

**September 23, 2014**  
**MILLERSVILLE BOROUGH COUNCIL MEETING MINUTES**

The MILLERSVILLE BOROUGH COUNCIL MEETING was held on Tuesday, September 23, 2014 in the Millersville Borough Public Meeting Room located at 100 Municipal Drive, Millersville, Pennsylvania.

The meeting was called to order at 7:00 p.m. by Council President, Michael C. Kirkham followed by the pledge to the flag. A moment of silence was then observed. President Kirkham mentioned the dedication of the new Rutter Gazebo that was held at the Freedom Memorial Park and that Ms. Dot Bender and other Rutter descendants were present for the ceremony.

**COUNCIL MEMBERS**

Michael C. Kirkham  
Philip A. Lastowski  
Lynn M. Miller  
David T. Aichele

Richard M. Moriarty, Mayor  
Linda J. Deal  
James A. Stager (absent)  
Daniel P. Ostrowski

**OTHERS PRESENT**

Edward J. Arnold, Millersville Borough Manager  
John D. Rochat, Millersville Borough Chief of Police  
Jessie L. Ebersole, Millersville Borough Staff  
James A Kirk Jr., Zoning Hearing Board Chairman  
Gary G. Hess, Planning Commission Secretary  
Steven A. DiGuiseppe, Millersville University  
Haley Williams, Millersville University Student Advisor  
Elaine J. Jones, Lancaster Intelligencer Journal / New Era  
Sam Bigler, 17 Wabank Road, Millersville  
Mark Nitroy, 45 Fresh Meadow Drive, Lancaster  
Robert Bates, 47 Fresh Meadow Drive, Lancaster

**MINUTES**

None

**CITIZEN'S REQUESTS OR CONCERNS**

Mr. Mark Nitroy of 45 Fresh Meadow Drive voiced his concern with the excessive vehicle speed and stop sign violations that occur at Fresh Meadow Drive and Village Green Lane intersection. Chief Rochat will look into the enforcement of this area.

Mr. Robert Bates of 47 Fresh Meadow Drive questioned whether it is a violation to park travel trailers, boats and vehicles without registration on their property. President Kirkham stated there are regulations regarding recreational vehicles and referred him to the Borough's Code Enforcement Officer. Chief Rochat stated he would look into the vehicle parked on the roadway without a valid registration. Mrs. Deal suggested a reminder notice of these issues be placed on the utility billing.

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**REPORTS OF COMMITTEES OR BOARDS**

Mr. Lastowski reported the Blue Rock Regional Fire District met on Thursday, September 4<sup>th</sup>. He announced the Commission approved the 2015 Budget, which remains the same as it has for the last two years. Mr. Lastowski mentioned the discussions held on the number of Susquehanna River calls where Blue Rock Rescue has responded due to boaters running out of gas and dead batteries. The Commission is looking into charging a fee for responding to boat breakdowns.

**MAYOR'S REPORT**

Mayor Moriarty asked the Chief to give the report on the monthly police activity. Chief noted it was a typical August, meaning a very active start to the school year. Chief also announced we became an affiliate of "Project LifeSaver". It is no cost to the Borough and deals with finding people. Project LifeSaver is a non-profit organization that provides police, fire/rescue and other first responders with equipment and training to locate and rescue "at risk" individuals, including those with Alzheimer's, Autism, and Down syndrome. West Hempfield is the host agency. The Chief also mentioned the passage of a new law, 'Safe Haven Law' which gives mothers a safe, legal and confidential alternative to abandoning their baby. It allows parents to drop off newborns up to 28 days old at any hospital or police station in the state of Pennsylvania without the fear of criminal prosecution as long as the baby has not been harmed.

