

CITY OF
PORTAGE
A Place for Opportunities to Grow

PLANNING COMMISSION

June 2, 2011

CITY OF PORTAGE PLANNING COMMISSION

A G E N D A

**June 2, 2011
(7:00 p.m.)**

Portage City Hall Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES:

- * May 19, 2011

SITE/FINAL PLANS:

PUBLIC HEARINGS:

- * 1. Rezoning Application #10-02, 4815 West Milham Avenue and 6027 South 12th Street
-- request to adjourn to 7/21/11 meeting
- * 2. Final Report: Ordinance Amendment #10-C, Medical Marihuana Home Occupation Ordinance
- * 3. Preliminary Report: Ordinance Amendment #10-D, Business Banner Regulations

PLATS/RESIDENTIAL CONDOS:

OLD BUSINESS:

NEW BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

April 2011 Summary of Environmental Activities Report
May 10, 2011 City Council meeting minutes

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

PLANNING COMMISSION

May 19, 2011

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The City of Portage Planning Commission meeting of May 19, 2011 was called to order by Chairman Cheesebro at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Two citizens were in attendance.

MEMBERS PRESENT:

Bill Patterson, Allan Reiff, Jim Pearson, Miko Dargitz, Rick Bosch, Paul Welch, Wayne Stoffer and Chairman James Cheesebro.

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Mark Siegfried.

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 May 5, 2011 meeting minutes. Commissioners Dargitz, Bosch, Cheesebro and Welch stated that would be abstaining from voting since they were not present at the May 5th meeting. A motion was made by Commissioner Patterson, seconded by Commissioner Reiff, to approve the minutes as submitted. The minutes were unanimously approved.

SITE/FINAL PLANS:

None.

PUBLIC HEARINGS:

1. Preliminary Report: Ordinance Amendment 10-C, Medical Marihuana Home Occupation Ordinance. Mr. Forth summarized the May 13, 2011 staff report regarding the proposed medical marihuana home occupation ordinance. Mr. Forth summarized major ordinance provisions and summarized previous issues discussed by the Commission during the April 21st and May 5th meetings. Chairman Cheesebro asked for clarification regarding the phrase "normal residential lighting" and hours that a qualifying patient can visit the site (8:00am-8:00pm). Mr. Forth stated there are existing ordinance standards for residential lighting and Attorney Brown indicated limiting the hours of the home occupation were reasonable and consistent with other ordinances. Commissioner Pearson asked why the ordinance prohibited any aspect of the home occupation from occurring in an attached or detached accessory building. Attorney Brown stated it was intended that the home occupation be conducted within the main residential structure. Mr. Forth also indicated that accessory buildings are less secure than the dwelling unit. The Commission and Attorney Brown next discussed trends in local municipality regulation of medical marihuana, liability issues and differences between a caregiver-patient interaction and a commercial dispensary.

Commissioner Dargitz asked why the caregiver-patient interaction could not occur within a commercial district, as opposed to the residential district. Attorney Brown indicated the administrative committee believes

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regulation as a home occupation in the residential zoning districts is most consistent with the intent of Act and best preserves the personal/confidential relationship between the caregiver and patient. Attorney Brown stated the administrative committee believes that regulation in a commercial district would likely necessitate a caregiver providing marijuana to more than five patients, which is contrary to the Act and would likely result in a dispensary operation. Attorney Brown indicated the Act specifically states a caregiver can only receive "compensation for costs" and that the transaction between a caregiver and a patient are intended to be personal/confidential and are not intended to be a business. If allowed in the commercial zones, Attorney Brown stated the administrative committee believes the regulation would encourage dispensary-type, business operations. Attorney Brown referenced the Michigan Municipal League commissioned White Paper and the secondary, negative affects associated with dispensaries. Commissioner Dargitz indicated she still has concerns about restricting medical marijuana locations to the residential districts and asked whether the ordinance could require the caregiver to travel to the patients and not allow the patients to ingest marijuana at a caregiver location. Attorney Brown restated the ordinance is not intended to regulate the use of marijuana (Act regulates the use), but rather where a caregiver can operate. Attorney Brown also indicated that an ordinance provision that would require the caregiver to travel to the patient can not be regulated as a zoning issue.

The Commission and Attorney Brown discussed removal of day care facilities from the distance provisions section of the ordinance, consistency with the federal Drug Free School Zone requirements and definitions section of the ordinance. Commissioners Dargitz and Stoffer expressed concerns about elimination of day care facilities that care for elementary school aged children from the distance provisions section of the ordinance. Attorney Brown stated the intent was to maintain consistency with the federal Drug Free School Zone requirements. Commissioner Bosch stated he believes the Commission consideration of additional regulations involves an "over-management" of the medical marijuana issue. Commissioner Bosch indicated the ordinance is consistent with the State Act and federal Drug Free School Zone requirements and believes the direction the administrative committee has chosen is the best way to go. Commissioners Cheesebro, Welch and Patterson agreed. Additional discussion between the Commission and Attorney Brown ensued.

Chairman Cheesebro opened the public hearing. One citizen (Troy Fleckenstein, 275 West Michigan Avenue, Galesburg, Michigan) spoke in regards to the proposed ordinance. Mr. Fleckenstein voluntarily stated that he was a registered caregiver and patient and indicated he agrees with Commissioner Bosch and believes the Commission is attempting to over-regulate the issue. Mr. Fleckenstein indicated the State of Michigan already has a registration process and another registration through the city is unnecessary. Mr. Fleckenstein stated that he disagrees with Attorney Brown and believes the Act allows a caregiver to receive compensation for expenses and reasonable fees for services rendered. Mr. Fleckenstein also indicated that he believes the Commission discussion about "protecting children" is not relevant to the medical marijuana issue. Mr. Fleckenstein stated he does not believe the ordinance should restrict a caregiver to a residential area since there are various aspects to a caregiver operation including growing, harvesting, processing, storage and distribution that may not be appropriate at one specific location. No additional citizens spoke regarding the proposed ordinance.

The Commission, Attorney Brown and staff continued the discussion regarding the proposed ordinance language and issues related to prohibiting caregiver activities in an attached/detached accessory building and whether the ordinance should be expanded to also include commercial districts. After additional discussion, a motion was made by Commissioner Bosch, seconded by Commissioner Welch, to adjourn the public hearing for Ordinance Amendment 10-C, Medical Marijuana Home Occupation Ordinance, to the June 2, 2011 meeting. The motion was unanimously approved.

PLATS/RESIDENTIAL CONDOS:

None.

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OLD BUSINESS:

1. Proposed Business Banner Ordinance (referral from City Council). Mr. West introduced the item and reviewed the City Council transmittals regarding the proposed business banner ordinance as referred by City Council. Mr. West also summarized the Planning Commission review and discussion during the May 5, 2011 meeting. Mr. West stated the proposed language would amend the sign ordinance regulations and expand the ability of a business to use a banner by eliminating the provision regarding the “name of business”, increasing the area for “copy” to 50% of the banner and by adding the language to all of the business zones (B-1, B-2, B-3, CPD and PD districts).

Commissioner Pearson referred the Commission to the November 3, 2010 memo from Mr. Erickson to City Manager Evans regarding the City Council retreat information and signage issues. Commissioner Pearson stated that he believes there is a problem with temporary signs in regard to the fee and time involved for processing requests. Commissioner Pearson indicated he sent a communication to the City Council Ad Hoc Sign Committee inquiring as to whether temporary signs were included in the discussion, however, has not yet received a response. Commissioner Pearson suggested holding off on the business banner regulations until he receives a response from the Ad Hoc Sign Committee. Mr. West stated the Ad Hoc Committee and City Council reviewed and discussed various aspects of the sign regulations and chose to forward the business banner regulations to the Planning Commission for action. Mr. West indicated the public notice was specific to the business banner regulations and a public hearing was scheduled for June 2, 2011. Mr. Forth stated the Commission may choose to move forward with further discussion of temporary signs as a separate matter, but Commission action on the business banner ordinance as requested by City Council is appropriate. The Commission and staff briefly discussed the definition of a banner, the permanent or temporary nature of banners and specific ordinance provisions. Mr. West stated examples of banner signs would be provided with the preliminary staff report.

NEW BUSINESS:

1. 2010 Census of Population and Housing – Analysis and General Trends. Mr. Forth provided a summary of the 2010 Census of Population and Housing – Analysis and General Trends report as prepared by the Department of Community Development. Mr. Forth summarized major findings of the report and stated additional census related information would be provided to the Commission as it becomes available.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

Chairman Cheesebro indicated there seems to be two primary areas of discussions by the Commission regarding the medical marihuana ordinance: 1) location in residential vs. commercial district and 2) prohibitions in a detached and/or attached accessory building. Chairman Chesebro asked the City Attorney and staff to again summarize these two issues for the next meeting.

There being no further business, the meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Christopher Forth, AICP
Deputy Director of Planning and Development Services

TO: Planning Commission

DATE: May 27, 2011

FROM: Jeffrey M. Erickson ^{JME} Director of Community Development

SUBJECT: Rezoning Application #10-02, 4815 West Milham Avenue and 6027 South 12th Street – request to adjourn

Attached for Commission review is an e-mail message dated May 26, 2011 from Mr. Terry Patterson, on behalf of Milham Crossings LLC, requesting that the public hearing for Rezoning Application #10-02 be adjourned to the July 21, 2011 meeting.

At the request of the applicant, the Planning Commission should consider adjourning the public hearing for Rezoning Application #10-02 to the July 21, 2011 meeting.

Attachment: May 26, 2011 email communication from Mr. Terry Patterson (Treystar/Milham Crossings LLC)

S:\2010-2011 Department Files\Board Files\PLANNING COMMISSION\PC Reports\Rezoning\Rezoning Application 10-02 - request to adjourn to 7-21.doc

From: "Terry Patterson" <tpatterson@treystar.com>
To: "Christopher Forth" <forthc@portagemi.gov>
Date: 5/26/2011 8:27 AM
Subject: FW: Meeting Adjournment

Hi Chris...just making sure you received this e-mail yesterday. My phone messaging was acting up.

Thanks,
Terry

Terry Patterson
7950 Moorsbridge Rd.
Portage, Michigan 49024
269-329-1808 Office
269-488-1715 Direct
269-323-8705 Fax
269-217-1684 Cell
www.treystar.com

-----Original Message-----

From: Terry Patterson
Sent: Wednesday, May 25, 2011 9:45 AM
To: Chris Forth
Subject: Meeting Adjournment

Chris:

We would like to adjourn the public hearing for the proposed rezoning for our Milham & 12th property to the 7/21 meeting.

Thank you,
Terry

TO: Planning Commission **DATE:** May 27, 2011
FROM: Jeffrey M. Erickson, Director of Community Development
SUBJECT: Final Report: Ordinance Amendment No. 10-C (Medical Marihuana Home Occupation Ordinance)

I. INTRODUCTION

The proposed medical marihuana home occupation ordinance was initially developed and recommended by the City Administration subsequent to enactment of a temporary moratorium by City Council on January 11, 2011. The proposed ordinance language would amend Section 42-129, Home Occupations. As the Planning Commission is aware, on April 12, 2011, City Council referred the medical marihuana home occupation ordinance to the Commission for consideration and to initiate the Zoning Code amendment process. The Planning Commission recommendation is to be submitted to City Council no later than June 3, 2011.

II. MAJOR ORDINANCE PROVISIONS

The following briefly summarizes the major provisions of the proposed ordinance.

- Medical marihuana would only be provided by a primary caregiver as a home occupation.
- Primary caregiver must comply with all statutory requirements.
- The medical marihuana home occupation must be at least 1,000 feet from a school, playground or housing facility owned by a public housing authority and 100 feet from a youth center, public swimming pool or video arcade consistent with the federal Drug Free School Zone requirements. Attached is a map that shows these drug free zones.
- The use must be in compliance with applicable requirements of the Building Code, Noise Ordinance, Safety, Sanitation and Health Code, and Housing/Property Maintenance Code.
- Lighting used in the growing of marihuana that exceeds normal residential use must be shielded between the hours of 11:00 p.m. and 6:00 a.m.
- Patients may only visit the primary caregiver between the hours of 8:00 a.m. and 8:00 p.m.
- Signs identifying the home occupation and use of window displays are not permitted.

III. PLANNING COMMISSION REVIEW/CONSIDERATION

During the April 21st meeting, the proposed medical marihuana home occupation ordinance was reviewed and discussed by the Planning Commission. The major provisions of the Michigan Medical Marihuana Act ("Act"), the proposed regulatory framework of the ordinance and the basis for the recommended ordinance were reviewed. The Commission also received correspondence from the City Attorney that explained the Michigan Medical Marihuana Act, proposed Medical Marihuana Home Occupation Ordinance and reasons to regulate medical marihuana as a home occupation. The Planning Commission discussed the information and heard comments from Mr. Chris Chiles, who attended the

meeting. No other persons spoke during the meeting. After further discussion, the Commission voted unanimously to set a public hearing for May 19, 2011.

The Commission again discussed the proposed medical marihuana home occupation ordinance during the May 5, 2011 meeting. In response to discussion during the April 21st meeting, an April 29, 2011 supplemental report was provided that further clarified the four primary topic areas: 1) home occupation permitting (and registration/licensing), 2) home occupation versus commercial use issue, 3) marihuana “dispensary” issue, and 4) home occupation distance provisions/requirements/definitions. Attached is a copy of this report.

The Planning Commission convened the public hearing on May 19th. The Commission discussed various aspects of the proposed medical marihuana home occupation ordinance including residential lighting, visiting hours, activities in an accessory building (attached/detached), regulating as a home occupation versus location in a commercial district, commercial dispensaries and related impacts, federal Drug Free School Zone requirements and the intent of the State Act for purposes of ordinance development. Mr. Troy Fleckenstein, 275 West Michigan Avenue, was present and spoke in support of medical marihuana. At the conclusion of the May 19th discussion, the Commission requested additional information regarding two issues: Regulating medical marihuana as a home occupation versus permitting the use in a commercial district and use of an accessory building for medical marihuana purposes. The following information regarding each of these two issues is provided below.

