

CITY OF
PORTAGE
A Place for Opportunities to Grow

PLANNING COMMISSION

January 17, 2013

CITY OF PORTAGE PLANNING COMMISSION

A G E N D A

January 17, 2013

(7:00 p.m.)

Portage City Hall Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES:

- * January 3, 2013

PUBLIC HEARINGS:

- * 1. Final Report: Donation Box Ordinance Amendment

SITE/FINAL PLANS:

NEW BUSINESS:

OLD BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

December 10, 2012 Zoning Board of Appeals meeting minutes

December 18, 2012 City Council meeting minutes

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

PLANNING COMMISSION

January 3, 2013

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The City of Portage Planning Commission meeting of January 3, 2013 was called to order by Chairman Cheesebro at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Three citizens were in attendance.

MEMBERS PRESENT:

Miko Dargitz, Allan Reiff, Dave Felicijan, James Cheesebro, Paul Welch, Dave Artley and Wayne Stoffer (arrived at 7:03pm).

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Bill Patterson and Rick Bosch.

IN ATTENDANCE:

Christopher Forth, Deputy Director of Planning, Development and Neighborhood Services; Michael West, Assistant City Planner; Randy Brown, City Attorney; and Bill Deming, Director of Parks, Recreation & Public Services.

PLEDGE OF ALLEGIANCE:

Chairman Cheesebro led the Commission in the Pledge of Allegiance.

APPROVAL OF MINUTES:

Chairman Cheesebro referred the Commission to the December 20, 2012 meeting minutes contained in the agenda packet. A motion was offered by Commissioner Artley, seconded by Commissioner Dargitz, to approve the minutes as submitted. The motion was approved 6-0.

PUBLIC HEARINGS:

1. Preliminary Report: Donation Box Ordinance Amendment. Mr. Forth summarized the preliminary staff report dated December 28, 2012 regarding the proposed donation box ordinance. Mr. Forth discussed the survey of commercially zoned properties and inventory of existing donation boxes conducted by the Department of Community Development and reviewed the substantive sections of the proposed ordinance. Mr. Forth also summarized the initial Commission review of the draft ordinance during the December 20, 2012 meeting and the primary issues discussed including permit fees, distance separation, number of donation boxes per site, donation box size and ordinance enforcement. Lastly, Mr. Forth indicated that staff provided a courtesy notice of the proposed ordinance and public hearing date to all property owners where donation boxes are currently located and the organizations that maintain the boxes. Mr. Forth referred the Commission to three communications received that were included in the final agenda packet.

The public hearing was then opened by Chairman Cheesebro. Three citizens spoke in regards to the proposed ordinance amendment: 1) Dan Dalton (attorney representing Planet Aid), 2) Carlo Cavallaro (attorney representing USAgain) and 3) Dustin Holland (Vice-President, Better World Books). Mr. Dalton stated he was supportive of the proposed ordinance but requested the following changes: a) all boxes be of steel construction; b) require liability insurance coverage; and c) a local representative or regional manager have the ability to sign a permit application on behalf of the organization. Mr. Dalton discussed the Planet

Aid organization and indicated the primary concern regarding donation boxes involves items left on the ground adjacent to the boxes. Mr. Dalton stated he does not foresee any problem with a 1,000 foot distance separation requirement between boxes. Mr. Cavallaro also stated he was supportive of the ordinance and suggested the Planning Commission consider: a) modifying the language of the ordinance to refer to the boxes as collection boxes rather than donation boxes; and b) permit an authorized representative to sign on behalf of the property owner. Mr. Cavallaro provided an overview of the growing collection box industry as well as the USAgain organization. Mr. Cavallaro concurred with Mr. Dalton that the primary concern regarding donation boxes involves items left on the ground adjacent to the boxes. Mr. Cavallaro also thought that the proliferation of boxes in a community can be a problem. Mr. Cavallaro stated that metal boxes are the standard in the industry and are safer and more stable than wood or resin boxes. Mr. Cavallaro indicated he prefers the 500 foot distance separation requirement and stated the allowance for a second box will reduce the occurrences of overflow and help the organization better manager service routes. Mr. Holland also expressed support of the proposed ordinance but requested the minimum 2-inch size print on the boxes for organization information not be required. Mr. Holland stated Better World Books currently has a ½-inch size print on the boxes and does not include a mailing address. As currently written, the ordinance would require revision of the Better World Books decal package. Finally, Mr. Holland stated he prefers the 500 foot donation box separation distance as currently proposed in the ordinance. No additional citizens spoke regarding the proposed ordinance.

The Commission, Mr. Forth and Attorney Brown discussed various aspects of the proposed ordinance, along with comments and suggestions received from the organization representatives. Attorney Brown suggested adding language that would expand the authority to sign applications, which would offer greater flexibility to the organization and property owner. Commissioner Artley suggested adding language to the ordinance that would require liability insurance to protect citizens and increase the separation requirement between boxes to 1,000 feet. Commissioner Stoffer suggested modifying the ordinance to require steel boxes, increasing setback standard from a public street, establishing a maximum box size of 4.5 feet by 4.5 feet by 7 feet high, and increasing the separation requirement to 1,000 feet if two boxes are present on a site. After additional discussion, a motion was made by Commissioner Welch, seconded by Commissioner Reiff, to adjourn the public hearing for the Donation Box Ordinance Amendment to the January 17, 2013 meeting. The motion was unanimously approved.

The Commission and staff continued discussion of the proposed donation box ordinance. Based on the comments received and the Commission discussion, Attorney Brown indicated he would likely be making minor changes to the ordinance for the January 17th meeting. The Commission also discussed whether any changes to the ordinance should be made now or during the January 17th meeting. Attorney Brown stated any changes to the ordinance should be made in the form or a motion with a majority vote of the Commission. After additional discussion, a motion was made by Commissioner Felicijan, seconded by Commissioner Artley, to incorporate the following changes into the draft ordinance for further consideration during the January 17th meeting: 1) Increase the separation distance to 1,000 feet between boxes; 2) allow two boxes on a site only if from the same company and the two boxes must abut each other; 3) require liability insurance; and 4) require metal boxes. Following additional discussion, the motion was unanimously approved.

2. 2013 Recreation and Open Space Plan Update. Mr. Forth summarized the staff report dated December 28, 2012 regarding the Plan update. Mr. Forth discussed substantive changes from the 2008 Plan and the incorporation of Commission comments received during the October 18, 2012 meeting. Commissioner Dargitz asked if Map 6 should be further modified to include forested areas similar to the Sensitive Land Areas map that is included in the Comprehensive Plan. Mr. Forth indicated that due to the size and scale of the map included in 2013 Recreation and Open Space Plan, the sensitive land areas are more generalized. Mr. Forth noted that the more detailed Sensitive Land Areas map is included in the 2008 Comprehensive Plan. An update of the Sensitive Land Areas map will be accomplished as part of the Comprehensive Plan update.

Mr. Bill Deming, Director of Parks, Recreation & Public Services, was present to support the Plan Update. In addition to updating the resources and recreational assets of the city, Mr. Deming stated one of the primary

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purposes of the Plan update was to qualify for State of Michigan grant funds. No citizens were present to speak during the public hearing.

After a brief discussion, a motion was made by Commissioner Felicijan, seconded by Commissioner Artley, to adopt the 2013 Recreation and Open Space Plan Update and forward the document to City Council. The motion was unanimously approved.

NEW BUSINESS:

None.

