn't a city hall decision, or a city council decision. He said this was voted on by the
- 55 Middleburg Heights residents to join in 2002.
- Mayor Castelli said there were two votes in the early 2000's. He said one was for gas and one for electricity.
- Mr. Sage reiterated this was not a council decision to be part of NOPEC.

# 61 APPOINTMENTS AND CONFIRMATIONS

62 None.

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# ORDINANCES, RESOLUTIONS AND MOTIONS CITY PARKS, RECREATION & SERVICES COMMITTEE - MR. ALI CHAIRMAN

No legislation.

# FINANCE, TAXATION & ASSESSMENTS COMMITTEE - MR BORTOLOTTO, CHAIRMAN

Mr. Bortolotto introduced RESOLUTION NO. 2023-36, A Resolution authorizing the service director to dispose of equipment no longer needed for any municipal purpose and MOVED TO ADOPT.

10 Seconded by Mr. Sage.

Mr. Bortolotto said the service department is getting rid of some old pieces of equipment that are no longer needed and donating them to the Cuyahoga County Fairgrounds.

Mr. Herron said a lot of the equipment is old and doesn't fit our equipment anymore. He said we are just trying to keep the area clean. Mr. Herron said the fairgrounds had a fire a couple years ago that decimated a lot of their equipment. He said obviously the fairgrounds are a nice partner, and they also provide picnic tables for the Summer in the City every year.

Mr. Meany said he thinks it is great that we don't just throw away things that are

Mr. Meany said he thinks it is great that we don't just throw away things that are no longer viable for the city. He said he thinks it is a great practice looking out for the fairgrounds, Woodvale and other organizations that can utilize equipment that we no longer need.

ROLL CALL: YEAS 6, NAYS 0, ORDINANCE NO. 2023-36 ADOPTED

# <u>LEGISLATION & RULES COMMITTEE – MR. FERENCE, CHAIRMAN</u> No legislation.

# PUBLIC HEALTH, SAFETY & RELIEF COMMITTEE - MR. McGREGOR, CHAIRMAN

Mr. McGregor introduced ORDINANCE NO. 2023-37, An Ordinance amending section 436.032 "Use of Electronic Wireless Communication Device Prohibited While Driving" of the Middleburg Heights Codified Ordinances and MOVED TO ADOPT. Seconded by Mr. Meany.

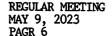
Mr. McGregor said on April 4, 2023, the Ohio Revised Code was amended regarding electronic use by drivers. He said we needed to make sure that our ordinances match and did not conflict with the state.

Mr. Incorvaia said the new law, phones down it's the law, is effective April 4, 2023. He said it is illegal to use or hold a cell phone or electronic device in your hand, lap or other parts of your body while you are driving on Ohio roads. Mr. Incorvaia said in regards to Bluetooth, you can still use this if you are over 18 to make and receive phone calls. He said hands free technology can be used such as Bluetooth, speaker phone, ear piece, wireless headset and an electronic watch to make and receive phone calls in a vehicle. Mr. Incorvaia said things that are off limits are dialing a phone number, updating your browsing social media, browsing the internet, playing games, video calls, Facetime, watching videos, recording or streaming videos, or sending a text message unless you are using a hands free method in the vehicle. He said drivers under the age of 18 are still restricted from using their devices in any way including hands free features. Mr. Incorvaia said this legislation will bring our local code into compliance and parallel with our state code.

Mr. Ali said it is truly unbelievable when you are driving to see how many people are actually on their phones. He said the technology that you have today, right from the steering wheels has the buttons to push and call whomever and you don't need to look at anything. Mr. Ali said technology is phenomenal when it comes to stuff like this, and you are absolutely not distracted at all.

RES. 2023-36 ADOPTED DISPOSE OF EQUIPMENT NO LONGER NEEDED

ORD. 2023-37
ADOPTED
AMEND SECTION
436.032
"USE OF WIRELESS
DEVICES PROHIBITED
WHILE DRIVING"



Mr. Ference said he fully supports this legislation that provides for safety for all motorists, including the people using their devices.

Mr. McGregor said with the hands free devices, as Mr. Ali said, you are able to send a text and you could have one air bud in while you are doing this. He said when this came out he believes there is a six month grace period. Mr. McGregor said when any law enforcement persons pulled people over for this for six months, they were more educating and not necessarily citing yet. He said on October 4, 2023, is when citations will start and fines and court appearances will go forward. Mr. McGregor said he liked the idea of the grace period, not everyone would know about this, adding the education part is important to start.

everyone would know about this, adding the education part is important to start.

Mr. Ali asked if anytime, an individual can be pulled over if they see you on the phone, or is it like the seatbelt law, it's only if they pull you over for something else.

