

**City Council Meeting**  
Of the City of Palos Hills  
**Held Thursday, April 2, 2009**  
City Hall Council Chambers  
10335 S. Roberts Road  
Palos Hills, Illinois 60465

- 1) **CALL TO ORDER:** Mayor Bennett called the City Council Meeting to order at 7:00 p.m.
- 2) **PLEDGE TO THE FLAG:** Mayor Bennett led everyone in the Pledge to the Flag.
- 3) **ROLL CALL:** Upon roll call the following Aldermen responded as present: Knox, Brachman, Hanson, Marrotta, Kleefisch, Stratton, Pasek, Moore, Williams

**ABSENT:** Schultz

- 4) **QUORUM:** Mayor Bennett declared a quorum was present.

- 5) **READING OF THE PREVIOUS MEETING MINUTES:**

Ald. Kleefisch, I MOVE to approve the City Council Meeting Minutes dated March 19, 2009 as presented. SECONDED by Ald. Moore. Upon roll call the following Ald. voted:

AYE: Brachman, Kleefisch, Stratton, Pasek, Moore, Williams, Knox

ABSTAIN: Marrotta

ABSENT: Schultz

NAY: None

**MOTION CARRIED.**

- 6) **CITIZENS PETITION:** None

- 7) **CITIZENS HEARING:**

Ed Stackra, I have been a citizen of Palos Hills since 1979 and a Senior Member of the New Horizons Club, which meet at the Community Center every other Wednesday. At every meeting the Flag is tucked in the corner and I made countless times to move the flag to the speaker and I was advised to come here. I am willing to pay for a bracket that would be posted on the north wall so that we could put the flag there so it is obvious to everyone who attends the meetings.

Mayor Bennett, it is not a major problem we can move it back.

Tod Selke who is the current President of the Palos Hills Baseball Association asked for the City's support of their organization. He spoke of the many changes that have taken place with the organization.

He thanked the City for the opportunity for letting them run the pull-tabs at the Festival last year. He stated the city paid for the tent. But this year the Association was told they would be charged for the bingo tent at his years Festival.

He further stated they appreciated the opportunity to try and raise money for our kids but they think they should not have to pay for the tent that it should be part of the overall expenses for running the Festival. He stated it was their hope that everyone agrees with us that the City Council of Palos Hills supports the Palos Hills Baseball Association and our kids and that the tent rental fee be waived.

Mayor Bennett, I am glad you took the opportunity to come up here and address what you've done over the last year. I've had the opportunity as you know to sit down and try work with you and try to help you as best that I could, and I think for the Council to hear the rest of the things you have done, that is why I approached the Council and asked the for the waiving of the fee and certainly last year to invite you to participate in the Fest to earn some money for the organization.

This year with the tent situation, which believe me has gone beyond even what I even thought. The tent you talked about we are looking into whether or not that tent is still around or still available. But in any case if that tent isn't around or doesn't work out I would still ask the Council to waive the fee if we have to go out and get a tent because this other one didn't work out. So we don't have to have you back here again and we don't have to go through this one more time.

I don't think there is and I am not speaking for anyone else on this Council I am speaking for myself to support Palos Hills Baseball Association. You don't have to tell me, I think I have expressed that to you as to what you guys have done over the years for this city. Certainly at peak when close to 500 families over fifteen hundred membership in that organization, it was the main focus of recreation in this community as it is every summer.

I was there for the 50<sup>th</sup> Anniversary of the recognition of Baseball in America and the New York Times came out and did an article back then, its kind of historic especially for the New York Times to do a story about little suburban Palos Hills. But it spoke about the greatness of every spring when baseball starts across America that in Palos Hills we are proud of what Bill Dunnett did years ago to establish the organization. Certainly for me it's been an honor to participate and try to help as best I can over the last 28 years. I didn't think you were asking for a whole lot and in fact, as you know I even tried to go beyond that.

But I would ask the Council if we can't work out whatever internal tents that we may or may not have, if that don't work out that the Council be on record now of waiving the fee of a tent if we have to end up renting a tent.

A few Council Members had conversation and comments and suggestion of not officially voting tonight and moving this issue to Committee.

(Unknown), for clarification are you voting tonight or no.

Mayor Bennett, as soon as I close the public portion of the meeting the City Council has the right to do whatever they want.