Mayor Moriarty announced he has vetoed Ordinance No. 2014-03, an ordinance to revise parking regulations, designate additional streets as snow emergency routes, and to revise regulations governing snow and ice emergencies. He read his memorandum addressed to Council President, Mike Kirkham dated September 1, 2014 (officially attached to these minutes) stating his objections. Mr. Arnold added that the Borough's Solicitor did not believe that the language was clear on the governing of snow emergency and therefore re-wrote Chapter 350-53 Declaration of snow and ice emergency to add clarity. Mayor Moriarty stated the opinion of the PA State Mayor's Association is that the PA Borough Code does not differentiate one emergency to another. Mr. Ostrowski summarized discussions by saying, "There are some grey areas if we leave the language as the 'Borough Manager declares' but not if we change it to the 'Mayor declares'." Mrs. Miller asked what are the options presented to Council tonight. President Kirkham answered that Council can override the veto or accept the veto. Mr. Arnold mentioned we do from time to time go in to this Chapter of the Borough Ordinances to make changes and/or additions and from a monetary aspect we could address changing the Borough Manager to the Mayor with the next advertisement and make the amendment at that time. After no more discussions, Mrs. Miller made a motion to override the veto. There was no second made to the motion to override; therefore, the Mayor's veto of Ordinance Number 2014-03 stands. Mr. Aichele then made a motion to advertise the amendment to the ordinance again with a change to reflect the "Mayor, or his designee" will declare a snow emergency. Mrs. Deal seconded the motion. With no further discussions the motion passed by a majority voice vote, with Mrs. Miller and President Kirkham opposed.

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**MILLERSVILLE UNIVERSITY REPORT**

Mr. DiGuiseppe gave his report on the upcoming events. The Fall Open House will be held on September 27<sup>th</sup> from 9:30 a.m. to 2:00 p.m. Homecoming week is October 15<sup>th</sup> thru 19<sup>th</sup> with lots of events: pep rally, bonfire, reunions, football and the Millersville Community Parade. Mr. DiGuiseppe stated the parade is shaping up nicely with another 2300 participants of all sorts: bands, special honor divisions, floats, classic cars, fire and emergency apparatus, clowns and so much more. He welcomed everyone to come out and enjoy the 18<sup>th</sup> annual parade Saturday morning, rain or shine. Mr. DiGuiseppe announced there are two major power shut downs that will affect Gordinier and the Student Center as well as Roddy/Caputo Halls, Pucillo Gym and Brossman Hall scheduled during fall break, October 13<sup>th</sup> thru 14<sup>th</sup>. He additionally noted Millersville University again ranked in the top 100, placing 87<sup>th</sup> in the category of Best Regional Universities in the North Region by U.S. News & World Report Best Colleges issue for 2015.

Ms. Haley Williams reported that on Friday, October 3<sup>rd</sup>, the University will host PrideFest, the first ever pride festival to be held on campus, from 5 p.m. to 8 p.m. Ms. Williams also reported that the American Dream Scholarship ride has raised/pledged over \$67,000 for President Anderson's new multi-year scholarships. She also announced that Millersville University students can now transfer credits to Harrisburg Area Community College toward an associate's degree.

**FINANCE COMMITTEE**

Mr. Lastowski made a motion to accept the Borough's 2015 Minimum Municipal Obligation for the Police Pension Plan in the amount of \$179,618. Mr. Aichele seconded the motion. This is an increase of \$12,226 over last year. With no further discussions the motion passed by a unanimous voice vote.

Mr. Lastowski made a motion to accept the Borough's 2015 Minimum Municipal Obligation for the Non Uniform Pension Plan in the amount of \$113,566. Mr. Aichele seconded the motion. This is a decrease of \$2,120 from last year. With no further discussions the motion passed by a unanimous voice vote.

**WASTE WATER COMMITTEE REPORT**

Mr. Ostrowski mentioned the Sewer Capital Project on East Cottage Street for the sewer main replacement work will now be a pipe lining project at an estimated \$137,492, which is substantially lower than budget (\$260,000). This project is considered maintenance and does not require advertisement but we will need to follow prevailing wages requirements.

**PLANNING AND BETTERMENT COMMITTEE REPORT**

Mrs. Deal discussed the five possible objectives for an official map that the committee will be recommending to the Planning Commission. They include: 1) a path connecting Eshleman Elementary School to Freedom Memorial Park, 2) the open access lot/land off of Route 999 be mapped as a second entrance to the upper end of Freedom Memorial Park, 3) the North/South Duke Street Corridor, 4) the dedication of Heisey Avenue from Leaman Avenue to

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Wabank Road, and 5) a possible relief route connecting the Wabank Road extension to Pucillo Drive. Mr. Arnold announced a Lancaster County Planning representative will also be attending the upcoming Borough's Planning Commission meeting to present a Downtown Business area plan that they have been developing with the Local Economic Development Committee. They will be suggesting legislative changes to the Planning Commission that will enable that project to happen.

