

CITY OF CHARLEVOIX
REGULAR CITY COUNCIL MEETING MINUTES
Monday, June 15, 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: Bryan Graham
City Manager: Rob Straebel
City Clerk: Stephanie C. Brown, Deputy Clerk
Members Present: Council members Lyle Gennett, Dennis Kusina, Jill Picha, Greg Stevens, Gabe Campbell, and Shane Cole
Absent: None.

III. Inquiry Regarding Possible Conflicts of Interest

Councilmember Picha reported that she has a conflict of interest on Items V.A., Public Hearing for Amendment to Title V, Planning and Zoning and Item X.A, Ordinance 740 of 2009, an Ordinance to Amend Title V, Planning and Zoning, Chapter 51, Zoning.

IV. Consent Agenda

The following items were approved and filed, with a correction to the June 1, 2009 minutes.

- A. Approval of Minutes – June 1, 2009 Regular Meeting Minutes
- B. Accounts Payable Check Register – June 5, 2009
- C. Accounts Payable Check Register – June 16, 2009
- D. Payroll Check Register – June 12, 2009
- E. Payroll Transmittal Check Register – June 12, 2009

V. Public Hearings

A. Amendment to Title V, Planning and Zoning

City Planner Mike Spencer was available to review the item and answer questions for Council and the audience. This ordinance is the outcome of research, public input, and the recommendation from the Planning Commission finalized at a public meeting in December 2008. The Mayor opened the public hearing at 7:05 p.m.

Citizen Mary Eveleigh inquired about the definition of a fence in the ordinance. Council discussed changing the definition. Eveleigh also asked how the definition affects Section 5.191(1) *Fence, Walls and Screen Regulations*. Assistant Attorney Graham stated that this section applies to more than just fences.

There was significant discussion about controlling landscaping that affects site distance and safety for motor vehicles.

Citizen Traver Wood noted that the definition of a retaining wall as a permanent structure implies that a zoning permit would be required as with other permanent structures. City Planner Spencer stated that it is not the intention to require zoning permit for landscaping work. Mayor Carlson stated that, generally, if a building permit is required in relationship to a retaining wall then a zoning permit might be required. Spencer agreed that if a building permit is required, the citizen should check to see if a zoning permit is required.

Council asked if the height of hedges would be regulated by this ordinance. City Manager Rob Straebel suggested that Section 5.191(1) be changed from “all fences, walls, or similar objects” to “all fences, walls, or other objects”. Spencer noted that while some of these safety issues are covered in other ordinances, his office wants these safety regulations also addressed in the zoning ordinance. After discussion, Council decided to revise Section 5.191(1) to remove “similar objects” and to address hedges within fifteen (15) feet of the lot line.

Spencer suggested an addition to the ordinance, Section 7, to require the finished side of a fence to face out. Council implemented that and several other changes to the adopted ordinance, as reflected in these minutes.

The Mayor closed the Public hearing at 8:07 p.m.

VI. Reports

- A. The Manager reported that there are two invoices from Sales and Marketing of Michigan of which Joe Schwartzfisher and his wife are employees. He is disclosing this information prior to paying the invoice in compliance with the current Conflict of Interest Policy.
- B. The Manager noted that there will be painting on Pine River Channel. The work will be done by Northwest Michigan Works, a youth employment agency for summer employment. The group will be painting the railings at the channel. Straebel stated that he is trying to provide additional projects for this youth group.

VII. Requests, Petitions and Communications and Actions Thereon

- A. Request from Colorado Challenge that City Apply for Grand Traverse Band of Ottawa and Chippewa Indians Grant
Mayor Carlson reviewed this item and answered questions for Council.

Motion by Councilmember Campbell, second by Councilmember Picha, to authorize the City Manager to sign the application seeking funds for Colorado Challenge from the Grand Traverse Band of Ottawa and Chippewa Indians.

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

- B. Request by Charlevoix Yacht Club for Free Launch – Nucore Triangle and Red Fox Regatta
Mayor Carlson reviewed the item and answered questions for Council. The Charlevoix Yacht Club would like the City Council to consider waiving launch/parking fees at Ferry Beach for September 4, 5, and 6, 2009. Action by resolution.
- C. Request from Northwest Academy that City Apply for Grand Traverse Band of Ottawa and Chippewa Indians Grant
Gary Stutzman of Northwest Academy was available to review the item and answer questions from Council. City Manager Straebel reported that the City is acting as a fiscal agent for the Grand Traverse Band grants; therefore, the City will require invoices to substantiate the disbursement of these funds.