Home Occupation Ordinance Approach

- The personal and confidential relationship between the caregiver and patient as required by the Act is best maintained as a home occupation.
- There is an absence of specific provisions in the Act concerning dispensaries and, as a result, Michigan Courts may conclude that “dispensaries” can be prohibited by local ordinance.
- The operation of commercial dispensaries in other states has been linked to illicit drug activities and related “secondary” effects. Similar issues have been the subject of concern in other Michigan municipalities because some groups have asserted there are ambiguities about distribution in the Act.
- Allowing medical marihuana dispensaries encourages commercial business operations contrary to the intent of the Act. If the intent of the Act was to allow commercial medical marihuana operations, it is believed the Act would have not included the statement “A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the use of medical marihuana.”
- The Justice Department is targeting commercial dispensaries with enforcement activities and not the less intense home occupation-based medical marihuana facilities.
- Impacts associated with of a home-based medical marihuana facility are minimal. The Act specifies that one caregiver can only have up to five patients and no more than one caregiver may occupy a dwelling.
- Consistent with numerous southwest Michigan communities, including Grand Rapids, East Grand Rapids (in process), Kalamazoo, Oshtemo Township (in process), Holland Township, Allegan, Lawton, among others, the home occupation ordinance is the preferred approach.

Accessory Building Issue

- Consistent with a similar provision in the recently adopted a passive home occupation ordinance, prohibiting the use of an accessory building serves to further limit impacts on the adjacent properties and the neighborhood by restricting the medical marihuana activity to the dwelling unit.
- Accessory buildings are unoccupied making them less secure than a locked room located in the dwelling.
- An accessory building is primarily intended for the storage of vehicles and household and exterior property maintenance items. If accessory buildings are not utilized for the intended use, community quality concerns (e.g. parking in yard, outdoor storage of debris, or inoperable vehicles) may result.

IV. RECOMMENDATION

It is recommended that the Planning Commission review the ordinance language, reconvene the public hearing and accept public comment during the June 2, 2011 meeting, and then recommend to City Council approval of Ordinance Amendment No. 10-C, Medical Marihuana Home Occupation.

Attachments: Proposed Medical Marihuana Home Occupation Ordinance
Primary Caregiver Distance Provisions Map
Department of Community Development report dated April 29, 2011

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

THE CITY OF PORTAGE ORDAINS:

That Section 42-129 of Chapter 42, Land Development Regulations, is hereby amended to add Section 42-129(C) as follows:

Section 42-129. Home occupations.

- A. No change.
- B. No change.
- C. Medical Marihuana Home Occupation. A primary caregiver acting in compliance with the General Rules of the Michigan Department of Community Health ("General Rules"), the Michigan Medical Marihuana Act, P.A.2008, Initiated Law, MCL 333.26421, et. seq., (the "Act") and the requirements of this section, shall only be allowed as a home occupation. The conditions and requirements contained in Section 42-129(A) and (B) (Passive and Active Home Occupations) shall not be applicable to medical marihuana home occupations under this section and no permit under the Portage Zoning Code is required for a medical marihuana home occupation. The Act was passed by Michigan Voters through the initiative process. Both the summary of the Act appearing on the ballot and the Act as a whole reflect an intent to create a private and confidential patient/caregiver relationship to facilitate the lawful cultivation, distribution and use of marihuana strictly for medical purposes. The Act does not authorize the broad legalization of the cultivation, distribution or use of marihuana and a reading that permits such broad legalization is inconsistent with the fundamental intent of the Act read as a whole in context with generally applicable Michigan law. A primary caregiver may assist only a qualifying patient to whom he or she is connected through the Department of Community Health's ("Department") registration process for the medical use of marihuana. The following requirements for a primary caregiver as a home occupation shall apply:
 - 1. A primary caregiver shall comply at all times and in all circumstances with the Act and the General Rules of the Department as they may be amended from time to time.
 - 2. The home occupation shall only be conducted in a dwelling unit (as defined by the Zoning Code) where no more than one primary caregiver:
 - a. Cultivates up to the maximum number of marihuana plants permitted by the Act (12 for each qualifying patient)
 - b. Possesses up to the maximum amount of marihuana permitted by the Act (2.5 ounces for each qualifying patient), including any incidental amounts of seed, stalks and unusable roots; and

- c. Assists no more than the maximum number of qualifying patients permitted by the Act (maximum of 5) who have been issued and possess a registry identification card and who are connected with the primary caregiver through the Department's registration process for the medical use of marihuana. Assistance to a qualifying patient by someone other than his or her designated primary caregiver is prohibited.

3. The following shall apply to a primary caregiver conducting a home occupation under this section:

- a. To ensure community compliance with the federal "Drug Free School Zone" requirements, the home occupation shall not be located:
 - i. Within one thousand (1,000) feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, or a playground, or housing facility owned by a public housing authority; or
 - ii. Within one hundred (100) feet of a public or private youth center, public swimming pool, or video arcade facility.
- b. Measurements for purposes of Section 3(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the home occupation to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined by Article 42, Section 42-112, Definitions, of the Portage Code of Ordinances, as amended. A map showing the uses and facilities listed in Section 3(a) above, as well as the protected areas, is available for review in the Department of Community Development at the Portage City Hall and on the City's website under the Department of Community Development.
- c. The distance provisions of this subsection do not apply to a primary caregiver whose qualifying patient(s) (up to the maximum permitted under the Act) are permanent residents of the primary caregiver's household and whose residence is shared with the primary caregiver.

4. If the primary caregiver is not an owner of the premises, nothing contained in this section shall limit an owner of the premises from prohibiting the home occupation on the premises occupied by the primary caregiver nor limit an owner's right to pursue any private right of action allowed by law.

5. All medical marihuana plants shall be contained within the main residential structure in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the primary

caregiver or qualifying patient. The home occupation shall not be conducted in an attached or detached accessory building or structure.

6. The home occupation shall be conducted consistent with the Portage Code of Ordinances including but not limited to securing all building, electrical, plumbing and mechanical permits for any portion of the residential structure in which electrical wiring, lighting, and/or watering devices are located, installed or modified that support the cultivation, growing or harvesting of marihuana, compliance with Article 4, Chapter 24 Noise, Article 5, Chapter 24 Safety, Sanitation and Health as well as Article 14, Chapter 42 Housing/Property Maintenance Code.
7. If a room with windows is utilized as a marihuana growing location, any lighting methods that exceed usual residential use between the hours of 11 p.m. and 6 a.m. shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.
8. Qualifying patients may visit the site for the purposes permitted under the Act only during the hours of 8:00 a.m. to 8:00 p.m. No more than 5 qualifying patients may visit the site at any one time.
9. Off street parking provided for the home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions, of the Portage Code of Ordinances, as amended. There shall be no other vehicular parking other than the off street parking facilities normally required for the residential use.
10. There shall be no sign of any nature identifying the home occupation and the use of window displays are not permitted.
11. Nothing in this section, or in any companion regulatory provision adopted in any other provision of this Code is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for, growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with the Act and the General Rules and this section. To this end, the sale, distribution, cultivation, manufacture, possession, delivery or transfer of marihuana to treat a qualifying patient shall only be conducted as a home occupation, and shall not be permitted in any other zoning classification of this Zoning Code. Also, since federal law is not affected by the Act or the General Rules, nothing in this section, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. Neither this ordinance nor the Michigan Medical Marihuana Act protects users, caregivers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.

12. Definitions. As used in this section:

a. MARIHUANA

This term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106, as is referred to in Section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26423(d).

b. PRIMARY CAREGIVER

A person who is at least 21 years old who has agreed to assist with a patient's medical use of marihuana, who has never been convicted of a felony involving illegal drugs and who has been issued and possesses a registry identification card.

c. QUALIFYING PATIENT

A person who has been diagnosed by a physician as having a debilitating medical condition.

d. REGISTRY IDENTIFICATION CARD

A document issued by the Department that identifies a person as a registered qualifying patient or a registered primary caregiver or a document or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana.

FIRST READING:
SECOND READING:
EFFECTIVE DATE:

CERTIFICATION

STATE OF MICHIGAN)
)SS
COUNTY OF KALAMAZOO)

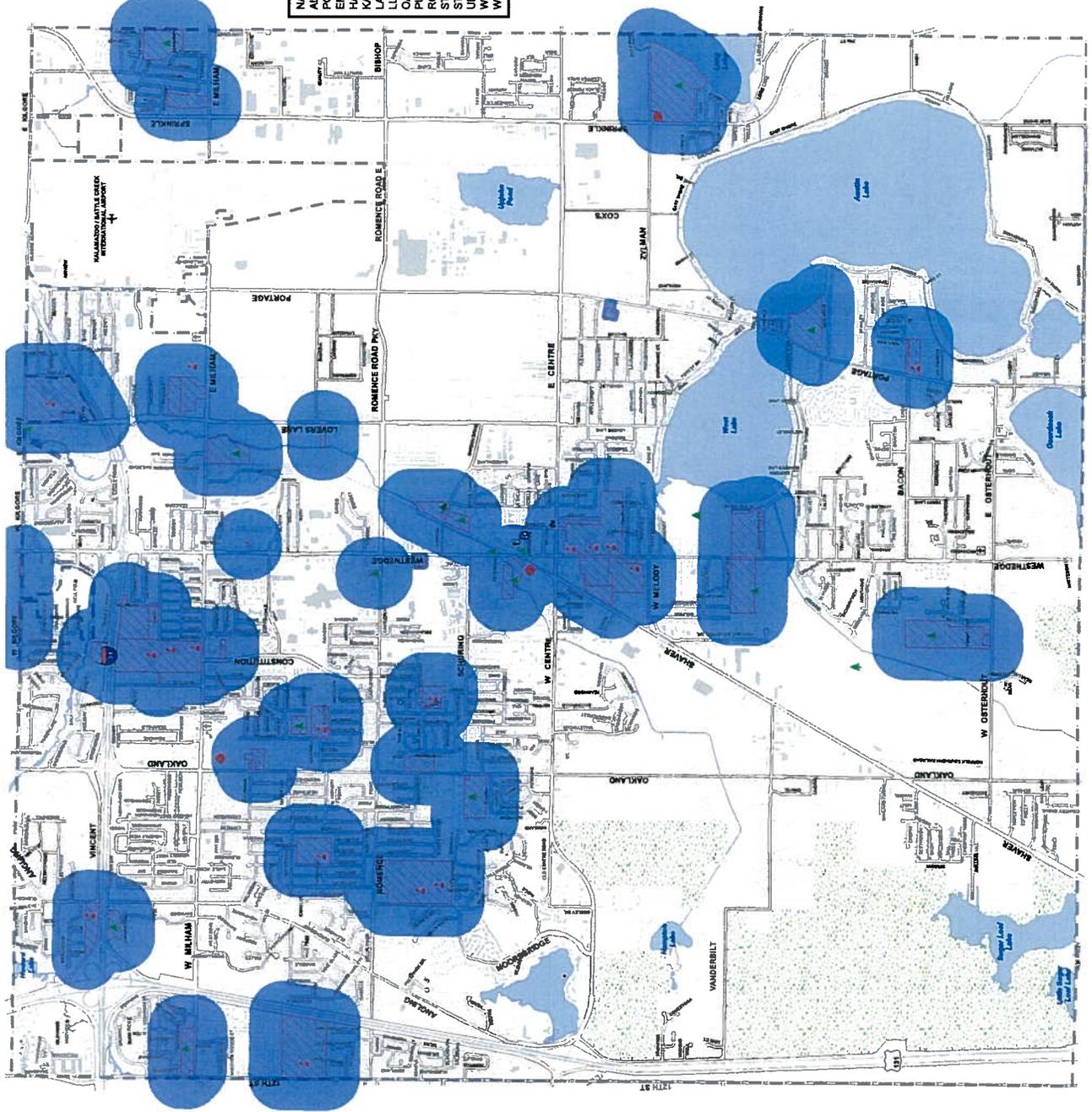
I, James R. Hudson, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the _____ day of _____, 2011.

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

Proposed Medical Marihuana Primary Caregiver Distance Provisions



NAME	ADDRESS	TYPE	DISTANCE
ALL PORTAGE PUBLIC SCHOOLS		SCHOOL	1000
PORTAGE PARKS		PARK	1000
EMPIRE BEAUTY SCHOOL	609 CONSTITUTION	SCHOOL	1000
HACKETT CATHOLIC CENTRAL H.S.	1000 W KILGORE RD	SCHOOL	1000
KALAMAZOO ACADEMY, INC	4221 E MILHAM AV	SCHOOL	1000
LAZAR LAND	8302 PORTAGE RD	ARCADE	100
LLOY NORRIS H.S.	E KILGORE	SCHOOL	1000
OAKLAND ACADEMY	OAKLAND DR	SCHOOL	1000
PUTTERS FAMILY FUN CENTER	7206 S WESTMEDGE AV	ARCADE	1000
ROSS MEDICAL	6235 S WESTMEDGE AV	SCHOOL	1000
ST MICHAEL LUTHERAN CHURCH SCHOOL	7211 OAKLAND DR	SCHOOL	1000
ST MONICA SCHOOL	530 W KILGORE RD	SCHOOL	1000
UNIVERSITY OF PHOENIX	950 TRADE CENTRE WA	HIGHER ED	1000
WOODSEDGE LEARNING CENTER (KRESA)	1501 E MILHAM AV	SCHOOL	1000
WRIGHT BEAUTY ACADEMY	8666 LOVERS LN	SCHOOL	1000

1 in = 0.59 miles
Date: 4/28/2011

TO: Planning Commission

DATE: April 29, 2011

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Preliminary Report: Proposed Medical Marihuana Home Occupation Ordinance

At the April 21, 2011 meeting, the proposed medical marihuana home occupation ordinance that was recommended by the City Administration committee (committee) and referred to the Planning Commission by City Council was discussed. The committee is comprised of Attorney Brown and Attorney Bear, Police Chief White, City Manager Evans and me. The committee members, each with areas of expertise – public safety, the legalities of ordinance language, public administration, community planning perspective, and so forth – have dedicated significant time over a number of months to carefully review the subject and a recommended approach for consideration. Copies of the City Council transmittals and the draft ordinance proposal were provided as information. The major provisions of the Michigan Medical Marihuana Act (“Act”), the proposed regulatory framework of the ordinance and the basis for the recommended ordinance were reviewed.