**STREET COMMITTEE REPORT**

Mr. Aichele made a motion to reject the bid received from Pennsy Supply, Inc. in the amount of \$375,030.25 for the West Frederick Street Improvements Phase 3 project due to only receiving one bid and to re-advertise for bids in early 2015. Mrs. Miller seconded the motion. The County Redevelopment Authority informed the Borough that CDBG projects require a minimum of two bids. With no further discussions the motion passed by a unanimous voice vote.

Mr. Aichele made a motion to ratify the use of public streets for the 5<sup>th</sup> Annual Manor View Drive block party held Sunday, September 21<sup>st</sup> and Student Services 5K Run/Walk for Four Diamonds Fund of Penn State Hershey Medical Center held Sunday, September 14<sup>th</sup>. Mrs. Miller seconded the motion. Mayor Moriarty mentioned Council may want to review the Borough Ordinance concerning the closure of a borough street for a block party. With no further discussions the motion passed by a unanimous voice vote.

**SAFETY COMMITTEE REPORT**

Mrs. Miller announced the committee had a disruptive conduct report hearing for three residents of 123 North Prince Street. She stated the committee upheld the actions of the police department.

Mrs. Miller made a motion to waive the Borough's open burning ordinance regulation to allow a bonfire on Millersville University's campus during Friday night's homecoming on October 17, 2014. The University has full cooperation from the MU Police Department and the Blue Rock Fire Rescue. Mr. Ostrowski seconded the motion. With no further discussions the motion passed by a unanimous voice vote.

**PERSONNEL COMMITTEE REPORT**

Mrs. Deal made a motion to renew the Police Chief's contract with the same terms for 2015. Mr. Lastowski seconded the motion. Mrs. Deal noted the Chief has received an excellent review by the Mayor. With no discussions the motion passed by a unanimous voice vote.

Mrs. Deal made a motion to fill the vacant part-time park maintenance position with Mr. Jeffrey A. Miller effective immediately. Mr. Lastowski seconded the motion. Mr. Arnold explained that Mr. Boxleitner, Street Department Superintendent is looking to add a second part-time worker as a public works maintenance laborer; however based on further research due to the Borough being self-insured for unemployment compensation, it was decided to wait until the new budget was approved. With no further discussions the motion passed by a unanimous voice vote.

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**PRESIDENT'S REPORT**

President Kirkham presented Council with a resolution to consider supporting an amendment to Act 111 – The Policemen and Firemen Collective Bargaining Act. This resolution states Act 111 reform would inject fairness into the process by requiring costs of arbitration to be split evenly by the parties, balance the influence of the arbitration board, open arbitration proceedings to the public and show ability to pay through justification and consideration of new costs. Mr. Aichele made such a motion, seconded by Mr. Lastowski. With no further discussions the motion passed by a majority voice vote, with Mrs. Miller opposed. Mrs. Miller asked for earlier notification of future supporting resolutions as to have time to do individual research.

**BOROUGH MANAGER REPORT**

Mr. Arnold gave a progress report on the West Frederick Street Phase 2 improvement project. One complete side of the street has finished the curb and sidewalk, thus relieving pedestrian traffic. If the weather stays in their favor the other side should happen this week and street resurfacing next week. This project is wrapping up in time for the Millersville Community Parade.

**EXECUTIVE SESSION**

After a five minute recess, Council broke for an executive session at 8:50 p.m. for legal matters concerning property acquisitions.

**ADJOURNMENT**

There being no further business to discuss, Mr. Lastowski made a motion, seconded by Mr. Aichele to adjourn the meeting at 9:10 p.m. The motion passed by unanimous voice vote.

