

**CITY OF**  
**PORTAGE**  
*A Place for Opportunities to Grow*

# **PLANNING COMMISSION**

**January 20, 2011**

# **CITY OF PORTAGE PLANNING COMMISSION**

## **A G E N D A**

**January 20, 2011**

**(7:00 p.m.)**

**Portage City Hall Council Chambers**

### **PLEDGE OF ALLEGIANCE**

### **APPROVAL OF MINUTES:**

- \* January 6, 2011

### **SITE/FINAL PLANS:**

### **PUBLIC HEARINGS:**

- \* 1. Preliminary Report - Ordinance Amendment #10-B, Revised Home Occupation Ordinance

### **PLATS/RESIDENTIAL CONDOS:**

### **OLD BUSINESS:**

### **NEW BUSINESS:**

1. Planning Commission Training: "Community Planning and the Commissioner"  
-- convene in City Hall Conference Room No. 2

### **STATEMENT OF CITIZENS:**

### **ADJOURNMENT:**

### **MATERIALS TRANSMITTED**

November 2010 Summary of Environmental Activities Report  
December 21, 2010 City Council meeting minutes  
December 13, 2010 Zoning Board of Appeals meeting minutes

Star (\*) indicates printed material within the agenda packet.

PLANNING COMMISSION

January 6, 2011

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The City of Portage Planning Commission meeting of January 6, 2011 was called to order by Chairman Cheesebro at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Approximately 18 citizens were in attendance.

**MEMBERS PRESENT:**

Jim Pearson, Wayne Stoffer, Rick Bosch, Paul Welch, Mark Siegfried, Bill Patterson, and Chairman James Cheesebro.

**MEMBERS ABSENT:**

None.

**MEMBERS EXCUSED:**

Miko Dargitz.

**IN ATTENDANCE:**

Christopher Forth, Deputy Director of Planning and Development Services; Michael West, Assistant City Planner and Randall Brown, City Attorney

**PLEDGE OF ALLEGIANCE:**

The Planning Commission, staff and the audience recited the Pledge of Allegiance.

**APPROVAL OF MINUTES:**

Chairman Cheesebro referred the Commission to the December 16, 2010 meeting minutes. A motion was made by Commissioner Patterson, seconded by Commissioner Pearson, to approve the minutes as submitted. The minutes were unanimously approved.

**SITE/FINAL PLANS:**

None.

**PUBLIC HEARINGS:**

1. Special Land Use Permit: Auto World of Portage, 7940 South Sprinkle Road. Mr. West summarized the staff report dated December 30, 2010 regarding a request by Auto World of Portage to establish a new/used automobile dealership at 7940 South Sprinkle Road. Mr. West provided background information regarding past approvals and uses at the site and discussed the existing nonconforming nature of greenstrip landscaping along the South Sprinkle Road and East Centre Avenue frontages. Consistent with current ordinance requirements and to eliminate the existing nonconformity, Mr. West indicated staff is recommending installation of greenstrip landscaping along East Centre Avenue frontage (trees and shrubs) and along the South Sprinkle Road frontage (trees only). Mr. West stated that similar landscaping and site

enhancement conditions were attached to other special land use permit approvals involving establishment of new/used car dealerships.

The Commission and staff discussed various issues associated with the installation of landscaping including the presence of power lines along the South Sprinkle Road frontage, traffic safety and visibility at the South Sprinkle Road/East Centre Avenue intersection and previous automobile dealership reviews by the Commission. Mr. West indicated that Consumers Energy Company provides guidance and recommendations regarding planting of trees near power lines and a low growing deciduous tree species can be selected by the applicant. Mr. West also indicated the Department of Transportation & Utilities had reviewed the plan and landscaping recommendations and concluded that no traffic safety or vision obstruction issues would result.

Mr. Jim Murphy (property owner) and Mr. Bob Dixon (Auto World of Portage) were present to support the application. Mr. Murphy stated he has owned the property for 32 years and provided a history of uses at the site. Mr. Murphy requested the Planning Commission approve the application with no landscaping requirements citing concerns with overhead power lines, traffic safety at the South Sprinkle Road/East Centre Avenue intersection, salt spray from snow plowing, maintenance expense and visibility for the proposed automobile dealership. Mr. Dixon expressed concerns regarding vehicle visibility from the public street and requested the Planning Commission not require landscaping. Mr. West reviewed the general standards of review for special land use permits and the intent/purpose of the greenstrip landscaping provisions as detailed in the zoning ordinance. Mr. West discussed the staff rationale and recommendation for greenstrip landscaping and indicated it was based on current ordinance standards, consistent with past approvals and would eliminate an existing nonconformity at the site. The public hearing was opened by Chairman Cheesebro. No citizens spoke in regard to the special land use permit application. A motion was made by Commissioner Welch, seconded by Commissioner Bosch, to close the public hearing. The motion was unanimously approved.

The Commission discussed alternatives that would provide the property owner more flexibility regarding greenstrip landscape installation while still meeting the intent of the landscaping ordinance. After additional discussion, an amended motion was made by Commissioner Welch, seconded by Commissioner Pearson, to approve the Special Land Use Permit for Auto World of Portage, 7940 South Sprinkle Road, subject to installation of greenstrip landscaping along the East Centre Avenue and South Sprinkle Road frontages with the following exceptions: Three deciduous trees within the South Sprinkle Road greenstrip and three deciduous trees and 16-inches tall shrubs spaced no greater than 10-feet apart within the East Centre Avenue greenstrip. The motion also allowed the applicant to determine where low growing deciduous trees would be planted within the greenstrip areas and included a finding that the reduction in landscaping was based on high traffic and visibility concerns at the South Sprinkle Road/East Centre Avenue intersection. The motion was unanimously approved.

2. Ordinance Amendment #10-A, Keeping of Hens and Other Animals. Mr. Forth summarized the December 30, 2010 and December 10, 2010 staff reports regarding an amendment to the Zoning Code, initiated by the Planning Commission in response to a request from a Portage resident, to raise/keep chickens and other animals in residential areas. Mr. Forth indicated that additional discussion and consensus by the Planning Commission on various ordinance related issues was necessary prior to staff and the City Attorney revising the proposed ordinance language. Mr. Forth reviewed the discussion topics outlined in the December 10<sup>th</sup> staff report, options available and requested additional comments from the Commission.

Chairman Cheesebro reconvened the public hearing. A total of twelve citizens spoke regarding the proposed ordinance amendment. Three citizens spoke in opposition to the proposed ordinance: Courtney McMillan, 5813 Hagg Road, Lansing, MI; Dorothy McMillan, 8460 Valleywood Lane and Moses McMillan, 8460 Valleywood Lane. Ms. Courtney McMillan discussed the demographics and goals/objectives of the City of Portage and stated she did not believe the keeping of chickens and other "livestock" animals was

