

**MINUTES OF THE REGULAR MEETING
MASSILLON CITY COUNCIL
HELD TUESDAY, FEBRUARY 21, 2023**

COUNCIL PRESIDENT ISTNICK – Welcome to the Massillon City Council Meeting for Tuesday, February 21, 2023. We have in attendance the following City officials: Mayor, Kathy Catazaro-Perry, Asst. Law Director, Edmond Mack, and Economic Development Director, David Maley. Under #5 on the agenda is where the public can speak on any topic that appears on tonight’s agenda and under #17 is where the public can speak on any topic that does NOT appear on tonight’s agenda. I’d like to remind everyone keep your mics off until you’re ready to speak and please, mute your cell phones or set them to vibrate.

COUNCIL PRESIDENT ISTNICK – Roll call.

1. ROLL CALL

Roll call for the evening found the following Council Members present: Jill Creamer, Mike Gregg, Julie Harwig Smith, Ted Herncane, Ed Lewis, Mark Lombardi, Jamie Slutz, and Aaron Violand.

Roll call of 8 present

COUNCIL PRESIDENT ISTNICK – Councilman Lewis.

COUNCILMAN LEWIS – I’d like to make a motion that we excuse Councilman Snee.

COUNCIL PRESIDENT ISTNICK – Seconded by Councilman Lombardi. Roll call.

8 yes to excuse Councilman Snee

COUNCIL PRESIDENT ISTNICK – Thank you, Madam Clerk. Councilman Snee has been excused. Councilwoman Creamer.

2. INVOCATION

COUNCILWOMAN JILL CREAMER

3. PLEDGE OF ALLEGIANCE

LED BY COUNCILWOMAN CREAMER

4. READING OF THE JOURNAL

COUNCIL PRESIDENT ISTNICK – Thank you, Councilwoman Creamer. Madam Clerk are the minutes of the previous meeting transcribed and open for public viewing?

COUNCIL CLERK ROLLAND – Yes, they are.

COUNCIL PRESIDENT ISTNICK – Are there any additions or corrections to be made?

COUNCIL CLERK ROLLAND – No, there are not.

COUNCIL PRESIDENT ISTNICK – Then the minutes stand approved as written.

5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA

GEORGE GLIBA – I just want to make sure that the Tiger Rags situation is under No. 17 on the agenda.

COUNCIL PRESIDENT ISTNICK – He’s asking if it’s on the agenda. He was asking to see if he could get up and talk now.

6. NEW AND MISCELLANEOUS BUSINESS

COUNCIL CLERK ROLLAND – The ALICE Training.

COUNCIL PRESIDENT ISTNICK – You all got the information about the ALICE Training. The different times are going to be March 7th, 1:00p to 3:00p at the Administration Bldg. March 15th, 8:00a to 10:00a at the Rec. Center, Community Room A. March 15th, 12:00p to 2:00p at the Rec. Center, Community Room A and March 7th, 9:00a to 11:00 at the Health Dept. Diane will have a sign-up sheet if anyone is interested, please see her.

7. INTRODUCTION OF ORDINANCES AND RESOLUTIONS

COUNCIL PRESIDENT ISTNICK – Ord. No. 13 – 2023.

ORDINANCE NO. 13 – 2023

BY: STREETS, HIGHWAYS, TRAFFIC AND SAFETY COMMITTEE

AN ORDINANCE to approve the vacation of a portion of South Ave. S.E., Massillon, Ohio, an unimproved 50-foot wide right of way, located north of Harsh Ave. S.E., and running in a westerly direction from 20th St.

COUNCIL PRESIDENT ISTNICK – Councilman Violand.

COUNCILMAN VIOLAND – Thank you, President Istnick. Mr. Snee asked that I request that this be given first reading tonight. Thank you.