After presenting the City Council transmittals, proposed ordinance and related materials, staff and the planning commissioners discussed the information and heard comments from Mr. Chiles, who attended the meeting and voluntarily disclosed that he is a registered medical marihuana caregiver and patient. No other persons were present at the meeting.

Following is information in response to the discussion at the April 21st meeting that is intended to provide responses to commissioner inquiries and to provide further clarification of the proposal. Four topic areas have been identified based on the Commission discussion including home occupation permitting (and registration/licensing), the home occupation versus commercial use issue, the marihuana “dispensary” issue, and the home occupation distance provisions/requirements/definitions in the proposal.

1. Home Occupation Permitting (and registration/licensing)

The proposal presented to the Commission accommodates the statutory-allowed use of medicinal marihuana as a home occupation in a manner similar to the “passive” category of home occupation recently incorporated into the Zoning Code. No permit would be required, and from a legal perspective, a permit requirement may increase the risks that the confidentiality provisions in the Act may be violated. As discussed with the Commission at the April 21st meeting, the Act sets forth the intent that the relationship is a private/confidential one and the transfer of medical marihuana should be conducted within the strict limits of this relationship. The home occupation activity, as an accessory use to a residential use, is most appropriate to further this stated intention. Additionally, given the privacy and confidentiality provisions contained in the Act, the committee is of the opinion that requirements for a permit, registration, or licensing, are problematic. Storing and keeping caregiver and patient information could result in criminal and monetary sanctions upon release of confidential information: This burden and potential liability to the city is not acceptable. Further, to enforce the ordinance provisions should a complaint be received, it is recognized that research and review will be necessary. This review and research is required regardless of whether or not a permit, registration or licensing is required or granted. Recall that the Act grants immunity from arrest, prosecution and penalty to primary caregivers and qualifying patients who possess registry identification cards for the medical use of marihuana. Compliance with local ordinance provisions will still be necessary, however. Given the variety of issues that are involved, the required research and review is complex and is best conducted by the city police agency and city planning staff in conjunction with the Office of the City Attorney. As the commissioners may know, this joint effort to

administer and enforce the ordinance, should it be necessary, is acknowledged and also incorporated into Section 2-319 Penalty, of the moratorium ordinance adopted by Council.

As final comments on this topic area, the home occupation approach has been successfully used in other communities. The proposed ordinance is similar to the adopted City of Kalamazoo medical marihuana home occupation ordinance. As also discussed and as pertains to all other local ordinances, the responsibility to understand the provisions of the ordinance rests with the medical marihuana caregiver and patient. The proposed ordinance does not regulate the “use” of marihuana and, therefore, the use of marihuana by persons is subject to criminal prosecution if not in compliance with the Act. While the Act is silent as to the authority of municipalities, if no ordinance were adopted, the absence of regulation of the activities of a primary caregiver under the Act could result in undesirable conditions/community impacts associated with this Schedule 1 Controlled Substance, as further discussed below. Given the likelihood that definitive court decisions and/or action by the Michigan Legislature is potentially years away, adopting this ordinance is the preferred option. Also, should the courts and/or legislature further clarify the Act in the future, review of the local ordinance would be accomplished and appropriate changes considered and made as necessary.

2. Home Occupation Versus Commercial Use Issue

Consistent with the Act, the proposed ordinance would regulate the distribution of medical marihuana by a primary caregiver for up to five qualifying patients only. As mentioned, 61% of Portage voters approved this limited, legal use of marihuana by qualifying patients who have a debilitating medical condition. With the clear intent of the Act, which narrowly tailors protections to qualified persons for certain narrowly defined medicinal purposes, the proposed ordinance would not allow dispensaries, or other form of caregiver- or patient-to-patient transfer of marihuana. The Act requires the qualifying patients to be “connected” to a primary caregiver through a State registration process and allows the primary caregiver to have up to 2.5 ounces of marihuana, as well as 12 plants, for each qualifying patient. The Act also states that the primary caregiver can only receive “compensation for costs.”

Importantly, the recommended home occupation approach allows the city to avoid issues associated with “business” activities and the “secondary” effects that are referenced in the Michigan Municipal League-commissioned White Paper. These “secondary” effects could be associated with, for example, the operation of a business-like “dispensary” or multiple “dispensaries” in various business zones potentially involving multiple caregivers/patients. It is the opinion of the committee that a regulation confining primary caregiver activities only to commercial, or other similar districts, with the restriction of five qualifying patients, would not be economically feasible. The development of dispensary “business” activities is problematic, and as again emphasized, is not consistent with the personal/confidential relationship that is intended and clearly conveyed by the Act.

3. Marihuana Dispensary Issue (and patient-to-patient transfers)

Although this topic area is also related to the topic addressed in #2, the Act lacks specific direction regarding the dispensation of medical marihuana. While some groups continue to argue that the Act permits the distribution of marihuana by a primary caregiver to more than five qualifying patients as well as patient-to-patient transfers, or as a “dispensary” activity, the committee is of the opinion that this is not permitted by the Act. There is an absence of specific provisions in the Act concerning “dispensaries.” This fact can very well mean that it is more likely for Michigan Courts to find that “dispensaries” can be prohibited by local ordinance. As previously conveyed in the communication to City Council, the advantages to the proposed ordinance include the prohibition of commercial dispensaries and prevention of the potential for illicit drug activities and related “secondary” effects referenced above that have been reported by law enforcement officials in California. Similar issues have been the subject of concern in other Michigan municipalities because some groups have asserted that there are ambiguities about distribution in the Act. Nonetheless, per the proposed ordinance, “dispensaries” would not be permitted in Portage.

4. Home Occupation Distance Provisions/Requirements/Definitions

As discussed with the commissioners, the regulatory provisions in the proposed ordinance are self explanatory. Certain standards address several operational issues (activity must be in the main residential structure, lighting requirements, nuisance regulations and sign prohibitions). Location standards are proposed that establish minimum distances from schools, youth centers and other specified uses. As mentioned during the meeting, these provisions were continuing to be refined. Under the proposed ordinance, which would not require the primary caregiver to obtain a permit, or register, the ordinance requirements would be enforced should a complaint be received about the home occupation. As referenced above, the home occupation approach is preferred based on the language in the Act. Additionally, enforcement, when needed, will require joint action of the city police agency, city planning staff and the city attorney. In this coordinated effort, effective administration and assuring compliance with the ordinance requirements can be accomplished.

With regard to refinements in the proposed ordinance, the distance provisions have been further clarified. The distance provisions are best established using the federal Drug Free School Zone provisions. Attached is a copy of the modifications to Section 42-129 C. 3. Essentially, the distance provisions will apply to the specified protected uses/facilities. Removed from the proposed ordinance are adult regulated uses and public community centers (there are none of either in Portage). Also removed from the ordinance are day care facilities and other primary caregivers conducting a home occupation under this section (to be consistent with the intent of the Act establishing the private/confidential caregiver-patient relationship). Use of the federal Drug Free School Zone provisions serves to standardize this element and provide consistent guidance concerning the proposed ordinance. While using the federal Drug Free School Zone provisions is a conservative approach, it is used by other Michigan municipalities and is believed to be appropriate in this community. The refined distance provisions that involve a number of identified, protected uses/facilities can be viewed on the attached Distance Provisions Map, which shows the protected uses/facilities and the corresponding excluded areas.

Conclusion

As conveyed to the Commission, the proposed ordinance has been developed in consideration of how medical marihuana would be distributed, the language of the Act, other ordinances passed by other municipalities, the potential impact on the community and taking into account law enforcement issues. Banning the use of medical marihuana, as four Michigan communities have done, is clearly inconsistent with the Act and would invite unwarranted litigation. Also, it is not known when the appellate courts will decide the relevant legal issues and/or the legislature will "fix" the Act. However, it is prudent to move forward with the proposed home occupation approach, which is similar to ordinances that have been adopted in other Michigan communities. It is recognized that future revisions may be necessary as appellate court decisions or legislative actions occur.

As requested by the Commission, following is the link to the White Paper on the internet, which can be found at <http://www.mama-online.org/sites/default/files/mimedicalmarijuanawhitepaper.pdf>. Commissioners may view the information, print all or the relevant sections, or staff can provide a copy upon request.

Department of Community Development staff and the Office of the City Attorney will be present at the upcoming meeting to further discuss this issue with the commissioners in advance of the scheduled May 19th public hearing.

Attachments

TO: Planning Commission

DATE: May 27, 2011

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Preliminary Report: Ordinance Amendment #10-D, Business Banner Regulations

I. INTRODUCTION/BACKGROUND

On January 18, 2011, the City Council Ad Hoc Sign Committee met to discuss business signage and Zoning Code regulations pertaining to signs. A historical overview of sign issues and regulations within the City of Portage was provided by the City Administration and the various business signs that are currently permitted by the Zoning Code including freestanding signs, wall signs, temporary signs, banner signs, changeable copy boards, and electronic message displays that provide advertising opportunities were reviewed and discussed. After reviewing the information and as recommended by the Ad Hoc Sign Committee, on April 12, 2011 City Council voted unanimously to refer the proposed business banner ordinance proposal to the Planning Commission for consideration and to initiate the Zoning Code amendment process.

The proposed ordinance language would amend the sign ordinance regulations and expand the ability of a business to use a banner. Attached for Commission review is a copy of the March 30, 2011 communication from the City Manager to the City Council that includes background information from the Ad Hoc Sign Committee, the proposed zoning ordinance and the April 12, 2011 City Council meeting minutes. The original ordinance language that was conveyed from City Council to the Planning Commission has been modified slightly to clarify the amount of the banner that can be devoted to sign copy. It was intended that Condition 6 allow not more than 50% of the banner to be devoted to sign copy (previously stated not more than 10 square feet). This correction has been made and the revised ordinance language is included in the attachments.

The Planning Commission received the proposed ordinance, along with the City Council background information, during the May 5, 2011 meeting. The Commission reviewed the materials and then voted unanimously to set a public hearing for the June 2, 2011 meeting. The proposed ordinance amendment was again discussed by the Commission during the May 19, 2011 meeting. No citizens spoke regarding the proposed ordinance amendment during the May 5th or May 19th meetings.

II. ZONING ORDINANCE PROVISIONS

The Zoning Code defines a *Banner* as “A sign made of cloth or a similar flexible material bearing a name, design, motto or other form of advertisement, identification or information that is secured to the support structure on all corners and/or sides. A flag, pennant or standard may be considered a “banner”, provided that it meets the definition of banner.” Section 42-552.J of the Zoning Code allows banners in the B-2, community business, B-3, general business and CPD, commercial planned development districts subject to seven conditions regarding minimum setback from a property line, maximum height, minimum distance from the ground surface, size, mounting/attachment, square

footage devoted to the name of the business and banner maintenance/repair. While business banners have not been widely utilized by area businesses, Crossroads Mall and Art Van Furniture provide examples of a typical business banner (see attached photographs).

The proposed ordinance amendment would expand banner use and provide additional options and flexibility for businesses interested in using banner signs. The ordinance language would:

- Eliminate the phrase “...to identify only the name of the business” (Section 42-552.J).
- Increase the area of the banner devoted for sign copy including the name of the business and related message from four square feet to up to 50% of the banner area (Section 42-552.J.6).
- Add the business banner ordinance language to the B-1, local business and PD, planned development districts (Sections 42-548.F and 42-551.C).

The intent of the expanded signage is to provide additional advertising options and flexibility for area businesses while helping to prevent the proliferation of temporary signs that contribute to sign clutter and confusion along public streets. The availability of other types of permanent and temporary signs including freestanding, wall, reader-boards, electronic message display and directional will also remain for business use.

III. RECOMMENDATION

In accordance with the Planning Commission policy of accepting public comment at the initial meeting and concluding the discussion and recommendation at a subsequent meeting, it is recommended that public comment be received during the June 2, 2011 meeting and the public hearing for Ordinance Amendment No. 10-D, Business Banner Regulations, be adjourned to the June 16, 2011 meeting for final action.

Attachments: March 30, 2011 communication from the City Manager to the City Council and related material
Proposed Business Banner Ordinance
April 12, 2011 City Council meeting minutes
Business Banner Photographs (Crossroads Mall and Art Van Furniture)

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: March 30, 2011

FROM: Maurice S. Evans, City Manager

SUBJECT: City Council Ad Hoc Sign Committee Business Sign Information

ACTION RECOMMENDED: That City Council receive the information from the Ad Hoc Sign Committee and refer the proposed business banner sign language to the Planning Commission for consideration and to initiate the Zoning Code amendment process.

Information about the work of the Ad Hoc Sign Committee was presented to the City Council at the March 22, 2011 meeting. The following is provided to convey the recommendations made by the Committee for further action by the City Council.

On January 18, 2011, the City Council Ad Hoc Sign Committee met to discuss business signage and the Zoning Code regulations pertaining to signs. The City Administration provided a historical overview of sign issues and regulations within the City of Portage. Business signs permitted by the Zoning Code that provide opportunities for advertising include freestanding signs, wall signs, various temporary signs, the use of banners and changeable copy boards, and electronic message displays. Issues discussed by the Ad Hoc Sign Committee included the history of the sign regulations, current sign provisions in the Zoning Code, the increased potential for "banner signs" to be used by businesses, permit requirements for changes to "business tenant panels" in existing freestanding signs, window displays, and the advantages to educational materials that could be provided to the business community about the current sign regulations.

The City Administration prepared a "Summary Guide To Business Signs," which incorporated Frequently Asked Questions (FAQs), background information on regulatory issues concerning allowing changes to "business tenant panels" in existing freestanding signs and proposed Zoning Code language that included provisions to expand the use and increase the flexibility for businesses to use "banner signs." After additional review by the Ad Hoc Sign Committee at a March 21, 2011 meeting, the Committee concurred that the "Summary Guide To Business Signs" be utilized as an educational/informational brochure and recommended that City Council refer the proposed "banner sign" language to the Planning Commission to consider as a modification to the Zoning Code. Attached are communications from the Community Development Director that were considered by the Ad Hoc Sign Committee with the final version of the "Summary Guide To Business Signs" brochure and the draft language concerning "banner signs."

It is recommended that City Council receive the information from the Ad Hoc Sign Committee and refer the "banner sign" language to the Planning Commission for consideration and to initiate the Zoning Code amendment process as recommended by the Committee.