There were no further questions or comments.

**8) REPORTS & COMMUNICATIONS FROM MAYOR AND OTHER CITY OFFICIALS:**

**A. CITY CLERK:** No report.

**B. CITY ATTORNEY:**

City Attorney Pappas, I circulated an opinion letter to the City Council concerning 7205 W. 103<sup>rd</sup> Street. I know the petitioner is here this evening with his Attorney. I don't know if the City Council wants to address it now in the open portion or wait until we reach the Plan Commission portion of the meeting.

Mayor Bennett, the portion is closed now so the Council would have no other choice except now to hear it under the Planning & Zoning portion of the meeting and have them address it at that time if they wish.

**C. MAYOR:**

Mayor Bennett, Ladies & Gentleman one item that I do have to bring to your attention is that the Southwest Conference of Mayors through our organization received money from the Fed Stimulus for our Federal highways in town and I was able to secure a half million dollars in Federal Stimulus money. This will involve a lot of sidewalk, a replacement 88<sup>th</sup> pedestrian and safety measures and also hopefully a lot of trees. We will have to be out to bid by September of this year on that project.

Also under my portion of the meeting I will entertain if an Alderman wants to make a motion regarding this issue with the tent rental by the Baseball Association.

So MOVED by Ald. Moore, SECONDED by Ald. Knox.

Mayor Bennett, the motion would be that the City on record would supply an internal tent if we have one for the Baseball Association because there is an agreement that the Association has to sign regarding the possible rental of a tent, that that rental fee be waived based upon a vote of this Council according to the agreement that they have been asked to sign. Will the City Clerk please call the roll?

Upon roll call the following Ald. voted:

AYE: Kleefisch, Pasek, Moore, Williams, Knox, Hanson, Marrotta

PRESENT: Stratton

ABSENT: Schultz

NAY: Brachman

**MOTION CARRIED.**

9) **PRESENTATION OF PETITIONS, COMMUNICATIONS, RESOLUTIONS, ORDERS AND ORDINANCES BY ALDERMEN:**

A. **BUILDING & LICENSES:** No report.

B. **CITY ADMINISTRATION/GOLF:** No report.

C. **COMMUNITY RESOURCES:** No report.

D. **ECONOMIC DEVELOPMENT:** No report.

E. **FINANCE:**

Ald. Pasek, you all have before you a Vendor Warrant dated April 2, 2009 in the amount of \$216,575.76. I MOVE to authorize the expenditure of same. SECONDED by Ald. Williams. Upon roll call the following Ald. voted:

AYE: Kleefisch, Stratton, Pasek, Moore, Williams, Knox, Brachman, Hanson, Marrotta

ABSENT: Schultz

NAY: None

MOTION CARRIED.

F. **LEGISLATION & ORDINANCE:**

Ald. Knox, everyone has in front of them an ordinance that was presented by the Mayor regarding adopting a Cable/Video Service Provider Fee and Peg Access Support fee in Palos Hills, will the City Clerk please assign an Ordinance number.

City Clerk Mulderink assigned number 2009-4 to that ordinance.

Ald. Hanson, I MOVE to WAIVE the reading of proposed Ordinance 2009-4. SECONDED by Ald. Moore. Upon roll call the following Ald. voted:

AYE: Pasek, Moore, Williams, Knox, Brachman, Hanson, Marrotta

ABSENT: Schultz

NAY: Stratton, Kleefisch

Ald. Knox, I MOVE for PASSAGE of Ordinance 2009-4, An Ordinance Adopting A Cable/Video Service Provider Fee And Peg Access Support Fee in Palos Hills, Illinois. SECONDED by Ald. Hanson. Upon roll call the following Ald. voted:

AYE: Pasek, Moore, Williams, Knox, Brachman, Hanson, Marrotta, Kleefisch, Stratton

ABSENT: Schultz

NAY: None

MOTION CARRIED.

G. **PARKS:**

Ald. Stratton, the chipper program started this week, schedules are available on the City web page, city hall and park and recreation office.