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appropriate in residential neighborhoods. Ms. Dorothy McMillan presented a letter dated January 6, 2011 which cited her reasons for opposing the ordinance, discussed ongoing issues with a neighbor who raises rabbits and stated she does not believe chickens are suitable for residential neighborhoods. Mr. McMillan also discussed ongoing issues with a neighbor who raises rabbits and expressed concerns over enforcement of the ordinance. Nine citizens spoke in support of the ordinance amendment: Bryan Mohney, 7911 Lakewood Drive; Dave Ostrem, 1515 Dogwood Drive; Lynda Stewart, 329 East VanHoesen Boulevard; Theresa Schwartz, 8408 Lovers Lane; Andrea Stork, 1515 Dogwood Drive; Tom Parker, 2312 Byrd Drive; Molly Ostrem, 1515 Dogwood Drive; Sherry Grundyke, 7234 South 8<sup>th</sup> Street, Kalamazoo, MI; and Fernando Costas, 7639 Harvest Lane. Mr. Mohney stated he supports the keeping of four hen chickens with restrictions and suggested no specific coop design standards since there are some many different options available. Mr. Ostrem cited successful implementation of chicken ordinances in Ann Arbor, East Lansing and other communities and indicated proposed restrictions would ensure proper care and minimal impacts on adjacent properties. Ms. Stewart stated hens are quieter than dogs and there are more problems with irresponsible people who keep dogs and cats. Ms. Stork stated chickens are educational and restrictions in ordinance would minimize impacts on adjacent properties and ensure proper care. Mr. Parker spoke in support of the ordinance and stated the keeping of chickens and other animals has nothing to do with reduction in property values or detrimental neighborhood impacts. Ms. Molly Ostrem spoke in support of the ordinance citing friends who like participating in 4-H programs. Ms. Grundyke spoke in support of the keeping of up to six chickens and indicated they are a wonderful experience for children. Mr. Costas indicated the proposed ordinance is about sustainability, allowing people more control over their food sources and stated proper regulations and responsible ownership will ensure no disturbances to neighbors. Mr. Costas stated most chicken keepers have an enclosed coop/run that is moveable. Mr. Costas clarified the original intent of his proposal was to allow the keeping of up to four hen chickens on lots ¼ acre or less with an option for more chickens on larger lots. No additional citizens spoke during the public hearing.

The Commission discussed several issues associated with the proposed ordinance language including whether chickens should be considered pets, minimum lot size for keeping of chickens, substandard and lakefront lots, coop/enclosure requirements and appropriate setbacks, permitting/fees, number of chickens allowed and other animals allowed with Planning Commission review/approval. After discussing these issues, Attorney Brown and Mr. Forth summarized the Commission discussion points and consensus on various aspects of the proposed ordinance language. The Commission reached consensus on the following discussion topics: 1) Chickens should not be considered pets; 2) Lot size requirements based on the zoning district with additional consideration for substandard and/or lakefront lots; 3) Allowance for 4-6 chickens (hens only) with additional chickens or other animals subject to Planning Commission review/approval; 4) General coop/enclosure design standards; 5) A one-time permit fee to ensure dissemination of information and ordinance requirements and assist with compliance; 6) Rear yard placement and minimum coop/enclosure setbacks from property line (10-feet) and adjacent residences (30-feet); 7) Confinement of chickens to the coop/pen enclosure; and 8) Inclusion of sanitation related provisions. Attorney Brown and Mr. Forth indicated the ordinance language would be modified and presented to the Commission for further consideration. After additional discussion, a motion was made by Commissioner Welch, seconded by Commissioner Bosch, to adjourn the public hearing for Ordinance Amendment #10-A, Keeping of Hens and Other Animals, to the February 3, 2011 meeting. The motion was unanimously approved.

**PLATS/RESIDENTIAL CONDOS:**

None.

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**OLD BUSINESS:**

None.

**NEW BUSINESS:**

None.

**STATEMENT OF CITIZENS:**

None.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Christopher Forth, AICP  
Deputy Director of Planning and Development Services

TO: Planning Commission

DATE: January 14, 2011

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Preliminary Report, Ordinance Amendment No. 10-B, Home Occupations

## I. INTRODUCTION

During the December 2, 2010 meeting, the Planning Commission reviewed a revised Home Occupation Ordinance referred to the Commission by City Council as recommended by the City Council Neighborhood Revitalization and Engagement Ad Hoc Committee (NREC). The Planning Commission discussed the revised ordinance, recommended one change and set the public hearing for January 20, 2011 consistent with statutory requirements.

As background information, the following section summarizes the 1) two major home occupation categories and 2) NREC substantive changes incorporated into the ordinance referred to the Commission by City Council.

## II. ZONING ORDINANCE PROVISIONS

The ordinance referred by City Council still maintains two categories of home occupations: Passive home occupations and active home occupations. A passive home occupation would continue the current ordinance provisions allowing low intensity occupations as a subordinate use to the principal residential use of the property. The active home occupation is a new category, which is also subordinate to the residential use of the property, but is a more intensive home-based activity that does not meet the requirements for a passive home occupation. An active home occupation could be allowed after a public hearing, with approval by the Planning Commission and compliance with the established conditions.

For comparison purposes, the substantive changes between the ordinance language recommended by the Planning Commission in January 2010 and the revised ordinance referred to the Commission by City Council in November 2010 are summarized below:

### Generally

1. Home Occupations are limited to service-oriented businesses only. The sale or exchange of products or goods is not permitted except if incidental to the services of the home occupation.
2. Instruction in outdoor recreational activities (e.g. swimming or tennis lessons) has been added to the definition of home occupation.
3. Window displays are not permitted.

### Passive Home Occupations

1. A permit is not required.

2. Clarifies that the use or storage of materials or equipment incidental to the home occupation must be within the enclosed sections of the dwelling unit. An attached or detached accessory building cannot be used.

### Active Home Occupations

1. Zoning lot does not have to abut a major thoroughfare.
2. Home occupation permit is not transferable without Planning Commission approval.
3. The Planning Commission may allow an increase in floor area used for the home occupation from 25% up to 50%.
4. Instruction in outdoor recreational activities (e.g. swimming or tennis lessons) has been added as an active home occupation.
5. The requirement that only one vehicle/trailer can be used in conjunction with the active home occupation has been removed. Ordinance language has, however, been added to Section 42-129(B)(9) that allows the Planning Commission to consider, among others, the size and weight of vehicles as well as the expected number of trips when evaluating an active home occupation application.
6. The restriction on hours of operation has been removed. However, language has been added to Section 42-129(B)(10) that allows the Planning Commission to attach conditions to mitigate any negative impacts on surrounding residential land uses including, but not limited to, hours of operation.

In addition to the revisions above, the change requested by the Planning Commission during the December 2, 2010 meeting that would permit one additional full-time non-occupant employee subject Commission review/approval has been added to Section 42-129(B)(1) of the active home occupation. Finally, the City Attorney has incorporated several organizational changes following the December 2, 2010 meeting to ensure consistency between the passive and active home occupations, where appropriate, and to improve clarity. The change requested by the Planning Commission as well as the changes incorporated by the City Attorney are shown in the attached highlight and strike copy of the proposed ordinance. Also attached is a clean copy of the ordinance.

### **III. RECOMMENDATION**

In accordance with the Planning Commission policy of accepting public comment at the initial meeting and concluding the discussion regarding the ordinance amendment at a subsequent meeting, it is recommended that public comment be received during the January 20, 2011 meeting and the public hearing be adjourned to the February 3, 2011 meeting. If no public comment is received and the Planning Commission requests no further changes, the Commission may wish to consider waiving the second public hearing date and formulate a recommendation to City Council on January 20, 2011.

Attachments: Highlight and strike copy of the ordinance  
Clean copy of the ordinance

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## ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF PORTAGE, MICHIGAN BY AMENDING SECTION 42-112 and 42-129 OF CHAPTER 42, LAND DEVELOPMENT REGULATIONS

THE CITY OF PORTAGE ORDAINS:

That Section 42-112 and 42-129 of Chapter 42, Land Development Regulations, are hereby amended as follows:

### Section 42-112. Definitions.

*Home occupation:* A home based activity or service conducted on a zoning lot used for residential purposes by an occupant(s) as a subordinate and accessory use involving the sale or exchange of services. Home occupations engaged in the sale or exchange of products or goods is not permitted except if incidental to the services of the home occupation. ~~The sale of products and goods is permitted only if incidental to the services of the home occupation~~ or involve the sale of fruits, vegetables or flowers grown on site pursuant to the Michigan Right to Farm Act, Act 93 of 1981, as amended. Home occupations may include, but are not limited to: administrative offices, photographic studios, personal service establishments, and instruction in outdoor recreational activities. Instruction in a craft or fine art within the dwelling unit pursuant to MCLA 125.3204 is permitted as a home occupation. For purposes of this section, family day care homes shall not be considered a home occupation. Two types of home occupations are hereby established and permitted pursuant to the terms of this section as follows:

- (1) Passive home occupations: Home occupations of low intensity which satisfy the specific conditions and requirements for passive home occupations provided in Section 42-129.A. A home occupation which does not meet all requirements of Section 42-129(A) shall cause the home occupation to require Planning Commission approval as an active home occupation pursuant to Section 42-129(B).
- (2) Active home occupations: Active home occupations are more intensive than passive home occupations and do not meet one or more of the requirements in Section 42-129.A. Specific conditions and requirements for active home occupations are provided in Section 42-129.B.

