

**CITY OF MASON
REGULAR CITY COUNCIL MEETING
MINUTES OF OCTOBER 5, 2009**

Clark called the meeting to order at 7:30 p.m. in the Council Chambers at 201 W. Ash Street, Mason, Michigan. Clark led the Pledge of Allegiance and offered the invocation.

Present: Councilmembers: Bruno, Clark, Ferris, Johnson, *Naeyaert, Tornholm, Waltz
Absent: Councilmember: None
Also present: Martin Colburn, City Administrator
Eric Smith, Finance Director/Treasurer
Dennis McGinty, City Attorney
Deborah Cwierniewicz, Deputy City Clerk

*Councilmember Naeyaert arrived at 7:31 p.m.

APPROVAL OF MINUTES: September 21, 2009

Johnson stated that under unfinished business of the September 21, 2009 Minutes, his update regarding the meeting that would be held with Officer Nettles, was specifically regarding the blight issues on Middlebury Lane and the crime issues on the rental properties of Peachtree Place. It was discussed that only the Peachtree Place issue had been raised; Johnson explained that the residents of Middlebury Lane and Foxview Lane are concerned with blight issues on Middlebury Lane. The regular meeting Minutes of September 21, 2009 were approved by consensus as adjusted.

APPROVAL OF BILLS

MOTION by Bruno, second by Naeyaert,
to approve the payment of bills in the amount of \$372,802.06 as submitted.
MOTION APPROVED UNANIMOUSLY

PEOPLE FROM THE FLOOR

None.

REGULAR BUSINESS

Second Reading and Adoption – Ordinance No. 177 – An Ordinance to Amend Chapter 42 – Offenses – Of the Code of the City of Mason by Adding Article VI Which Defines Graffiti Offenses and Provides Penalties for Graffiti Within the City of Mason

MOTION by Johnson, second by Waltz,
to consider Ordinance No. 177 as read for a second time and adopted.
MOTION APPROVED UNANIMOUSLY

CITY OF MASON
ORDINANCE NO. 177

AN ORDINANCE TO AMEND CHAPTER 42 - OFFENSES - OF THE CODE OF THE CITY OF MASON BY ADDING ARTICLE VI WHICH DEFINES GRAFFITI OFFENSES AND PROVIDES PENALTIES FOR GRAFFITI WITHIN THE CITY OF MASON.

THE CITY OF MASON ORDAINS:

Article VI of Chapter 42 - Offenses - of the Code of City of Mason is hereby added to read as follows:

Sec. 42-201. Definitions.

For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Aerosol paint container* means any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

(b) *Broad-tipped marker* means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth (1/4th) of an inch, containing ink or other pigmented liquid that is not water soluble.

(c) *Etching equipment* means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.

(d) *Graffiti* means any unauthorized inscription, word, figure, picture, pictograph, design, motto, inscription, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the city council.

(e) *Graffiti implement* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

(f) *Paint stick or graffiti stick* means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth (1/8th) of an inch in width.

Sec. 42-202. Prohibited acts.

(a) *Defacement.* It shall be unlawful for any person to injure, deface, destroy or apply graffiti to any natural or man-made surface on any public property or, without the permission of the owner or occupant, on any private property. Any person violating this subsection shall be guilty of a misdemeanor punishable as provided in section 1-8 of this code.

(b) *Possession of graffiti implements.*

(1) By minors at or near school facilities. It shall be unlawful for any person under the age of eighteen (18) years to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class or sanctioned school activity that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this section shall be upon the minor student to establish the need to possess a broad-tipped marker.

(2) In designated public places. It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the city.

(c) *Negligent parental supervision.* No parent or guardian of any minor under the age of eighteen (18) years shall by negligent supervision, or by failure to exercise reasonable parental control, suffer, permit or allow such minor to injure, deface or destroy public property or the private property of another by graffiti. An adjudication that said minor has violated subsection (a) of this section shall be prima facie evidence that said parent or guardian failed to exercise reasonable parental control.

Sec. 42-203. Accessibility to graffiti implements.

