

## CITY COUNCIL MEETING MINUTES FROM JULY 26, 2011

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

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

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

**APPROVAL OF MINUTES:** Motion by Urban, seconded by Reid, to approve the July 12, 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. Motion by Urban, seconded by Campbell, to approve the Consent Agenda motions as presented. Upon a roll call vote, motion carried 7 to 0.

\* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF JULY 26, 2011:** Motion by Urban, seconded by Campbell, to approve the Accounts Payable Register of July 26, 2011. Upon a roll call vote, motion carried 7 to 0.

### REPORTS FROM THE ADMINISTRATION:

\* **BUDGET AMENDMENT – WIND STORM CLEAN-UP:** Motion by Urban, seconded by Campbell, to authorize a budget amendment (loan/transfer) of \$125,000 from unobligated General Fund balance to the Leaf Pickup/Spring Cleanup Fund, with this previously unappropriated fund balance in the Leaf Pickup/Spring Cleanup Fund being appropriated for a special brush collection necessitated by the July 11, 2011 wind storm event and repaid to the General Fund as soon as sufficient revenue becomes available in the Leaf Pickup/Spring Cleanup Fund. Upon a roll call vote, motion carried 7 to 0.

\* **RESOLUTION AWARDING BID:** Motion by Urban, seconded by Campbell, to adopt the Resolution awarding the bid for City of Portage Special Assessment Bonds, Series 2011, in the amount of \$1,175,000 to Comerica Securities at 4.979156%. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on page 277 of City of Portage Resolution Book No. 44.

\* **ORDINANCE AMENDMENT 10-E, MIXED-USE ZONING ORDINANCES:** Motion by Urban, seconded by Campbell, to accept Ordinance Amendment 10-E, Mixed-Use Zoning Ordinances, for first reading and set a public hearing for August 23, 2011; and, subsequent to the public hearing, consider approval of Ordinance Amendment 10-E, Mixed-Use Zoning Ordinances. Upon a roll call vote, motion carried 7 to 0.

\* **JUNE 2011 SUMMARY ENVIRONMENTAL ACTIVITY REPORT – INFORMATION ONLY:** Motion by Urban, seconded by Campbell, to receive the communication from the City Manager regarding the June 2011 Summary Environmental Activity Report as information only. Upon a roll call vote, motion carried 7 to 0.

\* **DEPARTMENT MONTHLY REPORTS:** Motion by Urban, seconded by Campbell, to receive the Department Monthly Reports. Upon a roll call vote, motion carried 7 to 0.

## **UNFINISHED BUSINESS:**

### **ORDINANCE AMENDMENT 10-C, MEDICAL MARIHUANA HOME**

**OCCUPATION:** Since the public hearing was closed on this matter, Mayor Strazdas shared with the public how City Council would proceed in order to get remaining questions answered regarding health and safety issues, the effect of spacing requirements between the location of a primary caregiver home occupation and schools, playgrounds, housing facilities owned by a public housing authority, youth centers, public swimming pools or video arcades, and the location of the home occupation within the residential structure versus in a detached accessory building. Mayor Strazdas introduced Deputy City Manager Brian Bowling, who provided a brief overview of the development of the ordinance and the issues raised at the July 12, 2011 City Council Meeting. He pointed out that various regulatory structures were discussed over the last six months by the Administration and the City Council Committee that worked on the ordinance and listed them. He explained the major provisions of the ordinance and indicated that the ordinance is consistent with the Michigan Medical Marijuana Act. He reviewed the issues mentioned by Mayor Strazdas, referred to the materials received by City Council in the Agenda Packet and introduced Community Development Director Vicki Georgeau, who summarized the information contained in her communication to City Manager Maurice Evans dated July 18, 2011. Discussion followed.

In answer to Councilmember Reid, Ms. Georgeau indicated that the State Licensing Bureau of Michigan did not establish any rules regarding the Michigan Medical Marijuana Act (MMMA), did not plan to formulate any rules anytime soon, but the City of Portage Labor Attorney indicated that the Michigan Occupational Safety and Health Administration (MIOSHA) rules would be in effect and enforcement would be by the State because this home occupation qualifies as a self-employed business. Otherwise, enforcement would ensue any time there is a complaint or if one of the city departments observe anything “out of the norm” with respect to all health and safety issues, modifications to the property or permits that may be necessary.

