

March 21,

2017

The Council of the Municipality of New Lebanon, Ohio, met in regular session on Tuesday, March 21, 2017 at 7:30 p.m. with Mayor Arriola presiding. Present were Municipal Manager/Fire Chief George Markus, Law Director Ronald D. Keener, Police Chief Rick Daulton, Service Department Superintendent Scott Brock, Zoning Compliance Officer David Lunsford, Clerk of Council Sandy Wright and several visitors. Chief Financial Officer Brenda Etter was absent.

### **ROLL CALL**

The following members were present at the Call to Order: Raymond Arriola, Gale Joy, Glenna Madden, Carol Macmann, Christopher Sands and Tom Simon. Linda Green was absent.

### **INVOCATION**

Mayor Arriola gave the invocation.

### **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

### **APPROVAL OF MINUTES**

Mayor Arriola stated the first item on the agenda this evening is the approval of February 21, 2017 Regular Meeting Minutes.

Mayor Arriola stated are there any corrections or changes that need to be made to these minutes. Nothing was heard.

Mayor Arriola stated all in favor of these please signify by saying aye. All opposed same sign.

VOICE VOTE ON ABOVE MOTION. MOTION CARRIED.

### **OLD BUSINESS**

Mayor Arriola stated under old business tonight we have **ORDINANCE 2017-01: AN ORDINANCE PROHIBITING THE ESTABLISHMENT OF AN OPERATION OR MEDICAL MARIJUANA CULTIVATION, PROCESSING AND RETAIL DISPENSARIES.**

Mayor Arriola stated do I have a motion to adopt Ordinance 2017-01.

Council Member Joy stated could I ask a couple of questions. Did anybody send out a notification to the community that we are prohibiting marijuana.

Vice Mayor Madden stated they can come to a meeting anytime they want.

Council Member Joy stated okay so why are we declaring this an emergency so if they don't get to read the minutes, if they don't get to come to another meeting where this is being discussed why is this being declared an emergency when they won't have an opportunity to actually say anything.

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Municipal Manager Markus stated it is simply to move it forward. We had the notice on the water bill, we had the meeting last time, and now it is on the agenda again this time. It moves it forward instead of taking two more meeting to address the issue.

Council Member Joy asked so what part of this resolution is declared to be an emergency measure necessary for the immediate preservation of the peace health safety and general welfare of the people of this municipality. What part of any of that is deeming this to be an emergency measure?

Municipal Manager Markus stated Ron would you respond to that question please.

Law Director Ron Keener stated my response is basically what the manager has said. It is a matter of the criminality of something the fact that it doesn't matter what we feel as a state does the federal government feels it is illegal anyway. I think it is important we do not condone somebody to do any illegal act. If we do not, from my opinion, if we do not do this, we are opening ourselves up for potential liability if somebody does start a marijuana cultivation business or any other marijuana business because it is in violation of federal law. There are people that will obviously argue about that and that is why it was argued about in the legislature in Ohio, but the bottom line is Ohio does not have the right to make it legal if the federal government has made it illegal. We have already entered that realm. In order to protect the health, safety and morals of our community it becomes necessary to move forward. Unfortunately I was not here last meeting so I do not know what the last conversation was. The information I have was that it was discussed very thoroughly and that it was the decision to go forward with the ordinance and to proceed with it in all due haste.

Council Member Joy asked has someone stepped up or an entity person that has talked about expanding operations here?

Law Director Keener stated not that I am aware.

Council Member Joy stated in all actuality there is no reason for this to be an emergency action. There is no danger of someone starting this operation so why are we in such a hurry to pass this?

Council Member Sands asked when is the state going to issue licenses because if they are doing it tomorrow they could come here and say we want to put one here and we don't have this on the books so we have no way of stopping them.

Law Director Keener stated we have no way of knowing when the state is going to start issuing licenses. It doesn't go through the legislature at this point it goes through the establishment of rules and regulation.

Council Member Sands stated they have the committed together now.