Furnishing to minors prohibited. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of eighteen (18) years without the written consent of the parents or guardian of the person.

Sec. 42-204. Rewards and reimbursements for information.

(a) The city may offer a reward in an amount to be established by resolution of the city council for information leading to the identification and apprehension of any person who willfully damages or destroys any public property by the use of graffiti. In the event of any such damage to public property, the offender or the parents or legal guardian of any unemancipated minor shall reimburse the city for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the city in the manner it shall deem appropriate.

(b) Claims for rewards under this section shall be filed with the city in the manner specified by a resolution of the city council.

(c) No claim for a reward shall be allowed unless the city investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.

Sec. 42-205. Graffiti as nuisance.

(a) The existence of graffiti on public or private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this article and sections 2.2(19) and 11.9 of the city charter.

(b) It is the duty of both the owner of the property to which graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.

Sec. 42-206. Removal of graffiti by perpetrator.

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal in the case of public property shall be done in a manner prescribed by the chief of police, the director of the department of public works, or any additional city department head, as authorized by the city administrator. Any person applying graffiti shall be responsible for the costs of removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this article. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the costs of removal.

Sec. 42-207. Right of city to remove.

If graffiti is not removed by the perpetrator as required by section 42-206, graffiti shall be removed pursuant to the following provisions:

(a) *Property owner responsibility.* It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the city to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:

(1) The street address and legal description of the property sufficient for identification of the property;

(2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;

(3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the city will declare the property to be a public nuisance, subject to the abatement procedures in sections 2.2(19), and 11.9 of the city charter; and

(4) An information sheet identifying any graffiti removal assistance programs available through the city and private graffiti removal contractors.

(b) *Exceptions to property owner responsibility.* The removal requirements of subsection (a) above shall not apply if the property owner or responsible party can demonstrate to the chief of police or city administrator that:

(1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti;

or

(2) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of fifteen (15) days after service by first class mail of notice of the defacement.

(c) *Right of city to remove.*

(1) Use of public funds. Whenever the city becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the city shall be authorized to use public funds for the abatement of the graffiti nuisance, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the city administrator, or his designee, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

(2) Right of entry on private property. Prior to entering upon private property or property owned by a public entity other than the city for the purpose of graffiti removal the city shall attempt to secure the consent of the property owner or responsible party and a release of the city from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this article, or if the city has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the city and consistent with the terms of this section, the city shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

(d) *Abatement and cost recovery proceedings.*

(1) Notice of due process hearing. If the owner has refused consent and the city intends to proceed with abatement, the city administrator, or his designee, serving as the hearing officer, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different from the owner, not less than forty-eight (48) hours notice of the city's intent to hold a due process hearing at which the property owner or responsible party shall be entitled to present evidence and testimony that the property does not constitute a public nuisance. Notice shall be served in the same manner as a citation in a civil action in accordance with section 1-13(7) of the code. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and mailing by first-class mail to the most current owner of record as shown on the city's tax rolls.

(2) Determination of hearing officer. The determination of the hearing officer after the due process hearing shall be final and not appealable. If, after the due process hearing, regardless of the attendance of the owner or the responsible party or their respective agents, the hearing officer determines that the property contains graffiti viewable from a public or quasi-public place, the hearing officer shall give written notice in an abatement order that, unless the graffiti is removed within ten (10) days, the city shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the hearing officer), or such other abatement thereof as the hearing officer determines appropriate, and shall provide the owner with an accounting of the costs of the abatement on a full cost recovery basis.

(3) Abatement effort. Not sooner than the time specified in the order of the hearing officer, the city administrator, or the designee of the city administrator, shall implement the abatement order and shall mail an accounting to the owner and the responsible party of the costs thereof.

(4) Cost hearing. The owner or responsible party may, within ten (10) days following date of mailing, request a hearing before the hearing officer on the abatement cost accounting, and appropriate due notice and a due process hearing shall be extended to the owner or responsible party. If, following the hearing, or if no hearing is requested, after the implementation of the abatement order, the total amount set forth in the abatement accounting, or an amount thereof determined as appropriate by the hearing officer, shall be due and payable to the city by the owner or responsible party within thirty (30) days.