COUNCIL PRESIDENT ISTNICK – Thank you, Councilman Violand. Ord. No. 13 – 2023 has received first reading. Ord. No. 14 - 2023

ORDINANCE NO.14 – 2023

BY: FINANCE COMMITTEE

AN ORDINANCE making certain appropriations from the unappropriated balance of the 1233 Municipal Court Computer Fund, for the year ending December 31, 2023, and declaring an emergency.

COUNCIL PRESIDENT ISTNICK – Councilman Lewis.

COUNCILMAN LEWIS – Yes. This is an appropriation of \$25,052. It's within the Municipal Court and related to a State Grant that they have received. Are there any questions or discussion this evening? Seeing none, I make a motion that we suspend the rules requiring three readings, bringing Ord. No. 14 – 2023 forward for a vote.

COUNCIL PRESIDENT ISTNICK – Seconded by Councilman Lombardi. Roll call for suspension.

8 yes for suspension

COUNCIL PRESIDENT ISTNICK – And for passage.

8 yes for passage

COUNCIL PRESIDENT ISTNICK – Thank you, Madam Clerk. Ord. No. 14 – 2023 has passed.

8. UNFINISHED BUSINESS

9. PETITIONS AND GENERAL COMMUNICATIONS

A Transfer of a Liquor License from HIMAL Petroleum LLC, DBA Prime Station, located at 804 Wales Rd. N.E., Massillon, Ohio 44646 to KPRP LLC, located at 804 Wales Rd. N.E., Massillon, Ohio 44646. Permit Classes are C1 and C2 and is located in Ward 1.

COUNCIL PRESIDENT ISTNICK – Councilman Lombardi, did you receive information on this?

COUNCILMAN LOMBARDI – Yes, I have, President Istnick.

COUNCIL PRESIDENT ISTNICK – Thank you.

An Economic Transfer of a Liquor License from SLZ, Inc., DBA Sahara Grille, located at 4794 Dressler Rd. N.W., Canton, Ohio 44718 to Tlaquepaque of Massillon, LLC, located at 101 Massillon Market Place, Massillon, Ohio 44646. Permit Classes are D1, D2, D3 and D6 and is located in Ward 4.

COUNCIL PRESIDENT ISTNICK – Councilwoman Creamer, did you get information on this?

COUNCILWOMAN CREAMER – Yes, I did.

COUNCIL PRESIDENT ISTNICK – Do you know how to pronounce that word?

COUNCILWOMAN CREAMER – No, I do not.

COUNCILMAN SLUTZ – Ta-lucky-packy.

COUNCIL CLERK ROLLAND – Thank you.

10. BILLS, ACCOUNTS AND CLAIMS

Bonnie's Engravers	-	\$ 167.00	Name Plates and Hand Stamp
First Commonwealth Bank	-	156.06	Clock, Headset and Postage
US Bank Equipment Finance	-	<u>133.35</u>	February Payment for Copier
Total	-	\$ 456.41	

COUNCIL PRESIDENT ISTNICK – Councilman Lewis.

COUNCILMAN LEWIS – I make a motion to pay the bills.

COUNCIL PRESIDENT ISTNICK – Seconded by Councilman Gregg. Roll call.

8 yes to pay the bills

COUNCIL PRESIDENT ISTNICK – Thank you, Madam Clerk. The Clerk will pay the bills and charge them to their proper accounts.

11. REPORTS FROM CITY OFFICIALS

Mayor's Report - January 2023

12. REPORTS OF COMMITTEES

COUNCIL PRESIDENT ISTNICK – Our next Work Session will be Monday, February 27, 2023, at 6:30 p.m.

13. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS

COUNCIL PRESIDENT ISTNICK – Councilman Slutz.

COUNCILMAN SLUTZ – Thank you. I'd like to have a Health and Welfare Committee meeting on March 6, 2023, at 5:30 p.m. I'd like to invite Frank Silla so we can address some of the building code ordinances with him and his department.

COUNCIL PRESIDENT ISTNICK – Okay. Anyone else have anything? Mayor?

