



## CITY COUNCIL

September 21, 2015

A regular meeting of the City of Petoskey City Council was held in the City Hall Council Chambers, Petoskey, Michigan, on Monday, September 21, 2015. 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, 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 Robert Straebel, Clerk-Treasurer Alan Terry, City Planner Amy Tweeten, Director of Public Works Michael Robbins, Director of Public Safety John Calabrese, Downtown Director Becky Goodman and City Attorney James Murray.

City Councilmember Marshall moved that, seconded by City Councilmember Murphy to amend the September 21, 2015 agenda to add a Forensic Audit Proposal.

Said motion was adopted by the following vote:

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

Resolution No. 18893  
Approve Consent Agenda Items

Following introduction of the consent agenda for this meeting of September 21, 2015, 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 August 17, 2015 regular-session City Council meeting be and are hereby approved; and

BE IT RESOLVED that receipt by the City Council of a report concerning all checks that had been issued since August 17 for contract and vendor claims at \$13,852,633.69, intergovernmental claims at \$4,749,775.16, and the August 27 and September 10 payrolls at \$387,177.67, for a total of \$18,989,586.52 be and is hereby acknowledged.

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 heard from Ernie Mainland, representing Robert Dau, concerning the Hemingway statue; read a statement on the donation of the statue; and that City Council had 30 days to agree to site as selected by Mr. Dau.

The City Manager reviewed that the City received Hear City Manager Updates a draft National Pollutant Discharge Elimination System

(NPDES) permit from the MDEQ for the Wastewater Treatment Plant and that staff will discuss permit and certain requirements with MDEQ in the coming weeks; that a stop sign was installed at the alleyway by Jose's Restaurant to forewarn motorists of oncoming pedestrian traffic; that a fire equipment needs assessment and funding options report will be delivered to City Council in October for discussion; and that the City was recently awarded \$133,049 in federal matching grant funds to go towards the purchase of Self-Contained Breathing Apparatus.

The City Manager reviewed that on June 26 and 27, 2015 Resolution No. 18894 – Approve 2015 a work session was held to conduct strategic Action Plan & City Goals planning and goal setting with City Council and staff.

The City Manager reviewed that City Council tabled adopting the Action Plan and goals until both the DMB and Planning Commission could review and give comment. The City Manager also reviewed with City Council DMB's concerns on various matters.

City Councilmembers discussed MEDC funding issues and that it may affect goals.

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

WHEREAS, on June 26-27, 2015, the City Council met with facilitator Dr. Joe Ohren, the City Manager and Department Heads to discuss important issues facing the City of Petoskey; and

WHEREAS, as part of these sessions the City Council and Department Heads developed a draft Action Plan that listed four near-term goals for the City of Petoskey:

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the following goals as its Action Plan for the City of Petoskey:

### **1. Insure a Long-Term Sustainable City Budget**

- Consider four specific new revenue sources to increase total revenues for the City
- Develop and implement a comprehensive educational/informational campaign to explain to residents the need for additional revenues to insure sustainability

### **2. Plan for New and Replacement Infrastructure to Accommodate the Future**

- Identify, perhaps by extending the Capital Improvement Plan (CIP), the long term infrastructure needs of city departments, indicating both new and replacement needs as well as long term infrastructure maintenance requirements
- Consider specific revenue sources for infrastructure and capital expenditures; for example, a public safety millage to provide additional revenue for replacement of public safety equipment
- Aggressively pursue grants to support specific infrastructure needs, including Bureau of Indian Affairs funding for streets where appropriate
- Explore reclassifying appropriate city streets to increase the level of state road funding

### **3. Diversify and Strengthen the City's Economic Base**

- Create an inventory of vacant and/or underutilized property for marketing purposes

- Develop a handbook that identifies City policies, processes, and costs for development or redevelopment in the City
- Articulate a policy, even a general framework if necessary, governing the City's position on supporting development/redevelopment efforts through incentives of various kinds
- Consider pursuing Redevelopment Ready Community Certification from the State MEDC
- Reexamine parking requirements for commercial uses outside the downtown area in the Zoning Ordinance

#### 4. Identify and Address Downtown Development Issues

- Consider several specific strategies to increase parking or parking access in the downtown area
- Examine and remove to the extent feasible obstacles to downtown residential uses
- Consider whether property code enforcement should be expanded in the downtown area.