Plant One On Me, two programs were submitted for this award, it's an environmental

improvement and higher level of a tree care in our community as evident by the additions and improvements to our Tree Programs this past year. Plant One On Me is taught by our Community Resource & Recreation Department where 3<sup>rd</sup> graders were taught how to plant and care for trees. A very creative booklet was developed and distributed by the Recreation Department. This booklet was featured along with several other good educational ideas in the newsletter from the IDNR to all Illinois Tree City U.S.A. Communities and at the Tree City U.S.A. Awards presentation in Springfield on March 26<sup>th</sup>.

The Commissioner received for the City its 21<sup>st</sup> Tree City U.S.A. Award and 8<sup>th</sup> Growth Award from the Tree City USA Arbor Day Foundation.

#### **H. PLANNING & ZONING:**

Ald. Hanson, I distributed a list to everyone here on the two items that are up on this Committee, one is a Zoning Board of Appeals Hearing on Tuesday, April 28<sup>th</sup> relating to variance of front yard and side yard set backs at 10429 S. 83<sup>rd</sup> Avenue. I'd like to discuss that at Committee next week.

The other issue that we have before us is related to a Plan Commission Hearing that took place on February 23<sup>rd</sup>. The petitioner was looking for a special use for a cigar lounge, tobacco sales and Internet Café. The minutes of this meeting have been distributed to everyone. The motion that is reflected in those minutes states and I quote that it was subject to the opinion of the City Attorney and subsequent approval by the City Council.

At this time I would like to have our City Attorney discuss the letter that was dated April 2<sup>nd</sup> that I believe was also distributed to everyone.

City Attorney Pappas, at the request of the City Council I prepared an opinion letter, which Ald. Hanson referred to, dated April 2, 2009. In that opinion letter I think I indicated several reasons why I felt the use for that location would be a violation of State Law.

In addition to the research that I did, I contacted County Officials responsible for enforcing the legislation as well as State Officials and I described the operation as best as I could based on the information that I had that was presented at the Plan Commission as well as my personal investigation of the site.

I was told emphatically by the individuals involved in enforcing the legislation that intended use of that location would be a violation of State Law. As my letter indicates I discussed that with Dr. Suhail and his Attorney as well and I indicated to them that it was not something that is being posed upon them by the City of Palos Hills but we were obligated to follow State Law.

I know they are concerned about the decision and my recommendation and I told them that it would be in violation of State Law for us to issue a Business License for that

location. Also I indicated to the Doctor this afternoon that even if we did the State could shut them down based on the information that I received. It is not our decision; we are following the mandates of the State.

So based on that it is my opinion based on the investigation and the information that I have before me that operation of a smoking lounge at that location would not satisfy the State requirements, and my suggestion is and if the Doctor and his Attorney feel that they should operate at that location; if they can get the permission of the State and the County to cooperate in the fashion that the Doctor wants that location to operate then the City Council can consider the recommendation and vote based on what the Plan Commission has presented to you. But I think the ball is really in the Doctors court and also in the court of his Attorney to come back to us with information that the State and the County will approve the business as the Doctor intends to run it.

Mayor Bennett, Aldermen as was asked by Council earlier whether or not Council wants to open up the meeting at this point for any discussion by the petitioner, that is up to the City Council to do that by vote.

Ald. Brachman, I MOVE to waive the Council Meeting rules and allow the petitioner to speak. SECONDED by Ald. Pasek. Upon roll call the following Ald. voted. Upon roll call the following Ald. voted:

AYE: Moore, Williams, Knox, Brachman, Hanson, Kleefisch, Stratton, Pasek

ABSENT: Schultz

NAY: Marrotta

MOTION CARRIED.

Mayor Bennett, so noted, again in the Council Minutes that we did have a public portion at the beginning of the meeting and there was no comment from the public regarding this issue at that time so the City Council is directing of waving the Council rules and allowing the petitioner to speak strictly regarding this issue. So if there is a petitioner out there or a person representing the petitioner that would like to speak, you may address the City Council.

Amy Ezeldin from 8855 S. Roberts Road, Hickory Hills. This is kind of again not so cut and dry straightforward issue. I did briefly speak with Mr. (inaudible) regarding this particular situation. My research actually resulted in nothing too solid (inaudible) in the interpretation of the law and the act itself (inaudible). I think unfortunately the issue that we are having here is one of interpretation of the actual act and I didn't get a chance to hear or see Mr. Pappas about what as far as his research went with the act itself, what parts of it did Mr. Suhail – is it not make it qualify for, make it acceptable under one of the exemptions that are listed in the actual act.