OLD BUSINESS:

1. City of Portage 50th Anniversary Celebration – Recognition of Portage Businesses. Chairman Cheesebro summarized the communication from City Council to form a subcommittee to develop operational details associated with the “pass book” idea. Commissioner Dargitz asked for clarification on staff availability to assist the subcommittee. Mr. Forth indicated staff would be available on a limited basis to answer questions from subcommittee and assist with the use of potential city resources such as use of the city web site. Commissioners Dargitz, Felicijan, Stoffer and Artley volunteered to serve on the subcommittee. Commissioner Felicijan stated he would coordinate scheduling the first subcommittee meeting, likely before the January 17th meeting, and would send an email confirmation.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

There being no further business to come before the Commission, the meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Christopher T. Forth, AICP
Deputy Director of Planning, Development & Neighborhood Services

TO: Planning Commission **DATE:** January 11, 2013
FROM: Vicki Georgeau, Director of Community Development
SUBJECT: Final Report: Donation Box Ordinance Amendment

I. INTRODUCTION:

During the past several months, donation boxes for the purpose of collecting clothing, books, and other household items began to appear along commercial corridors throughout the city. While the city has not experienced notable problems or citizen complaints associated with the various donation boxes, discussion has ensued regarding potential public health, safety and community quality concerns associated with the donation boxes. During the September 25, 2012 City Council meeting, Council requested the City Administration develop ordinance language to address concerns expressed associated with the location of donation boxes. The City Administration has worked with the Office of the City Attorney to draft ordinance language based on available regulatory options and best practices utilized in other communities.

The following provides background information regarding: donation boxes currently located in the city and efforts by the City Administration to develop ordinance language; summary of the Planning Commission discussions on December 20, 2012 and January 3, 2013; and summary of the proposed ordinance language with changes requested by the Commission during the January 3, 2013 meeting, and a staff recommendation regarding the proposed ordinance.

II. COMMUNITY SURVEY:

A survey of all commercially zoned properties has been accomplished, and 25 existing donation boxes at 19 separate locations were identified throughout the city as of January 10, 2013. The attached Donation Box Location Map illustrates the location of the donation boxes identified. A series of photos is also attached that provides the address, principal use, and illustrates the location and condition of each donation box. For Commission information, based on a field survey in late August 2012, there were a total of 18 donation boxes located at 14 different locations.

As shown in the attached photos of the identified donation boxes, many are located in a manner that are visible from the public street right-of-way, several are located within the parking lot interior and not visible from the public right-of-way, and two are located against the exterior building wall. The location of the identified donation boxes do not create problems with regard to obstruction of required parking spaces or maneuvering lanes, internal or external traffic flow, or vision obstructions. However, accumulation of litter and donated items placed on the ground around donation boxes has been observed and documented.

III. DEVELOPMENT OF ORDINANCE LANGUAGE:

The Department has contacted several communities in southwest Michigan regarding donation boxes and other similar exterior accessory uses (including: the cities Kalamazoo, Wyoming, and Kentwood, and the townships of Oshtemo, Texas, Kalamazoo, and Plainfield). With the exception of Kalamazoo Township, none of the southwest Michigan communities surveyed have specific regulations for these types of accessory uses. Kalamazoo Township had initially taken the approach that donation boxes were not a use specified in the Zoning Code and therefore not permitted. A recent change in interpretation of the Zoning Code by the Kalamazoo Township Planner has determined that donation boxes are accessory uses subject to a special land use permit. It is noted it may be problematic for the city to prohibit this type of business use altogether, especially in consideration of other exterior accessory uses that have been in existence throughout the community for many years.

Communities located in southeast Michigan and outside of the State of Michigan have recently adopted regulations for donation boxes. For example, the cities of Romulus, Grosse Ile, and Woodhaven, Michigan recently adopted regulations, and the City of Wayne, South Lyon and Brownstown Township are in the process of adopting regulations for donation boxes. Of the identified communities that have adopted ordinances for donation boxes, regulations typically include the following provisions:

- Requirement for a Permit: permit applications must include property owner permission, contact information for the donation box operator, and a drawing of the donation box location;
- Location Requirements: donation boxes are prohibited in residential zoning districts, cannot be located in a required front, side and/or rear yard area, and must be located in a manner that does not obstruct or impede fire lanes, exit doors, off-street parking and maneuvering lanes, access drives and sidewalks;
- Limits on Number of Boxes: many communities restrict the number of donation boxes on one specific property;
- Maintenance Requirements: specifications on the condition of the donation box, and prohibition of junk/debris in the immediate area surrounding the donation boxes.

Some communities have chosen to amend their Zoning Code to include donation box regulations, while others have amended their community codified ordinances to regulate donation boxes and require a business permit or license. After considering the nature of this accessory use, the proliferation and location of the donation boxes in the community and the potential to cause blight, ordinance language is proposed to be added to Chapter 24, Community Quality.

While the proposed ordinance would amend Chapter 24, Community Quality, it has been recommended by the City Attorney that the Planning Commission and City Council review the proposed amendment in the same manner as a Zoning Code amendment. This approach has been advised for several reasons, which include that: the Planning Commission is the appellate body; the ordinance has zoning elements (e.g., specifies use of land where donation boxes are permitted and provisions for the location of donation

boxes) and several property owners and donation box operators will be affected if the ordinance is adopted.

Some concern has been expressed with regard to whether the donation boxes are operated by non-profit or for-profit organizations, and whether the donation boxes are operated by “legitimate” non-profit organizations. A variety of organizations operate donation boxes located within the city. A large number of boxes are operated by Planet Aid, while the Cancer Federation, Community Patriots, Homeless Empowerment Relationship Organization (HERO), Childhood Disease Research Foundation, USAgain, Metro Charities and Better World Books also operate within the city. Planet Aid, the Cancer Federation, HERO, Childhood Disease Research Foundation and Metro Charities are non-profit organizations, whereas Community Patriots, Better World Books and USAgain are for profit organizations.

As noted, donation boxes are operated by both non-profit and for-profit organizations. Further, the City Attorney has reviewed this matter and determined the city cannot distinguish, from a regulatory perspective, between a charitable or for-profit use. The City Attorney has indicated that there are State statutes (the Michigan Consumer Protection Act, and the Charitable Organizations and Solicitations Act) that regulate charitable clothing donation boxes, which are intended to ensure proper disclosure regarding the operation of boxes.

As required by the Michigan Consumer Protection Act, the donation boxes have wording that identifies the organization responsible for the use, which have not been considered “signs” regulated by the Zoning Code. This determination is similar to wording/advertising on vending machines, gas pumps, and ATM/ drive-through facilities that are oriented to the customer, as opposed to the public street right-of-way.

The following is a brief summary of the substantive sections of the ordinance prepared by the City Administration and presented to the Planning Commission on December 20, 2012 and January 3, 2013:

- Donation boxes shall be maintained in good condition and appearance, and must be serviced and emptied so that debris and other material do not accumulate in the area surrounding a donation box.
- The property owner must submit an affidavit providing written permission to place a box(es) on the property, and a local contact for the donation box operator must be provided to the city.
- Operator information must be displayed on the box and state if it is a non-profit or for-profit entity.
- Donation boxes are not permitted on land used for residential purposes, undeveloped property, or property where the principal use has been closed or unoccupied for more than 30 days.
- No more than two boxes are allowed on a single lot of record. Donation boxes placed on separate lots of record must be at least 500 feet apart.
- A maximum donation box size is specified, with a requirement that boxes be locked or otherwise secured.