MAYOR CATAZARO-PERRY – Good evening, Madam President, Members of Council. For my report this week, the only thing I wanted to share with you is the nomination form is out for City employees, Veterans of the Year, Student of the Year. Diane, I can leave this with you if you'd like to share it with everyone. The breakfast will be April 21st at St. George's Social Hall. Thank you.

COUNCIL PRESIDENT ISTNICK – Thank you, Mayor.

14. CALL OF THE CALENDAR

15. THIRD READING ORDINANCE AND RESOLUTIONS

16. **SECOND READING ORDINANCES AND RESOLUTIONS**

RESOLUTION NO. 3 – 2023

BY: COMMUNITY DEVELOPMENT

A RESOLUTION reversing the decision of the Massillon Board of Zoning Appeals in the Variance Case No. 2023 – 1.

COUNCIL PRESIDENT ISTNICK – Councilwoman Creamer.

COUNCILWOMAN CREAMER – Thank you, Madam President. This request is to reverse the decision of the Massillon Zoning Board of Appeals made on January 12, 2023. This request is to operate a home-based occupation of licensed massage therapist at 300 Taggart Ave. N.E., Massillon, Ohio. Parcel # 612447 in a R-3 Single Family zoned district. The appeal was filed with the Clerk of Council on January 17, 2023. We had a public hearing this evening at 5:30 p.m. and we heard a lot of statements by individuals this evening and I just want to thank everyone for sharing their comments with us and for Jennifer McConnell for the work that she does for our community. In addition to that, we all received copies of Chapter 1180 – Home Occupations and Incidental Residential Uses. So the intent is to “establish regulations which will permit home occupations and other incidental residential uses in a manner which will preserve the peace, quiet and tranquility of residential neighborhoods and to insure the compatibility of uses permitted within the same zoning district. Home occupations will particularly benefit individuals with physical disabilities as well as those having to care for children or the elderly within the home. There are also potential benefits to the local community to be realized by those seeking services or goods, supplies through home occupations and other incidental residential uses. However, these positive benefits must be weighed against the potential impact of such uses on the residential character of the neighborhood”. I had some questions that we did not get to ask during the public hearing that I really need clarification on the request and the background of this business. So, I would like to bring up Ms. Jennifer McConnell and have Council ask any questions that you may have regarding her request.

COUNCIL PRESIDENT ISTNICK – Jennifer, if you could come forward to this microphone.

EDMOND MACK – You’re still under oath, Ms. McConnell.

JENNIFER MCCONNELL – Yes sir. Good evening.

COUNCILWOMAN CREAMER – I’ll start off with asking you, your one child that you mentioned, your nine-year old; he attends Whittier Elementary?

JENNIFER MCCONNELL – Yes ma’am.

COUNCILWOMAN CREAMER – Does he attend school five days a week?

JENNIFER MCCONNELL – Yes.

COUNCILWOMAN CREAMER – Throughout the entire day?

JENNIFER MCCONNELL – Yes.

COUNCILWOMAN CREAMER – Okay. Also you mentioned your husband is a truck driver. Does he work full-time as a truck driver?

JENNIFER MCCONNELL – He works four tens.

COUNCILWOMAN CREAMER – So he is full time as a truck driver?

JENNIFER MCCONNELL – Yes ma'am.

COUNCILWOMAN CREAMER – Okay. Does any other Council Members have questions? I have additional questions to ask, but I want to open it up for those that have questions also. Anyone have questions?

COUNCIL PRESIDENT ISTNICK – Councilman Gregg.

COUNCILMAN GREGG – I don't have questions for Ms. McConnell, but I will have, perhaps, questions for other individuals. If that's allowed. But, I'll do it when you're done.

COUNCIL PRESIDENT ISTNICK – Councilwoman Creamer.

COUNCILWOMAN CREAMER – Then I'll continue since Ms. McConnell is up here. When you worked out of Dr. Kotnick's office, how many years did you work in that office?

JILL MCCONNELL – Seven and a half.

COUNCILWOMAN CREAMER – And what were the hours that you worked in that office and how many days a week?

