

AGENDA
CITY OF CHARLEVOIX CITY COUNCIL MEETING

Monday, July 1, 2013 - 7:00 p.m.
210 State St, City Hall, Second Floor City Council Chambers, Charlevoix, MI

- I. Invocation or Pledge of Allegiance**
- II. Roll Call of Members Present**
- III. Inquiry Regarding Possible Conflicts of Interest**
- IV. Consent Agenda**
 - A. City Council Meeting Minutes – June 17, 2013 Regular Meeting PG 1-11
 - B. Accounts Payable Check Register PG 12-22
 - C. Payroll Check Register PG 23-26
- V. Public Hearings**
 - A. Public Hearing and Consideration to Approve Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program Ordinance PG 27-47
- VI. Reports**
- VII. Requests, Petitions and Communications and Actions Thereon**
 - A. Presentation of Girl Scouts Beach Sign Proposal PG 48-50
 - B. Adoption of Airport Master Plan Study June, 2013 Final Report PG 51
 - C. Proposal to Establish Conservation Easement at Mt. McSauba PG 52-70
 - D. Request by Charlevoix Yacht Club for Free Parking – Nucore Triangle and Red Fox Regatta PG 71-73
 - E. Discussion on Proposed Zoning Ordinance Amendment PG 74-95
 - F. Discussions with Local Townships to Form a Fire/EMS Regional Authority PG 96-97
 - G. Fireworks Legislation and Recent Changes Allowing Local Ordinances PG 98-112
 - H. Authorized Bank Signatures PG 113-116
 - I. Discussion of Interim City Clerk PG 117-118
 - J. Third Discussion Regarding Donation Acceptance Policy PG 119-123
- VIII. Introduction and Initial Actions Relating to Ordinances or to Resolutions That Require Publication or Hearings Prior to Final or Further Action**
- IX. Resolutions**
 - A. Charlevoix Yacht Club for Free Parking – Nucore Triangle and Red Fox Regatta PG 73
- X. Ordinances**
 - A. Consideration to Approve Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program Ordinance PG 40-46
- XI. Miscellaneous Business**
- XII. Audience – Non-Agenda Input (written requests take precedent)**
- XIII. Adjourn**

The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one weeks notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids or services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Public Hearing and Consideration to Approve Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program Ordinance

DATE: July 1, 2013

PRESENTED BY: Jeff Gates, TJ Acquisitions

Rob Straebel

ATTACHMENTS:

1. March 4th, 2013 Meeting Minutes
2. Memo from TJ Acquisitions dated October 10, 2012
3. Property Tax Analysis- May 23, 2013
4. Final Draft PILOT Ordinance

BACKGROUND INFORMATION: At our last meeting, City Council heard a presentation from Jeff Gates of TJ Acquisitions and directed Staff to set a Public Hearing for the July 1 City Council meeting. The Public Hearing has been property advertised in the Charlevoix Courier.

The following has been included in past Council packets:

On March 4, 2013 Jeff Gates, TJ Acquisitions, made a presentation to the City Council regarding a proposed Payment in Lieu of Taxes (PILOT) program for Lake Harbor Apartments. At that meeting City Council was generally supportive of the affordable housing initiative and directed Staff to develop documents to be considered at a future meeting. See attached copy of meeting minutes.

PILOT programs are a common mechanism for municipalities to support low to moderate income housing options with minimal impacts to a community's finances. Tenants would need to make no more than 60% of the Charlevoix County median income. The 2013 HUD median household income for Charlevoix County is \$60,600. HUD translates the 60% limit to household size which is as follows:

1. 1 person household: \$25,500
2. 2 person household: \$29,100
3. 3 person household: \$32,760
4. 4 person household: \$36,360

According to Mr. Gates, Lake Harbor Apartments are presently 100% occupied and the annual incomes of the residents range from \$2,400 to \$22,849, the average is \$10,450. As you can see this is well below the 60% limit and is in fact closer to 20-25% of the median income, demonstrating that they serve a very low income population.

The program also creates an incentive for upgrades to an aging facility through low income tax credits. Mr. Gates estimates that between \$800,000 to \$1,000,000 will be invested in Lake Harbor Apartments.

The City has approved another PILOT program for May Street Apartments at 4.5% of the Annual Shelter Rents for 35 years. The proposed percentage for Lake Harbor Apartments was originally proposed at 10% of Annual Shelter Rents for 18 years. Because of declining tax and state revenues, and to lessen the financial impact to Charlevoix taxing entities, the City Manager has requested a larger percentage of PILOT fees be dedicated through the new ordinance. To this end, the proposed PILOT percentage is at 11.18% of Annual Shelter Rents. Mr. Gates has also agreed to an annual 2% escalator which is depicted in the chart under Section 6, #1.

Other revisions that Staff has recommended and Mr. Gates has agreed to include:

Section 6, #1 "The PILOT ordinance shall commence for the next calendar year following the commencement of renovations. Until such time the property shall continue to pay ad valorem taxes." Staff feels the payments in lieu of taxes should not commence with passage of ordinance but with commencement of renovations.

Section 10, C Added language for non-payment of fees in lieu of taxes allowing the City to lien the property if payment is not made to City.

On March 11, 2013, City Staff sent out eleven letters to all organizations affected by the PILOT program describing the program and financial impact. We have received no feedback from these agencies.

The City Attorney has fully reviewed the PILOT ordinance.

RECOMENDATION: Solicit input through a Public Hearing. Ordinance is ready to be passed. Council may make a motion to approve Ordinance 761 of 2013 as presented in the July 1, 2013 agenda packet.

CITY OF CHARLEVOIX
REGULAR CITY COUNCIL MEETING MINUTES
Monday, March 4, 2013 – 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:	Ruf Straebel
City Clerk:	Carol A. Ochs
Members Present:	Council members Bryan Vollmer, Shane Cole, Lyle Gennett, Dennis Kusina, Jill Picha, Greg Stevens
Absent:	None

III. Inquiry Regarding Possible Conflicts of Interest
None.

IV. Consent Agenda

The following items were approved and filed:

- A. Approval of Minutes – February 18, 2013 Regular Meeting Minutes
- B. Accounts Payable Check Register – February 22, 2013
- C. Accounts Payable Check Register – March 5, 2013
- D. Accounts Payable Check Register (State Bank) – February 22, 2013
- E. Tax Disbursement – March 5, 2013
- F. ACH Payments – February 19, 2013 – March 1, 2013
- G. Payroll Check Register – March 1, 2013
- H. Payroll Transmittal – March 1, 2013

V. Public Hearings
None.

VI. Reports

The City Manager proposed scheduling a meeting regarding the construction of the fireplace with the City Council, the DDA, and the Planning Commission. Council generally agreed that Monday or Thursday would be the best day. The Manager will see when Mark Buday is available.

The Manager invited Council to the Winterfest event at Mt. McSaubo on Sunday, March 10.

Councilmember Greg Stevens asked for an update on interviews for the Recreation Director position. The Manager is waiting to hear back from an offer made earlier today. There had been great candidates for the position. The Manager will get a memo out to Council as soon as something is finalized.

VII. Requests, Petitions and Communications and Actions Thereon

A. Presentation Regarding Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program

Jeff Gates, representing TJ Acquisitions, one of the owners of Lake Harbor Apartments, was available to review the program and answer questions for Council. Lake Harbor Apartments is a 24-unit apartment complex built in the eighties under a Department of Agriculture (USDA) rural development program called the Farmers Home Administration Program. It's an affordable housing development restricted to persons who make 60% or less of the median income in Charlevoix County. Current residents are a mixture of senior citizens, persons with disabilities, families, and single-parent households. TJ Acquisitions purchased managing general partner interest in the property in 2012. TJ Acquisitions had been approached by some of the limited partners and the USDA to step in, take control of the property, and work to stabilize and renovate the property.

Mr. Gates is requesting the City help make those renovations happen by enacting a PILOT ordinance for the property. A PILOT (Payment in Lieu of Taxes) ordinance calculates the taxes on the income of the property rather than the millage rate and value of the property. The PILOT is needed for the owners to apply for low income tax credits on the property. Low income tax credits are the primary tool for creating and retaining affordable housing. The tax credits are administered by the Michigan State Housing Development Authority (MSHDA) through a competitive process. A PILOT gives applicants a competitive advantage in the process to win the credits. A PILOT can be enacted for a specific property or for all qualifying properties within a community.

Mr. Gates reviewed similar projects they have done in other communities. He also reviewed the proposed improvements for Lake Harbor. The housing is restricted to persons who make no more than 60% of the median income, and Lake Harbor residents will pay no more than 30% of their income towards rent. A rent subsidy makes up the difference between the actual rent and what tenants are able to pay. The rent includes heat and hot water; residents would pay their own electric, telephone, and tv. Property will be inspected and audited annually by the USDA and the MSHDA. Owners make a limited dividend off the property.

The PILOT does have an impact on the community. Presently, Lake Harbor pays about \$16,000 a year in taxes. A 10% PILOT would reduce those by about \$5,300 a year – about \$1,200 is the City's portion; the rest is the other taxing entities'. Granting a PILOT does not impact the education dollars received from the State of Michigan.

Benefits of the PILOT would be that the renovations and improvements will cost between \$800 thousand to \$1 million dollars. A lot of that money will be spent with local contractors and suppliers. The community will end up with a good, stable, affordable housing complex that provides necessary housing for senior citizens, a lot of people who work in service industries, and persons with disabilities.

Mr. Gates is asking Council to consider establishing a PILOT ordinance at a rate of 10% for 18 years. They ask for 18 years, so that the tax credits that they are applying for have a 15 year compliance period. They like to have a three-year "cushion" in case they don't get the tax credits in the first round of application.

Mr. Gates and the City Manager answered various questions from Council. Current residents will not be displaced. Renovations are done around the residents with only a little inconvenience to the tenants. There is currently a PILOT in place specific for May Street Apartments. Costs for the project will be certified and audited. They will try to buy and hire local contractors and suppliers, though there are some contractors, such as HVAC, that they use from job to job.

The Mayor called for public comment.

Shirley Gibson asked if the PILOT amount was negotiable. The amount can be a percentage of revenues received from the rents or a fixed amount, which would be less variable. A revenue-based amount would fluctuate based on occupancy of the apartments; a fixed amount is less variable.

Ms. Gibson asked if the other local taxing entities know this is going to be a revenue leak for them. The Manager stated they would work to get the information to them and allow for them to give written comments or comment at a public hearing.

City Planner Mike Spencer asked about occupancy of the units. Current occupancy is 100%.

The Mayor closed the item to public comment.

The Manager reiterated that he would work to notify other local entities and get their input on the specific impact to them. He is hopeful that they would be supportive of the PILOT, as the annual figures are quite small. He thinks a wide array of affordable housing options in a community is important to cater to different demographics. He thinks the overall financial impact is well offset by the public benefit of the program.

Councilmember Greg Stevens stated that there is a need for this type of housing in the community.

Motion by Councilmember Jill Picha, seconded by Councilmember Bryan Vollmer, to direct Staff to develop program documents for a PILOT program for Lake Harbor Apartments for Council's future consideration.

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

B. Discussion Regarding Sea Scout Ship 14 Use of Marina Slip

John Young spoke on behalf Sea Scout Ship 11, a charter organization of the Charlevoix Kiwanis Club. They are requesting permission to use one of the City dock slips at the marina when it is available. This is the same arrangement they have had previously. If the marina is full, the Scouts will find alternative dockage or anchorage. The Manager stated that Harbormaster Hal Evans is fully supportive of the proposal.

The Mayor called for public comment. There were no comments. The Mayor closed public comment.

Motion by Councilmember Shane Cole, seconded by Councilmember Greg Stevens, that, contingent upon approval from the DNR Waterways Commission, the City of Charlevoix approves free dockage for the Sea Scouts for the 2013 Boating Season when the marina is not full.

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

C. Discussion on Planning Commission Resolution from 2006 Concerning Review of City Projects

City Planner Mike Spencer briefed Council of the history of this resolution. He has reviewed what other communities do in these types of situations. There was a resolution that the Planning Commission adopted and that Council accepted in 2006. This resolution was not brought to Mr. Spencer's attention until recently. The resolution stated that projects should get zoning approval, but there are no standards for any structures in this zoning district such as height requirements, set back requirements, or lot coverage requirements. According to John Hess, the intent of the resolution was in reaction to the Planning Commission not reviewing the entire East Park renovation project. Mr. Spencer is not sure if that resolution was intended to apply to specifics of features in existing parks. Mr. Spencer has researched several communities, such as Boyne City, Petoskey, Grand Haven and Holland, and he has not found any precedent among them for projects going to their planning commission for a review. Mr. Spencer indicated that projects could go through a review here if desired, but that the City would need to know what the purpose for such a review would be. Would it be because they are representative members of the public and it provides another opportunity for public comment on a proposal like this, or is it for the Planning Commission to weigh in on certain standards, which in this case don't exist? Even if it went to the Planning Commission, legally they couldn't really deny it. Mr. Spencer will follow whatever City policy Council chooses to adopt. Mr. Spencer's concerns are that staff know about it, which in this case they didn't [know about the resolution] and that the policy be clear for staff, the public, Planning Commission members and Council. The policy would need to be specific about what level of project would trigger that Planning Commission review. Mr. Spencer reviewed various projects, such as the historic district kiosks, the City kiosks, the flagpole at Michigan Beach, the Art in Public Places, all which could be considered structures in public parks, but did not go through a Planning Commission review. The Attorney has provided Council with some options for enacting a policy. Mr. Spencer does not think the City did anything illegal; the 2006 resolution was not officially adopted by Council with a resolution number at the top of it. The Planning Commission would really have no legal grounds to deny it. Maybe the intent was that members of the public or Council trust the Planning Commission to make informed decisions and recommendations to Council on projects. In Mr. Spencer's conversations with Planning Commissioners, he doesn't think they want to be in a position where, every time a brick is laid, a door is replaced, or a fire hydrant or a bench is installed, those types of project need to be taken to the Planning Commission first. At this point, Mr. Spencer is looking for guidance from Council on what their wishes are.

Attorney Bryan Graham clarified that, in 2006, the issue before Council dealt with whether a City project was required to get zoning approval. That is an important distinction. Michigan law is very clear that when a municipality is proposing to do its own project for a governmental function, like a park, it is not required to comply with its own zoning ordinance. The thought process is that the governmental entity—the public body—has to approve those development plans, just like a normal developer would, in a public forum/meeting. There is no need to get the zoning approval because you're just going through a second public approval process. Michigan law is very clear you are not required to get zoning approval under your own zoning ordinance. You can elect to do that if you want to, but Michigan law doesn't mandate that. Council has been provided with three options on p. 37 of their packet. If Council is looking at zoning approval, development plans go to Planning for recommendation and final approval is done by Council. Mr. Graham sees this as redundant.

There are currently no zoning standards for the scenic/public reserve zoning districts for the Planning Commission to review.

T J ACQUISITIONS LLC

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October 10, 2012

Mr. Robert J. Straebel, City Manager
City of Charlevoix
210 State Street
Charlevoix, MI 49720

RE: Lake Harbor Apartments
637 Petoskey Avenue

Dear Mr. Straebel:

It was a pleasure to meet with you to discuss our plans for Lake Harbor Apartments. Although we shared with you our plans and how we became involved in Lake Harbor, I will reiterate the points I made in our meeting so that you can share this information with members of your staff.

Lake Harbor is a 24 unit affordable rental housing development located on Petoskey Avenue. It was built in the 1980's by the Teklin Corporation through the Section 515 Program administered by the Rural Development (RD) Agency of the U.S. Department of Agriculture (USDA). Lake Harbor primarily provides affordable housing for families, but it also serves single persons, couples, seniors and persons with disabilities. The average annual income of a typical resident of an RD property is about \$11,700.

Earlier this year, my partner and I purchased a controlling interest in the partnership that owns Lake Harbor Apartments. Our purchase was motivated by the fact that we buy, re-develop, and then manage RD and other similar affordable housing developments. At present we have 37 similar properties around the State.

Our vision for the property was to purchase it; and then renovate the property by using the Low Income Housing Tax Credit Program. This is a federal program administered by the Michigan State Housing Development Authority (MSHDA). The low income housing tax credit program is the primary financing mechanism for creating and preserving affordable housing. Current economic and regulatory conditions are favorable for us to proceed with this strategy.

Our renovations to the property are focused on the following:

- Improvements that result in reduced maintenance
- Improvements that improve energy efficiency and reduce energy costs
- Improvements that enhance curb appeal and compliment the community
- Improvements that enhance tenant comfort and convenience
- Improvements that enhance marketability

To achieve these improvements we intend to spend nearly \$1,000,000 to renovate the buildings, units and site. Lake Harbor is long overdue for renovations and the improvements address deferred maintenance issues that include the following:

Site Improvements & Repairs:

- Sidewalk and site concrete replacement. Provide ADA/barrier free access
- Rebuild parking lot and drive– Remove existing pavement, stabilize base and place 3” of new asphalt
- Replace site lighting with LED fixtures
- Provide landscaping maintenance and enhancements
- Replace dumpster enclosures with vinyl fencing
- Replace site signage
- Add office and community building
- Add playground equipment

Building Common Areas:

- Drywall patching as required prior to painting
- Paint all walls and ceilings
- Replace door frames and doors
- Implement Section 504 ADA improvements for barrier free access
- Replace door hardware with lever handled hardware
- Replace all flooring
- Replace laundry room countertops and laundry sinks
- Install new energy star light fixtures
- Replace boilers and water heaters with high efficiency units
- Augment attic insulation to R-49
- Provide re-cycling facilities

Building Exteriors:

- Install new vinyl siding (w/Tyvek or equal building wrap), trim, fascia and soffit
- Install new gutters and downspouts
- Replace windows and sliding glass doors with new vinyl, insulated, low-e units
- Replace building entry doors
- Rebuild balconies with composite decking and install new vinyl railings

Unit Interiors:

- Drywall patching as required prior to painting walls and ceilings
- Replace all interior doors and frames
- Replace vinyl flooring and carpet
- Replace door hardware with lever handled hardware
- Install new bath accessories and replace shelving
- Replace cabinets and countertops
- Install new refrigerator, range, under cabinet microwave, dishwasher, garbage disposal and range hood using energy star appliances where available.
- Install new kitchen sink and faucet, bath lavatory and faucet, tubs and surrounds, tub and shower valve, and toilet using low flow fixtures

- Replace electrical devices and install new energy star light fixtures
- Add smoke detectors
- Install new window treatments
- Replace hydronic baseboard
- Install thru-wall energy star air conditioning unit
- Add energy star ventilated range hoods
- Add energy star ventilated bath fans
- Update existing barrier free unit to current ADA standards
- Convert one additional unit to barrier free

To facilitate the renovations we will use two different sources of financing and funding. First, we will assume the existing mortgage with the current lender, USDA Rural Development. Second, we will raise equity for this project through the sale of the low income housing tax credits mentioned earlier. Both of the financing sources ensure that the property will continue to serve persons with incomes at 60% or less of the county median income.

The tax credits are the key element of this transaction and we must compete for those tax credits. Each year MSHDA conducts two funding rounds for the tax credits. Developers submit applications for their projects and the applications are competitively scored. Applications for the tax credits are about 3 times the amount of tax credits available, hence there are winners and losers.

To have any chance of winning a tax credit reservation, a project must have a PILOT ordinance in effect. A development with a PILOT ordinance has as much as a 15 point advantage over a development that doesn't. Furthermore, a PILOT is critical to maintaining affordable rents and a financially stable property. In affordable housing developments rents are restricted and expenses are regulated. PILOT's allow properties to maintain affordable rents and still operate the property in a financially stable manner.

The need for a PILOT for Lake Harbor is the reason we have met with you. Again, for the benefit of all I will explain a PILOT, which is the acronym for "Payment In Lieu Of Taxes". A PILOT is the payment of a service charge in lieu of ad valorem taxes. It is a statutory means of providing property tax relief for affordable housing projects. It is permitted under Act 346 of the Michigan Statutes and the purpose of the statute is to make affordable housing more affordable. Attachment #1 is the section of the statute that permits the property to be exempt from all ad valorem property taxes. Only properties that are specifically designated as affordable housing developments and meet specific criteria qualify for a PILOT. In fact, a PILOT ordinance can be project specific.

The PILOT is a fee based on annual shelter rents, which are defined as rental income less utilities paid by the landlord. PILOT's are calculated on a percentage basis that ranges from 0% to 10% of the annual shelter rents. The PILOT fee is then proportionally allocated to all of the various taxing units.

To understand the impact to the State, County, and City, I have prepared Attachment #2. This illustrates the effect of a 10% PILOT. Under a 10% PILOT, annual revenues to the City would be reduced by about \$956 and revenue to the County and State would be reduced by about \$4,424. Even though funding is reduced to the State, the PILOT would not have an adverse effect on the per pupil funds the school district receives back. The fees paid under a PILOT are transparent. The finances of the property are audited annually and a copy of the audit is included with the PILOT calculations and payment.