15 Mr. Incorvaia said he believes it can be a primary offense and pull you over.

Mr. Sage said as insurance guy, this has been a long time coming by the State of Ohio. He said it is nice that the state took this up, so we wouldn't have to as individual municipalities. Mr. Sage said he fully supports this legislation.

Mr. Meany thanked his colleagues for their support.

ROLL CALL: YEAS 6, NAYS 0, ORDINANCE NO. 2023-37 ADOPTED

# <u>PUBLIC IMPROVEMENTS COMMITTEE – MR. SAGE, CHAIRMAN</u> No legislation.

# STREETS, UTILITIES & RAILROAD COMMITTEE - MR. MEANY, CHAIRMAN

Mr. Meany introduced ORDINANCE NO. 2023-38. An Ordinance amending Chapter 709 of the Middleburg Heights Codified Ordinances entitled peddlers, solicitors and canvassers and MOVED TO ADOPT. Seconded by Mr. Ali.

Mr. Meany said this was debated earlier in the meeting and asked if anyone had any other questions.

ROLL CALL: YEAS 6, NAYS 0, ORDINANCE NO. 2023-38 ADOPTED

ORD. 2023-38
ADOPTED
AMEND CHAPTER
709: "PEDDLERS,
SOLICITORS, AND
CANVASSERS"

# ZONING & BUILDING CODE COMMITTEE – MR. GRECH, CHAIRMAN No legislation.

#### **COUNCIL COMMITTEE REPORTS**

#### City Parks, Recreation & Services Committee - Mr. Ali, Chairman

Mr. Ali said they will be having an advisory board meeting for the Bark Park on Thursday, May 11<sup>th</sup> at 9:00 a.m. at the Bark Park. He said all are welcome to attend. Mr. Ali said they are graciously and patiently waiting to see if we receive the grant for the pavilion over there. He said if we do receive the grant, the pavilion will be put in and the pet friendly gravel would be added to solve the heavy rain mud puddling. Mr. Ali said after that, they would like to see the obstacle course going in.

Mr. Ference asked if the artificial turf was off the table.

Mr. Ali said yes, we could have actually received it for free. He said the company taking it out would not install it, and we contacted another company to install the turf and they did not want to install used turf. Mr. Ali said he would have to believe somewhere down the road there was issues with used turf. He said the turf would have been nice looking, but the pet friendly gravel has been proven at Lakewood Dog Park for decades.

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Finance, Taxation & Assessments Committee - Mr. Bortolotto, Chairman

Mr. Bortolotto thanked the administration and the council members, for our new trail in Indian Creek. He said we attended the grand opening for that this evening, which was an absolute joy. Mr. Bortolotto said one of the Indian Creek residents said this is the crown jewel of our subdivision, which he thought was really nice.

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#### Legislation & Rules Committee - Mr. Ference, Chairman

Mr. Ference said he would like to acknowledge and thank the residents who brought forth their thought provoking comments. He said some of these things we think of ahead of time, but some we don't. Mr. Ference said it is always helpful to get perspectives.

#### Public Health, Safety & Relief Committee - Mr. McGregor, Chairman

Mr. McGregor acknowledged Mr. Bortolotto's comment regarding the park, and also agreed with Mr. Ference's comments thanking the residents for coming up this evening.

#### Public Improvements Committee - Mr. Sage, Chairman

Mr. Sage thanked Mayor Castelli, his fellow councilmen, Mary Ann and the entire city for their condolences for the passing of his father.

### Streets, Utilities & Railroad Committee - Mr. Meany, Chairman

Mr. Meany said they met last night and minutes were distributed.

# Zoning & Building Code Committee – Mr. Grech, Chairman No report.

#### **MAYOR'S REPORT**

Mayor Castelli thanked city council, the residents and the organizations that came out today at the Baldwin Creek Nature Preserve. He said it was nice to see everyone there, and received a lot of great feedback. Mayor Castelli said every time that they have gone out to the trail, even when we were doing final approvals, there were multiple residents and families already walking the trail. He said there will be eventually a trail head that will be put there. Mayor Castelli said nothing is going to be done right now at the dead end because we are still working on getting a grant and finalizing the relief sewer in Indian Creek. He said if that happens, we would have to rip up that dead end area. Mayor Castelli said once that is done, as part of the relief sewer project, we would ultimately finish the trail head.