- Donation boxes must be located at least ten feet from: a public right-of-way, public sidewalk, driveway and from a side or rear property line if the adjacent property is used for residential purposes.
- The location of donation boxes must not create vision obstructions, obstruct fire lanes or building exits, or interfere/encroach into any access drive, parking lot maneuvering lane or required off-street parking space.
- Every donation box, including those that exist upon adoption and effective date of the ordinance, must apply for a permit and comply with all requirements. The permit is valid for one calendar year (or portion thereof) and must be annually renewed.
- A permit can be revoked upon proper notice for failure to comply with the requirements of the ordinance. If the permit has been revoked, the permit will not be renewed for the subsequent calendar year. In addition, if three written violation notices are provided to a permittee during any given calendar year, the permit will not be renewed for the subsequent permit year.
- Any person aggrieved by a decision of the Director can appeal that decision to the Planning Commission.
- The recommended fee for an initial annual permit is \$50, \$25 for the annual renewal, and \$150 for an appeal.

Based on the initial ordinance language prepared by the City Administration, the following existing donation boxes would not comply with the minimum requirements:

- 5905 South Westnedge Avenue. The donation box is not located ten feet from the adjacent public right-of-way. However, the box can be moved to a conforming location.
- 6355 South Westnedge Avenue. The building located at 6355 South Westnedge (former K-Mart) has been unoccupied for an extended period of time. However, the site is being renovated for Dick's Sporting Goods.
- 8086 Portage Road and 8136 Portage Road. The donation boxes do not meet the minimum 500 foot separation distance. Also, the donation box located at 8086 Portage Road is not located ten feet from the adjacent public right-of-way. However, both boxes can be moved to conforming locations.
- 5469 South Sprinkle Road. The donation box is not located ten feet from the adjacent public right-of-way. However, the box can be moved to a conforming location.
- 9119 South Sprinkle Road. Three boxes are located on the same lot of record. One must be removed.
- 8350 Shaver Road. Three boxes are located on the same lot of record. One must be removed.

IV. PLANNING COMMISSION REVIEW/PUBLIC COMMENT

During the December 20, 2012 meeting, the Commission reviewed and discussed the draft ordinance language. At the conclusion of the discussion, the Commission requested that staff consider modifications to the ordinance language involving permit fees, distance separation between boxes, number of boxes per site, donation box size and ordinance enforcement. Responses to these various issues were provided in a Department of Community Development preliminary staff report dated December 28, 2012. Subsequent to initial review of the Planning Commission comments, staff recommended that one change be made, which requires that two boxes on the same lot abut one another. In addition, staff was receptive to increasing the separation between boxes from 500 feet to 1,000 feet.

The Planning Commission convened a public hearing at the January 3, 2013 meeting. Three citizens spoke in regards to the proposed ordinance amendment: Dan Dalton, attorney representing Planet Aid; Carlo Cavallaro, attorney representing USAgain; and 3) Dustin Holland, Vice-President, Better World Books. All three individuals generally expressed support for the proposed ordinance with suggested modifications such as: proof of liability insurance, that a local representative be permitted to act on behalf of the property owner and donation box organization, boxes be made of steel, that the separation between boxes be 500 feet rather than 1,000 or 1,500 feet, and the size of text printed on the box be smaller.

At the conclusion of the January 3rd discussion, a motion was made and approved by the Planning Commission to incorporate into the draft ordinance the following: 1) increase the separation distance between boxes from 500 feet to 1,000 feet; 2) allow two boxes on a lot of record if operated by the same company, and require the two boxes to abut one another; 3) require liability insurance; and 4) require all boxes be made of metal. Additionally, Attorney Brown indicated he would likely be making minor changes to the ordinance for the January 17th meeting. Attached is a revised ordinance with the changes highlighted.

In response to the changes requested by the Planning Commission, the following additional information is provided.

Distance Separation. The ordinance language has been modified to increase the separation distance between donation boxes on separate lots of record from 500 feet to 1,000 feet (see Section 24-143.A.6.c.). While the initial 500 foot separation distance suggested by staff was based on other similar ordinance standards and intended to prevent the proliferation of boxes in close proximity to one another along major commercial corridors, an increase to 1,000 feet can be supported by staff and will not significantly impact existing donation boxes located across the city. Increasing the separation requirement to 1,000 feet would affect the following existing donation box locations:

1. 5121 South Westnedge and 5108 South Westnedge (approximately 900 feet apart)
2. 6207 South Westnedge and 6355 South Westnedge (approximately 900 feet apart)
3. 8086 Portage Road and 8136 Portage Road (approximately 490 feet apart)

A 1,000 foot separation distance would require the removal or relocation of one existing donation box as indicated in No. 3 above. Since both of these boxes are owned and operated by Planet Aid, they could simply be combined onto one site. The boxes identified in Nos. 1 and 2 above would only require minor on-site adjustments/relocations.

Metal donation boxes. The proposed ordinance language has been modified to require donation boxes to be constructed of metal (see Sections 24-140.B and 24-143.A.1). Based on the discussion that occurred during the January 3rd public hearing, metal is the

industry standard due to its appearance and durability, and provides a higher level of safety (i.e. more secure, less combustible) compared to other materials such as wood or plastic/resin.

Number of donation boxes per site. As requested by the Commission, the draft ordinance language has been modified to allow two donation boxes on a lot of record if the boxes are operated by same company and abut each other (see Section 24-143.A.6.c). While staff supports the allowance for up to two boxes on a site with the provision that they must abut each other, staff recommends that the ordinance not require the two boxes be operated by the same company based on the following:

- The rationale for the requirement is not clear, and the requirement does not appear to address a public health, safety and/or community quality concern.
- If the two boxes have to be maintained by the same operator, the total number sites occupied by a donation box may increase as a result of the second operator being forced to seek an alternate location.
- Allowing two boxes on a single lot of record regardless of the operator may reduce the occurrences of donated materials and/or debris from accumulating on the ground or overflowing from the box.
- While donation boxes vary slightly in appearance (color and style) between companies, two boxes can be placed on a site in a manner to occupy a small area, such as within one non-required parking space and will have minimal impact.
- A single operator could place two boxes on the same lot of record that vary in color and style for various reasons (e.g. to identify that each box collects different items, the boxes more fabricated at different times, etc.).

As additional information, the requirement that both donation boxes be operated by the same company would necessitate removal of at least one box from the following locations:

- 8350 Shaver Road (Wal Mart)
- 330 East Centre Avenue (Sweets Convenience)
- 9119 Sprinkle Road (Lakeshore Market)

Based on the above, staff recommends that two boxes be permitted per lot of record with the stipulation that the boxes abut one another, but without the requirement that the boxes be operated by the same company.

Liability insurance. As requested by the Commission, the draft ordinance language has been modified to require each permittee to provide proof of liability insurance coverage for the boxes (see Section 24-143.B). However, staff does not concur that the ordinance should require proof of liability insurance based on the following:

- The city routinely issues a variety of permits that involve private property accessible to the public (which may pose more of a hazard) without requiring proof of private liability insurance.

- There is nothing extraordinary about the placement of a donation box on private property than other uses/structures permitted in the community that would necessitate a city requirement for liability insurance.
- The City Attorney advised during the January 3rd Planning Commission meeting that the city would have no or limited risk as a result of issuing a permit for a donation box on private property. Staff also consulted with the Director of Financial Services, who administers city insurance matters, who has also concluded requiring submission of proof of insurance for a permittee is not necessary.
- While the city requires proof of liability insurance coverage for contractors hired by the city or working on city property, whether or not each donation box operator maintains liability insurance (including the type and amount of coverage) is a private matter negotiated between the operator and private property owner. It is not the responsibility of the city to ensure each property owner maintains liability insurance.

Consequently, the City Administration is recommending that proof liability insurance coverage not be a requirement for issuance of the permit.