JILL MCCONNELL – Tuesday through Friday when I first started with her. I did see some clients on Saturdays with the approval of Dr. Kotnick herself to be in the office.

COUNCILWOMAN CREAMER – And what were your hours?

JENNIFER MCCONNELL – They flexed on a Saturday to appointment only. I've never taken walk-ins. It's always been by appointment only.

COUNCILWOMAN CREAMER – What about during the week? Did you work, I know currently based on your hours, you're working about thirty-eight hours a week.

JENNIFER MCCONNELL – Yes ma'am.

COUNCILWOMAN CREAMER – Were you working those same hours when you were at the doctor's office?

JENNIFER MCCONNELL – Yes.

COUNCILWOMAN CREAMER – Okay. And when you purchased your home here in Massillon, did you understand that in order to proceed with a home business you would need a permit in order to operate?

JENNIFER MCCONNELL – I'm sorry, ma'am.

COUNCILWOMAN CREAMER – In order to operate a home business, did you understand that we have ordinances permitting or not permitting home businesses based on what's granted through our Ordinance 1180?

JENNIFER MCCONNELL – When I purchased my home I did not purchase it to open a business there.

COUNCILWOMAN CREAMER – Yeah, but did you realized that we have ordinances that would possibly prohibit home businesses unless you have a permit?

JENNIFER MCCONNELL – No ma'am.

COUNCILWOMAN CREAMER – Thank you. That's all I have.

COUNCIL PRESIDENT ISTNICK – Councilman Gregg, did you say you questions?

COUNCILMAN GREGG – Well, yes, but I don't know if anybody that can answer them is here. My interest is in the Zoning Board of Appeals and if there's anybody from there, from that Board here, that can answer as to why this was a unanimous decision to deny the variance? Or any other individual that has firm knowledge of that.

COUNCIL PRESIDENT ISTNICK – Jennifer, we're done with you.

JENNIFER MCCONNELL – Thank you.

EDMOND MACK – Thanks. I know the transcript's a part of the record and testimony was presented by the Zoning Inspector Official, Mr. Johnson. But, as to the actual rationale beyond what's expressed in the transcript, I don't know that we'd be able to have anybody in here to answer questions as to their thought process. Just like once Council makes their decision, judges are subject to questions as to why they decided a certain way and neither would you guys. But, I don't know that we have anything else of what's in the transcript.

COUNCILMAN GREGG – Thank you, Mr. Mack. I did read the transcripts and that's why I was asking. I didn't see anything in there that gave any rationale for the decision to not grant and I think there should be some there that, you know, we have zoning in place for reasons. We have a Zoning Board of Appeals in place for particular reasons and I, generally, put a lot of weight on those individuals and what they're assigned to do or asked to do as part of the community. I'd like to know why this, tonight and even reading transcripts in tonight's hearing of what we've heard this evening in the meeting, is a great deal of positive reasons to have that business located where it's located. I've not heard very much if anything at all as to a negative. I know there's a gentleman that's expressed that he didn't like the fact that it was there; it wasn't part of a community; they weren't part of the neighbors, per se, but as far as exact negative impact, I'd like to know what the exact negative impact that community, on that neighborhood is, to have this business located there. I'm not sure anybody can answer that, but that's my thought process. Thank you.

COUNCIL PRESIDENT ISTNICK – Councilman Lewis.

COUNCILMAN LEWIS – What I’m wrestling with, at the moment in making this decision, is making a decision based off of the laws and the rules that we currently have that govern our community and not based on the emotional reactions that we may feel. So, we do know there may be a lot of good that comes from this service for many people and while that may garner some empathy from us as we all enjoy seeing good for others; that is not what we are charged with. We are charged with making sure that the laws that are in place in this community are being upheld and if there is to be a variance, it is done so in a legal and reasoned manner. In particular, this one is a use variance and we have to look at what is allowable for the use variance. In this particular case, we’d be looking at if there’s any undue hardship placed on the property owner if the variance is not granted and considering that this property is a residential home in a residential community that was resided in for well over three years prior to the business being placed inside of it, I think that is providing us evidence that there is no undue hardship because the property was providing its stated purpose for multiple years prior to. Additionally, one of the things that I find very compelling is that the registration of this business was originally denied by our Code Enforcement Building Dept. and the continuation of a commercial enterprise out of the property was still went forward with, even though an initial denial was already granted and while I appreciate transparency, it still does have an air of “You were told you could not do this and you did so anyways” and that is how we get to this. So, my decision is leaning towards the fact that we were initially denied and we still went forward and two, I do not see any undue hardship based on the current usage of the property because it still serves its original purpose of a residential location.