Mr. McGregor confirmed the survey is back up on Facebook. He said he had all of his students at Berea-Midpark High School fill it out. Mr. McGregor said there wasn't an option between 16-18 years of age, so he apologizes if they falsely put they were 18-24 years old. He said one of the projects that they do is they are split into the three cities that they live in and they have to come up with something. Mr. McGregor said what sprang of that three or four years ago, was the community gardens. He said one of the students did that and he brought it to the mayor and we have pushed forward with that. Mr. McGregor said he wanted to make sure that was out there again for any residents that might have missed it, or wanted to fill that out.

or wanted to fill that out
Mayor Costelli said the

Mayor Castelli said the survey has been up. He said they did the one final push and this is the survey for Central Park, determining what type of amenities people in the community want to see. Mayor Castelli said OHM, who is the consultant that is advising us on the master plan, has said that we have had an enormous response. He said that is good news. Mayor Castelli said the survey will be up

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through the end of this week. He said they will be meeting with OHM on May 16<sup>th</sup>, and the survey might even be up until that point. Mayor Castelli said OHM will compile all of the information and provide us with the feedback that was 3 received from the residents.

Mr. McGregor asked if other surveys are done in the future, could a younger age 6 be listed as well.

Mayor Castelli said sure, we can talk to our survey conductors to see if that makes 8 sense to put on there.

Mr. McGregor thanked the mayor. 10

Mayor Castelli said just for everyone's general purposes, the way that city council 11 12 works is that they have audience participation, where an individual can talk at that 13 time. He said after that, the meeting goes forward and there wouldn't be any other 14 additional conversations. Mayor Castelli said he is bringing that up because he 15 saw a hand raised a couple of times, and didn't want anyone to think that council 16 was ignoring them. He said he just wanted to bring up how the protocols work 17 for city council meetings. 18

Mr. Bortolotto said if there was anyone that wanted to speak, they could speak after the meeting.

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#### LAW DIRECTOR

Mr. Incorvaia asked that council consider a motion to convene into Executive Session prior to adjournment to consider/discuss the purchase of real estate/property for public purposes pursuant to ORC 121.22(G)(2).

On behalf of Mr. Incorvaia, Mr. Bortolotto made a motion to convene into Executive Session prior to the adjournment to consider/discuss the purchase of real estate/property for public purposes pursuant to ORC 121.22(G)(2). Seconded by Mr. Ference.

31 ROLL CALL: YEAS 6, NAYS 0, MOTION APPROVED

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# **FINANCE DIRECTOR**

No report.

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#### RECREATION DIRECTOR

Mr. Elliott said obviously with the weather agreeing, you will see a lot of activity out back with baseball and softball practices, and also said that the outdoor pool is being prepped for summer. Mr. Elliott again reminded members of council that the food trucks will be here every Wednesday.

Mr. Ali asked what type of food the food trucks serve.

Mr. Elliott said they serve a variety of different foods.

Mayor Castelli said there will be approximately 10-12 different food trucks.

46 Mr. Meany referred to the parade applications, and said he will get his submitted. 47 48

He reminded members of council to submit their applications.

Mr. Elliott said there still is time.

#### ECONOMIC DEVELOPMENT DIRECTOR

No report.

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#### **SERVICE DIRECTOR**

56 No report. 57

Mr. McGregor said he has had numerous residents call about their neighbor's grass not being mowed and maintained. He asked if the inspectors are out and about throughout the city educating our residents about that.



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Mr. Herron said yes they are out and about. He said May is always a tough month with all the rain. Mr. Herron said they will be out citing people. He said unfortunately, sometimes they have to take a half dozen or so to court.

Mr. McGregor asked if he should contact Shawn.

Mr. Herron said to contact Amy, and if you have specific addresses let her know and she will get into the system.

Mr. Ference said he couldn't make it last Friday, but understands that the Arbor Day festivity was a big success. He said that is a really nice learning opportunity that we provide, and thinks that is something worthy to keep doing.

1 Mr. Herron said it was very nice and appreciated and thanked all those involved.

12 Mr. McGregor thanked Mr. Nadeo and Mr. Bartch for the help last Saturday at 13 our Elected Officials Food Drive. He asked Mr. Herron to pass on council's 14 appreciation.

#### **EXECUTIVE ASSISTANT**

No report.

19 Start Executive Session: 7:50 p.m.

Following the Executive Session, Mr. Bortolotto reconvened the Regular Meeting of Council at 8:37 p.m.

PRESENT: Matthew Castelli Mayor

David Bortolotto
Tim Ali
Dan Sage
Dan Sage
Bill Meany
Matthew McGregor
Michael Ference
President of Council
Councilman-At-Large
Councilman Ward 1
Councilman Ward 2
Councilman Ward 3

Mary Ann Meola Clerk of Council

STAFF: Santo Incorvaia

Santo Incorvaia
Jason Stewart
Jim Herron

Law Director
Finance Director
Service Director

Chuck Bichara Eco

**Economic Development Director** 

Bob Downey Executive Assistant

There being no further business, Mr. Bortolotto made a motion to adjourn. Seconded by Mr. Meany. Mr. Bortolotto adjourned the meeting at 8:37 p.m.

David Bortolotto
President of Council

Mary Ann Meola Clerk of Council