### Section 42-129. Home occupations.

- A. A passive home occupation on a zoning lot where there is a one family residential dwelling unit may be conducted by the occupant that meets the following requirements standards is allowed as an accessory use with no permit being required.
  1. The occupation is conducted as a subordinate use by a member of the family occupying the dwelling unit.
  2. The occupation, or any part thereof, is shall be conducted wholly within the dwelling unit and shall not be conducted in any attached or detached accessory building or structure nor on any patio, deck or lawn area.
  3. No person outside the family is employed in the home occupation.

4. Not more than 25 percent of the total floor area of any one floor of the dwelling unit, or 25 percent of the basement, is used for the home occupation.
5. The home occupation does not require interior or exterior alterations of the dwelling unit or the use of mechanical or electronic equipment not customarily used in a dwelling unit.
6. There shall be no sign of any nature identifying ~~No sign identifies~~ the home occupation. The use of window displays are not permitted.
7. The home occupation does not produce or generate, in any way, noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No passive home occupation shall be permitted to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.
8. The home occupation does not generate pedestrian or vehicular traffic beyond that normally generated by a dwelling unit.
9. Off-street parking shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions, and ~~there shall be no other vehicular parking other than the off-street parking facilities normally required for the residential use.~~
10. ~~The use or storage of goods, any materials or equipment which is incidental to the services of the home occupation is permitted only within the enclosed sections of the one-family dwelling unit. The storage of goods, materials or equipment in any attached or detached accessory building or structure is not permitted. The home occupation or any part thereof shall not be conducted in any attached or detached accessory building or structure.~~
11. No goods or products shall be directly sold or delivered to customers on the premises of the one family dwelling except goods and products which are incidental to the services of the home occupation.
12. No condition or requirement stated for passive home occupations shall prohibit the growing of fruits, vegetables or flowers, or any other farm product, protected by the Michigan Right to Farm Act, Act 93 of 1981, as amended, provided that the farm produce is grown, raised or produced on the zoning lot occupied by the home occupation and is for commercial purposes and meets all other applicable laws and rules, including the Generally Accepted Agricultural And Management Practices ("GAAMPs") as promulgated by the Michigan Department of Agriculture.

B. An active home occupation on a zoning lot where there is a one-family residential dwelling unit may be conducted by the occupant if approved by the Planning Commission after a public hearing in accordance with the requirements of Section 103 of the Michigan Zoning Enabling Act, MCLA 125.3101, et. seq., and finding that the application of the occupant meets the following requirements standards:

1. No more than one person other than the full-time occupant(s) of the one-family dwelling unit shall be engaged in the conduct of the active home occupation on the zoning lot. The Planning Commission may allow two full-time non-occupant employees upon request. In making its determination, the Planning Commission shall make a finding that the increase to two full-time non-occupant employees does not adversely impact adjacent residential uses, shall consider the standards contained in Section 42-129(B)(11) and may impose conditions under Section 42-129(B)(12). The home occupation is personal to the full-time occupant engaged in the conduct of the active home occupation and is not transferrable without Planning Commission approval.
2. Not more than 25 percent of the total floor area of any one floor of the one-family dwelling unit, or 25 percent of any basement, and provided that no more than

400 square feet of the dwelling unit is occupied by the active home occupation. The planning commission may allow an increase in the floor area of the existing dwelling unit to be used for the home occupation not to exceed a maximum of 50 percent of the floor area of any one floor or basement of the dwelling unit. The planning commission shall make a finding that the increase of floor area used for the home occupation does not adversely impact adjacent residential uses and the increase in floor area used for the home occupation complies with the requirements standards contained in Section 29-44242-129(B)(11)(9)(a) through (f) below.

3. There shall be no alterations or exterior treatments to the zoning lot or structures on the zoning lot which would, in any way, change its residential character or appearance. ~~Off-street parking provided for the active home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions.~~
4. Off street parking provided for the active home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions. There shall be no other vehicular parking other than the off-street parking facilities normally required for the residential use.
5. No goods or products shall be directly sold or delivered to customers on the premises of the one family dwelling except goods and products which are incidental to the services of the home occupation.
46. Storage of goods, materials or equipment which is incidental to the services of the home occupation shall be permitted only within the enclosed sections of the one-family dwelling unit or within not more than 50 percent of the total floor area of a completely enclosed accessory building.
57. The active home occupation, or any part thereof, shall not be conducted in any attached or detached accessory building or structure nor on any patio, deck or lawn area, except outdoor areas may be used for instruction in recreational activities customarily associated with residential uses including, but not limited to, swimming lessons and tennis lessons. ~~This section shall not prohibit the growing of fruits, vegetables or flowers nor any other farm product protected by the Michigan Right to Farm Act, Act 93 of 1981, as amended, in any outside area, provided that the farm product is grown, raised or produced on the zoning lot occupied by the active home occupation.~~
68. ~~Materials, equipment or goods which are incidental to the active home occupation shall not be visible from adjacent properties, nor shall they be directly sold or delivered to customers on the premises of the one family dwelling, except for the sale of fruits, vegetables and flowers as permitted in Section 42-129(B)(5).~~
79. There shall be no sign of any nature identifying the home occupation. The use of window displays are not permitted. ~~No freestanding signage is permitted. Non-illuminated wall signage (maximum of six square feet) identifying the name of the active home occupation may be affixed to the one-family dwelling unit. Window displays are not permitted.~~
810. The active home occupation shall not produce or generate excessive or undue noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No active home occupation shall be permitted to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.
911. The Planning Commission shall consider whether the use and the expected conduct of the use associated with the active home occupation application submitted by the occupant is within an acceptable range of compatibility appropriate for the surrounding area and does not present undue safety hazards. In its determination, the Planning Commission shall consider whether the use and expected conduct of the use specified in the application by the occupant:

- a. Promotes the intent and purpose of this section;
  - b. Sufficiently mitigates adverse impacts on the surrounding residential uses of land. The Planning Commission may consider factors including, but not limited to, the following:
    - i. The proximity of the surrounding uses to the active home occupation;
    - ii. The size of the zoning lot, location of driveways, topography, vegetation, location of structures and other features of the zoning lot;
    - iii. The seasonal nature of the active home occupation;
    - iv. The size and weight of vehicles to be used in the active home occupation; and
    - v. The number of trips the vehicle to be used in the home occupation is expected to make to and from the property;
  - c. Does not unduly affect the capacities of public services or facilities;
  - d. Is consistent with the public health, safety and welfare;
  - e. Is harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan; and
  - f. Is planned and designed to ensure that the nature and intensity of the use and the site layout and its relation to the streets giving access to it, is not hazardous to the area and does not unduly conflict with normal traffic.
120. The Planning Commission may attach conditions to the application by the occupant to conduct an active home occupation deemed necessary for the general welfare, for the protection of individual property rights, to mitigate any negative impacts on the surrounding residential uses of land including the number of customers allowed on the zoning lot at any one time, hours of operation, and similar factors, and any condition allowed by MCLA 125.3504(4) of the Michigan Zoning Enabling Act.
13. No condition or requirement stated for active home occupations shall prohibit the growing of fruits, vegetables or flowers, or any other farm product, protected by the Michigan Right to Farm Act, Act 93 of 1981, as amended, provided that the farm produce is grown, raised or produced on the zoning lot occupied by the home occupation and is for commercial purposes and meets all other applicable laws and rules, including the Generally Accepted Agricultural And Management Practices ("GAAMPs") as promulgated by the Michigan Department of Agriculture.

