



CITY COUNCIL

January 6, 2014

A regular meeting of the City of Petoskey City Council was held in the City Hall City Council Chambers, Petoskey, Michigan, on Monday, January 6, 2014. This meeting was called to order at 7:00 P.M.; then, after a recitation of the Pledge of Allegiance to the Flag of the United States of America, as part of the City Council's annual organizational meeting, the City Clerk-Treasurer administered oaths of office to Mayor-elect William J. Fraser, and City Councilmembers-elect Kate Marshall and Grant Dittmar, following their elections to the City Council at the General Election of November 5, 2013. A roll call then determined that the following were

Present: William Fraser, Mayor  
Kate Marshall, City Councilmember  
John Murphy, City Councilmember  
Grant Dittmar, City Councilmember  
Jeremy Wills, City Councilmember

Absent: None

Also in attendance were City Manager Dan Ralley, City Clerk-Treasurer Alan Terry and City Planner Amy Tweeten.

Resolution No. 18740  
Approve Consent Agenda Items

Following the introduction of the consent agenda for this meeting of January 6, 2014, City Councilmember Marshall moved that, seconded by City Councilmember Dittmar adoption of the following resolution:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the December 12, 2013 joint-session and December 16, 2013 regular-session City Council meeting be and are hereby approved; and

BE IT FURTHER RESOLVED that receipt by the City Council of a report concerning all checks that had been issued since December 16 for contract and vendor claims at \$1,376,591.17, intergovernmental claims at \$66,415.75, and the December 19 payroll at \$169,265.62, for a total of \$1,612,272.54 be and is hereby acknowledged;

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Resolution No. 18741  
Elect Mayor Protempore

Mayor Fraser next reported that, as required by City Charter provisions, the City Council was being asked to elect from its members a Mayor Protempore who would serve in the absence or incapacity of the Mayor, and

then requested nominations for this position. Mayor Fraser then nominated, supported by City Councilmember Murphy, that City Councilmember Marshall be appointed as Mayor Protempore and that the following resolution be adopted:

BE IT RESOLVED that the City Council does and hereby approves the appointment of City Councilmember Kate Marshall as Mayor Protempore to the City Council.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Resolution No. 18742  
Confirm Appointments

Mayor Fraser then reviewed that City Council consider possible appointments to the Parks and Recreation Commission. City Councilmember Wills moved that, seconded by City Councilmember Marshall, adoption of

the following resolution:

BE IT RESOLVED that the City Council does and hereby approves the reappointments of Amanda (Amy) McMullen, 901 Sunset Court, and Roy Pulaski, 449 Pearl Street, to the Parks and Recreation Commission, both for two-year terms ending January 2016.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Hear Public Comment

Mayor Fraser asked for public comments and there were no comments.

Hear City Manager Updates

The City Manager reported that Mac McClelland would be giving a Brownfield presentation at the January 20 City Council meeting; that the City will receive an additional \$400,000 towards the West Mitchell Street and US-31 project and thanked Mayor Fraser and State Representatives Frank Foster and Wayne Schmidt for their efforts in securing the funds; and that Elias Amash purchased the former Petoskey Pointe site property.

Resolution No. 18743-18744-Adopt Ord.  
737 & 738 Pertaining to Civil Infractions

The City Manager next reviewed two proposed ordinances that would amend sections of the City's Codified Ordinances related to Municipal Civil Infractions. The first proposed ordinance would enable Civil Infraction fines to be established from time to time via a resolution of City Council. The second proposed ordinance would replace conflicting language in the City's Code that specifies dollar amounts for certain penalties established prior to the transition to Civil Infractions.

City Council conducted a first reading and reviewed both ordinances at its December 16, 2013 meeting and was being asked to conduct a second reading and take possible action.

In 2000 the City adopted a Civil Infraction ordinance that established certain violations of the City's Codified Ordinances to be Municipal Civil Infractions. Attached to that ordinance, along with a subsequent update in 2010, was an exhibit that established a set of fine amounts for certain civil infractions. Because this exhibit was attached to the Civil Infraction ordinance, the fine schedule was codified within Section 2-96 as part of the ordinance. All other fees and charges for the City are established via resolutions of City Council. There are no changes proposed for Municipal Civil Infraction penalty amounts within this section.