Attachments: November 3, 2010 communication from the Community Development Director
March 4, 2011 communication from the Community Development Director (with updated attachments)

CITY OF PORTAGE

COMMUNICATION

TO: Maurice S. Evans, City Manager

DATE: November 3, 2010

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Zoning Code Signage Issues – City Council Retreat Information

Per prior discussions, previous written communications provided on the subject of sign requirements specified in the Zoning Code and the brief City Council discussion at the October 5, 2010 meeting, following is information for your review. The following information is organized to assist the City Council and City Administration as this subject is discussed:

- A brief historical overview/background on sign regulations in the community
- Summary of the Zoning Code sign regulations applicable to businesses
- Review of 2005 – 2010 period and business sign permits
- Overview of 2005 – 2010 Zoning Board of Appeals variance applications

A conclusion/summary is at the end of this communication.

Historical Overview/Background

From time-to-time, signage issues seem to come to the forefront. There are various factors that may generate this discussion that could include the declining economic situation/business environment, efforts by businesses to advertise, attract consumers and differentiate themselves, attempts to adapt new technology/techniques, among others. Notwithstanding these factors, regulations to address the use of advertising signs are common by municipalities across the country. In Michigan, sign regulations were the subject of Michigan Supreme Court decision as early as 1937 (Michigan Zoning and Planning, 3rd Edition, Clan Crawford, Jr., page 328). The intent of sign regulations is straightforward and the Portage Zoning Code intent and purpose section presents the overall objective of community sign regulations:

“...regulate the use, construction, reconstruction, placement and design of signs in order to protect the public health, safety, peace and general welfare. The regulations involve a recognition that the individual user’s right to convey a message must be balanced against the public’s right to be free of signs which unreasonably compete, distract drivers and pedestrians, and produce confusion.” (Section 42-540 A. and B.)

The Zoning Code identifies several reasons that sign regulations are desirable, which include in summary:

“...prevent traffic injuries and property damage...minimize risk of damage from signs that are dilapidated, wind blown, electric shock hazards...achieve uniformity...enhance aesthetics of the community...prevent blight...encourage equality among business and property...(and)...protect the public health, safety, peace and general welfare.” (Section 42-540 D.)

There is some history to sign regulations in the City of Portage. In the late 1970s, there was considerable concern about signage in the community and the City of Portage Environmental Board was instrumental in the development of the first, comprehensive sign regulations that were incorporated into the Zoning Code. As reflected in the March 17, 1976 Environmental Board meeting minutes, the board members were particularly concerned about the “...*design, size and position of signs as well as with blinking and portable signs which can distract one while driving.*” The Board also discussed the existing regulations and expressed concern that the 1976 sign code and zoning ordinance were “*incomprehensible*” (September 16, 1976 meeting minutes). The Planning Commission assisted the Environmental Board over the course of several years, and culminating on August 14, 1979, City Council approved a comprehensive amendment to

the Zoning Code establishing sign regulations with an effective date of September 7, 1979. Attached are several photos of business signage that were taken in the late 1970s within Portage business areas that help illustrate the concerns expressed by the Environmental Board and other community members.

The community discussion about the sign regulations continued for a number of years. Amendments to the sign regulations occurred during this period. In the effort to reach agreeable regulatory compromise, City Council formed ad hoc committees on several occasions in the early to mid 1980s to suggest amendments to the sign regulations. Of note, on December 20, 1983, City Council convened a work session on sign regulations and at the following regular meeting established a seven member Ad Hoc Sign Committee with business, citizen at-large, sign industry, City Administration and Environmental Board participants. The charge to the committee was to report back in February 1984 and: *"...to see what areas they can still improve the overall appearance of our city but still modify the present ordinance to be easier for the businesses to comply."* (December 20, 1983 Council meeting minutes, page 469). The results of this effort are summarized in January 31, 1984 correspondence from the committee chairperson that recommended changes to allow temporary signs (40 square foot sign, increased use/display days and for non-commercial public service events), changes to nonconforming signs (five-year non-conforming sign agreement), and changes to existing freestanding signs (allow changeable copy signage to be permanently attached to a sign).

In 1986, with continuing discussion of signage, a formal survey of residents and businesses was authorized by City Council that involved mailing of 2,142 surveys. All businesses in Portage received a survey and every 12th resident in the Property Tax Master File also received a survey. A very good response rate of 28% (605 returned surveys) resulted. While there were differences between the responses from businesses and the responses from residents about signage, the report to City Council indicated that, in general, respondents believed that the sign regulations in the Zoning Code were reasonable and appropriate. The report concluded that no modifications were recommended. The conclusion was also based, in part, on the concern that too-frequent code changes and modifications would create confusion, inequities and inconsistencies in administration with additional negative impacts on the community.

In December 2001, the Zoning Code was the subject of a comprehensive update that concluded with approval by City Council of the ordinance update on February 18, 2003. In this amendment, 29 substantive changes were recommended, which included sign regulation changes. Additional sign flexibility was incorporated for business wall signage, for example, as were changes to definitions, sign measurements, among others. A copy of the changes to the sign regulations that was summarized and provided to the City Council in January 2003 is attached.

In addition, the sign regulations in the Zoning Code have been the subject of regular review and, where appropriate, amended. The purposes for this review include incorporating emerging sign technology and techniques, clarification and correction of sign provisions and improved/uniform administration. Following is a summary of sign regulation changes since 2003:

2006:

Section 42-552(E), Signs in the B-2/B-3 Zoning Districts -- Distance between two freestanding signs. Before the amendment, this section referred to "a developed B-2 parcel." Consistent with other sections of the Zoning Code, this section was amended to refer to zoning lot since there may be more than one parcel of land. This section also uniformly applies to signs in the B-3 district.

Section 42-553(C)(2), Billboard Sign Area -- When the Zoning Code was updated in 2003, the consultant inadvertently changed the maximum sign area: The maximum area was corrected and is 300 square feet as previously established.

2007:

Section 42-542(I), Electronic or Mechanical Sign Elements -- Electronic message display (EMD) signs added.

2009:

Section 42-545(C), Single-family Residential Subdivision Signs – Construction of a sign to identify a single-family residential subdivision in R-1A, R-1B R-1C R-1D, R-1E and R-1T residential districts has been permitted and now pertains to the PD, planned development district.

2010:

Section 42-545(B)(C), Signs Permitted in the Single-family and Attached Districts – Increased the size of wall and freestanding signs for non-residential uses permitted in the R-1A through R-1T districts.

Section 42-546(D), Signs Permitted in the RM-1 and RM-2 Districts – Increased the size of wall and freestanding signs for non-residential uses permitted in the RM-1 and RM-2 districts.

Section 42-550(A), Signs Permitted in the OS-1 and OTR districts; and Section 42-551(A), Signs Permitted in the B-1, local business District. Modifications to these two sections involved clarification of the statement "...with a minimum sign size of 32 square feet..." The changes to Sections 42-550(A) and 42-551(A) clarified that 1) a variance from the ZBA is not required if a smaller sign size is desired by a business owner and 2) the maximum sign size for a lot less than 80 feet in width is 32 square feet.

2010 Zoning Code Sign Regulations Applicable to Businesses

A two-page summary table of the existing sign regulations applicable to the business community is attached. As apparent, freestanding, wall and other types of signage are permitted for all businesses. Signage is regulated by zoning lot and by business use to ensure fairness, consistency and uniformity with applicable law and judicial decisions. A variety of signage is permitted with significant flexibility to assist retail, office, service, specialty business uses that operate in differing situations (i.e., in individual buildings, in multi-use business centers, on small and large parcels, in ownership/lease tenancies, in new business development projects, redevelopment projects, and so forth). Additionally, "temporary" signage is specifically permitted for business purposes and can be standard signs, strings of flags, streamers, balloons, etc., electronic message signs, or other types. These various types of signs are allowed within the context of the applicable sign regulations and in: "... the recognition that the individual user's right to convey a message must be balanced against the public's right to be free of signs which unreasonably compete, distract drivers and pedestrians and produce confusion."

With specific regard to stationary/mobile electronic message signs for business use, these signs are permitted and can be permanent or temporary signs. Stationary/permanent electronic message display (EMD) sign examples include among others the new Sonic Restaurant sign, the Mulligan's Restaurant sign, the electronic elements on the Walgreens signs and, also, the Shoppes at Romence Village sign. For mobile/temporary sign examples, EMD signs can be/have been used as a 40 square foot grand opening, change/going out of business sign and, also, as a 64 square foot public noncommercial service event sign.

Finally, the sign regulations include other elements that provide "flexibility" in the interests of assisting businesses. First, legal, nonconforming signs are allowed to continue to exist and be used. It is intended that these signs conform to the regulations over time. Provisions that allow re-use and encourage eventual conformity have been incorporated into the regulations including allowing unlimited sign changes for a five year period after which the legal nonconforming sign must conform and the attachment of changeable copy signage to any sign to assist businesses with temporary sales, special event activities, and so forth. Also, the standards for variances involving re-use of legal nonconforming signs (i.e., reduction in the degree of nonconformity and replacement signs that are more in conformance with the code) assist the business community. Further, there are unregulated sign/messaging options available to businesses. These options include, among others, advertising on licensed motor vehicles, costumed/mascot advertising in the parking area or along a public street and interior window displays, which are commonly employed by businesses. Finally, the Zoning Code provides the Zoning Board of Appeals with the responsibility to hear appeals and to consider interpretations of code provisions, which can be helpful to businesses seeking clarification or the ability to use certain sign/messaging technologies/techniques.

FY2005 – 2010 Sign Permit and Zoning Board of Appeals Information

A brief analysis of sign permits that were issued and Zoning Board of Appeals (ZBA) sign variance/appeal applications that were acted on during the FY2005/06 to FY2009/10 period was accomplished. With regard to the issuance of permits, 797 sign permits were issued during this five-year period. These permits were for the following sign types:

Permit Type	Number of Permits
Freestanding sign	333
Wall Sign	348
Temporary Sign	116

On an annual basis, 159 sign permits were issued during this period. As for fees, a sign permit cost is as follows – Permanent freestanding or wall sign is \$110.00; Temporary sign is \$55.00. (The fees associated with sign permits have not been increased since January 2006.) For convenience, sign permits may be submitted by mail, or electronically, for review and approval.

The ZBA applications involving signage that were acted on during this five-year period were also reviewed. A total of 37 signage applications were considered (involving 28 properties), or an average of seven applications annually. Twenty-nine (29) applications were approved by the ZBA (78%), while eight were not approved (22%). Specifically regarding signs for businesses that were considered by the ZBA over the five-year period, 22 applications were considered, with 16 applications (73%) approved. Seven applications involved freestanding signs and required sign area, setback or separation distance. Also, six applications involved changes to nonconforming signs. The next category of business sign application considered by the ZBA was wall sign area (four applications), where a larger wall sign(s) was requested. The remaining five applications involving businesses considered by the ZBA involved one appeal of a denied permit, one roof sign variance and three non-accessory (billboard) requests. In summary, during the past five years, an average of 159 sign permits have been annually issued. During this same period, an average of only seven ZBA sign applications was annually received.

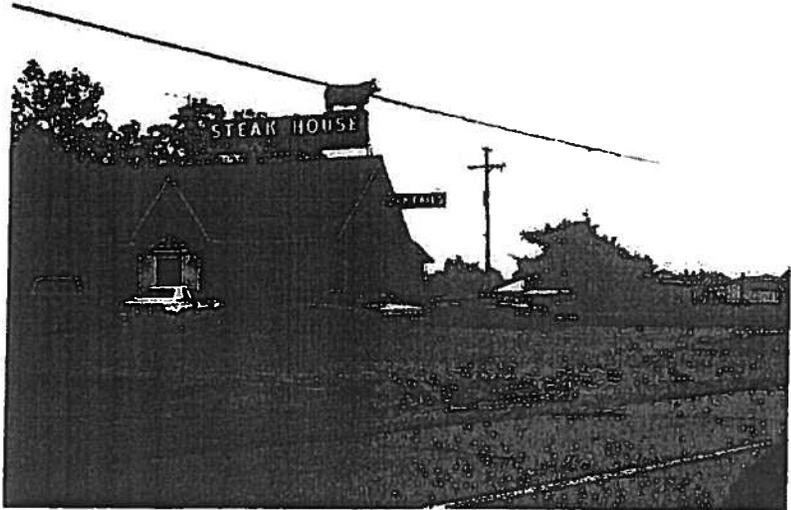
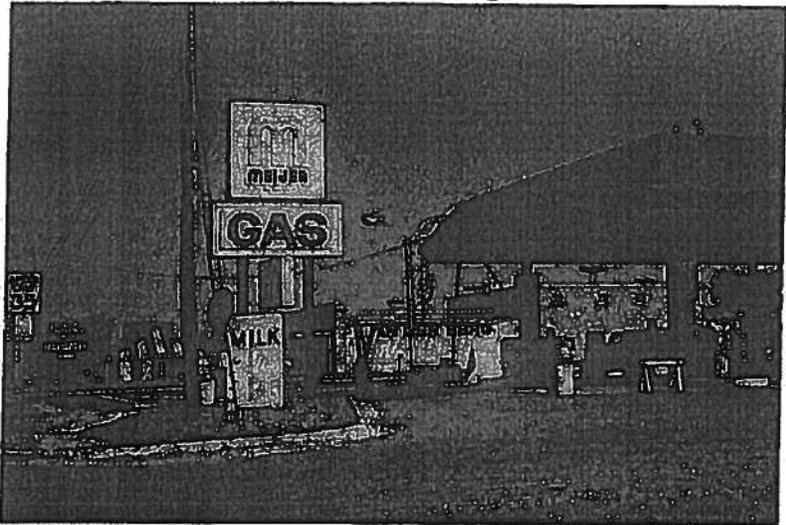
Conclusion

There exists considerable history regarding the subject of sign regulations in the community. A comprehensive sign ordinance amendment occurred in 1979 that more effectively regulated signs that could be erected in the city. Regular efforts have been made to ensure reasonable sign options for businesses by various advisory board, ad hoc committee and professional staff, with the most recent comprehensive amendment approved in 2003. Ongoing review of signage including provisions that provide flexibility for business advertising purposes and to incorporate new technology and techniques is also evident. A significant number of sign permits, including business sign permits, have been issued on an annual basis over the past five fiscal years. Also, comparatively few applications for sign variances submitted by businesses have been considered by the ZBA over this same five-year period. Where the ZBA has considered sign variance applications, a majority of applications by businesses have been approved. The sign regulations appear to have achieved an effective balance between the need for business advertising while reducing clutter and motorist distractions to enhance community quality and traffic safety.