COUNCIL PRESIDENT ISTNICK – Councilman Lombardi.

COUNCILMAN LOMBARDI – Thank you, President Istnick. I would echo what Councilman Lewis has said. Even though we didn’t hear from many opposed here tonight, I have heard from several opposed to this. Our zoning laws are in place for a reason and it’s to protect our neighborhoods and that’s protecting the serenity of this neighborhood right now and the people who have owned their homes, who purchased their homes and have been there for years and even the people who haven’t been there for years, they deserve to have the neighborhood that they chose to live in without businesses opening up in it. And as far as I’m concerned, when we start looking at zoning variances; in case, we’re not asking to put a fence up around somebody’s yard or put a tool shed in their backyard. We’re asking for this property to now be able be used as a business. So, where do we draw the line? If a psychologist moves into the neighborhood, can he open his business there? If a mechanic moves into the neighborhood, can he use his property for his business? And so on and so forth. I think that our zoning laws were put in place for a reason and we do need to back those laws and back those reasons. Like I said, they’re for the protection of the other residents.

COUNCIL PRESIDENT ISTNICK – Councilman Herculane.

COUNCILMAN HERNCANE – Thank you, Madam President. I agree with Mr. Lewis and Mr. Lombardi. I’m not sure that there’s an undue hardship here. Mr. McConnell works forty-hours a week as a truck driver, Mrs. McConnell’s son attends Whittier School, so he’s gone eight to nine hours a day. I think that it’s basically a choice and a preference, whether to save money from renting a retail location or just a convenience thing. I think there certainly is time for her and it is appropriate for her to have a for-profit LLC business in a retail commercially zoned district, not in a residential district. This is not similar to teaching or music instruction as exempted by the code. Those are more than likely not for-profit businesses. I think this move was to do this at home. It was purely for family and personal reasons and frankly, I think it’s a

little selfish for the neighbors who have had to deal with thirty-two cars a week ranging over a twelve-hour period as late as 9:00 p.m. I sympathize with her plight and I have no doubt that she does good work and I appreciate the folks that came in to testify on her behalf. I'm pretty competent that they will come to see her and utilize her services when she does have like she had before, a commercially zoned office where appropriate in the City or outside of the City. I will be voting "no" on this and I hope we suspend the rules to resolve this this evening. Thank you.

COUNCIL PRESIDENT ISTNICK – Anyone else? Councilwoman Creamer.

COUNCILWOMAN CREAMER – Thank you, Madam President. So, at this time, I would like to make a motion to waive the rules requiring three readings for Resolution No. 3 – 2023 and move forward with a vote.

COUNCIL PRESIDENT ISTNICK – Seconded by Councilman Lewis.

COUNCILWOMAN CREAMER – But prior to taking the vote, I just want to clarify with this request a "yes" vote is that you are reversing the decision Zoning Board of Appeals and allowing Ms. McConnell with her home-based licensed massage therapist business and a "no" is not reversing the decision of the Massillon Zoning Board. Thank you.

COUNCIL PRESIDENT ISTNICK – Roll call for suspension.

8 yes for suspension

COUNCIL PRESIDENT ISTNICK – And for passage.

6 nos; 2 yes – Harwig Smith and Gregg voted "yes"

COUNCIL PRESIDENT ISTNICK – Thank you, Madam Clerk. Res. No. 3 – 2023 has been defeated.