The second ordinance would amend portions of Chapters 16, 18, 20 ½ and 21 to remove specific dollar amounts referenced within those sections that conflicted with the Municipal Civil Infraction penalty amounts and clarify that the specified violations are Municipal Civil Infractions.

These sections of the Code existed prior to the adoption of Municipal Civil Infractions by the City. Although the violations were covered by the Municipal Civil Infraction ordinance, the specific code sections were not updated concurrently with the adopted use of Civil Infractions.

This ordinance updates the language in each of these specific Code sections to remove fine specific amounts and clarify that each violation is a Municipal Civil Infraction.

City Councilmembers discussed when and why fines would be updated; and if the table of fines would no longer be needed on each individual fine. The City Manager responded that there was no more need to have each individual fine listed within each ordinance.

Mayor Fraser asked for public comment regarding civil infraction penalties by resolution and there were no public comments.

City Councilmember Murphy then moved that, seconded by City Councilmember Wills adoption of the following ordinance:

Resolution No. 18743  
**ORDINANCE NO. 737**

**AN ORDINANCE TO AMEND A PORTION OF CHAPTER 2, ARTICLE VI OF THE CITY OF PETOSKEY CODE OF ORDINANCES ENTITLED “MUNICIPAL CIVIL INFRACTIONS” FOR THE PURPOSE OF AMENDING THE PENALTY SECTION.**

**THE CITY OF PETOSKEY ORDAINS:**

1. Section 2-96, Article VI, Chapter 2, of the City Code of Ordinances Entitled “Designation of Authorized City Officials” is hereby repealed and replaced with the following:

**Sec. 2-96. - Designation of authorized city officials.**

*All authorized city official(s) shall have the authority to issue municipal civil infraction citations and municipal civil infraction violation notices.*

2. Section 2-108, Article VI, Chapter 2, of the City Code of Ordinances Entitled “Penalty for Municipal Civil Infraction” is hereby repealed and replaced with the following:

**Sec. 2-108. Penalty for municipal civil infraction.**

*Every person found responsible for a violation of this Code shall pay a civil fine according to the schedule of civil fines established by resolution of the City Council, as the same may be amended from time to time by further resolution of the City Council, but not more than \$1,000.00 per day plus costs, damages, and expenses as follows:*

(1) *A person found responsible by the judge or district court magistrate for any violation of this Code charged as a municipal civil infraction shall pay the stipulated civil fine and costs to be determined by the court or magistrate, which may include all expenses, direct and indirect, to which the city has been put in connection with the municipal civil infraction, up to the entry of the judgment. Costs of not less than \$9.00 or more than \$500.00 shall be ordered.*

(2) *In addition to ordering the defendant to pay a civil fine, costs, damages, and expenses, the judge or district court magistrate may issue such writs or injunctive orders as necessary to abate a nuisance as provided in MCL 600.2940, or issue any judgment, writ or order necessary to enforce the city ordinance as provided in MCL 600.8302.*

(3) *If a defendant fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the court may proceed under MCL 600.8729 and MCL 600.8731. A defendant who fails to answer a citation or notice to appear in court for a municipal civil infraction is guilty of a misdemeanor and shall be punished as provided in [section 2-107](#) of this Code.*

(4) *If a defendant does not pay a civil fine or costs or expenses or an ordered installment payment within 30 days after the date on which payment is due in a municipal civil infraction action brought for a violation involving the use or occupation of land or a building or other structure, the city may obtain a lien against the land, building or structure involved in the violation by recording a copy of the court order requiring payment of the fine, costs, and expenses with the Emmet County Register of Deeds containing the legal description of the property, which lien may be recorded and enforced in the manner provided by MCL 600.8731.*

(5) *In a municipal civil infraction action involving the use or occupancy of land or a building or other structure, a copy of the citation need not be personally served upon the alleged violator but may be served upon an owner or occupant of the land, building, or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building, or structure at the owner's last known address.*

(6) *Each act of violation and every day upon which a violation shall occur shall constitute a separate offense.*

(7) *This penalty section, including the schedule of fines adopted by resolution of the City Council, shall control over any other penalty section of the City Code in conflict with this section concerning the assessment of fines, costs and damages for any violation of the City Code designated as a municipal civil infraction.*

3. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

4. This Ordinance shall take effect fifteen (15) days following its enactment and shall be published once within seven (7) days after its enactment as provided by Charter.

