



CITY COUNCIL

April 18, 2022

A regular meeting of the City of Petoskey City Council was held in the City Hall Council Chambers, Petoskey, Michigan, on Monday, April 18, 2022. 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
Tina DeMoore, City Councilmember
Derek Shiels, City Councilmember
Brian Wagner, City Councilmember
Lindsey Walker, City Councilmember

Absent: None

Also in attendance were Interim City Manager/Clerk-Treasurer Alan Terry, Public Safety Director Matthew Breed, Public Works Director Michael Robbins, City Attorney Matt Cross, Downtown Director Becky Goodman, Finance Supervisor Audrey Plath and Executive Assistant Sarah Bek.

Hear Sexual Assault Awareness Month Proclamation

Mayor Murphy reviewed that the Women's Resource Center of Northern Michigan requested to declare April 2022 to be Sexual Assault Awareness Month. Mayor Murphy reviewed that the proclamation would recognize April as "Sexual Assault Awareness Month in Petoskey" and emphasize the City's commitment to this important issue. Mayor Murphy then read the following:

WHEREAS, sexual assault is a devastating abuse of power that affects people of every age, race, sex, gender, identity, sexual orientation, national origin, socioeconomic background, and religion; and

WHEREAS, according to the Centers for Disease Control, nearly one in five women and one in 38 men have experienced a completed or attempted rape during their lifetime; and

WHEREAS, one in four girls and one in 13 boys experience sexual abuse in childhood; and

WHEREAS, approximately one in two Native American women and one in four Native American men experience sexual violence in their lifetime; and

WHEREAS, approximately seven in 10 perpetrators of sexual assault know their victim; and

WHEREAS, sexual violence often has a deep and enduring impact on survivors and their psychological, emotional, social, and physical health; and

WHEREAS, sexual assault can be devastating for not only the survivor, but also for the family and friends of the survivor; and

WHEREAS, access to informed, supportive, and inclusive services can greatly increase survivors' ability to heal from sexual assault; and

WHEREAS, we join with the Michigan Domestic and Sexual Violence Prevention and Treatment Board, Michigan Department of Health and Human Services, and sexual assault prevention advocates to acknowledge the importance of working together to educate our communities about sexual violence prevention, support survivors, and speak out against harmful attitudes and actions:

NOW, THEREFORE, I, John Murphy, Mayor of the City of Petoskey, do hereby proclaim April 2022 as Sexual Assault Awareness Month in our city.

Consent Agenda - Resolution No. 19652

Following introduction of the consent agenda for this meeting of April 18, 2022, City Councilmember Wagner moved that, seconded by City Councilmember DeMoore adoption of the following resolution:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the March 21, 2022 regular session, March 23, 24 and April 11, 2022 special session City Council meetings 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 March 21, 2022 for contract and vendor claims at \$1,095,976.69, intergovernmental claims at \$262.88 and the March 31 and April 14 payrolls at \$424,856.87, for a total of \$1,521,096.44 be and is hereby acknowledged.

Said resolution was adopted by the following vote:

AYES: DeMoore, Shiels, Wagner, Walker, Murphy (5)

NAYS: None (0)

Hear Public Comment

Mayor Murphy asked for public comments and there were no comments.

Hear City Manager Updates

The City Manager reviewed the East Lake Street project and that the project is proceeding on schedule; that the East Lake Street/Division intersection is complete and will reopen tomorrow; and that crews are working their way up to Williams Street with sewer replacement complete, beginning with watermains and storm sewer to follow.

Adopt Ord. 785 Regarding Floodplain Management Insurance Program – Resolution No. 19653

The City Manager reviewed that the City participates in the National Flood Insurance Program which is run through FEMA; that floodplain maps have been updated; that FEMA is now requiring an ordinance be approved by the City and an agreement with Emmet County since the County performs this service; that the intergovernmental agreement has been approved by both the City and Emmet County; and the final step is to approve a floodplain ordinance prior to June 1, 2022.

