

CITY COUNCIL MEETING MINUTES

September 7, 2021

Cadillac City Hall - 200 N. Lake St. - Cadillac, Michigan 49601

CALL TO ORDER

Mayor Filkins called the City Council meeting to order at approximately 6:00 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

Council Present: Elenbaas, Schippers, Engels, King, Mayor Filkins
Council Absent: None
Staff Present: Peccia, Ottjepka, Coy, Dietlin, Mott, Wasson

APPROVAL OF AGENDA

2021-162 Approve agenda as presented.

Motion was made by Schippers and supported by Engels to approve the agenda as presented.

Motion unanimously approved.

PUBLIC COMMENTS

Justin Eckelbecker expressed concern that the proposed changes to the sign ordinance may limit political speech.

Glenn Kangas expressed concern that the proposed changes to the sign ordinance are restricting First Amendment rights.

John Saari expressed support for changing the sign ordinance but feels temporary signs may need further definition, such as stability and construction.

CONSENT AGENDA

2021-163 Approve consent agenda as presented.

Motion was made by Elenbaas and supported by Engels to approve the consent agenda as presented.

Motion unanimously approved.

PUBLIC HEARINGS

- A. Public hearing to consider adoption of Ordinance Amending Section 46.664 of the Zoning Ordinance Regarding Temporary Use Signs.

Peccia stated one of the primary reasons why this matter was raised is to bring this section of the City's Zoning Ordinance into compliance with the Supreme Court Case Reed v.

Town of Gilbert, which requires content neutrality. He noted the Supreme Court in this case essentially said you cannot regulate signs differently based upon what they say (content), and the City's current temporary sign ordinance does contain regulations that regulate signs differently due to their content such as real-estate signs, political signs, trailer/mobile signs, etcetera. He stated the second reason for the proposed Zoning Amendment is that our current Ordinance does not address how many temporary signs can be placed on a property and the size of those signs. He noted there have been several related complaints and that has also prompted the City to re-evaluate this section of code.

Peccia stated the proposed amendment, that would amend section 46.664 of the City's Zoning Ordinance Regarding Temporary Use Signs, addresses both issues. The amendment places all temporary signs into one category, which would create content neutrality, and then establishes regulations regarding size, placement, and number of signs. Temporary signs in the City will no longer be regulated differently based on content.

Peccia read through the following key changes from the existing sign ordinance:

- Changing and clarifying the number of days allowed for the removal of a temporary sign related to an event from a range of 5-10 days to 7 days.
- Establishing a maximum number of temporary signs for residential property to 4.
- Establishing a maximum number of temporary signs for commercial property to 2.
- Establishing a maximum area of a temporary sign for residential property of 4 square feet.
- Establishing a minimum distance between temporary signs of 10 feet.
- Establishing a minimum setback distance of 10 feet from a right-of-way line.
- Allowing single-family residential properties to have up to two off-site temporary signs on private property for the purpose of directing the public to a residential activity for a commercial purpose (e.g., real estate open house, garage/yard sale, estate sale).
(Currently these signs are not allowed)

Peccia stated following deliberation and discussion City Council may decide to do any of the following: approve the amendment as presented; slightly modify the amendment then approve; remand it back to staff and/or the Planning Commission for further evaluation; not approve it; or table it for another period of time to then reconsider.

Mayor Filkins opened the public hearing.

Justin Eckelbecker urged City Council to vote against the current proposed amendment and consider it at a later date because he believes it would stifle freedom of speech.

Glenn Kangas stated he has received many positive and very few negative responses to his signs.

John Saari stated the proliferation of signs has always been considered a form of pollution. He added we need to address the stability, size, and number of signs.

Kevin Dewey, from Chico's Taco House, stated the flag he displays draws people to the Farmers Market and to Long Road Distillers. He questioned how his fluttering flag could be considered more of a distraction than the banners displayed across Mitchell Street.

Mayor Filkins closed the public hearing.

Mayor Filkins requested a discussion about the American flag that was mentioned during public comments.

City Attorney Mott stated from a legal standpoint there is no clear guidance on the difference between signs and flags.

Schippers asked if the Chico's flag would be considered a fluttering sign and be prohibited.

Mike Coy, Zoning Administrator, stated it would be considered a fluttering sign.

Schippers asked the purpose of including that in the ordinance.

Coy stated the section Prohibited Signs in the Ordinance includes signs that could potentially be a distraction to drivers.

Engels asked the set-back requirement for a flagpole.

Coy stated if it has an American flag it would be exempt. He noted it is addressed in a different section of the sign ordinance, specifically under exempt. He stated there can be another flag too but for it to be exempt it must include an American flag.

Mayor Filkins asked if a flagpole held an American flag and a second flag would that count toward the four (4) signs that would be permitted.

Peccia stated there is no clear legal guidance at this point. He noted we all know that the American flag is not a sign but other things that happen to fly on a flagpole may or may not be considered signs.

Mayor Filkins noted Mike Coy stated that if it is being flown with an American flag then that flag is also exempt and she doesn't know if she agrees with that.

Peccia noted that statement may or may not be correct. He stated the placement of the pole along with the American flag is outside the section of Code that Council is being asked to consider.

King stated a flagpole is a permanent structure that could fall under a different form of regulation.

Engels stated that once a flagpole is installed whether in the ground or on a house, he would be hesitant to regulate any flag that was displayed or even count that as a sign under the sign ordinance. He stated he likes the size of the signs being set at 4 sq. ft. but is not sure the proposed number of signs is practical. He stated the spacing of signs at 10 ft. and the minimum setback from the right-of-way at 10 ft. needs additional clarification. He

noted he doesn't believe signs are distracting if they are less than 10 ft. from the right-of-way. He stated he doesn't believe 4 signs is enough especially during a political season. He noted he supports changing the duration to 7 days and the size of signs is important. He stated he is not in favor of stopping the flags that people are upset about. He noted they are flown as flags on flagpoles that are permanently installed or attached to houses. He stated it does not make sense to allow any flag because there is an American flag included with it or to not give someone a pass because they do not want to fly the American flag with their flag. He noted he does not believe flags should be counted as signs unless they are not displayed as flags.

Peccia stated we will not have a clear legal definition, other than the American flag, as to how all of these flags either count or don't count in terms of signage. He noted it is not even the section of the Code under consideration. He stated the section of Code under consideration is Temporary Use Signs.

Engels asked if a temporary sign is in the intent of the person of how long they want to display it or is it in the construction of the sign.

Peccia stated it is regarding the number of signs not the construction of the signs. He noted we are looking to regulate the signs based on size, spacing, and number permitted on a property.

Elenbaas stated he believes the intent was to put a small dent in blight within the City.

King stated he believes strongly in the First Amendment. He noted that neighbors have a right to have peaceful enjoyment and not have blight so there is a balancing of rights. He noted the proposed amendment is not content focused and that is the right way to handle it. He stated if people have to rotate signs it would not be stepping on the right of free speech.

Peccia stated the following issues should be focused on (1) should the setback be shorter than 10 ft. and (2) should there be a different spacing between signs.

Mayor Filkins stated she believes we need to decide on the number of signs allowed that everyone is comfortable with no matter what time of year. She noted she also believes that 10 ft. from the right-of-way in many cases is too far because there may not be enough space available in the yard for signs to be placed 10 ft. apart which could limit freedom of speech.

Schippers suggested 6 ft. instead of 10 ft. for setback and spacing and increasing the number of signs permitted from 4 to 6.

Mayor Filkins stated she agrees the distance from the right-of-way needs to be shorter.

King suggested if there is a sidewalk signs can be placed immediately adjacent to the sidewalk. He added if there is not a sidewalk than it would be 6 ft. from the road.

Engels stated he would support setting the number at 6 signs. He noted he does not understand the reasoning for spacing the signs 10 ft. apart.

Peccia stated the purpose of the spatial separation requirement is reducing what could be perceived by others as blight or as a proliferation of signs.

Mayor Filkins asked if it could be stated that the signs be equally distanced from each other.

King stated there is not enough space for 6 signs on a lot that is 50 ft. wide.

Engels stated he would support a minimum spacing between signs of 2 ft.

Peccia summarized the discussion as follows:

- Increase the number of total signs to 6
- Reduce the separation between signs from 10 ft. to 2 ft.
- Reduce the setback from the right-of-way from 10 ft. to the following:
 - 6 ft. from the road right-of-way line, essentially where the curb is, if there is no sidewalk
 - immediately adjacent to the sidewalk as long as the signs do not overhang the sidewalk

Peccia stated if Council agrees with the summary provided it could move forward as a motion.

2021-164 Approve Ordinance 2021-13 as amended.

Motion was made by Engels and supported by Schippers to approve motion as stated by the City Manager.

Motion unanimously approved.

Schippers stated any ordinance can be revisited in the future, if necessary.

Peccia stated a Frequently Asked Questions (FAQ) document to explain the updates will be released to the media in the next few weeks.

Schippers asked that the FAQ document include clarification that content cannot be regulated.

Mayor Filkins stated throughout the process there was very thoughtful discussion during the Planning Commission meetings and between the Council Members tonight. She noted she appreciates the members of the public who attended to provide their feedback. She stated the intent is to continue to make our community beautiful and respecting our neighbors.

COMMUNICATIONS

A. Zion Lutheran Church Craft Show

Mayor Filkins noted because Zion Lutheran Church is requesting signs be displayed in the City right-of-way it requires approval by the City Council.

2021-165 Approve sign request for Zion Lutheran Church Craft Show.

Motion was made by Schippers and supported by Elenbaas to approve the sign request for the Zion Lutheran Church Craft Show as presented.

Motion unanimously approved.

B. Toy Town Toy Trot

2021-166 Approve street closure for Toy Town Toy Trot.

Motion was made by Elenbaas and supported by Engels to approve the closure of Lake St. between Harris St. and Cass St. from 7:00 am to 11:00 am on November 20, 2021 for the Toy Town Toy Trot 5k.

Motion unanimously approved.

C. White Pine Ride

2021-167 Approve parking lot closure for White Pine Ride.

Motion was made by Schippers and supported by Elenbaas to approve the closure of the parking lot on Lake St. south of the pavilion from 7:00 am to 7:00 pm on October 2, 2021 for the White Pine Ride.

Motion unanimously approved.

APPOINTMENTS

A. Recommendation regarding appointment to the Downtown Development Authority.

2021-168 Approve appointment to the Downtown Development Authority.

Motion was made by Elenbaas and supported by Schippers to approve the appointment of Miranda Grunow to the Downtown Development Authority for a 4-year term to expire on September 7, 2025.

Motion unanimously approved.

B. Recommendation regarding appointment to the City of Cadillac/Clam Lake Joint Planning Commission.

2021-169 Approve appointment to the City of Cadillac/Clam Lake Joint Planning Commission.

Motion was made by Schippers and supported by Elenbaas to approve the appointment of Miranda Grunow to the City of Cadillac/Clam Lake Joint Planning Commission for a 3-year term to expire on September 7, 2024.

Motion unanimously approved.

C. Recommendation regarding appointment to the City of Cadillac/Clam Lake Joint Planning Commission.

2021-170 Approve appointment to the City of Cadillac/Clam Lake Joint Planning Commission.

Motion was made by Elenbaas and supported by Engels to approve the appointment of Mark Lagerwey to the City of Cadillac/Clam Lake Joint Planning Commission for a 3-year term to expire on September 7, 2024.

Motion unanimously approved.

D. Recommendation regarding appointment to the Planning Commission.

2021-171 Approve appointment to the Planning Commission.

Motion was made by Schippers and supported by Elenbaas to approve the appointment of Dale Rice to the Planning Commission (representing Ward 3) for a 3-year term to expire on September 7, 2024.

Motion unanimously approved.

E. Recommendation regarding appointment to the Zoning Board of Appeals.

2021-172 Approve appointment to the Zoning Board of Appeals.

Motion was made by Elenbaas and supported by Engels to approve the appointment of Ben Dean to the Zoning Board of Appeals for a 3-year term to expire on September 7, 2024.

Motion unanimously approved.

Mayor Filkins stated she appreciates the individuals who serve on the various boards and commissions and encouraged others to consider serving if they are interested.

CITY MANAGER'S REPORT

A. Construction Updates

Connie Houk, Prein & Newhof, provided an update on the various construction projects:

- Chestnut Street – opened to traffic approximately 2-weeks ago; permanent signs and pavement markings are completed; street has new wider bike lanes
- Roundabout (Crosby Road & Division Street) – construction began 2-weeks ago; project is scheduled to be completed by November 15th; a side road is in place for emergency vehicles
- Evert Street – is a 7-block project that began in June; underground work is completed; concrete curb and flatwork on the driveways are completed; paving is tentatively scheduled for September 13th
- Stimson Street – began in late August; some additional work remaining on sewer & watermain; curb; gutter and flatwork in the drive approaches is scheduled in about 10-days from now; some neighbors on Stimson Street expressed concern about the placement of one of the hydrants so they are reviewing a few alternatives which may require a change order, and possibly come back before Council at a future meeting
- Mason Street and Bremer Street – projects were completed last year but there was an issue with grass seed taking; areas were reseeded and grass is now growing
- Trailhead Project – revised plans were resubmitted to the DNR after Council approved several months ago how the project should be bid; several of the items in the grant application were removed from the project; project is nearly ready to go out for bid; however, changing out from picnic shelter to the clock tower may free up some of the

grant funding because the state is no longer considering the clock tower a shade structure. The grant funds may be used to still build a shade/picnicking area, just not on the reinstallation of the clock tower.

ADOPTION OF ORDINANCES AND RESOLUTIONS

A. Adopt Resolution to Amend Fee Schedule for Business Licenses.

Peccia stated following the successful opening of a new business in downtown Cadillac, Long Road Distillers, a modification to our transient merchant licensing program specific to food vending has become necessary. He noted the proposed resolution would add the opportunity for there to be a monthly license and a weekly license. He stated it was requested by a Council Member to have the monthly and weekly fees be the same for both motorized and non-motorized devices.

Peccia noted there is also a recommendation of creating a third category which would provide an option for private property owners or businesses to acquire an annual \$1,000 license that would allow them to have any peddlers, solicitors and transient merchants vending any food items from mobile carts, stands, tables, or any similar device, or from any vehicle propelled by a motor that are not owned by said private property owners.

Peccia stated the recommendation is to adopt the Resolution to Amend Fee Schedule for Business Licenses as amended to make the monthly and weekly fees be the same for both motorized and non-motorized devices.

King stated it is critical we make sure it is known if the property owner decides to pay that \$1000 fee it covers any inspections the City is required to do and it also means the vendors are not required to pay an additional fee.

2021-173 Adopt Resolution to Amend Fee Schedule for Business Licenses.

Motion was made by Schippers and supported by King to adopt the Resolution to Amend Fee Schedule for Business Licenses with the amendment as stated by the City Manager.

Motion unanimously approved.

B. Adopt resolution regarding Local Governmental Unit Approval for Social District Permits.

Peccia noted the City of Cadillac was a very early adopter of the opportunity the State of Michigan created for the Social District and Social Zone Program. He stated up until a month ago, the City had not received any applications to participate in the program. He noted Long Road Distillers was the first business to apply for the permit. He stated Council Member King and Miranda Grunow were very helpful in soliciting applications from local businesses. He noted because of that effort we have received applications from five (5) different businesses. He stated the Cadillac Area Visitors Bureau and the Chamber of Commerce are eager to start creating some type of marketing and branding initiative to help people understand that this will now be available in Cadillac.

Peccia stated because we are trying to incentivize some of the other establishments to participate, Council is being asked to consider a motion that would waive the City's application fee until January 1, 2022 and reimburse that same fee to Long Road Distillers.

Peccia stated Council is also being asked to approve a motion to accept the application from Clam Lake Beer Company, Hermann's Café & Restaurant, Raven Social, Roaring 20's Saloon, and Willow Market & Meats.

2021-174 Waive Social District Permit application fee until January 1, 2022 and reimburse that same fee to Long Road Distillers.

Motion was made by King and supported by Schippers to waive the City's Downtown Cadillac Social District Permit Application fee until January 1, 2022 and reimburse that same fee to Long Road Distillers.

Motion unanimously approved.

2021-175 Approve the Local Governmental Unit Resolution of Approval for Social District Permits.

Motion was made by Elenbaas and supported by King to approve the Local Governmental Unit Resolution of Approval for a Social District Permit for the aforementioned businesses as presented (Clam Lake Beer Company, Hermann's Café & Restaurant, Raven Social, Roaring 20's Saloon, and Willow Market & Meats).

Motion unanimously approved.

PUBLIC COMMENTS

Glenn Kangas stated he disagrees with the size of the sign allowed because it is not large enough to express his freedom of speech. He questioned if the flags he currently has are permitted.

GOOD OF THE ORDER

Schippers mentioned she saw a heartwarming post today about a 5-year-old child that dropped off a thank-you sign and some flowers thanking one of her neighbors for their Halloween display.

ADJOURNMENT

Respectfully submitted,

Carla J. Filkins, Mayor

Sandra L. Wasson, City Clerk