Mr. Robert J. Straebel
October 10, 2012
Page 4

The PILOT can run for any number of years, however in order to achieve the maximum amount of points it must run for more than 15 years. Typically we like to see the PILOT run for an 18 year term. The PILOT ordinance itself is a standard, boilerplate document because many of the conditions in it are required by the statute. PILOT's are in place in hundreds of communities around the state.

The PILOT ordinance can be conditioned on the start and completion of the renovations. This serves as a safeguard to the City in the event we are not successful in securing a tax credit reservation so that we can complete the proposed renovations.

It is imperative to understand that the purpose of granting a PILOT is not to put money into our pockets. As the owners of this property we have the potential to earn a very limited annual return of only \$2,800. The real beneficiaries are the residents in that their rents are maintained at affordable levels; the project in that expenses can be maintained at a level to keep the property in good condition; and the community in that it has revitalized affordable housing.

We are seeking the joint cooperation and participation of the City to assist us in revitalizing and preserving Lake Harbor as an affordable housing development. With the PILOT and the tax credits, we will be able to offer totally renovated 1 and 2 bedroom apartments and because of federal rental assistance, no resident will pay more than 30% of their income towards the rent. Hot water and heat is included in our rents so the resident only pays for electricity.

By working together there is a unique opportunity for a win-win-win situation for the City, for the current and future residents of Lake Harbor Apartments, and for us that can result in:

- Preserving and revitalizing quality affordable housing.
- Improving the physical condition and appearance of Lake Harbor Apartments.
- Attracting new and retaining existing quality residents.
- Economic development that results in jobs, employment and local business.
- A financially feasible, long-term investment.

As we discussed the sensitivity of this proposal requires that we move deliberately and do a thorough job of educating those individuals who will make the recommendations and decisions. The next tax credit funding round is February 15, 2013 so our goal is to have this ordinance in place by January. Please let me know when you would like to meet again so that we can have further dialogue on the issue and answer any questions.

In the meantime, should you have any questions or require any additional information, please contact me at (248) 921-8112. We look forward to working with you.

Sincerely,



Jeffrey F. Gates

Enclosures as noted:

1. Attachment #1 – State Housing Development Authority Act 346 of 1966
2. Attachment #2 – Property Tax Analysis

STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966 (EXCERPT)

Act 346 of 1966

125.1415a Exemption of housing project from taxes; filing certified notification of exemption with local assessing authority; annual service charge; amount; duration of exemption; distribution of payments for public services; exceptions; payment of service charge equal to full amount of taxes; reduced housing charges; "low income persons and families" defined; rules; reimbursement prohibited.

Sec. 15a. (1) If a housing project owned by a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is financed with a federally-aided or authority-aided mortgage or advance or grant from the authority, then, except as provided in this section, the housing project is exempt from all ad valorem property taxes imposed by this state or by any political subdivision, public body, or taxing district in which the project is located. The owner of a housing project eligible for the exemption shall file with the local assessing officer a notification of the exemption, which shall be in an affidavit form as provided by the authority. The completed affidavit form first shall be submitted to the authority for certification by the authority that the project is eligible for the exemption. The owner then shall file the certified notification of the exemption with the local assessing officer before November 1 of the year preceding the tax year in which the exemption is to begin.

(2) The owner of a housing project exempt from taxation under this section shall pay to the municipality in which the project is located an annual service charge for public services in lieu of all taxes. Subject to subsection (6), the amount to be paid as a service charge in lieu of taxes shall be for new construction projects the greater of, and for rehabilitation projects the lesser of, the tax on the property on which the project is located for the tax year before the date when construction or rehabilitation of the project was commenced or 10% of the annual shelter rents obtained from the project. A municipality, by ordinance, may establish or change, by any amount it chooses, the service charge to be paid in lieu of taxes by all or any class of housing projects exempt from taxation under this act. However, the service charge shall not exceed the taxes that would be paid but for this act.

(3) The exemption from taxation granted by this section shall remain in effect for as long as the federally-aided or authority-aided mortgage or advance or grant from the authority is outstanding, but not more than 50 years. The municipality may establish by ordinance a different period of time for the exemption to remain in effect.

(4) Except as otherwise provided in this subsection, any payments for public services received by a municipality in lieu of taxes under this section shall be distributed by the municipality to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. For payments in lieu of taxes collected after June 30, 1994, the distribution to the several units shall be made as if the number of mills levied for local school district operating purposes were equal to the number of mills levied for those purposes in 1993 minus the number of mills levied under the state education tax act, Act No. 331 of the Public Acts of 1993, being sections 211.901 to 211.906 of the Michigan Compiled Laws, for the year for which the distribution is calculated. For tax years after 1993, the amount of payments in lieu of taxes to be distributed to a local school district for operating purposes under this subsection shall not be distributed to the local school district but instead shall be paid to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(5) Notwithstanding subsection (1), a municipality may provide by ordinance that the tax exemption established in subsection (1) shall not apply to all or any class of housing projects within its boundaries to which subsection (1) applies. If the municipality makes that provision, the tax exemption established in subsection (1) shall not apply to the class of housing projects designated in the ordinance. If the ordinance so provides, the ordinance shall be effective with respect to housing projects for which an exemption has already been granted on December 31 of the year in which the ordinance is adopted, but not before. A municipality that has adopted an ordinance described in this subsection may repeal that ordinance, and the repeal shall become effective on the date designated in the repealing ordinance.

(6) Notwithstanding subsection (2), the service charge to be paid each year in lieu of taxes for that part of a housing project that is tax exempt under subsection (1) and that is occupied by other than low income persons or families shall be equal to the full amount of the taxes that would be paid on that portion of the project if the project

were not tax exempt. The benefits of any tax exemption granted under this section shall be allocated by the owner of the housing project exclusively to low income persons or families in the form of reduced housing charges.

(7) For purposes of this section only, "low income persons and families" means, with respect to any housing project that is tax exempt, persons and families eligible to move into that project. For purposes of this subsection, the authority may promulgate rules to redefine low income persons or families for each municipality on the basis of conditions existing in that municipality.

(8) This state shall not reimburse any unit of government for a tax exemption granted to any housing project under this section.

History: Add. 1968, Act 334, Imd. Eff. July 14, 1968;—Am. 1969, Act 109, Imd. Eff. July 24, 1969;—Am. 1979, Act 49, Imd. Eff. July 7, 1979;—Am. 1982, Act 534, Imd. Eff. Dec. 31, 1982;—Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983;—Am. 1994, Act 363, Imd. Eff. Dec. 27, 1994.

Compiler's note: Section 2 of Act No. 363 of the Public Acts of 1994 provides:

"The provisions of this amendatory act, providing that the exemption from taxes provided in section 15a of this act be limited to ad valorem property taxes, are curative expressing the original intent of the legislature that the exemption extends only to ad valorem property taxes and does not apply to the other taxes levied under Michigan law."

Administrative rules: R 125.101 et seq. of the Michigan Administrative Code.

Lake Harbor Apartments (Charlevoix, MI)
 Property Tax Analysis
 May 23, 2013

	<u>2012</u>	<u>2013</u>
Taxable value:	\$ 323,300	\$ 326,500
SEV:	\$ 323,300	\$ 326,500
Assessed Value:	\$ 323,300	\$ 326,500
PILOT (11.18%)	\$ 12,572	

AD VALOREM / PILOT ALLOCATIONS

<u>Description</u>	<u>Millage</u>	<u>Ad valorem</u>		<u>PILOT</u>	<u>Reduction</u>
		<u>Taxes</u>			
State & County					
State Education Tax	6.00000	\$ 1,939.80	\$ 1,466.54	\$ (473.26)	
County Allocation	4.70000	\$ 1,519.51	\$ 1,148.79	\$ (370.72)	
School Operating	18.00000	\$ 5,819.40	\$ 4,399.61	\$ (1,419.79)	
School Debt	1.90000	\$ 614.27	\$ 464.40	\$ (149.87)	
School Debt 08	0.95000	\$ 307.14	\$ 232.20	\$ (74.93)	
School Debt 2008	0.06500	\$ 21.01	\$ 15.89	\$ (5.13)	
Char EM Alloc	0.20000	\$ 64.66	\$ 48.88	\$ (15.78)	
Special Ed 64	0.67130	\$ 217.03	\$ 164.08	\$ (52.95)	
Special Ed 08	1.16000	\$ 375.03	\$ 283.53	\$ (91.50)	
Vocational AI Ed	0.75000	\$ 242.48	\$ 183.32	\$ (59.16)	
Chx Lib Op 97	0.44400	\$ 143.55	\$ 108.52	\$ (35.02)	
Chx Lib Op 04	0.63390	\$ 204.94	\$ 154.94	\$ (50.00)	
Chx Lib	0.74000	\$ 239.24	\$ 180.87	\$ (58.37)	
County Transit	0.25000	\$ 80.83	\$ 61.11	\$ (19.72)	
County Recycling	0.15000	\$ 48.50	\$ 36.66	\$ (11.83)	
Co. Sr Citizen	0.40000	\$ 129.32	\$ 97.77	\$ (31.55)	
Grandvue Oper	0.75000	\$ 242.48	\$ 183.32	\$ (59.16)	
Grandvue Bond	0.18000	\$ 58.19	\$ 44.00	\$ (14.20)	
County Roads	1.00000	\$ 323.30	\$ 244.42	\$ (78.88)	
Recreational	0.33000	\$ 106.69	\$ 80.66	\$ (26.03)	
Admin Fee		\$ 19.88	\$ 15.03	\$ (4.85)	
City					
City Operation	9.05000	\$ 2,925.87	\$ 2,212.03	\$ (713.84)	
Infrastructure	2.05930	\$ 665.77	\$ 503.34	\$ (162.43)	
Refuse	0.90000	\$ 290.97	\$ 219.98	\$ (70.99)	
Admin Fee		\$ 29.26	\$ 22.12	\$ (7.14)	

RE-CAP/SUMMARY

	<u>City</u>	<u>County/State</u>	<u>Total</u>
PILOT	\$ 2,957.47	\$ 9,614.53	\$ 12,572.00
Sub-Total	\$ 2,957.47	\$ 9,614.53	\$ 12,572.00
	LESS: PRIOR AD VALOREM		\$ 16,629.09
	TOTAL REDUCTION		\$ (4,057.09)

Lake Harbor Apartments (Charlevoix, MI)
PILOT Calculation

RENTAL INCOME

Gross Rental Income - Residential	\$143,712	
Other Income - Residential	\$2,460	
Interest Income	\$0	
Less Vacancy 8%	(\$11,497)	
NET RENTAL INCOME	\$134,675	

OPERATING EXPENSES

Administration		
Accounting	\$5,775	
Advertising	\$465	
Legal	\$975	
Management Fee	\$11,126	
Management Salaries & Payroll Taxes	\$4,613	
Office Supplies/Postage	\$820	
Telephone	\$912	
Other	\$456	
Total Administrative Costs	\$25,142	
Operating		
Electricity	\$2,190	
Water/Sewer	\$6,150	
Gas	\$11,395	
Trash Removal	\$1,423	
Other (Describe)	\$0	
Total Operating Expenses	\$21,158	
Maintenance		
Extermination	\$180	
Grounds	\$520	
Repairs	\$2,170	
Maintenance Salaries/Payroll Taxes	\$10,684	
Snow Removal	\$3,500	
Maintenance Supplies	\$3,075	
Decorating	\$975	
Other (Describe):	\$0	
Total Maintenance Expenses	\$21,104	
Fixed		
Real Estate Taxes	\$0	
Payment in Lieu of Taxes (PILOT)	\$12,572	
Insurance	\$3,000	
Other	\$1,023	
Total Fixed Expenses	\$16,595	
TOTAL OPERATING EXPENSES	\$83,999	

Lake Harbor Apartments (Charlevoix, MI)
PILOT Calculation

REPLACEMENT RESERVE

Replacement Reserve	\$7,200	\$7,200
Total Replacement Reserve		\$7,200

DEBT SERVICE

Mortgage Principle & Interest	\$37,772	\$37,772
Total Debt Service		\$37,772

RETURN TO OWNER

Return to Owner (Maximum)	\$2,760	\$2,760
Total Debt Service		\$2,760

OPERATING CASH FLOW (LOSS)		\$2,944
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PILOT CALCULATION

Gross Rental Income	\$143,712	
Less Vacancy Loss	(\$11,497)	
Less Owner-Paid Utilities:		
Electricity	(\$2,190)	
Water/Sewer	(\$6,150)	
Gas	(\$11,395)	
Net Annual Shelter Rents		\$112,480
PILOT Service Charge Rate	X	11.18%
PILOT Charge		\$12,572

CITY OF CHARLEVOIX
COUNTY OF CHARLEVOIX, MICHIGAN

Minutes of a regular meeting of the City Council of the City of Charlevoix, County of Charlevoix, Michigan, held in the City Office located at 210 State Street, Charlevoix, Michigan, on the ____ day of _____, 2013, at 7:00 p.m. Local Time.

PRESENT: Members: _____

ABSENT: Members: _____

The following preamble and ordinance were offered by Member _____ and supported by Member _____:

ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE THE PAYMENT OF AN ANNUAL SERVICE CHARGE IN LIEU OF TAXES FOR RESIDENTIAL UNITS SERVING LOW INCOME OR MODERATE INCOME PERSONS IN ACCORDANCE WITH THE STATE HOUSING DEVELOPMENT AUTHORITY, ACT 346 OF THE PUBLIC ACTS OF MICHIGAN OF 1966, AS AMENDED, AND MATTERS RELATED THERETO

THE CITY OF CHARLEVOIX ORDAINS:

Section 1. Purpose. This Ordinance authorizes and approves an annual service charge in lieu of taxes for residential housing developments that: (a) serve Low Income or Moderate Income Persons (as defined in the State Housing Development Authority Act, Act 346 of the Public Acts of Michigan of 1966, as amended, and this Ordinance); (b) are financed or assisted by USDA-RD or the Authority in accordance with Act 346; (c) are located within the City of Charlevoix; and (d) comply with this Ordinance.

Section 2. Title. This Ordinance shall be known and cited as the "City of Charlevoix Tax Exemption Ordinance."

Section 3. Preamble. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for low income citizens and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with Act 346. The City is authorized by Act 346 and this Ordinance to establish or change the annual service charge to be paid in lieu of taxes by any and all classes of housing exempt from taxation under Act 346 at any amount it chooses not to exceed the taxes that would be paid but for Act 346. It is further acknowledged that housing for low income persons and families is a public necessity, and as the City will be benefitted and improved by such housing, the encouragement of the same by providing certain real-estate tax exemptions for

such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The City acknowledges that T J Lake Harbor Limited Dividend Housing Association Limited Partnership (the “Sponsor” as defined in Section 4 of this Ordinance) has committed to rehabilitate, own and operate a housing development identified as “Lake Harbor Apartments” on certain property located on 637 Petoskey Avenue, Charlevoix, Michigan, which is legally described in Section 4.G. of this Ordinance, to serve Low Income or Moderate Income Persons, and that the Sponsor has offered to pay and will pay to the City, on account of the Housing Development, an annual service charge for public services in lieu of all taxes.

Section 4. Definitions. The terms used within this Ordinance shall have the following meanings:

A. “Act” means the State Housing Development Authority Act, being Act 346 of the Public Acts of Michigan of 1966, as amended.

B. “Annual Shelter Rents” means the total actual collections during each calendar year from all occupants of a housing development representing rents or occupancy charges, which rental amounts shall be exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.

C. “Authority” means the Michigan State Housing Development Authority.

D. “Class” means the Housing Development known as Lake Harbor Apartments for Low Income or Moderate Income Persons.

E. “Contract Rents” are as defined by the U. S. Department of Housing and Urban Development in regulations promulgated pursuant to the U. S. Housing Act of 1937, as amended.

F. “Federally-Aided Mortgage” means any of the following:

- (i) A below market interest rate mortgage insured, purchased, or held by the Secretary of the Department of Housing and Urban Development (“HUD”) or United States Department of Agriculture – Rural Development (“USDA-RD”);
- (ii) A mortgage receiving interest reduction payments provided by the HUD or USDA – RD;
- (iii) A Housing Development to which the Authority allocates low income housing tax credits under Section 22b of the Act; or
- (iv) A mortgage receiving special benefits under other federal law designated specifically to develop low and moderate-income housing, consistent with the Act.

G. "Housing Development" means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the Authority determines to improve the quality of the development as it relates to housing for persons of low income. For the purposes of this Ordinance, "Housing Development" means Lake Harbor Apartments located on the property legally described as:

Land located in the City of Charlevoix, County of Charlevoix, and State of Michigan, described as: Commencing at a 1 inch iron bar (set by Robinson) at the East quarter of Section 23, Town 34 North, Range 8 West; thence on a bearing of West along the East and West quarter line of said section, as monumented, 1320.32 feet to a nail on the East eighth line of said section, as monumented; thence South 0°12'44" West along said eighth line, 297.34 feet (recorded as 297.0 feet) to a concrete monument, being the Point of Beginning of this description; thence continuing along said eighth line, as monumented, South 0°58'24" West 33.20 feet to a concrete monument recorded as being 1321.0 feet West and 330.0 feet South of the quarter corner between Sections 23 and 24, Town 34 North, Range 8 West; thence North 89°46'01" West 161.20 feet (recorded as 161.62 feet) to a concrete monument; thence South 0°34'28" East along the Easterly line of the former A. D. Cruickshank property 320.75 feet (recorded as 321.38 feet) to a concrete monument on the Northwesterly line of Highway U.S. 31; thence North 69°40'46" East along said highway line, 340.27 feet recorded as 339.37 feet) to a 1/2 inch rod on the Westerly line of "CHEZ CHARLEVOIX" Condominium as recorded in Liber 232, Page 955, Charlevoix County Records; thence North 0°04'56" West along said Westerly condominium line 295.21 feet (recorded as 294.99 feet) to a 1/2 inch rod; thence South 69°25'38" West 171.03 feet (recorded as 169.73 feet) to the point of beginning; being a part of the West Half of the Southeast Quarter of Section 23, Town 34 North, Range 8 West.

H. "Low Income or Moderate Income Persons" shall be as defined in the Act, as amended.

I. "Sponsor" means person(s) or entities which have applied to the Authority for the Tax Credits to finance a Housing Development. For the purposes of this Ordinance, the Sponsor is T J Lake Harbor Limited Dividend Housing Association Limited Partnership.

J. "Tax Credits" means the low income housing tax credits made available by the Authority to the Sponsor for rehabilitation of the Housing Development by the Sponsor in accordance with the Low Income Housing Tax Credit Program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.

K. "USDA-RD" means the United States Department of Agriculture, Rural Services Division.

L. "Utilities" means fuel, water, sanitary sewer service and/or electrical service, which are paid by the Housing Development.

Section 5. Class of Housing Development. This Ordinance shall apply only to the Housing Development to the extent that the Housing Development provides housing for Low Income and Moderate Income Persons and is financed or assisted by USDA-RD or the Authority pursuant to the Act.

Section 6. Establishment of Annual Service Charge.

A. The City acknowledges that the Sponsor and USDA-RD and/or the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all property taxes and payment of an annual service charge in lieu of taxes in an amount established in accordance with this Section. In consideration of the Sponsor's offer to rehabilitate, own and operate the Housing Development, the City agrees to accept payment of an annual service charge for public services in lieu of all ad valorem property taxes that would otherwise be assessed to the Housing Development under Michigan law.

(1) Effective upon the adoption of this ordinance and subject to the receipt by the City of the "Notification of Exemption" (or such other similar notification) by the Sponsor and/or the Authority, the annual service charge shall be the greater of eleven point one eight percent (11.18%) percent of Annual Shelter Rents; or \$12,572 increased at the rate of 2% per year (as detailed in the schedule below). The property shall not benefit from this ordinance until the property has transferred to the Sponsor and the planned renovations have commenced. The PILOT ordinance shall commence for the next calendar year following the commencement of renovations. Until such time the property shall continue to pay ad valorem taxes.

Year of Agreement	Calendar Year	Annual Charge	2% Annual Increase	Year of Agreement	Calendar Year	Annual Charge	2% Annual Increase
1	2014	\$ 12,572.00	\$ -	10	2023	\$ 15,025.20	\$ 294.70
2	2015	\$ 12,823.50	\$ 251.50	11	2024	\$ 15,325.80	\$ 300.60
3	2016	\$ 13,080.00	\$ 256.50	12	2025	\$ 15,632.40	\$ 306.60
4	2017	\$ 13,341.60	\$ 261.60	13	2026	\$ 15,945.10	\$ 312.70
5	2018	\$ 13,608.50	\$ 266.90	14	2027	\$ 16,264.10	\$ 319.00
6	2019	\$ 13,880.70	\$ 272.20	15	2028	\$ 16,589.40	\$ 325.30
7	2020	\$ 14,158.40	\$ 277.70	16	2029	\$ 16,921.20	\$ 331.80
8	2021	\$ 14,441.60	\$ 283.20	17	2030	\$ 17,259.70	\$ 338.50
9	2022	\$ 14,730.50	\$ 288.90	18	2031	\$ 17,604.90	\$ 345.20

B. The Housing Development, and the property on which it is constructed, shall be exempt from all property taxes from and after the commencement of rehabilitation of the Housing Development by the Sponsor under the terms of this Ordinance.