V. RECOMMENDATION

Subject to any additional comments received during the public hearing, staff advises the Planning Commission recommend to City Council that the Donation Box Ordinance Amendment be adopted without requiring: 1) the same operator to maintain both donation boxes in order to have two donation boxes on one lot of record; and 2) private liability insurance requirements.

Attachments: Donation Box Location Map
 Photos of Donation Boxes
 Proposed Donation Box Ordinance and Fee Resolution
 Communications Received from Donation Box Organizations

Donation Box Location Map

Date: 1/11/2013



★ Donation Box



1 inch = 4,200 feet



Meijer, 5121 S. Westnedge



Lowes, 5108 S. Westnedge



Hoffman Party, 5905 S. Westnedge



Toys R Us, 6207 S. Westnedge



Former K-Mart, 6355 S. Westnedge



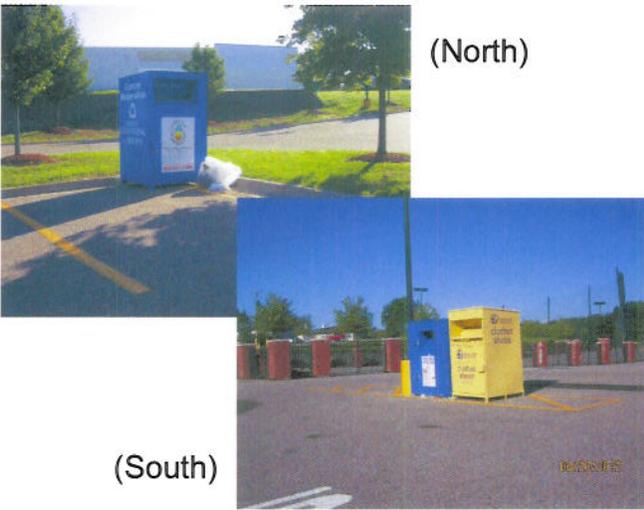
Sam's Club, 7021 S. Westnedge



Sweets Convenience, 330 E. Centre



Portage Centre Plaza, 129 W. Centre



Wal-Mart, 8350 Shaver



Meijer, 8850 Shaver



DN's Party Store 10418 Shaver

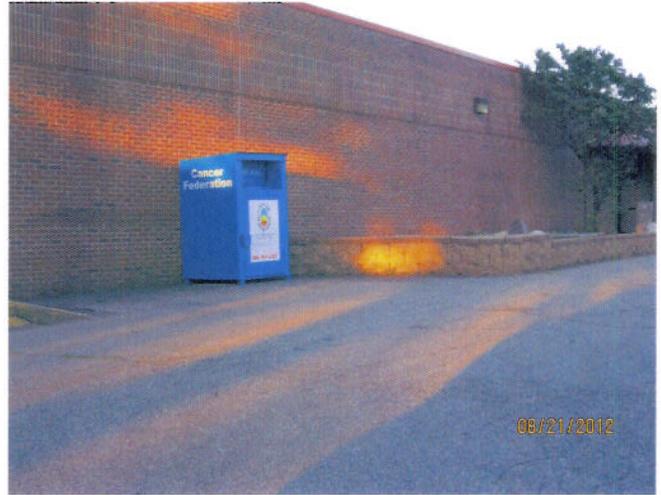


Bank of America, 4431 W. Centre

Joy Fong,
8136 Portage



Shiney Brite,
8086 Portage



H & B Market, 9113 Portage



Sprinkle Rd. Laundry, 5469 Sprinkle

Lakeshore Market, 9119 Sprinkle



Kaps Restaurant, 10410 Portage

Connie's, 10946 Portage

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Note: Planning Commission changes are highlighted in yellow.

CHAPTER 24, COMMUNITY QUALITY, ARTICLE 6. DONATION BOXES

Sec. 24-140. Intent and Definitions.

A. The Donation Boxes Ordinance is intended to be a regulatory ordinance in the public's health, safety and welfare for the protection of all citizens who use donation boxes. The intent of this Donation Boxes Ordinance is to impose restrictions and conditions on all donation boxes in the City so that they are, and remain, clean, safe and do not create hazards to pedestrians and to vehicular traffic. The ordinance is passed under the City's regulatory authority pursuant to MCLA 117.4, et. seq., and the Portage City Charter.

B. *Operator* means a person who owns, operates or otherwise is in control of donation boxes to solicit donations of salvageable personal property.

Director means the Director of Community Development for the City of Portage.

Permittee means a the person over 18 years of age or an entity who is issued a permit authorizing placement of donation box(es) on real property.

Real property, Property or Land means a lot of record located in the City of Portage.

Property owner means the person who is an owner of real property where the donation box(es) are located.

Donation box means any metal container, receptacle, or similar device that is located on any parcel or lot of record within the City and that is used for soliciting and collecting donations of clothing, household items, or other salvageable personal property. This term does not include recycle bins for the collection of recyclable material, governed or regulated by the Zoning Code, any rubbish or garbage receptacle or any donation box located within an enclosed building.

Sec. 24-141. Donation Box Permit.

No later than ninety (90) days from the effective date of this article, no person shall place, operate, maintain or allow any donation box on any real property without first obtaining an annual permit issued by the Department of Community Development ("Department"), to locate a donation box.

Sec. 24-142. Application for a Permit.

A. Any person desiring to secure a permit shall make an application to the Department of Community Development.

- B. A permit shall be obtained for each donation box(es) proposed. Combining fees for donation box(es) located on a lot of record may be addressed in the fee resolution.
- C. 1. The application for a permit shall be upon a form provided by the Department and be signed by an individual who is an officer, director, member or manager of an entity applicant. The applicant shall furnish the following information:
- (i) Name, address and email of all partners or limited partners of a partnership applicant, all members of an LLC applicant, all officers and directors of a non-publicly traded corporation applicant, all stockholders owning more than five percent of the stock of a non-publicly traded corporate applicant, and any other person who is financially interested directly in the ownership or operation of the business, including all aliases.
 - (ii) Date of birth of individuals and date of establishment of any entity or the birthdate of an individual applicant.
 - ~~(iii) — Written proof that the individual is at least 18 years of age.~~
 - ~~(iiiiv)~~ Whether the applicant has previously received a permit for a donation box in the city or operates a donation box or similar type receptacle without a permit in the city.
 - (iv) The name, address, email and telephone number of a contact person for all matters relating to a donation box located in the city.
2. The physical address of the real property where the donation box is proposed to be located.
3. A scaled drawing sufficient to illustrate the proposed location of the donation box on the real property, the dimensions of the proposed donation box and that the location complies with the requirements of Section 24-143 of this Article 6 of Chapter 24.
4. If not the owner of the real property, an affidavit from the property owner providing written permission to place the donation box(es) on the property, as well as an acknowledgment from the property owner of receipt of a copy of this ordinance. shall be provided on a form provided by the Director. For purposes of this subsection, the affidavit and acknowledgment may be executed by an individual who is an officer, director, member or manager of an entity owning the property.
5. A nonrefundable fee in an amount established by resolution of City Council.

- D. Within ten (10) days of receiving an application for a permit, the Director shall notify the applicant whether the permit is granted or denied. If the Director denies an application, the Director shall state in writing the specific reasons for denial.
- E. No person to whom a permit has been issued shall transfer, assign or convey such permit to another person or legal entity.
- F. A person shall be issued a permit by the Director if the requirements of this article are satisfied.

Sec. 24-143. Requirements for a permit.