Respectfully submitted,



Edward J. Arnold  
Borough Manager

EJA/jle



## MEMORANDUM

TO: Millersville Boro Council President, Mike Kirkham  
FROM: Mayor Richard Moriarty  
DATE: 9/1/14  
RE: Veto of Snow Emergency Ordinance

Hopefully you and Millersville Boro Council know me well enough to understand that I take a veto very seriously and in my 11 years as Mayor have only vetoed one other piece of legislation. While that doesn't mean that I agree with every ordinance that you enact it means that I feel very strongly in the separation of duties between Council and the Mayor. (Frankly sometimes I am of the strong belief that Council merely looks at the Mayor as another council member and does not realize that the Mayor has different duties and responsibilities, but that is different and frustrating issue for another time). Despite that, unless I feel a true injustice to our citizens has occurred or if I realize that the legislation is inappropriate or violates PA Boro Code, I sign them despite my personal feelings. To that point, I have been informed that at the 8/26/14 Millersville Boro Council meeting a "*Snow Emergency*" ordinance was enacted. As I had stated both publicly at the July 22, 2014 meeting as well as in a supporting letter from the PA Mayors' Assn President, that I had solicited, I believe that among other things this ordinance is contrary to our primary governing law—the PA Boro Code. Your newly approved ordinance states that the Boro Manager will be responsible for declaring a *snow emergency*. According to information that I had been provided, apparently the Boro Solicitor's opinion was that because it was a snow emergency, involving other boro departments not within the purview of the Mayor's responsibility that this would be permissible. However, among other things I will point out that The PA Boro Code does not differentiate one storm vs. another. The PA Boro Code is clear in Section 10A04 a4-it states:

If the mayor considers that a state of emergency exists, the mayor may issue a proclamation, which shall be in writing and posted in one or more conspicuous places and the contents of

which shall be made available to all news media, declaring a state of emergency for a period not to exceed seven days unless sooner rescinded, modified or ratified or extended by resolution of council.

In addition, nowhere in The PA Boro Code is anyone, (Council President, Boro Manager-no one) authorized to declare an emergency, unless designated so by the Mayor. Let me be clear, this is not about me and what I want or don't want...frankly, in the overall scheme of things the snow emergency ordinance is not a battle that I would normally choose to debate. However, what this is about is the law that governs us...The PA Boro Code...and The PA Boro Code is clear..... in addition it does not delineate the types of storms nor what departments are impacted. Correct me if I am wrong, isn't it fairly clear? Does it not state very clearly that the Mayor is responsible to declare emergencies? Period ...

The ordinance is not in compliance with The PA Boro Code; as such I am informing Millersville Boro Council that I am vetoing this piece of legislation as it stands. In addition, because it is contrary to The PA Boro Code I cannot ask our Police Dept. to enforce any emergency actions that might be declared as a result of anyone other than the Mayor or my designate declaring an emergency.

Again, in not only my opinion, but also the opinion of the PA Mayors Assn this is not a legally enforceable ordinance, and as such I am of the opinion that it would be a waste of taxpayers' time and money to issue tickets only to have them discharged at the District Justice level because they are not enforceable. I might add that as part of my research on this issue I spoke with two district justices (not DJ Keller) who indicated that if the facts are as I stated in that The PA Boro Code clearly indicates that it is only the Mayor or his/her designate that can issue the snow emergency then they would have no choice but to dismiss any citations brought before them.

Furthermore, let me quote the President of the PA Mayor's Assn., Jim Nowalk, Esq. when he says:

"By way of background, the Borough Code, as revised, contains an extensive section on the powers of the Mayor to determine and respond to an emergency. Section 10A06 reads as follows:

**(b) Emergencies.--**

(1) In addition to the power granted to mayors by 35 Pa.C.S. Pt. V (relating to emergency management services) and in order to enable the mayor to effectually preserve the public peace within the borough, the mayor shall have the power to prevent and suppress mobs, riots and unlawful and tumultuous assemblies.

(2) In the event that a state of emergency exists, a mayor shall have the authority to request aid and assistance from law enforcement officers and agencies from a neighboring municipality.

(3) In response to a request of a mayor made in accordance with this subsection, a municipal police officer shall, within the borough from which the request was made, have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of the officer's primary jurisdiction, subject to the limitations and conditions set forth in 42 Pa.C.S. § 8953(b), (c), (d) and (e) (relating to Statewide municipal police jurisdiction).