In response to Mayor Pro Tem Sackley, Ms. Georgeau indicated that neither, the USDA, the MDA nor the FDA has put forward any rules at this point. Discussion followed regarding the need for permits for health and safety reasons. In answer to Councilmember Urban, Ms. Georgeau told him that the ordinance allows the city to inspect the equipment and location of the equipment to ensure the service is adequate to support the new use and to advise accordingly. Discussion followed.

Mayor Strazdas asked for input regarding the use of an accessory building versus utilization of the residence. In answer to the concerns of Councilmembers Randall and Campbell regarding the use of an outside secured building for cultivation of marihuana as opposed to a secured area inside the residence, Ms. Georgeau indicated that requiring that the operation take place within the residence is the result of a policy discussion as opposed to a legal requirement. She said the purpose is to increase security, to reduce a potential adverse impact on neighbors and to achieve consistency with the other home occupation ordinances. Councilmember Campbell also expressed her concern for the use of toxic gases and fuel inside the home as opposed to a safer location in an accessory building. Discussion followed. In answer to Councilmember Campbell, City Attorney Randy Brown indicated that “other area” could be construed as being outside the residence, but there is no question that inside the residence is covered by the MMMA.

Next, Mayor Strazdas explained some of the information regarding the effect of spacing requirements between the location of a primary caregiver home occupation and schools, playgrounds, housing facilities owned by a public housing authority, youth centers, public swimming pools or video arcades and opened discussion. Mayor Pro Tem Sackley expressed his concern that the use of the Federal 1000 foot requirement of the Drug Free School Zone Spacing was established to set harsher criminal sanctions for criminal activity within these zones regarding drugs. He stated his opinion that the voters of State of Michigan did not recognize medical marihuana use as an illegal activity and should therefore not be included in the Federal 1000 foot requirement of the Drug Free School Zone

Spacing as some neighborhoods would not be able to cite a caregiver. So, he asked if there were any practical considerations for choosing the Federal 1000 foot requirement of the Drug Free School Zone Spacing as an overlay for MMMA caregivers from a safety health or viability of a neighborhood standpoint. Ms. Georgeau explained that after a study of this issue, the resultant proposal to use the Drug Free School Zone spacing requirements was a scaled back version of the initial proposed spacing requirements that included 1,000 feet from child care centers and city parks and was a common practice in other communities as well. In answer to Mayor Pro Tem Sackley's follow-up question if a qualified care giver sought to operate within the Home Occupation Ordinance in a neighborhood within the restricted zone would be a basis to go before the Zoning Board of Appeals to show a hardship, City Attorney Brown, without judging what the Zoning Board of Appeals would decide, acknowledged that the Zoning Board of Appeals would be the appropriate option for an appeal in this situation. Discussion followed.

When Councilmember Urban indicated that simply because an individual home happens to be in a restricted zone, this does not qualify that person for a hardship, City Attorney Brown indicated that it is up to the Zoning Board of Appeals to decide. Councilmember Urban opined that the Zoning Board of Appeals can not use financial reasons to qualify a person for a hardship exemption because the homeowner could just move to another neighborhood; and, when a hardship is found, it is usually associated with the individual property itself, not the neighborhood. He found the proposed overlay arbitrary and questioned the use of the Federal Statute as a guide for the overlay when the whole state has chosen to ignore the Federal Statute on the use of marihuana.

In answer to Councilmember Randall, who asked if the designated area for keeping and growing marihuana is properly secured, how would school children have access to it, Ms. Georgeau indicated that the concern is for the secondary effects of having marihuana in close proximity to children, although the problem presents itself in other states because of the presence of dispensaries in most cases, and is a policy rather than a legal consideration for City Council. Discussion followed.