Said ordinance was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Mayor Fraser asked for public comment regarding civil infraction penalty amendments and there were no public comments.

City Councilmember Wills then moved that, seconded by City Councilmember Marshall adoption of the following ordinance:

Resolution No. 18744

**ORDINANCE NO. 738**

**ORDINANCE TO AMEND A PORTION OF CHAPTERS 16, 18, 20 ½ AND 21 OF THE CITY OF PETOSKEY CODE OF ORDINANCES FOR THE PURPOSE OF AMENDING THE PENALTY SECTIONS.**

**THE CITY OF PETOSKEY ORDAINS:**

1. Section 16-7 of Part II, Chapter 16 of the City Code of Ordinance, regulating Soil Erosion and Sedimentation Control, is hereby repealed and replaced with the following:

*Section 16-7 – Municipal civil infractions.*

1. *Any person, firm or corporation violating any of the provisions of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine pursuant to the City of Petoskey Municipal Civil Infraction Ordinance, as amended, plus costs and other sanctions, for each violation (as authorized by Section 24 of Act 184 of the Public Acts of Michigan of 1943, as amended, the City of Petoskey Municipal Civil Infraction Ordinance, and other applicable laws).*
  2. *Repeat offenses under this ordinance shall be subject to increased fines, as provided by the City of Petoskey Municipal Civil Infraction Ordinance, as amended from time to time.*
  3. *Each day on which any violation of this ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this Ordinance shall not exempt the offender from meeting the requirements of this ordinance.*
  4. *A violation of this ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the city may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this ordinance.*
2. Section 18-18 of Article II, Chapter 18 of the City Code of Ordinance, entitled Removal by City; Assessment of costs, is hereby repealed and replaced with the following:

*Section 18-18 – Removal by City; Violation*

1. *If any occupant or owner shall neglect or fail to remove such part of such snow or ice as will result in compliance with [section 18-17](#), the city manager may cause such snow or ice to be removed. The person, firm or corporation violating any of the provisions of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine pursuant to the City of Petoskey Municipal Civil Infraction Ordinance, as amended, plus costs and other sanctions, for each violation (as authorized by Section 24 of Act 184 of the Public Acts of Michigan of 1943, as amended, the City of Petoskey Municipal Civil Infraction Ordinance, and other applicable laws).*
  2. *Repeat offenses under this ordinance shall be subject to increased fines, as provided by the City of Petoskey Municipal Civil Infraction Ordinance, as amended from time to time.*
  3. *Each day on which any violation of this ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this Ordinance shall not exempt the offender from meeting the requirements of this ordinance.*
  4. *A violation of this ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the city may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this ordinance.*
3. Section 18-27 of Article II, Chapter 18 of the City Code of Ordinance, entitled Removal by City; Assessment of costs, is hereby repealed and replaced with the following:  
*Section 18-27 – Removal by City; Violation*

1. *If any occupant or owner shall neglect or fail to clear ice or snow from the sidewalk adjoining his lot or parcel of land within the time limited and required by [section 18-26](#), or shall otherwise permit ice and snow to accumulate on such sidewalk, the city manager may cause such snow or ice to be cleared. The person, firm or corporation violating any of the provisions of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine pursuant to the City of Petoskey Municipal Civil Infraction Ordinance, as amended, plus costs and other sanctions, for each violation (as authorized by Section 24 of Act 184 of the Public Acts of Michigan of 1943, as amended, the City of Petoskey Municipal Civil Infraction Ordinance, and other applicable laws).*
  2. *Repeat offenses under this ordinance shall be subject to increased fines, as provided by the City of Petoskey Municipal Civil Infraction Ordinance, as amended from time to time.*
  3. *Each day on which any violation of this ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this Ordinance shall not exempt the offender from meeting the requirements of this ordinance.*
  4. *A violation of this ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the city may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this ordinance.*
4. Section 20 1/2-20 of Part II, Chapter 20 1/2 of the City Code of Ordinance, regulating Telecommunications, is hereby repealed and replaced with the following:

*Section 20 ½-20 – Municipal civil infraction*

1. *Any person, firm or corporation violating any of the provisions of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine pursuant to the City of Petoskey Municipal Civil Infraction Ordinance, as amended, plus costs and other sanctions, for each violation (as authorized by Section 24 of Act 184 of the Public Acts of Michigan of 1943, as amended, the City of Petoskey Municipal Civil Infraction Ordinance, and other applicable laws).*
  2. *Repeat offenses under this ordinance shall be subject to increased fines, as provided by the City of Petoskey Municipal Civil Infraction Ordinance, as amended from time to time.*
  3. *Each day on which any violation of this ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this Ordinance shall not exempt the offender from meeting the requirements of this ordinance.*
  4. *A violation of this ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the city may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this ordinance.*
5. Section 21-38(4) of Article III, Chapter 21 of the City Code of Ordinance, entitled Parking, etc. in excess of three hours; Violations, is hereby repealed and replaced with the following:

*Section 21-38(4) – Violations.*

1. *Any person, firm or corporation violating any of the provisions of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine pursuant to the City of Petoskey Municipal Civil Infraction Ordinance, as amended, plus costs and other sanctions, for each violation (as authorized by Section 24 of Act 184 of the Public Acts of Michigan of 1943, as amended, the City of Petoskey Municipal Civil Infraction Ordinance, and other applicable laws).*
2. *Repeat offenses under this ordinance shall be subject to increased fines, as provided by the City of Petoskey Municipal Civil Infraction Ordinance, as amended from time to time.*
3. *Each day on which any violation of this ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this Ordinance shall not exempt the offender from meeting the requirements of this ordinance.*
4. *A violation of this ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the city may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this ordinance.*
6. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.
7. This Ordinance shall take effect fifteen (15) days following its enactment and shall be published once within seven (7) days after its enactment as provided by Charter.

Said ordinance was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)  
 NAYS: None (0)

Resolution No. 18745 – Adopt Ord. 739  
Amending ZBA Membership &  
Use Variances

The City Manager next reviewed a proposed ordinance that would change the membership composition of the Zoning Board of Appeals and clarify the formal authority of the ZBA to review certain specified variance applications. Additionally, the ordinance makes administrative changes to the temporary use review process and clarifies the right of appeal of ZBA decisions to the Emmet County Circuit Court.

On September 12, 2013 City Council held a joint meeting with the Planning Commission and ZBA. At that meeting, multiple policy issues were discussed, including the membership of the ZBA, the jurisdiction of the ZBA for use and non-use variances, as well as sign variances. The development of the proposed ordinance originated out of these discussions.

City Council conducted the first reading and reviewed the ordinance at its December 16, 2013 meeting and was being asked to take action.

The following changes are proposed to Appendix A of the City's Codified Ordinances as part of the attached ordinance:

1. Section 2000 Membership. The proposed ordinance language would change the ZBA from a six person body that includes a seventh alternate member to a seven person body with no alternate. The even number of members on the ZBA has been a source of confusion for voting, and the presence of the alternate has at times also added to confusion about the composition of the ZBA. The intent of the proposed change is to clarify the membership composition of the ZBA as well as the majority needed for approval of appeals.

2. Section 2002 Appeal. Proposed language in this Section would codify the length of time at 30 days within which an appeal must be filed with the ZBA rather than allowing this timeframe to be set by “general rule” of the ZBA. Appeals can either be of an administrative decision of the Zoning Administrator, or a decision of the Planning Commission. For purposes of this Section formal decisions of the Planning Commission are determined to be made upon approval of the meeting minutes, which typically happens at a subsequent meeting from the hearing of an application before the Planning Commission.
3. Section 2004 Section 1 Administrative Review. Language in this section has changed to parallel Section 2002 giving administrative review authority to the ZBA within 30 days of an administrative ruling.
4. Section 2004 Section 2 Variances. Language in this section has been substantially re-written to clarify the ZBA’s authority to review non-use variances, use variances, and sign variances. Standards of for review of each potential appeal type are specified in this Section.
  - a. Non-Use Variances. The ZBA presently has authority to review dimensional variances. The language in this proposed sub-section clarifies that dimensional variances should be reviewed using a standard of “practical difficulty”. Specific language defining situations where dimensional variances may be granted is unchanged from the existing Section 2004 (2).
  - b. Use Variances. Although previously granted in situations involving accessory structures, the ZBA has never had explicit authority within Appendix A to review use variances although the Zoning Enabling Act does authorize communities to allow use variances. Examples were cited at the September 12, 2013 meeting of existing structures located in various locations within the City that historically included first floor commercial spaces that are now prohibited under residential zoning standards. Partially as a result of these zoning restrictions, these first floor spaces are difficult to rent and frequently sit vacant. Based on concerns discussed at the joint meeting, authority within this proposed section has been drafted to permit use variance review using an unnecessary hardship standard in situations where “the historic character of the building suggests that, absent relief, an unnecessary hardship may occur.” Additionally, the ordinance gives the ZBA authority to attach conditions to their approval of a use variance, and explicitly states that authority for granted use variances does not continue following the sale of a property or the abandonment of a use for which a variance has been granted.
  - c. Sign Variances. Although previously reviewed by the ZBA, Appendix A has never specifically included language granting the ZBA authority to review sign variances under Appendix C of the City’s Code. This proposed ordinance clarifies the ZBA’s authority in this area, and limits this authority to variances based on “sign dimensions, height, and the re-location of non-conforming signs”.
  - d. Temporary Uses. Language in Section 2004 (3)(e) and (f) has been combined to streamline the review process for temporary use applications. Streamlining the temporary use review process is designed to encourage rather encumber entrepreneurial activities that may start small or be of a temporary or seasonal nature (e.g. farmers market, pop-up retail). Specifically, under the proposed language, a temporary use would continue to require notification of adjacent property owners and action at a public meeting, but the formal public hearing requirements in terms of publication of hearing notices and minimum number of days for notification are removed. Other notice provisions to adjacent property owners remain unchanged.