Section 7. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 6, if any portion of the Housing Development is occupied by other than Low Income and Moderate Income Persons, the full amount of the taxes that would be paid on those units of the Housing Development if the Housing Development were not tax exempt shall be added to the service charge in lieu of taxes.

Section 8. Contractual Effect of Ordinance. Notwithstanding the provisions of Section 15(a)(5) of the Act to the contrary, and subject to the terms of this Ordinance including, but not limited to Section 11 herein, this Ordinance constitutes a contract between the City and the Sponsor to provide an exemption from ad valorem property taxes and to accept the payment of an annual service charge in lieu of such taxes, as previously described in this Ordinance. It is expressly recognized that the Authority and USDA-RD are third party beneficiaries to this Ordinance. By accepting a service charge in lieu of taxes, the Sponsor and its successors in interest in the property shall be deemed to have agreed, as a matter of contract, to all of the provisions of this ordinance.

Section 9. Payment of Service Charge. The service charge in lieu of taxes shall be payable to the City in the same manner as ad valorem property taxes are payable, except that the annual payment shall be paid on or before May 1 of each year for the previous calendar year.

Section 10. Duration/Failure to Pay.

A. Subject to subsection B, below, this Ordinance shall remain in effect and shall not terminate for a maximum term of 18 years and so long as the Housing Development remains subject to a Federally Aided Mortgage and so long as the housing development submits the required annual notification of exemption pursuant to M.C.L. 125.1415a(1), as amended. The term of this Ordinance shall commence upon the issuance of the Notification to Local Assessor of Exemption as issued by the Authority.

B. This Ordinance may be terminated if rehabilitation of the Housing Development does not commence within two (2) years from the effective date of this Ordinance; or if the renovations are not completed within one year from the start of rehabilitation.

C. Notwithstanding anything contained herein to the contrary, if the Sponsor fails to pay the final adjusted service charge in lieu of taxes granted hereunder, or fails to provide the verification of the calculations used to make the payment, and such failure continues after thirty (30) days of written notice of such failure to the Sponsor, the service charge in lieu of taxes granted by this Ordinance will automatically be terminated. Written notice shall be sent to:

T J Lake Harbor LDHA LP
605 S. Capitol Avenue
Lansing, MI 48933

and

MSHDA
Attn: Director of Legal Affairs
735 East Michigan Avenue
Lansing, MI 48909

If the Sponsor or its successors do not correct the failure or failures as provided in the written notice, the effective date of termination shall be thirty (30) days from the date of mailing of the written notice. The City shall file a Notice of Termination to the Sponsor of the Housing Development and the Authority, by certified mail. If the service charge in lieu of taxes is terminated, then, in addition to the termination of the service charge, the City in its discretion shall have the right to either (a) prospectively impose upon the property all taxes which would have been applicable to the property if the service charge in lieu of taxes had not been granted or (b) place a lien on the property for all unpaid service charges and record a notice of the lien with the Register of Deeds. The lien may be enforced as if the amount of the lien were a mortgage and shall include the right to foreclose by advertisement. The amount of the unpaid service shall accrue interest at the maximum interest rate authorized by law for an unsecured debt with interest beginning on the effective date of termination. Nothing in this ordinance shall restrict the rights of the City to exercise other remedies authorized by law for the collection of unpaid monies authorized by law for breach of contract. Regardless of the remedy chosen by the City, all costs, including attorney fees, incurred by the City after the effective date of termination, which relate to the exercise of its rights under this ordinance or as otherwise provided by law, shall be added to the lien amount or any court judgment.

Section 11. Filing of Annual Audit. The Sponsor, or its successor, shall file a copy of any and all annual audits required to be provided to the federal government, the State of Michigan, and/or the Authority simultaneously with the City. The audit shall include detail with respect to occupancy of the Housing Development, Annual Shelter Rents received from the Housing Development, and the cost for utilities during the audit period.

Section 12. Publication; Effective Date. This Ordinance shall become effective the day following its publication or the day following publication of a summary of its provisions in a newspaper of general circulation in the City.

Section 13. Repeal. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

AYES: Members: _____

NAYS: Members: _____

Passed and adopted by the City of Charlevoix on _____, 2013.

_____, Mayor

_____, City Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF CHARLEVOIX)

I, the undersigned, the duly qualified and acting Clerk of the City of Charlevoix, Charlevoix County, Michigan, do hereby certify that the foregoing Ordinance was adopted by City of Charlevoix at a regular City Council meeting duly held on the ___ day of _____, 2013, and that the meeting was held in compliance with notice provisions and all other requirements of Act 267 of the Public Acts of 1976, as amended. I hereby certify that I published the Ordinance in the _____ on the ___ day of _____, 2013.

_____, City Clerk

Haggard's

PLUMBING and HEATING

"Business of Quality and Service"

"Charlevoix-the-Beautiful"

haggardsinc@hotmail.com

Date: June 24, 2013

To: City Clerk's Office
210 State Street
Charlevoix, MI 49720

RE: Lake Harbor Apartments
637 Petoskey Ave.

RECEIVED

JUN 26 2013

City of Charlevoix

To whom it may concern,

Upon reviewing the purposed tax exemption ordinance for the Lake Harbor Apartments, I would like to express my support with the above proposal. Haggard's Plumbing & Heating is not at all opposed to the changes of their property and/or the request to the City Council. If a property owner is fortunate enough to have the ability and the resources in this time of economical struggles to either build and/or improve their existing property, we would like to see their request granted. It would be an incentive for low-income families, which would bring much needed revenue to our city. It would prove positive for the local, county, state and country to do all we can to improve and promote growth in any way possible.

Sincerely,

Haggard's Plumbing & Heating

**CHARLEVOIX CITY COUNCIL
AGENDA ITEM**

AGENDA ITEM TITLE: Request by the Girl Scouts of Charlevoix to Erect Beach Signs

DATE: July 1, 2013

PRESENTED BY: Patti McCreadie
Members of Girl Scouts of Charlevoix

ATTACHMENTS: Email from Patti McCreadie

BACKGROUND INFORMATION:

The Girl Scouts of Charlevoix are seeking to do a service project to remind beach patrons to help keep our beaches clean. The signs are proposed to be erected at Depot Beach, Ferry Beach, Michigan Beach, and the entrance to North Channel pier located at the foot of Pine River Lane. The Girl Scouts has submitted two separate sign verbiage – *“Please Pick Up Trash and Treasure in Equal Measure – The Girl Scouts of Charlevoix”* or *“Please Keep Charlevoix Beautiful Pick Up Trash and Treasure in Equal Measure – The Girl Scouts of Charlevoix”*. The 18” x 24” signs will be purchased and installed by the Girl Scouts.

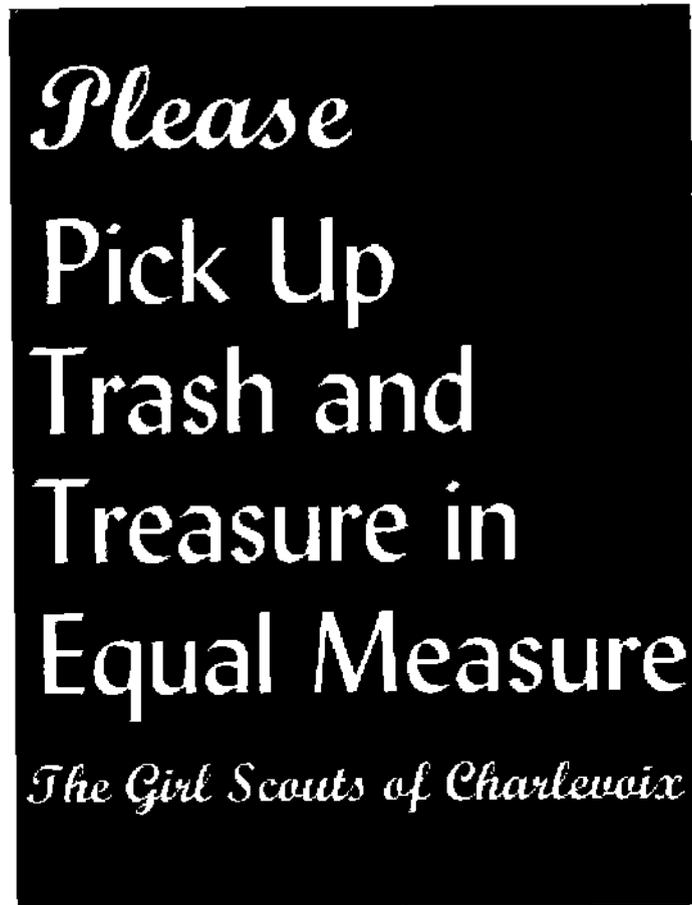
Their original proposal included a sign be placed at Mount McSauba. City staff has voiced concerns that the wording on the signs may encourage McSauba patrons to pick up “treasures” as well as trash. The McSauba dune area has a number of unique flowers and grasses which should not be removed from the beach/dune area. City staff is also requesting that the Girl Scouts be required to ask MISS DIG to mark all underground utilities prior to the installation of the signs.

RECOMMENDATION:

That City Council pass a motion to give Girl Scout Troops 10262 and 10269 permission to purchase and erect signs at Depot Beach, Ferry Beach, Michigan Beach, and the entrance to north channel pier located at the foot of Pine River Lane to encourage patrons to pick up trash, with the condition that MISS DIG is to be contacted by the Girl Scouts to mark all underground utilities prior to the installation of the signs and that the specific location of the signs is to be approved by City staff prior to installation.

Beach Sign Proposal-Girl Scouts of Charlevoix

As part of their service learning project, Girl Scout Troops 10262 and 10269 have decided to help clean up the city and the world. They would like to place this aluminum, 18" X 24" inch sign at the pictured locations below. The signs can be added to existing sign posts or installed on permanent metal round or channel posts. The Girl Scout troops will pay for the signs with fundraising events and will take care of installation at each site. We plan to install the signposts permanently with cement. Please allow a few of the girls to present their proposal at the July 1st City Council meeting. Thank you for your help navigating this worthy project! Please contact Patti McCreddie at 231-373-2196.





Alternative Wording:

Please
Keep Charlevoix Beautiful
**Pick Up
Trash and
Treasure in
Equal Measure**
The Girl Scouts of Charlevoix

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Adoption of Airport Master Plan Study June, 2013 Final Report

DATE: July 1st, 2013

PRESENTED BY: Kevin Clarke & Paul Puckli of R.W. Armstrong.
Mike Borta & Paul Shapter QoE Consulting
Scott Woody- Airport Manager

ATTACHMENTS: See Airport Master Plan delivered Tuesday, June 25, 2013

BACKGROUND INFORMATION: The Airport Master Plan is the City's strategy for the development of the Airport facilities, and is used to prepare and maintain an Airport Layout Plan (ALP). The ALP is an FAA requirement to receive federal funding under the Airport Improvement Program and associated sponsor grant assurances. The primary goal of the master plan is to identify and justify the facilities necessary to meet long-term operational demands of the users and traveling public. The Master Plan Study was kicked off in April, 2010. The Study Team consisted of members from the City of Charlevoix, FAA, MDOT, QoE Consulting, RW Armstrong and a Technical Advisory Committee (TAC) made up of tenants and other local stakeholders. The City, agencies and TAC reviewed interim working papers at critical decision points in the process. Four TAC meetings and one public meeting were also held over the course of the project (October 2010, December 2010, February 2011, and May 2011) during which the study findings were presented and input was solicited from all parties. The Final Draft Master Plan and associated Airport Layout Plan (ALP) were submitted to the FAA and MDOT in August 2011. Over the next 2 years, ongoing agency coordination led to official approval of the ALP on May 28, 2013.

RECOMMENDATION: Adoption of Master Plan Study June 2013 Final Report

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Proposal to establish Conservation Easement at Mt. McSauba.

DATE: Monday, July 1, 2013

PRESENTED BY: Mike Spencer, City Planner

ATTACHMENTS:

1. Documentation from John Campbell.
2. Legal opinion from Jim Young.

BACKGROUND INFORMATION:

In 2009 City Staff were approached by John Campbell to discuss the feasibility of establishing a conservation easement at Mt. McSauba. A conservation easement (CE) is essentially an agreement between a landowner and a land conservancy organization where a defined area is permanently protected from development. Types of developments usually restricted or limited by conservation easements include residential (condos, single family, subdivisions), industrial uses, and protection from logging or mining. CEs are typically used on private properties to protect the land and provide income tax deductions for gifting the easement to a conservancy. The amount of the tax deduction depends on the value of the CE. It is important to understand that the property owner still owns the land, but the area included in the CE is permanently bound by terms of the easement agreement which usually prevents development. Typically when CEs are established, the landowners surrounding the easement property also benefit from increased property values because they are next to an area that is permanently protected.

As with any land use restriction there are pros and cons. The obvious benefit would be that this highly valued community property would be permanently protected from development and the land conservancy would make sure that the easement agreement is enforced. The most immediate obstacle is the language of the City Charter (Section 2.16 f) that states: "The City Council shall not have the power to sell, divide, lease, partition, plat, subdivide, or dispose of any City Park or cemetery, or any part thereof, unless specifically approved by the majority of electors voting thereon at any general or special election." There are similar restrictions in subsection (g) pertaining to "property within 100 feet of the water's edge of Lake Michigan..."

City Council reviewed this issue before in 2010 and it was decided to not pursue a conservation easement. Jim Young has offered a legal opinion that if the city pursued a conservation

easement or even deed restrictions it would have to be voted on pursuant to the City Charter. (See Attachment)

RECOMMENDATION:

City Staff feel that conservation easements are a very positive way for landowners to protect their properties for the benefit of future generations; however, at this point we feel establishing a CE at Mt. McSauba is not in the City's best interests for the following reasons:

- The property is already protected by the language of the charter and any sale, subdivision, etc would have to be voted on by the people first.
- The property is zoned Scenic Reserve which does not allow residential, commercial, or industrial development. Even if a future "rogue" city council requested a zone change the voters would have to approve this first and the zone change would most likely be staunchly opposed by the residents of Charlevoix Township. The Township Zoning is as follows:

5.11 SRD SCENIC RESERVE DISTRICT

A. District Purpose. The purposes of this district are to maintain and protect large areas of publicly owned Lake Michigan shorelands and critical dune areas for limited public and scenic use as designated by the Township Master Plan.

B. Permitted Principal Uses. Land and buildings within the SR Scenic Reserve District shall be used only for the following purposes, provided the Planning Commission finds that the proposed use satisfies all of the District Development Regulations of Section 5.11 E. of this Ordinance.

1. Existing campgrounds and ancillary uses.
2. Existing trails and interpretive facilities.
3. Flora and fauna management activities

- The conservation easement would need to define both current and possible future uses. It is difficult to fully define future recreational uses.
- Mt. McSauba is, first and foremost, a recreational area, a great amenity for families and kids to ski, snowboard, ice skate, sled, play disc golf, etc. The ski area is substantially subsidized by general fund dollars. The City needs flexibility to create other amenities in the future to offset subsidy and make operations solvent.
- The city has a record of good stewardship and recognizes the beauty, uniqueness, and fragile ecological nature of Mt. McSauba. The City currently makes a concerted effort to protect this area for future generations. We strongly feel that recreational pursuits

and preservation of ecosystems are not mutually exclusive. It is an invaluable recreational area for residents and visitors alike.

- The City does not pay taxes so we would not receive any financial advantages from a CE like a private property owner would.
- This is a permanent restriction with an outside organization so there is loss of local control of the land unless it meets the terms of the easement agreement.
- The area has a Critical Dune designation which is protected by the Critical Dune Act, which is administered and enforced by DEQ Staff. For example, in the development of the disc golf course, the City worked with DEQ officials in developing a plan to minimize impacts to dune areas and creating erosion control measures. The disco golf course was approved by the DEQ.

Michael Spencer

ATTACHMENT

From: James G. Young <jyoung@upnorthlaw.com>
Sent: Sunday, June 23, 2013 3:20 PM
To: Michael Spencer
Cc: Rob Straebel
Subject: Re: Section 2.16 Council Powers and Limitations

A Conservation Easement would require voter approval. Such an easement functionally requires the City to “dispose” of certain development rights (which are part of the “bundle of property rights” which any owner has). Note that the wording says “any park....., or any part thereof, unless.....”.

An opponent to the easement could easily start a lawsuit and allege that by giving a Conservation Easement to the Conservancy, the City has disposed of a “part” of a city park by disposing of some of its property rights.

Deed restrictions might be subject to the same argument. If the City wants to project Mt. McSauba, my initial reaction is that a restrictive ordinance is worth exploring. At a minimum, the ordinance could not be changed without a public hearing.

James G. Young
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of Counsel
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Bellaire, MI. 49615

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On Jun 19, 2013, at 7:20 AM, Michael Spencer <michaels@cityofcharlevoix.org> wrote:

f. The Council shall not have the power to sell, divide, lease, partition, plat, subdivide, or dispose of any City park or cemetery, or any part thereof, unless specifically approved by a majority of the electors voting thereon at any general or special election, except as provided for in "sub-section h" of this section.

Mike Spencer

City Planning Director
City of Charlevoix Office of Planning and Zoning.
210 State Street
Charlevoix, MI. 49720
m Spencer@cityofcharlevoix.org
www.cityofcharlevoix.org
Phone: 231-547-3265
Fax: 231-547-3617

CITY OF CHARLEVOIX
City Council Meeting, 1 July 2013
WHY A CONSERVATION EASEMENT ON PUBLIC PROPERTY?

North Pointe – owned by Charlevoix Township

- Permitted uses controlled by the State of Michigan
- Approximately 35 acres and 2,800 feet of shoreline
- Preserved 25 years ago

Mt. McSauba – owned by the City of Charlevoix

- Located in Charlevoix Township
- Recreational uses – no limits
- Zoned Scenic Reserve
- Approximately 63 acres and 2,514 feet of shoreline
- To be preserved

PROPOSED CONSERVATION EASEMENT SUMMARY

Prohibited Actions:

- Division
- Commercial activities
- Industrial activities
- Land surface alteration
- Dumping
- Water course alteration
- Off-road recreation vehicles
- Signs and billboards

Permitted Uses:

- Right to convey
- Right to maintain and replace existing structures
- Right to add designated structures
- Right to have disc golf and associated structures
- Right to cut trees or other vegetation

NOTE: Projection of aerial map with boundaries will be used from my computer during presentation.

WHY A CONSERVATION EASEMENT ON PUBLIC PROPERTY?

Although conventional wisdom clings to the idea that options should never be foreclosed, this is not always the most wise or practical course. There is a place for permanence, not only in public policy but also in public property. The protection of open space for the benefit of the general public has been a task of government for many years. One can look at open spaces from the Boston Common to New York's Central Park in our large metropolitan areas, or to green spaces in such small towns as Marquette, Michigan, where the great landscape architect Frederick Law Olmstead said that the best thing to do with some public spaces is to simply leave them alone.

The City park at Mt. McSauba, which was enhanced by the addition of North Point through the Michigan Natural Resources Trust Fund, is a case in point. This beautiful beach has been a central feature of Charlevoix for many years, and it remains essential not only as a public open space for area residents, but also as a destination for the many visitors to our area whose presence and commerce support our livelihoods. Most people would agree that this beautiful beach, with its surrounding dunes and forest, will only become more valuable as a community resource as time goes on.

As we have learned recently in Charlevoix, political winds can blow in different directions and they do not always carry us in the right direction. Government needs a certain amount of flexibility, but it also requires discipline. The placement of a conservation easement on a portion of the Mt. McSauba property is a way to utilize this flexibility in order to exercise that discipline. It would enshrine in public policy what most people feel about the beach, dunes and forests of the area: to leave them as they are for the perpetual enjoyment of the people who live and visit here; to leave them open for public access; to maintain the natural quality of the area; and to ensure that these natural values will not be impinged. The creation of such a conservation protection should be viewed not so much as a restriction on the property as the appropriate exercise of visionary leadership. It would exclude the developed area of the property, leaving plenty of room for the ski hill and other developed recreational uses. Flexibility would thus be retained.

If we create such an easement—regardless of whether we create it in the form of a deed restriction under Michigan law or grant it to another unit of government or a non-profit organization—we will relieve our successors and future generations of having a divisive and agonizing debate about selling the land out for development, or losing it through litigation. We will provide permanent public access to our greatest natural resource, our greatest recreational resource and a most pleasant place for enjoying the natural beauty that makes our area so special. We will also send a message to our citizens and visitors that Charlevoix is not only open for business, but also open for enjoyment.