(4) If the mayor considers that a state of emergency exists, the mayor may issue a proclamation, which shall be in writing and posted in one or more conspicuous places and the contents of which shall be made available to all news media, declaring a state of emergency for a period not to exceed seven days unless sooner rescinded, modified or ratified or extended by resolution of council.

(5) The mayor may prohibit in the proclamation for all or part of the borough:

(i) Any person being on the public streets or in the public parks or at any other public place during the hours declared by the mayor to be a period of curfew.

(ii) The entry or departure of persons into or from any restricted area.

(iii) The sale, purchase or dispensing of any commodities or goods as designated by the mayor.

(iv) The transportation, possession or use of gasoline, kerosene or other combustible, flammable or explosive liquids or materials except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use.

(v) Any other activities as the mayor reasonably believes should be prohibited to help preserve life, health, property or the public peace.

(6) The proclamation shall describe the specific restricted area with particularity and shall specify the hours when restrictions are to be in effect.

(7) A person violating the proclamation of emergency commits a summary offense and shall, upon conviction, be sentenced to pay a fine not to exceed \$300 and costs or to a term of imprisonment not to exceed 30 days.

President Nowalk continues, "There are simply no other comparable provisions anywhere else in the (PA) Borough Code, as revised, which would give any other elected or appointed official the power to declare an emergency other than the Mayor. This can be verified by searching the revised Borough Code for uses of the word "emergency" or "emergencies."

President Nowalk continues, "Dillon's Rule is a principle of municipal law first articulated by Judge Forrest Dillon, who was an American jurist who served on the Iowa Supreme Court and the United States 8<sup>th</sup> Circuit Court in the 19<sup>th</sup> Century and has been adopted by many state courts including Pennsylvania. It states that "municipal governments only have the powers that are expressly granted to them by the state legislature, those powers that are necessarily implied from that grant of power and those that are essential to the municipality's existence and functioning." If this principle is binding upon municipal governments, it is certainly binding upon the elected and appointed officials who run those governments. Under this principle, no elected or appointed official has the express or implied power under the revised Borough Code to declare an emergency other than the Mayor."

"There is strong public policy which supports this opinion. The declaration of an emergency is an *executive act* which often requires a swift analysis of a threat to a community and decisive action to respond to that threat. No elected or appointed official is better positioned to

undertake that responsibility than the Mayor. The Mayor is the only *elected* executive in the Borough. The Mayor is the chief law enforcement officer of the Borough with the specific statutory duties of responding to emergencies and "preserving order in the Borough." The Borough personnel who will most often have the best information regarding the existence and seriousness of an emergency are the Borough police who work 24 hours daily and they report to the Mayor.

Nowak's letter concludes: "In conclusion, the provisions of the Borough Code, as revised, support the declaration of an emergency by the Mayor and no other elected or appointed official. If the PSMA can be of further service to you, please do not hesitate to call upon us."

Not to be forgotten: my other MAJOR concern with this piece of legislation is the community notification. Again, as you may recall, I suggested that Council review options for this technology, either [A] via MUs alert system (if they would permit us to utilize) and/or [B] via a commercial system that other communities, such as Elizabethtown, Marietta, etc. are using. If memory serves me correct I was told by a Council member that the cost was approx. \$950 per year. This system could be used for any number of reasons, just not the snow emergency. Again, in today's age of technology where we have the availability to target message households, I just feel that we owe our citizens this pro-active process service rather than taking a risk that we hope they are watching television. (How many other times could we potentially use this alerting system? I am of the belief that there are several other uses for such a service.)

In summary, I've gone thru great detail to exhibit why this ordinance is both out of compliance with the emergency declaration by the Boro Manager; but also lacking in a community alerting process more in tune with the 21st century. If, however, you believe that we are following or being guided by another law (other than PA the PA Boro Code) please let me know. Perhaps I am missing something...perhaps the President of the PA Mayor's Assn or the Council for the PA Mayors Assn are missing the guiding law...if so, please provide us me that detail. Please inform me about the governing rule of law that we are following and provide me the section so that I can be corrected. If, however, we are following The PA Boro Code and if Council is desirous of abiding by The PA Boro Code then it is my, as well as PA Mayors' Assn and PA Mayors' Council's opinion that the Mayor is solely authorized to enact an emergency and Council, in order to follow the law and Millersville Boro Council should uphold my veto.