Additionally, the ZBA would be permitted, but not required, to seek the input of the Planning Commission in reviewing temporary use applications, which has slowed the process by approximately another month.

5. Section 2007 Miscellaneous. Language has been added to this section clarifying that decisions of the ZBA may be appealed to Emmet County Circuit Court.

The City Manager reviewed that the amendments would change the membership from 6 to 7 members with no alternate; that the timeline for an appeal would be 30 days; and that the Board would be able to hear non-use, use and sign variances.

City Councilmembers inquired if these changes would negatively affect the existing process; and the City Planner reviewed that the only item that changes is 7 members and will change number of votes needed for a variance approval.

City Councilmembers discussed the proposed and current number of members on the Appeals Board.

City Councilmember Marshall then moved that, seconded by City Councilmember Murphy to extract Section 2000 from the proposed ordinance for discussion purposes.

Said motion was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Fraser (4)  
NAYS: Wills (1)

City Councilmembers further discussed concerns moving towards a 7 member board; noting that a higher threshold needs to be in place for changes from the code; concerns with eliminating the alternate position; discussed potential issue of having members on two different boards; and discussed whether there had been other input from the ZBA on the number of members.

City Councilmember Marshall then moved that, seconded by City Councilmember Murphy adoption of the proposed ordinance excluding Section 2000:

#### **ORDINANCE NO. 739**

#### **AN ORDINANCE TO REPEAL AND REPLACE SECTIONS 2002, 2004 AND 2007 OF ARTICLE XX ENTITLED BOARD OF APPEALS OF THE CITY OF PETOSKEY ZONING ORDINANCE**

The City of Petoskey ordains:

1. Section 2002 of Article XX Zoning Ordinance of the City of Petoskey entitled "Appeal" is hereby repealed and replaced by the following:

#### **Sec. 2002. - Appeal.**

*An appeal may be taken to the board of appeals by a person, firm or corporation aggrieved, or by any officer, department, board or bureau of this state or the City of Petoskey. Such appeal shall be taken within thirty days of a decision, by filing with the Zoning Administrator and with the board of appeals a notice of appeal, specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board of appeals after notice of appeal has been filed with him or her that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed, otherwise than by a restraining order, which may be granted by a court of record.*

*The board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.*

2. Section 2004 of Article XX Zoning Ordinance of the City of Petoskey entitled "Jurisdiction" is hereby repealed and replaced by the following:

**Sec. 2004. - Jurisdiction.**

*The zoning board of appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this ordinance, but does have power to act on those matters where this ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this section and laws of the State of Michigan. Said powers include:*

1. *Administrative review. To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the zoning official or any other administrative official in carrying out or enforcing any provisions of this ordinance. Administrative Review appeals must be filed within 30 days of an order, requirement, permit, decision or refusing made by the zoning official or any other administrative official carrying out or enforcing any provisions of this ordinance.*