Motion by Councilmember Stevens, second by Councilmember Cole, to approve the request from Northwest Academy that the City apply for the Grand Traverse Band of Ottawa and Chippewa Indians Grant.

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

- D. Request from Charlevoix Historic Society and SeaPorts Great lakes to Use City Facilities and Dockage for the Tall Ship Inland Seas
Tim Boyko, Community Development/Trustee of SeaPorts Great Lakes discussed the benefits of bringing the tall ships into our community, including attracting many visitors to the community and being one economic development tool for the community. Boyko also briefly discussed the educational benefits of the tall ship Inland Seas and the itinerary for the ships time in Charlevoix.

Motion by Councilmember Kusina, second by Councilmember Gennett, to waive docking fees on June 30 and July 1, 2009 for the Tall Ship Inland Seas. [NOTE: Council passed a resolution to this effect later in the meeting.]

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

- E. Consideration to Amend Code of Ethics Policy
City Manager Rob Straebel and Assistant City Attorney Bryan Graham were available to review the item and answer questions for Council. The Conflict of Interest Policy has been revised according to discussions at the June 1, 2009 Council meeting. Action by resolution.
- F. US 31 Water Main Work
Electric and Water Superintendent Don Swem was available to review the item and answer questions for Council. Two locations on US 31 are in need of some water main repairs and staff thinks this water service could become a major leak at any time. Due to traffic control issues, staff feels a contractor would be better equipped to perform this work. Swem disclosed that his plan for the job would be to start very early and probably finish late in the day to get the job done in one day. The water will be shut off for two or three hours. Low bidder for the project is Tri-County Excavating for \$23,300. If Council approves, the work will be completed within the next two weeks.

Motion by Councilmember Picha, second by Councilmember Gennett, to award the bid for water main repair on US 31 to Tri-County Excavating for a not-to-exceed amount of \$23,300.

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

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. Request by Charlevoix Yacht Club for Free Launch – Nucore Triangle and Red Fox Regatta
Motion by Councilmember Stevens, second by Councilmember Gennett, to approve Resolution 2009-06-02 as follows:

CITY OF CHARLEVOIX
RESOLUTION NO. 2009-06-02
WAIVE LAUNCH/PARKING FEES FOR CHARLEVOIX YACHT CLUB
NUCORE TRIANGLE RACE AND RED FOX REGATTA

WHEREAS, the Charlevoix Yacht Club is hosting the Nucore Triangle Race on September 4 and the Red Fox Regatta on September 5 and 6, 2009; and

WHEREAS, the Charlevoix Yacht Club is requesting that launch/parking fees be waived for the races; and

WHEREAS, the City Code permits the City Council to waive launch/parking fees for special or public events; and

BE IT RESOLVED, that the City Council of the City of Charlevoix hereby waives launch/parking fees for the Nucore Triangle Race on September 4 and the Red Fox Regatta on September 5 and 6, 2009.

RESOLVED, this 15th day of June, 2009.

Resolution adopted by the following yea and nay votes:

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

- B. Consideration to Amend Code of Ethics Policy
Motion by Councilmember Cole, second by Councilmember Stevens, to approve Resolution 2009-06-03 as follows:

CITY OF CHARLEVOIX
RESOLUTION NO. 2009-06-03
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. 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). 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 may be approved by the City Manager pursuant to the City Code and the City Manager finds that the proposed contract is in the best interests of the City, then the City Manager may approve the contract and, as early as practical after its approval, shall inform the City Council 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.
- C. This resolution supersedes any prior resolution or policy of the City regarding this subject matter.

RESOLVED, this 15th day of June, 2009.

Resolution adopted by the following yea and nay votes:

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

C. Request by SeaPorts Great Lakes for Free Dockage – Tall Ship Inland Seas

Motion by Councilmember Stevens, second by Councilmember Cole, to approve Resolution 2009-06-04 as follows:

CITY OF CHARLEVOIX
RESOLUTION NO. 2009-06-04
WAIVE DOCKING FEES FOR TALL SHIP INLAND SEAS

WHEREAS, SeaPorts Great Lakes is hosting the Tall Ship Inland Seas on June 30 and July 1, 2009; and

WHEREAS, SeaPorts Great Lakes is requesting that docking fees be waived for the ship; and

WHEREAS, the City Code permits the City Council to waive docking fees for special or public events; and

BE IT RESOLVED, that the City Council of the City of Charlevoix hereby waives docking fees for the tall ship Inland Seas on June 30 and July 1, 2009.