In the past, it was an important function of government to protect civilization from the ravages of the nature. As we begin the 21st century, times have changed and in many cases it is more important to protect our remaining natural areas from the ravages of civilization. The neighboring North Point property is protected through provisions in the grant agreement with the Michigan Department of Natural Resources. Now, it's our turn. A conservation easement for the beaches and dunes of Mt. McSauba would be a way for Charlevoix to accomplish just that, and to assure public access to our most valuable natural resource for all generations to come.

Mt. McSauba CONSERVATION EASEMENT

DATE: DRAFT

DONOR/OWNER: City of Charlevoix
210 State Street
Charlevoix, MI 49720

DONEE/ENTITY: To be identified.

For Purposes of this Conservation Easement, the Donor, who is the current Owner, and all subsequent Owners of the subject Property, will be referred to as the "Owner" throughout this Conservation Easement. The Donee will be referred to as the "Entity" throughout this Conservation Easement.

PROPERTY: (INSERT COMPLETE LEGAL DESCRIPTION)

CONVEYANCE: The Owner conveys and warrants to the Entity a perpetual Conservation Easement over the Property. The scope of this Conservation Easement is set forth in this agreement. This conveyance is a gift from the Donor to the Entity. Accordingly, this is exempt from Transfer Tax pursuant to MCL 207.505(a) and 207.526(a).

THE OWNER AND THE ENTITY AGREE TO THE FOLLOWING:

1. **PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE DONOR/OWNER AND THE ENTITY.**
 - A. This Conservation Easement assures that the Property will be perpetually preserved in its predominately natural, scenic, historic, forested, and open space condition. The Purposes of this Conservation Easement are to protect the Property's natural resource and watershed values; to maintain and enhance biodiversity; to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property. Any uses of the

Property which may impair or interfere with the Conservation Values are expressly prohibited.

- B.** The Donor is the Owner of the Property and is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities consistent with the Purposes of this Easement and the preservation of the Conservation Values.
- C.** The Entity is a qualified Recipient of this Conservation Easement, is committed to preserving the Conservation Values of the Property, and is committed to upholding the terms of this Conservation Easement. The Entity protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Entity also preserves open spaces, including farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

- 2. CONSERVATION VALUES.** The Property possesses natural, scenic, historic, open space, biological, and ecological values of prominent importance to the Owner, the Entity, and the public. These values are referred to as the "Conservation Values" in this Easement. The Conservation Values include the following:

OPEN SPACE and SCENIC:

- A.** A scenic landscape and natural character which would be impaired by modification of the Property.
- B.** A scenic panorama visible to the public from publicly accessible sites which would be adversely affected by modifications of the natural habitat.
- C.** Relief from suburban closeness.
- D.** Prominent visibility to the public from Lake Michigan, which will enhance tourism if preserved in its natural state.
- E.** Biological integrity of other land in the vicinity has been modified by intense development and land division, and the trend is expected to continue.
- F.** There is a reasonable possibility that the Entity may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Conservation Easement.

PUBLIC POLICY:

- G.** The State of Michigan has recognized the importance of protecting our natural

resources as delineated in the 1963 Michigan Constitution, Article IV, Section 52, “The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety, and general welfare of the people. The legislature shall provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.”

- H. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy:
- Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.2140 *et seq.*;
 - Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.35501 *et seq.*; (Legislative Findings § 324.35502);
 - Sand Dune Protection and Management, Part 353 of the Michigan Natural Resources and Environmental Protection Act, MCL §§ 324.35301 *et seq.*; (Legislative Findings MCL § 324.35302);
 - Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Act - MCL §§ 324.30301 *et seq.*; (Legislative Findings MCL § 324.30302);
 - Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka “Section 404” Clean Water Act.);
 - Coastal Zone Management Act, 16 USC §§ 1451 *et seq.*; (§§ 1451, 1452 Congressional Findings and Policy.);
 - Shorelands Protection and Management, Part 323 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.32301 *et seq.*;
 - Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);
- I. The City of Charlevoix has designated this area as (INSERT) in its Comprehensive Plan dated (INSERT).

WILDLIFE VALUES:

J. The Property is home to many species of wildlife, including: **(INSERT)**.

K. The Property is noteworthy for the **(INSERT)**.

ECOLOGICAL / HABITAT:

L. The Property contains significant natural habitat in which fish, wildlife, plants, or the ecosystems which support them, thrive in a natural state.

M. The Property contains natural areas which represent high quality examples of terrestrial or aquatic communities **(INSERT)**.

N. The Property contains sustainable habitat for biodiverse vegetation, birds, fish, and terrestrial animals.

O. A diversity of plant and animal life are found on the Property in an unusually broad range of habitats for a property of its size.

P. The Property is characteristic of **(INSERT)**. Its dominant vegetation is **(INSERT)** interspersed with **(INSERT other habitats, streams, important natural features)**. These plant communities are in a relatively natural and undisturbed condition and support the full range of wildlife species found in these habitat types.

Q. Valued native forest land exists on the Property, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs.

WATERSHED PROTECTION:

R. The Property provides important natural land within the watershed of Lake Michigan. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the Lake Michigan watershed area.

S. The Property includes approximately 2,500 feet of frontage along Lake Michigan.

ADJACENT TO PROTECTED LANDS:

- T. The Property lies in close proximity to the following conserved properties which similarly preserve the existing natural habitat: **North Point Preserve.**
- U. This Easement protects a natural area which contributes to the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or similar conservation area.
- V. Preservation of the Property enables the Owner to integrate the Conservation values with other neighboring lands.

3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory to be signed by the Owner and the Entity upon execution of this Conservation Easement. This “Baseline Documentation Report” may consist of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that this natural resources inventory, the Baseline Documentation Report, is an accurate representation of the Property at the time of this donation.

4. **PROHIBITED ACTIONS.** Any activity on, or use of, the Property which is inconsistent with the Purposes of this Conservation Easement or which is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:

- A. **Division.** Any division or subdivision of the Property is prohibited.
- B. **Commercial Activities.** Any commercial activity on the Property is prohibited. *De minimis* commercial recreational activity is, however, permitted.
- C. **Industrial Activities.** Any industrial activity on the Property is prohibited.
- D. **Construction.** The placement or construction of any human-made modification such as, but not limited to, structures, buildings, fences, roads, and parking lots is prohibited, except as permitted in Section 5 below.
- E. **Cutting Vegetation.** Any cutting of trees or vegetation is prohibited, except to clear vegetation for activities permitted in Section 5 below.

- F. **Land Surface Alteration.** Any mining or alteration of the surface of the land is prohibited, including any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products are all prohibited activities.
 - G. **Dumping.** Waste and unsightly or offensive material is not allowed and may not be accumulated on the Property.
 - H. **Water Courses.** Natural water courses, lakes, wetlands, or other bodies of water may not be altered.
 - I. **Off-Road Recreational Vehicles.** Motorized off-road vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated off of designated roads on the Property.
 - J. **Signs and Billboards.** Billboards are prohibited. Signs are prohibited, except the following signs may be displayed to state:
 - a) The name and address of the property or the owner's name.
 - b) The area is protected by a conservation easement.
 - c) Prohibition of any unauthorized entry or use.
 - d) Rules for recreational use of the Property.
 - e) Trail signs and maps.
 - f) Interpretative information for educational purposes
 - g) Other signs as appropriate relating to recreational, educational or scientific use of the Property.
5. **PERMITTED USES.** The Owner retains all ownership rights which are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved:
- A. **Right to Convey.** The Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Conservation Easement and the subsequent Owner will be bound by all obligations in this agreement.
 - B. **Right to Maintain and Replace Existing Structures.** The Owner retains the right to maintain, renovate, and replace the existing structures as noted in the Baseline Documentation Report in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure.

- C. **Right to Add Designated Structures or Uses.** The Owner retains the right to add the following structures, modifications, or uses on the Property.
 - a) Signs and Kiosks, as provided for in 4.J. above.
 - b) Nature trails to accommodate hiking, cross-country skiing and snowshoeing.
 - c) Stairs to provide access to the waterfront area and to manage erosion resulting from visitor use of the Property.
 - d) Overlook platforms for scenic viewing, providing that any overlook structures are non-obtrusive and do not detract from scenic values of the Property.
 - e) Fences along the Property's boundaries.

- D. **Right to have Disc Golf and Associated Structures.** The Owner retains the right to add, maintain and improve existing disc golf course and its associated structures.

- E. **Right to Cut Trees or other Vegetation.** Trees and other vegetation may be killed, cut, trimmed, removed, etc. under the following conditions and for the following purposes:
 - 1) Dangerous trees. The Owner retains the right to remove or trim trees which are an immediate health or safety hazard to individuals or structures that are permitted within this document without consent of the Entity.
 - 2) Removal of diseased or non-native plants. Plants which are diseased, are at high risk for becoming diseased, are excessively infested with insects or other pests, are non-native, or may otherwise pose a threat to the forest ecosystem health may be removed with prior written approval from the Entity.

- 6. **RIGHTS OF THE ENTITY.** The Owner confers the following rights upon the Entity to perpetually maintain the Conservation Values of the Property:
 - A. **Right to Enter.** The Entity has the right to enter the Property at reasonable times to monitor the Conservation Easement Property. Furthermore, the Entity has the right to enter the Property at reasonable times to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. The Entity may not, however, unreasonably interfere with the Owner's use and quiet enjoyment of the Property. The Entity has no right to permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.

 - B. **Right to Preserve.** The Entity has the right to prevent any activity on or use of

the Property that is inconsistent with the Purposes of this Conservation Easement or detrimental to the Conservation Values of the Property.

- C. **Right to Require Restoration.** The Entity has the right to require the Owner to restore the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
- D. **Signs.** The Entity has the right to place signs on the Property which identify the land as protected by this Conservation Easement. The number and location of any signs are subject to the Owner's approval.

7. **ENTITY'S REMEDIES.** This section addresses cumulative remedies of the Entity and limitations on these remedies.

- A. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the Entity's right to eventually enforce the terms of this Conservation Easement.
- B. **Acts Beyond Owner's Control.** The Entity may not bring an action against the Owner for modifications to the Property resulting from causes beyond the Owners' control, including, but not limited to, unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or even an Owner's well-intentioned action in response to an emergency resulting in changes to the Property. The Owner has no responsibility under this Conservation Easement for such unintended modifications.
- C. **Notice and Demand.** If the Entity determines that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Entity shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property.

However, if at any time the Entity determines, at its sole discretion, that the violation constitutes immediate and irreparable harm, no written notice is required. The Entity may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property.

If the Entity determines that this Conservation Easement is, or is expected to be, violated, and the Entity's good-faith and reasonable efforts to notify the Owner are unsuccessful, the Entity may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs associated with this effort.

D. Failure to Act. If, within 28 days after written notice, the Owner does not implement corrective measures requested by the Entity, the Entity may bring an action in law or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, or if an Owner is unable to be notified, the Entity may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period.

The Entity is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Property. If the court determines that the Owner has failed to comply with this Conservation Easement, the Owner shall also reimburse the Entity for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by the Entity.

E. Unreasonable Litigation. If the Entity initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Entity to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.

F. Actual or Threatened Non-Compliance. The Entity's rights under this Section, Entity Remedies, apply equally in the event of either actual or threatened violations of the terms of this Easement. The Owner agrees that the Entity's claim for money damages for any violation of the terms of this Easement is inadequate. The Entity shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. The Entity's claim for injunctive relief or specific performance for a violation of this Conservation Easement shall not require proof of actual damages to the Conservation Values.

G. Cumulative Remedies. The preceding remedies of the Entity are cumulative. Any, or all, of the remedies may be invoked by the Entity if there is an actual or threatened violation of this Conservation Easement.

8. NOTIFICATION PROVISION. The Entity is entitled to 60 Days written notice whenever its approval is required under this Conservation Easement. If the Entity fails to respond within 60 Days after it receives the written request, then its approval shall be deemed given. This implied approval shall not extend to any activity contrary to this Conservation Easement or impairing a Conservation Value. The Entity's approval shall continue for three years. If the approved activity is not completed within three years after the approval date, then the Owner must re-submit the written application to the Entity.

9. CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.

- A. This Conservation Easement is created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.
- C. The Entity is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.

10. OWNERSHIP COSTS AND LIABILITIES. In accepting this Conservation Easement, the Entity shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property. The Entity's rights do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act. The Entity, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any property on the Property. The Owner agrees to defend the Entity against such claims arising during the term of the Owner's ownership of the Property.

11. NO TRANSFER OF DEVELOPMENT RIGHTS. Owner hereby grants to Entity all development rights, except for the particular development rights specifically reserved herein, for the limited purpose of ensuring that such rights are forever terminated and extinguished and may not be used on or transferred off of the Property to any other property, adjacent or otherwise, or used as a credit for density of development anywhere, by Owner, Entity, or any other party.

12. CESSATION OF EXISTENCE. If the Entity shall cease to exist or if it fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if the Entity is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3). The Entity's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.

13. **TERMINATION.** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.
- A. Unexpected Change in Conditions.** If subsequent circumstances render the Purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Entity will then be entitled to compensation in accordance with the provisions of IRC Treasury Regulations Section 1.170A-14(g)(6)(ii).
- B. Eminent Domain.** If the Property is taken, in whole or in part, by power of eminent domain, then the Entity will be entitled to compensation by the method as is set forth in IRC Treasury Regulations Section 1.170A-14(g)(6)(ii).
14. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Code MCL 324.2140 *et seq.*
15. **NOTICES.** For purposes of this agreement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the last known address of a party) by First Class mail.
16. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
17. **SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of, the Donor/Owner's and the Entity's successors in interest. All subsequent Owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Donor.
18. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
19. **MICHIGAN LAW.** This Conservation Easement will be construed in accordance with Michigan Law.
20. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

Signatures to follow:

DONOR/OWNER: INSERT NAME

STATE OF MICHIGAN)

)

COUNTY OF _____)

Acknowledged before me on this ____ of _____, of 2013, by (Insert Owner's names).

Notary Public

County, Michigan
My commission expires:

ENTITY:

STATE OF MICHIGAN)

)

COUNTY OF _____)

Acknowledged before me on this ____ of _____, of 2013, by ____ known to me to be the _____.

Notary Public
Emmet County, Michigan
My commission expires:

AFTER RECORDING SEND TO: **SEND TAX BILL TO:** **PREPARED BY:**
Entity Donor Entity



**CHARLEVOIX CITY COUNCIL
AGENDA ITEM**

AGENDA ITEM TITLE: Request by Charlevoix Yacht Club for Free Parking – Nucore Triangle and Red Fox Regatta

DATE: July 1, 2013

PRESENTED BY: Judy A. Gordon

ATTACHMENTS: Letter from Charlevoix Yacht Club
Draft Resolution

BACKGROUND INFORMATION:

The Charlevoix Yacht Club would like the City Council to consider waiving parking fees at Ferry Launch Ramp for August 30th, August 31st and September 1st, 2013.

Section 10.84 states: “The city council, by resolution, may revise or waive fees for special or public events. The term "special or public events" shall mean a tournament, festival or other type of event, whether or not open to public participation or observation, the occurrence of which will, in the judgment of the city council, benefit the city economically or by virtue of the publicity surrounding the event.”

RECOMMENDATION:

Motion to approve the attached resolution waiving parking fees for the Charlevoix Yacht Club on August 30th, August 31st and September 1st, 2013.



Charlevoix Yacht Club

209 Ferry Avenue · PO Box 522 Charlevoix, MI 49720 · www.CharlevoixYachtClub.org · 231-547-9170

June 7, 2013

Mayor and City Council
City of Charlevoix
210 State Street
Charlevoix, Mi. 49720

RE: Use of Boat Launch Facility for Red Fox Regatta

Dear Mayor and Council:

This letter is a request to the City Council to again allow free use of the boat launch ramp at the end of Stover Road on August 30 & 31 and September 1 of 2013. These are the dates of the Nucore Triangle Race, Friday evening and the annual Red Fox Regatta sailboat race between Charlevoix and Boyne City, Saturday and Sunday, hosted by the Charlevoix Yacht Club.

We have sailboats participating in these races from out of town that will need to use the launch ramp. Last year there were about thirty launch passes used by out of town sailboats. Local boats are either in the water or already have seasonal launch passes. Participants will be identified by showing a colored card indicating that they are a Red Fox participant.

There will be approximately 80 to 90 boats with anywhere from 1 to 18 people on board. Over half of the race participants come from out of town and will be patronizing Charlevoix restaurants, businesses and motels during their stay. There will be a definite economic benefit to the City of Charlevoix. Charlevoix also receives good community exposure as the host of this annual event.

Your consideration and approval of this matter will be appreciated.

Sincerely,

Judy A. Gordon
Red Fox Committee
Charlevoix Yacht Club

RECEIVED

JUN 10 2013

CITY OF CHARLEVOIX

City of Charlevoix

RESOLUTION NO. 2013-07-XX
WAIVE PARKING FEES FOR CHARLEVOIX YACHT CLUB

WHEREAS; the Charlevoix Yacht Club is hosting the Nucore Triangle Race on August 30th and the Red Fox Regatta on August 31st and September 1st, 2013; and

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

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

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Charlevoix, hereby waives launch/parking fees for the Nucore Triangle Race on August 30th and the Red Fox Regatta on August 31st and September 1st, 2013.

RESOLVED, this ____ day of _____, 2013, A.D.

Resolution was adopted by the following yea and nay vote:

Yeas:

Nays:

Absent:

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussion on 2013 Draft Zoning Ordinance

DATE: July 1, 2013

PRESENTED BY: Mike Spencer, City Planner

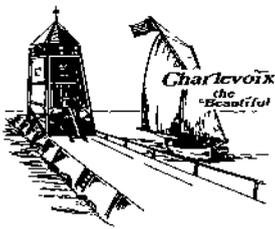
ATTACHMENTS: June 25 Memo from Jim Young.
June 25 Memo summarizing changes to “conditions of approval.”
June 26 Memo from City Planner.

BACKGROUND INFORMATION:

The purpose of this agenda item is to discuss specific changes to the zoning ordinance proposed by staff and the City Attorney, allow City Council to ask questions or provide input on any part of the zoning, and give the public another opportunity to comment on the draft. We have provided this documentation on the City website for the public to review and I believe there will be an article in Charlevoix Courier on Friday, June 28 that will discuss the draft and the proposed changes. We are making every effort to involve the public and seek comment on the draft and the proposed changes.

RECOMMENDATION:

Please continue to review the draft, call my office if you have additional questions or concerns, and carefully consider the proposed amendments. The public hearing is set for July 15, 2013 at 7PM. After the public hearing Council can decide if additional meetings are necessary prior to adoption.



CITY OF CHARLEVOIX
210 STATE ST. CHARLEVOIX, MICH. 49720

OFFICE OF PLANNING AND ZONING
Mike Spencer, City Planner/ Zoning Administrator
210 State Street Charlevoix, MI. 49720
[mspencer@cityofcharlevoix.org](mailto:m Spencer@cityofcharlevoix.org)
(231)547-3265

ATTACHMENT

MEMORANDUM

TO: City Council

DATE: June 25, 2013

SUBJECT: 2013 Draft Zoning Ordinance

As you recall, on June 17 we were going to prepare a list of changes to the zoning ordinance for your consideration before holding the public hearing on July 15 at 7PM. Specifically these changes deal with clustered housing, townhouse or similar developments in the R-4 Zone and the discussion over outdoor advertising displays downtown, such as hanging merchandise on a building. This memo summarizes those issues or changes. Please review this information and let me know if you have any questions. I know the specific changes to the R-4 District can be confusing but hopefully after the presentation Monday you will have a better understanding of what we are trying to accomplish.

We have used a ~~striketrough~~ and underline format to show you what is changing. Words that have a strike are through are being deleted and new language is underlined.

Changes on the next page.

Change to Section 5.27 for R-4 Developments.

(3) *Dimensional Requirements, Multiple family dwellings in the R4 District.*

Table 5.27(3) Dimensional Requirements: Multiple Family Dwellings in the R-4 Zone

Max. Building Height (ft.)	Minimum Yard Setbacks (ft.)				Lot Coverage (%)	Min. Floor Area (sq. ft.), based on number of bedrooms			Distance Between Buildings
	Yard Adjacent to:	Front	Side	Rear		1 bedroom/efficiency	2 bedrooms	3 bedrooms	
35	R1, R2 or R2A	40	30	40	50	660	780	900	30
	All districts	40-30	30-20	40-35					

(4) *Additional Requirements For Multiple Family Dwellings.*

(a) Development Standards. The general plan for multiple family dwellings shall include evidence and facts showing that it has considered and made provisions for, and the development shall be executed in accordance with, the following essential conditions:

1. The proposed development shall be constructed in accordance with an overall plan and shall be designed as the unified architectural unit (each **building**, excluding **accessory structures**, shall have consistent roof lines, roof pitch, architectural features, and building materials) with appropriate landscaping meeting the requirements of *Section 5.81*.
2. If the development is to be carried out in stages, each stage shall be so planned that the foregoing requirements and the intent of this Article shall be fully complied with at the completion of any stage and the development of each stage shall take place in sequential order as designated by the plan.