Law Director Keener stated yes, the committee is in place.

Council Member Sands stated the committee will make up the rules and all that stuff so they are getting closer to issuing licenses, so forth and so on.

Law Director Keener stated exactly.

Council Member Macmann stated at last meeting it was discussed that we did not have any available area for a grow operation so it is kind of a mute point anyway.

Council Member Joy asked why isn't there any place to put something?

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Council Member Macmann stated we discussed location of churches, schools, parks, and the library.

Council Member Joy stated there are plenty of places. I looked at that map. It is neither here nor there, there are plenty of places around here. I am asking about things that are on the business for today and the fact is that I don't see any reason for this to be an emergency action. Besides the fact we have an ordinance in place and laws in place to stop this from happening. Nobody here has said why it is actually an emergency measure so I am not understanding it.

Vice Mayor Madden stated so you want to look at it for two or three more readings.

Council Member Joy stated it does not matter. I am asking a question and no one can answer it. It is being arbitrary. And it brings up another question. You talk about the Ohio Revised Code and that being a schedule one substance and it's against federal law and I guess the next question I have is what laws are we under? Are we under federal law or are we under state law or are we under New Lebanon Law?

Vice Mayor Madden stated all three of them.

Council Member Joy asked when we are in conflict which one do we go by?

Vice Mayor Madden stated federal.

Council Member Joy asked why?

Vice Mayor Madden stated it is the law of the land.

Council Member Joy stated no this legislation right here, there is nothing in the Constitution that says they should be reduced. I would direct you to read the Federalist papers because that is not what they actually say.

Law Director Keener stated the Federalist papers are not the law either.

Council Member Joy stated they are based on the intent of the people that were actually at the Constitutional convention.

Law Director Keener stated so we are going through the same thing that a certain justice is going through currently by trying to determine to try to go to interpret the intent of what was done or what the law says that was what was done.

Council Member Joy stated the Constitution is very plain on what Congress can and can't do. It is very clear, that is why we have the 10<sup>th</sup> Amendment and there is nothing in the Constitution that says they should not be doing this so it would then go back to the 10<sup>th</sup> Amendment in which a state would then decide. The State did decide and they passed House Bill 523 and that is the law of Ohio.

Law Director Keener stated well unless the US code is declared, as it relates to this section, is declared to be unconstitutional it still prevails. The law is what it is. If people want to argue against it it has to be determined through the proper court system that the law is ineffective.

Council Member Joy stated I believe that happened because it is the law.

Law Director Keener stated the law is not the court. Legislature is not the court.

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Council Member Joy stated the legislature makes the law though.

Vice Mayor Madden stated similar to the traffic light cameras. They put those in and the court said no.

Mayor Arriola stated do I have a motion to declare an emergency and waive the three (3) readings.

Motion by Council Member Sands, second by Council Member Simon to declare an emergency and waive the three (3) readings.

ROLL CALL ON ABOVE MOTION: Council Member Arriola, yes; Council Member Joy, no; Council Member Madden, yes; Council Member Macmann, yes; Council Member Sands, yes; Council Member Simon, yes; 5 yes 1 no

Motion Carried

Mayor Arriola stated do I have a motion to adopt Ordinance 2017-01.

Motion by Council Member Simon, second by Council Member Sands to adopt Ordinance 2017-01.

ROLL CALL ON ABOVE MOTION: Council Member Joy, no; Council Member Madden, yes; Council Member Macmann, yes; Council Member Sands, yes; Council Member Simon, yes; Council Member Arriola, yes; 5 yes 1 no

Motion Carried.

Mayor Arriola asked do we have any additional old business to discuss? Nothing was heard. Mayor Arriola stated Gale do you have any additional old business to discuss.

Council Member Joy stated no.