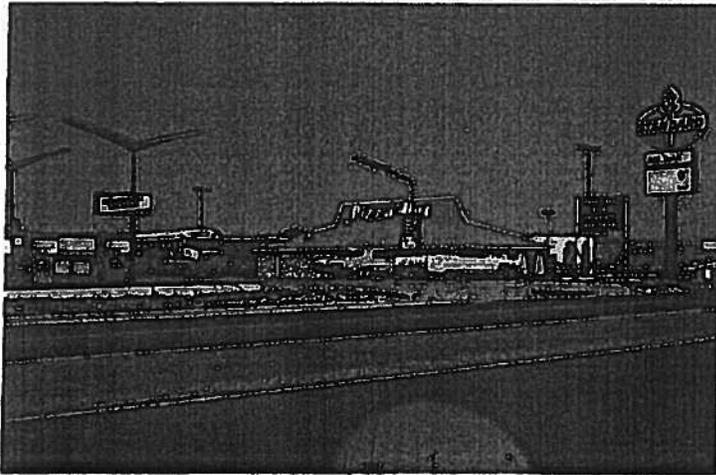
Attachments: Sign Photos from 1979-era City of Portage
2003 Zoning Code Update: Sign changes (#25 Signs)
2010 Zoning Code Sign Regulations Applicable to Businesses Table

c: Brian J. Bowling, Deputy City Manager

Historical Business Sign Photos



Historical Business Sign Photos



2003 Zoning Code Update – Sign Changes

25. Signs (Division 6, Subdivision 2)

- a. The Intent and Purpose section has been added.
- b. Several definitions were added including sign face, awning/canopy sign, construction sign and identification sign.
- c. A section related to sign measurements has been added to eliminate confusion on how to calculate and locate signage.
- d. The erection of a one-family residential construction sign identifying the builder, contractor or subcontractor is now permitted. No permit is required.
- e. A 64 square foot maximum has been established for public event signs. The current code section did not specify a maximum square footage.
- f. A section has been added which requires removal of a nonconforming sign if a substantial improvement is made to the site or building that equals or exceeds 25% of the market value of the structure or site improvement.
- g. The R-1E, OTR and CPD zoning districts have been added.
- h. In response to court decisions and Zoning Board of Appeals (ZBA) decisions involving the size of wall signs, a section has been added that allows an increase in the size of wall signs based on the size of the wall and the setback distance from a public or private street. The proposed increases are consistent with recent ZBA variances granted to several retail establishments.
- i. The current sign regulations permit one additional freestanding sign if the property is within 200 feet of any US-131 or I-94 interchange. This section has been eliminated. Uses intended to attract the interest of freeway motorists are encouraged to use the Michigan Logo Signing Program. This program allows eligible businesses to display their business logos to motorists at interchanges along freeways. Elimination of this section will create several nonconforming signs at the South Westnedge and Portage Road interchange areas. An inventory of these signs has been completed.

CITY OF PORTAGE

COMMUNICATION

TO: Maurice S. Evans, City Manager

DATE: March 4, 2011

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Business Sign Issues – City Council Sign Committee

The City Council Sign Committee met during the morning of January 18, 2011 to discuss the above issue. As you know, the Committee was provided with a copy of the November 3, 2010 communication on sign issues as background information. There was a further discussion of several sign issues and Zoning Code regulations including temporary signs, changes in “business tenant panels” in existing freestanding signs and permit requirements, banner signs, window displays, a method to convey sign regulatory information to the business community such as in frequently asked question (FAQ) format that included “visuals” for general use and posting on the city website.

The City Administration indicated to the Committee that an ordinance proposal would be prepared that addressed the “business tenant panels” and permit matter, and the suggested more popular use of “banners” by businesses. An FAQ format with some “visuals” would also be prepared for discussion purposes. A subsequent Committee meeting would be scheduled at which further discussion of the business sign issues would occur.

Attached please find two items that can be considered by the City Administration and with your approval, forwarded to the Committee for discussion purposes:

1. A draft of a proposed Summary Guide to Business Signs with FAQs that incorporates photographs of signs from award entries to an annual sign competition by the International Sign Association based in Alexandria, VA. The guide is four pages and is intended to cover the basics regarding Zoning Code requirements for business signs. The guide incorporates the intent and purpose of the sign regulations, a summary table of business signs and temporary and other signs that are permitted in the Portage Zoning Code.
2. A draft of proposed regulations that would allow accomplish two things:
 - a. The changes to Section 42-542 would allow changes to business tenant panels in existing, freestanding signs where changes are permitted with no review or sign permit.
 - b. The changes to Section 42-548, 42-551 and 42-552 would allow a banner sign and expands the ability of a business to use a banner by eliminating the regulation about the “name of the business,” increasing the area for “copy” to 50% of the banner, and by adding the language in all of the business zones (B-1, B-2, B-3, CPD and PD districts).
(This draft is shown in ordinance format, but has not been reviewed by the City Attorney and is a preliminary proposal for further discussion.)

With regard to 2.a., while this approach may be considered to be more business friendly, it is noted that challenges with the proper administration of the sign regulations may arise as a result of allowing permanent or temporary business sign changes in some, or only limited, situations with no permit. First, basic administration and enforcement involves uniform and consistent application of the applicable code requirements. Essentially, for businesses, freestanding signs

are based on property frontage and wall signs are based on building wall area. There are many situations where a formal review of an existing sign – freestanding, wall, other – is necessary and appropriate. These situations occur because businesses (tenants) open and close, property is bought and sold, or divided and combined, buildings are altered or enlarged including business tenant suites, public infrastructure is constructed/reconstructed/streets widened, and Zoning Code sign regulations are modified to achieve community objectives. Review of applications to change business signage together with permit approval and issuance, then, will allow proper and effective administration and enforcement and avoid confusion within the business community and the assertion of unfairness, or other charge. Second, some freestanding and wall signs may be legal, nonconforming signs, but not known by the business tenant, owner, or sign company. This fact would place the city and the tenant/owner/sign company in the unenviable position of needing a variance after the change has occurred, and which may not be granted. Third, a limited number of businesses, certainly a minority number, do not apply for, or obtain, required sign permits. With primary reliance on a complaint basis for administration and enforcement, issues of fairness and consistency now occur and could increase. From experience, there is no positive outcome in these “catch me if you can” situations, which will potentially increase with allowing business sign changes in some “no permit” situations. Finally, these above-noted problems have surfaced in the City of Wyoming, where staff has indicated that administration and enforcement where the ordinance has been changed to allow some changes with “no permit” has caused added problems and concern expressed by some of the business community.

To address the above-noted problems and issues, an alternative approach could be considered where a “reduced fee” permit could be established. As an example, if a permit is needed to change a freestanding sign and it is determined to be in conformance with the Zoning Code, a fee equal to one-half of the normal fee could be charged. While there will be review and research required by the City Administration to ensure fair and consistent application of the ordinance, it is believed that a minor change to an existing, freestanding sign, such as only a replacement business tenant, for example, should necessitate less time to review and be more easily finalized for permit issuance purposes.

The Department understands the importance of balancing the goal to be “business friendly” regarding the conduct and cost of business, the identification of businesses and consumer information, while at the same time ensuring that community objectives are also met in terms of appearance of business properties along commercial corridors, pedestrian and motorist safety and so forth.

I am available to meet with you to further discuss this matter at your convenience.

Attachments: draft Sign Guide and FAQs
 draft ordinance-format language

c: Brian J. Bowling, Deputy City Manager

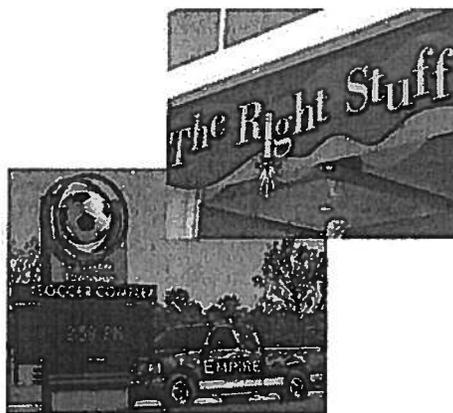
Summary Guide To Business Signs

The City of Portage recognizes the importance of signs to local businesses and the economy. Standards have been adopted by Portage that promote the effective use of signs as a directional and communication tool, while protecting public safety and property values, and promoting community character. The intent and purpose of Portage sign regulations¹ is to:

- Balance the right to identify a business location and attract customers with the public right to be free of signs that unreasonably compete, distract drivers and pedestrians, and produce confusion.
- Provide businesses with equal opportunity to attract customers by achieving uniformity in the size, number and placement of signs.
- Protect public health and safety by regulating the construction of signs.
- Enhance the aesthetics of the community.

In addition to the specifications included in city sign regulations, businesses are encouraged to carefully consider the following design elements regarding signs²:

- Signs should use creative and dynamic design, yet be compatible with the surroundings.
- Signs should be designed and located in a manner that enhances sign legibility.
- Signs should be constructed and designed to avoid hazards and distractions.
- Signs should be located so they do not block pedestrian or motorist vision or line of sight.
- Signs should be constructed of durable, quality material, and should be kept in good repair.



¹ The Code of Ordinances is available on the city web site at: www.portagemi.gov. (See the Code of Ordinances, Land Development Regulations, Chapter 42 of the Code of Ordinances, Article 4, Zoning, and Article 11, Signs.)

² Photos of select award entries in the 2010 Sign Competition by the International Sign Association (Alexandria, VA)

If you have additional questions about business signs, please contact the Department of Community Development at 269-329-4477

Frequently Asked Questions Regarding Signs

1. *What type of sign requires a sign permit?*

Sign permits are required to ensure that signs situated on business-zoned property meet applicable city codes. This ensures fairness and consistency for all businesses. A sign is defined in the Zoning Code, as are the rules for various freestanding signs and wall signs that are permitted. A permit is required for new signs and alterations or changes to existing signs on business-zoned property and for some temporary signs.

2. *Are there business signs that do not require a sign permit?*

- Signs that do not require a sign permit (and must meet location, size and duration of display requirements) include: real estate signs, election campaign signs, construction signs, holiday decorations, and household goods signs (e.g., garage/yard sale). Signs inside a building do not require a sign permit.
- Interior window displays and advertising on the inside of a building window glass are not regulated by the Zoning Code, and provide added business advertising options.

3. *How much does a sign permit cost?*

Fees are annually established by City Council. The current fee for a sign permit is: \$110 for a wall sign permit application; \$110 for a freestanding sign permit application; and \$55 for a temporary sign or a directional sign permit application.

4. *What kinds of temporary signs are permitted to promote my business?*

Businesses can promote special events and sales by using an electronic message display (EMD) or changeable copy sign display. These types of signs can be incorporated into or added to a freestanding sign, for example. In addition, a temporary wall sign or a freestanding sign is permitted for business grand openings, change of business or going out of business events and must meet location, size and duration of display requirements.

5. *How many freestanding signs and wall signs can a business use?*

- For freestanding signs on the property, the number and size permitted is dependent on the business zone where the property is located, the amount of frontage on the street and the number of business uses or tenants on the property.
- For wall signs on the building, the number and size permitted is dependent on the business zone where the property is located, and the wall area of the building where the business is located (*building width x building height*).
- Also, additional freestanding signs and wall signs are permitted for a business-zoned property that has frontage on more than one street, such as a corner property.

6. *What is a "legal nonconforming sign" and can changes be made to the sign?*

A sign is a "legal nonconforming sign" if it does not fulfill the sign requirements in the Zoning Code, but did comply with the sign requirements when it was placed on the business-zoned property. Changes are allowed in the following instances:

- The sign face may be changed after an "Agreement to Remove Nonconforming Sign" is completed by the sign owner, property owner and the City of Portage.
- The sign may be changed after an application for a variance is requested and approved by the City of Portage Zoning Board of Appeals. A variance may be authorized if the Zoning Code provisions for a variance are met.

SUMMARY OF SIGN REGULATIONS APPLICABLE TO BUSINESSES

ZONING DISTRICT	FREESTANDING SIGNS ¹	WALL SIGNS ¹
<p>OS-1, Office Service</p> <p>and</p> <p>OTR, Office, Technology Research</p> <p>and</p> <p>B-1, Local Business</p>	<p><u>Sign(s) per business-zoned property (zoning lot):</u></p> <ul style="list-style-type: none"> ▪ One (with additional sign for a zoning lot with more than 300 ft. of street frontage) ▪ In an OTR district, 1 additional sign is permitted for each vehicular entrance <p><u>Sign Area:</u></p> <ul style="list-style-type: none"> ▪ 32 sq. ft. minimum to 50 sq. ft. maximum, with area based on street frontage ▪ May be increased up to 50% for multiple use zoning lots, or from 48 sq. ft. to 75 sq. ft. <p><u>Sign Setback / Height:</u> 10 ft. from all property lines, 15 ft. next to one-family residential / 15 ft. high</p>	<p><u>Sign(s) per business-zoned property (zoning lot):</u> One or more wall signs permitted per business use</p> <p><u>Sign Area:</u></p> <ul style="list-style-type: none"> ▪ 15% of the wall area per street frontage, up to 100 sq. ft. ▪ If no freestanding sign, wall sign area may be increased by 33% per street frontage <p><u>Sign Setback / Height:</u> NA</p>
<p>B-2, Community Business</p> <p>and</p> <p>B-3, General Business</p> <p>and</p> <p>CPD, Commercial Planned Development</p>	<p><u>Sign(s) per business-zoned property (zoning lot):</u></p> <ul style="list-style-type: none"> ▪ One, with an additional sign for a: <ul style="list-style-type: none"> - zoning lot with more than 320 ft. of street frontage - zoning lot that is on a street corner, or - zoning lot with frontage on more than one street <p><u>Sign Area:</u></p> <ul style="list-style-type: none"> ▪ 50 sq. ft. minimum to 120 sq. ft. maximum, with area based on street frontage ▪ May be increased up to 50% for multiple use zoning lots, or from 75 sq. ft. to 180 sq. ft. ▪ For corner lot, if only one sign, area may be increased 100% up to a maximum of 120 sq. ft. <p><u>Sign Setback / Height:</u> 10 ft. from all property lines / 25 ft. high</p>	<p><u>Sign(s) per business-zoned property (zoning lot):</u> One or more wall signs permitted per business use</p> <p><u>Sign Area:</u></p> <ul style="list-style-type: none"> ▪ 15% of the wall area per street frontage, up to 100 sq. ft. ▪ May be increased, up to an additional 125 sq. ft. for buildings with at least 200 ft. of lineal wall frontage. ▪ Area may be further increased, up to an additional 125 sq. ft. for buildings with 200 ft. of lineal wall frontage <u>and</u> a building setback of 300 ft. or greater ▪ If no freestanding sign, wall sign area may be increased by 33% per street frontage <p><u>Sign Setback / Height:</u> NA</p>
<p>PD, Planned Development</p>	<p><u>Sign(s) per business-zone property (zoning lot):</u> One (with additional sign for a zoning lot with more than 300 ft. of street frontage)</p> <p><u>Sign Area:</u></p> <ul style="list-style-type: none"> ▪ Up to 50 sq. ft. ▪ May be increased up to 50% for multiple use zoning lots, or up to 75 sq. ft. <p><u>Sign Setback / Height:</u> 10 ft. from all property lines, which increases based on sign area, when abutting one-family zones / 15 ft. high</p>	<p><u>Sign(s) per business-zoned property (zoning lot):</u> One or more wall signs permitted per business use</p> <p><u>Sign Area:</u></p> <ul style="list-style-type: none"> ▪ 15% of the wall area per street frontage, up to 100 sq. ft. ▪ If no freestanding sign, wall sign area may be increased by 33% per street frontage <p><u>Sign Setback / Height:</u> NA</p>