- A. A Permittee shall operate and maintain, or cause to be operated and maintained, all donation boxes located in the City for which the Permittee has been granted a permit as follows:
 - 1. Donation boxes shall be **metal and be** maintained in good condition and appearance with no structural damage, holes or visible rust and shall be free of graffiti;
 - 2. Donation boxes shall be locked or otherwise secured in such a manner that the contents cannot be accessed by anyone other than those responsible for the retrieval of the contents;
 - 3. Donation boxes shall contain in two (2") inch type visible from the front of each donation box the name, address, email, website and phone number of the operator, as well as whether the donation box is owned and operated by a for profit company or a not for profit company.
 - 4. Donation boxes shall be serviced and emptied as needed, but at least every thirty (30) days.
 - 5. The Permittee and property owner shall maintain, or cause to be maintained, the area surrounding the donation boxes, free from any junk, debris or other material. The property owner shall be responsible to the extent provided by law for the City's cost to abate any nuisance, in accordance with Section 24-113(e), Abatement Procedure, of the City Code.
 - 6. Donation boxes shall:
 - a. not be permitted on any land used for residential purposes;
 - b. not be permitted on any unimproved parcel, nor where the principal use of the land has been closed or unoccupied for more than thirty (30) days;
 - c. not be less than **51000** feet from another donation box as measured along a straight line from one box to the other. Notwithstanding this separation requirement, up to two (2)

~~donations boxes on a single lot of record are permitted if the two (2) donation boxes are side by side, are no more than one foot apart, and are operated by the same Permittee. This requirement shall not apply to donation boxes located on a single lot of record. In no event shall there be more than two (2) donation boxes on any one lot of record.~~

- d. not exceed 7.0 feet in height, 6 feet in width and 6 feet in depth;
- e. not cause a visual obstruction to vehicular or pedestrian traffic;
- f. not be placed closer than 10 feet from: i) a public or private sidewalk except that this provision does not apply to a private sidewalk as long as the private sidewalk maintains a 5 foot clearance; ii) a public right-of-way; iii) a driveway; or iv) a side or rear property line of adjacent property used for residential purposes;
- g. not cause safety hazards with regard to a designated fire lane or building exit;
- h. not 1) interfere with an access drive, off-street parking lot maneuvering lane and/or required off-street parking space to an extent which would cause safety hazards and/or unnecessary inconvenience to vehicular or pedestrian traffic; 2) encroach upon an access drive, off-street parking lot maneuvering lane and/or required off-street parking space; and
- i. be placed on a level, hard (asphalt or concrete) paved, dust-free surface.

B. The Permittee shall have commercial general liability (each occurrence - \$1,000,000), automobile liability (combined single limit - \$1,000,000), and workers compensation (statutory minimum) with regard to each donation box before a permit is issued and provide a certificate of insurance showing proof of same.

Sec. 24-144. Term of Permit and Renewal of permit.

- A. The permit year shall begin on January 1 in each year and shall terminate on December 31 of the same calendar year. An annual permit issued between December 1 and December 31 of any year shall expire on December 31 of the calendar year next following issuance thereof.
- B. A donation box permit shall be renewed annually. The application for renewal must be filed not later than thirty (30) days before the permit expires. The application for renewal shall be upon a form provided by the Director.
- C. The Director shall either approve or deny the renewal of a permit within ten (10) days of receipt of the complete renewal application and payment of the renewal

fee. Failure of the Director to act before expiration of the permit shall constitute approval of the renewal of the permit.

- D. A permit renewal fee set by resolution of the City Council shall be submitted with the application for renewal.
- E. Prior to expiration of the permit, the Permittee may voluntarily cancel the permit by notifying the Director in writing of the intent to cancel the permit. The permit shall become void upon the Director's receipt of a written notice to intent to cancel the permit.
- F. The Director shall approve the renewal of a permit if the Director finds that no circumstances existed during the term of the permit which would cause a violation to exist, and that at the time of submission of the application for renewal, or at any time during the renewal of the application for renewal, there were not circumstances inconsistent with any finding required for approval of a new permit. Any Permittee whose permit has been revoked shall be denied renewal of the permit for the subsequent calendar year.
- G. If the permit expires and is not renewed, the donation box(es) must be removed from the real property within a maximum of ten (10) days after expiration of the permit.

Sec. 24-145. Revocation of permit, removal of donation boxes and liability.

- A.
 - 1. The Director shall have the right to revoke any permit issued hereunder for a violation of this article. Any of the grounds upon which the Director may refuse to issue an initial permit shall also constitute grounds for such revocation. In addition, the failure of the Permittee to comply with the provisions of this article or other provisions of this code or other law shall also constitute grounds for revocation of the permit. The Director shall provide a written notification to the Permittee and property owner stating the specific grounds for a revocation and a demand for correction and abatement . The notice shall allow a maximum of ten (10) days from mailing of the notice to correct or abate the violation. Upon failure to make the correction or abatement, the permit shall be revoked by the Director and, thereafter, the Permittee shall not be eligible for a permit on the property for the subsequent calendar year.
 - 2. Upon revocation, the donation box shall be removed from the real property within ten (10) days and, if not so removed within the time period, the City may remove, store or dispose of the donation box at the expense of the Permittee and/or real property owner. All costs associated with the removal of the donation box incurred by the City, or the City's contractor shall be the responsibility of the property owner. If such obligation is not paid within thirty (30) days after mailing of a billing of costs to the property owner, the City may place a lien upon such real property enforceable as a tax lien in the manner prescribed by the general laws of this state against the property and collected as in the case of general property tax. If the same is not paid prior to the preparation of the next assessment roll of the City, the amount shall be

assessed as a special tax against such premises on the next assessment roll and collected thereunder.

- B. A permit for a donation box may be revoked if any governmental authority or agency determines that the donation box has violated the Michigan Consumer Protection Act and/or the Charitable Organizations and Solicitations Act.

Sec. 24-146. Appeal to Planning Commission.

Any person aggrieved by the decision rendered by the Director in granting or denying an application for a permit under this article or in revoking a permit issued under this article may appeal the decision to the Planning Commission. The appeal shall be made by filing a written notice thereof with the Department of Community Development setting forth the grounds for the appeal not later than ten (10) days after receiving notice of the decision of the Director. The Planning Commission may grant relief if the applicant presents clear and convincing evidence that there was an error in the decision of the Director.

Sec. 24-147. Penalty and Remedies.

- A. In addition to revocation of permit pursuant to Section 24-145, any person violating the provisions of this article is guilty of a civil infraction.
- B. In addition to the penalty provided in Subsection (A) of this section, any condition caused or permitted to exist in violation of the provisions of this article, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.
- C. Nothing in this article shall prevent the City from pursuing any other remedy provided by law in conjunction with or in lieu of prosecuting persons under this section for violation of this article.
- D. The real property owner and Permittee shall be jointly and severally liable for each violation and for payment of any fine and costs of abatement.
- E. No fines shall be imposed for a violation of this article until ninety (90) days after its effective date. All donation boxes existing at the effective date of the ordinance shall apply for a permit as required herein within thirty (30) days of the effective date. Any donation boxes not in compliance with this article after ninety (90) days of the effective date shall be subject to all remedies for violation as provided herein.

**CITY OF PORTAGE
RESOLUTION FOR PERMIT FEE UNDER ARTICLE 6 OF CHAPTER 24
COMMUNITY QUALITY**

Minutes of a regular meeting of the City Council for the City of Portage, Michigan held on _____, 20____ at 7:30 p.m. local time at the City Hall in the City of Portage, Michigan.

PRESENT: _____

ABSENT: _____

The following resolution was offered by:

Councilmember: _____, and supported by:

Councilmember: _____.