Said resolution was approved by the following vote:

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

NAYS: None (0)

Resolution No. 18895 - Second Reading & Adoption of Ordinance 752 Restricting Use of Sky Lanterns

The City Manager reviewed that at the August 3, 2015 City Council meeting, a discussion was conducted regarding sky lanterns and the dangers they pose to city buildings, structures and residents. City Council directed staff to draft an ordinance to deal with this matter.

City Council conducted the first reading of the proposed ordinance amendments at the August 17, 2015 meeting and the City did not receive any correspondence regarding these proposed amendments.

City Councilmembers inquired if the City would notify stores of the legality of sky lanterns; discussed the responsibility of store owners to inform buyers of the law; and concurred that the Department of Public Safety send information to known local retailers who sell sky lanterns of the new law.

Mayor Fraser asked for public comments and heard that this matter is similar to firearms which are illegal in the City to use, but not to purchase and have in their possession.

City Councilmember Wills then moved that, seconded by City Councilmember Marshall adoption of the following ordinance and providing that the City will provide information on the law to local retailers:

#### **Ordinance 752**

**AN ORDINANCE OF THE CITY OF PETOSKEY; AMENDING ORDINANCE NO. 710, § 1, SPECIFICALLY, ARTICLE II, "IN GENERAL" OF CHAPTER 10, "FIRE PREVENTION AND CONTROL" TO ADD A SECTION CONCERNING "SKY LANTERNS", TO RESTRICT THE USE OF SKY LANTERNS IN THE CITY.**

#### **The City of Petoskey Ordains:**

Ordinance No. 710, § 1 of the Code of Ordinances of the City of Petoskey, particularly Article II of Chapter 10, is hereby amended to add a section restricting the use of Sky Lanterns as Sec. 10-13, with the remaining sections renumbered accordingly, as follows:

#### **ARTICLE II. - IN GENERAL**

**Sec. 10-3. - "Fire hazard" defined.**

The term "fire hazard" means any building, premises, structure or thing, or any accumulation of trash, refuse or combustible matter, which by reason of its nature, location, occupancy, condition or use may cause loss, damage or injury to persons or property by reason of fire, explosion or action of the elements.

**Sec. 10-4. - State law and rules and regulations.**

The fire chief and his authorized representatives shall have full powers under, and no person shall violate, any law of the state, or any rule or regulation adopted by any duly authorized agency of the state, pertaining to fire, fire hazards, fire prevention or fire waste.

**Sec. 10-5. - Fire hazard inspections; right of entry of fire chief, etc.**

Whenever necessary to make an inspection to enforce any of the provisions of this Code, or whenever the director of public safety or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any conditions or violations of this Code which make the building or premises unsafe, dangerous or hazardous, the director of public safety or his authorized representative shall have the authority to enter the building or premises at all reasonable times to inspect or to perform any duties imposed upon the director of public safety by this Code. If such building or premises is occupied, the director of public safety or his authorized representation shall present credentials to the occupant and request entry. If such building or premises is unoccupied, the director of public safety or his authorized representative shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the director of public safety or his authorized representative has recourse to every remedy provided by law to secure entry. When the director of public safety or his authorized representative has first obtained a proper inspection warrant or other remedy provided by law to secure entry, any owner or occupant or person having charge, care or control of the building or premises shall not fail or neglect, after proper request is made as herein provided, to permit entry therein by the director of public safety or his authorized representative for the purpose of inspection and examination pursuant to this Code.

**Sec. 10-6. - Order to abate fire hazard - Generally; abatement by fire chief, etc.**

The fire chief or his authorized representatives shall order the abatement of any fire hazard, or any deficiency which may cause an otherwise preventable fire or explosion, endanger persons or property, or be dangerous to the public security or safety. If any such hazard or deficiency requires immediate action, the fire chief and his authorized representatives may abate the same, and the cost of abating such hazard or deficiency may be charged against the premises and the owner thereof as a special assessment in accordance with the provisions of chapter 9 of the Charter of the City of Petoskey.

**Sec. 10-7. - Same—Appeals to fire chief.**

Should any person receiving an order of abatement under the provisions of section [10-6] consider himself aggrieved, he may, within 48 hours of the receipt of such order, excluding Saturdays, Sundays or holidays, appeal to the fire chief, who shall hear the grievance and make such written order as he determines reasonable and proper.