(b) Development Requirements.

1. **Parking:** A parking area shall be placed so that they do not interfere with any recreation or **service area** and shall be set back at least twenty (20) feet from property lines.
2. **Paving:** All areas provided for use by vehicles and all pedestrian walks shall be surfaced with bituminous asphalt, concrete or similar materials and be properly drained.
3. **Service:** Areas for loading and unloading delivery trucks and other vehicles and for the servicing of refuse collection, fuel and other services shall be provided, shall be adequate in size and shall be so arranged that they may be used without interference with the use of access ways or parking facilities.

4. Access: Provision shall be made for safe and efficient ingress and egress to the **public streets** and highways servicing the **R4 zone** without undue congestion to, or interference with, normal traffic flow.
5. Utilities: All **buildings** within the **R4 zone** shall be serviced by a public sanitary sewer disposal system and public water supply system. All utility lines within the subject property including, but not limited to, power, water, sewer and telephone shall be placed underground by the developer for new developments.¹ Each unit will be considered as a separate **dwelling** for the purpose of utility connections.
6. Open Space: The developer shall be required where possible to preserve or incorporate natural features such as wooded areas, streams and **open space** areas, which add to the overall cohesive development of the **R4 zone** and overall community development. ~~However, all conditions deemed hazardous by the planning commission including natural features are to be eliminated or all precautions, deemed appropriate by the city to reduce the hazard, are to be provided by the developer.~~

(5) Clustered Housing: Dimensional Requirements for Single Family Attached, Single Family Detached, Two Family Dwellings, or any combination in the R4 District.

Max. Building Height (ft.)	Minimum Yard Setbacks (ft.)				Lot Coverage (%)	Min. Floor Area(sq. ft.)		Distance Between Buildings
	Yard Adjacent to:	Front	Side	Rear		1 story	2 stories	
26	All districts	25	10	25	NA ²	800	1100	10

(6) Additional Requirements for Single Family Attached, Single Family Detached, and Two Family Dwellings in the R4 District.

- (a) Development Standards. The general plan for a the development shall include evidence and facts showing that it has considered and made provisions for, and the development shall be executed in accordance with, the following essential conditions:
 1. If the development is to be carried out in stages, each stage shall be so planned that the foregoing requirements and the intent of this Article shall be fully complied with at the completion of any stage and the development of each stage shall take place in sequential order as designated by the plan.

¹ City council may waive this requirement for the expansion of existing developments.

² Applicants are required to submit a grading and drainage plan, in accordance with the requirements of Article 12 Site Plan Review, demonstrating storm water can be contained and managed on the subject property if no municipal storm water system exists. If a municipal storm water system exists, the Director of Public Works, or consulting engineer representing the City, shall review the grading and drainage plan to determine if the existing infrastructure can adequately handle the storm water runoff. Applicants may be required to install storm water management features to mitigate impacts to the municipal storm water system.

(b) Development Requirements.

1. Parking: Parking areas shall be placed so that they do not interfere with any recreation or service area.
2. Paving: All areas provided for use by vehicles and all pedestrian walks shall be surfaced with bituminous asphalt, concrete or similar materials and be properly drained.
3. Service: Areas for loading and unloading delivery trucks and other vehicles and for the servicing of refuse collection, fuel and other services shall be provided, shall be adequate in size and shall be so arranged that they may be used without interference with the use of access ways or parking facilities.
4. Access: Provision shall be made for safe and efficient ingress and egress to the public streets and highways servicing the R4 zone without undue congestion to, or interference with, normal traffic flow.
5. Utilities: All buildings within the development shall be serviced by a public sanitary sewer disposal system and public water supply system. All utility lines within the subject property including, but not limited to, power, water, sewer, and telephone shall be placed underground by the developer for new developments. Each unit will be considered as a separate dwelling for the purpose of utility connections.

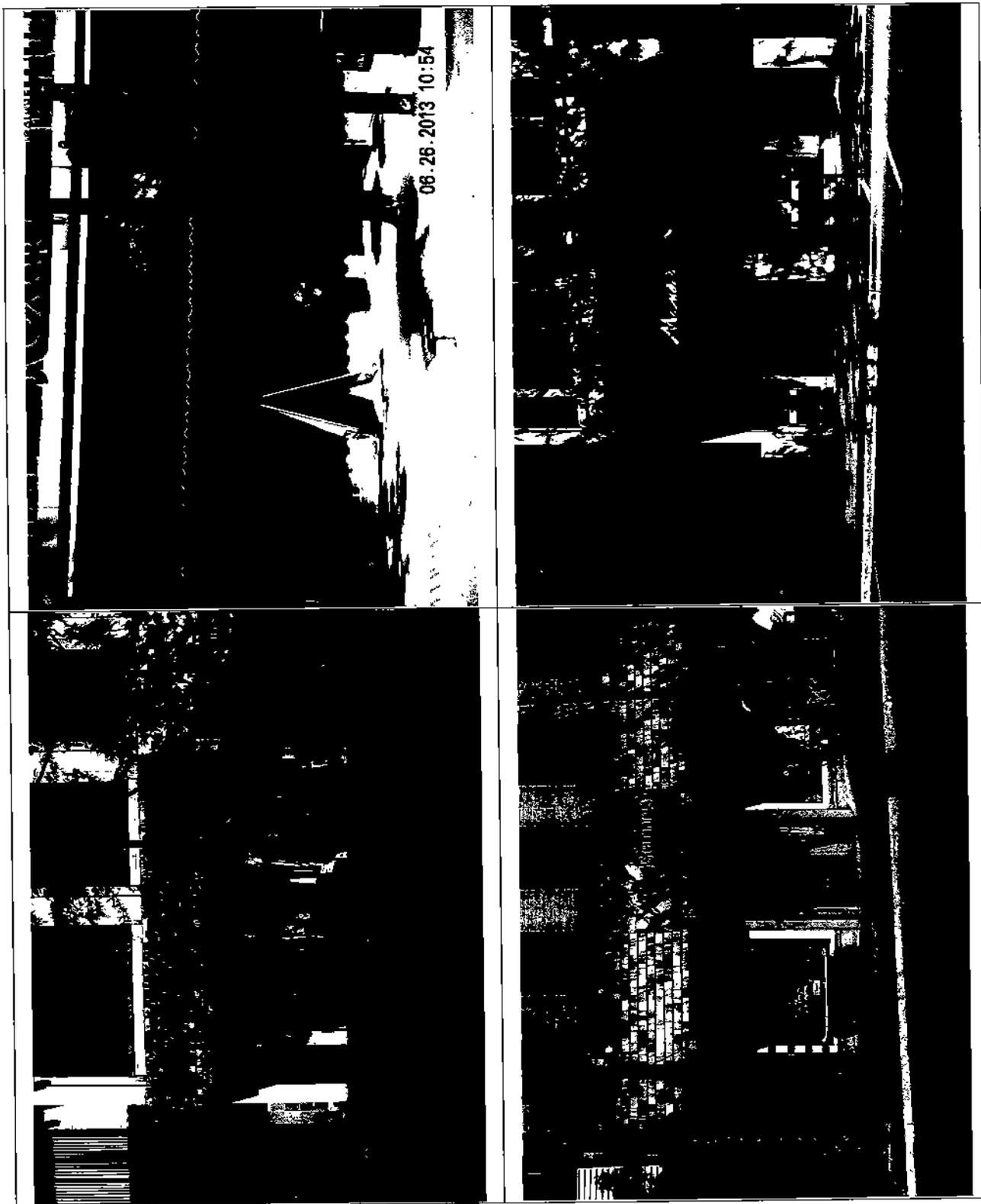
Should the City change our regulations to deal with outdoor advertising? We have received numerous complaints about the appearance of certain businesses/buildings. As mentioned previously it is hard to regulate taste and appearance with outdoor displays and advertising. The pictures on the following pages demonstrate the different types of advertising people are using. Our sign ordinance controls some things like flags, balloons, streamers, etc but we do not have other regulations for sale racks, sculptures, merchandise on buildings, etc.

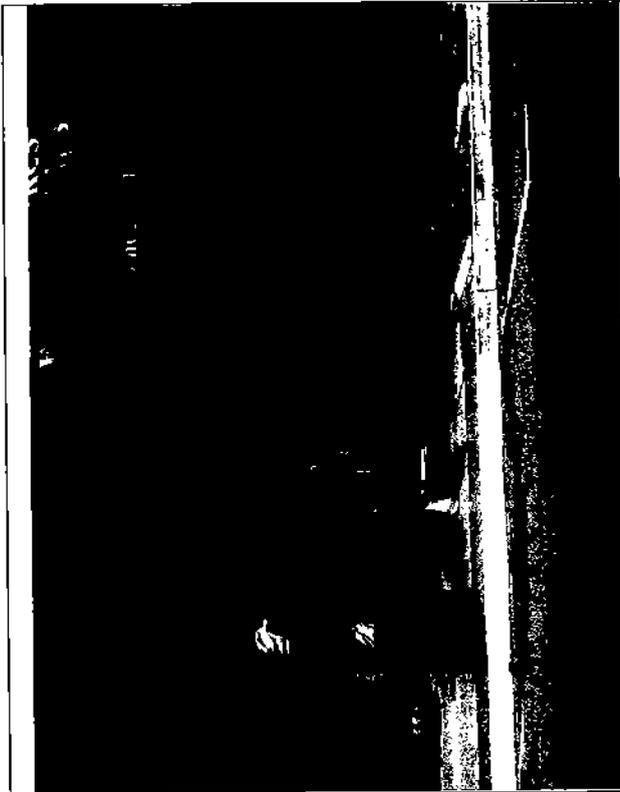
- Features hung on buildings, such a bike or a sculpture.
- Sale racks in front of buildings that are still on private property. (Sale racks are not allowed on public sidewalks under our existing code under Title IV).
- Merchandise hung on buildings.

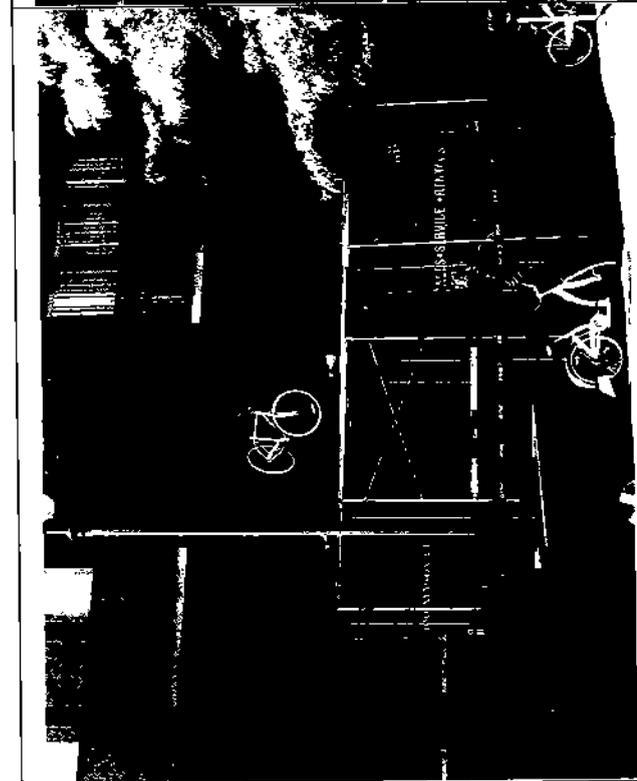
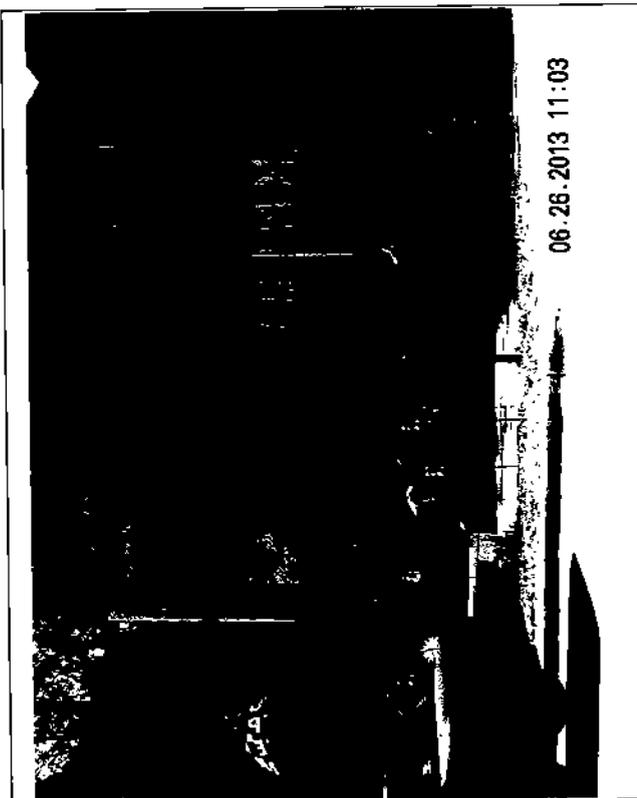
Council has several options to choose from:

1. Continue to allow outdoor displays on private property.
2. Restrict outdoor displays on private property in the DDA district.
3. Restrict outdoor displays on private property only on those businesses/buildings fronting Bridge Street.
4. Direct Staff to draft language that allows certain displays and advertising, but prohibits others. This will be very difficult to accomplish.

We are researching what other communities restrict and will have that information available at the next meeting.







ATTACHMENT

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Eugene W. Smith

James G. Young, *Of Counsel*

To: City Council

From: James G. Young – City Attorney

Subject: New Zoning Ordinance – recent recommended changes

Date: June 25, 2013

Consideration of a new zoning ordinance is one of the most important legislative actions that the City Council can take. Interestingly, based on the history that the Planner provided in the June 17 agenda packet, the City's first zoning ordinance was in effect for 36 years before it was redone in 1977 and it will be another 36 years if Council adopts the new zoning ordinance in 2013. Thus, as you can see, the new ordinance will guide development and the use of land in the City for decades.

Before the Planning Commission's (PC) public hearing on the new ordinance, I had an opportunity to review an earlier draft of the ordinance. The Planner provided me with a list of those sections that were to be reviewed. After receiving my recommendations, the Planner and the PC implemented most of my suggestions and adopted a draft of the ordinance. Council received this draft on June 17.

After the PC adopted the current draft, the Planner sent me a list of sections to review based on questions that he or the PC had. That list has resulted in my preparing recommendations that are not in the draft of the ordinance, which Council has currently. Consistent with those recommendations and at the request of the PC and Planner, I revised various sections of the ordinance. All of my revisions related to wording improvements for clarity or consistency. The changes did not change the substance of any section.

The following items summarize my revisions:

1. Section 5.27 – R-4. This revision improved wording for clarity. The primary change was to change the reference from "conditions" to "requirements" since compliance with the those development standards are mandatory.

2. Section 5.46 - B & Bs. This revision improved wording for clarity. In addition, this section requires “sufficient parking on site”. It was suggested that a cross-reference to the section that states the parking requirement be included or, if no section exists, then to list the standards by which “sufficient parking on site” can be determined. The purpose was to avoid a dispute or ambiguity regarding what constitutes “sufficient parking on site”.
3. Section 5.61 – Site Excavations. This revision merely clarified wording regarding what constitutes a dangerous excavation.
4. Section 5.116 – Performance Guarantee. It was recommended that this section be revised by the Planner to clarify procedures related to the processing and rebate of cash deposits that guarantee the completion of a project. The establishment of such procedures is consistent with the Michigan Zoning Enabling Act.
5. Section 5.160 – Zoning Permits. For clarity, it was suggested that the Planner define “substantial excavation” and “major construction project” unless those terms were defined elsewhere. The purpose was to avoid a dispute or ambiguity regarding what these terms mean.
6. Section 5.175 – Powers and Duties of the ZBA. Changes were made regarding the processing of an appeal to the ZBA to be consistent with the requirements of the Michigan Zoning Enabling Act. The major change was to require the applicant to identify the reasons or basis of the appeal. This is required by the Michigan Zoning Enabling Act.
7. Section 5.178 – Use Variance Conditions. This section was changed to be consistent with other sections that deal with conditions.
8. Sections Allowing Conditions to Zoning Permits. On June 17, the Planner provided me with a list of sections that relate to the imposition of conditions to a zoning decision. These sections were rewritten so that the wording among them was essentially consistent. Consistency is important from a legal perspective and, also, makes the ordinance easier to apply. These changes included important provisions regarding Special Land Uses, Sexually Oriented Businesses, Mineral Extraction, Site Plan Approval and Planned Unit Developments.

Despite the efforts of a community, a new zoning ordinance is always a “work in progress”. Statutes and court decisions change over time. Equally important, experience in applying a new ordinance will reveal “rough spots” and, ultimately, lead to improvements in the ordinance. As time progresses, the Planner will develop a list of potential improvements to the ordinance. I will add to that list as well. In time, those changes can be incorporated into one overall amendment. This is more efficient and cost-effective than multiple, “piece-meal” amendments.

Thank you for reading the proposed zoning ordinance, which was given to you on June 17. That draft of the ordinance coupled with this memo will serve as a basis for understanding the proposed ordinance that the Planner will include in the Council agenda packet for the July 15 public hearing and Council agenda item. I will be attending that meeting and I look forward to working with you regarding this very important matter.



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210 STATE ST. CHARLEVOIX, MICH. 49720

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[mspencer@cityofcharlevoix.org](mailto:m Spencer@cityofcharlevoix.org)
(231)547-3265

ATTACHMENT

MEMORANDUM

TO: City Council
DATE: June 25, 2013
SUBJECT: Changes to “conditions of approval” language in the zoning ordinance.

The following list is a summary of legal changes Jim Young is recommending for specific language regarding conditions of approval. These should be consistent throughout the entire ordinance. These are numbered 1-6.

We have used a ~~strickethrough~~ and underline format to show you what is changing. Words that have a strike are through are being deleted and new language is underlined.

Please let me know if you have any questions.

Mike

1. Change to Section 5.46(1)(d)2. (pg.58) that alters the text of the subsection.

5.46. Lodging, Dining and Entertainment Uses

(1) *Sexually Oriented Businesses.*

(d) Procedures.

2. Conditions of Approval. Prior to granting approval for the establishment of any sexually oriented business, the city council may impose conditions or limitations upon the establishment, location, construction, maintenance or operation of the use as authorized by Section 5.132. Any evidence, bond or other performance guarantee may be required as proof that the conditions stipulated in connection therewith will be fulfilled.

2. Change to Section 5.55(2) (pg. 69) to add a Requirements subsection and move Conditions to a new subsection. (City Attorney)

5.55. Other Uses

(2) *Mineral Extraction Operations.*

- (a) A special use approval shall be required for mineral extraction operations, including removal of soil, sand or gravel, where more than six hundred (600) cubic yards will be removed. The special use permit shall be subject to approval by the city council following a public hearing and recommendation from the planning commission. Once issued, the special use may be reviewed annually by the city council to ensure that the operation conforms to all plans, progress, conditions and sureties. Removal operations shall not begin until the special use is approved and a zoning compliance permit is issued.
- (b) Application. In addition to the submittals for a special use outlined in *Section 5.131*, an application for a mineral extraction permit shall be accompanied by the following:
1. A topographic map with two (2) foot contour intervals including the locations of all streets, buildings and existing drainage facilities within three hundred (300) feet of the property.
 2. A topographic map with two (2) foot contour intervals showing final elevations, including the proposed locations of access drives, parking areas and equipment.
 3. An estimated schedule for removal and an agreement conforming to all provisions of this section.
 4. A traffic control plan showing proposed truck routes to and from the site.
 5. A written description of proposed post-removal use of the property.
 6. A reclamation plan showing final grading of the site with two (2) foot contours, vegetation, roadways and other features to be installed.
 7. A fee, determined by resolution of the city council, to defray review, administration and inspection costs.
- (c) Requirements. A special use permit shall not be issued unless activities comply with all the following requirements and the city council finds that there will be no serious consequences to the immediate area or community at large. A special use permit may be revoked if the use is found in violation of any part of this section:
1. Activities shall comply with applicable soil erosion and sedimentation control regulations.
 2. Final grades shall not exceed five (5) percent and shall meet existing elevations at all property lines. Grades in excess of five (5) percent may be permitted by the city council if the applicant demonstrates that an increase is essential to implement a plan for future use.
 3. The limits of the excavation shall be at least fifty (50) feet from any adjoining property line and one hundred (100) feet from any street right-of-way or private street easement line.