WHEREAS, under Chapter 24, Community Quality, Article 6, Donation Boxes, Council may establish by resolution the permit fee for donation boxes;

NOW, THEREFORE, BE IT RESOLVED that the initial permit fee of \$50; permit renewal fee of \$25.00; and appeal of administrative decision fee of \$150.00 is hereby established for permits involving donation boxes.

IT IS FURTHER RESOLVED that a single Permittee who makes application for two (2) donation boxes on a single lot of record, shall be subject to only one (1) permit fee.

YES: Councilmember _____

NAYS: Councilmember _____

ABSENT: Councilmember _____

RESOLUTION DECLARED ADOPTED: _____

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of this resolution adopted at a regular meeting of the City Council of the City of Portage, Kalamazoo County, Michigan held on _____, 20____, the original of which is in the official proceedings of the City Council.

James R. Hudson, City Clerk

Approved as to form:

Date _____

City Attorney

Victoria Georgeau - Fw: Donation Boxes

From: "Brown & Associates, PLC" <brownandassociates@att.net>
To: "Victoria Georgeau" <georgeav@portagemi.gov>
Date: 12/20/2012 11:10 AM
Subject: Fw: Donation Boxes

Here is some of Mr. Dalton's responses. They add further restrictions and should be considered.

Randy

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

From: Dan Dalton
To: Brown & Associates, PLC
Sent: Monday, December 17, 2012 8:19 AM
Subject: RE: Donation Boxes

Good morning Randy,

My client has reviewed the proposed ordinance and has the following comments.

- Sec 24-142, 1 (i). Please allow the local (state or county) operation manager to sign off on the permit. The Board of Director approval will be very difficult to secure as the Board is located out of state and meeting infrequently.
- Suggested additions to the ordinance:
 - The bins shall be metal only and are enclosed by use of a receiving door and locked so that the contents of the bin(s) may not be accessed by anyone other than those responsible for the retrieval of the contents. No other types of bin(s) are permitted – wood, plastic as they could be lit on fire.
 - Liability insurance should be added to the permit requirements. Protects the land owner and provides any injury coverage.

At this point in time, I do not see the necessity for me to appear at the hearing this week. Please let me know if you want me to appear.

Best,

Dan

Daniel P. Dalton
Dalton & Tomich plc
41000 Woodward Avenue | Suite 345 East
Bloomfield Hills MI 48304
T: 248.971.2400 | F: 248.971.1906
E: ddalton@daltontomich.com
www.daltontomich.com

Notice from Dalton & Tomich plc

To comply with U.S. Treasury regulations, we advise you that any discussion of federal tax issues in this communication was not intended or written to be used, and cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein. This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately. Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

Mike West - January 3rd meeting re: Donation Bins

From: Dustin Holland <dholland@betterworldbooks.com>
To: <westm@portagemi.gov>
Date: 12/28/2012 10:48 AM
Subject: January 3rd meeting re: Donation Bins
Attachments: 1218_DPBX-New-Label.pdf; Donation Box Guidelines_Portage.pdf

Hi Mike,

I just left you a voice mail about the upcoming hearing on January 3rd regarding the draft ordinance on Donation Boxes.

I was able to find a copy of the proposed ordinance (attached), as our partner Meijer, forwarded us a copy of the draft. Please let me know if there is a more recent version of the ordinance that we should review.

Also, I will be attending the hearing on the 3rd on behalf of Better World Books. Our in-house legal counsel has yet to review the draft ordinance, but I have reviewed it and it appears that we will support the adoption of this ordinance, but would definitely like to discuss the requirement outlined in Sec. 24-143 A. 3. Under this requirement, we'd have to rework our current decal package to meet the proposed requirement.

Lastly, I've attached a sample of the current design we are using. We specify that we are a for-profit social enterprise and we publish an email address, phone number, website, and a means for somebody to text us for information. As an online retailer, we do not publish a physical address nor do we use 2" fonts. The information we do make visible on the front of each Drop Box is clearly marked and easily understood by our customers that use the Drop Box.

Thank you for notifying us about the meeting..I look forward to meeting you and your staff.

Please contact me if you have any concerns or questions that need to be addressed in advance of the hearing.

Thank you,

--Dustin

Dustin J. Holland

Vice President & Closet Environmentalist

o. [678.646.5178](tel:678.646.5178) | m. [678.793.8446](tel:678.793.8446)

www.BetterWorldBooks.com

www.facebook.com/betterworldbooks | twitter @BWBooks

Mike West - Introduction - Collection bin Ordinance

From: "Carlo Cavallaro" <c.cavallaro@usagain.com>
To: <westm@portagemi.gov>
Date: 12/28/2012 12:51 PM
Subject: Introduction - Collection bin Ordinance
CC: "Douglas McCreight- DM CHI" <d.mccreight@usagain.com>, "Butch Davenport..."

Mike:

I wanted to introduce myself, I am the in-house attorney and government affairs staff for USAgain. We are a collection bin operator and received your notice for the meeting on January 4rd. We currently have one site in Portage. I am preparing to send some general information regarding our industry as well as information specifically talking about USAgain. We have been in operation for 13 years and expanded into the Portage area just last year. We set and maintain a very high standard of service and commitment to our sites, our relationships with the site hosts and the communities are the focus of our operations teams. We are 100% employee based, we answer our phones with a live person each and every day and we provide a 24 hour response guarantee to address any issues regarding our bins or our sites.

Let me be clear, we fully support the implementation of reasonable regulations regarding our industry. I have reviewed the ordinance as drafted and find it to be along the lines of many other ordinances we have supported. We do have some comments and questions with two primary suggested modification of the ordinance. My first comment/question is whether the staff would consider amending the nomenclature from donation boxes to collection boxes or bins? Many of the operators in our industry are for-profit companies and the term donation tends to be misleading that everyone is a not-for-profit. For the purpose of regulation the devices are clearly defined so changing the name should not negatively impact the desired goal. I would appreciate your consideration of this request.

Secondly, we assume that the purpose of property owner's signature, affidavit and information on the permit is to ensure the bins are being placed with their permission and that someone responsible for the property be known and identified to the City. As you may know the actual property owner, especially of commercial or retail property, may not live locally. We have had success in other municipalities in using a requirement that provides for the signature of the property owner or authorized representative. This language allows for the stand alone lessee or real estate management firm, for a property that they do not own to execute the permit authorization. However, at the same time it achieves the communities desire to have someone directly related to the real estate to be involved in the authorization and permit process.

For the record, USAgain obtains written permission to place and operate every one of its collection bins. We have a team of Community Recycling Specialist who act as our sales force and they are the first point of contact for our site hosts. As for the City myself and Doug McCreight, who oversees our operations team would serve as your direct contact for USAgain.

Carlo F. Cavallaro
Director Government Affairs/
Senior Legal Counsel
U'SAgain LLC / U'SAgain (2000)
1555 W Hawthorne Lane

MATERIALS TRANSMITTED

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – December 10, 2012

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

MEMBERS PRESENT: Rob Linenger, Timothy Bunch, Doug Rhodus, Betty Schimmel, Jeffrey Bright, Michael Robbe, Mariana Singer, and Glenn Smith.

MEMBERS EXCUSED: Lowell Seyburn

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator and Charles Bear, Assistant City Attorney

APPROVAL OF THE MINUTES: Bunch moved and Rhodus seconded a motion to approve the November 12, 2012 minutes as submitted. Upon voice vote, motion was approved 7-0.