Mr. Brown indicated that the MMMA does not make marihuana legal, it just sets up an affirmative defense, so the caregiver can inform the prosecutor that he or she cannot be prosecuted because he or she is in compliance with the Act. He pointed out that the proposed overlay is not arbitrary as is consistent with Drug Free Zone spacing requirements and the Drug Free Zone deals with marihuana. Discussion followed and the proposed overlay was compared and contrasted with the State Law requirements that are not found in the City of Portage Zoning Code for licensing establishments selling and/or serving liquor. Discussion followed.

Mayor Strazdas opened the discussion up to the public.

Richard Enos, 10615 Cora Drive, indicated he did not want to be a caregiver, but wanted to exercise his rights as a patient and had an e-mail from the MMMA that indicated that it is legal to grow it outside as long as it was not visible by the neighbors. He described his secured dog kennel and privacy fencing as his approach to comply with the Act. Mayor Strazdas responded and discussion followed.

John Targowski, 1963 Brighton Lane, spoke in opposition to the proposed ordinance and indicated that he is an attorney that works in marihuana cases and offered the suggestion that City Council consider the special use permit process for the use of outbuildings as the confidentiality of the caregiver and even the patient could be compromised if the caregiver is required to come before the Planning Commission since there are no parameters regarding the questions that could be asked. He indicated that Kalamazoo Township pared their spacing requirements down to 500 feet. He advocated waiting until some of the issues have been litigated and referenced cases that are currently working their way through the courts that may help to clarify legal uncertainties. Mr. Brown indicated that the Committee did discuss special use permits and special land use, but did not require this or registration because of the dangers of violating the confidentiality provision.

Kevin Spitler, 57189 Ryan Street, Mattawan, indicated that he was from Med Joint of Oshtemo and said that there is a Bill in the Legislature and provided City Council with an article that referenced the Muskegon Ordinance and the frustrations with the burden of proof as the ordinance is written. Discussion followed.

Sal Ollie, 1163 Mount Royal Road, Oshtemo Township, questioned the protection of confidentiality if a caregiver is required to appeal a public meeting before the Zoning Board of Appeals.

Erik Rowe, 7320 Garden Lane, Suite 105, Director of Alternative Meds, spoke in favor of marihuana and in opposition to the proposed ordinance based on its restrictiveness since he can obtain prescription drugs at any drug store, can take a prescription drug anywhere and can attend a school swim meet after taking a prescription drug without violating the law. He also argued that the City of Portage would lose revenue with the passage of this ordinance.

Ken Jonatzke, 8318 Portage Road, spoke in opposition to the proposed ordinance requirement that the product only be grown within the home as he has patients who are not ambulatory, can not travel very far for their medication and may have zero tolerance for pesticides or carbon dioxide. He also questioned the section that limits the caregivers to one per resident, advocated the use of dispensaries, pointed out that drugs in the home are currently a very serious problem and asked for a moratorium. Discussion followed.

In response to Councilmember Urban, City Attorney Brown confirmed that the confidentiality rule includes both the patient and the caregiver. However, Mr. Brown was not optimistic about passage of the bills in the Legislature or the settlement of the court cases any time soon. Discussion followed.

Mayor Strazdas asked if any Councilmember was interested in an extension of a moratorium and expressed his opposition to the moratorium. Mayor Pro Tem Sackley advocated a motion, thanked those who came to speak to the ordinance and thanked Jim Cheesebro, Planning Commission Chair, for all of his work on the ordinance. He pointed out that the State Law is not clear; hence, the discussion, court cases and bills being offered in the Legislature. He indicated that Mr. Brown also agreed that the State Law is not clear. At the request of Mayor Pro Tem Sackley, Mr. Brown acknowledged that he is President-elect of the Michigan Association of Municipal Attorneys of the Michigan Municipal League which has a Legislative liaison who keeps them abreast of the progress of bills in the Legislature. Discussion followed.

Motion by Sackley, seconded by Urban, to consider the additional information provided by the City Administration, to approve Ordinance Amendment 10-C, Medical Marihuana Home Occupation, with the 1000 feet from schools and playgrounds and 100 feet from arcades spacing requirement modified to a 500 feet from schools and playgrounds and 100 feet from arcades spacing requirement; and, based on the expiration of the Moratorium that is in effect until July 29, 2011, that this ordinance amendment take effect immediately upon the expiration of the moratorium.