(5) Lien. If all or any portion of the abatement charges remain unpaid after thirty (30) days, the portion thereof that remains unpaid shall constitute a lien on the property that was the subject of the abatement effort. The city treasurer shall cause a notice of lien to be recorded with the Ingham County Register of Deeds. If any such charges are not paid within six (6) months after the recording of the lien, the official in charge of the collection shall, prior to May 1 of each year, certify to the tax assessing officer of the

city of the facts of such delinquency, whereupon the officer shall enter such delinquent charges upon the next city tax roll as a charge against the premises pursuant to sections 2.2(19) and 11.9 of the city charter and the lien shall be enforced in the same manner as provided by law for delinquent and unpaid taxes.

(6) Suit. Unpaid abatement charges shall also constitute a debt owed to the city by the owner or the person occupying and controlling the property which may also be collected by the city by a suit in *assumpsit* brought in the name of the city against the owner or person occupying or in control of the premises, or both.

Sec. 42-208. Penalties.

(a) *Fines and imprisonment.* Except as otherwise stated herein, any person violating this article shall be responsible for a municipal civil infraction and punished by a fine of two hundred and fifty dollars (\$250.00) for the first offense; five hundred dollars (\$500.00) for the second offense; and one-thousand dollars (\$1,000.00) for each subsequent offense and all direct and indirect costs of the action not to exceed the amount allowed by the Revised Judicature Act.

(1) In the case of a minor, the parents or legal guardian shall be jointly and severally liable with the minor for payment of all fines and costs.

(2) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardian's property that includes the fine and administrative costs.

(3) Upon an application and finding of indigence, the court may decline to order fines against the minor, parents or guardian.

(b) *Restitution.* In addition to any punishment specified in this section, the court may order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor for liquidated damages in an amount equal to the cost to restore or repair the defaced property.

(c) *Community service.* In lieu of, or as part of, the penalties specified in this section, a minor or adult may be required by the court to perform community service as described by the court based on the following minimum requirements:

(1) The minor or adult shall perform at least thirty (30) hours of community service.

(2) At least one parent or guardian of the minor shall be in attendance a minimum of fifty percent (50%) of the period of assigned community service.

(3) The entire period of community service shall be performed under the supervision of a community service provider approved by the chief of police.

(4) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal.

Effective Date. This ordinance shall take effect 20 days after its passage, approval and publication.

The foregoing ordinance was moved for adoption by Council Member Johnson and supported by Council Member Waltz with a vote thereon being: YES (7) NO (0), at a regular meeting of the City Council held pursuant to public notice in compliance with the Michigan Open Meetings Act, on the 5th day of October, 2009.

RESOLUTION APPROVED UNANIMOUSLY

Resolution No. 2009-39 – Establishment of a Receiving Board for 2009 General Election

MOTION by Naeyaert, second by Johnson,
to consider Resolution No. 2009-39 as read.

MOTION APPROVED UNANIMOUSLY

Resolution No. 2009-39 was introduced by Waltz and seconded by Bruno.

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2009-39
ESTABLISHMENT OF A RECEIVING BOARD
FOR THE 2009 GENERAL ELECTION
October 5, 2009**

WHEREAS, Michigan Election Law states that the legislative body of a city may, by resolution, provide that one or more additional boards of election inspectors be appointed to serve as a Receiving Board at an election at which the ballots are counted and certified at the precinct; and

WHEREAS, not less than two election inspectors in a precinct, representing each of the major political parties, shall deliver to the Receiving Board for that precinct materials for canvassing in sealed containers, as required by Michigan Election Law; and

WHEREAS, the Receiving Board shall open the sealed containers and review the statement of votes to determine that the number of individuals voting recorded in the poll book equals the number of ballots issued to electors, as shown by the statement of votes; and

WHEREAS, the Election Commission shall appoint two election inspectors from differing major political parties as the Receiving Board; and

WHEREAS, the City Clerk, as Chair of the City of Mason Election Commission, recommends that Receiving Boards be established for the November 3, 2009 General Election.