**Sec. 10-8. – Same - Failure to comply with order; prohibited condition constitutes nuisance.**

No person shall fail to comply with any order of the fire chief or his authorized representatives issued under the provisions of section [10-6], unless pending appeal, as provided for by section [10-7], and any condition permitted to exist contrary to the terms of such order shall constitute a public nuisance.

**Sec. 10-9. - Accumulations of combustible wastes.**

(a) *Generally.* No person owning or being responsible for any premises shall permit any wastepaper, oil, rags, excelsior, refuse or any material of a similar nature to accumulate therein or thereon, to such extent that such accumulation creates a fire hazard.

(b) *Private garages.* No person owning or being responsible for any private garage shall permit any wastepaper, ashes, oil, rags, excelsior, refuse or any material of a similar nature to accumulate therein.

**Sec. 10-10. - Ashes.**

No ashes, except at factories where ashes are used for manufacturing purposes, shall be kept or deposited in any part of this city in or within 20 feet of any building unless the same be in a metallic or earthen vessel, or brick or stone ash room.

**Sec. 10-11. - Fires in streets, etc.**

No person shall kindle any fire in or upon any street or alley, or upon any public place, except in publicly provided outdoor grills.

**Sec. 10-12. - Fires on private property.**

No person shall kindle or light any fire on any private property within 15 feet of any building or other structure, or within 50 feet of any lumber, timber, wood, hay, straw, shavings or other combustible material. No campfires or open fires shall be kindled or lighted except as permitted under Section 307 of the International Fire Code, 2009 Edition, as amended.

**Sec. 10-13. - Sky Lanterns.**

For purposes of this Section, a "Sky Lantern" is defined as an airborne lantern typically made of paper with a wood frame containing a candle, fuel cell composed of waxy flammable material or other open flame which serves as a heat source to heat the air inside the lantern to cause it to lift into the air. This includes sky candles, fire balloons, Chinese lanterns, Kongming lanterns, and other airborne paper lanterns.

Except as otherwise provided in this Section, no person in the city shall release or otherwise set into the air a Sky Lantern, and no person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control.

Upon approval of the fire chief or his authorized representative, sky lanterns may be used for religious or cultural ceremonies provided that adequate safeguards have been taken in the discretion of the fire code official. Sky Lanterns used under this exception must be tethered in a safe manner to prevent them from leaving the area, must be constantly attended until extinguished, and must be retrieved once extinguished.

**Sec. 10-14. - False alarms; molesting firefighting equipment, etc.**

No person shall turn in, sound or cause to be communicated to the fire department a false alarm of fire, or molest any firefighting apparatus or equipment, or anything pertaining to the fire alarm system, without the express permission of the fire chief or his authorized representative.

**Sec. 10-15. - Fire hydrants—Obstruction of.**

No person shall place any building material or other obstruction whatever, nor shall any person who is responsible for any such material or obstruction, permit the same to remain within 15 feet of any fire hydrant.

**Sec. 10-16. – Same - Opening or taking water from.**

No person, except members of the fire department, board of public works or the street department, shall use any fire hydrant, except in case of emergency, without first securing permission from the fire chief or his authorized representative for such use and agreeing to pay for the water to be used. In no case shall any wrench or tool be used on a fire hydrant other than a regulation fire department hydrant wrench.

**Sec. 10-17. - Violations and penalties.**

A person who violates or fails to comply with this chapter is responsible for a municipal civil infraction and subject to the civil fines set forth in Ordinance No. 674, being the City of Petoskey's Municipal Civil Infraction Ordinance, as amended, and any other relief that may be imposed by the court. Each act of violation and each day upon which such violation occurs shall constitute a separate violation.

No other provisions or Articles of Chapter 10 are hereby affected, changed, or modified by this amendment.

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.