4. Mineral extraction shall not create permanent depressions that may fill with water. All storm runoff must discharge into existing drainage systems.
 5. Since artificial lakes and water bodies can present threats of ground water pollution and stagnant water, thereby adversely affecting the public health, safety and welfare, they shall not be created as part of removal operations unless the applicant demonstrates:
 - a. Engineering and geological studies find there will be a positive source of unpolluted underground or stream-fed water in adequate amounts to produce positive water flow at all times;
 - b. Plans for the proposed artificial lake or water body have received all State of Michigan approvals and conform to all federal, state, county and municipal standards;
 - c. A site plan of the proposed future development has been approved by the city; and
 - d. In an artificial lake or water body, a channel or lagoon shall not project beyond the main body of water greater than two times the width of the channel or lagoon.
 - (d) Conditions. Conditions may be imposed pursuant to the Special Land Use provisions of Section 5.132. Such conditions may include the reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic unless prohibited by the Michigan Zoning Enabling Act or other applicable law. All conditions shall be reasonable in accommodating customary mining operations.
 - (e) The city may require a financial guarantee in accordance with *Section 5.122* to ensure compliance with the zoning ordinance and any conditions of approval.
3. Change to Section 5.121 (pg. 123) to add additional conditions to site plan approval and reword other subsections.

5.121. Conditions of Site Plan Approval

Conditions which are designed to ensure compliance with the intent of this ordinance and other regulations of the City of Charlevoix may be imposed on site plan approval. Conditions imposed shall be based on the following criteria:

- (1) Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected.
- (2) Ensure that the use is compatible with adjacent land uses and activities.
- (3) Protect natural resources, the health, safety, welfare and 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.

- (4) Ensure compatibility between the proposed use or activity and the rights of the city to perform its governmental functions.
 - (5) Meet the intent and purpose of the zoning ordinance, be related to the regulations and standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.
 - (6) Ensure compliance with the intent other city ordinances that are applicable to the site plan.
 - (7) Ensure compatibility with other uses of land in the vicinity.
4. Change to Section 5.132 (pg. 126) to add additional conditions of approval for special land use review and reword some of the existing conditions.

5.132. Conditions of Approval

Reasonable conditions may be imposed on the approval of a special land use to achieve the following:

- (1) Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected.
 - (2) Ensure that the use is compatible with adjacent land uses and activities.
 - (3) Protect natural resources, the health, safety, welfare and 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.
 - (4) Ensure compatibility between the proposed use or activity and the rights of the city to perform its governmental functions.
 - (5) Meet the intent and purpose of the zoning ordinance, be related to the regulations and standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.
 - (6) Ensure compatibility with other uses of land in the vicinity.
5. Change to Section 5.143(1) (pg. 132) to add additional general provisions for planned use developments and reword or combine some of the subsections.

5.143. General Provisions

- (1) *Conditions.* Reasonable conditions may be imposed upon the PUD approval by the planning commission and/or city council as part of the final decision of the PUD application. The conditions imposed shall be recorded in the minutes of the approval action and shall remain unchanged except upon amendment of the PUD in accordance with the procedures of *Section 5.147.* Conditions may include, but are not limited to, those necessary to:
 - (a) Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected.

- (b) Ensure that the use is compatible with adjacent land uses and activities
 - (c) Protect natural resources, the health, safety, welfare and 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.
 - (d) Ensure compatibility between the proposed use or activity and the rights of the city to perform its governmental functions.
 - (e) Meet the intent and purpose of the zoning ordinance, be related to the regulations and standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.
 - (f) Ensure compatibility with other uses of land in the vicinity.
 - (g) Ensure compliance with the final development plan and the provisions of this ordinance.
6. Change to Section 5.178(7)(d)3. (pg. 153) to add Conditions of Approval as a subsection for Use Variances.

5.178. Powers and Duties

(7) Use Variances.

(d) Use Variance – Decision of the Zoning Board of Appeals.

3. If the ZBA determines to grant variance relief, it shall be the minimum relief required to allow reasonable use of the property while maintaining the essential character of the area. Such relief may be in the form of one or more non-use variances and/or in the form of a use variance. Conditions which are designed to ensure compliance with the intent of this ordinance and other regulations of the City of Charlevoix may be imposed on use variance. Conditions imposed shall be based on the following criteria:
 - i. Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected.
 - ii. Ensure that the use is compatible with adjacent land uses and activities.
 - iii. Protect natural resources, the health, safety, welfare and 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.
 - iv. Ensure compatibility between the proposed use or activity and the the rights of the city to perform its governmental functions.
 - v. Meet the intent and purpose of the zoning ordinance, be related to the regulations and standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.

- vi. Ensure compliance with the intent other city ordinances that are applicable to the site plan.
- vii. Ensure compatibility with other uses of land in the vicinity.



CITY OF CHARLEVOIX
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Mike Spencer, City Planner/ Zoning Administrator
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(231)547-3265

MEMORANDUM

TO: City Council

DATE: June 27, 2013

SUBJECT: Documentation

May Eveleigh, who resides at 208 E. Dixon, requested that this documentation be included in the City Council packets for Monday, July 1st.

I was not told why but perhaps Mary will be referring to this documentation while making public comments at the meeting. If you have any questions her phone number is 547-5548.

Krupansky, Lynda (DEQ)

From: Krupansky, Lynda (DEQ)
Sent: Monday, June 03, 2013 4:15 PM
To: 'eveleigh0922@sbc.net'
Subject: City of Charlevoix - Coastal Zone Management Program

Hi Mary, per our telephone conversation...please see information below:

Project#: 04-6217-02
Project Title: Charlevoix Planning Area Multi-jurisdictional Smart Growth Land Use Plan
Grant amount: \$30,000 **Match amount:** \$30,000 **Total amount:** \$60,000
Location: City of Charlevoix, Charlevoix County

Project Description:

The city of Charlevoix is the nucleus of the Charlevoix settlement area, which includes development in five surrounding townships. The townships cooperating in this project are all either located on the high quality waters of Lake Michigan or Lake Charlevoix. The city has reached nearly a 100% build out of land within its corporate boundaries. Future growth will have to occur in neighboring municipalities, unless properties are redeveloped in the city. The city provides sanitary sewer, sewage treatment, and electrical distribution to surrounding townships in its planning area. Currently, planning for the area is undertaken by each of the municipalities on an individual basis with little regard for the growth and needs of the overall watershed. To address the issues of future land conversion, impervious surfaces, maintenance of open space and rural character, there is a critical need for a coordinated area-wide watershed and land use planning initiative. This project will undertake a multi-jurisdictional comprehensive watershed and land use planning initiative which will involve the five municipal and township jurisdictions. The planning process will include opportunities for public comment and review.

I hope this information was helpful...please feel free to contact me if you require additional assistance.

Thank you,

Lynda Krupansky
Coastal Zone Management Program
MDEQ/Office of the Great Lakes
Constitution Hall - 6th floor
525 W. Allegan
Lansing, MI 48909

ph. 517.264.5037
fax. 517.335.4053
email. krupanskyf@michigan.gov
website. www.michigan.gov/coastalmanagement

The Recreation Passport is your \$10 ticket to Michigan's state parks and outdoor adventures! www.michigan.gov/recreationpassport.

Zoning district, tax assessor classifications not the same thing

Some use tax assessor classifications as an indicator of zoning district. They are not the same and one should never base zoning decisions on property tax classifications.

Posted on **March 24, 2013** by **Kurt H. Schindler**, Michigan State University Extension

One of the reoccurring misperceptions, which just does not seem to go away, is the belief that the tax classification on one's property tax bill is the same as the zoning district one is in.

They are not the same.

Michigan State University Extension () specialists in planning and zoning often receive questions on this topic. (Related articles: March board of review is landowners opportunity to protest property tax issue

(/news/march means spring is around the corner but not before your local march boa); Qualified agricultural property exemption not necessarily tied to property classification

(/news/qualified agricultural property exemption not necessarily tied to property classification)).

The tax assessor classifies properties and takes that data to study property values in a given area. The assessor will group all of a certain type of residential property so residential values are only being compared to like residential land. One may not want residential to be grouped with commercial for purposes of assessing property value.

One part of the General Property Tax Act (MCL 211.34c(2)) ([http://www.legislature.mi.gov/\(S\(odo4cpnaf3wsfw55pxaqoi45\)\)/mileg.aspx?page=getObject&objectName=mcl-211-34c](http://www.legislature.mi.gov/(S(odo4cpnaf3wsfw55pxaqoi45))/mileg.aspx?page=getObject&objectName=mcl-211-34c)) strictly defines each property classification. The tax assessor has many possible sub-classifications which are based on the actual use of the land. They include:

- Agricultural (includes sub-classifications 101-160 for agricultural: improved, vacant, building on leased land, and other agricultural categories)
- Commercial (includes sub-classifications 201-251 for commercial: improved, vacant, renaissance zones, condominiums, personal property, and more)
- Industrial (includes sub-classifications 301-352 for industrial: improved, vacant, renaissance zones, personal property, and more)
- Residential (includes sub-classifications 401-460 for residential: improved, vacant, condominiums, and more)
- Timber (includes sub-classifications 501-5 for timber: cutover, Commercial Forest Act, and more)

There are other categories. Michigan provides a [partial list of recommended classification codes online \(pdf\)](#).

Zoning district names have the same titles (agricultural, commercial, industrial and residential), but they have different purposes.

A local government adopts a Master Plan using a process spelled out in the [Michigan Planning Enabling Act \(pdf\)](#). Part of the plan will include discussion on zoning, and will include a future land use map. The plan expresses a future vision for a community and shows where different forms of growth should occur.

The local government then might adopt a zoning ordinance using processes, protocols and restrictions spelled out in the [Michigan Zoning Enabling Act \(pdf\)](#). A zoning ordinance includes a zoning map that shows zoning districts. Over time the zoning map is updated and gradually starts to look similar to the future land use map.

Those zoning districts are often given names denoting where that type of development is to occur. There is not any standardization of zoning district names in Michigan. Some communities name their zoning districts after a colloquial place name, or neighborhood name such as “Chalktown District.” Others just use a letter-number system such as R-1, R-2, etc. Residential R-1 might be the least dense single-family area in one community but the most dense multiple family in another.

With zoning one does not rely on the name of the zoning district, rather, one looks at the details in the zoning ordinance to see what that district is about and what land uses and forms might be allowed. Zoning is talking about what the use and forms can and cannot be today and in the immediate future. Tax classifications, meanwhile, talk about the actual use already on the land. The tax assessor is classifying property based on what the current use of parcels are for purposes of comparing like-land in order to calculate property values and generally uses a statewide classification system with uniform names.

Because of these differences, one should never base zoning decisions on what appears on a property tax bill or assessment notice.

This article was published by **Michigan State University Extension** (<http://www.msue.msu.edu>). For more information, visit <http://www.msue.msu.edu> (<http://www.msue.msu.edu>). To contact an expert in your area, visit <http://expert.msue.msu.edu> (<http://expert.msue.msu.edu>), or call 888-MSUE4MI (888-678-3464).

Related Articles

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussions with Local Townships to form a Fire/EMS Regional Authority

DATE: July 1, 2013

PRESENTED BY: Rob Straebel & Paul Ivan

BACKGROUND INFORMATION: On June 5th Rob and I attended a meeting at Stroud Hall with representatives from all of the surrounding townships (Charlevoix, Eveline, Hayes, Marion, and Norwood.) The initial purpose of the meeting was to talk about the possible formation of an EMS regional authority. Our original thought was to listen to all parties involved, but to advocate for a Fire/EMS authority, not just an EMS authority.

Many of the other representatives at the meeting also were in favor of looking at a Fire/EMS authority, and the topic was actually brought up by one of the other attendees. All of the representatives at the meeting agreed to return to their municipalities, and make their boards/councils aware that there was agreement to broaden the focus to a fire/EMS regional authority, rather than just an EMS authority. If all of the local municipalities agreed to continue to explore a fire/EMS authority rather than just an EMS authority, discussions would move forward.

RECOMMENDATION: Rob and I are asking for direction from City Council. In the past, this topic has been brought up by the City, but went nowhere. There seems to be a desire on the part of all of the municipalities to explore this option at this time. We recommend that Council allow us to continue to participate in these discussions on behalf of the City.

Linda Weller

From: Paul Ivan
Sent: Friday, June 07, 2013 11:11 AM
To: Rob Straebel
Cc: Linda Weller
Subject: RE: Agenda Item
Attachments: agenda item July 1 2013.docx

Rob: Here it is.

Also, you wanted to think about what to do with Lynn Harvey. I personally think forming a Fire/EMS Authority is a better option than just looking at a public safety director/department within the City, and has more of a regional outlook...but it will likely mean that the direct supervision of the department will not be solely the City's responsibility.

Lynn told me that he is willing to meet with the township representatives after noon on July 17th. We have him scheduled to be at the City Council meeting on that day, to talk about the public safety aspect.

I haven't contacted any of the township reps. yet about a meeting with Lynn.

Have you reached a decision about the direction you want to proceed yet?

Paul

From: Rob Straebel
Sent: Thursday, June 06, 2013 6:29 AM
To: Paul Ivan
Cc: Linda Weller
Subject:

Paul,

Please put together an agenda item for the July 1 Council meeting regarding EMS/Fire authority and study. Thanks, Rob

Rob Straebel, City Manager
City of Charlevoix
210 State Street
Charlevoix, MI 49720
(231)547-3270
rstraebel@cityofcharlevoix.org

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Fireworks Legislation and recent changes allowing local ordinances (under certain conditions)

DATE: July 1, 2013

PRESENTED BY: Paul Ivan

BACKGROUND INFORMATION: The current "Michigan Fireworks Safety Act," Act 256 of 2011 took effect on January 1, 2012. Most of the law deals with the rules and regulations dealing with the storage and sale of commercial fireworks (not display fireworks) in Michigan.

One section of this law deals with local ordinances. That section states:

28.457 Local ordinances.

Sec. 7. (1) Except as provided in this act, a local unit of government shall not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks regulated under this act.

(2) A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks. However, an ordinance enacted under this subsection shall not regulate the use of consumer fireworks on the day preceding, the day of, or the day after a national holiday.

Another section of the statute describes "Prohibited conduct" and places penalties on violations. That section states:

28.462 Prohibited conduct; permission required; violation as civil infraction; civil fine; definitions; violation of smoking prohibition as misdemeanor; signage.

Sec. 12. (1) A person shall not ignite, discharge, or use consumer fireworks on public property, school property, church property, or the property of another person without that organization's or person's express permission to use those fireworks on those premises. Except as otherwise provided in this section, a person that violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(2) Consumer fireworks shall not be sold to a minor. A person that violates this subsection shall be ordered to pay a civil fine of not more than \$500.00 or, for a second or subsequent violation of this subsection, a civil fine of not more than \$1,000.00. In addition, the person's consumer fireworks certificate shall be suspended for 90 days after the civil fine is ordered for a second or subsequent violation. This age requirement shall be verified by any of the following:

(a) An operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

- (b) An official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.
 - (c) An enhanced driver license or enhanced official state personal identification card issued under the enhanced driver license and enhanced official state personal identification card act, 2008 PA 23, MCL 28.301 to 28.308.
 - (d) A military identification card.
 - (e) A passport.
 - (f) Any other bona fide photograph identification that establishes the identity and age of the individual.
- (3) An individual shall not use consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance. As used in this subsection:
- (a) "Alcoholic liquor" means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.
 - (b) "Controlled substance" means that term as defined in section 8b of the Michigan vehicle code, 1949 PA 300, MCL 257.8b.
- (4) An individual who violates the smoking prohibition under NFPA 1124, 7.3.11.1 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
- (5) Signage stating the smoking prohibition described in subsection (4) satisfies the requirements of NFPA 1124.

On Wednesday June 19, 2013 Lt. Governor Brian Calley signed into law what the Governor's office refers to as a "common-sense law that respects the preferences of communities by letting local authorities decide when fireworks can and cannot be used." For a unit of government our size, it would allow setting a 1AM fireworks deadline on any national holiday, and the days before and after. Fees up to \$500 could be imposed.

Before the most recent change to the State Fireworks law, City Attorney Jim Young, Police Chief Gerard Doan and I looked at the current City nuisance ordinances in place, and thought that police action could be taken with the laws already on the books.

RECOMMENDATION: Councilwoman Gibson brought up this topic in a recent City Council meeting, she was right "on point" with discussions regarding fireworks occurring throughout the State. If Council feels further regulation is necessary, we would be happy to attempt to address Council's concerns.

Police Chief Doan has stated that his officers have not received reports of fireworks use, and the prudent thing to do at this time would be to encourage residents to call 911 when they hear fireworks going off.

MICHIGAN FIREWORKS SAFETY ACT
Act 256 of 2011

AN ACT to revise, consolidate, and codify the laws relating to certain fireworks; to regulate the purchase, possession, sale, and use of certain fireworks; to establish a fireworks safety fund; to establish a fireworks safety fee; to provide for the transfer and expenditure of funds; to prescribe the powers and duties of certain state agencies; to provide for penalties and remedies; and to repeal acts and parts of acts.

History: 2011, Act 256, Eff. Jan. 1, 2012.

The People of the State of Michigan enact:

28.451 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan fireworks safety act".

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.452 Definitions.

Sec. 2. As used in this act:

(a) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States department of the interior or the department of natural resources of this state.

(b) "APA standard 87-1" means 2001 APA standard 87-1, standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics, published by the American pyrotechnics association of Bethesda, Maryland.

(c) "Articles pyrotechnic" means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 CFR 172.101.

(d) "Citation" means that term as described in section 17a.

(e) "Commercial manufacturer" means a person engaged in the manufacture of consumer fireworks.

(f) "Consumer fireworks" means fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks does not include low-impact fireworks.

(g) "Consumer fireworks certificate" means a certificate issued under section 4.

(h) "Department" means the department of licensing and regulatory affairs.

(i) "Display fireworks" means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

(j) "Firework" or "fireworks" means any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

(k) "Fireworks safety fund" means the fireworks safety fund created in section 11.

(l) "Local unit of government" means a city, village, or township.

(m) "Low-impact fireworks" means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.

(n) "Minor" means an individual who is less than 18 years of age.

(o) "NFPA" means the national fire protection association headquartered at 1 Batterymarch Park, Quincy, Massachusetts.

(p) "NFPA 1" means the uniform fire code, 2006 edition, developed by NFPA.

(q) "NFPA 72" means the "National Fire Alarm Code", 2002 edition, developed by NFPA.

(r) "NFPA 101" means the "Life Safety Code", 2009 edition, developed by NFPA.

(s) "NFPA 1123" means the "Code for Fireworks Display", 2010 edition, developed by NFPA.

(t) "NFPA 1124" means the "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles", 2006 edition, developed by NFPA.

(u) "NFPA 1126" means the "Standard for the Use of Pyrotechnics Before a Proximate Audience", 2011 edition, developed by NFPA.

(v) "Novelties" means that term as defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following:

(i) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cap.

(ii) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (i) are used, that are constructed so that the hand cannot come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.

(iii) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.

(iv) Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed on the box; and toy smoke devices.

(w) "Permanent building or structure" is a building or structure that is affixed to a foundation on a site that has fixed utility connections and that is intended to remain on the site for more than 180 consecutive calendar days.

(x) "Person" means an individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

(y) "Retailer" means a person who sells consumer fireworks or low-impact fireworks for resale to an individual for ultimate use.

(z) "Retail location" means a facility listed under NFPA 1124, 7.1.2.

(aa) "Rule" means that term as defined in section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207, that was promulgated by the department.

(bb) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(cc) "Serious violation" means a violation of this act, an order issued under this act, or a rule promulgated or adopted by reference under this act for which a substantial probability exists that death or serious impairment of a body function to a person other than the violator may result unless the violator did not and could not, with the exercise of reasonable diligence, know of the presence of the violation.

(dd) "Special effects" means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production or live entertainment.

(ee) "State fire marshal" means the state fire marshal appointed under section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b.

(ff) "Warehouse" means a permanent building or structure used primarily for the storage of consumer fireworks or low-impact fireworks.

(gg) "Wholesaler" means any person who sells consumer fireworks or low-impact fireworks to a retailer or any other person for resale. Wholesaler does not include a person who sells only display fireworks or special effects.

History: 2011, Act 256, Eff. Jan. 1, 2012;—Am. 2012, Act 257, Imd. Eff. July 2, 2012.

28.453 Novelties; inapplicability of act.

Sec. 3. This act does not apply to novelties. Nothing in this act allows a local unit of government to enact or enforce an ordinance, code, or regulation pertaining to, or in any manner regulating, the sale, storage, display for sale, transportation, use, or distribution of novelties.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.454 Sale of consumer fireworks; certificate required; violation as misdemeanor; penalty; application; requirements; issuance; validity; issuance of original or renewal certificate; sales tax license information; denial; transfer; display; prohibition; location or address; disposition of fees.