To summarize briefly the State says that smoking is prohibited (inaudible) and it goes on and on and then has an exemption section that talks about (inaudible). One of those is the retail tobacco store exemption and you know it allows for the (inaudible) new businesses if they qualify under certain requirements to open up there, you know a smoking facility or something that allows smoke in it. And you know one of the

(inaudible) sell (inaudible) the business has to be sale of tobacco. The second requirement that it being a free standing structure occupied solely by the business and the third would be that the smoke does not migrate into an enclosed area where smoking --- another closed area where smoking is prohibited.

The Doctors (inaudible) he recently opened up well not opened up, he purchased and is renovating a gas station on 103<sup>rd</sup> & Harlem and there was in today the landlord Mr. (inaudible) the landlord (inaudible) who owns the gas station and also owns a strip plaza next to that gas station and subject the we are on here today is Dr. Suhail would like to open up next to his gas station the cigar lounge which is again located in a strip plaza but it is at the end of the strip plaza and there is nothing located above him.

So the question is you know I believe if you would qualify (inaudible) you know under the whole (inaudible). First of (inaudible) which is you know having 80% of business come from the sale of tobacco I'd believe you'd qualify (inaudible) under the third (inaudible) which says you know to prevent smoke from migrating to other areas where smoke is prohibited. You know Dr. Suhail has put in a good ventilation system; the check out I believe by the city at one point and his neighbors in the strip plaza have no opposition or are not against him opening up the cigar lounge.

So it's the issue that's been (inaudible) I am assuming then maybe Mr. Pappas could (inaudible) and again I have not spoken to him about what (inaudible) issue was. But the freestanding structure occupied solely by the business is actually not determined or define in the act itself. So based on that I did further research to see if (inaudible) will help in that direction to clarify what is actual (inaudible).

I did speak with an Attorney at the Illinois Department of Public Health and was not able to give me any clear-cut advice or (inaudible) or anything on this account. So I am afraid that I can't bring anything more solid then that you know looking at the fact of Dr. Suhail business that he wants to open up in that it is in a commercial strip plaza at the end of the strip plaza; nothing is on one side of him and there is nothing above him. He is putting in a ventilation system or equipment what have you so that smoke is not (inaudible). Based on that and my interpretation of the actual act I would believe he would be able to do this. Again it is nothing solid to go either way on that in the actual definition of a freestanding structure.

You know Dr. Suhail had in January of this year written an email to the office of Attorney Pappas indicating what his intent was for this business and what he planned to do with it. And then in January of 09 this is the background sheet (inaudible) from Palos Hills to get a permit to begin construction on his place and he did do that. He probably spent from his estimate approximately \$97,000.00 to bring his place up to what it is suppose to be as far as construction and everything else. Just up until recently he was able to get his electrical approved and he is well on his way and almost ready to open up shop.

So based on the research that I have when I interpret the law to allow him to open up this particular business at this location.

Ald. Hanson, just on a couple of issues; number one building permit, if somebody comes in and applies to improve a property and they are doing everything within the ordinance I don't honestly feel that it is within the building departments area of responsibility as to necessarily what they are doing with the space, it is the fact that they are improving the space within the ordinance of that. So if he has money invested in that and he is going ahead and improving the property not knowing whether or not the business will be approved I don't understand how that could be you know ---- I don't even understand why he really sees stating that, it's nice that he improves the space and that it is virtually ready to open. But as far as whether or not he did that I mean you know, he knew he was improving a property and he also knew since February what the status was of his business getting approved. So whether or not he went ahead and did that you know I just don't see how that should reflect into this at all.

Amy Ezeldin, I can see how you might (inaudible) but you see how we might say that it may not be as relevant but matter of fact you know from the beginning in January of 09 he had presented his situation on what he intended to do (inaudible) and the business, not just a food place (inaudible – noise) lounge and he did go ahead and make it pretty much specifically for a cigar lounge.

Attorney Pappas, on February 23<sup>rd</sup> when the Doctor appeared before the Plan Commission, he knew he had a problem. Because there was extensive discussion with the Plan concerning what constituted a freestanding building. So at that point the Doctor was aware of it. But let me go back to January 1<sup>st</sup> of 2008. On January 1, 2008 the State of Illinois passed this legislation; it was all over the newspapers that no smoking would be allowed in public places. Everybody in the entire State was aware of this so it is difficult for me and perhaps and I am only speaking for myself, to understand how the Doctor went into this without any knowledge of what the State Law was. Another thing too, I don't think I have an email address so I don't know how I got this email, I don't have a (inaudible).

Now here is what I ---- and you know there really is no point in us discussing your interpretation of the law and my interpretation of the law. What I suggest to you is to approach the various public officials who are responsible for enforcing this legislation. Get a letter from them that they approve the project and we will be ---- again I am speaking of myself, but the City Council will be obligated to consider that. That is the simple way to do it. Otherwise if this City Council votes to give you a business license; they are going to shut him down in a week or too. That is what I was told. There are other locations throughout the County that are similar to this one and I described it is a strip mall, it is not a freestanding structure, and they are going to shut them down, that is what I was told. So my suggestion to you and to the Doctor is to get the necessary State & County approval, describe to them fully where the location is and what you intend to do with it and then the City Council can consider it. That is the way to do it because your interpretation is one way and my interpretation is different. I am basing my interpretation based on what they told me when I had discussions with them. So that would be the easiest way to do it; lets postpone this and then come back to the City Council in a week or too and say here Mayor and Members of the City Council here is the approval, the

State and the County (inaudible) the proposal doesn't violate the law and now we want you to consider it. Isn't that reasonable request? My recommendation to the City Council is not to vote tonight. I think you and I should both do more homework and if you get the okay from the State and County then the City Council will be in a position to vote.

Dr. Sameer Suhail, I wanted to mention we came in for the minutes, after we came in for the minutes Gene Nelson stopped by the place and talked to our contractor and even prior to this whole show back in January when I can in to file my application, in the application it states that this to do a cigar lounge in there. So my whole construction was based on that, my whole idea was based on that.

However after the minutes Gene Nelson sent his (inaudible) in there (inaudible) and said its fine with the construction as long as you go by the code, if your walls and your firewalls are (inaudible). I told the contractor you are going to have to do what ever the city wants you to do. Now I was not told any thing prior to March last month about a freestanding building. Now I don't know in terms of the minutes (inaudible) what was sent here but at the same time Mr. Pappas calls me up on a Friday and said you have to have a freestanding building.

Now Mr. Pappas I have written a letter for you (inaudible) we faxed that letter and we given a copy of that letter to the city representative stating that this a (inaudible). You could have told me that listen this is no excuse it has to be a freestanding building (inaudible). The last inspection was yesterday with the electricity and it was approved. My plumbing was approved also so I was getting approved constantly back and forth denial, approved, denial, approved.

So what was the whole purpose, what was the (inaudible) for, that is my question at this point. I have invested \$96,000.00/\$97,000.00 in this place, I don't know that this is (inaudible) you are suppose to have a free standing building in there okay in terms of to pursue something like this. Something like that comes up in March after I have started construction, after talking to the Commissioner and the Commissioner says listen you should not have any problems, those were the exact words of the Commissioner.

Mayor Bennett, I think for the record and maybe Counsel can correct me is that first of all you have a right of due process. If you petition the City of Palos Hills for a Plan Commission Hearing on a change of what are the ordinances or the zoning laws of the City or business licensing of the city, you have a right to do that we can't tell you don't come up here.

As far as the Statute itself I think as stated at the Plan Commission Hearing when you had your due process before them that there was a concern of an interpretation of what free standing was by the Plan Commission at that time and I think again and as their recommendation based upon an opinion by the City Attorney that obviously he is obligated by law to Council the members of this body as to whether or not based upon their asking that he render an opinion. He has done that tonight based upon the record of what he has shown and you are certainly entitled to a copy of his recommendation to this

Council, it's a matter of public record and we'd be happy to give you a copy of that, his investigation as to what is State Law. You were entitled to due process, which you were given due process.

The question before the Council now based upon the opinion of the City Attorney is that he feels that it would be in violation of a State Statute and a County violation and he has indicated to the Council he can't ask this Legislative Body to do something, which he feels would be illegal. That is where we are at and I think he's asked you if you fee different that somehow this Council would not be in violation to bring forth that evidence before us for the Council in order for them to make a decision on voting on the issue.