City Councilmembers clarified that the ordinance does not increase or decrease impacted area of flood insurance required, but that it allows access to less expensive insurance for those that need it.

City Councilmember Walker moved that, seconded by City Councilmember Shiels to adopt the following ordinance:

AN ORDINANCE ADDRESSING FLOODPLAIN MANAGEMENT PROVISIONS OF THE STATE CONSTRUCTION CODE IN THE CITY OF PETOSKEY

An ordinance to affirm an enforcing agency to discharge the responsibility of the City of Petoskey located in Emmet County, and to designate regulated flood hazard areas under the provisions of the State Construction Code Act, Act No. 230 of the Public Acts of 1972, as amended.

THE CITY OF PETOSKEY ORDAINS:

Chapter 7, Building and Building Regulations, Sections 7-01 through 7-05 of the Petoskey Code of Ordinances is hereby enacted as follows:

Section 7-01. AGENCY DESIGNATED. Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, the Emmet County Building Official of Emmet County is hereby designated as the enforcing agency to discharge the responsibility of the City of Petoskey under Act 230, of the Public Acts of 1972, as amended, State of Michigan. The County of Emmet assumes responsibility for the administration and enforcement of said Act throughout the corporate limits of the City of Petoskey.

Section 7-02. CODE APPENDIX ENFORCED. Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, Appendix G of the Michigan Building Code shall be enforced by the enforcing agency within the jurisdiction of the City of Petoskey.

Section 7-03. DESIGNATION OF REGULATED FLOOD PRONE HAZARD AREAS. The Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) Entitled "The Flood Insurance Study for Emmet County, all Jurisdictions" and dated June 1, 2022 and the Flood Insurance Rate Map(s) (FIRMS) panel number(s) of 26047CIND1A, 26047CIND2A, 26047C0338D, 26047C0339D, 26047C0401D, 26047C0402D, 26047C0406D, 26047C0407D, 26047C0426D, 26047C0427D, dated June 1, 2022 are adopted by reference for the purposes of administration of the Michigan Construction Code, and declared to be a part of Section 1612.3 of the Michigan Building Code, and to provide the content of the "Flood Hazards" section of Table R301.2(1) of the Michigan Residential Code.

Section 7-04. REPEALS. All ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Section 7-05. PUBLICATION. This ordinance shall be effective after legal publication and in accordance with the provisions of the Act governing same.

Said ordinance was adopted by the following vote:

AYES: DeMoore, Shiels, Wagner, Walker, Murphy (5)

NAYS: None (0)

Discuss Fortunetelling Ordinance & Adopt Ord. 786 Repealing Ordinance Prohibiting Fortunetelling – Resolution No. 19654

The City Manager reviewed that the proposed ordinance was prepared by the City Attorney and Director of Public Safety based on other municipal ordinances; that fortunetelling definition provides for the many types that fall under this title; reviewed highlights of the proposed ordinance including a provision excluding those for solely entertainment purposes or a religious ceremony; that business location will be inspected by Public Safety and rates required to be posted; that an annual application is required to be submitted and approved with an \$150 annual fee which includes a State background check and fingerprinting; and that the companion ordinance repealing the current ordinance prohibiting fortunetelling would also need to be approved which was introduced at the February 7, 2022 meeting.

City Councilmembers inquired if ordinance repealing fortunetelling could be approved at this meeting; addressed the Facebook post to four Councilmembers asking for a response regarding fortunetelling and that if Council responded it could be in violation of the Open Meetings Act; inquired on the definition of a religious association and on charging for services; heard comments regarding the fortune telling definition; that when discussed on February 7 the thought was to eliminate the potential of organized crime and fraud; heard from those opposed to the ordinance; that the current fortunetelling ordinance should be repealed; heard concerns on government overreach, the effectiveness of the ordinance and there may be a perception of discrimination; inquired if fingerprinting could be removed and the process of background check; that the clarity of purpose is vague; discussed current businesses and how proposed ordinance would affect existing businesses; and inquired if the City Attorney recommended repealing current ordinance prohibiting fortunetelling.

The City Manager responded that the ordinance repealing fortunetelling could be adopted at this meeting since it was the second discussion and the definition of a religious association is a bonafide church, but that there is no cut and dry determination of activity.

The City Attorney reviewed definition and purpose; that paganism is a recognized religion; that not charging for services is a bad way to do business; that there is a level of sensitivity and trying to prevent fraud and not violate First Amendment; that the ordinance needs to be defensible; and reviewed that the ordinance should not have minimal language and needs to be thorough.

The Public Safety Director reviewed it is important to regulate fortunetelling in some fashion without infringing on First Amendment; the City has an obligation to find a resolution; there have been no issues in the past due to prohibition, but conscious of activity; and reviewed background and fingerprinting process.

The City Attorney further reviewed that existing businesses have 90 days to obtain licensing; that the current ordinance is not enforceable or constitutional and recommended repealing ordinance.

City Councilmember Walker moved that, seconded by City Councilmember DeMoore repealing the following ordinance:

AN ORDINANCE TO REPEAL CHAPTER 12, SECTION 12-3, AN ORDINANCE CONCERNING FORTUNETELLING.

An Ordinance to repeal a certain Section of Chapter 12 of the Ordinances of the City of Petoskey, entitled 12-3 Fortunetelling.

THE CITY OF PETOSKEY ORDAINS:

The City of Petoskey hereby repeals the following Sections of Chapter 12 of the Ordinances of the City of Petoskey:

12-3 Fortunetelling

No other provisions, Sections, or Ordinances of this Chapter are repealed or affected.

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: DeMoore, Shiels, Wagner, Walker, Murphy (5)
NAYS: None (0)

Mayor Murphy then asked for public comments and heard comments appreciating efforts to prevent fraud and crime; inquiries if ordinance applies to non-denominational organizations; heard from those that feel the ordinance is criminalizing those that practice fortunetelling and is insulting; heard concerns on Section 8-397 concerning receipts and inquired if other businesses are audited for transaction receipts and if not, then it is not fair in practice; heard comments that religious organizations are not exempt from this ordinance and may not meet exception; and heard from those cautioning Council's intention of regulating religious enterprises.

City Councilmembers further discussed proposed ordinance; commented that the ordinance will help Public Safety to prevent potential problems; heard concerns with legal costs and tax payer dollars of the ongoing discussions; inquired if it was beneficial to hear from community members before the next review; and suggested changes for an additional review which included Section 8-396(a) and (b); Section 8-397; possibility of a five-year cycle vs. annual license; questioned the need of Section 8-402(o) requiring a photograph and Section 8-403(c) planning and zoning review; and to clarify purpose of City's intention.

The City Attorney and staff will address requested changes and bring a revised ordinance for further discussion at a future City Council meeting.

Approve Dining Decks for 2022 Summer Season – Resolution No. 19655

The City Manager reviewed that City Council was being asked to approve a resolution allowing continued use of dining decks in parking spaces within the downtown for the 2022 summer season, which began under COVID restrictions in 2020; that the Downtown Management Board proposed regulating deck usage from May 15 to October 31, based on weather; that businesses would be allowed one parking space per storefront for a deck and required minimum hours of operation; that construction regulations are provided for businesses; and the monthly rental fee is \$350 paid to the Downtown Office.

City Councilmembers inquired on past issues and how they are being resolved; inquired if the Parking Committee had been involved in discussions; inquired on the number of potential applicants; confirmed that the ordinance will not allow for a permanent deck; inquired if certain liability insurance is required for decks in right-of-way; and heard comments on the restrictive regulations and concerns with adopting an ordinance for permanent decks for a small amount of business participation.

The Downtown Director responded that there have been issues with adjacent business owners to City Park Grill and their dining deck; the Mayor, DMB Chairperson, herself and representatives from City Park and adjacent business had a conversation about issues and a good plan is in place moving forward; both the Design and Parking Committees have been involved in dining deck discussions; three applications are expected; the \$350 fee goes to the Parking Fund which is slightly more than someone feeding the meter all day; insurance is required; and the resolution is only for the 2022 season, but an ordinance is being developed concurrently and will be presented in the coming months following City Attorney review.

Mayor Murphy asked for public comments and heard comments from adjacent property owner to City Park Grill in opposition to dining decks including safety concerns, feels there is plenty of right-of-way space available already since they also utilize sidewalk dining, parking issues, fairness of private use for profit and concerns with ADA compliance, insurance and liquor license violations.

City Councilmembers inquired if there have been any public safety issues at current dining deck sites and if adjacent property owner was included in conversations.

City staff responded that there have been no public safety issues in the past; that the adjacent owner was not present at the meeting, but rather the tenant; that there are no liquor license or ADA violations; and that both dining decks on the street and sidewalk dining are manageable, but both are inspected by the Department of Public Safety and identified on the application to the City and Michigan Liquor Control Commission.

City Councilmember Shiels moved that, seconded by City Councilmember Wagner adoption of the following resolution:

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease that caused temporary shut downs and restricted dining capacities in local restaurants and contributed to economic hardship for them and their employees during 2020 AND 2021; and

WHEREAS, the Downtown is transitioning out of the economic hardship of COVID-19 due to public health initiatives into a pre-post COVID era where CDC guidance and possible mandates regarding indoor dining still or may exist, changing sometimes weekly; and

WHEREAS, as evidenced by the success of the decks installed throughout the summers of 2020 and 2021, the DMB is currently working on a recommendation for City Council's consideration to change the City ordinance in an effort to allow dining decks to be permitted on the streets permanently on a seasonal basis beginning in 2023; and

WHEREAS, the decks were found to be popular, manageable, and profitable during the summers of 2020 and 2021; and

WHEREAS, the concerns of retailers regarding the parking supply, as well as the overall vitality of all of Downtown have been considered and the Downtown Management Board has determined that all segments of Downtown need to work shoulder to shoulder to ensure vibrancy and vitality for all; and

WHEREAS, the Downtown Management Board and the City of Petoskey are committed to encouraging economic activity and assisting downtown businesses to flourish and thrive, including restaurants that, by their nature, may require additional seating and square footage to accommodate the visiting public in the busy summer season, and furthering that point; and

WHEREAS, restaurant capacity in the summer months is less than required by the visiting public and there is a need for seating capacity to be flexible with the goal in mind that keeping visitors in Downtown when they want to dine so that they can continue to shop after their dining experience is an economic driver; and

WHEREAS, the City of Petoskey regulates use of its streets, sidewalks, and other public places through Chapter 18 of the Code of Ordinances, and allows outdoor dining and mobile food vending pursuant to Chapter 8 of the Petoskey Code of Ordinances Businesses and Business Regulations:

NOW THEREFORE BE IT RESOLVED, that restaurants will be permitted to operate dining decks in public parking spaces during 2022 according to the following temporary measures:

- Dining deck permits will be available on all Downtown streets to full service restaurants that are open ten hours a day, six days a week. Decks may be in place beginning May 15 and must be removed no later than October 31 or sooner based on weather conditions, at the discretion of the City Manager. A full-service restaurant must have at least 50% of sales coming from food and provide wait service.
- During the time period of Memorial Day through Labor Day decks will be open a minimum of ten hours a day six days a week and for all other days ten hours a day five days a week.
- One space will be allowed per separate storefront. For purposes of the resolution, a storefront will be defined as each publicly recognized entity.
- Decks must fit within the parking space lines most proximate to the storefront, unless there are two dining platforms located in close proximity that are requested by City staff to be located adjacent to each other in an effort to maximize parking and eliminate the need for a car to parallel park between two dining platforms.
- Businesses that also have sidewalk dining may have a deck if ADA regulations can be satisfied.
- Hours of operation will be consistent with the restaurant's regular hours and correspond to seasonally appropriate fair weather. In other words, the decks should be open when the restaurant is open as long as the weather is reasonable.

- The deck rental fee will be \$350 monthly.
- An Open-Air Food-Beverage Service/Outdoor Dining Application and fee must be submitted to City staff and a license obtained before commencing construction of a dining deck.
- Decks that are newly constructed in 2022 must conform to the City of Petoskey Outdoor Design Guidelines document and also to specific dining deck design standards that include:
 - The dining deck structure must be made of quality materials and the floor of the deck must be wood or a composite material colored in grey shades to match concrete. No plastic or vinyl will be allowed.
 - The dining deck railings must be constructed of wrought iron, aluminum, steel, or cable systems in the color of black or to match the Petoskey Green color in the streetscape furnishings. No plastic or vinyl will be allowed.
 - All elements of the dining deck must be in compliance with the building code.
 - No lighting will be allowed on the decks other than table top lighting and ambient lighting along railings.
 - Dining furniture must be manufactured of wrought iron, cast aluminum, steel, or other substantial metal material. No plastic or vinyl will be allowed. The color may be black, Petoskey Green, silver or a color compatible with the front storefront façade.
 - Umbrellas must be constructed of canvas material, contain no logos or advertising, and must be aesthetically compatible with the color scheme of the front building façade.
 - Reflective material will be placed on the outside edge of the deck facing oncoming vehicular traffic.

Said resolution was adopted by the following vote:

AYES: DeMoore, Shiels, Wagner, Walker, Murphy (5)

NAYS: None (0)

Approve Agreement with EGLE and Purchase and Install Electric Vehicle (EV) Charging Stations – Resolution No. 19656

The City Manager reviewed that the City’s 2022 Annual Budget and Capital Improvement Plan allocated \$60,000 within the Electric Fund to be used as match monies for the State of Michigan’s “Charge Up Michigan” program; that the program is being administered by the Department of Environment, Great Lakes, and Energy (EGLE) and is promoting the installation of EV charging stations in key areas around the state; that the proposal includes installation of four EV stations which will include one fast charging and three dual-level chargers; that the estimated cost is \$180,000 with EGLE funding \$120,000 and the City funding \$60,000; that the EV charger low bidder is Blink Network at a cost of \$85,111; that the EV charger installation low bidder is Select Electric at a cost of \$27,100; that a grant agreement needed to be approved with EGLE; that site preparation and restoration including electric utility hookup, site excavation and restoration will be performed by staff and subcontractors estimated at \$66,256; and with all costs known, a rate will be determined including electric usage, parking rates, processing fees and system construction costs.

City Councilmembers inquired if the existing charger in the Darling Lot would remain, be replaced or has any value; inquired about bid amount disparities and if references were used; inquired if the City received a break on application from EGLE since municipally owned electric; heard from those applauding the City for being proactive within the State and benefit will make up for \$60,000 investment; inquired if there were any concerns with Darling Lot location if a future parking deck were to be constructed; and heard inquiries on how stations will be monitored.

The Public Works Director responded that the Darling Lot charger will be replaced with a Blink Network unit; that the existing unit could be repurposed for City staff vehicles or City facilities; that the Blink Network bid proposal included a five year networking agreement; that Blink Network is in Traverse City; that the City plans on hosting and owning the stations; that the City did receive a break on grant application and the State is funding 2/3 and the City 1/3 since we own electric system; that the State requires the City to keep EV charging stations in place for at least 48 months and provide reporting; and that infrastructure is already in proposed locations including the Darling Lot and a future parking deck would not be built for at least 2-5 years so would not interrupt the charging stations.

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

WHEREAS, the City's 2022 Annual Budget and Capital Improvement Plan allocated \$60,000 within the Electric Fund to be used as match monies for the State of Michigan's "Charge Up Michigan" Program; and

WHEREAS, the program is being administered by the Department of Environment, Great Lakes, and Energy (EGLE) and is promoting the installation of Electric Vehicle (EV) charging stations in key areas around the state; and

WHEREAS, eligibility requirements to apply for grant funding included placing the EV charging stations geographically per EGLE guidelines, participation from the local electric utility, ability to provide 33.3% matching funds and willingness to enter into an agreement with EGLE; and

WHEREAS, City staff submitted an application on September 3, 2021 that included four charging stations, two located in Bayfront Park, one in the Darling Lot and one located in the Elks Lot for an estimated total cost of \$178,466.98; and

WHEREAS, EGLE approved the City's application and notified staff on December 8, 2021 with approximately \$120,000 in grant funding and the City's responsibility for approximately \$58,466.98; and

WHEREAS, bid specifications were prepared by GRP Engineering, Petoskey, for one 75kW DC fast charger and three 19.2kW Dual-Level 2 chargers, along with a 5-year commitment for networking, operations and maintenance services; and

WHEREAS, bid specifications were also prepared by GRP Engineering, Petoskey, for labor, equipment and materials for the installation of four EV charging units at three locations within the City; and

NOW, THEREFORE, BE IT RESOLVED that the City Council does and hereby authorizes Michael Robbins, Public Works Director, or his designee to sign and execute agreement with EGLE for grant funding for EV charging stations as part of the "Charge Up Michigan" Program; and

BE IT FURTHER RESOLVED, that the City Council does and hereby authorizes to contract with Blink Network, LLC, Miami Beach, Florida, in the amount of \$85,110.98 for EV charging stations, network services and miscellaneous equipment; and

BE IT FURTHER RESOLVED, that the City Council does and hereby authorizes to contract with Select Electric Company, Petoskey, in the amount of \$27,100 for installation of EV charging stations.

Said resolution was adopted by the following vote:

AYES: DeMoore, Shiels, Wagner, Walker, Murphy (5)

NAYS: None (0)

Approve Ward and City Convention Locations – Resolution No. 19657

The City Manager reviewed that the City is required to conduct annual Ward and City Conventions which are proposed to be scheduled for July 11 and 13 of 2022; that staff proposed to reserve the same locations used last year; that dates have been moved up due to State requirements and Affidavits of Identity being due by July 21, 2022; and that locations would be at Petoskey Public Schools cafeterias and gymnasiums for Ward Conventions and the Emmet County Fairgrounds Community Building for the City Convention.

City Councilmember Shiels moved that, seconded by City Councilmember Wagner adoption of the following resolution:

WHEREAS, in accordance with provisions of the City Charter, the City Council must establish dates and places for annual Ward Conventions and the annual City Convention:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby calls the annual 2022 Ward Conventions to be held at 8:00 P.M., Monday, July 11, at the Petoskey Middle School Cafeteria for the First Ward, Ottawa Elementary Gym/Cafeteria for the Second Ward, Lincoln Elementary Gym/Cafeteria for the Third Ward and Sheridan Elementary Cafeteria for the Fourth Ward; and

BE IT FURTHER RESOLVED that the City Council does and hereby calls the annual 2022 City Convention to be conducted at 8:00 P.M., Wednesday, July 13, at the Emmet County Fairgrounds Community Building.

Said resolution was adopted by the following vote:

AYES: DeMoore, Shiels, Wagner, Walker, Murphy (5)

NAYS: None (0)

Council Comments

Mayor Murphy asked for council comments and Councilmember Wagner thanked the audience for their perspectives and participation in fortunetelling discussion. City Councilmember Shiels received "Stop Spread of Swallowwort in Petoskey" letter, commented that it is a necessary tool to control invasive plants, applauded City for collaborating with organizations to control this matter and encouraged the community to respond to letter. City Councilmember DeMoore thanked citizens that offered a voice and appreciate input on fortunetelling ordinance and thanked the City Attorney and staff for their efforts on matters at hand. Mayor Murphy reported that he attended a session with other Mayors of similar sized cities, attended a fair housing workshop, thanked citizens for their participation and encouraged the community to view the flag of Ukraine on display at the Carnegie Building for the next 30 days before it transfers to Italy.

There being no further business to come before the City Council, this April 18, 2022, meeting of the City Council adjourned at 9:00 P.M.

John Murphy, Mayor

Alan Terry, Clerk-Treasurer