RESOLVED, this 15th day of June, 2009.

Resolution adopted by the following yea and nay votes:

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

X. Ordinances

A. Amendments to Title V, Planning and Zoning

CITY OF CHARLEVOIX
ORDINANCE NO. 740 OF 2009
AN ORDINANCE TO AMEND TITLE V, PLANNING AND ZONING, CHAPTER 51, ZONING.
MULTIPLE SECTIONS CITED HEREIN

THE CITY OF CHARLEVOIX ORDAINS:

SECTION 1. Amendment of Sections 5.6, 5.10, 5.12 Definitions.

The following definitions are hereby added or amended to read in their entirety as follows:

Fence: A structure of definite height and location intended to serve as a physical barrier to property ingress or egress, a screen for objectionable vista or noise, a marker, or a decorative use.

Ordinary High Water Mark: The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the soil and the vegetation. On an inland lake which has had a level established by law, it means the high established level. On a river or stream, the ordinary high water mark shall be the ten year flood limit line. The ordinary high water mark shall be at elevation 581.5 feet (International Great Lake Datum, IGLD- 1985) for Lake Michigan and Lake Charlevoix.

Retaining Wall: a permanent structure used to secure dirt, sand, rock, or other materials to prevent downslope movement or erosion.

Through Lot: A lot having frontage on two parallel, or approximately parallel, streets.

Yard, Front: A yard extending across the front of a lot between the side lot lines and being the minimum horizontal distance between the street or place line and the main building or any projections thereof. On corner lots the front yard shall be parallel to that street frontage upon which the traditional front entrance for persons, i.e., the front door, is located.

SECTION 2. Amendment of Section 5.33(1) and Section 5.43(1) Minimum Lot Areas for R1 and R2 Districts.

The following sections are hereby amended to read in their entirety as follows:

5.33(1) Minimum Lot Area and Width: The minimum lot area and width in this zone shall be twelve thousand (12,000) square feet and one hundred (100) feet respectively. The building and or structures shall not use more than thirty (30%) percent of the usable lot area, however lots with an area of less than 7000 square feet shall not use more than forty (40%) percent of the usable area. Percentages shall be determined by totaling the building footprint of all structures on the lot excluding eaves and overhangs that are less than two feet. Eaves and overhangs greater than 2 feet shall be included in the percentage of lot coverage.

5.43(1) Minimum Lot Area and Width: The building and or structures shall not use more than thirty (30%) percent of the usable lot area, however lots with an area of less than 6000 square feet shall not use more than forty (40%) percent of the usable area. Percentages shall be determined by totaling the building footprint of all structures on the lot excluding eaves and overhangs that are less than two feet. Eaves and overhangs greater than 2 feet shall be included in the percentage of lot coverage.

SECTION 3. Amendment of Section 5.92 (6) Permitted Use Regulations in CBD.

Section 5.92(6) is hereby amended to read in its entirety as follows:

- (6) Restaurants.

SECTION 4. Repeal of Section 5.176(6) Accessory Buildings.

Section 5.176(6) is hereby repealed in its entirety.

SECTION 5. Amendment of Section 5.183 Through Lots.

Section 5.183 is hereby amended to read in its entirety as follows:

5.183 Through Lots.

In any district, a through lot, as defined, shall have a front yard, as hereinafter provided for its particular district, on all frontages along each street lot line. Through lots are prohibited on any new developments, except where one frontage is a private road. Front yards on through lots in existence shall be located on the side of traditional front entrance of the home. Through lots located on Block 5 of Newman's Addition and Block 21 of Mason's Addition shall have front yards facing Belvedere Avenue due to topographical disadvantages.

SECTION 6. Amendments to Section 5.188(1), (3) and (4) - Development Plan.