2. *Variances.*

- A. *Non-Use Variances*

*The zoning board of appeals shall have the authority to grant non-use variances relating to the construction, structural changes or alterations of buildings or structures related to dimensional requirements of this zoning ordinance or any other nonuse-related standards in the ordinance. If there are "practical difficulties" for non-use variances the zoning board of appeals may grant a variance so that the spirit of this zoning ordinance is observed, public safety secured and substantial justice done. The zoning board of appeals shall consider dimensional standards where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or practical difficulties to the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this ordinance.*

- B. *Use Variances*

*The zoning board of appeals shall have the authority to grant variances from uses of land where the historic use or character of a building suggests that, absent relief, an "unnecessary hardship" may occur. For use variances, the zoning board of appeals may grant a variance so that the spirit of this zoning ordinance is observed, public safety secured and substantial justice done. The zoning board of appeals shall consider standards where by reason of undue hardship upon the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this ordinance.*

*In granting a variance, the board may attach thereto such conditions regarding the location, character, and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this ordinance. In granting a variance, the board shall state the grounds upon which it justifies the granting of a variance. Use variances shall not run with the land and shall lapse upon change in ownership or the abandonment of the use for which a variance was granted.*

### *C. Sign Variances*

*The zoning board of appeals shall only have the authority to grant sign variances for sign dimensions, height, and the re-location of existing non-conforming signs. The zoning board of appeals shall consider the intent of the sign ordinance, the practical difficulty presented by the proposed sign and sign location, and public safety. Where the strict application of the regulations enacted would result in peculiar or practical difficulties to the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this ordinance.*

*3. Exceptions and special approvals. To hear and decide in accordance with the provisions of this ordinance, requests for exceptions, for interpretations of the zoning map, and for decisions on special approval situations on which this ordinance specifically authorizes the board to pass. Any exception or special approval shall be subject to such conditions as the board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this ordinance, including the following:*

*a. Interpret the provisions of this ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the zoning map fixing the use districts, accompanying and made part of this ordinance, where street layout actually on the ground varies from the street layout as shown on the map aforesaid.*

*b. Permit the erection and use of a building or use of premises for public utility purposes, upon recommendation of the planning commission.*

*c. Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.*

*d. Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.*

*e. Permit temporary buildings and uses for periods not to exceed one year, renewable upon re-application, to the board of appeals. The board of appeals, in granting permits for the above temporary uses, shall do so under the following conditions:*

*(1) The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.*

*(2) The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.*

*(3) All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City of Petoskey, shall be made at the discretion of the board of appeals.*

*(4) In classifying uses as not requiring capital improvement, the board of appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to: golf-driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.*

*(5) The use shall be in harmony with the general character of the district.*

(6) *No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of the review. Further, the board of appeals may seek the review and recommendation of the planning commission prior to taking action on the temporary use request.*

4. *In consideration of all appeals and all proposed variations to this ordinance the board shall, before making any variations from the ordinance in a specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Petoskey. The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision or determination of the administrative official or body; to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under this ordinance; or to grant a variance under this zoning ordinance. Nothing herein contained shall be construed to give or grant to the board the power or authority to alter or change this ordinance or the zoning map, such power and authority being reserved to the city council of the City of Petoskey, in the manner provided by law.*

5. *International Property Maintenance Code. The zoning board of appeals shall have the power to hear appeals under the International Property Maintenance Code as established in §13-34.*

3. Section 2007 of Article XX Zoning Ordinance of the City of Petoskey entitled "Miscellaneous" is hereby repealed and replaced by the following:

**Sec. 2007. - Miscellaneous.**

1. *No order of the board permitting the erection of a building shall be valid for a period longer than one year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.*

2. *No order of the board permitting a use of a building or premises shall be valid for a period longer than one year, unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.*

3. *The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the County of Emmet.*

4. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

5. This Ordinance shall take effect fifteen (15) days following its enactment and shall be published once within seven (7) days after its enactment as provided by Charter.

Said ordinance was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Resolution No. 18746 Adopt Ord. 740  
Prohibiting Begging

The City Manager next reviewed a proposed ordinance that would prohibit begging. In August of 2013, the U.S. Court of Appeals for the Sixth Circuit issued a decision holding that begging is a form of speech protected by the First Amendment and that Michigan's state-law ban on begging in a public place, M.C.L. §750.167(1)(h) is facially unconstitutional. *Speet v Schuette*, 726 F.3d 867 (6<sup>th</sup> Cir. 2013). The City Attorney advised that as a result of this decision that the City's Codified Ordinance Section 12-2 is probably unconstitutional and should be repealed. The proposed ordinance would repeal Section 12-2 of the City's Codified Ordinances.