FIRST READING:  
 SECOND READING:  
 EFFECTIVE DATE:

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CERTIFICATION

STATE OF MICHIGAN        )  
  )SS  
COUNTY OF KALAMAZOO )

I, James R. Hudson, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

PREPARED BY:  
Randall L. Brown (P34116)  
Portage City Attorney  
1662 East Centre Avenue  
Portage, MI 49002  
(269) 323-8812

\_\_\_\_\_  
Approved as to form  
Date: \_\_\_\_\_  
\_\_\_\_\_  
City Attorney

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### **Section 42-112. Definitions.**

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- (1) Passive home occupations: Home occupations of low intensity which satisfy the specific conditions and requirements for passive home occupations provided in Section 42-129.A. A home occupation which does not meet all requirements of Section 42-129(A) shall cause the home occupation to require Planning Commission approval as an active home occupation pursuant to Section 42-129(B).
- (2) Active home occupations: Active home occupations are more intensive than passive home occupations and do not meet one or more of the requirements in Section 42-129.A. Specific conditions and requirements for active home occupations are provided in Section 42-129.B.

### **Section 42-129. Home occupations.**

- A. A passive home occupation on a zoning lot where there is a one family residential dwelling unit may be conducted by the occupant that meets the following requirements is allowed as an accessory use with no permit being required.
  1. The occupation is conducted as a subordinate use by a member of the family occupying the dwelling unit.
  2. The occupation, or any part thereof, shall be conducted wholly within the dwelling unit and shall not be conducted in any attached or detached accessory building or structure nor on any patio, deck or lawn area.
  3. No person outside the family is employed in the home occupation.
  4. Not more than 25 percent of the total floor area of any one floor of the dwelling unit, or 25 percent of the basement, is used for the home occupation.

5. The home occupation does not require interior or exterior alterations of the dwelling unit or the use of mechanical or electronic equipment not customarily used in a dwelling unit.
6. There shall be no sign of any nature identifying the home occupation. The use of window displays are not permitted.
7. The home occupation does not produce or generate, in any way, noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No passive home occupation shall be permitted to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.
8. The home occupation does not generate pedestrian or vehicular traffic beyond that normally generated by a dwelling unit.
9. Off-street parking shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions, and there shall be no other vehicular parking other than the off-street parking facilities normally required for the residential use.
10. The storage of goods, materials or equipment which is incidental to the services of the home occupation is permitted only within the enclosed sections of the one-family dwelling unit. The storage of goods, materials or equipment in any attached or detached accessory building or structure is not permitted.
11. No goods or products shall be directly sold or delivered to customers on the premises of the one family dwelling except goods and products which are incidental to the services of the home occupation.
12. No condition or requirement stated for passive home occupations shall prohibit the growing of fruits, vegetables or flowers, or any other farm product, protected by the Michigan Right to Farm Act, Act 93 of 1981, as amended, provided that the farm produce is grown, raised or produced on the zoning lot occupied by the home occupation and is for commercial purposes and meets all other applicable laws and rules, including the Generally Accepted Agricultural And Management Practices ("GAAMPs") as promulgated by the Michigan Department of Agriculture.

B. An active home occupation on a zoning lot where there is a one-family residential dwelling unit may be conducted by the occupant if approved by the Planning Commission after a public hearing in accordance with the requirements of Section 103 of the Michigan Zoning Enabling Act, MCLA 125.3101, et. seq., and finding that the application of the occupant meets the following requirements:

1. No more than one person other than the full-time occupant(s) of the one-family dwelling unit shall be engaged in the conduct of the active home occupation on the zoning lot. The Planning Commission may allow two full-time non-occupant employees upon request. In making its determination, the Planning Commission shall make a finding that the increase to two full-time non-occupant employees does not adversely impact adjacent residential uses, shall consider the standards contained in Section 42-129(B)(11) and may impose conditions under Section 42-129(B)(12). The home occupation is personal to the full-time occupant engaged in the conduct of the active home occupation and is not transferrable without Planning Commission approval.
2. Not more than 25 percent of the total floor area of any one floor of the one-family dwelling unit, or 25 percent of any basement, and provided that no more than 400 square feet of the dwelling unit is occupied by the active home occupation. The planning commission may allow an increase in the floor area of the existing dwelling unit to be used for the home occupation not to exceed a maximum of 50 percent of the floor area of any one floor or basement of the dwelling unit. The

planning commission shall make a finding that the increase of floor area used for the home occupation does not adversely impact adjacent residential uses and the increase in floor area used for the home occupation complies with the requirements contained in Section 42-129(B)(11) (a) through (f) below.

3. There shall be no alterations or exterior treatments to the zoning lot or structures on the zoning lot which would, in any way, change its residential character or appearance.
4. Off street parking provided for the active home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions. There shall be no other vehicular parking other than the off-street parking facilities normally required for the residential use.
5. No goods or products shall be directly sold or delivered to customers on the premises of the one family dwelling except goods and products which are incidental to the services of the home occupation.
6. Storage of goods, materials or equipment which is incidental to the services of the home occupation shall be permitted only within the enclosed sections of the one-family dwelling unit or within not more than 50 percent of the total floor area of a completely enclosed accessory building.
7. The active home occupation, or any part thereof, shall not be conducted in any attached or detached accessory building or structure nor on any patio, deck or lawn area, except outdoor areas may be used for instruction in recreational activities customarily associated with residential uses including, but not limited to, swimming lessons and tennis lessons.
8. Materials, equipment or goods shall not be visible from adjacent properties.
9. There shall be no sign of any nature identifying the home occupation. The use of window displays are not permitted. Non-illuminated wall signage (maximum of six square feet) identifying the name of the active home occupation may be affixed to the one-family dwelling unit.
10. The active home occupation shall not produce or generate excessive or undue noise, odor, dust, fumes, smoke, glare or comparable nuisances which would cause negative effects on surrounding property. No active home occupation shall be permitted to use, store or produce any hazardous materials in excess of quantities permitted in residential structures.
11. The Planning Commission shall consider whether the use and the expected conduct of the use associated with the active home occupation application submitted by the occupant is within an acceptable range of compatibility appropriate for the surrounding area and does not present undue safety hazards. In its determination, the Planning Commission shall consider whether the use and expected conduct of the use specified in the application by the occupant:
  - a. Promotes the intent and purpose of this section;
  - b. Sufficiently mitigates adverse impacts on the surrounding residential uses of land. The Planning Commission may consider factors including, but not limited to, the following:
    - i. The proximity of the surrounding uses to the active home occupation;
    - ii. The size of the zoning lot, location of driveways, topography, vegetation, location of structures and other features of the zoning lot;
    - iii. The seasonal nature of the active home occupation;
    - iv. The size and weight of vehicles to be used in the active home occupation; and
    - v. The number of trips the vehicle to be used in the home occupation is expected to make to and from the property;
  - c. Does not unduly affect the capacities of public services or facilities;

- d. Is consistent with the public health, safety and welfare;
  - e. Is harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan; and
  - f. Is planned and designed to ensure that the nature and intensity of the use and the site layout and its relation to the streets giving access to it, is not hazardous to the area and does not unduly conflict with normal traffic.
12. The Planning Commission may attach conditions to the application by the occupant to conduct an active home occupation deemed necessary for the general welfare, for the protection of individual property rights, to mitigate any negative impacts on the surrounding residential uses of land including the number of customers allowed on the zoning lot at any one time, hours of operation, and similar factors, and any condition allowed by MCLA 125.3504(4) of the Michigan Zoning Enabling Act.
13. No condition or requirement stated for active home occupations shall prohibit the growing of fruits, vegetables or flowers, or any other farm product, protected by the Michigan Right to Farm Act, Act 93 of 1981, as amended, provided that the farm produce is grown, raised or produced on the zoning lot occupied by the home occupation and is for commercial purposes and meets all other applicable laws and rules, including the Generally Accepted Agricultural And Management Practices ("GAAMPs") as promulgated by the Michigan Department of Agriculture.

