

CITY OF CHARLEVOIX
REGULAR CITY COUNCIL MEETING MINUTES
Monday, January 19, 2009 — 7:00 p.m.
210 State Street, City Hall, Council Chambers, Charlevoix, MI

The meeting was called to order at 7:00 p.m. by Mayor Norman L. Carlson, Jr.

I. Pledge of Allegiance

II. Roll Call of Members Present

Mayor: Norman L. Carlson, Jr.
City Attorney: Jim Young
City Manager: Rob Straebel
City Clerk: Carol A. Ochs
Members Present: Council members Jill Picha, Greg Stevens, Gabe Campbell, Shane Cole, Lyle Gennett, Dennis Kusina
Absent: None

III. Inquiry Regarding Possible Conflicts of Interest

None.

IV. Consent Agenda

The following items were approved and filed:

- A. Approval of Minutes – January 5, 2009 Regular Meeting Minutes.
- B. Accounts Payable Check Register – January 8, 2009
- C. Accounts Payable Check Register – January 20, 2009
- D. Payroll Check Register – January 9, 2009

- E. Shade Tree Commission Resignation – Peggy Brennan
Motion by Councilmember Jill Picha, seconded by Councilmember Gabe Campbell, to accept the resignation of Peggy Brennan from the Shade Tree Commission.

Yeas: Council members Picha, Stevens, Campbell, Cole, Gennett, Kusina
Nays: None
Absent: None

V. Public Hearings

None.

VI. Reports

- A. The Manager informed Council of the details of the upcoming snowmobile ride in and asked if they were comfortable with the event. Council had no objections to the event.
- B. The Manager provided an update on the proposed acquisition of way finding kiosks.
- C. The Clerk stated that Council Chambers would be available to the public for viewing of the Inauguration ceremonies on January 20.
- D. The Mayor publicly acknowledged a recent article on Charlevoix in the Michigan Municipal League magazine.

VII. Requests, Petitions and Communications and Actions Thereon

- A. Biosolids Management Agreement Addendum
Water/Wastewater Superintendent Jim Caldwell was available to address the item and answer questions from Council.

Motion by Councilmember Lyle Gennett, seconded by Councilmember Jill Picha, to approve the City Manager to sign Biosolids Management Agreement Addendum #1 with Biotech Agronomics.

Yeas: Council members Picha, Stevens, Campbell, Cole, Gennett, Kusina
Nays: None
Absent: None

- B. Request to Apply for MDOT Annual Permit
The Manager reviewed the items. The first resolution will allow staff to obtain permits to do work in the US 31 right-of-way. The second resolution will allow staff to apply for permits to close US 31 for special events. Both are annual items required by the State in order to apply for the permits. Action by resolutions.
- C. Discussion of 2009-2010 City Goals
The Mayor and Council reviewed the list of goals provided by staff on pp. 34-40 of the packet. Council did not recommend any

changes to the list.

D. Discussion and Possible Adoption of Draft Code of Ethics and Conflict of Interest Policy

The Attorney reviewed the item and answered questions for Council. The resolution combines the best concepts from the ordinance, plus ethics provisions from the previous ethics resolution of April, 1993. If Council is agreeable to the resolution and passes it, an ordinance can be drafted to repeal Section 1.57 of the City Code. This would simplify the code, and the City would be governed by the State Statute and the new ethics resolution. Under miscellaneous business, Council gave informal general direction to the Attorney to draft an ordinance to repeal Section 1.57 of the City Code. Action by resolution.

VIII. Introduction and Initial Actions Relating to Ordinances or to Resolutions That Require Publication or Hearings Prior to Final or Further Action

None.