## **NEW BUSINESS**

Mayor Arriola stated under new business **RESOLUTION 2017-04: A RESOLUTION STRONGLY OPPOSING THE STATE OF OHIO GOVERNOR'S PROPOSED 2018-2019 BUDGET, WHICH PROPOSES CENTRALIZED COLLECTION OF NET PROFIT TAX RETURNS AND OTHER DISASTROUS PROVISIONS AS DETREIMENTAL TO LOCAL GOVERNMENTS AND WHICH WILL RESULT IN FURTHER SIGNIFICANT LOSS OF REVENUE NEEDED TO SUPPORT THE HEALTH, SAFETY, WELFARE, AND ECONOMIC DEVELOPMENT EFFORTS OF OHIO'S COMMUNITIES.**

Mayor Arriola stated does anyone have any questions.

Council Member Joy asked can I make a statement. As I read this resolution based on what I knew what was actually going to happen on the last resolution I have to say that I find to me it is interesting ironic and a bit hypocritical to propose this. We just passed a resolution that could have brought a significant amount of revenue and were stating here and this is a quote, it says this will result in a significant loss of revenue to support the health, safety, welfare, and economic development efforts of Ohio communities so we just pass this resolution and now we basically lost revenue that would and we passed a resolution that could have

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brought revenue, in the form of income tax into New Lebanon. As I read this resolution we are complaining about the tax and here I am going to quote you again, it says on the home rule powers granted to municipal corporations in a week where in a week where we are invoking usurpation of constitute protected local power and yet we just agreed that we have no power in the last resolution. We are complaining about creating a centralized state operation operated collection program and we have no problem with the state actually taking money from us tax payers and doling it back to the municipal corporations in the form of grants. You know to me, although this may be actually correct it's hypotheses and I'm opposing it for that reason.

Mayor Arriola stated anything else. Nothing was heard.

Mayor Arriola stated do I have a motion to adopt Resolution 2017-04.

Motion by Council Member Madden, second by Council Member Macmann to adopt Resolution 2017-04.

ROLL CALL ON ABOVE MOTION: Council Member Madden, yes; Council Member Macmann, yes; Council Member Sands, yes; Council Member Simon, yes; Council Member Arriola, yes; Council Member Joy, no; 5 yes 1 no

Motion Carried.

Mayor Arriola stated next is public comments or questions. If anybody has any comments or questions please come forward to the podium and state your name and address for the record.

#### **PUBLIC COMMENTS OR QUESTIONS**

Lyndon Perkins, 735 Greyhound Drive stated I agree with the gentleman on the end. I read that notice on the bottom of the water bill but I really did not understand what was happening. It is too late now. Some kind of letter should have been sent out to each household to let them know that this was going to be done.

Council Member Simon asked for which one?

Vice Mayor Madden stated for selling marijuana.

Mr. Perkins stated yes.

Mr. Perkins stated I read the other day that the governor has a rainy day fund in case something happens. He never uses it and a lot of other governors do the same thing and then at the end of the year they spend it.

Mayor Arriola stated we had a meeting a few weeks ago sir. A discussion was held at that time and it was decided to have an Ordinance prohibiting the cultivation of medical marijuana in New Lebanon.

Mr. Perkins stated I spent three days in bed. I sit on the hard bleachers at a game and had to get a shot and I am still taking muscle relaxers. I will have to take another one when I get home

Now it is done so I am talking against the wind.

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Mr. Perkins stated I have not mentioned anything about the asphalt for about six months to a year but soccer season is here again. It seems to me that asphalt could have been spread out..

Mayor Arriola asked Scott do we have a schedule on the asphalt Scott?

Service Department Superintendent Scott Brock stated we are relocating the trail next week.

Mr. Perkins stated I would also like to thank Mr. Lunsford. You sent a letter and the car has been removed out of the back yard. I think that is all I have got to say for now. If my back allows me to be up here I would have been here. If I make a commitment I stand by it. I bought myself a large cushion so I can go watch the twins play basketball. We did have twins in the family, one boy and one girl. Thank you and have a good evening.

#### **ADMINISTRATIVE STAFF COMMENTS**

Mayor Arriola stated we will go to administrative staff comments.