Adopted in 1971, Section 12-2 is part of the City's Codified Ordinances Chapter 12 covering Miscellaneous Offenses and Provisions. Chapter 12 is currently undergoing a comprehensive review by Department of Public Safety staff. Although significant revisions to Chapter 12 are anticipated to be ready for Council consideration in the first half of 2014, the Sixth Circuit's ruling prompted City staff to bring forward the repeal of Section 12-2 prior to broader proposed revisions to the entirety of Chapter 12.

City Council conducted the first reading at its December 16, 2013 meeting and was being asked to take action.

The City Manager reviewed that the Department of Public Safety believes if there are issues pertaining to this matter that they could be dealt with through other enforcement measures.

Mayor Fraser asked for public comments and there were no comments.

City Councilmember Wills moved that, seconded by City Councilmember Marshall adoption of the following ordinance:

**ORDINANCE NO. 740**

**AN ORDINANCE TO AMEND A PORTION OF CHAPTER 12, ARTICLE I OF THE CITY OF PETOSKEY CODE OF ORDINANCES TO REPEAL THE PROHIBITION AGAINST BEGGING IN THE CITY OF PETOSKEY**

**THE CITY OF PETOSKEY ORDAINS:**

WHEREAS, the United States Court of Appeals for the Sixth Circuit issued a decision holding that begging is a form of speech protected by the First Amendment and that certain laws banning begging in a public place may be facially unconstitutional. *Speet v Schuette*, 726 F.3d 867 (6<sup>th</sup> Cir. 2013).

THEREFORE, based on this legal authority, Section 12-2, Article I, Chapter 12, of the City of Petoskey Code of Ordinances Entitled "Begging" is hereby repealed in its entirety

The various parts, sections and clauses of this Amendment to Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

This Amendment to Ordinance shall take effect fifteen (15) days following its enactment and shall be published once within seven (7) days after its enactment as provided by Charter.

Said ordinance was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

## Vacation Rental Properties Discussion

The City Manager next reviewed that in the fall of 2012, following concerns raised about vacation rental housing at a Ward Convention meeting, City Council held discussions about problems associated with vacation rental housing. Councilmember Marshall asked that Council re-visit this discussion in order to further discuss possible options for addressing the concerns of some of her constituents.

A vacation home is commonly defined as a commercial use of a dwelling where the dwelling is rented or sold for any term less than 30 consecutive days. Some coastal communities in Michigan regulate vacation rental properties, which appear to be increasing in popularity, with the development of vacation rental websites. Most of the communities surveyed that regulate vacation rental properties also have an active rental inspection program for all apartments within their communities and/or their own building inspection program.

A survey conducted in the late summer of 2012 found seven vacation rental properties within the City in addition to those properties within Bay Harbor that were designed and formally managed as vacation rental investment properties. Because of the self-listing/advertising of vacation rentals, it is likely that there are additional properties being used as vacation rentals beyond the seven properties identified as part of this survey.

Utilizing a residentially zoned property as a vacation rental introduces a commercial use into residential areas that may threaten the stability of a residential neighborhood or diminish the value of surrounding properties. The Department of Public Safety does not separately track complaints from vacation rental properties so it is not known the extent to which complaints have stemmed from these vacation rental properties within Petoskey.

However, other communities with a large number of vacation rentals have reported problems with parking, noise, and trash disposal, and anecdotal evidence suggests that similar problems exist with some vacation rental properties in Petoskey.

The following is a brief summary of how some other communities in Michigan are handling vacation rentals:

- Charlevoix - No regulations.
- Harbor Springs – No dwelling unit can be rented less than one week. No license or inspections. Handled on a complaint basis.
- Holland - Has rental inspection program. Defines any rental less than thirty days as a commercial use that is confined to certain zoning districts.
- Mackinac Island – Defines a hotel as any residence where persons stay less than 30 days. Zoning code restricts areas where hotels may be located. Vacation rentals that existed prior to date of regulatory change were grandfathered until a change of ownership occurs.
- Manistee – Rental inspection program covers vacation rentals.
- Muskegon – Has rental registration and inspection program under which vacation rental properties are regulated that are occupied more than three months per year.
- St. Joseph – Has rental registration and inspection program. “Short-term leases” of 30 days or less are required to include maximum occupancy loads, off-street parking requirements, the local telephone number of the unit, noise requirements in a conspicuous location within the vacation rental and in the lease.
- Traverse City – Require license for “Tourists Homes” where individual rooms are rented for less than seven days in a home that is occupied by the owner. Require license for “Vacation Home Rentals” (non-owner occupied) that includes an annual license fee and inspection. Vacation Home Rental license revocable for two violations of City code.