17. **REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS NOT ON THE AGENDA**

GEORGE GLIBA – I live at 222 Lake Ave. N.E., Massillon, Ohio. I am a taxpayer and I do own a small business as well. I wanted to weigh in on the Tiger Rags situation because last week's discussion was a real good discussion. Everyone was talking about it and the amendment is what we're trying to figure out a percentage and I had a week to think about it and the way I thought about was that if you're going to amend it and fix this situation with a 60% lien or a 100% lien or whatever the percentage is, some people might be on the fence and say, well 60% is kind of steep, or 0%, that's not enough. Even Aaron had said something about like a new owner coming in and not taking care of their property and if was to get demolished or whatever and the grant money, if they're not taking care of their property. Frank was in there to survey the situation and maybe saying it needed fix or whatever. So, what I was thinking of was why isn't there a criteria like from 100 to 0 in 20% increments; if you're going to amend this rule of the law. Because I think this guy at the Tiger Rags store has been there forty years. How many jobs did he create? Put \$40,000 in it. Paid his taxes. He did all of this stuff for this building and you guys want to slap a lien on it? How is that business running? That's what I'd like, the five people that voted "no" to tell me how that's business-friendly. The guy's done everything he could for this building and for the community. If you

want to slap a lien on money that was given to him through a grant, you want to step in and impose a lien, I just don't get that. I mean, in certain situations, yeah. I mean you got these other two buildings down here that were torn and the City's on the cost for that for a couple of hundred thousand. So, they slapped a lien on it so they can get their money back. I get that. But, we don't know the future and how that's going to play out. That could sit there empty for a long period of time. So, what I'm trying to say is, furthermore, you had a buyer for the property and another business is going to come in there. But, that's what I was trying to emphasize. Maybe a criteria of the longevity of the business. Did they take care of the property? Did they pay their taxes? Do they do the upkeep? So, that's what I wanted to try to convey to this Council that I don't think they should pay anything. Zero. And then throughout your discussion next, because I've been coming up here, I'd like to know how that's business-friendly. I mean, forty years, a staple to the community and then you want to slap a lien on his property. I just want to know how that's business-friendly and say, "Hey, bring in your business, we'll take care of you". And let something happen and we're going to slap a lien on you. Overreach is what I think it is. Government overreach. That's all I got to say. Thank you.

COUNCIL PRESIDENT ISTNICK – Thank you, George. Anyone else?

GAYLE DANZY – I live at 2014 Tennyson Ave. N.E., Massillon, Ohio. I just wanted to come back and ask Council to reconsider something that I brought up a long time ago. With buildings being torn down, would Council please consider forming some legislation that would stop people from renting properties that are already under standard. Because I see now that one of the properties that was reviewed by the City and is understood that it's still up for rent. So, I believe the legislation can be written by the Council that would say that in the City of Massillon, we will not allow slum landlords to rent to anybody. So, I'm just asking that you would reconsider doing something about that. And then you won't be up against tearing down buildings that you're putting liens on that you'll never receive the money for and you know that because possibly, or not possibly, in the past one of the landlords, and I'll say it again, burnt down a building, went to prison, came back and still owns half of Massillon. So, when you put the lien on their property, they're never going to pay you anything and I think all of you know that. So, would you reconsider doing legislation so that they cannot rent to the citizens of Massillon their slum property. Thank you.

COUNCIL PRESIDENT ISTNICK – Thank you, Gayle. Anyone else?

18. ADJOURNMENT

COUNCIL PRESIDENT ISTNICK – Councilwoman Creamer.

COUNCILWOMAN CREAMER – I make a motion to adjourn.

COUNCIL PRESIDENT ISTNICK – Seconded by Councilman Herncane. Roll call.

8 yes to adjourn

COUNCIL PRESIDENT ISTNICK – Meeting adjourned.

DIANE ROLLAND, COUNCIL CLERK

CLAUDETTE ISTNICK, PRESIDENT