Sec. 4. (1) A person shall not sell consumer fireworks unless the person annually obtains and maintains a consumer fireworks certificate from the department under this section. A person who knows, or should know, that he or she is required to comply with this subsection and who fails or neglects to do so is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine, or both, with the fine as follows:

Rendered Friday, June 14, 2013

Page 2

Michigan Compiled Laws Complete Through PA 58 of 2013

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- (a) For a first violation of this subsection, not more than \$5,000.00.
- (b) For a second violation of this subsection, not more than \$20,000.00.
- (c) For a third or subsequent violation of this subsection, not more than \$40,000.00.
- (2) An application for a consumer fireworks certificate shall meet all of the following requirements:
 - (a) Before January 1, 2012, the application shall be submitted not less than 90 days before the applicant sells consumer fireworks.
 - (b) Beginning January 1, 2012, the application shall be submitted no later than April 1 of each year in which consumer fireworks are to be sold.
 - (c) The application shall list the name and address of each retail location from which consumer fireworks are to be sold.
 - (d) Until January 1, 2014, the application shall be accompanied by a fee of \$1,000.00 for a certificate for each retail location that is a permanent building or structure or \$600.00 for each retail location that is not a permanent building or structure. Until January 1, 2014, the fireworks certificate fee required to be paid for a retail location that is not a permanent building or structure shall not exceed 60% of the fireworks certificate fee for a retail location that is a permanent building or structure.
 - (e) The application shall be accompanied by a copy of the applicant's current sales tax license, including the applicant's account number, issued by the department of treasury for each retail location where consumer fireworks are to be sold by the applicant.
- (3) A consumer fireworks certificate issued under this section is valid from the date of issue until April 30 of the year after it was issued. A person may renew a consumer fireworks certificate for a retail location by making application in the same manner as provided under subsection (2). However, the department shall not issue a renewal consumer fireworks certificate unless the department determines that the applicant properly remitted all of the fireworks safety fees required to be paid in the preceding year. The department shall provide to the department of treasury the sales tax license information received from the applicant and any additional information as may be necessary to allow the department of treasury to confirm that each sales tax license submitted by the applicant is current and valid. The department shall enter into an agreement with the department of treasury under section 28(1) of 1941 PA 122, MCL 205.28, that will allow the department of treasury to provide that information to the department. The department shall not issue an original or renewal consumer fireworks certificate to an applicant until the department of treasury has confirmed to the department that each sales tax license submitted by the applicant is current and valid, and that the applicant is otherwise eligible to obtain a consumer fireworks certificate under this act.
- (4) Not more than 30 days after an application is submitted to the department under this section, the department shall issue or deny issuance of a consumer fireworks certificate to the applicant and, if issuance is denied, shall indicate to the applicant the reason for denial.
- (5) If the department denies issuance of a consumer fireworks certificate under this section, the applicant may cure any defect of the application within 45 days after the denial without paying an additional fee. The department shall not unreasonably delay or deny an application under this section.
- (6) A consumer fireworks certificate is transferable upon approval by the department and the payment of a \$25.00 transfer fee. However, the department shall not approve the transfer of a consumer fireworks certificate unless the transferee satisfies eligibility requirements for an original consumer fireworks certificate under this act.
- (7) The holder of a consumer fireworks certificate shall prominently display the original or copy of the certificate in the appropriate retail location. A person that violates this subsection is responsible for a civil fine of \$100.00. Each day that the consumer fireworks certificate is not displayed as required under this subsection is a separate violation.
- (8) The department shall not issue a consumer fireworks certificate to a person that is ineligible under this act.
- (9) The face of the consumer fireworks certificate shall indicate the location or address for which it was issued.
- (10) Fees collected under this section shall be deposited in the fireworks safety fund.

History: 2011, Act 256, Eff. Jan. 1, 2012;—Am. 2012, Act 257, Imd. Eff. July 2, 2012.

28.455 Sale of consumer fireworks from retail location; conditions; failure to comply; civil fine; insurance coverage.

Sec. 5. (1) Consumer fireworks shall only be sold from a retail location if all of the following applicable conditions are met:

- (a) Except as provided in subdivision (b), a retail location satisfies the applicable requirements of NFPA 101 and NFPA 1124 not in conflict with this act.

Rendered Friday, June 14, 2013

Page 3

Michigan Compiled Laws Complete Through PA 58 of 2013

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(b) Beginning 1 year after the effective date of this act, a permanent building or structure shall be equipped with a fire suppression system in compliance with NFPA 1124.

(c) The retailer at that retail location is licensed under section 3 of the general sales tax act, 1933 PA 167, MCL 205.53.

(d) The retailer has a valid federal taxpayer identification number issued by the federal department of the treasury, internal revenue service. This requirement does not apply to a retailer that is a sole proprietorship.

(2) A person that knows, or should know, that he or she is required to comply with subsection (1) and who fails or neglects to do so is responsible for a civil fine of \$2,500.00 for each violation. Each day that a person is in noncompliance constitutes a separate violation.

(3) During periods when consumer fireworks are sold, each retail location selling consumer fireworks either shall be added as an additional insured, or public liability and product liability insurance coverage shall be obtained and maintained, in an amount not less than \$10,000,000.00 per occurrence. A person that knows, or should know, that he or she is required to comply with this subsection and who fails or neglects to do so is liable for a civil fine of not more than \$5,000.00.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.456 Website; establishment and maintenance by department; registration with low-impact fireworks retail registry.

Sec. 6. (1) The department shall establish and maintain, or cause to be created and maintained, an internet website that has as its purpose the protection of the residents of this state who purchase, use, or transport fireworks. The website shall include, at a minimum, both of the following:

(a) A list of every person and entity that is issued a consumer fireworks certificate under section 4.

(b) A low-impact fireworks retail registry. All of the following apply to the online low-impact fireworks retail registry:

(i) It shall be maintained and operated at no cost to a user.

(ii) The cost of its maintenance and operation shall be paid with funds described in section 11(4).

(iii) It shall provide for instant registry without condition.

(2) Beginning February 1, 2012, a person shall not sell low-impact fireworks unless he or she registers with the low-impact fireworks retail registry not less than 10 days before selling the fireworks in each calendar year.

(3) A person who sells low-impact fireworks at retail and who fails to register as described in this section shall cease the sale of low-impact fireworks until the person complies with subsection (2).

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.457 Local ordinances.

Sec. 7. (1) Except as provided in this act, a local unit of government shall not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks regulated under this act.

(2) A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks. However, an ordinance enacted under this subsection shall not regulate the use of consumer fireworks on the day preceding, the day of, or the day after a national holiday.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.458 Fireworks safety fee; imposition; payment; deposit in fireworks safety fund; failure to comply as misdemeanor; fine.

Sec. 8. (1) A user fee, known as the fireworks safety fee, is imposed on retail transactions made in this state for consumer fireworks and low-impact fireworks as provided in section 9.

(2) A person that acquires consumer fireworks or low-impact fireworks in a retail transaction is liable for the fireworks safety fee on the transaction and, except as otherwise provided in this act, shall pay the fireworks safety fee to the retailer as a separate added amount to the consideration in the transaction. The retailer shall collect the fireworks safety fee as an agent for the state.

(3) The fireworks safety fee shall be deposited in the fireworks safety fund.

(4) A person that knows or should know that he or she is required to comply with the requirements of subsection (2) but fails to collect or remit a fireworks safety fee as required under this section is guilty of a misdemeanor punishable by a fine as follows:

(a) For a first violation of this subsection, not more than \$10,000.00.

(b) For a second violation of this subsection, not more than \$20,000.00.

(c) For a third or subsequent violation of this subsection, not more than \$40,000.00.

History: 2011, Act 256, Eff. Jan. 1, 2012;—Am. 2012, Act 257, Imd. Eff. July 2, 2012.

28.459 Fireworks safety fee; determination; rates; collection allowance.

Sec. 9. (1) Except as provided in subsections (2) and (3), the fireworks safety fee is determined by the gross retail income from consumer fireworks and low-impact fireworks received by a retail merchant in a retail unitary transaction of consumer fireworks and low-impact fireworks and is imposed before any taxes are applied at the following rates:

FIREWORKS SAFETY FEE		GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION	
\$ 0		less than	\$ 0.08
\$ 0.01	at least \$ 0.08	but less than	\$ 0.24
\$ 0.02	at least \$ 0.24	but less than	\$ 0.40
\$ 0.03	at least \$ 0.40	but less than	\$ 0.56
\$ 0.04	at least \$ 0.56	but less than	\$ 0.72
\$ 0.05	at least \$ 0.72	but less than	\$ 0.88
\$ 0.06	at least \$ 0.88	but less than	\$ 1.04

(2) On a retail unitary transaction in which the gross retail income received by the retail merchant is \$1.04 or more, the fireworks safety fee is 6% of that gross retail income as determined before any taxes are applied.

(3) If the fireworks safety fee calculated under subsection (1) results in a fraction of 1/2 cent or more, the amount of the fireworks safety fee shall be rounded to the next additional cent.

(4) The retailer whose retail location is a permanent building or structure may retain 1% of the fireworks safety fees that the retailer collected under this section as a collection allowance.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.460 Fireworks safety fee; remittance; forms; manner; payment liability.

Sec. 10. A retailer shall remit the fireworks safety fee as described in section 9 to the department on forms and in the manner prescribed by the department, shall hold the fireworks safety fees collected in trust for the state until remitted to the state, and is personally liable for the payment of the fireworks safety fee money to this state.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.461 Fireworks safety fund; creation within department of treasury; investment; money remaining in fund; lapse; expenditures.

Sec. 11. (1) The fireworks safety fund is created within the department of treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money deposited in the fund to carry out the purposes of this act, the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, and the firefighters training council created under section 3 of the firefighters training council act, 1966 PA 291, MCL 29.363. Of the first \$1,000,000.00 collected in the fireworks safety fund in each fiscal year, the department may expend not more than \$1,000,000.00 in discretionary grants to local units of government to defray inspection costs associated with the enforcement of this act.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.462 Prohibited conduct; permission required; violation as civil infraction; civil fine; definitions; violation of smoking prohibition as misdemeanor; signage.

Sec. 12. (1) A person shall not ignite, discharge, or use consumer fireworks on public property, school property, church property, or the property of another person without that organization's or person's express permission to use those fireworks on those premises. Except as otherwise provided in this section, a person that violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(2) Consumer fireworks shall not be sold to a minor. A person that violates this subsection shall be ordered to pay a civil fine of not more than \$500.00, or, for a second or subsequent violation of this subsection, a civil fine of not more than \$1,000.00. In addition, the person's consumer fireworks certificate shall be suspended

for 90 days after the civil fine is ordered for a second or subsequent violation. This age requirement shall be verified by any of the following:

(a) An operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(b) An official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(c) An enhanced driver license or enhanced official state personal identification card issued under the enhanced driver license and enhanced official state personal identification card act, 2008 PA 23, MCL 28.301 to 28.308.

(d) A military identification card.

(e) A passport.

(f) Any other bona fide photograph identification that establishes the identity and age of the individual.

(3) An individual shall not use consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance. As used in this subsection:

(a) "Alcoholic liquor" means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

(b) "Controlled substance" means that term as defined in section 8b of the Michigan vehicle code, 1949 PA 300, MCL 257.8b.

(4) An individual who violates the smoking prohibition under NFPA 1124, 7.3.11.1 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) Signage stating the smoking prohibition described in subsection (4) satisfies the requirements of NFPA 1124.

History: 2011, Act 256, Eff. Jan. 1, 2012;—Am. 2012, Act 257, Imd. Eff. July 2, 2012.

28.463 Resident agent.

Sec. 13. A wholesaler shall maintain a resident agent who resides in this state and who has a physical address in this state. A post office box is not a physical address for purposes of this section.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.464 Identification of firework in violation of act; investigation; determination of violation; seizure; criminal or civil proceedings.

Sec. 14. (1) A governmental or law enforcement agency that identifies a firework that is in violation of this act shall secure the firework and immediately notify the department of the alleged violation. The department or law enforcement agency shall investigate the alleged violation for compliance with this act within a reasonable time.

(2) If the department or law enforcement agency determines that a violation of this act has occurred, except for a violation of section 6(2), the department or law enforcement agency may seize the firework as evidence of the violation. Evidence seized under this section shall be stored pending disposition of any criminal or civil proceedings arising from a violation of this act at the expense of the person, if the person is found guilty, responsible, or liable for the violation.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.465 Storage of seized fireworks; disposal or destruction; storage and disposal costs; use for training purposes.

Sec. 15. (1) Fireworks seized for an alleged violation of this act shall be stored in compliance with this act and rules promulgated under this act.

(2) Following final disposition of a conviction for violating this act, the seizing agency in possession may dispose of or destroy any fireworks retained as evidence in that prosecution.

(3) The person from whom fireworks are seized under this act shall pay the actual costs of storage and disposal of the seized fireworks.

(4) The department of state police and the department may use fireworks described in subsection (2) for training purposes.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.466 Articles pyrotechnic or display fireworks ignition; permit; competency and qualifications of operators; retention of fee.

Sec. 16. (1) The legislative body of a city, village, or township, upon application in writing on forms

provided by the department and payment of a fee set by the legislative body, if any, may grant a permit for the use of agricultural or wildlife fireworks, articles pyrotechnic, display fireworks, or special effects manufactured for outdoor pest control or agricultural purposes, or for public or private display within the city, village, or township by municipalities, fair associations, amusement parks, or other organizations or individuals approved by the city, village, or township authority, if the applicable provisions of this act are complied with. After a permit has been granted, sales, possession, or transportation of fireworks for the purposes described in the permit only may be made. A permit granted under this subsection is not transferable and shall not be issued to a minor.

(2) Before a permit for articles pyrotechnic or a display fireworks ignition is issued, the person, firm, or corporation applying for the permit shall furnish proof of financial responsibility by a bond or insurance in an amount, character, and form deemed necessary by the local governing authority to satisfy claims for damages to property or personal injuries arising out of an act or omission on the part of the person, firm, or corporation or an agent or employee of the person, firm, or corporation, and to protect the public.

(3) A permit shall not be issued under this act to a nonresident person, firm, or corporation for ignition of articles pyrotechnic or display fireworks in this state until the person, firm, or corporation has appointed in writing a resident member of the bar of this state or a resident agent to be the legal representative upon whom all process in an action or proceeding against the person, firm, or corporation may be served.

(4) The local governing authority shall rule on the competency and qualifications of articles pyrotechnic and display fireworks operators as required under NFPA 1123, as the operator has furnished in his or her application form, and on the time, place, and safety aspects of the display of articles pyrotechnic or display fireworks before granting permits.

(5) A local unit of government that charges a fee to issue a permit under this section shall retain the fee paid.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.467 Conduct not prohibited by act.

Sec. 17. Except as otherwise provided in this act, this act does not prohibit any of the following:

(a) A wholesaler, retailer, commercial manufacturer, or importer from selling, storing, using, transporting, or distributing consumer fireworks or low-impact fireworks.

(b) The use of fireworks by railroads or other transportation agencies or law enforcement agencies for signal purposes or illumination.

(c) The use of agricultural or wildlife fireworks.

(d) The sale or use of blank cartridges for any of the following:

(i) A show or play.

(ii) Signal or ceremonial purposes in athletics or sports.

(iii) Use by military organizations.

(iv) Use by law enforcement agencies.

(e) The possession, sale, or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who possess a permit to possess, store, and sell explosives from the bureau of alcohol, tobacco, firearms, and explosives of the United States department of justice.

(f) Interstate wholesalers from selling, storing, using, transporting, or distributing fireworks.

History: 2011, Act 256, Eff. Jan. 1, 2012;—Am. 2012, Act 257, Imd. Eff. July 2, 2012.

28.467a Issuance of citation by state fire marshal.

Sec. 17a. (1) If, as a result of an inspection or investigation, the state fire marshal or the state fire marshal's designee believes that a person has violated this act, an order issued under this act, or a rule promulgated under this act, the state fire marshal or his or her designee shall issue a citation to the person not more than 90 days after the completion of the physical inspection or investigation.

(2) Except as otherwise provided in this act, upon issuance of a citation, the state fire marshal may immediately suspend the consumer fireworks certificate of the person to whom the citation was issued.

(3) Upon a proper petition, a court of competent jurisdiction may enjoin a violation of this act.

(4) All of the following apply to a citation issued by the state fire marshal or the state fire marshal's designee under this act:

(a) It shall be in writing.

(b) It shall state on its face that it is an allegation of a violation of this act, describe with particularity the nature of the violation, and include a reference to the provision, rule, or order alleged to be violated.

(c) It shall contain all of the following:

(i) The date of the citation.

- (ii) The name and title of the individual who issued the citation.
 - (iii) The name and address of the person to whom the citation is issued.
 - (iv) The actions necessary to bring the person to whom the citation is issued into compliance, including the payment of a fine.
 - (v) A space for the signature of the person to whom the citation is issued indicating that the person has received the citation.
 - (vi) A space where the person to whom the citation is issued may accept the citation and agree to comply or, in the alternative, may indicate the intent of the person to whom the citation is issued to contest the citation.
 - (vii) A notice that the person to whom the citation is issued shall accept or reject the terms of the citation within 15 days of the date of the citation.
 - (viii) A brief description of the administrative hearing process and the process for settlement as provided for by rule.
- (d) A citation may either be mailed to the person to whom the citation is issued by certified mail, return receipt requested, or delivered in person by the state fire marshal or state fire marshal's designee who issued the citation.

History: Add. 2012, Act 257, Imd. Eff. July 2, 2012.

28.468 Violation of act; penalty; reimbursement of storage costs.

Sec. 18. (1) Unless otherwise provided in this act, if a person violates this act, the person is guilty of a crime as follows:

- (a) Except as otherwise provided in this section, a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than \$1,000.00, or both.
- (b) If the violation causes damage to the property of another person, a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00, or both.
- (c) If the violation causes serious impairment of a body function of another person, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.
- (d) If the violation causes the death of another person, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(2) In addition to any other penalty imposed for the violation of this act, a person that is found guilty of a violation of this act shall be required to reimburse the appropriate governmental agency for the costs of storing seized fireworks that the governmental agency confiscated for a violation of this act. This reimbursement shall be in a form and at a time as required by the department and as otherwise required by law.

History: 2011, Act 256, Eff. Jan. 1, 2012;—Am. 2012, Act 257, Imd. Eff. July 2, 2012.

28.468a Citation for serious violation; fine; prosecution; payment of civil fines to department; collection proceedings.

Sec. 18a. (1) Except as otherwise provided in this section, a person who receives a citation for a serious violation, an order issued under this act, or a rule promulgated under this act shall be assessed a civil fine of not more than \$1,000.00 for each violation.

(2) Except as otherwise provided in this section, a person who receives a citation for a violation of this act that is not a serious violation may be assessed a civil fine of not more than \$500.00 for each violation.

(3) Subsections (1) and (2) do not apply to violations for which a specific civil fine is provided by this act.

(4) The state fire marshal may request that the prosecuting attorney for the county in which a violation of this act occurred issue a complaint and request a warrant for the prosecution of a person who commits a criminal violation of this act.

(5) All civil fines collected under this section shall be paid to the department within 15 working days after the date the penalty is ordered, not subject to further review, and credited to the fireworks safety fund.

(6) The department of treasury shall institute proceedings to collect any civil fines ordered but not paid under this act.

History: Add. 2012, Act 257, Imd. Eff. July 2, 2012..

28.468b Issuance of certificate prohibited; revocation.

Sec. 18b. (1) The department shall not issue, and a person is ineligible to be issued, a consumer fireworks certificate if either of the following apply:

- (a) The person was sentenced for a felony conviction within the preceding 5 years.
- (b) The person has ever been convicted of a felony involving theft, fraud, or arson.

(2) If a person is convicted of a crime that would cause the person to be ineligible to be issued a consumer fireworks certificate on April 30 of the following year, the person's consumer fireworks certificate shall be revoked for the balance of the year for which the person's current consumer fireworks certificate was issued.

History: Add. 2012, Act 257, Imd. Eff. July 2, 2012.

28.468c Person ineligible to obtain consumer fireworks certificates; offenses; periods; sanctions.

Sec. 18c. (1) A person who is convicted of the following offenses is ineligible to obtain a consumer fireworks certificate for the following periods of time after conviction:

- (a) For a second violation of section 4(1), 5 years.
- (b) For a third or subsequent violation of section 4(1), 10 years.
- (c) For a first violation of section 8(4), 1 year.
- (d) For a second violation of section 8(4), 5 years.
- (e) For a third or subsequent violation of section 8(4), 10 years.
- (f) For a violation of section 18(1)(b), 1 year.
- (g) For a violation of section 18(1)(c), permanently.
- (h) For a violation of section 18(1)(d), permanently.

(2) A sanction imposed under subsection (1) shall be imposed in addition to any other penalty or sanction imposed for a violation of this act.

History: Add. 2012, Act 257, Imd. Eff. July 2, 2012.

28.469 Inspections; delegation of authority and responsibility.

Sec. 19. The department may delegate authority and responsibility to carry out inspections and other duties under this act.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.470 Rules.

Sec. 20. (1) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to administer this act, including, but not limited to, all of the following:

(a) Create uniform applications and other forms for dissemination to and use by local units of government under this act.