NOW THEREFORE, BE IT HEREBY RESOLVED, that the Mason City Council authorizes a Receiving Board for the November 3, 2009 General Election.

RESOLUTION APPROVED UNANIMOUSLY

Resolution No. 2009-40 – Acceptance of the Michigan Green Communities Challenge

MOTION by Naeyaert, second by Tornholm,
to consider Resolution No. 2009-40 as read.

MOTION APPROVED UNANIMOUSLY

Resolution No. 2009-40 was introduced by Bruno and seconded by Waltz.

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2009-40
ACCEPTANCE OF THE MICHIGAN GREEN COMMUNITIES CHALLENGE
October 5, 2009**

WHEREAS, the City of Mason wants to emphasize the benefits of energy efficiency and conservation; and

WHEREAS, the City of Mason wants to demonstrate that energy efficiency and conservation practices can be applied to the daily governmental operations and to infrastructure projects; and

WHEREAS, the City of Mason seeks to find methods of service delivery and operations that conserve energy and resources, saving taxpayer dollars and protecting and preserving the environment; and

WHEREAS, the City of Mason recognizes that green energy efficiencies and conservation practices can reduce government costs over the long-term; and

WHEREAS, the City of Mason will lead by example to show the practicality and effectiveness of these practices; and

WHEREAS, the City of Mason seeks to encourage its citizens and businesses to initiate green energy practices and stewardship activities that benefit the environment and their community;

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Mason accepts the Michigan Green Communities Challenge and pledges to work toward achieving the goals of the *Basic Challenge* over

the next three years.

RESOLUTION APPROVED UNANIMOUSLY

Resolution No. 2009-41 – A Resolution Requesting Ingham County Board of Commissioners to Continue to Maintain Operations of Rayner Park, an Ingham County Park

Colburn gave a brief update regarding the Ingham County Board of Commissioners consideration of whether the County should continue maintaining the operation of Rayner Park.

MOTION by Naeyaert, second by Waltz,
to consider Resolution No. 2009-41 as read.

MOTION APPROVED UNANIMOUSLY

A brief discussion ensued. Bruno stated that he believed this is an Ingham County decision and he would not vote in favor of this resolution.

MOTION by Waltz, second by Bruno,
to approve Resolution No. 2009-41.
Yes: (6) Clark, Ferris, Johnson, Naeyaert, Tornholm, Waltz
No: (1) Bruno

MOTION APPROVED

Resolution No. 2009-41 was introduced by Waltz and seconded by Bruno.

**CITY OF MASON
CITY COUNCIL RESOLUTION No. 2009-41
A RESOLUTION REQUESTING INGHAM COUNTY BOARD OF COMMISSIONERS TO
CONTINUE TO MAINTAIN OPERATIONS OF RAYNER PARK, AN INGHAM COUNTY PARK
OCTOBER 5, 2009**

WHEREAS, the Ingham County Board of Commissioners Finance Committee voted 4 – 2 on September 23, 2009 to close Rayner Park and has forwarded this recommendation to the Board of Commissioners as a whole to implement in the 2010 fiscal year budget; and

WHEREAS, County Parks staff presented a scaled down annual budget for Rayner Park of \$20,000 making continuing operations affordable; and

WHEREAS, Ingham County is making capital expenditures for new facilities in other county parks while contemplating closing down Rayner Park; and

WHEREAS, Rayner Park is the oldest and most historical park within the Ingham County Park system and is highly utilized by citizens from throughout Ingham County; and

WHEREAS, soccer leagues, little league and softball leagues with memberships from throughout Ingham County and beyond utilize Rayner Park as part of the primary park system; and

WHEREAS, individually Rayner Park typically has a visitation use of approximately 150,000 a year, more than the typical use of the Ingham County Parks of Burchfield, Riverbend, McNamara, Lake Lansing North, Lake Lansing Boat Launch and Baldwin; and

WHEREAS, the City of Mason is experiencing and funding projects and services related to federal mandates, increasing state fees, reduced state shared revenues and potential loss of services from Ingham County.