FIRST READING:  
 SECOND READING:  
 EFFECTIVE DATE:

\_\_\_\_\_

CERTIFICATION

STATE OF MICHIGAN        )  
   )SS  
 COUNTY OF KALAMAZOO    )

I, James R. Hudson, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

PREPARED BY:  
 Randall L. Brown (P34116)  
 Portage City Attorney  
 1662 East Centre Avenue  
 Portage, MI 49002  
 (269) 323-8812

\_\_\_\_\_  
 Approved as to form  
 Date: \_\_\_\_\_  
 \_\_\_\_\_  
 City Attorney

# **MATERIALS TRANSMITTED**

SUMMARY ENVIRONMENTAL ACTIVITY REPORT  
November 2010 (*updates in italics*)

<u>Project/Activity</u>	<u>Description</u>	<u>Status</u>
Portage City Landfill	Ongoing groundwater monitoring of former municipal landfill.	<p>-City Council awarded a 3 year contract to American Hydrogeologic Corporation on February 23, 2010 to perform annual groundwater sampling. The site groundwater data will continue to be monitored to confirm continuation of the natural attenuation process. Sampling shows continued improvement in groundwater quality. Sampling performed in June 2010. Annual report submitted to MDNRE in June 2010. General groundwater quality continues to improve, but site will require monitoring for the foreseeable future.</p>
Site Inspection/Development Project Review	Review of existing business & industries and review of proposed business and industrial development projects for environmental protection purposes and/or building plans completed.	<p>-Coordination with property owners and City or State agencies ongoing.  <i>-Review of 4 site/building plans and/or plats completed in November 2010.</i></p>
Sewer Connection Program	Groundwater protection program requiring residential/business hookup to the sanitary sewer where available.	<p><i>-Sanitary sewer hookup permits issued in November 2010: 3 commercial and 8 residential. Three sewer connections made as part of the Mandatory Sewer Program. Four sewer connection deferrals were issued by the Mandatory Sewer Subcommittee.</i></p>
West Lake Management Program	Special assessment district designed to maintain/improve lake conditions.	<p>-Five Year Lake Management Assessment District process initiated (Resolution #1) on December 7, 2004. Resolution #3 was approved by City Council on January 11, 2005. Resolution #5 was adopted by City Council on February 8, 2005. On March 22, 2005, City Council approved a contract with Aquatic Services, Goodrich, MI, to perform annual weed treatment. West Lake currently working with the Kalamazoo County Drain Commissioner to create a filtration system on the Austin Lake Drain. On July 10, 2007, City Council authorized the Administration to submit a grant application in the amount of \$5,000 to the Kalamazoo Foundation to assist funding the filtration system. Construction bids received by the Drain Commissioner on November 14, 2006. Construction began on the Austin Dam reconstruction in December 2006 and new structure completed in March 2007. Filtration system construction was substantially completed in July 2008. On July 8, 2008, City Council awarded contracts to Aquatic Services, Inc. for the 2008 Weed Treatment Program and awarded a contract to ASI Environmental to perform watershed and vegetation survey. New 5 year improvement plan and special assessment process was approved by City Council on March 23, 2010. The 2010 lake treatment is complete.</p>

Retention Basin Sampling Program	Investigation regarding potential impact of retention basins on groundwater levels.	-Historical monitoring continues to show minor impacts at most basins. From 1993 through 2009 the monitoring program showed stable groundwater impacts due to stormwater infiltration. Alternative road salt practices continue to be considered and evaluated. On March 23, 2010, City Council awarded a four-year contract to Wightman Environmental. Program will focus primarily on groundwater level information. Sampling of retention basins was completed on June 25, 2010. Report is due in December 2010.
Wellhead Protection Program (WHPP)	Development of program to protect City well fields and surrounding area from contamination resulting from improper land use.	-Wellhead Protection Grant award received from MDEQ on August 30, 1999 and Council accepted the grant on October 5, 1999. Council also awarded contract to Earth Tech to complete WHPP. Earth Tech completed the final wellhead protection plan and MDEQ submittal was made on October 14, 2000. Plan was reviewed by MDEQ with written approval received in March, 2001. City staff made a presentation to the American Water Works Association at their April 25, 2008 meeting to highlight current city initiatives. Plan implementation is ongoing.
Leaf Compost Monitoring Program	Monitoring and analysis of groundwater at the new Oakland Drive Leaf Compost site.	-City Council awarded contract on August 21, 2001 to Soil & Materials Engineers for monitoring and analysis of groundwater impact of the new compost operation. Drilling was completed in October 2001 and first sampling cycle was completed in February 2002. Semi annual sampling was performed from 2002 to 2009 in June and January. Sampling and analysis results continue to show no groundwater impacts from the leaf composting. Sampling schedule was reduced to annual sampling in 2009 with results showing continued minor impact on groundwater quality. The 2010 report was received with results showing minimal impact on groundwater. Next sampling scheduled for July 2011.
National Pollution Discharge Elimination System (NPDES) permit implementation	Five year plan to implement the current NPDES stormwater permit.	-Received NPDES general permit on August 15, 2001. Renewal Application submission was made to MDEQ on March 7, 2003. New permit received in 2004 mandates involvement in several county watershed groups. City staff completed the submission of a Stormwater Pollution Prevention Initiative (SWIPPI) as required by NPDES permit. SWIPPI submitted on October 21, 2005. New certificate of coverage permit was issued by MDEQ on September 30, 2009. New permit covers a 5 year time frame with first work item (updating the Public Participation Plan) due December 11, 2009. Plan update completed with other local governments and submitted November 24, 2009. City staff worked with other agencies at the 2010 Home Expo on March 17 – 20, 2010. Staff completed an updated SWIPPI submittal to MDNRE. SWIPPI was submitted for MDNRE approval on June 25, 2010. Permit implementation is ongoing.

National Pollution Discharge Elimination System (NPDES) permit implementation

Kalamazoo River Mainstem Watershed Management Plan

-First meeting was held September 17, 2004. Proposals for completing the watershed plan were received by Kalamazoo County on September 15, 2005 and a contract awarded to Kieser & Associates in November 2005. Draft watershed plan submitted to MDEQ on December 30, 2005. Review comments received from MDEQ and revised watershed plan due in December 2006. A letter not to revise the Watershed Plan was submitted to the MDEQ on March 17, 2008. Public participation plan update submitted to MDEQ on November 24, 2009. Kalamazoo River Water Festival was held on August 14, 2010 with City of Portage participation. Preliminary grant request submitted September 16, 2010 for West Fork of Portage Creek storm water enhancements. Complete grant application was submitted on October 25, 2010.