The City of Petoskey currently does not regulate vacation rental properties. Issues and complaints with regard to vacation rental properties are handled thru the Department of Public Safety in exactly the same fashion as issues that arise with any other properties in Petoskey.

Most communities that actively regulate vacation rental housing have an existing rental inspection program and/or maintain their own building department. In these communities, vacation rental housing is regulated in a similar fashion to all rental housing, often with specific add-on regulations pertaining only to short-term or vacation rentals. These inspections help to ensure that basic safety standards are met, and licenses in these communities are typically revocable if problems of safety, noise, trash or automobiles are found on repeated occasions.

By contrast Harbor Springs and Mackinac Island have chosen to regulate vacation rentals thru their zoning codes, and rely on complaints to trigger enforcement. In these communities the definition of a hotel has been broadened to incorporate vacation rental properties, which are restricted to specified zoning districts. Petoskey could utilize a similar approach if City Council wishes to restrict areas where vacation rentals would be permitted.

The exact number of vacation rental properties within Petoskey, not including Bay Harbor, is difficult to determine, but appears relatively small in number. Similarly, because incidents involving vacation rental properties are not tracked separately, and in many cases may not be formally reported, it is not possible to know the extent of problems that may exist with these properties in the city. However, because of the transient nature of vacation rental properties, issues of noise, trash disposal and parking may occur.

The potential regulation of vacation rental properties should weigh the value of having these homes available for visitors to Petoskey versus the impact of these properties on residential neighborhoods. If City Council does wish to regulate vacation rental properties it needs to determine whether regulation or prohibition is the objective.

Because the City lacks a Building Department, and does not have a rental housing inspection program, the regulation and oversight of vacation rental properties could pose administrative challenges. In contrast, if the zoning code was modified to effectively prohibit vacation rentals in many areas of the community, initial enforcement could be difficult, but ongoing oversight and enforcement would be minimal. Regulating via the Zoning Code would also not impact the properties in Bay Harbor that were designed as vacation rental properties, and which are centrally managed, because Resort Township regulates zoning under the Act 425 agreement.

If regulations are adopted that prohibit vacation rentals, those vacation rentals lawfully in existence prior to the passage of regulations would be grandfathered. Under Michigan law it is necessary to allow existing non-conforming uses in order to avoid having property regulations constitute a taking of property. Consequently, regulations could prevent additional vacation rentals from being established, and/or they could require registration and inspection of existing vacation rentals, but it is not possible to eliminate existing vacation rental properties unless done so voluntarily by an owner of a property. However, zoning regulations restricting where vacation rentals can exist paired with a requirement that basic noise, trash and parking regulations are posted in existing vacation rental properties, as is done in St Joseph, may offer an option to address neighborhood concerns.

City Councilmembers voiced concerns with sense of neighborhood and safety; that year-round residents should not have to deal with issues created by short term rentals; that the City could use a similar ordinance that St. Joseph uses to regulate these properties; that rentals should be registered; that regulations should be posted within the rental unit; and the City would have the ability to revoke a license if unresolved issues continued.

City Councilmembers further discussed what type of regulations they would like to consider providing direction to City staff so they may further research the matter and provide additional information to Council at a later date.

Mayor Fraser asked for public comments and heard from those concerned with too many cars and people for size of house; that rentals deteriorate a neighborhood; why are existing rentals grandfathered in; that regulating rentals may decrease tourism; question ability to regulate number of individuals renting a dwelling; and heard that Harbor Springs limits rentals to no less than a week.

City Councilmembers will discuss possible regulations at a future meeting.

There being no further business to come before the City Council, this January 6, 2014, meeting of the City Council adjourned at 8:30 P.M.

W.J. Fraser, Mayor

Alan Terry, City Clerk-Treasurer

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