OLD BUSINESS:

NEW BUSINESS:

ZBA #12-16, 4317 West Milham Avenue: Mais summarized the request for a variance to construct a 2,600 square-foot duplex unit with 10-foot side yard setbacks, where minimum 30-foot setbacks are required. Realtor, Rick Berner, stated the property had been on the market for two years and they have found a prospective buyer who wants to build a duplex, but the 30-foot side setbacks present practical difficulties leaving only a 25 foot wide building envelope, and orienting the house sideways to the street would not only look unusual but would leave no back yard for kids to play in. Bright inquired how far the proposed duplex would be from the adjacent apartments to the east and west. Staff stated 60 feet. Rhodus inquired if the vegetation on site would be retained. Rick Hamming stated he was the prospective buyer/builder and that the only tree he intended to cut was one located where the duplex would be built.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Smith, seconded by Singer, to grant a variance to construct a 2,600 square-foot duplex unit with 10-foot side yard setbacks, where minimum 30-foot setbacks are required. There are exceptional circumstances applying to the property which include the narrow building envelope, and the lot is adjacent to other multiple family dwellings; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to construct a duplex; the immediate practical difficulty causing the need for the variance request was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the Zoning Ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Bunch-Yes, Smith-Yes, Bright-Yes, Schimmel-Yes, Singer-Yes Linenger-Yes, Rhodus-Yes. Motion passed 7-0.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:20 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator

CITY COUNCIL MEETING MINUTES FROM DECEMBER 18, 2012

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

At the request of Mayor Pro Tem Reid, Pastor John Moore of the Pathfinder Church of Portage gave an invocation and City Council and the audience recited the Pledge of Allegiance.

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

APPROVAL OF MINUTES: Motion by Urban, seconded by Campbell, to approve the December 4, 2012 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 5 to 0.

* **CONSENT AGENDA:** Mayor Pro Tem Reid asked Councilmember Urban to read the Consent Agenda. Councilmember Pearson asked that Item F.5, Michigan Municipal League Dues, be removed from the Consent Agenda. Motion by Urban, seconded by Campbell, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 5 to 0.

* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF DECEMBER 18, 2012:** Motion by Urban, seconded by Campbell, to approve the Accounts Payable Register of December 18, 2012. Upon a roll call vote, motion carried 5 to 0.

PETITIONS AND STATEMENTS OF CITIZENS: Ed Halcomb, 9834 Woodlawn Drive, requested that Fire Station No. 3 be manned with firefighters and fire equipment twenty-four hours a day, seven days a week, for the second time, and provided a review of his life experiences as a career firefighter for the City of Portage as support for his contention.

REPORTS FROM THE ADMINISTRATION:

* **PROPOSED TWO-YEAR LABOR AGREEMENT:** Motion by Urban, seconded by Campbell, to authorize the Mayor and City Clerk to execute the two-year replacement labor agreement with the Portage Police Officers Association in accordance with the Act 312 Arbitration Award. Upon a roll call vote, motion carried 5 to 0.

* **HEALTH INSURANCE CONTRACT RENEWALS:** Motion by Urban, seconded by Campbell, to approve one-year contract renewals for employee health insurance offered through Blue Care Network-10 (HMO plan), and Blue Cross Blue Shield of Michigan (PPO-1 and PPO-2 plans); up to a one year contract for PPOA retiree supplemental health insurance through Blue Care Network (Medicare Advantage plan) and authorize the City Manager to execute all documents on behalf of the city. Upon a roll call vote, motion carried 5 to 0.

* **2013 FEE SCHEDULES:** Motion by Urban, seconded by Campbell, to adopt the Proposed 2013 Charges for Documents fee schedule; the recommended fee schedules for recreation programs and park facilities for 2013; the Resolution for Community Development Fees; and the 2013 Special Assessment Rate Resolution and approve the proposed new Arrest Warrant Processing Fee. Upon a roll call vote, motion carried 5 to 0. Resolutions recorded on pages 477 and 481 of City of Portage Resolution Book No. 44.

* **MARCH BOARD OF REVIEW RESOLUTION:** Motion by Urban, seconded by Campbell, to adopt the Resolution setting the dates and times for the 2013 March Board of Review sessions. Upon a roll call vote, motion carried 5 to 0. Resolution recorded on page 485 of City of Portage Resolution Book No. 44.

MICHIGAN MUNICIPAL LEAGUE DUES: Councilmember Pearson spoke in favor of the Michigan Municipal League and cited some of its efforts on behalf of municipalities and Portage in Michigan. Discussion followed. Motion by Pearson, seconded by Randall, to authorize payment to the Michigan Municipal League in the amount of \$8,554 for year 2013 membership dues. Upon a roll call vote, motion carried 5 to 0.

* **NOVEMBER 2012 SUMMARY ENVIRONMENTAL ACTIVITY REPORT – INFORMATION ONLY:** Motion by Urban, seconded by Campbell, to receive the communication from the City Manager regarding the November 2012 Summary Environmental Activity Report as information only. Upon a roll call vote, motion carried 5 to 0.

* **DEPARTMENT MONTHLY REPORTS:** Motion by Urban, seconded by Campbell, to receive the Department Monthly Reports from the various city departments. Upon a roll call vote, motion carried 5 to 0.

COMMUNICATIONS:

TERMINATION OF LEASE FOR 8TH DISTRICT COURT: Mayor Pro Tem Reid deferred to City Manager Maurice Evans, who referenced the District Court Consolidation Agreement of April 1997 with the City and County of Kalamazoo and the elected judges sitting at the time and their successors on the 8th District Court and the 9th District Court that included the South County Court location in Portage. He referenced the communication from Chief Judge Paul J. Bridenstine prompted by the retirement of Judge Carol Husum and Public Act 19 (2012) which mandates that her judicial seat not be filled, the challenge of functioning with one less judge and the proposed closing of the Portage Court location. He pointed out in order for the location to be closed, there has to be a new agreement among the parties and the Administration recommendation is to authorize the City Manager to proceed with negotiations and bring back the terms of any modifications to City Council for consideration and approval.

Next, Mr. Evans reviewed some of the challenges Portage will face such as the Portage Police Officers and the City Attorney staff leaving the city to go downtown to court instead of in the same facility or at least the same city. Discussion followed.

At the request of Mayor Pro Tem Reid at the behest of Councilmember Campbell, Chief Judge Paul J. Bridenstine answered questions about which municipalities utilized the services of the Portage Court location and the percentages of the overall civil and criminal cases in the County heard at the Portage location. Discussion followed. Judge Bridenstine indicated that he and the other elected judges have analyzed case assignments for the County on the basis of efficiency and service to the greater community and determined the best approach is to move all cases to the two downtown locations and close the Portage location. Discussion followed.

In answer to Councilmember Randall, Judge Bridenstine explained how the case load will increase approximately 15% per judge as it will now be handled by only six judges instead of seven as a result of the passage of Public Act 19 (2012) by the State Legislature, who based their decision upon a State Court Administrative Office Judicial Resources recommendation. Judge Bridenstine explained that this is not the first time that the closing of the Portage location has been considered over the last fifteen years and that he defended leaving it open each time it came up because he felt it would be a disservice to the community to close it. However, he indicated that the dynamics have changed owing to cost for the service and the case load shift from seven judges to six judges that he now faces. Discussion followed.

In answer to Councilmember Urban, Judge Bridenstine explained the case assignment logistics and the problems this causes for the efficiency of the judges. Discussion followed.

In answer to Mayor Pro Tem Reid, Judge Bridenstine explained the scheduling and systems in place that save time for police officers, attorneys and court personnel and the plans for future use of technologies that will facilitate the process even further and explained.