Portage River Watershed Management Plan

-Public participation plan submitted June 28, 2004. Proposals for a Watershed Management Plan were received by the Kalamazoo County Road Commission and a contract awarded to the Kalamazoo County Conservation Service in November 2005. Draft watershed plan submitted to MDEQ on December 30, 2005. Follow-up meetings are held monthly to facilitate an implementation schedule. Portage River Watershed public meeting held in Vicksburg on April 11, 2006. Review comments received from MDEQ and revised watershed plan due November 2006. Revised Watershed Plan submitted November 30, 2006, follow up meetings to be held as necessary. A letter not to revise the Watershed Plan was submitted to the MDEQ on March 17, 2008. Public participation plan update submitted to MDEQ on November 24, 2009. Based upon MDEQ comments, the plan was revised and resubmitted on December 21, 2009.

Plan to implement and maintain an Illicit Discharge Elimination Program (IDEP).

-On October 21, 2001, City Council awarded a contract to Fishbeck, Thompson, Carr and Huber for the Portage Creek element of the IDEP, which was completed in July 2002. On February 19, 2002, City Council approved a new ordinance as required by the NPDES permit titled "Storm Water Illicit Discharges and Connections". On April 28, 2004, City Council accepted a grant from the State of Michigan in the amount of \$152,264 and awarded a contract to Fishbeck, Thompson, Carr and Huber in the amount of \$184,264 for the remainder of the IDEP for the entire city. Program implementation is ongoing as funding allows. Continued outfall sampling is required by permit and will be budgeted accordingly. IDEP program was updated for submittal to MDNRE on June 25, 2010, and part of the SWIPPI.

Garden Lane Arsenic Removal Facility

Construction of a water treatment facility at the Garden Lane Wellfield to remove arsenic, iron and manganese from the

-City Council approved an agreement with Fishbeck, Thompson, Carr & Huber, Inc. on January 10, 2006 to prepare a feasibility study to meet new USEPA arsenic standards for drinking water. Feasibility study completed in August 2006. Engineering proposals for the project were received August 14,

groundwater.

2007. Project engineering awarded to Earth Tech by City Council on September 11, 2007. Project design to include Leadership in Energy and Environmental Design (LEED) criteria. Project construction bids were received on November 25, 2008. Contract awarded by City Council on December 16, 2008 to Adams Building Contractors, Inc., Jackson, Michigan. Preconstruction meeting was held January 29, 2009. Start up activities began in May 2010. Facility is in operation with ribbon cutting held August 2, 2010. City staff gave a presentation on August 9, 2010 to the Michigan Chapter of the American Water Works Association about the arsenic removal of the facility. The facility is producing approximately one million gallons of water per day.

Environmental Incident/Spill  
Clean Up Notification

Environmental Protection  
Program to assist Portage  
Police/Fire Departments with  
spill containment and spill  
cleanup.

*-The number of environmental incident/spill investigations performed in November 2010-0. The number of incidents requiring city forces/contractor emergency cleanups-0.*

Localized Groundwater Table  
Investigation

Hydrogeologic study of the  
Portage area, especially in the  
Sprinkle Woods plat area, to  
determine causes of increase in  
groundwater elevation.

-On April 29, 2008, City Council awarded a contract to American Hydrogeology Corporation to investigate the reason and extent of seasonally high groundwater elevation. Special emphasis will be placed on the Black Forest plat area to suggest possible solutions to the basement leaking problems experienced in the area. Study was transmitted to City Council on July 22, 2008. Work was completed on October 31, 2008. City staff continues to investigate other remedies for local groundwater table issues. Work complete on compiling a history of local groundwater table elevations at 19 city-owned retention basins with data from 1994 to 2009. Data from the analysis shows a general upward trend through the Portage area from 2005 to present. Five monitoring wells were installed in the Jamaica Lane area as a result of a number of citizen concerns. *Analysis of the Jamaica Lane wells shows that seasonal groundwater table levels have dropped approximately 24" from spring 2009 levels and level has stabilized through November 2010. November sampling continued to show a slight decline in the groundwater table.* Sampling will continue through the fall and winter months as weather allows.

Hampton Wetland Area Water  
Level

Assistance with the Inverness  
Condominium Association to  
Review Surface Water Levels

-Ongoing assistance with the Condominium Association to develop appropriate measures to regulate the rising water level in Hampton Wetlands Area located on the north side of West Centre Avenue and east of Angling Road. Current activity has centered on meeting with MDNRE staff to determine feasible method to lower water levels. Association currently working with MDNRE permit staff to clarify permit requirements. No

change in status. Lower groundwater table elevation has reduced the concerns from the Condominium Association. *Conference call with MDNRE scheduled for December 8, 2010 to discuss options.*

#### Southwest Michigan Regional Sustainability Covenant

Collaborative effort with local government, academic, and other stakeholders to lead toward environmental, economic and social sustainability.

-On May 12, 2009, City Council approved the Southwest Michigan Regional Sustainability Covenant. A sustainability work session was held April 14, 2010, to review elements of the covenant in cooperation with the City of Kalamazoo and the City of Battle Creek. A grant application was made to MDNRE for a greenhouse gas inventory study of the area. Notice received July 15, 2010 that the grant application was not successful. City staff attended a September 10, 2010 meeting in Grand Rapids to discuss sustainable economic, environment, and society programs.

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## **CITY COUNCIL MEETING MINUTES FROM DECEMBER 21, 2010**

The Regular Meeting was called to order by Mayor Strazdas at 7:30 p.m.

At the request of Mayor Strazdas, Pastor John Moore of the Portage First United Methodist Church gave the invocation and the City Council and the audience recited the Pledge of Allegiance.

The City Clerk called the roll with the following members present: Councilmembers Elizabeth A. Campbell, Margaret E. O'Brien, Patricia M. Randall and Claudette S. Reid, Mayor Pro Tem Edward J. Sackley and Mayor Peter J. Strazdas. Councilmember Terry R. Urban was absent with excuse. Also in attendance were City Manager Maurice S. Evans, City Attorney Randall Brown and City Clerk James R. Hudson.

**APPROVAL OF MINUTES:** Motion by O'Brien, seconded by Reid, to approve the December 7, 2010 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 6 to 0.

**RESIGNATION OF COUNCILMEMBER MARGARET O'BRIEN:** Councilmember O'Brien read a prepared statement in which she resigned as a City Councilmember in order to fulfill the wishes of the voters and become the State Representative for the 61<sup>st</sup> District. City Council accepted her resignation and presented her with a Resolution of Respect and Recognition of Service. Each Councilmember and Mayor Strazdas expressed appreciation for her compassion and her sincerity, and wished her well in Lansing.

**RESOLUTION OF RESPECT HONORING MARGARET E. O'BRIEN:** Mayor Strazdas read the Resolution of Respect Honoring Margaret E. O'Brien and presented it to her, plus a present from City Council.

**SWEARING IN OF CORY BAILES AS COUNCILMEMBER:** City Clerk James Hudson gave the Oath of Office to Cory Bailes as Councilmember and Councilmember Bailes signed the oath of Office and The City Council Code of Ethics and Values Policy.

The City Clerk called the roll of the new City Council with the following members present: Councilmembers Cory A. Bailes, Elizabeth A. Campbell, Patricia M. Randall and Claudette S. Reid, Mayor Pro Tem Edward J. Sackley and Mayor Peter J. Strazdas. Councilmember Terry R. Urban was absent with excuse. Also in attendance were City Manager Maurice S. Evans, City Attorney Randall Brown and City Clerk James R. Hudson.

\* **CONSENT AGENDA:** Mayor Strazdas added Item M.1, City Council Staff Committee Appointments, to the Agenda and asked Councilmember Reid to read the Consent Agenda. Councilmember Reid asked that Item H.3, 2011 Fee Schedules, be removed from the Consent Agenda. Motion by Reid, seconded by Campbell, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 6 to 0.

\* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF DECEMBER 21, 2010:** Motion by Reid, seconded by Campbell, to approve the Accounts Payable Register of December 21, 2010. Upon a roll call vote, motion carried 6 to 0.