Mayor Arriola stated Police Chief Daulton.

Police Chief Daulton stated I have quick comment tonight sir. Today we had students from the University of Cincinnati give presentations to the students in health classes at Dixie High School about the affects of heroin overdoses on the body. The presentations seemed to go well.

Mayor Arriola stated anyone have any questions for the Police Chief.

Council Member Sands asked what is our policy if someone overdoses and we use narkan to revive them. Do we charge them with a crime or slap them on the wrist and send them on their way? I am asking because I have heard it in the news that a lot of places.

Police Chief Daulton stated if they say they are going to treatment but so far we have no way of tracking it. The courts say they are going to build a way of tracking but so far it has not happened.

Vice Mayor Madden asked do we bill them for the ambulance ride, the narkan and all that good stuff?

Municipal Manager/Fire Chief Markus stated they receive a bill for the medic call if they are not a community resident and it is largely going to be unpaid because most of the people do not have insurance.

Vice Mayor Madden stated they don't get a bill for the narkan or anything like that for saving their life.

Municipal Manager/Fire Chief Markus replied medic only.

Council Member Sands stated we have to get these people into treatment. I know that you know who I am talking about. They just took them out again on Saturday.

Vice Mayor Madden stated they took my neighbor on Friday.

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Council Member Sands stated it has got to stop. I know it is not going to but we have to do something to make these people stop.

Mayor Arriola stated Fire Chief.

Fire Chief Markus stated I have nothing tonight sir.

Mayor Arriola stated anything for the Fire Chief. Nothing was heard.

Mayor Arriola stated Zoning Compliance Officer David.

Zoning Compliance Officer Lunsford stated I have nothing tonight sir.

Mayor Arriola stated anything for David. Nothing was heard.

Mayor Arriola stated Financial Officer Brenda.

Municipal Manager Markus stated she has nothing tonight sir.

Mayor Arriola stated Service Department Superintendent Scott.

Service Department Superintendent Scott stated I have nothing tonight sir.

Mayor Arriola stated anything for Scott.

Mayor Arriola stated I know you are busy but I have noticed a few potholes on Emerson and Heeter.

Service Department Superintendent Scott stated they are never ending. I will add them to the list.

Mayor Arriola stated Parks & Recreation Alex.

Alex stated I gave you all a handout. Miami Valley Food Bank served 30 families as well as 14 senior boxes in March which was a lower number due to the bad weather. I will be meeting this week to finalize details and order supplies for the mural project collaboration with the Center for Adolescent Services. I am also meeting this week to finalize the Disc Golf layout. I attended Dayton Metro Parks Leave No Child Inside Summit on March 11<sup>th</sup>. I am still searching for live music/vendors for the Village Farmers Markets. I turned in \$1,000 Montgomery County Beautification Grant last week. I also received over 20 applications for high school intern opportunities. We are still accepting applications for the Hometown Heroes.

Mayor Arriola stated Municipal Manager comments.

#### **MUNICIPAL MANAGER'S COMMENTS**

Municipal Manager Markus stated I have two comments. For Council the Annual MVRPC Spring Dinner is rapidly approaching. If you are interesting in going talk to Sandy no later than March 29<sup>th</sup> and she will give you all of the information and we will take care of everything else.

The long lost Ohio Public Works Commission Grant Application letter finally arrived today. It was for the project we applied for last August which is Sanitary Sewer Phase 14 in the amount of \$199,723.00 so after July 1<sup>st</sup> when the new state budget kicks in you will see resolutions for this and other projects.

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Mayor Arriola stated anything for the Manager. Nothing was heard.

Mayor Arriola stated council member comments.

**COUNCIL MEMBER COMMENTS**

Mayor Arriola stated Gale.

Council Member Joy stated I have nothing else this evening.

Mayor Arriola stated Carol.

Council Member Macmann stated I nothing.

Mayor Arriola stated Chris.

Council Member Sands stated I have nothing.

Mayor Arriola stated Tom.