¹ Electronic Message Displays (EMD): These signs may be stationary/permanent freestanding signs or wall signs, (and electronically or mechanically changed) and are permitted in zoning districts per the provisions in the Zoning Code. For example, EMD sign messages must be static (limited motion/movement) and may change not more than once per four seconds. To protect neighborhoods, the EMD message may not change between 10 p.m. and 7 a.m., when the EMD sign is located 200 feet from a residential zoning district and use.

If you have additional questions about business signs, please contact the Department of Community Development at 269-329-4477

TEMPORARY AND OTHER SIGNS ALLOWED IN BUSINESS ZONING DISTRICTS

- Copy Board Sign: An additional 15 square foot changeable letter/panel sign may be added to any freestanding sign including a legal, nonconforming sign in any zoning district (except on new EMD signs erected since October 2007)
- Banner Sign: One 20 square foot banner sign per business-zoned property to identify business with additional banner permitted for each 2 acres of zoning lot subject to location requirements (B-2, B-3, CPD zoning districts only)
- Directional Sign: Up to 4 square feet in area (no limit on the number of directional signs)
- Grand Opening, Change of Business, or Going out of Business Sign:
 - One 40 square foot sign per business use on a business-zoned property for 14 days (with an additional 30-days if permanent sign not available, or other important reason)
 - Flags, banners, balloons, etc. may be used in lieu of, or in combination, up to the maximum 40 square foot sign area
- Development Sign: One, 64 square foot sign per development on the property may be displayed during active development for a period of up to 2 years
- Real estate Sign: One, 64 square foot sign per building or property, while the building or property is on the market for sale/rent/lease and 30 days thereafter (No permit required)
- Holiday Decorations: Decorations associated with a national, state, local or religious holidays may be displayed for not more than 10 days [except decorations may be displayed from the day after Thanksgiving to January 2nd] (No permit required)
- Public (noncommercial service) Event Sign:
 - One, 64 square foot sign for a property and for each street where the property has frontage on the street with an additional 64 square foot sign for each 2 acres of property (zoning lot)
 - The public event sign may be displayed 7 days before and 2 days after event
- 20 square foot Public Event Banner Sign: A banner may be mounted on a municipal pole on public property/right-of-way for up to 60 days per calendar year with the approval of a permit from the City of Portage to use the municipal pole

The Department of Community Development is available and happy to assist businesses, property owners, and sign companies with verifying the number, size and location of permitted signs.

Thank you and please call on us for assistance!

DRAFT

**ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN
BY AMENDING SECTION 42-542 OF CHAPTER 42, LAND DEVELOPMENT REGULATIONS**

THE CITY OF PORTAGE ORDAINS:

That Section 42-542 of Chapter 42, Land Development Regulations, is hereby amended as follows:

Section 42-542. General requirements.

A. No new sign shall be erected and no existing sign shall be changed, structurally altered or relocated except in conformity with the provisions of this chapter.

1. A new sign shall require a permit from the director of community development except when a sign permitted by this chapter is expressly stated to not require a permit.
2. Any change, structural alteration or relocation of an existing sign shall require a permit from the director of community development subject to the following exceptions:
 - a. A sign permitted by this chapter is expressly stated to not require a permit;
 - b. A sign face on an existing, freestanding sign that is located on a zoning lot with multiple business uses and which freestanding sign and sign face are in conformance with this chapter may be changed so long as the:
 - i. sign measurements of the freestanding sign are not changed or structurally altered; and the
 - ii. sign measurements of the sign face are not changed or structurally altered.

B. Sign measurements (no change)

Section 42-548. PD, planned development district.

F. For each zoning lot, there is permitted one banner. For a lot with frontage on more than one street, one banner is permitted for each street frontage. For each zoning lot that exceeds two acres in area, an additional banner is permitted for each two acres. All banners shall be subject to the following conditions:

1. The banner shall be setback ten feet from any property line.
2. The banner shall not exceed 25 feet in height.
3. The banner shall be not less than six feet from the surface of the ground.
4. The banner shall not exceed 20 square feet in area per side.
5. The banner shall not be attached to the surface of any building, to any existing freestanding sign or to any vehicle, or be stretched between poles or trees.
6. The banner shall not devote more than ~~a total of 10 square feet~~ **50 percent of the total area per side** to sign copy.
7. The owner of the zoning lot or banner shall keep the banner in reasonable repair.

- G. (former F.)
- H. (former G.)

42-551. B-1, local business district.

C. For each zoning lot, there is permitted one banner. For a lot with frontage on more than one street, one banner is permitted for each street frontage. For each zoning lot that exceeds two acres in area, an additional banner is permitted for each two acres. All banners shall be subject to the following conditions:

1. The banner shall be setback ten feet from any property line.
2. The banner shall not exceed 25 feet in height.
3. The banner shall be not less than six feet from the surface of the ground.
4. The banner shall not exceed 20 square feet in area per side.
5. The banner shall not be attached to the surface of any building, to any existing freestanding sign or to any vehicle, or be stretched between poles or trees.
6. The banner shall not devote more than ~~a total of 10 square feet~~ 50 percent of the total area per side to sign copy.
7. The owner of the zoning lot or banner shall keep the banner in reasonable repair.

Section 42-552. B-2, community business; B-3, general business; and CPD, commercial planned development districts.

J. For each zoning lot, there is permitted one banner. For a lot with frontage on more than one street, one banner is permitted for each street frontage. For each zoning lot that exceeds two acres in area, an additional banner is permitted for each two acres. All banners shall be subject to the following conditions:

1. The banner shall be setback ten feet from any property line.
2. (no change)
3. (no change)
4. (no change)
5. (no change)
6. The banner shall not devote more than ~~a total of 10 square feet~~ 50 percent of the total area per side to sign copy.
7. (no change)

Mayor Pro Tem Sackley cited other facilities in the community that could be used for meetings and indicated that City Hall should not be in competition with them. He said that the use of the facility by any elected official outside working hours, where there is additional cost, the elected official should be advised that there is a cost. He said that if the elected official has an office in the community, he or she should use his or her own facility, but under no circumstances should the official be charged as it is inappropriate. Discussion followed.

Motion by Randall to have the Customer Service Committee look into creating an Administrative Order that would open up the use of City Hall by elected officials (with day time being exempt) and to possibly look into reimbursement for weekends and after hours for cost incurred. Mayor Strazdas asked City Attorney Brown whether the motion was construed narrowly enough and Mr. Brown answered in the affirmative, but the Committee would be creating a "Council Policy" or directing the Administration to devise an "Administrative Order," and Councilmember Randall indicated her preference for a Council Policy. The motion was then seconded by Councilmember Reid.

Councilmember Reid asked that the Committee consider how scheduling would be handled. Mayor Pro Tem Sackley asked that the Committee consider or discuss reimbursement for weekends and after hours for cost for elected officials outside campaign times, not that there has to be a charge schedule. Upon a roll call vote, motion carried 7 to 0.

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

Portage Board of Education Regular Business of February 21 and Special Meeting and Committee of the Whole Work Session of March 7, 2011.

Portage Historic District Commission of March 2, 2011.

Portage Park Board of March 2, 2011.

Portage Planning Commission of March 17 and March 28, 2011.

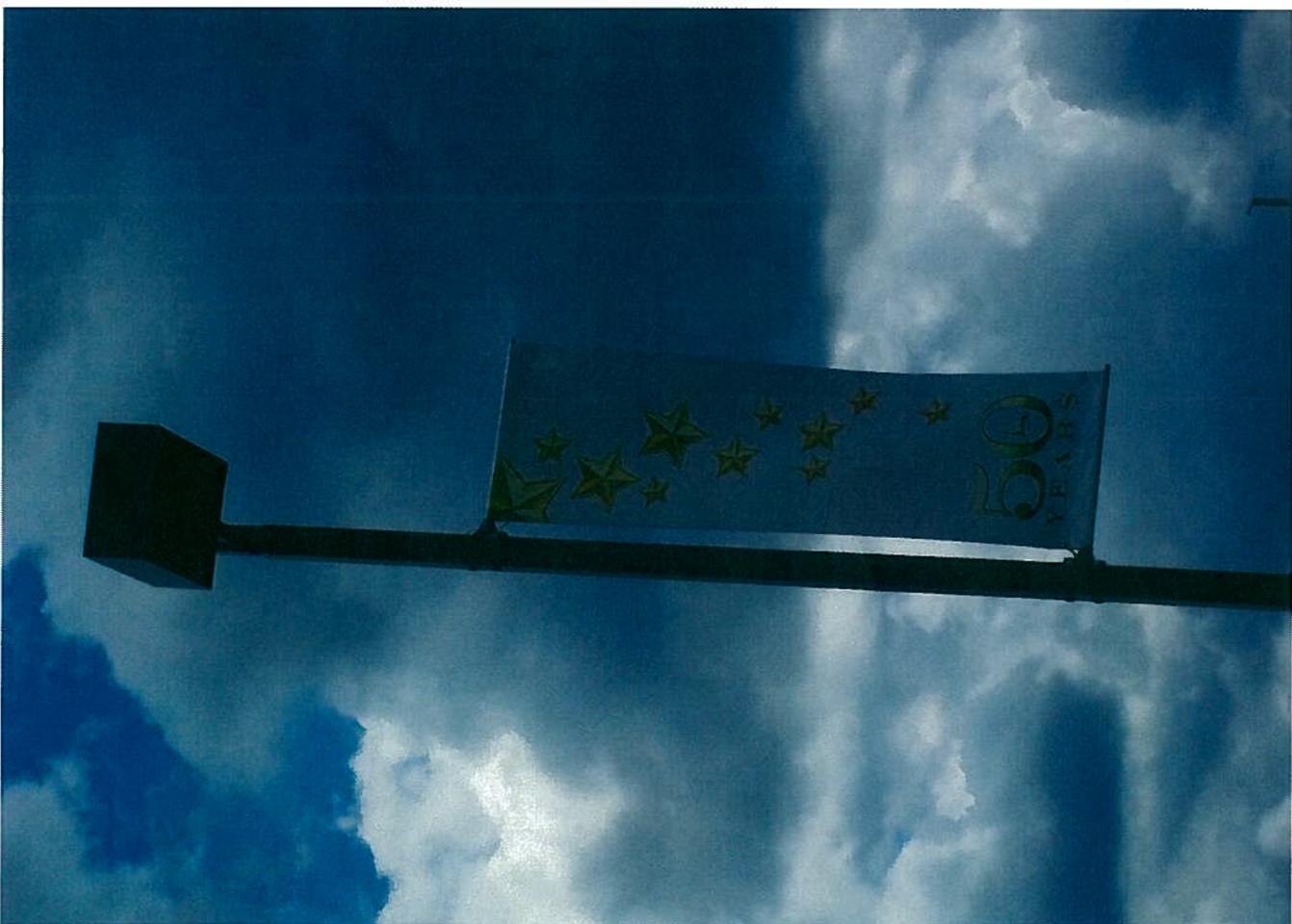
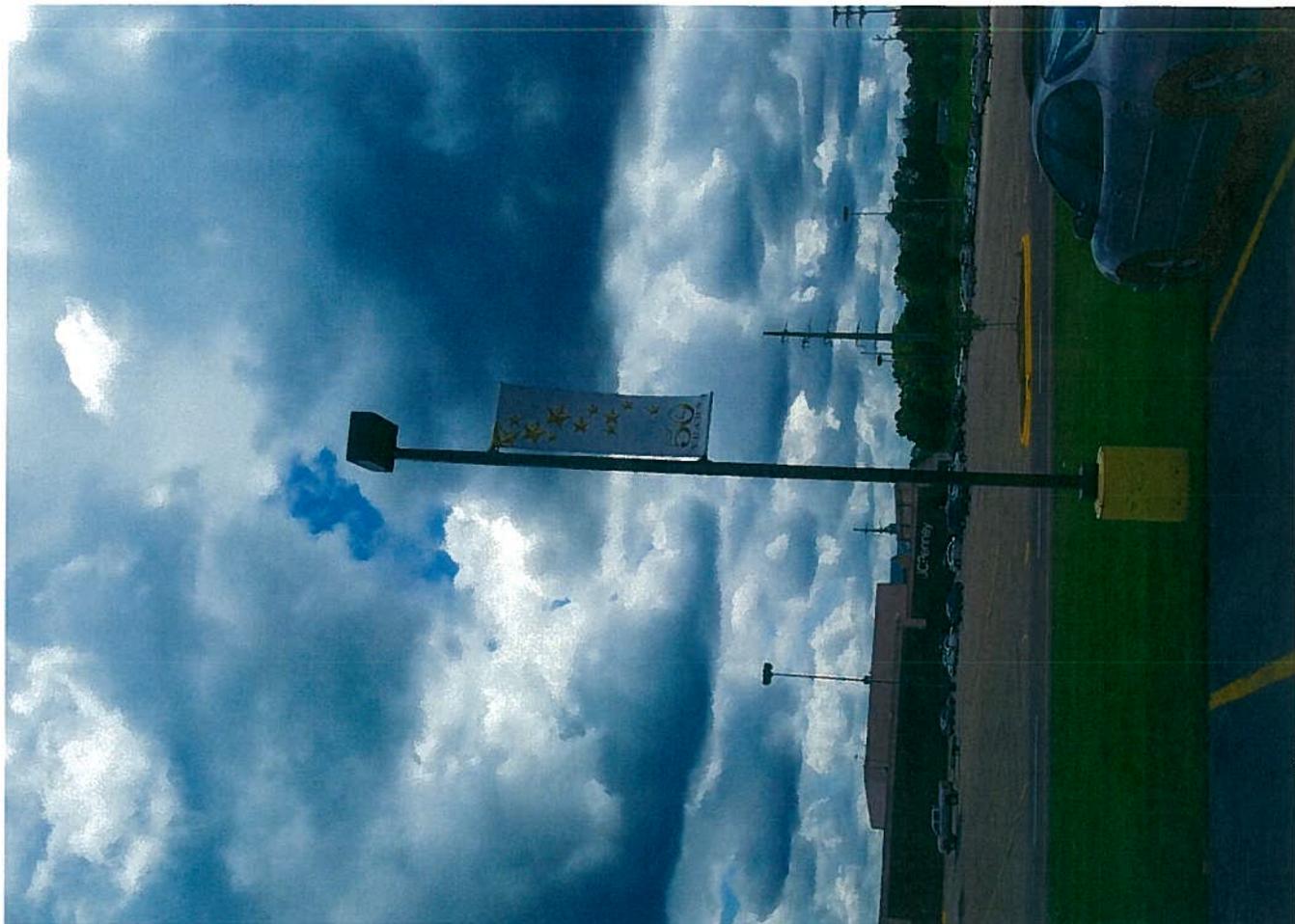
AD HOC COMMITTEE REPORTS:

CITY COUNCIL AD HOC SIGN COMMITTEE BUSINESS SIGN INFORMATION:

At the request of Councilmember Urban, Councilmember Campbell indicated that permit requirements on multitenant buildings to accommodate changes more easily needs further review and Councilmember Reid referred to a request to make the language in the sign ordinance more easily understood by local business owners and she referred to the new chart enclosed in the Agenda Packet. Councilmember Urban reviewed the suggested banner ordinance amendment and explained the reasoning behind the proposed changes. Discussion followed. Motion by Urban, seconded by Reid, to receive the information from the Ad Hoc Sign Committee and refer the proposed business banner sign language to the Planning Commission for consideration and to initiate the Zoning Code amendment process. Upon a roll call vote, motion carried 7 to 0.

COMMUNITY SURVEY COMMITTEE: Councilmember Reid reviewed the plan by the Survey Committee to seek approval of the contract with the Kercher Center to phrase the questions to get the information needed and to present the overview of the questions anticipated, the questions that were dropped, the questions that were modified and the questions that were added and to obtain input from the City Council and Western Michigan University Kercher Center for the contract. Discussion followed.





MATERIALS TRANSMITTED

CITY OF PORTAGE

COMMUNICATION

TO: Honorable Mayor and City Council

DATE: May 18, 2011

FROM: Maurice S. Evans, City Manager



SUBJECT: April 2011 Summary Environmental Activity Report – Information Only

Attached please find the April 2011 Summary Environmental Activity Report from the Department of Transportation & Utilities Director, W. Christopher Barnes. New material, or material of specific interest to City Council is presented in italics.

These items serve to update the Council on environmental affairs.

c: W. Christopher Barnes, Director of Transportation & Utilities
Planning Commission
Portage Environmental Board

CITY OF PORTAGE

COMMUNICATION

TO: Maurice S. Evans, City Manager

DATE: May 13, 2011

RECEIVED

FROM: W. Christopher Barnes, Director of Transportation & Utilities



MAY 13 2011

SUBJECT: April 2011 Environmental Activity Report – Information Only

CITY MANAGER'S OFFICE
PORTAGE, MI

In keeping with goals and objectives adopted by the Council emphasizing the need to enhance environmental quality and protect natural resources, the following information is intended to keep the Council, Planning Commission and Environmental Board apprised of current environmental issues.

Important environmental issues being monitored and coordinated by the Administration are attached. The Summary Environmental Activity Report will continue to be provided on a monthly basis to the Council, Planning Commission and Environmental Board.

Attachment

SUMMARY ENVIRONMENTAL ACTIVITY REPORT

April 2011 (*updates in italics*)

<u>Project/Activity</u>	<u>Description</u>	<u>Status</u>
Portage City Landfill	Ongoing groundwater monitoring of former municipal landfill.	-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 completed in April 2010. Annual report submitted to MDNRE in June 2010. General groundwater quality continues to improve, but site will require monitoring for the foreseeable future. 2011 sampling completed in March. Sample analysis underway.
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.	-Coordination with property owners and City or State agencies ongoing. <i>-Review of 3 site/building plans and/or plats completed in April 2011.</i>
Sewer Connection Program	Groundwater protection program requiring residential/business hookup to the sanitary sewer where available.	<i>-Sanitary sewer hookup permits issued in March 2011: 1 commercial and 2 residential. Three properties have court appearances scheduled in response to non-compliance.</i>
West Lake Management Program	Special assessment district designed to maintain/improve lake conditions.	-Five Year Lake Management Assessment District process was approved by City Council on March 23, 2010. 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. The 2009/2010 lake treatments are complete. The 2011 lake survey and treatment preparations are under way.
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. The 2010 year report received in January 2011. The 2010 results

show declining groundwater levels throughout the city. Declining levels range from 6" to 3' - 0". Surface storm water outfall sampling shows stable results. Next monitoring will occur in June 2011.

-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. Staff has met internally to discuss the future needs to update the plan. Plan implementation is ongoing.

-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.

-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. Staff completed an updated SWIPPI submittal to MDNRE. SWIPPI was submitted for MDNRE approval on June 25, 2010. Permit implementation is ongoing. Received a notice MDNRE rescinding the 2008 permit due to a recent court case ruling. MDNRE reinstated the 2003 permit for implementation. Information on new permit requirement was received February 2011. MDNRE expected to issue new permit in 2012. City staff presented public information with other local agencies at the 2011 Home Expo on March 9 - 12, 2011. Implementation is ongoing.

-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

Development of program to protect City well fields and surrounding area from contamination resulting from improper land use.

Monitoring and analysis of groundwater at the new Oakland Drive Leaf Compost site.

Five year plan to implement the current NPDES stormwater permit.

Kalamazoo River Mainstem Watershed Management Plan

Wellhead Protection Program (WHPP)

Leaf Compost Monitoring Program

National Pollution Discharge Elimination System (NPDES) permit implementation

National Pollution Discharge Elimination System (NPDES) permit implementation

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. No update on application status.

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. Interest has been raised by local conservation groups to update the current Watershed Plan using grant funds. *Meeting scheduled for May 9, 2011 among stakeholders.*

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 groundwater.

-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, 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. *Staff conducted a tour of the facility on April 27, 2011 to the local Chapter of the National Society of Professional Engineers.*

**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 April 2011 – 0. No investigations and none requiring emergency cleanup. Emergency spill response contract for 2011-13 with Terra Contracting is in place.

**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 December 2010. Current sampling continued to show a slight decline in the groundwater table. *Sampling will continue through the spring/summer months as staff time permits.**

**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. Met with MDNRE staff to determine feasible method to lower water levels. Association currently working with MDNRE permit staff on February 26, 2010 to clarify permit requirements. Lower groundwater table

elevation has reduced the concerns from the Condominium Association. Conference call with MDNRE held on December 8, 2010 to discuss permit submission updates. Condo Association discussing project with other property owners for support. Association submitted a letter to City Administration asking that the city consider the Wetland Water Level Regulation a municipal project. *On March 22, 2011, city staff response recommending the Association consider governmental lake board.*

**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.

t:\t & u monthly reportstenvrpt 2011.doc

CITY COUNCIL MEETING MINUTES FROM MAY 10, 2011

The Regular Meeting was called to order by Mayor Strazdas at 7:35 p.m.

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

Mayor Strazdas asked Councilmember Urban to give the invocation and Eagle Scout Elliot Klose led the City Council and the audience in the recitation of the Pledge of Allegiance.

APPROVAL OF MINUTES: Motion by Reid, seconded by Campbell, to approve the April 26, 2011 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0.

* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember Urban to read the Consent Agenda. Councilmember Campbell asked that item F.2, Rezoning Application #10-01, Portage Road and Fairlane Avenue, be removed from the Consent Agenda and Mayor Pro Tem Sackley asked that Item F.7, Proposal to Enter into a Lease for Use of City Hall Property, 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 7 to 0.

* **APPROVAL OF CHECK REGISTER OF MAY 10, 2011:** Motion by Reid, seconded by Campbell, to approve the Check Register of May 10, 2011. Upon a roll call vote, motion carried 7 to 0.

PUBLIC HEARINGS:

PUBLIC ACT 5 OF 1982 (TRUTH IN TAXATION): Mayor Strazdas opened the public hearing and City Manager Maurice Evans stated that this item is the action on the tax levy and the actual public hearing on the budget, and that no final action would be taken since the budget will be adopted at the May 24, 2011 Regular City Council Meeting. He indicated that the 2011-2012 Budget is slightly over \$60 million and is reflective of the guidance by the City Council at the annual retreat in November 2010 and takes into account the information provided by the Administration to City Council at the retreat. He indicated that this budget allows the city to meet its financial challenges in a responsible manner; that the budget is balanced and core services are being maintained at current levels, and he named a few: Police and Fire, Street Maintenance, Snow Removal, Water and Sewer Services, Parks and Recreation Programs and the Capital Improvement Program Projects. He reflected that the Administration did a trend analysis and that there is a continuation of reduction in revenue streams with a 2.9% reduction in property tax revenue, a decrease in Act 51 funds and lower state revenue sharing.

Mr. Evans pointed out that the 10.8916 millage rate is reflective of a 0.15 mill increase to accommodate curbside recycling and leaf pick-up funding needs and a 13% fund balance as prescribed by City Council. He also indicated that under the new program outlined by Governor Snyder, the City of Portage would be competing for revenue sharing with other cities, and that the City of Portage continues to remain in the lower 25 percent of all Michigan cities of greater than 25,000 in population in terms of millage level. He outlined the recent trend analysis that was shared with City Council and taken into account when determining the budget, and the Administration continues to take additional reductions. As a result of these factors, he pointed that the City will need to continue to reduce operating costs. Discussion followed.

James Pearson, 3004 East Shore Drive, expressed his appreciation for the responsiveness of the Administration during the Special Meetings for Budget presentation which he cited as a very positive process, praised staff, City Manager Evans and City Council for their hard work and cited some of the cost-cutting measures found in the Budget. When he asked about the 9% increase in sewer rates and the 12% increase in water rates, he was asked to wait for the explanation as found in Item D.2, 2011 Utility Rate Financial Study. When he asked about competitive bidding and the 32% increase in the curbside recycling cost, Finance Director Daniel Foecking responded that the contract was bid, and that it is in its third year where there was an escalation clause built into the contract that was there from the beginning. Discussion followed.

Ken Nunn, 9878 Arabian Drive, indicated that he had moved to Portage from California and asked for an explanation of Spring Clean-up and expressed an interest in having each individual homeowner do his or her own clean-up effort as the “gleaners” and “flea marketers,” “metal collectors” who comb the neighborhoods on “pick-up” day annoy him and asked City Council to reconsider the program. Mayor Strazdas pointed out that this program was a result of an election and the vote was in favor of both a Recycling Program and a Spring Clean-up Program. He commented that where such programs do not exist, citizens let the material pile up which creates an undesirable situation. Councilmember Urban pointed out that this is a separate millage from the Charter that was approved by the voters; therefore the City is constrained to levy the millage and provide the service and offered the City of Kalamazoo as a comparison where monthly clean-up of large items is an adjunct to weekly recycling. Discussion followed.

David McGavin, 611 South Shore Drive, expressed his misgivings and misconceptions regarding the 2011 Proposed Budget, praised the Administration for reducing staff, consolidating departments, reducing the plantings in the Spring and cutting city-sponsored events in an effort to save money. Mayor Pro Tem Sackley asked him to provide his information and figures to the Administration regarding his misunderstanding of budget figures to allow the City Manager to respond to his questions regarding: a new information system for \$137,000; Cable TV funding up 33%; \$200,000 extra for Cable Access; a bikeway and park trails for an additional expenditure of \$100,000; the need to reduce the number of the ten-year old vehicles and the 1997 City Hall van parked overnight in the City Hall parking lot that are utilized by staff in their daily duties; the purchase of the new vehicle on the agenda to replace the one lost in an accident where a citizen crashed into one of the ten-year old city cars; that the City Assessor spent \$250,000 for an outside consultant; the increase in the millage rate will only generate \$315,000; that since 2003 the city has increased its revenues from taxes and fees for services by 30% with an increase in population of only 5% since 2000; that there are other options instead of an 11% increase for water and sewer; an alternative to increasing the taxes by 1.5%; that in this city unemployment has doubled in the last 7 to 10 years with 8% of people in Portage unemployed; and, that the 13% fund balance should be reduced to 10%. Mr. Foecking responded and discussion followed.

Motion by Reid, seconded by Campbell, to close the public hearing. Upon a voice vote, motion carried 7 to 0. Discussion followed.

Motion by Urban, seconded by Sackley, to adopt the Resolution to establish a millage rate not-to-exceed 0.1604 mills above the base tax rate as defined by the State of Michigan Public Act 5 of 1982. Upon a roll call vote, motion carried 6 to 1. Yeas: Councilmembers Bailes, Campbell, Reid and Urban, Mayor Pro Tem Sackley and Mayor Strazdas. No: Councilmember Randall. Resolution recorded on page 203 of City of Portage Resolution Book No. 44.