Said ordinance was approved by the following vote:

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

NAYS: None (0)

Discuss Redevelopment Liquor License Application for BRKP Cigar Group, LLC The City Manager reviewed that on August 3, 2015 the City received an application for a Redevelopment Liquor License from BRKP Cigar Group, LLC, for 446 East Mitchell Street. The Downtown Management Board, in accordance with the local ordinance adopted by City Council, had 30 days from the date of submission to review and make a recommendation to City Council on granting of a Redevelopment License Application. The DMB complied with this requirement. On August 18 the DMB made a motion *“to recommend to City Council a Redevelopment Liquor License to BRKP Cigar Group, LLC, subject to condition that Chris Redding, property owner, satisfies all requirements of ordinance with respect to unpaid fees, taxes and special assessments.”*

The City Manager reviewed certain legal requirements and local controls for evaluating the issuance of Redevelopment Licenses; that Ordinance 727 states *“the applicant and subject property owner shall not have any current or outstanding code violations, tax delinquencies, or other outstanding City fees or in any way be in default to the City”*; that Mr. Redding owes approximately \$133,000 in delinquent taxes and assessments; that BRKP Cigar Group, LLC, has a smoking cigar license and is pursuing a license for liquor; and that Mr. Tribble, the applicant, stated that there may be a prospective new owner for 446 East Mitchell Street, but has not occurred.

City Councilmembers discussed DMB’s recommendation and that the recommendation is based on Mr. Redding paying all outstanding taxes; that delinquent taxes have not been paid to-date; inquired if potential locations are in the DDA District; discussed Ordinance 727; and heard from those opposed to approving the license until taxes have been paid.

City Councilmember deferred action until the applicant finds an eligible site.

Resolution No. 18896 – Approve 2016-2021 CIP were distributed to City Council and Planning Commission in advance of this meeting. 2016-2021 Capital Improvement Plan

On August 20, 2015 the Planning Commission heard a presentation concerning the proposed six-year capital plan update and recommended that Council adopt the proposed CIP.

The City Manager reviewed the proposed 2016-2021 Capital Improvements Plan (CIP) that totals \$35.1M, with capital spending in 2016 proposed at \$3.69M, of which \$702,000 is anticipated to come from grants or other outside sources of revenue. The 2016 plan contains monies for possible resurfacing of several streets in the Northmen Drive area that could include Klondike, Krusel, Hazelton, Clarion and Jennings east of Kalamazoo. These streets received a fair to poor rating per the PASER road rating system. The list will be revised based upon reviewing spring road conditions, final bid prices and the effect of winter snow removal costs on available cash reserves. Sidewalks will be considered in some areas creating critical pedestrian connections to Ottawa School and the high school/middle school campus. Some utility spot improvements may occur where needed. There is \$400,000 from the Right-of-Way Fund budgeted which should allow for some carry-over of funds to address the extensive improvements to Emmet Street scheduled for 2017.

Water and wastewater improvements include refurbishment and repainting of the US 131 elevated tank and upgrades to the Bear River East Lift Station. The WWTP improvements have been moved to 2017 allowing the City substantial time to pursue bonding for the estimated \$4.8 million project. The major focus for electric improvements will be replacement of older overhead lines in residential areas that includes portions of Michigan and State Streets.

The City Manager further reviewed 2017-2021 projects and discussed funding sources for those projects. He also reported that the 2016-2021 CIP contains slightly more than \$5M in identified, long-term infrastructure needs for which no funding mechanism currently exists. Most of these infrastructure needs exist today, or have already been deferred in recent years as a result of declining revenues.

City Councilmembers discussed the public restroom facility design study and requested it be moved up to 2016 from 2017, which the City Manager agreed with. Lake Street improvements for 2021 were also discussed.

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

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

WHEREAS, as part of the City's annual budget-preparation process, the City Planner submitted to the Planning Commission August 20, 2015 the City staff's proposed update to the City's six-year capital improvements program; and

WHEREAS, the Planning Commission reviewed this proposed 2016-2021 Capital Improvements Program on August 20, 2015, and recommended its adoption by the City Council; and

WHEREAS, the City Council reviewed the proposed plan on September 21, 2015 and concurs with the recommendation of the Planning Commission:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby approves the 2016-2021 Capital Improvements Program as submitted by the City Manager September 21, 2015 and approved by the Planning Commission August 20, 2015.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

First Reading of a Proposed Ordinance that would Amend the Sign Ordinance

The City Planner reviewed that the Sign Committee periodically reviews issues with certain sign regulations and makes recommendations to the Planning Commission for possible amendments. The first proposed change is for projecting nameplates, which are pedestrian-oriented signs used primarily downtown. The discussion was that while the overall sign size does not need to change, the way the ordinance calculates sign area (maximum height x maximum width) penalized a circular sign. The Sign Committee recommended a change to allow the area of a circular projecting nameplate to be slightly larger – 3.83 square feet rather than 3 square feet. The recommendation is for projecting nameplate signs only and would not apply to circular wall-mounted or free-standing signs.