**PETITIONS AND STATEMENTS OF CITIZENS:** Chris Childs introduced himself as a City of Kalamazoo resident with a business at 1611 West Centre Avenue, indicated that he is a medical marihuana caregiver under Initiated Law 1 of 2008, Michigan Marihuana Act (MMMA), is open to any questions and is a University of Michigan graduate, who recently located here. He pointed out that the exemptions section of the proposed City of Portage proposed temporary moratorium ordinance pertaining to MMMA, allows for a dwelling unit or other building or structure for patients or caregivers to possess plants or marihuana as the dry material. He advocated that the Portage Ordinance be aligned with the State Law and allow for a dwelling unit or other building or structure for patients or caregivers to possess plants and/or marihuana as the dry material. He asked for the City Attorney for a clarification on this. Mayor Strazdas asked Mr. Childs to present any recommendations in writing to the Administration for consideration at the January 11, 2011 Regular City Council Meeting. City Attorney Randy Brown reminded City Council that the temporary moratorium ordinance was considered for first reading and no public hearing or notice would follow before second reading and consideration of adoption on January 11, 2011. Mayor Strazdas indicated comments from the public are always accepted by City Council at a second reading. Discussion followed.

**REPORTS FROM THE ADMINISTRATION:**

**POVERTY EXEMPTION GUIDELINES:** When Mayor Strazdas asked for a recommendation for residents to qualify for a 2011 Homestead Poverty Exemption, City Manager Evans recommended using the Federal Guidelines for one year. Councilmember Randall spoke in favor of a 25% increase to the Federal Guidelines and indicated that she contacted the City of Kalamazoo Assessor, who indicated that Kalamazoo adds 25% to the Federal Poverty Standard on the basis that it keeps people in their homes instead of federal housing, that as an asset, a house is not liquid and can not be readily converted to cash to pay the taxes owed, and that Kalamazoo has no asset level test. Mr. Evans indicated that the City of Portage has only a handful or less of applicants each year, revealed significant economic differences between the two communities using 2005-2009 Census Data and expressed a preference to wait for the 2010 Census Data. Discussion followed. Councilmember Randall indicated that she discussed school lunch programs with a Portage School Board Member, who indicated that students receiving hot lunches rose from 14% to 20% this year. Discussion followed. Motion by Sackley, seconded by Reid, to adopt the Federal Poverty Income Standards and establish a maximum asset level test of \$25,000 for residents to qualify for a 2011 Homestead Poverty Exemption. Motion carried: Yeas: Councilmembers Bailes, Reid and Campbell, Mayor Pro Tem Sackley and Mayor Strazdas. No: Councilmember Randall.

\* **INITIATED LAW 1 OF 2008, MICHIGAN MARIHUANA ACT – PROPOSED ORDINANCE:** Motion by Reid, seconded by Campbell, to accept the temporary moratorium ordinance pertaining to medical marihuana for first reading and consider ordinance adoption on January 11, 2011. Upon a roll call vote, motion carried 6 to 0.

**2011 FEE SCHEDULES:** Councilmember Reid asked for the history and issues raised on the “Planning and Zoning Re-inspection Fee – when approved by the Director of Community Development” segment in Attachment 3, Table 4 – 2010 2011 Fee Comparison Table, on the bottom of the first page. She asked that the Administration look at other ways of doing business instead of continuing to look at additional fees. Discussion followed. Councilmember Randall asked whether approval of the Temporary Sign Permit charge of \$55 can be changed if approved as a part of the adoption of the Resolution as this was a topic of discussion at the City Council Retreat and will be a part of a Council

subcommittee study and recommendation. Mayor Strazdas assured her that it can be changed after adoption of the Resolution and subsequent review by the subcommittee. Motion by Reid, seconded by Sackley, to adopt the Proposed 2011 Charges for Documents fee schedule; the recommended fee schedules for recreation programs and park facilities for 2011; the Resolution for Community Development Fees with the exception of Planning and Zoning Re-inspection Fee – when approved by the Director of Community Development; and the 2011 Special Assessment Rate Resolution. Upon a roll call vote, motion carried 6 to 0.

\* **WEST MILHAM AVENUE/12<sup>TH</sup> STREET/TEXAS DRIVE INTERSECTION IMPROVEMENTS:** Motion by Reid, seconded by Campbell, to approve the acquisition of a sidewalk easement and temporary grading easement for 4824 West Milham Avenue in the amount of \$10,960 and authorize the City Manager to execute all applicable documents related to this matter on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

\* **MICHIGAN MUNICIPAL LEAGUE DUES:** Motion by Reid, seconded by Campbell, to authorize payment to the Michigan Municipal League in the amount of \$8,329 for year 2011 membership dues. Upon a roll call vote, motion carried 6 to 0.

\* **OFFICE PRODUCTS CONTRACT:** Motion by Reid, seconded by Campbell, to approve a contract with Office Depot Business Solutions Division through The Cooperative Purchasing Network (TCPN) for the purchase of office supplies and products through February 28, 2015, and any TCPN contract extensions offered thereafter; and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

\* **MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY GRANT AWARD - INFORMATION ONLY:** Motion by Reid, seconded by Campbell, to receive the communication from the City Manager regarding a Michigan State Housing Development Authority Grant Award as information only. Upon a roll call vote, motion carried 6 to 0.

\* **NOVEMBER 2010 SUMMARY ENVIRONMENTAL ACTIVITY REPORT - INFORMATION ONLY:** Motion by Reid, seconded by Campbell, to receive the communication from the City Manager regarding the November 2010 Summary Environmental Activity Report as information only. Upon a roll call vote, motion carried 6 to 0.

\* **DEPARTMENT MONTHLY REPORTS:** Motion by Reid, seconded by Campbell, to receive the Department Monthly Reports from the various Departments. Upon a roll call vote, motion carried 6 to 0.

\* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes for the following boards and commissions:

Portage Zoning Board of Appeals of November 8, 2010.

Kalamazoo County Board of Commissioners Committee of the Whole and Regular of November 16, 2010.

Portage Board of Education Special and Regular of November 22 and Special of December 6, 2010.

Portage Planning Commission of December 2, 2010.

## **AD HOC COMMITTEE REPORT:**

**PROPOSED INVESTMENT POLICY REVISIONS:** Mayor Strazdas deferred to City Manager Evans, who cited two changes to the Policy: “that the City will not do business with any bank, savings and loan, or broker-dealer who does not maintain either FDIC or SIPC insurance. The City also requires that the entity maintain an industry standard level of liability insurance for its portfolio over and above SPIC to cover fraud and/or defalcation.” Also, “(T)he Investment Committee shall develop an approved provider list of financial service firms that the City may choose from to deal with at any time. The list shall be reviewed annually by the Committee for additions or deletions. The criteria to be considered may include, but not limited to: References from within the State of Michigan, financial security, history and stability of the company.” Mayor Strazdas followed up with praises for the work and advice of Cliff Mulder and Brent Plew of Raymond James Financial Services, Citizen Members of the City Council Investment Committee, and commented on the need for vigilance and a conservative approach to investments owing to the economic climate and potential for high risk investment strategies in order to get the highest return on investment. Discussion followed.

Mayor Pro Tem Sackley indicated that he had the Policy reviewed by an independent professional and objected to some of the exclusionary language and terms left up to interpretation in the proposed policy. He questioned the U.S. Treasury and Agency obligations since “Agency” is not defined; that no reason is provided for the exclusion of foreign banks; and asked why the amount invested in CD’s can not be more than 60% of the total portfolio. If there is no reason to approve this policy this evening, he respectfully asked that he be given the opportunity to submit written comments and suggestions as a further way to improve the document and improve it as a tool for the Investment Committee. Discussion followed.