Council Member Simon stated I have nothing.

Mayor Arriola stated Glenna.

**VICE MAYOR'S COMMENTS**

Vice Mayor Madden stated I have nothing.

**MAYOR'S COMMENTS**

Mayor Arriola stated I have one thing that I have been hearing and I should have brought it up in old business, but the manager has here the Veterans Memorial Project Update. Does anyone still want to keep doing this?

Council Member Joy stated I don't.

Vice Mayor Madden stated I am concerned with the cost, \$25,000.00 seems excessive. That would be my concern and the location is over at the courts. That is another concern.

Mayor Arriola stated could we have a straw poll of who does not want to do it any longer.

Council Member Joy stated I do not want to do it.

Vice Mayor Madden stated I am not against Veterans in any way, I just think \$25,000.00 is excessive. Is there a way to maybe do a bronze plaque over here in the gazebo or something along those lines rather than a \$25,000.00 statue. Visually when we have potholes the size of cars, I get that it is not from the same fund, people do not understand that and when their car goes in a pothole and when they drive by a nice new shiny \$25,000.00 rock they disconnect whether we want them to or not and that is a hard sell. That is just my thought.

Council Member Simon stated I agree. We have not gotten any response from the legion or anybody else that they would appreciate anything.

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Municipal Manager Markus stated actually the Legion did respond and they were quite positive about it. That was as far back as last fall when we first started talking about it.

Council Member Simon stated I just that is a lot of money to spend when we have other things to spend our money on.

Vice Mayor Madden stated I get that it is not coming out of the same budget but again I can stand on the street and tell them what budget it came out of and people do not get it. They do not get it because all of their money is in one big bucket and they just pay their bills out of it.

Mayor Arriola stated they show a lot of interest, just like coming here.

Vice Mayor Madden stated is there a way to do something at a lower cost. I am not saying throw it out, but maybe look at it from a different angle.

Municipal Manager Markus stated we have two separate issues here. Why don't we separate them. Do you want to do the project or not is probably the first question.

Municipal Manager Markus asked Chris do you want to do the project, yes or no?

Council Member Sands stated I am good with it.

Municipal Manager Markus stated Tom.

Council Member Simon stated with the original project.

Municipal Manager Markus stated just with the memorial period.

Council Member Simon stated yes if it were downsized in cost.

Municipal Manager Markus stated Carol.

Council Member Macmann stated yes, if it were downsized in cost.

Municipal Manager Markus stated Glenna.

Vice Mayor Madden stated yes if it were downsized in cost.

Municipal Manager Markus stated Ray.

Mayor Arriola stated yes if it were downsized in cost.

Municipal Manager Markus stated Gale.

Council Member Joy stated no.

Mr. Perkins asked what kind of memorial are you talking about.

Municipal Manager Markus stated we were planning on a memorial stage over on the southwest corner of the courthouse parking area because that is our property. It was to be approximately 6 feet wide sidewalk going back to 25 feet stamped concrete circle that had a memorial rock placed in the middle and multiple flagpoles and some reflecting benches around. That was the original plan.

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Mr. Perkins stated the \$25,000.00 was coming out of the general fund. If you can get it done a little cheaper it would be nice. I am just a taxpayer. Well I am going back here and stretch out some more.

Mayor Arriola stated anyone have anything else. Nothing was heard.

**ADJOURNMENT**

Mayor Arriola stated do I have a motion to adjourn.

Motion by Council Member Sands, second by Council Member Madden to adjourn the meeting.

ROLL CALL ON ABOVE MOTION: Council Member Macmann, yes; Council Member Sands, yes; Council Member Simon, yes; Council Member Arriola, yes; Council Member Joy, Yes; Council Member Madden, yes; 6 yes 0 no

ALL IN FAVOR. MOTION CARRIED.

Meeting was adjourned at 8:08 p.m.

Approved:

\_\_\_\_\_  
Mayor Date

\_\_\_\_\_  
Clerk of Council Date