Mayor Bennett, at this time we are no longer in the open forum as voted by Council, we are back to the regular meeting of the City Council.

**I. PUBLIC SAFETY:**

Ald. Kleefisch presented and read the Palos Hills Police Department Activity Report for the month of March 2009 as follows: 427 traffic tickets were issued, 545 parking tickets issued, 74 misdemeanors, 3 burglaries, 16 thefts, and 1 motor vehicle theft and our C.I.D. Division handled a total of 105 cases.

Also a check was received from the Circuit Court in the amount of \$10,118.67 and another check from School District 230 in the amount of \$8,212.89.

**J. PUBLIC WORKS/SEWER & WATER:**

Ald. Williams, the Commissioner reports the following activities in the Public Works & Park Maintenance Department.

**Public Works & Sewer & Water crew have been working in the following area:**

- B-box location and repair
- Water main valve location, exercise and repair
- Concrete sidewalk trip hazard grinding
- Sewer manhole maintenance and repair
- Sump pump inspections for illegal connections to sanitary sewers
- Ditching and storm water improvements at various locations through out the city.
- Sod & concrete restorations from winter repair activities
- Sanitary Sewer Lift Station maintenance and repair

**Park Maintenance Crews have been working in the following area:**

- Routine park maintenance and inspection at all city parks and equipment
- Maintenance of planter beds at all city parks and entry signs to the city
- Tree trimming on city parkway trees and in city parks
- Walking tail maintenance and repair

**Special projects:**

- The creek gates at 81<sup>st</sup> Ave & 99th St. have been modified to allow for better flow of storm water without clogging during high storm water

flows. The modification was tested with moderate rainfall that fell the other day. The modification worked well.

Crews have been working on a new wood plant-walking trail at the west end of Pleasure Lake. The raised trail was needed to reduce maintenance in this area due to erosion from high water flow from Lucas Ditch Extension during heavy rain events. This project will be completed in the next few days. When complete a dry riverbed will be installed to enhance the area and prevent additional erosion and maintenance needs.

**Chipper Program:**

The chipper program started this week. Schedules are available on the City web page and at City Hall and the Park & Recreation office.

**Tree City USA**

The commissioner received for the City it's 21<sup>st</sup> Tree City USE Award and 8<sup>th</sup> Growth Award from the Tree City USA Arbor Day Foundation.

The awards recognized the environmental improvement and a higher level of tree care in our community as evident by the additions or improvement to our tree programs this past year.

Two programs were submitted for this award:

**Plant One on Me & Recycling**

Recycling – with the creation of Pleasure Lake walking trail system the Public Works & Park Maintenance Department has been able to recycle 100% of the wood chips generated by the Chipper Program to a recycling program that spreads the chips on the trail system and on tree mulch zones in city parks. In the past a good portion of the chips were sent to a landfill.

**10) REPORTS OF SPECIAL COMMITTEES:**

Ald. Pasek, just to let everyone know the last budget meeting is scheduled for April 16<sup>th</sup> at 5:30 p.m. and it will cover Building, Administration & Golf Course and everyone is invited to attend.

Mayor Bennett, one other note regarding meetings, as you know there are 5 Thursday's this month the 23<sup>rd</sup> is the forth Thursday and we will not meet on that day. On the 30<sup>th</sup> which is a Committee night it will also be the time period for the canvassing of votes from Tuesday's April 7<sup>th</sup> Election.

So at the next Council Meeting I will be asking the City Council to hold a Special Meeting for the purpose of the canvassing the election of April 7<sup>th</sup> and the various candidates will be administered the Oath of Office on the 30<sup>th</sup> at 7:00 p.m. So whether or not we have a short Committee Meeting and then go into that Special Meeting.

**11) UNFINISHED BUSINESS:** None.

**12) MISCELLANEOUS BUSINESS:** None.

**13) ADJOURNMENT:**

No further business, Mayor Bennett entertained a motion to adjourn. SO MOVED by Ald. Stratton . SECONDED by Ald. Pasek. By voice vote, all voted AYE.

The Meeting adjourned at 8:23 p.m.

Submitted by

Rudy A. Mulderink  
City Clerk  
City of Palos Hills