



## CITY COUNCIL

October 7, 2019

A regular meeting of the City of Petoskey City Council was held in the City Hall Council Chambers, Petoskey, Michigan, on Monday, October 7, 2019. This meeting was called to order at 7:00 P.M.; then, after a recitation of the Pledge of Allegiance to the Flag of the United States of America, a roll call then determined that the following were

Present: John Murphy, Mayor  
Kate Marshall, City Councilmember  
Suzanne Shumway, City Councilmember  
Grant Dittmar, City Councilmember  
Lindsey Walker, City Councilmember

Absent: None

Also in attendance were City Manager Robert Straebel, Clerk-Treasurer Alan Terry, Public Works Director Michael Robbins and Downtown Director Becky Goodman.

### **Hear Indigenous Peoples' Day Proclamation**

Mayor Murphy read the following proclamation:

WHEREAS Indigenous Peoples' Day was first proposed in 1977 by a delegation of Native Nations to the International Conference on Discrimination Against Indigenous Populations in the Americas; and

WHEREAS the United States endorsed the United Nations Declaration of Rights of Indigenous People on December 16, 2010; and

WHEREAS a growing number of cities and towns in the United States have recognized the second Monday of October as "Indigenous Peoples' Day", as an opportunity to celebrate indigenous heritage and resiliency; and

WHEREAS the City of Petoskey recognizes the historic, cultural, and contemporary significance of Indigenous Peoples of the lands that also became known as the Americas; and

WHEREAS the City of Petoskey recognizes it was founded and built upon lands first inhabited by Indigenous Peoples of this region and acknowledges and honors these members of the community; and

WHEREAS the City of Petoskey values the many contributions made to our community through Indigenous Peoples' knowledge, labor, technology, science, philosophy, arts, and the deep cultural contribution that has shaped the character of the City:

NOW, THEREFORE I, John Murphy, Mayor of the City of Petoskey, do hereby proclaim the second Monday of October as Indigenous Peoples' Day in Petoskey.

**Consent Agenda - Resolution No. 19324**

Following introduction of the consent agenda for this meeting of October 7, 2019, City Councilmember Marshall moved that, seconded by City Councilmember Shumway adoption of the following resolution:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the September 16, 2019 regular session City Council meeting be and are hereby approved; and

BE IT RESOLVED that receipt by the City Council of a report concerning all checks that had been issued since September 16, for contract and vendor claims at \$1,249,577.20, intergovernmental claims at \$0, and the September 19 and October 3 payrolls at \$424,229.23, for a total of \$1,673,806.43 be and is hereby acknowledged.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker, Murphy (5)

NAYS: None (0)

**Hear Public Comment**

Mayor Murphy asked for public comments and heard a comment from the Odawa Tribal Chair thanking the City for their support with the Indigenous Peoples’ Day proclamation and also heard an inquiry on the Master Plan update.

**Hear City Manager Updates**

The City Manager reported that staff hired Baird and Associates, an engineering firm out of Wisconsin, to complete a shoreline assessment to look at high water and erosion issues; that the Planning Commission heard a presentation by the Little Traverse Housing Partnership regarding affordable/workforce housing issues as part of the City’s Master Plan update; that a special City Council meeting is scheduled for 5:30 P.M., Monday, October 14 to discuss the 2018 Action Plan; that staff submitted a grant application for \$15,000 to the Petoskey Harbor Springs Area Community Foundation to offset costs for a solar array feasibility study to be completed on the Howard Road landfill site in 2020; that the Kalamazoo Avenue reconstruction open house is scheduled from 4:30 P.M. to 7:00 P.M., Wednesday, October 9 to solicit comments on the proposed street design for Kalamazoo Avenue; that staff is currently working on the draft 2020 Budget which will be discussed at the November 4 City Council meeting; provided US-31 highway construction and downtown resurfacing project updates; and reminded City Council that he will be attending the ICMA annual conference from October 20-23 and will not be in attendance at the October 21 City Council meeting.

**Zoning Board of Appeals Appointment – Resolution No. 19325**

Mayor Murphy reviewed that City Council consider possible appointment to the Zoning Board of Appeals.

City Councilmember Marshall moved that, seconded by City Councilmember Walker adoption of the following resolution:

BE IT RESOLVED that the City Council does and hereby approves the appointment of Jessica Shaw-Nolff, 517 East Lake Street, to the Zoning Board of Appeals to fill a vacated term ending April 2020.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker, Murphy (5)

NAYS: None (0)

**Adopt Ordinance 772 Amending the Zoning Ordinance Allowing Medical Marihuana Provisioning Facilities – Resolution No. 19326**

The City Manager reviewed that after three first readings of a zoning ordinance allowing medical marijuana provisioning centers, City Council could consider approving the ordinance; that there were no changes to the ordinance made from the last discussion on September 16; and that one additional comment dated October 3 was received from Mr. Joe Blachy.

City Councilmembers inquired if an initiative and referendum could be placed on the same ballot. The City Manager responded that it was a legal question and would converse with the City Attorney.

Mayor Murphy asked for public comments and heard a comment concerning allowing businesses at existing PUDs and commended Council for the distance between medical marijuana facilities; that it is unconscionable to bring medical marijuana to the community; heard from those in favor and thanked Council and staff for time spent on issue; and heard from those only in favor of medical marijuana.

City Council commented that the issue was a difficult decision and many did their research; that most of the allowed zoning districts are located in Ward 3; that matter should be voted down and bring initiative forward; and that a referendum is an option for those in opposition.

City Councilmember Walker moved that, seconded by City Councilmember Marshall adoption of the following ordinance:

**ORDINANCE NO. 772**

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF PETOSKEY TO**

- **AMEND ARTICLE II, SECTION 201, ADD NEW DEFINITIONS PERTAINING TO MEDICAL MARIHUANA FACILITIES;**
- **AMEND ARTICLE X, SECTION 1002, ADD MEDICAL MARIHUANA FACILITIES;**
- **AMEND ARTICLE XXV, SECTION 2502, ADD MEDICAL MARIHUANA FACILITIES;**
- **AMEND ARTICLE XXVI, SECTION 2601, ADD MEDICAL MARIHUANA FACILITIES AS A SPECIAL CONDITION USE;**
- **AMEND ARTICLE XIII, SECTION 1301(1) EXCEPTING MARIHUANA FACILITIES; AND**
- **ADD ARTICLE XXXII, PROVIDING ADDITIONAL ZONING PROVISIONS FOR THE SPECIAL USE OF MEDICAL MARIHUANA FACILITIES.**

The City of Petoskey ordains:

**ARTICLE II, SECTION 201**

Sec. 201. – Definitions. Section 201 of the City of Petoskey's Zoning Ordinance is amended to include the following definitions, in alphabetical order:

*LARA:* The Michigan Department of Licensing and Regulatory Affairs

*Licensee:* An entity that holds a license issued under the Medical Marihuana Facilities Licensing Act, Act 281 of 2016, as amended, that allows the licensee to operate as one of the following, specified in the license:

- A grower
- A processor
- A secure transporter

- A provisioning center
- A safety compliance facility

*Marihuana:* The term as defined in section 7106 of the public health code, 1978 PA 368, MCL § 333.7106 et seq.; the Michigan Medical Marihuana Act, MCL § 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL § 333.27101 et seq.; and the Marihuana Tracking Act, MCL§ 333.27901 et seq.

*Medical Marihuana Facility:* An enterprise at a specific location at which a licensee is licensed and a permit holder is permitted to operate under the Medical Marihuana Facilities Licensing Act. The term does not include or apply to a "primary caregiver" or "caregiver" as that term is defined in the Michigan Medical Marihuana Act, MCL § 333.26421 et seq.

*Medical Marihuana Permit:* A current and valid Permit for a Medical Marihuana Facility issued under the City's Medical Marihuana Facilities Ordinance, granted in accordance with that Ordinance.

*Provisioning Center:* A licensee that is a commercial entity located in this State that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan Medical Marihuana Act (MCL § 333.26421 et seq.) is not a provisioning center for purposes of this Ordinance.

**ARTICLE X, SECTION 1002**

Article X, Section 1002 of the City of Petoskey's Zoning Ordinance is amended to include the following additional principal use permitted subject to special conditions:

10. Medical Marihuana Facilities, to the extent permitted by and subject to the terms and conditions of the City of Petoskey's general ordinances regulating same and subject to the requirements of Article XXXII and the provisions of sections 1716 through 1718 of this ordinance.

**ARTICLE XIII, SECTION 1301**

Article XIII, Section 1301(1) of the City of Petoskey Zoning Ordinance is hereby amended to read:  
All uses permitted and as regulated in the B-3 General Commercial District except for Medical Marihuana Facilities.

**ARTICLE XXV, SECTION 2502**

Article XXV, Section 2502 of the City of Petoskey Zoning Ordinance is hereby amended to read:

1. All uses permitted in the B-3 General Business District of Petoskey Zoning Ordinance 451 shall be permitted for possible inclusion in a PUD. Accessory buildings and uses customarily incidental to any of the above permitted uses shall be permitted provided that they meet the conditions of section 2503(3)m.
2. Medical Marihuana Facilities shall be permitted in existing Planned Unit Development Districts provided that the development plan is amended. Medical Marihuana Facilities shall only be allowed to the extent permitted by and subject to the terms and conditions of the City of Petoskey's general ordinances regulating same and subject to the requirements of Subsection 1. Above, Article XXXII, and the provisions of sections 1716 through 1718 of this ordinance.

## **ARTICLE XXVI, SECTION 2601**

Article XXVI, Section 2601 of the City of Petoskey's Zoning Ordinance is amended to read:

Sec. 2601. - Principal uses permitted and principal uses permitted subject to special conditions:

In a B-3B Business Industrial District, no building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this ordinance:

- (1) Any uses permitted in the I-1 Light Industrial District, provided that:
  - (a) Residential uses shall be allowed with the permitted density and setback requirements of the RM-2 district; and
  - (b) All uses shall also be subject to the conditions set forth in this district; and
  - (c) The following principal uses shall not be permitted;
    1. Open storage facilities or yards;
    2. Railroad transfer and storage tracks;
    3. Commercial kennels;
    4. Auto engine and body repair;
    5. Lumber and planning mills;
    6. Trade or industrial schools specializing in auto mechanics, heavy equipment operation, engine repair and overhaul, and uses with similar industrial-type characteristics; and
    7. Other uses of a similar character to the above uses.
- (2) Principal uses permitted subject to Special Condition Standards for Review Section 1717
  - (a) Medical marihuana facilities.

## **ARTICLE XXXII – MEDICAL MARIHUANA FACILITIES.**

Article XXXII of the City of Petoskey's Zoning Ordinance, Medical Marihuana Facilities, is hereby added, as follows:

Sec. 3200. Intent.

It is the purpose of this Article to regulate Medical Marihuana Facilities so as to protect the public health, safety, and welfare of the residents and patients of the City and to establish reasonable and uniform regulations for their operation. It is further the intent of this Article to implement the provisions of the Michigan Medical Marihuana Facilities Licensing Act, MCL § 333.27101, et seq., with respect to local zoning and land use, and to permit the sale and distribution of medical marihuana consistent with applicable State statutes.

The provisions of this article have neither the purpose nor effect of granting immunity from any criminal prosecution under Federal law or granting immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of marihuana in any form, that is not in strict compliance with all applicable laws and rules promulgated by the State of Michigan and the City of Petoskey regarding medical marihuana. This Article does not provide any rights or privileges with regard to marihuana under the Michigan Regulation and Taxation of Marihuana Act, MCL § 333.27102.

Sec. 3201. General Provisions.

Medical marihuana facilities as defined by this Ordinance shall be subject to the following general regulations:

(a) Any uses or activities found by the State of Michigan or a court with jurisdiction to be unconstitutional or otherwise not permitted by State law are prohibited in the City. In the event that a court with jurisdiction declares some or all of this Section invalid, the City may suspend the acceptance of applications for licensing pending the resolutions of the legal issue in question.

(b) An operator of a medical marihuana facility shall at all times have a valid Medical Marihuana Facility permit issued by the City pursuant to Chapter 8, Article IX of the Petoskey Code of Ordinances, as amended, and a State operating license as issued by LARA pursuant to the Medical Marihuana Facilities Licensing Act, MCL § 333.27101 et seq.

(c) A property owner or operator of a medical marihuana facility shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any applicable amendment thereto.

(d) Discontinuation of a State medical marihuana facility license shall be also considered a discontinuance of a medical marihuana facility, at which time any permit granted by the City pursuant to this Ordinance would be considered ineffective.

Sec. 3202. Site development performance standards for all uses.

- (a) Only one medical marihuana facility per parcel or lot.
- (b) A separation distance of five hundred (500) feet is required from any other medical marihuana facility or marihuana establishment.
- (c) A medical marihuana facility is not permitted within one thousand (1000) feet of:  
any private or public elementary or secondary school (K-12).
- (d) The distances described in this section shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated in this section above to the nearest portion of the building or unit in which the medical marihuana facility is located.
- (e) The separation distances contained in this section are applicable to marihuana facilities and establishments located in adjacent governmental jurisdictions.
- (f) A medical marihuana facility is not permitted on the same property or parcel or within the same building where any of the following are located: a package liquor store, a convenience store that sells alcoholic beverages or a fueling station that sells alcoholic beverages.

Nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby revised as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this ordinance.

If any of the standards set forth in this amendment conflict with any other standards of previous or further ordinances or amendments, the stricter standards shall apply.

All ordinances, resolutions, or orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, repealed.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

This ordinance shall take effect fifteen (15) days following its enactment and shall be published once within seven (7) days after its enactment as provided by Charter.

Said ordinance was adopted by the following vote:

AYES: Marshall, Shumway, Walker, Murphy (4)

NAYS: Dittmar (1)

**Adopt Ordinance 773 Amending Chapter 8 Creating a New Article IX – Medical Marihuana Facilities – Resolution No. 19327**

The City Manager reviewed that after three first readings of the licensing ordinance allowing up to three medical marijuana provisioning centers within the City, Council could approve the ordinance and that there were no changes made to the ordinance from the last discussion on September 16.

City Councilmembers inquired on how long the lottery list remains on file at the City. The City Manager responded that the list is valid for three years.

Mayor Murphy asked for public comments and heard a comment on how staff will handle two locations within the same buffer zone; heard an inquiry on who monitors these types of businesses; and that security plans are reviewed at the State level.

City Councilmember Marshall moved that, seconded by City Councilmember Shumway adoption of the following ordinance:

**ORDINANCE NO. 773**

**AN ORDINANCE TO AMEND CHAPTER 8 OF THE PETOSKEY CODE OF ORDINANCES, BUSINESSES AND BUSINESS REGULATIONS, CREATING A NEW ARTICLE IX- MEDICAL MARIHUANA FACILITIES, WITHIN THE CITY OF PETOSKEY**

The City of Petoskey ordains:

**ARTICLE IX MEDICAL MARIHUANA FACILITIES**

**DIVISION I: GENERAL PROVISIONS**

**8-325: Purpose and Intent.**

The purpose of this Ordinance is to implement the provisions of Public Act 281 of 2016, being the Michigan Medical Marihuana Facilities Licensing Act, so as to protect the public health, safety, and welfare of the residents and patients of the City by setting forth the manner in which medical Marihuana facilities can be operated in the City. Specifically, the purpose of this Ordinance is to:

- (a) Provide for a means for the distribution of Marihuana to patients who qualify to obtain, possess, and use Marihuana for medical purposes under the Michigan Medical Marihuana Act, (MCL§ 333.26421 et seq.), the Medical Marihuana Facilities Licensing Act (MCL § 333.27101 et seq.) and the Marihuana Tracking Act (MCL § 333.27901 et seq.);
- (b) Authorize the establishment of medical Marihuana facilities and provide standards and procedures for the review, issuance, renewal and revocation of City-issued permits;
- (c) Coordinate the City's ordinance and procedures with laws and regulations that are and may be enacted by the State of Michigan pertaining to medical Marihuana;
- (d) Protect public health and safety through reasonable limitations on Marihuana facility operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the facility and its personnel, and other health and safety concerns;
- (e) Protect the character of residential neighborhoods by limiting the location and the concentration of types of Marihuana commercial entities to specific areas of the City; and

- (f) Impose fees to defray the cost to the City of the administrative and enforcement costs associated with medical Marihuana facilities.

Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal law. Nothing in this Ordinance is intended to promote or condone the production, distribution, or possession of Marihuana in violation of any applicable law and nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of Marihuana in any form, that is not in strict compliance with all applicable laws and rules promulgated by the State of Michigan and the City of Petoskey regarding medical Marihuana. Nothing in this Ordinance is intended to provide any approvals, permits or licenses for any other type of facility, except for a medical Marihuana facility. Specifically, this Ordinance does not provide any rights or privileges with regard to Marihuana under the Michigan Regulation and Taxation of Marihuana Act, MCL § 333.27951 et seq.

By accepting a permit issued pursuant to this Chapter, the holder waives and releases the City, its officers and employees from any liability for injuries, damages or liabilities of any kind that result from the arrest or prosecution of medical Marihuana facility owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations. Further, the holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers against all liability, claims or demands, including, but not limited to, arising as a result of any claim of diminution of property value by a property owner whose property is located in proximity to a permitted Marihuana facility, arising out of, claimed to have arisen out of or in any manner connected with the operation of a medical Marihuana facility.

**8-326: Definitions.**

Unless otherwise specifically defined in this ordinance, any terms in this ordinance that are defined or described in any of the Acts shall have the definitions or descriptions as set forth in those Acts. Additionally, as used in this Ordinance:

- (a) "Acts" means any combination thereof of the following Michigan State laws:
  - (1) "Michigan Medical Marihuana Act" or "MMMA" means 2008 IL1, MCL § 333.26421 et seq. as, may be amended.
  - (2) "Michigan Medical Marihuana Facilities Licensing Act" or "MMFLA" means Public Act 281 of 2016, MCL § 333.27101 et seq., as may be amended
  - (3) "Michigan Marihuana Tracking Act" means Public Act 282 of 2016, MC § 333.27901 et seq., as may be amended.
- (b) "Affiliate" shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(b), as amended.
- (c) "Applicant" means a person who applies for a state operating license and a City Permit. With respect to disclosures in an application, or for purposes of ineligibility for a license, the term "Applicant" shall have the same meaning as the identical term in the Michigan Medical Marihuana Facilities Licensing Act at MCL § 324.27102(c). "Applicant" includes an Affiliate, officer, director and managerial employee of the Applicant and an Applicant shall disclose the identity of any person or entity that controls, directly or indirectly, the Applicant.
- (d) "Cultivate" or "Cultivation" means (1) all phases of Marihuana growth from seed to harvest; and (2) the preparation, packaging, and labeling of harvested usable Marihuana.
- (e) "Grower" shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(g), as amended.
- (f) "Permit" means a current and valid permit for a Marihuana facility issued under this Ordinance.



“Permit holder” means a person holding a City of Petoskey operating permit issued under the provisions of this ordinance.

- (g) “Marihuana” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(k), as amended.
- (h) “Marihuana facility” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(l), as amended.
- (i) “Marihuana plant” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(m), as amended.
- (j) “Processor” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(u), as amended.
- (k) “Provisioning Center” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(v), as amended.
- (l) “Safety compliance facility” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(aa), as amended.
- (m) “Secure transporter” “Provisioning Center” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(bb), as amended.
- (n) “State operating license” “Provisioning Center” shall have the same meaning as the identical term in the MMFLA, MCL § 333.27102(ee), as amended.

**8-327: Authorized Facilities.**

The following types of Marihuana facilities may be established and operated by a licensee in the City, subject to compliance with the MMFLA, the Rules promulgated thereunder and this ordinance:

Provisioning Center – Not more than three (3) Provisioning Centers shall be established, operated or permitted in the City.

No Marihuana facility shall be eligible to be issued a Permit unless the location of the proposed facility complies with all zoning requirements for the Marihuana facility as set forth in the City Zoning Ordinance and all other applicable building, construction, and other similar codes at the time of issuance. No Applicant or Permit holder may operate more than one Marihuana facility in the City.

To the extent the State adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical Marihuana, the additional or stricter regulation shall control the establishment or operation of any Marihuana facility in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any Permit under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any Permit issued hereunder.

**DIVISION II: LICENSING.**

**8-328: Permit and Annual Fee Required.**

- (a) No person shall establish or operate a Marihuana facility in the City without first having obtained a City Permit and State operating license for the Marihuana facility. License and

Permit certificates shall be kept current and publically and prominently displayed within the facility. The facility shall be operated only so long as both the City Permit and state operating license remain in effect. Failure to maintain or display a current license and Permit shall be a violation of this ordinance.

- (b) An annual non-refundable fee to defray the administrative and enforcement costs associated with Marihuana facilities will be set by resolution and adopted by the City Council. The fee will not exceed the state maximum. The Permit fee requirement set forth in this ordinance shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or City ordinance, including, by way of example, any applicable zoning or building permits or approvals.
- (c) A separate Permit shall be required for each premises from which a Marihuana facility is operated. A Marihuana facility's Permit is valid only for the owner named thereon, the type of business disclosed on the application for the Permit, and the location for which the Permit is issued. No transfer, sale, or other conveyance of an interest in a Permit is allowed, unless the transfer, sale or other conveyance has been approved by the State and prior written approval is obtained from the City. The transferee must be in strict compliance with State laws and regulations governing such transfers, per MCL § 333.27406 and the provisions of this Ordinance.
- (d) The permit fee requirement set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any state regulatory agency or City ordinance, including, but not limited to, any applicable fees for site plan review, zoning review, inspections or building permits.

#### **8-329: Permit Application and Approval.**

- (a) A person seeking a City Permit to operate a medical Marihuana facility pursuant to the provisions of this Ordinance shall submit an application to the City Clerk on forms provided by the City. At the time of Permit application submission, each applicant shall pay the nonrefundable application fee as established by City resolution. The City shall accept only one Application, per Applicant, per location.
- (b) Applications will only be accepted from those applicants that have been prequalified by the State of Michigan for a Marihuana facility license. Proof of prequalification shall be submitted with the license application.
- (c) Upon an applicant's submission of the above-provided form, the City Clerk shall accept the application for review and consideration and assign it an application number. Only one Permit application, per Applicant, will be accepted for consideration for a single location. Applicant must demonstrate that it has or will have lawful possession of the proposed Marihuana facility for the period during which the Permit will apply (such proof may include a deed, a lease, a real estate contract contingent upon successful licensing, or letter of intent by the owner of the premises indicating an intent to lease the premises to the applicant contingent upon the applicant successfully obtaining a state operating license and local permit). **NO APPLICATION WILL BE ACCEPTED UNLESS IT IS COMPLETE.**
- (d) If the City Clerk identifies a deficiency in the completeness of an application, the applicant shall have ten (10) business days to correct the deficiency after notification by the City Clerk. The application will be considered withdrawn on the 11th business day if correction was not made.
- (e) If the number of Permit applications accepted for consideration in the first thirty (30) days after the ordinance becomes effective is greater than the number of facilities allowed, the City Clerk will conduct a drawing to randomly select applicants for conditional authorization

and to establish a waiting list for future conditional authorizations for that facility type during the first available City Council public meeting within thirty (30) days after the City has completed its review of all timely submitted applications and the period to correct deficiencies has concluded. The name of each qualified Applicant shall be drawn individually by the City Clerk in sequence, with each qualified Applicant being assigned a number corresponding to the order in which their name was drawn. The lottery will continue until the names of all qualified Applicants are drawn and assigned a number, which shall create an eligibility list to be maintained by the City Clerk. The eligibility list shall remain valid until a new lottery is conducted or three (3) years, whichever comes first. In the event a provisional Permit becomes available for whatever reason, it shall be offered to the next qualified applicant in order of the eligibility list. If a qualified Applicant declines a provisional Permit when one becomes available or if their provisional Permit lapses they shall be removed from the eligibility list.

Applicants who are otherwise qualified but whose facility is located within 500 feet of an Applicant higher on the eligibility list shall retain their position on the eligibility list unless and until the prior Applicant is issued a provisional permit, at which point the Applicant shall be removed from the eligibility list. For all applications received on or after the thirty-first (31st) day after the effective date of this Ordinance, complete Permit applications will be processed and eligible Applicants added to the eligibility list in the order received.

- (f) The following information shall be submitted with the application:
- i. For an individual, the applicant's name, date of birth, physical address, including residential and any business address(es) attached to the individual, copy of government issued photo identification, email address, and one or more phone numbers, including emergency contact information, and, if applicable, Federal EIN.
  - ii. For non-individuals, the names, date of birth, physical address, including residential and any business address(es), copy of government issued photo identification, email address, and one or more phone numbers of each stakeholder, Affiliates and/or general partners of the applicant, including designation of the highest ranking stakeholder and/or general partner as an emergency contact person and information for the emergency contact person, articles of incorporation/organization, assumed name registration documents, Internal Revenue Service SS-4, EIN confirmation letter(s), and a copy of the operating agreement of the applicant if a limited liability company, copy of the partnership agreement if a partnership, or a copy of the by-laws or shareholder agreement if a corporation; its legal status, and proof of registration with, or a certificate of good standing from the State of Michigan, as applicable.
  - iii. Proof of lawful use of the proposed premises that may consist of a deed, a lease, a real estate contract contingent upon successful licensing or letter of intent by the owner of the premises indicating an intent to lease the premises to the applicant contingent upon the applicant successfully obtaining a state operating license and local permit.
  - iv. The name and address of the proposed Medical Marijuana facility and contact information.
  - v. A comprehensive operating plan for the marijuana facility for which the application is being submitted that includes all of the information required for the Marijuana Facilities Plan to be submitted in connection with a state license pursuant to the rules, the operational standards in this chapter, as applicable, and the following at a minimum:
    - i. A description of the type of marijuana facility applied for.
    - ii. A security plan for the marijuana facility that addresses all required security measures of the rules and addresses at a minimum the ability to meet the security measures of the rules. The security plan must contain the specific

details of each piece of security equipment to be utilized by the marihuana facility and comply with the provisions of this chapter, as well as any other applicable provisions of the rules adopted by the State of Michigan. The security system, shall be maintained in good working order and provide twenty-four hours per day coverage and shall be available for inspection and review by the City, Public Safety Department and State Police at all times. A separate security system is required for each facility. Surveillance recordings are to be maintained for a minimum of 30 days.

- iii. An HVAC plan for the marihuana facility describing in detail among other things the equipment or systems that will be used to prevent any odor of marihuana from leaving the premises.
  - iv. A lighting plan.
  - v. Disposal and waste management plan for wastes generated at the Marihuana facility.
  - vi. The anticipated or actual number of employees and positions, including a staffing plan.
  - vii. Evidence of insurance required by the MMFLA in the form of a certificate of insurance evidencing the existence of a valid and effective policy, or, evidence that the applicant is able to obtain such insurance and state the limits of each policy, the name of the insurer, the effective date and expiration date of each policy and policy number if known.
- (g) Application for operation of a Marihuana facility, or leasing property to a Marihuana facility, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to permit the City Manager or his/her designee to conduct inspections of the Marihuana facility to ensure compliance with this Ordinance or any other applicable law, rule, or regulation.
- (h) Upon receipt of a completed application, the City Clerk may circulate the application to all affected department heads of the City or their designees for input as to whether the application and premises is in compliance with applicable laws, rules and regulations.
- (i) After preliminary review of the Permit application to confirm compliance with applicable laws, rules and regulations, selection of the application pursuant to the lottery in Sec. 8-329(e), above, (if necessary because there are more than three (3) applicants) and if so confirmed, the applicant shall be conditionally approved for a Permit and the City shall prepare a conditional approval notice for the purposes of State application requirements. The applicant must then obtain Special Condition Use and Site Plan approval from the Planning Commission within six (6) months of receiving conditional approval or the approval will expire and the application will be considered withdrawn, although the Planning Commission may grant an extension at its sole discretion for up to an additional six (6) months, so long as the Applicant is diligently pursuing Special Condition Use and Site Plan approval. All Permits issued are contingent upon the State of Michigan issuing a license for the operation under State law. A provisional permit does not authorize the applicant to operate a medical Marihuana facility without first obtaining a state operating license for the facility, and obtaining all other permits, inspections, and approvals required by this chapter and all other applicable provisions of this code.
- (j) An inspection of the proposed Marihuana facility by the City is required prior to the issuance of the City operating permit. Such inspection shall occur after the Marihuana facility is ready for operation, but prior to the stocking of the business with any medical Marihuana and prior to the opening of the Marihuana facility or commencement of operations. The City shall verify that the Marihuana facility is constructed and can be operated in accordance with the application submitted and the applicable requirements of this Chapter and any other applicable law, rule or regulation.
- (k) After verification that the Marihuana facility is constructed and can be operated in accordance with the application submitted and the applicable requirements of this Chapter

and any other applicable law, rule or regulation, and the issuance of a permanent certificate of occupancy for the Marihuana facility, the City Clerk shall issue a Permit for a term of one (1) year. The City-issued Permit shall be prominently displayed within the Marihuana facility.

- (l) Throughout the application process, and while any granted Permit is in force, the applicant or the Permit holder shall report any other change in the information provided on the application to the City within ten business days of the change.

**8-330: Permit Renewal.**

A City Marihuana facility operating Permit shall run concurrently with the State operating Marihuana license issued for the facility, unless revoked as provided by law.

Subject to the provisions of 8-331 below, a Permit may be renewed annually by completing a renewal application and payment of the annual Permit fee thirty (30) days prior to its expiration. A Permit will be renewed by the City for one (1) year if (1) there are no uncured administrative and/or legal violations in the prior year, including no taxes owed on the subject property; (2) the applicant has paid the annual City Permit fee for the renewal period; (3) any Stakeholder changes have been fully disclosed to the City; and (4) the applicant has paid and received the renewal of its State license.

Prior to the issuance of a renewed Permit by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Ordinance.

**8-331: Permit Forfeiture, Suspension, Non-Renewal.**

In the event that a Marihuana facility does not commence operations within one year of issuance of a City operating Permit, the Permit shall be deemed forfeited; the business may not commence operations and the Permit is not eligible for renewal. The City will consider new applications in place of the forfeited Permit in a manner consistent with 8-329(e) of this Ordinance.

The City may immediately revoke or suspend an existing Permit or refuse to renew a Permit for any of the following reasons:

- (a) The applicant or permit holder is denied a state operating license;
- (b) The applicant or Permit holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Ordinance or with any applicable state or local law or regulation;
- (c) The Marihuana facility is substantially different from the comprehensive operating plan, Marihuana facility plan, conceptual plan or other representations contained in the application;
- (d) Officers of the City are unable to access the proposed facility for Permit inspections or are denied access by the applicant or Permit holder;
- (e) The applicant or Permit holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its Permit pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the Permit and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the Permit or failure to comply to laws changing subsequent to acquiring a Permit;
- (f) The State of Michigan has revoked the Marihuana facility's state-issued license or permit;  
or

- (g) The Marihuana facility has been operated in a manner that, in the opinion of the City Manager, adversely affects the public health, safety or welfare. Evidence to support a finding under this Section may include, without limitation, a pattern of criminal conduct within

the premises of the Marihuana facility or in the immediate area surrounding such business, a pattern of criminal conduct directly related to or arising from the operation of the Marihuana facility, or a nuisance condition emanating from or caused by the Marihuana facility. Any criminal conduct shall be limited to the violation of a state law or regulation or city ordinance.

If a Permit is terminated, revoked, suspended or restricted, the City Clerk or his or her designee will notify in writing by mail or electronic mail both the permit holder, at the last known address on file with the City for notification of the applicant, and the Michigan Department of Licensing and Regulatory Affairs of the termination, revocation, suspension, or restriction of the permit and the reasons therefore in writing.

A Permit granted by this Chapter is a revocable privilege granted by the City and is not a property right. Granting a Permit does not create or vest any right, title, franchise or other property interest.

### **DIVISION III: FACILITY REQUIREMENTS.**

#### **8-332: Requirements.**

- (a) A Marihuana facility shall comply with all of the requirements of State law and all applicable State regulations.
- (b) Unless permitted by the MMMA and Medical Marihuana Facilities Licensing Act or applicable state law:
  - i. General public or common areas of a Provisioning Center must be separated from the Restricted Access Area as defined by State regulation, R 333.201(s) by a permanent and locked barrier;
  - ii. No Marihuana is permitted to be stored, displayed, or transferred in an area accessible to the general public;
  - iii. Any usable Marihuana remaining on the premises of a Provisioning Center while the Provisioning Center is not in operation shall be secured in a safe that is permanently affixed to the premises;
  - iv. No Marihuana plants shall be located in a Provisioning Center;
  - v. Disposal of Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with local and state laws and regulations;
  - vi. All Marihuana delivered to a patient shall be packaged and labeled as provided by state laws;
  - vii. All registered patients must present both their Michigan Medical Marihuana patient/caregiver identification card and a government issued photo identification prior to entering restricted/limited areas or non-public areas of the Provisioning Center;
  - viii. Certified laboratory testing results that meets the MMMA and Medical Marihuana Facilities Licensing Act or applicable state laws must be available to all Provisioning Center patients/customers upon request;
  - ix. All Marihuana facilities shall comply with all applicable requirements of the City of Petoskey's Zoning Ordinance;

- x. A Marihuana facility and all articles of property in the facility are subject to inspection, search and examination at any time by a member of the Petoskey Public Safety Department, the County Sheriff's Department, or the Department of State Police;
- xi. All signage and advertising for a Marihuana facility shall comply with all municipal ordinances, state law, and these rules regulating signs and advertising. Refer to Sign Ordinance for additional information; and
- xii. All activities of Marihuana commercial entities, including, without limitation, the displaying, selling, and storage of Marihuana and Marihuana-infused products shall be conducted indoors and out of public view and shall not be visible from outside the facility. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a Marihuana facility must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a Marihuana facility, the owner of the subject premises and the Permit holder shall be jointly and severally liable for such conditions and shall be responsible for immediate, full cleanup and correction of such condition. The Permit holder shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable state and local laws and regulations.

### **8-333 Prohibited Acts.**

It shall be unlawful for any Permit holder for a Marihuana facility, or for any agent, manager, or employee thereof to:

- (a) Sell, give, dispense or otherwise distribute to any patient or primary caregiver who is not a licensee a more Marihuana in usable form (including the useable Marihuana equivalent of Marihuana-infused products) within any seven (7) day period of time than they are allowed by the MMMA to possess.
- (b) Distribute Marihuana or Marihuana-infused products to a consumer free of charge.
- (c) Allow the consumption of Marihuana or Marihuana products on the licensed premises. A sign shall be posted on the premises of each facility indicating that consumption is prohibited on the premises.
- (d) Sell Marihuana or Marihuana products at a licensed provisioning center at any time other than between the hours of 9:00 A.M. and 9:00 P.M. daily.
- (e) Receive shipments of Marihuana or Marihuana products between the hours of 9:00 P.M. and 9:00 A.M.

### **8-334: Grant of Administrative Authority.**

The City Clerk is granted the power and duty to fully and effectively implement and administer the Permit Application process and issuance of a provisional Permit and operating Permits issued by the City as provided in this chapter.

### **8-335: RESERVED.**

All other provisions of the Code of Ordinances not specifically amended shall remain in full force and effect.

Nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby revised as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this ordinance.

If any of the standards set forth in this amendment conflict with any other standards of previous or further ordinances or amendments, the stricter standards shall apply.

All ordinances, resolutions, or orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, repealed.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

This ordinance shall take effect fifteen (15) days following its enactment and shall be published once within seven (7) days after its enactment as provided by Charter.

Said ordinance was adopted by the following vote:

AYES: Marshall, Shumway, Walker, Murphy (4)

NAYS: Dittmar (1)

**Approve Medical Marihuana Provisioning Center Fees – Resolution No. 19328**

The City Manager reviewed that as part of establishing a medical marijuana provisioning center program for the community, City Council needed to adopt two fees per resolution: an initial application fee and an annual license/renewal fee. The City Manager further reviewed that the resolution needed to be approved at the same meeting whereby the zoning and licensing ordinances are approved; that per State statute, the City could establish an annual fee of up to \$5,000 for the application fee and up to \$5,000 for the license/renewal fee to defray the administrative and enforcement costs incurred by the City.

City Councilmembers inquired if an applicant could be denied renewal at the City level if not in compliance.

Mayor Murphy asked for public comments and heard an inquiry if all employees receive background checks; that checks vary depending on staff level; that Council should look at expanding the number of facilities to more than three for revenue reasons; that allowable zoning locations are mostly in Ward 3 where citizens are opposed to issue; and heard an inquiry on why allowable zoning districts are all located in Ward 3.

City Councilmembers explained how zoning districts were chosen and why many areas were eliminated and that Bay Mall is a business district.

City Councilmember Shumway moved that, seconded by City Councilmember Marshall adoption of the following resolution:

WHEREAS, Michigan voters in 2008 approved the use of marijuana for medical use; and

WHEREAS, in 2016, the Michigan Legislature passed PA 281, the Medical Marijuana Facilities Licensing Act (MMFLA) to establish parameters for the growth, distribution and use of medical marijuana; and

WHEREAS, the MMFLA establishes a Medical Marijuana Licensing Board within the Department of Licensing and Regulatory Affairs that may grant up to five different types of medical marijuana facilities including provisioning centers; and

WHEREAS, the City's Planning Commission has taken public comment and has made recommendations to City Council on appropriate zoning districts for medical marijuana provisioning centers; and



WHEREAS, the City of Petoskey has approved both a zoning ordinance and licensing ordinance allowing up to three (3) medical marijuana provisioning centers within the City; and

WHEREAS, the City wishes to adopt fees to defray the administrative and enforcement costs associated with medical marijuana provisioning centers; and

WHEREAS, City staff has estimated the approximate costs of the medical marijuana Application Fee as well as an annual Licensing/Renewal Fee:

NOW THEREFORE BE IT RESOLVED, that the Petoskey City Council hereby adopts Resolution No. 19328, setting the following charges for a medical marijuana provisioning center Application Fee and an annual Licensing/Renewal Fee:

**Medical Marijuana Provisioning Center Application Fee  
\$5,000**

**Medical Marijuana Provisioning Center Annual License/Renewal Fee  
\$5,000**

The aforementioned fees do not include any State of Michigan fees or fees associated with obtaining a Special Condition Use or Site Plan approval through the Petoskey Planning Commission.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Walker, Murphy (4)  
NAYS: Dittmar (1)

**Approve 2020-2025 Capital Improvement Plan – Resolution No. 19329**

The City Manager reviewed that this was a second discussion of the proposed six-year Capital Improvement Plan for 2020-2025; that the Planning Commission reviewed the draft CIP on August 15 and unanimously recommended approval by City Council; and that the draft CIP was posted on the City’s website on August 20 until September 3 and one comment was received regarding changes to the Lake Street Dam. The City Manager further reviewed that Council was only being asked to approve the 2020-2025 CIP that includes the Kalamazoo Avenue project, but not the final design specifications for this street at this time; that the Planning Commission will review the street design specifications for Kalamazoo Avenue on October 17 with a recommendation to City Council; and that City Council will then review the final Kalamazoo Avenue street design at a meeting in November.

City Councilmembers inquired if feedback from the Kalamazoo Avenue reconstruction open house would be provided to the Planning Commission. The City Manager responded that community feedback would be provided to Planning Commissioners.

Mayor Murphy asked for public comments and heard a comment concerning the parking deck on Division and Lake Streets and if expenses will be matched by the County and for how long. The City Manager responded that the project would be a 50/50 match with an intergovernmental agreement to move forward.

City Councilmember Shumway moved that, seconded by City Councilmember Walker adoption of the following resolution:

WHEREAS, as part of the City's annual budget-preparation process, the City Planner submitted to the Planning Commission on August 15, 2019 the City staff's proposed update to the City's six-year capital improvement program; and

WHEREAS, the Planning Commission reviewed this proposed 2020-2025 Capital Improvement Program on August 15, 2019, and recommended its adoption by the City Council; and

WHEREAS, the City Council reviewed the proposed plan on September 16, 2019 and October 7, 2019 and concurs with the recommendation of the Planning Commission:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby approves the 2020-2025 Capital Improvement Program as submitted by the City Manager dated October 7, 2019 and approved by the Planning Commission August 15, 2019.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker, Murphy (5)

NAYS: None (0)

**Accept Special Assessment Report & Schedule Public Hearing – Resolution No. 19330**

The City Manager next reported that at its September 17, 2019 meeting, the City's Downtown Management Board reviewed and approved its proposed budget for downtown area programs and services for 2020 and recommended City Council levy a special assessment against all eligible, non-residential properties within the Management Board's jurisdictional territory, the proceeds from which would be used to finance costs of such programs and services; and increase the amount for the proposed special assessment compared to assessment-levy amounts that were used in 2019. The City Manager also reported that the Management Board's budget proposal would be included within the City's recommended 2020 Annual Budget, but City Code provisions required that the special-assessment process be done annually by City Council.

The City Manager further reported that the City Council was being asked to adopt a proposed resolution, a draft of which was included with the report, that would: confirm that costs of proposed downtown-area programs and services would be offset by special-assessment revenues; designate the special-assessment district; approve the recommended special-assessment formula; and schedule an October 21 public hearing to receive comments concerning the proposed programs and services. The City Manager also reported that a second public hearing to receive comments concerning the proposed special-assessment roll was tentatively scheduled for the November 18, 2019, City Council meeting.

City Councilmember Marshall moved that, seconded by City Councilmember Shumway, adoption of the following resolution:

WHEREAS, the City Council in 1994 appointed members of the City's Downtown Development Authority Board as a "Downtown Management Board" under provisions of Act 120 of the Public Acts of Michigan of 1961, as amended by Act 146 of 1992; and

WHEREAS, at its September 17, 2019, meeting, the Downtown Management Board discussed the need to continue to provide certain programs and services that are believed to be beneficial to the City's principal shopping area; and

WHEREAS, the Downtown Management Board has developed a recommended formula by which properties within the Board's district could be specially assessed as a means of obtaining revenues to offset costs of the Board's proposed programs and services for the year 2020; and

WHEREAS, the City Council has reviewed a report dated September 23, 2019, by the City Manager that lists those proposed programs and services as recommended by the Downtown Management Board and the proposed roll that would spread special assessments against properties within the Management Board's district:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby determines that a portion of the expense of these proposed programs and services shall be defrayed by special assessments upon those properties especially benefited; and

BE IT FURTHER RESOLVED that the nature of these proposed programs and services shall include such activities as special events, economic enhancement, beautification, marketing and promotions, and administration for costs estimated at \$192,800; that all portions of such costs shall be paid by special assessments and other related revenues, without a general obligation of the City; that such special-assessment revenues shall be collected in a single-installment payment; and that such assessments shall be levied in a district with boundaries that are to be coterminous to those of the Downtown Management Board's jurisdictional territory; and

BE IT FURTHER RESOLVED that the City Council does and hereby sets forth the basis of this special assessment by use of a formula that has been recommended by the Downtown Management Board to increase the amount for the proposed special assessment compared to the recommended 2019 formula and that has been calculated by the City staff based upon square footage of useable, non-residential building area and vacant properties, which the City Council has determined to be the most equitable to the greatest number of property owners concerned; and

BE IT FURTHER RESOLVED that the City Council does and hereby schedules a public hearing for 7:00 P.M., Monday, October 21, 2019, to receive comments concerning these proposed programs and services; and

BE IT FURTHER RESOLVED that the City Council does and hereby directs the City staff to notify all property owners within the proposed assessment district of potential property assessments and the October 21, 2019, public hearing to receive comments concerning these proposed programs and services.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker, Murphy (5)

NAYS: None (0)

### **Approve Small Cell Tower and Pole Attachment Process and Fees – Resolution No. 19331**

The City Manager reviewed that a small cell wireless facility is a cellular network facility capable of high transmission speeds at low ranges. "Small" refers to the network range, not the equipment size. The use of these facilities is integral to the anticipated upgrade to 5G services for phones, cars, and other devices. Small cell wireless facilities require fiber optic cable and power, making a public right-of-way an attractive location, as it tends to have both. However, an increased number of small cell wireless facilities in the public right-of-way raise municipal concerns, particularly of safety and aesthetics.