2011 UTILITY RATE FINANCIAL STUDY: At the request of Mayor Strazdas, City Manager Evans introduced Transportation & Utilities Director Chris Barnes and recognized Utilities Engineer Kendra Gwin. Mr. Barnes discussed the findings and recommendations of the 2011 Utility Rate Financial Study and reviewed the communication from City Manager Maurice Evans dated May 3, 2011, found in the City Council Agenda Packet using pie graphs and bar graphs as illustrations.

Mr. Barnes answered questions and concerns of Mayor Strazdas and City Council. Discussion followed. As Chair of the Utility Rate Committee consisting of Jeffrey Breneman and Former Mayor Pro Tem Ted W. Vliek, Sr., as citizens at large, Councilmembers Randall and Bailes and himself, Mayor Pro Tem Sackley provided a review of their activity and analysis. He indicated that the City of Portage contracted Utility Financial Solutions, LLC, to assist in the goal of getting to the readiness charge which is whether a household uses a drop of water or water all of the time, there is a fixed cost all of the time based on the size of the meter to have the utility system available throughout the city. He indicated that the Committee was unanimous in its findings and explained. Discussion followed.

Mayor Strazdas asked for comment from the public. There being no further comment, motion by Urban, seconded by Reid, to close the public hearing. Upon a voice vote, motion carried 7 to 0. Discussion followed.

Motion by Sackley, seconded by Urban, to adopt the 2011 sewer and water rate Resolutions establishing sewer and water rates, sewer and water franchise area fees and service fees and charges as outlined in the 2011 Utility Rate Financial Study and as recommended by the Administration and the City Council Water and Sewer Rate Study Committee. Discussion followed. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on pages 205 and 209 of City of Portage Resolution Book No. 44.

PETITIONS AND STATEMENTS OF CITIZENS: Charles Pasko, 5526 Meredith Street, issued a complaint against a contractor who left junk items and a mess along the creek in his back yard and asked for a remedy. City Manager Evans offered to follow-up and provide a report of the details to City Council for consideration. Discussion followed. He asked when can his property be reassessed and Mr. Evans said that can be done at anytime and offered an outline of his option from the City Assessor. Discussion followed.

James Pearson, 3004 East Shore Drive, expressed his appreciation to City Council for the follow-up information regarding posting of committee and subcommittee meetings on the City of Portage website. Discussion followed.

REPORTS FROM THE ADMINISTRATION:

*** COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

RECOMMENDATION: Motion by Reid, seconded by Campbell, to approve the Community Development Block Grant (CDBG) Program FY 2011-15 Consolidated Plan and FY 2011-12 Annual Action Plan; authorize the City Manager to execute and submit the documents to the Department of Housing and Urban Development; and accept as information the Analysis of Impediments to Fair Housing. Upon a roll call vote, motion carried 7 to 0.

REZONING APPLICATION #10-01, PORTAGE ROAD AND FAIRLANE AVENUE: Councilmember Campbell recused herself as one of the buildings to be considered for rezoning is owned by her employer. After a discussion on the proposed motion, motion by Sackley, seconded by Urban, to accept Rezoning Application #10-01 for first reading and set a public hearing for June 14, 2011, at 7:30 p.m. or as soon thereafter as may be heard; and subsequent to the public hearing, consider approving Rezoning Application #10-01 and rezone the seven parcels/lots from I-1, light industry and R-1C, one family residential, to OS-1, office service. Upon a roll call vote, motion carried 7 to 0. Councilmember Campbell returned.

*** TRADE CENTRE WAY RELOCATION PROJECT #997-R:** Motion by Reid, seconded by Campbell, to adopt Resolution No. 2 for the Trade Centre Way Relocation Project #997-R, setting a public hearing of necessity on May 24, 2011, at 7:30 p.m. or as soon thereafter as may be heard. Upon a

roll call vote, motion carried 7 to 0. Resolution recorded on page 213 of City of Portage Resolution Book No. 44.

* **FISCAL YEAR 2011-12 PROPOSED PARK BUDGET REDUCTIONS:** Motion by Reid, seconded by Campbell, to maintain the proposed park-related budget reductions in the 2011-12 fiscal year as modified in the report from Parks and Recreation Director William M. Deming dated April 29, 2011. Upon a roll call vote, motion carried 7 to 0.

* **ELECTRONIC POLL BOOK HARDWARE GRANT AGREEMENT:** Motion by Reid, seconded by Campbell, to approve a grant agreement with the Michigan Department of State for the purchase of laptop computers and accessories to support the implementation of Electronic Poll Books in the City of Portage voting precincts, and to authorize the City Manager to sign the agreement and all other documents related to this grant program on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

* **TRANSFER OWNERSHIP OF THE ESCROWED 2010 RESORT CLASS C LICENSE, ISSUED UNDER MCL 436.1531(4), MINIMUM SEATING 100, LOCATED AT 5341 SOUTH WESTNEDGE AVENUE (BENNIGAN'S):** Motion by Reid, seconded by Campbell, to grant the request to transfer ownership of the escrowed 2010 Resort Class C license, issued under MCL 436.1531(4), minimum seating 100, located at 5341 South Westnedge Avenue, Portage, MI 49002, Kalamazoo County, from Quick Casual Corporation (Bennigan's) to OC of Michigan, Inc. (Old Chicago). Resolution recorded on page 219 of City of Portage Resolution Book No. 44.

PROPOSAL TO ENTER INTO A LEASE FOR USE OF CITY HALL PROPERTY: Mayor Pro Tem Sackley reviewed the letter from American Village Builders (AVB), 4200 West Centre Avenue, dated May 2, 2011, to Property Manager Bill Deming from Greg Dobson of AVB. Mr. Dobson requested a Proposal to Lease a segment of the City Hall parking lot area for the placement of a pad for an Automatic Teller Machine (ATM) to be owned by Lake Michigan Credit Union and related traffic cue area. Mayor Pro Tem Sackley expressed his opposition to the use of city property, public property, for commercial use notwithstanding the use of leasing water towers for cell phone antennas, as he viewed this as distinguishable. He expressed the need to review this matter as a Committee of the Whole rather than refer it to the Property Committee as it is a huge change, unusual and extraordinary and it would be unfair to give it to a three-member City Council Committee. He even mentioned that the Planning Commission and Zoning Board of Appeals should weigh in on the discussion as well. He insisted that his comments are not against American Village Builders, Lake Michigan Credit Union or the Administration and pointed out that the parking lot was not pedestrian or traffic friendly. Discussion followed. Mayor Pro Tem Sackley cited some of the ATM's in the area and Councilmember Urban concurred.

Motion by Urban, seconded by Sackley, to receive the correspondence from American Village Builders LLC. Councilmember Campbell expressed her support of the motion, indicated that this is a security issue and she pointed out that there are seventeen ATM's within 2.5 miles of City Hall just going down Centre Avenue without considering Shaver Road or South Westnedge Avenue, all at private businesses. Mayor Strazdas concurred and indicated that it was inappropriate and not the same as co-locating antennas on water towers. Councilmember Bailes concurred. Councilmember Reid concurred and indicated that the City would be favoring one business over another and distinguished this request from the livery operation at Bicentennial Park. Discussion followed. Upon a roll call vote, motion carried 7 to 0.

* **CLOSED SESSION:** Motion by Reid, seconded by Campbell, to hold a closed session immediately following the Regular City Council Meeting of May 10, 2011, to discuss an attorney/client communication. Upon a roll call vote, motion carried 7 to 0.

* **POSTING OF CITY COUNCIL COMMITTEE MEETINGS – INFORMATION ONLY:** Motion by Reid, seconded by Campbell, to receive the communication from the City Manager regarding the posting of City Council Committee Meetings as information only. Upon a roll call vote, motion carried 7 to 0.

COMMUNICATION:

PRESENTATION BY HISTORIC DISTRICT COMMISSION CHAIRPERSON MARK REILE: City Council received the Presentation by Historic District Commission Chairperson Mark Reile as information only.

MINUTES OF BOARDS AND COMMISSIONS: City Council received the minutes of the following Boards and Commissions:

Portage Historic District Commission of April 6, 2011.
Portage Park Board of April 6, 2011.
Portage Human Services Board of April 11, 2011.
Portage Planning Commission of April 21, 2011.

AD HOC COMMITTEE REPORTS:

2011 COMMUNITY SURVEY: Mayor Strazdas indicated that the Community Survey Committee consists of Councilmembers Reid and Urban and himself, and Councilmember Reid provided some background information on the Portage Community Survey and an analysis of the goals of the survey instrument. Mayor Strazdas asked for assurances that the City Councilmembers could submit questions and concerns upon the approval of the contract. Discussion followed. Motion by Reid, seconded by Urban, to award a contract to the Kercher Center for Social Research at Western Michigan University in the amount of \$10,019 to conduct the 2011 Portage Community Survey and authorize the City Manager to execute all related documents. Discussion followed. Upon a roll call vote, motion carried 7 to 0.

APPROVAL OF REVISED INVESTMENT POLICY: Mayor Strazdas explained the reasons behind the impetus to revise the Investment Policy at this time and complimented the Committee for their work and offered special thanks to Jan Sackley and Councilmember Campbell for their service in this matter. Motion by Sackley, seconded by Reid, to receive the communication from the City Council Investment Committee and approve the revised Investment Policy as recommended by the Investment Committee and City Administration. Upon a roll call vote, motion carried 7 to 0.

CITY COUNCIL CUSTOMER SERVICE COMMITTEE: City Council received the Presentation by Councilmember Elizabeth Campbell regarding the recent activity of the City Council Customer Service Committee.

CITY COUNCIL BUSINESS AND THE CITY OF PORTAGE COMMITTEE: City Council received the Presentation by Councilmember Claudette Reid regarding the recent activity of the City Council Business and the City of Portage Committee.

NEW BUSINESS:

* **APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS:** Motion by Reid, seconded by Campbell, to appoint Elaine Abee, Eric Alden, Renee Beranek, Taylor Bruinwood, Catherine Cartier, Matthew Cartier, Sujay Dewan, Ali Fulling, Kyle Huitt, Kitu Komya, Madelyn Krenselewski, Abhiram Krishnan, Kelcie McGowan, Kasia Mietusiewicz, Humza Mirza, Brittany Muraoka, Sarah Perry, Nate Rajpoot, Avery Roper Beebe, Genevieve Sertic, Carly Siko, Nolan Stoffer, Reinie Thomas, Tucker Webb, Chelsea Williams, Tori Wilson and Lai Zhexuan with terms ending June 30, 2012, to the Youth Advisory Committee pending a Resolution to be presented at the next Regular City Council Meeting to increase membership; to appoint Sarah Perry with term ending June 30, 2012, as Youth Participant to the Environmental Board; to reappoint Kyle Huitt with term ending June 30, 2012, as Youth Participant to the Human Services Board; to reappoint Tucker Webb with term ending June 30, 2012, as Youth Participant to the Park Board; to appoint Kitu Komya with term ending June 30, 2012, as Youth Participant to the Senior Citizens Advisory Board; to reappoint John Kounelis and Bill Leach with terms ending June 1, 2014, and appoint Gary Gilchrist with unfulfilled term ending June 1, 2012, to the Construction Board of Appeals; to reappoint Miko Dargitz, Bill Patterson and Allan Reiff with terms ending May 31, 2014, to the Planning Commission; to appoint Tim Winslow with unfulfilled term ending October 1, 2011, to the Environmental Board; and to appoint Nadeem Mirza with unfulfilled term ending October 1, 2011, to the Human Services Board. Upon a roll call vote, motion carried 7 to 0.

BID TABULATIONS:

* **PURCHASE RECOMMENDATION – REPLACEMENT VEHICLE:** Motion by Reid, seconded by Campbell, to approve the purchase of one staff sedan at a total cost of \$13,368 and authorize the City Manager to execute all documents related to this purchase on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

* **RELOCATION OFFICE FURNISHINGS – PURCHASE RECOMMENDATION:** Motion by Reid, seconded by Campbell, to approve a purchase from Office Depot in the amount of \$12,875 for office furnishings related to the relocation of the Parks Department and authorize the City Manager to execute all documents related to this action on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

RECESS: 10:04 p.m.

RECONVENE: 10:31 p.m.

CLOSED SESSION: Motion by Sackley, seconded by Bailes, to uphold the disclosure denial of Scott Anderson for the reason that the one page NLETS and the 9-PAGE LEIN records can not be released due to provisions of Michigan State Law.

OTHER CITY MATTERS:

STATEMENTS OF CITIZENS: James Pearson, 3004 East Shore Drive, expressed an interest in placing satisfaction with neighborhood streets back into the survey and announced for the second time that a public hearing will be held by the Governmental Austin Lake Board at 6:00 p.m., Wednesday, May 18, 2011, City Hall Council Chambers on the practicability of doing Bioaugmentation and Aeration of Austin Lake.

STATEMENTS OF CITY COUNCIL AND CITY MANAGER: Councilmember Randall congratulated the Portage Northern High School Forensics Team for taking their tenth consecutive Michigan State Title and the Portage Central High School Forensics Team for placing Second in the State last weekend.

Mayor Pro Tem Sackley mentioned that the State Farm Insurance Company has consolidated operations by closing all of its offices but two, one in Livonia and one in Portage. He also talked about the visit from U.S. Transportation Secretary Ray LaHood, who signed and delivered to Governor Rick Snyder a \$199,309,608.00 Federal grant check this afternoon at downtown Detroit's Amtrak station that will pay to upgrade rail lines and enable high-speed passenger train service between Dearborn and Kalamazoo. He also announced the Riparian Association Meeting that will precede the Governmental Austin Lake Board by two days, Monday, May 16, 2011 at 7:00 p.m. at Lake Center Elementary School to discuss the practicability of the Bioaugmentation and Aeration of Austin Lake.

Mayor Strazdas expressed appreciation to the community for recently coming together with: the Portage Crop Hunger Walk 2011 where 471 walkers raised over \$33,000; Golf for the Arts to raise funds for the Summer Entertainment Series; the AFE group of KRESA where businesses provide opportunities for youth to job shadow; and, the National Day of Prayer.

ADJOURNMENT: Mayor Strazdas adjourned the meeting at 10:41 p.m.

James R. Hudson, City Clerk

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