

REGULAR MEETING OF THE COUNCIL OF THE VILLAGE OF SILVER LAKE

Tuesday, January 19, 2010

7:00 p.m.

The Village of Silver Lake Council met in an regular session on Tuesday, January 19, 2010, at Silver Lake Village Hall, 2961 Kent Road, Silver Lake, Ohio.

With Mr. Gerald Jones, President of Council presiding, the meeting was called to order at 7:00 p.m.

Mr. Jones led the Pledge of Allegiance.

The following members were present and responded to roll call: Mr. Christopher Scott, Mr. Gerald Jones, Mrs. Fuller, Mrs. Janie Geis, Mr. Rich Hite, Mr. Gerald Budrevich, and Mrs. Carol Steiner.

Roll call of Council - 7 members present.

Mr. Jones asked if there were any additions or corrections to the minutes of the January 4, 2010, Council meeting.

There being none, the minutes were approved as submitted.

Mr. Jones asked Mrs. Teresa Spohn, Clerk-Treasurer, for the reading of any pending legislation that is up for a first reading.

ORDINANCE NO. 7:2010 AN ORDINANCE AMENDING PART ONE-ADMINISTRATIVE CODE, CHAPTER 139-EMPLOYMENT PROVISIONS, BY REPEALING SECTION 139.02 (h) -VACATION FOR REGULAR PART-TIME EMPLOYEES, SECTION 139.12 (a)- SICK LEAVE ACCRUAL FOR REGULAR PART-TIME EMPLOYEES, SECTION 139.12(o) SICK LEAVE CREDIT FOR PREVIOUS GOVERNMENTAL SERVICE, 139.12(s) -SICK LEAVE PERSONAL DAY INCENTIVE AND SECTION 139.03(d)-HOLIDAY TIME FOR REGULAR PART-TIME EMPLOYEES, AND BY AMENDING SECTION 139.04 (a) -RETIREMENT COMPENSATION OR LEAVE, OF THE CODIFIED ORDINANCES OF THE VILLAGE OF SILVER LAKE, OHIO AND HEREBY ESTABLISHING AND SUBSTITUTING NEW SICK LEAVE PROVISIONS FOR EMPLOYEES, AND DECLARING AN EMERGENCY.

Mr. Jones assigned Ordinance No.: 7-2010 to the Personnel and Public Affairs Committee.

RESOLUTION NO.: 8-2010 A RESOLUTION CONFIRMING THE MAYORAL APPOINTMENTS OF DAVID BARSTOW, MICHAEL LYONS AND ROBERT ZIMMERMAN AS MEMBERS OF THE SILVER LAKE PARK BOARD FOR THE TERMS ENDING DECEMBER 31, 2013 AND DECEMBER 31, 2011, RESPECTIVELY, AND DECLARING AN EMERGENCY.

Mr. Jones assigned Resolution No.: 8-2010 to the Personnel and Public Affairs Committee.

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ORDINANCE NO.: 9-2010 AN ORDINANCE TO IDENTIFY AND PROSCRIBE THE KEEPING AND BEHAVIOR OF VICIOUS AND DANGEROUS DOGS IN THE VILLAGE AND PROVIDE FOR THE ENFORCEMENT THEREOF, AND DECLARING AN EMERGENCY.

Mr. Jones assigned Resolution No.: 9-2010 to the Personnel and Public Affairs Committee.

RESOLUTION NO.: 10-2010 A RESOLUTION AUTHORIZING THE PAYMENT OF CERTAIN CLAIMS. \$ 163,598.98

Mr. Jones assigned Resolution No.: 4-2010 to the Finance and Appropriations Committee.

Mr. Jones asked if there were any questions or comments from anyone in the audience.

Mr. Thomas Hart, 3143 Highland Drive spoke to Council about a large loose dog attacking his smaller dog tied up in his back yard. The owner of the dog was cited under Village ordinances and paid a fine. A similar occurrence happened and the same dog owner was cited under the County ordinances with the same result. He commended Council for putting together something so quickly. Mr. Hart stated on Page 2 of the Village's new legislation, a vicious dog is defined as one that has killed or caused physical harm to any person or has killed a domestic animal. He asked that it be amended to include an attack with the intent to kill.

Mr. Hart would also like to see regulations that a person who owns a dangerous or vicious dog should have to show proof of liability insurance. He is also concerned about having to go back to square one when the new ordinance is adopted for a dog that has already attacked twice.

Mr. Bill Poloski, 3106 Athens Road, stated he was walking his dog in the park. A fellow with a bull mastiff (150 lb. dog) walked near him. The bull mastiff proceeded to grab Mr. Poloski's 16 pound dog. Fortunately the bigger dog grabbed the smaller dog on either side of his chest. Mr. Poloski jumped on the back of the bull mastiff to try and get the larger dog to release his dog. Mr. Poloski stated the whole "adventure" cost him \$130 for his dog and \$500 for himself to get medical attention for his fingers. He stated dangerous dogs need to be muzzled.

Mr. Jones thanked both men for coming to the meeting and expressing their concerns.

COMMITTEE HEARINGS

Mr. Jones called upon Mr. Christopher Scott, Chairman of the Finance and Appropriations Committee, to lead discussion on items on the agenda pertinent to his committee.

FINANCE AND APPROPRIATIONS COMMITTEE

Mr. Scott asked for any comments and questions on Resolution No.: 10-2010, Payment of Claims.

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There being none, Mr. Scott stated the committee will recommend the adoption of Resolution No.: 10-2010 at this evening's meeting.

- GBC Design Inc. was paid \$20,433.66 for engineering services related to the Kingston/Orchard Sanitary Sewer Project.

Mr. Jones called upon Mrs. Fuller, Chairman of the Personnel and Public Affairs Committee to lead discussion on legislation listed on the agenda pertinent to her committee.

PERSONNEL AND PUBLIC AFFAIRS COMMITTEE

Ordinance No.: 9-2010 identifies and proscribes the keeping and behavior of vicious and dangerous dogs in the Village and provide for the enforcement thereof. Mrs. Fuller asked Mr. Heydorn, Village Solicitor, for his comments on the ordinance.

Mr. Heydorn stated he looked at various ordinances of municipalities in the county, including Summit County's ordinances. A comparison was made and a conclusion was made that the City of Cuyahoga Falls ordinance was the most restrictive on the issue of dangerous and vicious dogs. It is an ordinance which seems to be painstakingly written. The ordinance addresses all due processes involved in labeling a dog dangerous or vicious. The penalties imposed are rather severe and also provides police with the authority to impound a dog that is extremely dangerous and the court, to order its destruction, if necessary.

In terms of the ability to address due process, the ordinance sets up a Board consisting of the Village Solicitor, or designee, and a member from the health department and animal protective authorities to determine whether or not the individual dog is to be classified as dangerous or vicious. The decision of the Board is subject to further appeal, but in the end, once the dog is classed as dangerous or vicious, the owner is required to do certain things – the dog must be kept on a short leash when walked and must be muzzled. Or the dog can be kept inside all of the time. Or it can be kept in a pen which has certain construction requirements including its foundation, type of fence and size.

Mr. Heydorn stated that in addition to classifying the dog as dangerous or vicious is pretty much one and the same. Except that a vicious dog has a greater insurance requirement and the owner has greater financial responsibility. Definitions of both dangerous and vicious dogs have been included in many ordinances Mr. Heydorn has reviewed. Some time ago there was debate about pit bulls which really started the creation of dangerous/vicious dog ordinances in communities. Since that time, the categorization of certain types of breeds as dangerous or vicious has fallen on some disfavor. Assumptions were made that could be scientifically valid or invalid. The ordinance Council is considering is based solely on behavior.

Mr. Jones asked if Ordinance No.: 9-2010 was taken right out of Cuyahoga Falls' ordinance.

Mr. Heydorn stated the content of it was.

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Mr. Scott questioned the word “property” used in Section (gg) on Page 6 which stated “Nothing within this section shall be construed to prevent a law enforcement officer from seizing or destroying an animal which presents an immediate risk of physical harm to any person or property” He wondered what is meant by property.

Mr. Heydorn stated it could be another dog.

Mr. Scott stated maybe, then, it should say that, or “any domesticated animal”.

Mr. Scott observed Section (w) and Section (z) say the same thing.

Mr. Heydorn responded that violations ((y) and (bb) respectively) of each of those Sections have different penalties. He determined they are different situations.

Mr. Budrevich suggested lining out the word “property” in Section (gg). He stated he understands what Council is trying to do, but what if the little dog charges the big dog? A police officer arrives on the scene and sees a little dog on a big dog and he shoots the big dog. How is an officer supposed to know?

Mr. Scott stated his concern is someone determining that a dog is approaching someone in a “menacing fashion.” Mr. Scott asked if he was walking his 70 pound dog and he gets a little “grrrr” someone might think he is menacing. But all he wants is to be petted by people. If someone takes that as a “menacing dog” does he have to go through the whole procedure to prove that his dog isn’t a menacing dog. “I want to handle the problem, but I don’t want to make it so easy for any dog in the Village to be labeled as a menacing dog.”

Mr. Budrevich stated that any “cat” person would think a dog is menacing. He asked if the dog previously discussed by the two Village residents would be considered dangerous now that it has attacked on two different occasions.

Mr. Heydord stated “You should certainly think so.” It’s obviously up to the Board to convene after it is referred in an appeal from the police department’s determination.

Mr. Budrevich stated he is unsure about striking out the whole section dealing with other types of dangerous animals. He grew up in a neighborhood where a guy had a puma which got out more than once. Scratching the keeping dangerous animals and livestock out is of great concern.

After some discussion, Council would like to leave the exotic animals in the ordinance somewhere.

Mr. Heydorn stated that section could be preserved as is and exclude dogs, and then just simply keep Ordinance No.: 9-2010 pertaining to dogs only.

Mrs. Geis stated she was concerned about what would compose an “apparent attitude of attack.” Dogs will be dogs. They run up to people barking and then stop.

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Mr. Heydorn stated if the Police Chief makes a determination based upon whatever behavior it was, then if the owner thinks that he's wrong, it is appealed to the Board. The Police Chief would have to show a preponderance of evidence to the Board. The procedure builds in procedural safeguards. It builds in a lot of due process.

Mr. Jones asked if an Animal Board is in place now.

Mr. Heydorn stated "No, but it would certainly be put in place."

Mrs. Fuller suggested that a Board should be put in place when the ordinance is adopted.

Mr. Budrevich stated he thinks Council needs to put a little more review into this matter.

Mrs. Steiner agreed.

Chief DeMoss stated there is a big difference between an aggressive dog, a vicious dog and a dangerous dog. All of this needs to be sorted out and everyone needs to be comfortable with it.

At 7:40 p.m. Mrs. Fuller stated Council has spent a lot of time discussing this issue and offered the committee will recommend no action be taken at this evening's Council meeting. She also suggested that a Board be in place or at least have made overtures to people willing to sit on the Board when this legislation is adopted.

Mrs. Fuller moved discussion to Resolution No.: 8-2010 which confirms the Mayor's appointments of David Barstow, Michael Lyons and Robert Zimmermann as members of the Silver Lake Park Board for certain terms.

Mayor Hovey stated Mr. Barstow and Mr. Zimmermann have both served on the board already and have agreed to serve another term. Mr. Lyons contacted the Mayor and stated he would be interested in serving on the Park Board. He is anxious to make a contribution to the Village.

Mrs. Fuller stated the committee will recommend the adoption of Resolution No.: 8-2010 at this evening's Council meeting.

Ordinance No.: 7-2010 amending certain provisions of employee benefits is a result of discussion taken place at a committee meeting held last Monday, January 11, 2010. The legislation eliminates vacation, paid holidays and sick time for part-time employees, eliminates sick time credit from previous governmental service, eliminates the incentive personal day for not using sick time, and freezes the bonus day for each year of service paid at retirement and eliminating that benefit for future employees.

Mrs. Fuller asked if there were any additional comments.

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Mr. Heydorn stated everything that he has read indicates that state law in regards to sick leave is not only applicable across the board to all employees of the municipality as a minimum, but also to part-time employees.

Mrs. Fuller asked if Council could just amend the ordinance.