The City Manager further reviewed that the federal government explicitly exempts municipal utilities from regulation by the FCC with regard to pole attachments; that Michigan has opted to self-regulate its utility poles; and that the recent Small Wireless Communications Facilities Deployment Act (PA 365 of 2018) regulates these devices with respect to their right to access and attach to municipal poles and the rates that can be charged for them to do so. The Act gives wireless providers the right to locate antennas and equipment on existing utility poles or newly erected poles located within a municipal right-of-way. The Act also limits the degree to which local municipalities, including the City, can regulate these activities or charge for this right-of-way access.

The resolution and Pole Attachment Agreement is intended to govern the relationships between wireless providers and the City to the extent possible and to set appropriate rates in compliance with the Act.

City staff anticipates bringing forward for Council's consideration an ordinance to further define small

cell wireless facility regulations.

The City Manager reviewed that staff discussed bringing forward the agreement and resolution now rather than waiting until ordinance is presented at a future meeting date and that a current company is looking at 7 poles and staff does not know the outcome.

The Public Works Director reviewed small cell regulations with the City having few rights.

Mayor Murphy asked for public comments and heard an inquiry if this prevents municipal ownership. The City Manager responded that the City has no plans and that it would be a heavy lift for City.

City Councilmember Shumway moved that, seconded by City Councilmember Marshall adoption of the following resolution:

WHEREAS, the City of Petoskey operates a municipally owned electrical utility; and

WHEREAS, City uses and controls utility poles for electric delivery service; and

WHEREAS, the Small Wireless Communications Facilities Deployment Act (the "Act"), being Act 365 of 2018 requires that the City permit the collocation of small cell wireless facilities on City poles on a nondiscriminatory basis; and

WHEREAS, the Act requires City to adopt a process for requests by wireless providers to collocate small cell wireless facilities on City poles that is nondiscriminatory and competitively neutral; and

WHEREAS, the Act authorizes City to adopt a process for make-ready work for collocation of small cell wireless facilities provided that the process has been adopted for other parties under the same or similar circumstances; and

WHEREAS, the Act authorizes City to establish terms for relocation of small cell wireless facilities collocated on City poles; and

WHEREAS, the Act authorizes City to adopt reliability, safety, and engineering standards for collocation of small cell wireless facilities; and

WHEREAS, the Act allows City to require an attaching entity to execute an agreement for collocation of small cell wireless facilities; and

WHEREAS, the Act authorizes City to impose certain fees and charges for collocation and make-ready work;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That City adopts the process as set forth in the Standard Pole Attachment License Agreement, as such may be amended by resolution of City from time to time, (the "Agreement") for requests by wireless providers to collocate small cell wireless facilities on City poles.
2. That City allows collocation of small cell wireless facilities on City poles as set forth in the Agreement and further finds as follows:
  - a. Decorative light poles as defined in the Agreement are not designed or desired to support small cell wireless facilities.
  - b. Decorative light poles are not used for electric delivery service as defined in MCL 460.10y(13)(a).
3. That City adopts the process for make-ready work for collocation of small cell wireless facilities as set forth in the Agreement.

4. That City adopts the terms for relocation of small cell wireless facilities colocated on City poles as set forth in the Agreement.
5. That City establishes and adopts the reliability, safety, and engineering standards set forth in the Agreement.
6. That City establishes the fees and charges for small cell wireless facility attachments as set forth in the Agreement.
7. That City requires all entities requesting collocation of small cell wireless facilities to execute the Agreement prior to making application for a permit to attach to City Poles.

BE IT FURTHER RESOLVED that this Resolution shall be effective immediately.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker, Murphy (5)

NAYS: None (0)

**Approve State Trunkline Maintenance Contract – Resolution No. 19332**

The City Manager reviewed that MDOT routinely contracts with cities, villages and county road commissions to maintain State-owned highways within the jurisdictions of these local government units. In Petoskey’s case, State-owned trunkline portions that are maintained by the City under Department of Transportation guidelines include US-31 from Eppler Road to the north City limits and US-131 from its junction with US-31 to the south City limit. Maintenance costs are reimbursed to the City by the Department of Transportation based on budgets provided by the State, which for 2019, is \$103,151.

The proposed renewal contract has been reviewed by the Director of Public Works and the Director of Finance. The proposed contract would be effective from the date of signing by all parties and would expire September 30, 2024. The resolution would authorize the renewal of this contract and would re-designate the Director of Public Works as the City’s “Transportation Maintenance Superintendent” and the Director of Finance as the City’s “Contract Administrator.”

City Councilmember Dittmar moved that, seconded by City Councilmember Walker adoption of the following resolution:

WHEREAS, the City of Petoskey wishes to continue the State Trunkline Maintenance Contract with the Michigan Department of Transportation:

NOW, THEREFORE, BE IT RESOLVED by the City of Petoskey City Council that the State Transportation Maintenance Contract between the Michigan Department of Transportation and the City of Petoskey for the period October 1, 2019, through September 30, 2024, be and is hereby accepted; and

BE IT FURTHER RESOLVED that the City's Director of Public Works be and is hereby designated as Transportation Maintenance Superintendent on sections of the State Trunkline Highways within the City of Petoskey Corporate limits; and

BE IT FURTHER RESOLVED that the City’s Director of Finance be and is hereby designated as Contract Administrator responsible for budget and administration of the Contract; and

BE IT FURTHER RESOLVED that the Mayor and City Clerk be and are hereby authorized to sign said Maintenance Contract.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker, Murphy (5)

NAYS: None (0)

**Council Comments**

Mayor Murphy asked for Council comments and Councilmember Walker commented that the special Planning Commission meeting and Little Traverse Bay Housing partnership concerning affordable/workforce housing is exciting. Mayor Murphy commented that he attended government classes at the high school.

**Authorize Closed Session – Resolution No. 19333**

City Council was being asked to adopt a resolution that would adjourn to a closed session pursuant to Section 8(d) of the Michigan Open Meetings Act, to consider the purchase or lease of real property.

City Councilmember Shumway moved that, seconded by City Councilmember Marshall adoption of the following resolution:

WHEREAS, the City Manager has requested that the City Council adjourn to a closed session, pursuant to Section 8(d) of the Michigan Open Meetings Act, to consider the purchase or lease of real property, at the City Council's regular meeting of October 7, 2019:

NOW, THEREFORE, BE IT RESOLVED that the City Council does and hereby authorizes to adjourn to a closed session, to consider purchase or lease of real property.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker, Murphy (5)

NAYS: None (0)

Recessed to closed session at 8:40 P.M.

Reconvened into open session at 8:55 P.M.

There being no further business to come before the City Council, this October 7, 2019, meeting of the City Council adjourned at 8:56 P.M.

John Murphy, Mayor

Alan Terry, Clerk-Treasurer