IX. Resolutions

A. Resolution for Governmental Bodies – Performance Bond

Motion by Councilmember Gabe Campbell, seconded by Councilmember Greg Stevens, to approve Resolution 2009-01-01 as follows:

**CITY OF CHARLEVOIX
RESOLUTION NO. 2009-01-01
PERFORMANCE RESOLUTION FOR GOVERNMENTAL AGENCIES**

This Performance Resolution is required by the Michigan Department of Transportation for purposes of issuing to a municipal utility an "Individual Permit for Use of State Trunkline Right of Way" (form 2205), or an "Annual Application and Permit for Miscellaneous Operations Within State Trunkline Right of Way" (form 2205B).

RESOLVED WHEREAS, the City of Charlevoix hereinafter referred to as the "GOVERNMENTAL AGENCY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utility or other facilities, or to conduct other activities, on, over, and under state trunkline right of way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL AGENCY agrees that:

Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law.

This Agreement is not intended to increase either party's liability for, or immunity from, tort claims.

This Agreement is not intended nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.

1. Any work performed for the GOVERNMENTAL AGENCY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL AGENCY and not as a contractor or agent of the DEPARTMENT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL AGENCY. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL AGENCY, or their subcontractors or any other person not a party to the PERMIT without its specific prior written consent and notwithstanding the issuance of the PERMIT.
2. The GOVERNMENTAL AGENCY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.
3. It will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State trunkline right of way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL AGENCIES facilities according to a PERMIT issued by the DEPARTMENT.

4. With respect to any activities authorized by PERMIT, when the GOVERNMENTAL AGENCIES requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.
5. The incorporation by the DEPARTMENT of this resolution as a part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.
6. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL AGENCY or the DEPARTMENT with no less than thirty (30) days prior written notice to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL AGENCY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following position(s) are authorized to apply to the Michigan Department of Transportation for the necessary permit to work within state trunkline right of way on behalf of the GOVERNMENTAL AGENCY.

Name	And/or	Title
Robert Straebel		City Manager
Pat Elliott		Street Superintendent
Don Swem		City Engineer

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by the City of Charlevoix City Council of the City of Charlevoix of Charlevoix County at a regular meeting held on the 19TH day of January, A.D. 2009.

Signed Carol A. Ochs Title City Clerk

RESOLVED this 19th day of January, 2009.

Resolution adopted by the following yea and nay votes:

Yeas: Picha, Stevens, Campbell, Cole, Gennett, Kusina
Nays: None
Absent: None

B. Designation of Authorized Official to Apply for Parade Permits

Motion by Councilmember Greg Stevens, seconded by Councilmember Jill Picha, to approve Resolution 2009-01-02 as follows:

**CITY OF CHARLEVOIX
RESOLUTION NO. 2009-01-02
DESIGNATION OF AUTHORIZED OFFICIAL TO APPLY FOR PARADE PERMITS**

- WHEREAS, the City of Charlevoix is desirous to close the State Highway to hold various parades and events during 2009 which require the closing or partial closing of the US 31 highway; and
- WHEREAS, Keep Charlevoix Beautiful Inc. and the City of Charlevoix wishes to prepare the petunia beds, plant the petunias adjacent to the highway and when necessary, be able to weed the petunias; and
- WHEREAS, the American Legion is desirous to hold a Memorial Day parade from 10:00 a.m. to 11:00 a.m. on Monday, May 25, 2009; and
- WHEREAS, the City of Charlevoix wishes to close one lane of US 31 on Saturday, June 27, 2009 for the Run Charlevoix marathon; and
- WHEREAS, the Veterans of Foreign Wars is desirous to hold a 4th of July parade from 10:00 a.m. to 11:00 a.m. on Friday, July 4, 2009; and
- WHEREAS, the Jeff Drenth Memorial Foot Race wishes to close one lane of US 31 for its one mile, 5k and 10k races from 7:30 a.m. to 11:00 a.m. on Saturday, July 25, 2009; and

WHEREAS, the Charlevoix Venetian Festival wishes to hold its Venetian parade from 11:00 a.m. to 1:00 p.m. on Saturday, July 25, 2009; and

WHEREAS, the Charlevoix Downtown Development Authority wishes to hold its FlurryFest on a portion on US 31 from 10:00 a.m. to 9:00 p.m. on Saturday, December 5, 2009; and

WHEREAS, the State Highway requires a permit to close the highway and requires the governmental body to designate and authorize an official to request parade permits;

BE IT RESOLVED, THAT THE CITY OF CHARLEVOIX CITY COUNCIL HEREBY authorizes Patrick M. Elliott, Street Superintendent and designated MDOT Street Administrator, authority to apply for permits to close State Highway US 31 for the above mentioned parades/events.

RESOLVED this 19th day of January, 2009.

Resolution adopted by the following yea and nay votes:

Yeas: Picha, Stevens, Campbell, Cole, Gennett, Kusina

Nays: None

Absent: None

C. Code of Ethics and Conflict of Interest Policy

Motion by Councilmember Greg Stevens, seconded by Councilmember Dennis Kusina, to approve Resolution 2009-01-03 as follows:

**CITY OF CHARLEVOIX
RESOLUTION NO. 2009-01-03
ESTABLISHING CODE OF ETHICS AND CONFLICT OF INTEREST POLICY**

Recitals

WHEREAS, the City Council recognizes that it is the utmost importance to foster public confidence in the decisions made by the City Council;

WHEREAS, public confidence in the decisions of city government is enhanced when public officials avoid both actual conflicts of interest and the appearance of conflicts of interest;

WHEREAS, the establishment of a Code of Ethics and Conflict of Interest Policy for the City Council will provide assistance so that situations can be avoided which could negatively impact public confidence in the City and in those persons who act on behalf of the City in the performance of their duties or jobs; and

WHEREAS, the City Council desires to adopt a Code of Ethics and Conflict of Interest Policy for the City by the adoption of this resolution.

Resolution

NOW, THEREFORE, BE IT RESOLVED that the Charlevoix City Council establishes the following Code of Ethics and Conflict of Interest Policy for the persons who act on behalf of the City as specified in this resolution:

DEFINITIONS

"Council Members" shall mean members of the Charlevoix City Council.

"City Employees" shall mean the City Manager, the City Clerk, all department heads and all other full-time or part-time employees of the City.

"City Representatives" shall mean Council Members, city employees, persons serving on any boards or commissions of the City and any other person who is officially authorized to act on behalf of the City.

"Immediate Family Member" shall mean a spouse, child, spouse of a child or a parent of the employee as well as a person who is residing in the same household as the employee.

"Official Duties" shall mean work performed as a City Employee in the course of that person's employment for the City as well as any duty or act performed by an elected or appointed City official, a Council Member or a member of any City board or commission when such duty or act is performed in the course of that person's service to the City.

**CITY OF CHARLEVOIX
CODE OF ETHICS AND CONFLICT OF INTEREST POLICY**

- A. The following standards of conduct shall be followed in the discharge of official duties for the City
1. When performing Official Duties, City Representatives shall treat members of the public with respect and fairness.
 2. City Representatives shall discharge their Official Duties in accordance with prescribed constitutional, statutory, and regulatory procedures and shall apply the laws and policies of the City in an evenhanded manner without partiality, favoritism, or dishonesty and not for personal gain or benefit.
 3. City Representatives shall not divulge any unauthorized personal or confidential information acquired in the course of their Official Duties in advance of the time prescribed for its authorized release to the public. Confidential legal advice or opinions, such as written opinions from the City attorney, are protected by attorney-client privilege. The City is the client (and not individual Council Members or City Officials). Accordingly, a majority of the City Council should decide when confidential legal information is released.
 4. City Representatives who acquire confidential information in the course of their duties that is not available at the time to the general public shall not use such information to further their private interests or the private interests of another person.
 5. City Representatives shall not represent their personal opinions as that of the City or the committee, commission, or board on which they serve, unless expressly authorized to do so.
 6. Except with the knowledge of the appropriate department head and consistent with City policy regarding the use of City property, equipment, vehicles, or supplies for non-official use, City Representatives shall not, directly or indirectly, make use of or permit others to make use of City property, equipment, vehicles, or supplies of any kind for personal gain or benefit.
 7. City Representatives shall not, directly or indirectly, solicit or accept any gift or a loan of money, goods, services or other thing of value which tends to influence or creates the appearance that it influences the manner in which they perform their Official Duties or is intended or has the appearance of being intended as a reward for the performance of any Official Duty.
 8. City Representatives shall not engage in or accept employment or render services that are incompatible or in conflict with the discharge of their Official Duties or that tends to impair their independence of judgment when discharging their Official Duties.
 9. Except as permitted under the Contracts of Public Servants with Public Entities Act, MCL 15.321, *et seq.* (also mentioned in paragraph 10 below), City Representatives shall not, directly or indirectly, solicit or be a party to a contract between themselves and the City and shall not solicit a contract between an entity in which they have a financial or personal interest and the City.
 10. All persons involved in a proposed contract with the City shall comply with the Contracts of Public Servants with Public Entities Act, MCL 15.321, *et seq.* In addition to the requirements of the statute cited above, the following requirements must be met:
 - a. No Council Member shall vote on a City-related project when the Council Member has a reasonable likelihood of obtaining a financial benefit because of the project. This includes by way of example and not limitation, situations in which a Council Member will be a bidder on the project or has a reasonable likelihood of being a subcontractor on the project.
 - b. When a City Employee or a member of the City Employee's immediate family will be a party to a proposed contract with the City or have a personal interest in a proposed contract with the City, the department head, who is seeking

approval of the contract, shall disclose these facts to the City Manager in writing (which includes e-mail) and shall explain why the proposed contract is in the best interests of the City. The disclosure shall identify all parties to the contract and the nature of the financial interest of the employee or the employee's Immediate Family Member. If the proposed contract is to be approved by the City Manager, the City Manager shall not approve the contract until the City Council has been informed in writing of the same information that was provided to the City Manager as required above. In addition, the City Manager shall explain to the City Council why the proposed contract is in the best interests of the City. If the proposed contract is to be approved by the City Council, the City Manager (or the department head as directed by the City Manager) shall provide the same information that was provided to the City Manager as required above. In addition, the City Council shall be informed why the proposed contract is in the best interests of the City.

11. City Representatives shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates or other regulation or supervision relating to any business entity in which they have, directly or indirectly, a financial or personal interest.
12. When making discretionary, administrative decisions City Representatives shall refrain from making statements or taking any actions outside the formal decision-making process that would suggest they have prejudged the matter before them or would in any way preclude them from affording the applicant and the public a fair hearing.

B. As permitted by law, a violation of these standards of conduct may be grounds for the discharge of or other disciplinary action against a City Employee, or for removal from a council-appointed or a mayoral-appointed position.

RESOLVED, this 19th day of January, A.D. 2009

Resolution was adopted by the following yeas and nays vote:

Yeas: Picha, Stevens, Campbell, Cole, Gennett, Kusina
Nays: None
Absent: None

X. Ordinances

None.

XI. Miscellaneous Business

Councilmember Greg Stevens asked for an update on the tall ship meeting. The Manager will try to locate some minutes for Council.

Councilmember Jill Picha apologized for expressing herself in an undignified way at the January 5 meeting.

The Mayor stated that Mike Spencer is applying for an award for East Park, called Great Places in America, Public Spaces.

XII. Audience - Non-agenda Input (written requests take precedent)

Water/Wastewater Superintendent Jim Caldwell stated he had presented Council with a copy of the Water Quality Report, and they could call him if they had questions on it.

XIII. Adjourn

The Mayor stated if there were no objections, the meeting would adjourn.

There were no objections.

Meeting adjourned at 7:30p.m.

Carol A. Ochs

City Clerk

Norman L. Carlson, Jr.

Mayor