Section 5.188(1) is hereby amended to read in its entirety as follows:

- (1) No building shall be erected or structurally altered, nor shall any grading take place in any zone district, except R-1 and R-2, nor shall any change in use as defined by use regulation which requires an increase in parking spaces within the various zone districts be permitted in any portion of the premises, until such a time as a Development Plan has been approved by the City Council after review and recommendation by the City Planning Commission. "Change of use" shall also include a re-institution of any use discontinued for a period of three (3) years or more.

The site plan shall expire unless substantial construction of an approved site plan improvement has begun within 365 days of approval. Thirty days prior to expiration of an approved final site plan, an applicant may make application to the Planning Commission for a one year extension of the site plan at no fee. The Planning Commission may grant the requested extension up to an additional one year, if it finds good cause for the extension and that the zoning regulations governing the site plan approval have not changed since the approval.

If a building permit has been obtained as provided, the development plan approval shall be deemed expired if, at any time prior to completion of the project, work on the project cease for twelve (12) months or any twelve (12) month period otherwise elapses when substantial progress is not made toward completing the project.

Section 5.188(3) is hereby amended to read in its entirety as follows:

- (3) Three (3) copies of the development plan shall be submitted to the Zoning Administrator and shall contain the following information. The zoning administrator may waive the requirements in select cases.

The applicant shall provide to the Zoning Administrator electronic copies of any documents generated for development plan review process on CD or via e-mail in the appropriate electronic format, including but not limited to AutoCad, AutoMap, ESRI, tiff, pdf, or jpeg formats. The City acknowledges that these documents are for internal use only and may not be distributed to the public unless required by the Freedom of Information Act (FOIA.)

General requirement of overall development plan submission shall consist of a set of drawings shown at a scale of not less than one (1) inch equals fifty (50) feet on a standard sheet size of twenty-four (24) inches by thirty-six (36) inches. A scale of one (1) inch equals one hundred (100) feet when conditions warrant or do not allow the use of the standard sheet size at a scale of one (1) inch equals fifty (50) feet may be permitted. Architectural elevations and floor plan details shall be drawn to a minimum scale of one-eighth (1/8) inch equals one (1) foot.

Included in the development plan submission shall be the following information:

Section 5.188(3), sub-subsections (a)-(h) remain unchanged.

Section 5.188(3)(i) is hereby added and shall read in its entirety as follows:

- (i) Any additional reports deemed necessary by the Zoning Administrator or the Planning Commission including, but not limited to, transportation plans, traffic studies, geotechnical reports, flood hazard evaluations, or environmental assessments.

Section 5.188(4) is hereby added and shall read in its entirety as follows:

- (4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may be included conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:
 - (a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
 - (b) Be related to the valid exercise of the police power and purposes of which are affected by the proposed use or activity.
 - (c) Be necessary to meet the intent and purpose of the zoning requirement, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

SECTION 7. Amendment of Section 5.191(1) Fence, Walls and Screen Regulations.

Section 5.191(1) is hereby amended to read in its entirety as follows:

- (1) All fences, walls and other objects shall be located on private property and must not obstruct the sight distance of motorists from driveways, roads, and intersections. Fences or walls in all districts except Industrial shall not exceed six (6) feet in height above grade when located in any portion of the rear or side yard and shall not exceed three (3) feet above grade when located within fifteen (15) feet of the front lot line. Fences, provided that open wrought iron, picket, split rail or other decorative fences may be installed and maintained within fifteen (15) feet of the front lot line, provided they do not exceed three (3) feet in height above adjacent sidewalk or if no sidewalk three (3) feet above natural grade of the property, meet the requirements of Section 5.185, "intersection visibility", and have a maximum opacity of fifty percent (50%) and are not located within twelve (12) inches of the front lot line.
- (2) All fences shall be constructed with the finished side exposed to neighboring properties, the support posts placed on the inside, and in a manner which serves to enhance the aesthetic appearance of the neighborhood or surrounding area.

SECTION 8. Amendment of Section 5.214(3)(h).

Section 5.214(3)(h) is hereby amended to read in its entirety as follows:

- (h) Drive-in and fast food restaurants. One space for every three seats of legal operating capacity.

SECTION 9. Addition of Section 5.262(3) Procedure for Special Use Permits.

Section 5.262(3) is hereby added and shall read in its entirety as follows:

- (3) Applicants that obtain approval from the Planning Commission must then follow Section 5.188 for development plan review if the special use results in an increase in the number of parking spaces required as defined by Article VI.