Motion by Reid, seconded by Campbell, to accept the communication from the City Council Investment Committee recommending that City Council approve the revised Investment Policy as recommended by the Investment Committee and City Administration. Councilmember Reid clarified that the intent of the motion is to accept the communication but not approve the policy. Discussion followed. Upon a roll call vote, motion carried 6 to 0.

## **NEW BUSINESS:**

**APPOINTMENTS TO THE 2011 CITY COUNCIL COMMITTEES:** Mayor Strazdas provided a brief summary of the types of committees upon which City Council serves and the results of his survey of each of the City Councilmembers as a tool to determine each of their preferences for board service. He also mentioned that he gave up his top two preferences in deference to the wishes of individual Councilmembers. Discussion followed. Motion by Sackley, seconded by Reid, to approve the appointments to the 2011 City Council Committees. Upon a voice vote, motion carried 6 to 0.

## **BID TABULATION:**

\* **TRAFFIC SIGNAL IMPROVEMENTS:** Motion by Reid, seconded by Campbell, to award a construction contract to the low bidder, Severance Electric, Incorporated, in the not-to-exceed amount of \$179,221.34 for the installation of new traffic signals at the South Westnedge Avenue/Portage Central High School entrance intersection and authorize the City Manager to sign all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

**OTHER CITY MATTERS:**

**STATEMENTS OF CITY COUNCIL:** Mayor and City Council welcomed Councilmember Cory Bailes and wished everyone a Merry Christmas and safe holiday.

Councilmember Campbell expressed her condolences to Senior Citizens Advisory Board Member James Hoppe for the recent loss of his wife.

Councilmember Reid expressed her appreciation for the use of technology to reduce fees and the need for more employees.

Councilmember Randall congratulated staff for the updated website effort with a lot more information online.

Councilmember Bailes thanked City Council for their kind words.

City Manager Evans reviewed PA 198 Tax Abatements and indicated that four are expiring this year with no new applicants for 2010. With regard to economic condition factors for Portage, he said that residential assessments will be reduced approximately 1.5% and commercial assessments will be reduced approximately 8 to 10%. He said the Westnedge Avenue Corridor Study has been completed and an updated vacancy report will soon be available.

Mayor Pro Tem Sackley read a statement from Councilmember Urban welcoming Councilmember Bailes and encouraged everyone to shop locally.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 8:50 p.m.

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James R. Hudson, City Clerk

**\*Indicates items included on the Consent Agenda.**

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – December 13, 2010

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Two people were in the audience.

**MEMBERS PRESENT:** Timothy Bunch, David Felicijan, Rob Linenger, Betty Schimmel, Marianne Singer, Donald Mordas, Henry Kerr, Daniel Rhodus

**MEMBERS EXCUSED:** Lowell Seyburn

**IN ATTENDANCE:** Jeff Mais, Zoning & Codes Administrator, Charlie Bear, Assistant City Attorney

**APPROVAL OF THE MINUTES:** Felicijan moved and Linenger seconded a motion to approve the November 8, 2010 minutes as submitted. Upon voice vote, motion was approved 7-0.

### **NEW BUSINESS:**

**ZBA# 10-08, Steve Rodgers, 10076 Woodlawn Drive:** Staff summarized the requests for a) a variance to retain 210 square-feet of accessory building area; and b) a 160 square-foot variance to construct a detached shed in the rear yard, where the total combined accessory building area exceeds the ground floor living area of the dwelling by 353 square-feet. Mr. Rodgers was present to answer questions about the requests. Kerr noted conforming alternatives were available, and that additional living area could be added or some items could be moved to an off-premises storage facility. The applicant stated that would be expensive, and while he didn't have any hardship, the property did have characteristics, including the lot size and the location of the proposed shed that would minimize impacts on neighboring properties. Kerr advised the applicant the Board could not grant variances based on financial reasons.

A public hearing was opened. Letters received in support of the requests were read from: Darlene Ingersall, 10080 Woodlawn Drive; Robert & Pat Rustenholtz, 10076 Woodlawn Drive; Clarence LaCombe & Janice Webinski, 10073 Woodlawn Drive; Mark & Danielle Kinder 10077 Woodlawn Drive; Ellie & Craig Dove, 10086 Woodlawn Drive; Don & Sue Katz, 10071 Woodlawn Drive; Doug Schoetzow, 10063 Woodlawn Drive; and Mark Verberg, 10081 Woodlawn Drive. There being no further comments the public hearing was closed.

A motion was made by Linenger, supported by Felicijan, to grant a variance to retain 210 square-feet of accessory building area, as there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district, which include: the large lot size, the view of the attached accessory building is obscured from the street, and that no complaints had been received about the addition since it was constructed about 30 years ago; the immediate practical difficulty causing the variance was not created by the applicant; the variance will not be detrimental to adjacent property; and the variance will not materially impair the intent and purpose of the Zoning Ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing shall be incorporated in the record of this hearing and the findings of the Board, and that the action of the Board be final and effective immediately. Upon roll call vote, the motion carried 7-0 (Kerr-Yes, Felicijan-Yes, Linenger-Yes, Mordas-Yes, Schimmel-Yes, Bunch - Yes, Singer-Yes).

A motion was made by Linenger, supported by Felicijan to deny a 160 square-foot variance to construct a detached shed in the rear yard, where the total combined accessory building area exceeds the ground floor living area of the dwelling by 353 square-feet, for the following reasons: conforming alternatives are available and there are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district; the immediate practical difficulty causing the need for the variance was created by the applicant; and the variance would materially impair the intent and purpose of the Zoning Ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing shall be incorporated in the record of this hearing and the findings of the Board, and that the action of the Board be final and effective immediately. Upon roll call vote, the motion carried 7-0 (Kerr-Yes, Felicijan-Yes, Linenger-Yes, Mordas-Yes, Schimmel-Yes, Bunch - Yes, Singer-Yes).

**ZBA# 10-09, Beacon Sign Company, on behalf of Auto Club Services, 499, 501, 525 Romence Road:** Staff summarized the request for a variance to add a 12 square-foot tenant logo to a non-conforming freestanding sign. Sam Haddad with Beacon Sign Company was present to answer questions. Kerr requested clarification that the

applicant was only adding a panel to a portion of a sign that had previously been approved by the Board as part of ZBA 99-24 and was not proposing an increase to the existing sign structure in any way. Staff responded yes. A public hearing was opened. As no one was present to speak for or against the request, the public hearing was closed.

A motion was made by Linenger, seconded by Felicijan to approve a variance to add a 12 square-foot tenant logo to a nonconforming freestanding sign, as there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district which include: the significant change in elevation and proximity to the residential neighborhood to the west; the variance preserves the right to identify a new tenant similar to that possessed by other properties in the same zoning district and vicinity; the variance will not be detrimental to adjacent properties; and the variance will not materially impair the intent and purpose of the Zoning Ordinance, with the condition that future changes to the tenant panels below the electronic message display section may be reviewed administratively without further review by the Board, provided no other structural changes are accomplished. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing shall be incorporated in the record of this hearing and the findings of the Board, and that the action of the Board be final and effective immediately. Upon roll call vote, the motion carried 7-0 (Kerr-Yes, Felicijan-Yes, Linenger-Yes, Mordas-Yes, Schimmel-Yes, Bunch - Yes, Singer-Yes).

ZBA #10-10, Greg Dobson, on behalf of Cole Century (GCG, LLC) 6600 and 6601 South Westnedge Avenue: A communication from the applicant requesting the item be postponed until the January 10, 2011 meeting date was read. No one was present on behalf of the applicant or in the audience to speak on the matter. A motion to postpone the item until the January 10, 2011 meeting was made by Linenger, and seconded by Felicijan. Upon voice vote, the motion passed 7-0.

**OLD BUSINESS:** None

**STATEMENT OF CITIZENS:** None

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 7:30 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator