

REGULAR MEETING – July 3, 2007

The Common Council of the City of Michigan City, Indiana, met in regular session on Tuesday Evening, July 3, 2007, at the hour of 7:30 p.m., local time, in the Common Council Chambers, located in the lower level of the City Hall Building, 100 East Michigan Boulevard, Michigan City, Indiana.

The meeting was called to order at 7:30 p.m. by Council President Willie Milsap, who presided.

The Pledge of Allegiance to the Flag and a short period of silent prayer were observed.

Roll call was authorized and the following were noted present and/or absent:

PRESENT: COUNCIL MEMBERS Evelyn D. Baker; Patricia Boy; Angelo Corley, Joseph Doyle; Phillip Jankowski, Virginia Martin; Ronald Meer, Willie Milsap, and Paul Przybylinski (9).

ABSENT: None (0).

A QUORUM WAS NOTED PRESENT.

APPROVAL of MINUTES

President Milsap inquired whether there were any corrections, deletions, or additions to the minutes of the Regular Meeting of June 19, 2007, and, on a motion by Councilwoman Boy, seconded by Council Members Corley and Doyle, declared the minutes approved as written.

REPORTS of STANDING COMMITTEES

There were no Reports.

REPORTS of SPECIAL or SELECT COMMITTEE

Councilman Jankowski mentioned a couple of items: The Redevelopment Commission will be sponsoring a Stake Holders Meeting presented by Lohan Anderson regarding the development of Re-Use Plan for the Trail Creek Corridor and the former Memorial Hospital Site, which will take place on July 6th & July 11th and also there will be a Tax Abatement meeting this Thursday, July 5th.

REPORTS of OTHER CITY OFFICERS and DEPARTMENTS

At the Michigan City Council meeting held on Tuesday, June 19, 2007, Council President Milsap requested a verbal/written report from City Planner John Pugh regarding the status of the Marquette Mall Theatre, 9450 St. Johns Road, and the Dunes Theatre, 210 Dunes Plaza, to be presented at this Council meeting.

City Planner John Pugh submitted the following status reports on vacant theaters:

Dunes Plaza, 100 West U.S. Hwy. 20, Michigan City, IN, Zach Krachinski, Property Manager, 219-873-0908 - The Dunes Plaza Cinema is currently vacant and owned by Dunes and Landscaping. Zach Krachinski, owner of Custom Construction, has informed me that it has been on the market for 1e3ase since Kerasotas Theaters lease expired on December 31, 2005. Custom Construction will be scheduling painting and routine maintenance of the building throughout the summer. No future development plans have been proposed at this time.

Marquette Theater, Marquette Mall & Office Tower, 450 St. John Road, Suite 105, Michigan City, IN, 46360, Laura Tubbs, General Manager, 219-8375 - The Marquette Theater is also currently vacant. This property is owned by Grubb & Ellis Management Services Inc. Laura Tubbs, General Manager for Grubb & Ellis said the theater building has been vacated and marketed for sale or lease since Kerasotas Theaters lease expired on December 31, 2005. The building although vacant is on a monthly cleaning and pest control schedule. No future development plans have been proposed this time.

City Planner John Pugh submitted the following “**Bad Homes and Properties**” list:

330 Peru Street - Emergency Order to Demolish
 319 West 8th Street - Order to Demolish
 508 West 11th Street - Detailed Order to Repair
 425 Ogden - Order to Repair (Owner Not Established)

109 Combs - Demolition in Process
 217 Columbia Street - Order to Repair
 824 West 6th Street - Order to Repair
 324 Chestnut - Order to Repair
 907 Ohio Street - Order to Maintain Premises
 1611 Springland Avenue - Citations/Order to Maintain Premises
 117 Prairie Avenue - Order to Repair
 1401 Elston Street - Citations/Order to Maintain Premises
 444 Hayes Street - Ownership Being Established/Order to Maintain Premises
 600 Block of East 11th Street - Working with Property Owners to Address Deteriorating Retaining Wall.
 200 Gardena Street -Contacted Mortgage Company/Property Management determining how to save collapsing east wall.
 127 Williams Street - Sale in Progress/Order to repair
 213 Willard Avenue - Order to Repair
 402 Superior Street - Order to Repair
 5406 Harvey Court - Title work Ordered to Proceed With Order to Demolish

There was discussion between City Planner Pugh and Councilman Przybvlinski regarding Monster Billboards within the City.

PETITIONS

There were no Petitions.

COMMUNICATIONS - Correspondence received from Mayor Oberlie who vetoed the Ordinance adopted by the Common Council on June 19, 2007, entitled "**ORDINANCE TO AMEND ORDINANCE NO. 2306, ALSO KNOWN AS SEC. 86-4 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA.**"

June 28, 2007
 Michigan City Common Council
 Michigan City, IN 46360

Dear Council Members:

Please be advised that today I vetoed the proposed ordinance adopted by the Common Council on June 19, 2007, presented for signature on Tuesday, June 22, 2007, and entitled "**ORDINANCE TO AMEND ORDINANCE NO. 2306, ALSO KNOWN AS SEC. 86-4 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA.**"

For the past few years the need to revise those sections of the city code defining sidewalks and tree lawns and limiting the use of said areas has been discussed. Among the most-compelling concerns raised in these discussions is the not-uncommon condition in which a property owner's porch or entry steps are literally built upon the city's right-of-way. Since these issues were not addressed in the subject ordinance, as drafted, the city would become responsible for the repair of the connecting walks including entrance stoops in those areas where homes, buildings and walkways are built on the property line or the public right of way. While that may not have been the intention of the Council, it is the legal effect of its actions given the definition of a sidewalk in the code where "the term "sidewalk" means that portion of the street between the curbing and the adjacent property line intended for the use of pedestrians." (MC Section 1-2)

In many of our neighborhoods residents park on/over the treelawns/sidewalks causing damage. We have argued previously that this practice must come to an end. The first step in the process to curb such abuses is the adoption of clear language defining the area and regulating its use. The failure to revise our Municipal Code and clearly define/regulate the tree lawn area will result in the accelerated degradation of newly installed sidewalks, regardless of who pays for them.

Additionally, rightfully or wrongfully, our city does not require all developments to include sidewalks as can be seen by their total absence in the commercial areas on Franklin Street south of U.S. 20 and in several of our subdivisions. If substantive improvements to our Municipal Code regarding sidewalks are desired, this would provide an excellent opportunity to revisit the issue of requiring sidewalks in all new developments.

The second "whereas" of the proposed ordinance states that the city "has a responsibility to maintain the pedestrian rights-of-way." Once the city assumes the responsibility to maintain the pedestrian rights-of-way, the city necessarily assumes for itself, all responsibility associated with this obligation. Once the city assumes the responsibility, it assumes the liability. We are not the first municipality to address this issue and we should consider the experiences and lessons learned by other cities in this regard. According to the city's insurance provider, the proposed ordinance runs counter to the national trend in which their experience indicates that cities are moving to establish the property owner, who is in the best position to know the day-to-day condition of their sidewalk and protect against its deterioration or hazardous condition, the more responsible party to maintain it.

And finally, there are the two-fold issues of finances. First the Common Council has blindly adopted legislation with no meaningful inquiry, study or focused examination of the financial impact of this ordinance – an impact that will include not only the cost of physically maintaining the sidewalks, but the cost to the citizen-taxpayer created by the liability that arises from the lawsuits which are certain to follow when the city assumes the duty to maintain, repair and replace sidewalks which until now, have been the responsibility of the property owner and covered by the property owner's insurance. Secondly, the proposed ordinance suggests that TIF and CDBG funds will be utilized to meet the increased financial obligation to implement the ordinance, without acknowledging outstanding or regulatory restrictions. While Major Moves and Riverboat funds can be used for sidewalk construction, the issue of their use should be a part of the overall discussion of capital needs of the city. I have committed previously to those discussions once talks with INDOT about Michigan Boulevard either reach an impasse or move favorably forward. That time line should be concluded shortly.

There are 103 miles of known walks within the City not including service walks and entrance steps that are located on the right-of-way. Should the Council choose to override my veto, I will be forced to re-evaluate all currently planned capital projects and make significant changes in funding in order to comply with the ordinance. The City will have to hire and equip sidewalk inspectors and initiate a City-wide program to prioritize the repair needs of those walks and retain surveyors to identify those service walks and entrance stoops that are located on the City's rights-of-way.

Because of the costs and liability issues associated with the ordinance as well as its failure to define and limit the use of sidewalks and tree lawns, I am compelled to veto it. We will continue to address sidewalk issues within our budget and we will continue to build and replace sidewalks as part of our sewer and water construction projects.

Sincerely,

Chuck Oberlie, Mayor
City of Michigan City

Councilman Meer made numerous comments (other options) pertaining the Mayor's Veto letter.

Mayor Oberlie responded to questions by Councilwoman Martin concerning senior citizens that cannot afford sidewalk repair.

Councilwoman Boy made comments regarding tree roots and damage to sidewalks.

Councilman Przybylinski said he appreciated the Council Members voting in favor of this ordinance and went into great detail expressing his opinion on the Mayor's Veto.

Councilman Doyle moved to accept the Mayor's veto, seconded by Councilwoman Boy. Council President Milsap explained that voting **AYE** would mean **overriding the VETO** and **NAY** would mean **not to override the VETO**.

(*Councilman Meer requested to hear the motion again: Councilman Doyle said **NAY** would mean that the **VETO** would be accepted. Councilman Meer explained his understanding of the motion. There was clarification from Attorney Meyer. He said you don't vote to accept, you only vote to override. Attorney Meyer said the only appropriate motion would be a motion to override the **VETO**, otherwise the **VETO** stands if no body moves or if there is no vote.)

At this time, Councilman Doyle withdrew his motion and said the **VETO** should be considered.

Councilman Przybylinski moved to override the **VETO**, seconded by Councilman Jankowski.

Councilman Przybylinski called a point-of-order and asked the Council President to explain the voting process on the **VETO**. Council President Milsap said **AYE** would mean overriding the **VETO** and **NAY** would mean to keep it as it is. **AYES: COUNCIL MEMBER Przybylinski (1). NAYS: COUNCIL MEMBERS Doyle, Jankowski, Martin, Meer, Milsap, Baker, Boy, and Corley (8). VETO STANDS.**

Communication received from Mayor Oberlie regarding a Memorandum of Understanding outlining steps to improve communications and community relations between the Michigan City Police Department and the local branch of the NAACP:

Re: Memorandum of Understanding

Dear Council Members:

Please find attached a Memorandum of Understanding outlining steps to improve communications and community relations that has been signed by representatives of the City of Michigan City, Michigan City Police Department, and the local branch of The National Association for the Advancement of Colored People (NAACP). This agreement is the result of almost one year of discussions led by Conciliation Specialist Anita Cochran of the United States Department of Justice Community Relations Service. I am extremely optimistic through this agreement that meaningful dialogue will continue on the various issues negatively impacting our minority communities, thereby, creating a stronger and more vibrant city.

Mayor Oberlie responded to a question by Councilwoman Martin regarding video equipment in Police cars.

RESOLUTIONS

Councilman Meer read the following Resolution in its entirety:

RESOLUTION NO. [4362](#)

**A RESOLUTION TO THE MICHIGAN CITY PLAN COMMISSION
AND TO THE MICHIGAN CITY PLANNING AND INSPECTION**

DEPARTMENT INSTRUCTING THE WAIVER OF CERTAIN BUILDING PERMIT FEES AND INSPECTION FEES

WHEREAS, the Michigan City Common Council recognizes that the Michigan City community has not been spared the experience of homelessness which has affected communities throughout the country; and

WHEREAS, Citizens Concerned for the Homeless, Inc. is a not-for-profit charitable corporation servicing the needs of homeless children and their families in the Michigan City community as the Michigan City Homeless Shelter; and

WHEREAS, the former Sacred Heart Church rectory located at 1005 West 8th Street in Michigan City was recently donated to the Citizen's Concerned for the Homeless, Inc. for use as the new shelter for homeless children and their parents; and

WHEREAS, the Michigan City Common Council is informed that Michigan City community has generously responded to the efforts of the Citizens Concerned for the Homeless, Inc. to convert the property at 1005 West 8th Street to the new Michigan City Homeless Family Shelter, including support from the following community members and businesses:

- Bishop Dale Melczek, Father James McGrogan and the Sacred Heart Parish;
- Wayne Heating;
- Dalton Plumbing & Heating;
- RL Roofing;
- Michiana Construction;
- Thrivent – La Porte County Chapter;
- Chuck Krause;
- Charlie Cope;
- Patrick N. Glassman Memorial Foundation;
- Wesley Higdon;
- Hometown Finance, LLC;
- Window Mart, Inc.;
- E. M. Bakwin;
- Mary Lou Linnen;
- Laverne Hughes;
- Rosemary Mennen;
- Roger & Denise Libke;
- Dr. and Mrs. Donald Weninger;
- Knapp School 4th Grade Class;
- Hardesty Carpets;
- La Rocco Flooring;
- Renee Bauer;
- Carson Pirie Scott;
- Able Disposal;
- Pat Tym
- Leadership La Porte County

WHEREAS, the Citizens Concerned for the Homeless, Inc. are pursuing renovations to the structure to serve as the new shelter for homeless children and their parents and the Common Council of Michigan City recognizes the need for the City of Michigan City to contribute to the community-wide efforts being made in this regard; and

WHEREAS, the Common Council wishes to lessen the financial burden of the Citizens Concerned for the Homeless, Inc. as it pursues its renovations to the property.

NOW, THEREFORE, BE IT RESOLVED, that the Michigan City Common Council respectfully requests the Plan Commission and the Planning and Inspection Departments to specifically waive any and all fees on the home site being renovated or augmented by the Citizens Concerned for the Homeless, Inc. At 1005 West 8th Street to the new Michigan City, Indiana.

Upon the passage of this Resolution, the City Clerk will send a copy to each Member of the Board of Public Works and Safety and to John Pugh, in the Planning and Inspection Department for future demonstration with the State Board of Accounts.

This Resolution shall be in full force and effect after passage and approval by the Mayor of Michigan City.

INTRODUCED BY: /s/ Ron Meer
CO-SPONSORED BY: /s/ Patricia A. Boy
/s/ Willie Milsap

Councilman Meer moved for the adoption of the Resolution, seconded by Councilman Doyle.

Councilman Meer made favorable comments pertaining to the proposed Resolution.

There was discussion between Council Members Przybylinski and Meer regarding the waiving of sidewalk placement fees and the timeframe of the waiving of the fees.

Councilwoman Martin made various statements concerning the waiving of fees and the Ordinance that was passed in 2005 regarding the waiving of fees.

There was discussion between Councilman Przybylinski and Councilwoman Martin about inserting a timeframe in the proposed Resolution. Councilman Meer informed the Council that he has no plans to amend this Resolution and spoke in detail about the good of the establishment (Homeless Shelter).

Councilman Doyle made comments regarding the services they offer the community.

Councilwoman Baker expressed her support of the proposed Resolution.

Councilwoman Boy and Council President Milsap requested to be co-sponsors to the Resolution .

Council President Milsap asked if there were any comments or questions by the public, hearing none, directed the Clerk to call for the vote: **AYES: COUNCIL MEMBERS Jankowski, Meer, Milsap, Przybylinski, Baker, Boy, Corley and Doyle (8). NAYS: COUNCIL MEMBER Martin (1).**

ORDINANCES

There being no objections, the Clerk read on first reading by title only, **AN ORDINANCE OF THE MICHIGAN CITY COMMON COUNCIL FOR THE REGULATION OF FIREWORKS WITHIN THE CITY OF MICHIGAN CITY, INDIANA PURSUANT TO INDIANA CODE 22-11-14-10.5**, as introduced by Phil Jankowski.

Councilman Jankowski spoke on the proposed Ordinance and focused on the penalties.

City Attorney Jennifer Evans explained to the Council the appropriate penalty if any person is convicted of violating the Ordinance.

There was discussion among City Attorney Evans, Councilman Przybylinski, Councilman Corley, Councilwoman Boy, Councilwoman Martin, Councilman Jankowski, Council President Milsap, and Councilman Meer.

Council President Milsap asked if there were any other questions or comments from the Council or public, and hearing none, the Ordinance was then laid over for second reading.

The Clerk read by title only on second reading, there being no objections, **AN ORDINANCE PROVIDING FOR THE VACATION OF AN ALLEY RUNNING IN AN EASTERLY AND WESTERLY DIRECTION BETWEEN 8TH STREET ON THE WEST AND MICHIGAN BLVD. ON THE EAST IN MICHIGAN CITY, INDIANA**, as introduced by Patricia A. Boy. (Public Hearing to be held July 3rd - News Dispatch Ad June 20 & 27, 2007 .)

Attorney Bradley J. Adamsky, Newby, Lewis, Kaminski & Jones, introduced petitioner Jason Mergl and adjacent property owner Mark Pastoret. Attorney Adamsky spoke on the formalities that needed to be addressed. He distribute pictures of the alley to the Council Members and explained the proposed vacation.

There was discussion among Attorney Adamsky, City Planner Pugh, Councilwoman Martin, Councilman Przybylinski, Council President Milsap, Councilman Meer, Councilman Doyle, Councilwoman Boy, Council Attorney Meyer regarding the vacation of the alley.

The formal public hearing was opened. Responding were Jason Mergl (733 Cinnamon Teal Ct., Hobart, IN) and Mark Pastoret. The public hearing was then closed.

The Ordinance was then laid over for third reading.

There being no objections, the Clerk read by title only on second reading **ADDITIONAL APPROPRIATIONS ORDINANCE**, as introduced by Phil Jankowski. (**DECREASE** 9000 Riverboat, Unappro., **\$35,000.00** and **INCREASE** 9000 0000 06 460.100, Transfer of Funds, **\$35,000.00** ... **DECREASE** 0101 General Fund, Appro., **\$171,000.00** and **INCREASE** Salaries & Wages **\$97,000.00**, FICA **\$7,500.00**, PERF **\$1,400.00**, Health Insurance **\$5,600.00**, Clothing Allowance **\$1,500.00**, Office Supplies, **\$1,000.00**, Diesel Fuel **\$50,000.00**, and Workers Compensation Insurance **\$7,000.00**.) News Dispatch Ad June 20, 2007 - Formal Public Hearing to be held July 17, 2007

Councilman Jankowski explained this additional appropriation is being requested to cover the Municipal Coach expansion. The additional appropriation requested represents new monies. The City will receive \$136,000 from a federal grant for this project, with the local share for this grant being \$35,000.00.

Council President Milsap asked if there were any questions or comments by the Council or public, and hearing none, directed the Ordinance laid over for third reading.

The Clerk read by title only on second reading, there being no objections, **AN ORDINANCE TO INCREASE FARES FOR THE MUNICIPAL COACH DEPARTMENT**, as introduced by Phil Jankowski.

Councilman Jankowski explained this is a Ordinance to increase the fees for the bus service. He said the fees have not been increased since 1973.

Councilman Meer informed the Council and public a formal public hearing is necessary for this Ordinance and has been scheduled for Tuesday, July 17, 2007.

The Ordinance was then laid over for third reading.

UNFINISHED BUSINESS

There was no Unfinished Business.

NEW BUSINESS

There was no New Business.

COMMENTS FROM THE COUNCIL

Councilman Przybylinski wished everyone a safe and happy holiday. He commented on Monster Billboards and city sidewalks. Councilman Przybylinski wondered why the Council has not received any reports from the legal department regarding Tort Claims. He also commented on a city crime map to be published monthly.

Councilman Doyle invited everyone down to Millennium Plaza to enjoy the Patriotic Program and comments on the various Park events.

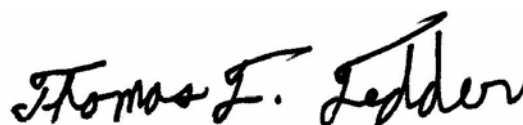
Councilwoman Boy commented on the veto regarding the Sidewalk Ordinance. She spoke on the joint meeting with the Plan Commission and the workshop concerning the tower definition. Mrs. Boy had a question about which Council Member were on the committee. Council President Milsap assured her that he would get back to her regarding her questions.

COMMENTS FROM THE PUBLIC

Mr. Don Przybylinski, 215 Gardena Street, spoke about city streets that were in disrepair. He thanked Council President Milsap and Councilman Przybylinski for their assistance. Mr. Przybylinski thanked our City Engineer, Bill Phelps, for his fine work.

ADJOURNMENT

On motion by Councilman Doyle, supported by the being no further business to transact, President meeting ADJOURNED (approximately 9:20 p.m.)



Council, and there Milsap declared the

Thomas F. Fedder, City Clerk