After discussion, motion by Urban, seconded by Campbell, to amend the motion to amend the ordinance language in Section 5 to read, "All medical marihuana plants shall be contained within the main residential structure or a detached, locked accessory building 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 accessory building or structure." Discussion followed. Mr. Brown asked that Section C.2 begin with the words, "Unless otherwise provided in this section, the home occupation shall only be conducted in a dwelling unit." Councilmember Urban and Councilmember Campbell agreed. Discussion followed. At the request of Mayor Strazdas, Mr. Brown read the motion as amended. Discussion followed. Upon a roll call vote, the amended motion failed 4 to 3. No: Councilmembers Bailes and Reid, Mayor Pro Tem Sackley and Mayor Strazdas. Yeas: Councilmembers Urban, Campbell and Randall. Discussion followed. Mayor Strazdas called for the question on the original motion. Upon a roll call vote, motion carried 5 to 2. Yeas: Councilmembers Urban, Bailes and Reid, Mayor Pro Tem Sackley and Mayor Strazdas. No: Councilmembers Campbell and Randall. Ordinance recorded on page 175 of City of Portage Ordinance Book No. 12.

\* **HUMAN SERVICES BOARD - HUMAN SERVICES FAIR:** Motion by Urban, seconded by Campbell, to direct the Human Services Board to further review aspects of the proposed Human Services Fair and report back to City Council prior to confirming an event date to ensure a successful,

sustainable, well attended and productive Human Services Fair. 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:

Kalamazoo County Board of Commissioners Committee of the Whole and Regular of July 5, 2011.  
Portage Planning Commission of July 7, 2011.

#### **AD HOC COMMITTEE REPORT:**

**2011 PORTAGE COMMUNITY SURVEY:** Councilmember Reid discussed the purpose of the City Council Survey Committee and indicated that the survey was not conducted last year because of funding. She said Dr. VanVale and the Committee looked at the questions and suggested a few changes. She discussed the proposed questions focusing on questions 11, Fall Leaf Pickup Program, 12, Spring Cleanup Program, and 13, Curbside Recycling Program, that have reference to the permissive millage concept. She discussed the satisfaction levels regarding these questions and asked for approval of the survey as provided in order to have data and trends for the Fall City Council Retreat. Mayor Strazdas thanked her for her efforts. Discussion followed. Motion by Reid, seconded by Campbell, to approve the 2011 Portage Community Survey instrument as recommended by the City Council Community Survey Committee. Upon a roll call vote, motion carried 7 to 0.

#### **BID TABULATION:**

\* **BICYCLE LANE ASPHALT REPAIRS - RECOMMENDATION:** Motion by Urban, seconded by Campbell, to accept the low bid from J. Allen and Company, Incorporated, to provide repairs to selected major street bicycle lanes in the not-to-exceed amount of \$15,526.30 and authorize the City Manager to execute all documents related to this contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

#### **OTHER CITY MATTERS:**

**STATEMENTS OF CITIZENS:** Jim Pearson, 3004 East Shore Drive, announced his candidacy for City Council for the November 8, 2011 General City Election. Discussion followed.

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Councilmember Campbell congratulated all of the young men and young women who played Little League this year from West Portage Little League and South Portage Little League, representing Portage at the local, state and national levels. She also congratulated the local Broncos eleven year old travel baseball team that just won the World Series in Tennessee.

Councilmember Reid expressed her gratitude for the clean-up efforts after the wind storm and announced that the 10<sup>th</sup> Annual Kalamazoo Area Foot Chase 2011 will take place on Saturday, September 10, 2011, at Celery Flats and is dedicated to Kalamazoo Department of Public Safety Officer Eric Zapata. She expressed her concern about the debt ceiling issue that is being debated in Washington, D.C., and Councilmember Urban concurred.

Councilmember Cory Bailes announced his candidacy for City Council for the November 8, 2011 General City Election.

Mayor Strazdas indicated that Stryker Corporation approved the use of 96,000 square feet of the former Upjohn, Pharmacia, Pfizer Quad Building for relocating up to 300 jobs.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 9:40 p.m.

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James R. Hudson, City Clerk

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