Mr. Heydorn stated Section 4 could be dropped.

Mrs. Spohn stated many municipalities do not offer part-time employees sick time.

Mr. Heydorn stated that what he has read may be only part of the existing authority. Based upon what he has read so far, there is a problem and at this point in time it is better to at least drop this section from this ordinance.

Mr. Budrevich asked what Council has control over.

Mr. Heydorn answered vacation.

Mrs. Fuller asked Mr. Heydorn if only Section 4 (a) of the ordinance needs to be dropped.

Mr. Heydorn stated Section (o), Previous Governmental Service is also covered under State law. Previous governmental service must be granted for purposes of sick leave.

Mrs. Fuller asked if it could be kept at the current minimum of 600 hours.

Mr. Heydorn stated he believes it is unlimited.

Mr. Jones suggested that Council will probably not pass the legislation at this evening's Council meeting adding that a Personnel and Public Affairs Committee meeting has already been scheduled for 5:30 on Monday, February 1, 2010. He asked Mr. Heydorn to attend that meeting.

Mrs. Fuller asked if the elimination of the incentive personal day would be permitted.

Mr. Heydorn responded that it would be permitted. Also granting of service credit for vacation purposes for previous governmental service is required.

REPORTS OF COUNCIL STANDING COMMITTEES

Finance and Appropriations Committee - Mr. Christopher Scott, Chairman

Mr. Scott stated Resolution No.: 10-2010, Payment of Claims, was discussed in Committee earlier this evening and is ready for adoption.

Mr. Scott moved to adopt Resolution No.: 10-2010, seconded by Mrs. Fuller.

Roll call on adoption: Yes 7 No 0

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Personnel and Public Affairs Committee, Mrs. Karen Fuller, Chairman

Mrs. Fuller stated Resolution No.: 8-2010 was discussed in Committee earlier this evening and is recommended for adoption.

Mrs. Fuller moved to suspend the rules for the second and third readings of Resolution No.: 8-2010, seconded by Mrs. Geis.

Roll call on adoption: Yes 7 No 0

Mrs. Fuller moved to adopt Resolution No.: 8-2010, seconded by Mr. Scott.

Roll call on adoption: Yes 7 No 0

Mrs. Fuller stated Ordinance Nos. 7-2010 and 9-2010 had their first readings earlier this evening.

REPORTS OF VILLAGE OFFICIALS

Mayor Hovey reported the Village has had three residents and one Service Department employee go through the Tree Commission Academy and are graduating Monday, February 22, 2010. Mayor Hovey plans on attending the ceremony for Marcia Mandala, Michelle Burgess, Bob Zimmermann and Ben Gregory.

Mayor Hovey stated he received a letter of commendation from the Cuyahoga Falls Fire Department for Sgt. Kennemuth's actions at a fire on Silver Lake Boulevard on January 1, 2010.

Mayor Hovey reported there is a vacant position for District C on the Citizens Housing Committee and an at-large position on the Board of Zoning Appeals. He asked Council for any recommendations of people who may be qualified and interested in filling the positions.

Also, Mayor Hovey invited everyone to attend a fundraiser where he will be a celebrity waiter.

Mr Heydorn, Village Solicitor, had no further report.

Chief DeMoss reported he is working with Redflex for the installation of cameras discussed in previous meetings. There is data that needs to be collected and forwarded to the company and eventually Council will need to adopt legislation to carry the project forward.

Mr. Richard Fenwick, Service Director, reported there were again three recent water breaks: He has run out of a stockpile of certain repair materials and parts and will be ordering replacement inventory soon.

Mrs. Spohn, Clerk-Treasurer, had no report.

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OTHER BUSINESS:

The next meeting of the Public Improvements/Finance & Appropriations Committees to further discuss the Capital Plan was scheduled for Tuesday, February 16, 2010 at 6:15 p.m.

Mr. Jones reminded everyone there is a Personnel and Public Affairs/Finance Committees meeting scheduled for Monday, February 11, 2010, at 5:30 p.m.

The meeting was adjourned at 8:05 p.m.

APPROVED:

Mr. Gerald Jones, President of Council

ATTEST:

Teresa M. Spohn, Clerk-Treasurer