NOW, THEREFORE, BE IT RESOLVED that the Mason City Council hereby respectfully requests that the Ingham County Board of Commissioner's continue operating Rayner Park as part of the Ingham County park system.

BE IT FURTHER RESOLVED that Ingham County continue to work with all parties to strengthen the capabilities of the parks throughout Ingham County to meet the continuing needs of all constituencies.

Yes (6) Clark, Ferris, Naeyaert, Johnson, Tornholm, Waltz

No (1) Bruno

RESOLUTION APPROVED UNANIMOUSLY

Motion – Ingham County Veterans Day Parade

The American Legion Browne/Cavender Post #148 and Veterans of Foreign Wars, Jean R. Anderson, Post #7309, and the D.A.V. Chapter #8 of Lansing are sponsoring a county wide Veterans Day Parade to be held in the City of Mason, Saturday, November 7, 2009, at 2:30 p.m. Staging for the parade will take place at the Mason High School parking lot at 11:30 a.m. The organizations are requesting street closures and a waiver of all City associated fees.

MOTION by Naeyaert, second by Ferris,
to approve the street closure request of the American Legion Browne/Cavender Post #148 and Veterans of Foreign Wars, Jean R. Anderson, Post #7309, and the D.A.V. Chapter #8 of Lansing to allow holding the Ingham County Veterans Day Parade, November 7 2009, between 2:30 p.m. and 3:45 p.m. as depicted on the submitted map and to waive all City fees associated with conducting the parade

MOTION APPROVED UNANIMOUSLY

Motion – Amend the 2009-2010 Fiscal Year Budget

Amendments are made to the Budget quarterly. This quarter, five amendments resulted from City Council Resolution 2009-35, approved August 17, 2009, which authorized a reallocation of funds from the street program to assist funding for the City Hall/Police Station. The remaining changes amend the budget to reflect the usage of the funds previously set aside for the City Hall/Police Station project.

MOTION by Naeyaert, second by Johnson,
to amend the 2009-2010 Fiscal Year Budget as presented.
Yes: (6) Clark, Ferris, Johnson, Naeyaert, Tornholm, Waltz
No: (1) Bruno

MOTION APPROVED

Report – Administrative Street Closures

At the September 21, 2009 meeting, Council directed the City Administrator and City Attorney to research City Code and the Charter to determine whether short term street closures could be accomplished administratively for events such as block party requests. Colburn reported that the City Administrator has the authority to allow the closure of a street on a short term basis for this type of use.

Motion – Traffic Control Order (TCO) 1-2009

TCO 1-2009 establishes closure for the 500 block of Park Street to traffic and temporary closure of the 400 block to through traffic during the construction of the City Hall/Police Department facility. Enactment of the order is at the discretion of the City Administrator when it is deemed necessary to provide public safety and site access control.

MOTION by Naeyaert, second by Johnson,
to approve Traffic Control Order 1-2009.

MOTION APPROVED UNANIMOUSLY

UNFINISHED BUSINESS

Naeyaert encouraged Council to send letters to Ingham County Commissioners expressing opinions regarding Rayner Park.

NEW BUSINESS

Ferris suggested drawing on the volunteer registry we now have to develop and distribute educational materials for citizens and businesses and establish an advisory commission for the Green Initiative.

Waltz informed Council that an Aurelius Township resident expressed gratitude for the recent improvements to Columbia Street completed by the City. The resident travels Columbia Street transporting grain to the Mason Elevator; the ride in is smoother and the ride back home is quieter.

CORRESPONDENCE

Distributed.

LIAISON REPORTS

Waltz informed Council regarding Historic District Commission business.

Clark informed Council the Downtown Development Authority meeting had been rescheduled for October 8, 2009.

ADMINISTRATOR'S REPORT

Colburn informed the Council regarding current city business.

PEOPLE FROM THE FLOOR

None.

ADJOURNMENT

The meeting adjourned at 8:20 p.m.

Martin A. Colburn, City Clerk

Leon Clark, Mayor