In answer to Councilmember Pearson, Judge Bridenstine explained it is a delicate balance to keep a judge busy all day, with the exception of arraignments, and pointed out that Judge Robert Kropf already spends 30% of his time at the downtown location. He also pointed out that to require people north of Kilgore Road with minimal transportation to go to the South County location in order to preserve easier access (for the South County taxpayers) would very much compromise citizens north of Kilgore Road "getting good service."

Councilmember Pearson quantified some of the facts regarding the effects of the lowered number of Judges on the population of Kalamazoo County; cited the expectation of customer service for South County taxpayers; indicated he was in favor of intergovernmental cooperation and consolidation; and pointed out that in any analysis of the closure of the Portage Court location, there is added cost to the City of Portage. He cited a lowered response time since some police officers would be out of the city, increased cost to the City Attorneys, increased equipment cost and the elimination of a highly efficient court operation that provides good customer service. He then asked what is the financial benefit to Kalamazoo County. Judge Bridenstine directed Councilmember Pearson to the County (Commissioners) to determine impacts on the Court Budget. He listed facility expenses and the possible elimination of some Deputy Sheriff and/or staff positions as the only perceived savings, but emphasized from his perspective, the case load remains the same. He offered the option utilized by the City of Kalamazoo to prosecute fewer cases by deferring to the State Prosecutor to prosecute matters that are also covered under State statute which results in fewer city police officers being required to appear in court. He also offered the option of discussing the matter with jurisdictions north of Kilgore Road to determine the relative efficiency of the downtown court system as the City of Portage and South County jurisdictions would be added to that system.

In answer to Mayor Pro Tem Reid, Judge Bridenstine indicated that it would take a few days to move the staff, but he needs it to happen relatively soon because he has to schedule cases and envisioned the beginning of March as the probable time for the move. In answer to Councilmember Urban, Judge Bridenstine indicated that Judge Carol Husum has announced her retirement effective February 28, 2013, and explained. Discussion followed.

Councilmember Urban echoed all of the concerns already discussed and expressed a further concern that the proposed motion presupposes that the Portage Court location will close, that he desired more information and investigation, and that he had a new concern with the time it will take the City of Portage Police Officers to apply for warrants as this had not been considered until tonight by him because he had not been in any of the prior meetings on this matter. Discussion followed.

Motion by Pearson, seconded by Campbell, to receive the communication from Kalamazoo County 8th District Court Chief Judge Paul J. Brindenstine dated November 30, 2012, regarding the proposed closure of the 8th District Court South location and not refer the request from the Kalamazoo County District Court at this time to modify the District Court Consolidation Agreement to the City Manager with authorization to negotiate the terms of the modification. Discussion followed.

Motion by Pearson, seconded by Campbell, to modify the motion to read: to receive the communication from Kalamazoo County 8th District Court Chief Judge Paul J. Brindenstine dated November 30, 2012, regarding the proposed closure of the 8th District Court South location and refer the communication to the City Manager for further discussion, investigation and a report back to City Council. Upon a roll call vote, motion carried 5 to 0.

CITY OF PORTAGE 50TH ANNIVERSARY EVENTS RECOMMENDATION: At the request of Mayor Pro Tem Reid, City Manager Maurice Evans explained that Items G.2, G.3 and G.4 are the direct result of the request by City Council that the Advisory Boards and Commissions consider how they could help and to provide suggestions on how to commemorate the 50th Anniversary of the City of Portage. He indicated that the Park Board had nothing to offer at this time, but the Historic District Commission recommended that City Council support and recommend the Historic District Commission development of a self-guided historic site/trails tour, as well as production of Portage and Its Past by Grace Potts in electronic format and that it be made available on the Portage City website for the 2013 calendar year. He also indicated that the Planning Commission asked for support of the idea of a “pass book” to recognize and support local businesses and to establish a subcommittee to identify the operational details of the activity and to report back to City Council with their ideas. Discussion followed.

Motion by Campbell, seconded by Randall, to receive the report from the Historic District Commission regarding the potential of a tour of Portage historic homes and Train Barn open house in recognition of the city’s 50th Anniversary. Discussion followed. Motion by Campbell, seconded by Randall, to indicate that we (City Council) want the Historic District Commission to move forward with their plan. Discussion followed. Upon a roll call vote, motion carried 5 to 0.

CITY OF PORTAGE 50TH ANNIVERSARY: Motion by Urban, seconded by Campbell, to receive the report from the Park Board regarding the possibility of a community art competition in recognition of the city’s 50th Anniversary. Discussion followed. Upon a roll call vote, motion carried 5 to 0.

CITY OF PORTAGE 50TH ANNIVERSARY CELEBRATION – RECOGNITION OF PORTAGE BUSINESSES: Motion by Urban, seconded by Campbell, to receive the report from the Planning Commission and authorize them to proceed with the idea in the report of forming a subcommittee that can establish operational details of that activity; and to communicate to them that staff time is not available to support this activity. Upon a roll call vote, motion carried 5 to 0.

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

Portage Historic District Commission of October 3 and November 7, 2012.
Portage Human Services Board, November 1, 2012.
Portage Park Board of November 7, 2012.
Portage Youth Advisory Committee of November 11, 2012.
Portage Zoning Board of Appeals of November 12, 2012.

AD HOC COMMITTEE REPORT:

AD-HOC PROPERTY COMMITTEE REPORT: Councilmember Campbell reported on the two items before the ad hoc property committee on December 13, 2012, and indicated that because there was no quorum the matter of 10323 Archwood Drive was not discussed, but will be discussed in January 2013. She indicated that City Manager Maurice Evans and Community Development Director Vicki Georgeau were able to provide more information regarding the proposed sale to the city of the property at 117 East Centre Avenue owned by Roger L. Schiefler. She offered the recommendation of the Property Committee in the form of a motion, seconded by Councilmember Urban, to authorize the City Manager to negotiate with Mr. Scheifler to offer an amount to purchase the property at 117 East Center Avenue and, if an agreement is reached, then have the City Manager order a Phase I Environmental Study and an appraisal of the property. Discussion followed. Mayor Pro Tem Reid asked City Attorney Randy Brown if purchasing the property for future development was enough of a

public purpose to allow the city to purchase the property, and Mr. Brown answered in the affirmative and noted that the motion should reflect that the purchase agreement should come before City Council before the City Manager orders the Phase I Environmental Study of the property or before due diligence is initiated. Both Councilmember Campbell and Urban agreed to incorporate this in the motion. Upon a roll call vote, motion carried 5 to 0.

BID TABULATION:

* **CONTRACT APPROVAL – COMPREHENSIVE JANITORIAL SERVICES:** Motion by Urban, seconded by Campbell, to approve the low bids for comprehensive janitorial services submitted by New Fresh Cleaning Services in the amount of \$16,560 for the Police Division Building, and LaCosta Facility Support Services in the amount of \$13,212 for City Hall, \$19,764 for the Parks, Recreation and Public Services Building, \$6,780 for the Senior Center and \$3,744 for the District Court both for the period of January 13, 2013, to January 11, 2014, with the option of three one-year renewals, and authorize the City Manager to sign all other documents related to this action on behalf of the city. Upon a roll call vote, motion carried 5 to 0.

OTHER CITY MATTERS:

STATEMENTS OF CITY COUNCIL: Mayor Pro Tem Reid and City Council wished everyone a Merry Christmas and a safe and happy holiday season.

Councilmember Pearson also encouraged everyone to hug their children not once, but twice, whether they have been naughty or nice.

ADJOURNMENT: Mayor Pro Tem Reid adjourned the meeting at 8:59 p.m.

James R. Hudson, City Clerk

*Indicates items included on the Consent Agenda.