- (b) Procedures for the collection of application fees and fireworks safety fees.
- (c) Enforcement of regulatory duties.
- (d) The enforcement of age limitations.

(2) Rules promulgated under this section shall conform to the following codes developed by the national fire protection association, except for any code provision that conflicts with this act:

- (a) NFPA 1123, code for fireworks display.
- (b) NFPA 1124, code for manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles.
- (c) NFPA 1126, standard for the use of pyrotechnics.

(3) The rules promulgated under former chapter XXXIX of the Michigan penal code, 1931 PA 328, MCL 750.243a to 750.243e, pertaining to the display of articles pyrotechnic and display fireworks that are in effect on the effective date of this act shall remain in effect until rescinded or otherwise changed according to law, as provided for in section 31 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.231.

History: 2011, Act 256, Eff. Jan. 1, 2012.

28.471 Report by state fire marshal.

Sec. 21. No later than October 1, 2013, the state fire marshal shall provide a report to the legislature that details both of the following:

(a) The costs associated with the inspection of retail locations under this act. It is the intent of the legislature that the information described in this subdivision be used to determine the consumer fireworks certificate fee for each retail location under section 4 beginning January 1, 2014.

(b) The types and number of violations of this act.

History: 2011, Act 256, Eff. Jan. 1, 2012.



Governor Rick Snyder
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Calley signs bill giving communities more control over fireworks

Wednesday, June 19, 2013

LANSING, Mich. - Lt. Gov. Brian Calley today signed legislation that allows local governments to prohibit the use of consumer fireworks between midnight and 8 a.m. on the day before, day of, and day after national holidays

"This is a common-sense bill that respects the preferences of communities by letting local authorities decide when fireworks can and cannot be used," Calley said.

A local unit with a population of 50,000 or more, or a local unit in a county with a population of 750,000 or more may have a fireworks deadline of 1 a.m. only on New Year's Day. A local unit with a population of less than 50,000, or a local unit in a county with a population of less than 750,000 may have 1 a.m. fireworks deadlines on any national holiday and the days before and after. Fines of up to \$500 could be imposed for individuals who do not comply.

House Bill 4743, sponsored by state Rep. Harold Haugh, also guarantees all of the fees that vendors pay for fireworks safety go toward local firefighter training programs.

The measure is now Public Act 65 of 2013.

Calley also signed three remaining bills in a package that allows the Detroit Zoo and the Detroit Institute of Arts to receive 100 percent of millages that help fund those institutions.

HB 4459, sponsored by state Rep. Jim Townsend, prohibits a Downtown Development Authority from capturing regional property taxes imposed to subsidize the Detroit Zoo and the Detroit Institute for the Arts. It is now Public Act 66 of 2013.

HB 4460, sponsored by state Rep. Phil Cavanagh, prohibits a Brownfield Development Authority from capturing regional property taxes imposed to subsidize the Detroit Zoo and the Detroit Institute for the Arts. It is now PA 67.

HB 4462, sponsored by state Rep. Jeff Farrington, prohibits a "corridor improvement" authority from capturing regional property taxes imposed to subsidize the Detroit Zoo and the Detroit Institute for the Arts. It is PA 68.

Gov. Rick Snyder is on a trade mission to Israel this week. Article V, Section 26 of the Michigan Constitution gives authority to the lieutenant governor when the governor is outside the state.

Visit www.legislature.michigan.gov for more information on the bills.

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TITLE III - PARKS AND PUBLIC GROUNDS

CHAPTER 31

PARKS - GENERAL REGULATIONS

3.1. Definitions.

The words "Parks" and "Public Places," unless specifically limited, shall be deemed to include all parks, beaches, grass plots, playgrounds, recreational areas, athletic fields, and other areas which are now or may hereafter be acquired by purchase, gift, devise, bequeath, loan or lease, or other public playground, recreational area or athletic field located within the corporate limits of the City of Charlevoix. Any term in the singular shall include the plural.

3.2. Fires.

No person or persons shall kindle or build a fire in any public park or playground except in receptacles provided therefor, or in designated areas where such is permissible.

3.3. Fireworks.

No person shall discharge or set off any rocket, firecracker, roman candle or firework containing any substance of an explosive or flammable nature in any public park or playground. This section shall not apply to special fireworks exhibitions made pursuant to a permit from the city.

(Ord. No. 658, 03-06-00)

3.4. Repealed. (Ord. No. 658, 03-06-00)

3.5. Litter.

No person in any municipal park or recreation area shall bring in or dump or deposit bottles, glass, ashes, paper, garbage, or other refuse or trash, and no garbage or trash shall be placed in receptacles in the park, except that in the park use. Where receptacles are not so provided, all rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.

**TITLE IX - POLICE REGULATIONS
CHAPTER 111
DISORDERLY CONDUCT**

9.1. Definitions.

- (1) The term "public place" as used in this Chapter shall mean any street, alley, park, public building, parking lot, body of water, any place of business or assembly open to or frequented by the public, and any other place to which the public has access.
- (2) The term "public nudity" shall mean knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to, payment or promise of payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering, or a female individual's breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following:
 - (a) A woman's breast feeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
 - (b) Material as defined in section 2 of Act No. 343 of the Public Acts of 1984, being section 752.362 of the Michigan Compiled Laws.
 - (c) Sexually explicit visual material as defined in section 3 of Act No. 33 of the Public Acts of 1978, being section 722.673 of the Michigan Compiled Laws.

(Ord. No. 658, 03-06-00)

9.2. Acts Prohibited.

No person shall:

- (1) Discharge any firearm, air rifle, air pistol or bow and arrow in the City, except when lawfully acting in the defense of persons or property or the enforcement of law or at a duly established range, the operation of which has been approved by the city council.
- (2) Engage in public nudity.
- (3) Engage in any disturbance, fight, or quarrel in a public place.
- (4) Obstruct traffic on any street or sidewalk without the approval of the City manager.
- (5) Refuse to leave a public meeting after having been validly ordered to leave the meeting pursuant to a rule or bylaw of the public body holding the meeting.

(Ord. No. 605, 4-19-93; Ord. No. 658, 03-06-00)

9.3. Misdemeanor.

Each person violating any provision of Section 9.2 of this Code shall be guilty of a misdemeanor. A person convicted violating any provision of Section 9.2 shall be punished by a fine of not more than five hundred dollars (\$500) and costs of prosecution, or by imprisonment for not more than ninety (90) days, or both.

(Ord. No. 658, 03-06-00; Ord. No. 665, §4, 02-19-01)

9.4. Acts Prohibited (Civil Infraction).

No person shall:

- (1) Disturb the public peace and quiet by loud, boisterous or vulgar conduct.
- (2) Permit any place occupied or controlled by him or her to be a place in which noisy, boisterous or disorderly persons are present.

(Ord. No. 658, 03-06-00; Ord. No. 665, §5, 02-19-01)

9.52. Possession or Consumption of Open Intoxicants.

No person shall possess open intoxicants or consume intoxicants in a public place unless such possession or consumption is allowed by state law or this Code.

(Ord. No. 658, 03-06-00)

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Authorized Bank Signatures

DATE: July 1, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS: Auditors Agreement, Resolution

BACKGROUND INFORMATION: Due to the resignation of the City Clerk, the banks we use to deposit funds in and write checks from, require a City Council resolution to approve the staff allowed to be on signature cards to deposit funds and write checks on City accounts. In order to pay our bills and pay our employees, staff has proposed to include the following signatures:

Check signors: Richard M. Brandi, Treasurer

Robert Straebel, City Manager

Account Signature Cards at Banks:

Richard M. Brandi
Robert Straebel
Alida K. Klooster
Stephanie Brown

We foresee this to be a temporary setup until a City Clerk is either elected by residents or appointed by City Council and Stephanie Brown is able to return to work as Deputy Clerk.

Our auditors approve of having the City Manager and the City Treasurer sign checks and feel this would not create any conflicts for separation of duties (see attached email).

RECOMMENDATION:

Council needs to authorize the following resolution in order to allow us to bank with our two depositories and pay the bills (by check or ACH payment) which are included in your packet for July 1st, 2013 bills and payroll:

RESOLUTION # 2013-07-01

WHEREAS, the City Council has approved the Charlevoix State Bank and FirstMerit Bank (formerly Citizens Bank) as depositories for the City business accounts during the City Council meeting of February 4, 2013,

WHEREAS, these banks are required to comply with Michigan P.A. 20 and have agreed to follow our adopted investment policy,

WHEREAS, the resignation of the City Clerk has required changes be made to the staff which are allowed to authorize receipts and payments to these banks,

THEREFORE BE IT RESOLVED, That any and all funds standing to the credit of the City of Charlevoix with these banks in their main checking and/or sweep accounts may be withdrawn with checks, drafts, notices for the payment of money, when signed by any of the following:

Richard M. Brandi, City Treasurer
Robert Straebel, City Manager
Alida K. Klooster, Payroll Administrator
Stephanie Brown, Deputy Clerk

Richard Brandi

From: Doug Deeter [Doug.Deeter@rehmann.com]
Sent: Tuesday, June 25, 2013 2:27 PM
To: Richard Brandi
Cc: Rob Straebel
Subject: RE: setting up new signators on City checks

Categories: Clerk

Rick, I do not see any separation of duties conflicts with adding Rob as a signor on the account.

If there are additional questions please let me know.

Doug

Doug Deeter, CPA
Senior Manager

 **Rehmann**

Rehmann Robson

Rehmann
902 South Huron
P.O. Box 250
Cheboygan, MI 49721
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Fax: 231.627.5787
Cell: 231-290-0345
doug.deeter@rehmann.com
www.rehmann.com

Business wisdom delivered.

From: Richard Brandi [<mailto:rickb@cityofchanevoix.org>]
Sent: Tuesday, June 25, 2013 2:10 PM
To: Doug Deeter
Cc: Rob Straebel
Subject: setting up new signators on City checks

Doug,

We are proposing to have Rob Straebel and myself be the two signatures on our payable and payroll checks due to the resignation of the City Clerk and the fact that her Deputy, (Stephanie Brown) is currently on medical leave. We are hoping that Stephanie will accept the Acting City Clerk title and we could then switch back our signature block to include her, upon her return to work.

I don't see any conflicts using Rob to sign checks temporarily until we have an acting City Clerk and she is back to work. Does you see any issues with separation of duties with this approach or any other issues we need to consider? We are in the process of changing our signature cards at the bank so that we can make our check run of July 1 work with the banks. We would appreciate your opinion on this.

Thanks,

Rick Brandi

Rick Brandi
City of Charlevoix, Treasurer
210 State Street
Charlevoix, MI 49720
231.547.3251 Phone
231.547.3617 FAX
rbrandi@cityofcharlevoix.org
www.cityofcharlevoix.org

NOTICE TO PERSONS SUBJECT TO UNITED STATES TAXATION:

DISCLOSURE UNDER TREASURY CIRCULAR 230: The United States Federal tax advice, if any, contained in this document and its attachments may not be used or referred to in the promoting, marketing, or recommending of any entity, investment plan, or arrangement, nor is such advice intended or written to be used, and may not be used, by a taxpayer for the purpose of avoiding Federal tax penalties.

This e-mail and any attachments are intended for the sole use of the addressee listed. It may contain confidential, proprietary and/or legally privileged information. If you are not the intended recipient please notify the sender by return e-mail or call our corporate Information Technology Division at (989) 799-9580 and delete the e-mail. Unauthorized use, dissemination, distribution or copying of this e-mail or attachments, in whole or in part is strictly prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this e-mail are subject to the terms and conditions included in specific engagement letters or contracts. Please note that e-mails are susceptible to change and we shall not be responsible or liable for the proper and complete transmission of the information contained in this e-mail, any delay in its receipt or damage to your systems. We do not guarantee that the integrity of this e-mail has been maintained or that this e-mail is free of viruses, interception or interference.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussion Regarding Staffing Options for the City Clerk's Office

DATE: July 1, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS:

BACKGROUND INFORMATION: At the June 17th, 2013 City Council meeting, City Clerk Ochs stated she would be resigning from her position effective June 28th, 2013. Agenda item is to discuss options for staffing Clerk's Office.

The City Clerk's position is an elected position with one candidate, Larry Sullivan, submitting his petition to run for City Clerk in November of this year. The State Attorney General's Office has been asked to determine if an active County Commissioner could also concurrently serve as a City Clerk. We have not received the legal opinion at this time.

Staff is also working with our City Attorney in developing ballot language for Council's consideration to amend the City Charter allowing the clerk's position to be appointed and not elected. It is unsure at this point whether we have sufficient time to place this on the November ballot.

Filling the vacant clerk position is not addressed in the Charter; although, the issue arose in both 2000 and 2004. In the year 2000, the City Manager recommended an Acting City Clerk and Council made a motion to appoint that person to the temporary acting position. Later that year, the City advertised for candidates for the position and conducted interviews through a committee. The committee then made a recommendation to City Council with City Council appointing that person to the position. In 2004, the City Council advertised and interviewed for the position and appointed Carol Ochs as City Clerk.

In the short-term we could have the Deputy Clerk, Stephanie Brown, assume the responsibilities of the Clerk's Office if Council so chooses. Although Ms. Brown is currently on sick leave, we are confident that we have sufficient Staff levels to cover the office and meetings in the short-term.

City Council will need to decide if they would like to advertise for the position and seek candidates for the Clerk's Office. Any City Clerk elected in November of this year will not take office until January, 2014. Council should consider whether it is prudent to interview and appoint a City Clerk for the remaining five months of 2013. Unless candidates have specific

municipal clerk skills and knowledge, the learning curve will be steep and training will be needed. Is it wise to appoint a Clerk for the remaining 5 months?

RECOMMENDATION: Discussion with direction to Staff. Staff recommends City Council *“make a motion that the services of Stephanie Brown, the current Deputy City Clerk, are recognized and appreciated as she temporarily takes responsibility for the duties of the City Clerk’s Office until the Office of City Clerk is filled as provided by law.”*

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Third Discussion Regarding Donation Acceptance Policy

DATE: July 1, 2013

PRESENTED BY: Mayor Carlson

ATTACHMENTS: Donation Acceptance Policy

BACKGROUND INFORMATION: At the June 3 and June 17th, 2013 City Council meetings, City Council members discussed revising the attached Donation Acceptance Policy. Council members agreed to suggest names for a committee who would review and recommend revisions to the policy. The City Council agreed to seek additional committee members and bring suggestions to the July 1 meeting.

Councilmember Porter suggested two names at the June 17th meeting- Robert Klein and Mary Lee Campbell. It was generally agreed that the committee membership should not exceed 5 members.

RECOMMENDATION: Discussion. City Council should nominate appropriate members to a committee to review Donation Acceptance Policy and make recommended changes to City Council.

City of Charlevoix

Donation Acceptance Policy

1. Introduction

The City truly appreciates the generosity of donors who wish to make Charlevoix a finer community for all. The residents of the City of Charlevoix have a proven track record in not only volunteering for many community initiatives and serving on various boards but also making generous donations. These efforts further enhance our quality of life and contribute to making “Charlevoix the Beautiful” a truly unique and special community. These invaluable efforts often make the difference between a good community and a great community. Examples of past donations include art work, vehicles, benches, trees and other items. The current list of donated amenities that have been partially or fully funded by the generosity of an individual, organization, or foundation is a long one. Charlevoix and its residents are very fortunate.

2. Purpose

The purpose of this policy is to establish guidelines, standards and procedures for the acceptance of personal property to the City, including the installation, long-term maintenance and operation of donated elements to the City. The City of Charlevoix (hereinafter the "City") desires to encourage donations while at the same time consider aesthetic impacts and on-going maintenance and operational costs. Any donated items become property of the City of Charlevoix.

Acceptance Guidelines and Standards established by this policy will apply to all donations made after the effective date of this policy, and shall also include the current proposal to construct a Community Fireplace in East Park.

3. Standards for New Donations

A. Definitions

Donation-an act or instance of presenting something as a gift or contribution either monetary or a physical element.

New Donations-New donations are those made after the adoption of this policy, but shall include the current proposal to construct a Community Fireplace in East Park.

B. Appearance and Aesthetics

The City and the community have an interest in ensuring the best appearance and aesthetic quality of their public lands and facilities. Donated elements and their associated acknowledgments should reflect the character of the park or facility. All

elements will be installed in such a manner that will not substantially change the character of a facility or its intended use.

C. Maintenance/Repair

Donated elements and their associated acknowledgement become City property. The community has an interest in ensuring that all elements remain in good repair. In addition, the community has an interest in ensuring that the short and long-term repair costs are reasonable and that repair parts and materials must be readily available. Donated elements must be of high quality to ensure a long life, be resistant to the elements, wear and tear, and to acts of vandalism.

D. Cost

The City has an interest in ensuring that the donor covers the full cost for the purchase, installation, and maintenance and operation during the expected life cycle of donated elements. Conversely, the City may determine that the value of a donated element far exceeds the maintenance and operational costs. Each donation is unique and should be evaluated on its own merits. Consequently, the City shall consider the following options when considering donations:

1. Require all estimated annual maintenance and operation costs be paid in advance by private donations or funding sources other than taxpayer dollars prior to use of the donated item;
2. At the time of the donation, the City must receive sufficient funds or financial commitments to cover anticipated on-going maintenance and operation costs of donated elements during their expected life expectancy.
3. The inherent value of the donation exceeds the annual maintenance and operational costs requiring no funds be contributed by the donator to the City.

4. Procedure for Making a Donation

The City Council shall have the authority to approve, deny or modify all donations. Prior to preparing a written proposal, the donor or donor's representative shall contact the City Manager's Office to discuss a proposed donation. A pre-application meeting may assist the potential donor in determining if a gift will meet the criteria contained in this policy. City Staff or City Council may request additional information such as but not limited, to scaled drawings, artist's rendition or other documents or submittals to better illustrate the exact nature of the donated elements. All submittal materials shall be paid by the donor or donor's representative. The City may choose to consult with other agencies or organizations in the review process. The City Council may also send any donation proposal to the appropriate board or committee for review and subsequent recommendation to the City Council.

If a gift appears to be in accordance with this policy, the donor or donor's representative will then submit a written proposal and meet with City Staff members to determine the specific nature of the donation, proposed location, and yearly maintenance and operational costs for review and processing. The written proposal, including a Staff report, will be sent to City Council for their decision.

5. Acceptance Guidelines, Acknowledgements/Memorial Plaques

A. Acceptance Guidelines

Based upon the City's best interests, the City may accept a donation element for a specific facility or location. When considering donations, the City Council shall consider the following criteria in its decision-making process:

1. Does the proposed donation substantially interfere with the intended current or future use of the land or facility where it is being proposed to be located;
2. Uniqueness of the proposal and its ability to attract visitors to the community;
3. Whether the donated element requires relocation or installation of other equipment or infrastructure to accommodate the donation;
4. A plan exists showing the available locations for donated elements;
5. Any substantial impacts on public health, safety or welfare.
6. Recommendation of the City Staff.

The City Council is not obligated to accept donations but will consider each donation based upon its own merits. Some City facilities may be fully developed and the opportunity for donations may not be available.

B. Acknowledgements/Memorial Plaques

Donation acknowledgments and memorial plaques shall be made of bronze and be of the highest quality, life and durability. In cases where bronze plaques are not feasible, other alternative types may be considered. Donation acknowledgements/memorial plaques and its text will be approved by the City Council with all acknowledgments being tasteful and subtle.

6. Installation

If the donated element, including donor acknowledgements/memorial plaques, requires any type of installation, the installation shall be completed by a licensed contractor and/or City Staff. The donor shall select and pay for the licensed contractor and the selection of the contractor shall be

approved by the City. The licensed contractor shall assume all responsibility for construction or placement of a donated element and shall hold the City harmless for any damages to property or buildings. If installation includes City Staff, the City may require reimbursement for personnel and equipment costs associated with installation of donated element. The installation will be scheduled at a time and date as determined by City Staff so as not to unnecessarily interfere with routine maintenance activities and in a manner that minimizes impacts to the community. City Staff shall oversee the installation process to ensure compliance with the proposal.

7. Removal and/or Relocation

This section applies to both existing and new donations. When it is in the City's best interest, the City reserves the right to restore, relocate, remove or relinquish donations that are no longer suited for their original purpose. Donations do not confer special privilege or rights for the donor or any other person or entity. Donations are graciously and unconditionally accepted without obligation.

8. Donations Impacting City Parks

If a donated physical element is being proposed for a City park, Council may hold a Public Hearing on the proposed donation. In determining whether a Public Hearing is appropriate, City Council shall consider whether there is a reasonable likelihood that the donated element would have one or more significant impacts on the park or the surrounding community. Significant impacts may included but are not limited to: impacts on viewsheds, size of the proposed element, noise generation, safety concerns or other impacts deemed appropriate by City Council. Purpose of the Public Hearing will be to solicit input from City residents on the proposed donation, the anticipated significant impacts and whether any adverse impacts can be lessened or eliminated.