In recommending the recent changes to allow home businesses in all residential districts, the Planning Commission reviewed the regulations for home business signs and determined that the size allowance should be reduced from 3 square feet to one square foot.

The Planning Commission held a public hearing on these proposed amendments on July 16, 2015 and recommended changes to City Council.

City Councilmember discussed proposed changes, specifically the residential sign limits.

Mayor Fraser asked for public comments and heard from those indicating that one square foot for a residential sign seems small; that if home businesses don't like the regulations, they should move to the business district; and that home businesses are supposed to be a minimal impact business and retain the look of residential area.

City Council will conduct a second reading at the October 5, 2015 meeting.

Resolution No. 18897 – Approve Forensic Audit Proposal

The City Manager reviewed that the Michigan State Police (MSP) continue to investigate allegations of employee embezzlement and recommended the City complete a forensic audit of the City's financial records. The audit may be needed to provide litigation support for the City for any possible future civil or criminal charges. An audit will be completed by a professional forensic accounting firm leading to an objective, independent and comprehensive report detailing all findings and documenting all identified fraudulent transactions. The audit will focus on the last three years but may be extended to larger time frame based upon initial results of the investigation. The audit will also make recommendations for internal control changes to mitigate future occurrences.

The City Manager solicited proposals from three different forensic accounting firms and recommended approval of a proposal from Rehmann Corporate Investigative Services. Based upon discussions with past Rehmann clients and the extensive qualifications of their investigators, the City Manager and City Attorney recommended their firm to complete the forensic investigation. The MSP also worked with Rehmann in the past and speaks highly of their abilities to uncover evidence leading to charges. The chief investigators may also serve as expert witnesses for any possible future court proceedings. Estimated costs of the initial forensic audit is \$10,350-\$13,250 and are not covered by the City's insurance.

City Councilmember Marshall moved that, seconded by City Councilmember Murphy to approve Rehmann Corporate Investigative Services to conduct a forensic study for independent review on alleged criminal embezzlement.

Said motion was adopted by the following vote:

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

NAYS: None (0)

Hear Council Comments

visitor to the area was very much impressed with the quick response.

Mayor Fraser asked for Council Comments and heard from City Councilmember Marshall who commended the quick response to a smoking trash can and how a

Resolution No. 18898  
Adjourn to a Closed Session

*and of the performance of his duties under this Agreement after approximately four months of employment and thereafter annually.*” City Manager Straebel was hired on May 4, 2015 and early September is approximately four months. The evaluation forms were sent out by the City Attorney and he was in charge of collecting all the individual forms from each Councilmember. The City Manager requested his evaluation be conducted in a closed session under Section 8(a) of the Open Meetings Act.

The City Manager reviewed that per the employment contract with the City Manager, Section 4.1

Annual Evaluation states: “*The City Council will review the performance of the City Manager as the City Manager*

City Councilmember Murphy moved that, seconded by City Councilmember Marshall adoption of the following resolution:

WHEREAS, the City Manager has requested that the City Council adjourn to a closed session, pursuant to Section 8(a) of the Michigan Open Meetings Act, to discuss his evaluation, following the conclusion of routine business at the City Council's regular meeting of September 21, 2015:

NOW, THEREFORE, BE IT RESOLVED that the City Council does and hereby authorizes to adjourn to a closed session, to discuss the City Manager's evaluation.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Adjourned to closed session at 8:30 P.M.

Reconvened to open session at 9:08 P.M.

City Councilmember Murphy moved that, seconded by City Councilmember Dittmar to approve the final form of City Manager evaluation.

Said motion was adopted by the following vote:

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

NAYS: None (0)

There being no further business to come before the City Council, this September 21, 2015, meeting of the City Council adjourned at 9:10 P.M.

W.J. Fraser, Mayor

Alan Terry, City Clerk-Treasurer