

PROCEEDINGS OF THE CITY COMMISSION
CITY OF EAST GRAND RAPIDS

Regular Meeting Held September 17, 2018

Mayor Seibold called the meeting to order at 6:00 p.m. in the City Commission Chambers at the East Grand Rapids Community Center and led the audience in the Pledge of Allegiance.

Present: Commissioners Duncan, Favale, Hamrick, Miller, Walters, Zagel and Mayor Seibold

Absent: None

Also Present: City Manager Donovan; City Attorney Huff; Assistant City Attorney Tobias; Assistant City Manager LaFave; Public Safety Director Herald; Parks & Recreation Director Bunn; City Clerk Brower; Communications Specialist Greenleaf

2018-114. Peter Dimitriou, 2621 Inverness, spoke about the current abnormally warm weather and a new website about climate science.

Laurel Abraham, 1108 Lakeside, introduced herself as a candidate for the 19th District County Commission seat and offered her contact information to anyone interested in speaking with her.

2018-115. Commissioners Walters, Miller, Duncan and Zagel all thanked the Public Safety Department for their quick response and excellent communication during the partial lockdown at the high school earlier in the day and for working so well with Grand Rapids to apprehend the suspect accused of making the threat.

Commissioner Hamrick reported she had attended the redevelopment ready workshop last week and was looking forward to exploring the many resources available.

Commissioner Favale noted that the high school staff had stepped up and fed everyone lunch during the lockdown.

Commissioner Duncan thanked Jose Babushka's and other local businesses for assisting with food delivery during the unexpected need to keep everyone in the building when they otherwise would have been able to go out for lunch.

City Manager Donovan reported the Public Works Department would be again be placing pellets into the storm drains to control the mosquito population due to the continued threat of the west Nile virus. He urged citizens to remove any standing water on their properties and take precautions against mosquito bites.

Mayor Seibold also thanked the Public Safety Department and the school district for their handling of the potential threat at the high school earlier in the day. She also noted that Calvin College would be shooting off fireworks on Saturday, September 29 at approximately 9 p.m. for their homecoming activities. Mayor Seibold also thanked the Parks & Recreation Dept. staff for all their work on the recent triathlon.

2018-116. A zoning variance hearing was held regarding the request David & Beverly Verdier of 3043 Mary to allow the construction of an accessory structure on Reeds Lake.

Zoning Administrator Mizikar explained the request to tear down and rebuild a small structure near Reeds Lake. The building would be approximately 400 square feet with only storage and work areas. He noted this request meets the standards contained in the ordinance to grant a variance and that several similar requests have been granted in the immediate area.

Ben Kortz of Insignia Homes noted the structure would be 136 square feet larger than the old building.

Mayor Seibold opened a public hearing. No public comment was received. Mayor Seibold closed the public hearing.

2018-116-A. Zagel-Miller. That the request of David & Beverly Verdier of 3043 Mary to allow the construction of an accessory structure on Reeds Lake be approved.

Commissioner Zagel felt this was a reasonable request and noted that others have been allowed to do much the same thing.

Commissioner Walters agreed this was an appropriate variance to grant.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7

Nays: -0-

2018-117. Request to rezone property at 2755 Hall to R-2 Residential.

Mayor Seibold announced this request was being postponed to a future meeting at the request of the applicant. Since the public hearing had been noticed to surrounding properties, Mayor Seibold opened a public hearing to allow those who were present a chance to speak. The following people gave their opinions:

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| - Adam Panter, 2820 Lake Dr | Opposed because it would create inconsistency in the neighborhood. |
| - Brian Gill, 2760 Lake Dr | Supported the recommendation of the Planning Commission to deny this request. |

The following communications were received at City Hall concerning this variance request:

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| - Adam & Christine Panter, 2820 Lake Dr | Opposed. |
| - Brian & Elena Gill, 2760 Lake Dr. | Opposed. |

No other public comment was received. Mayor Seibold closed the public hearing.

2018-118. Final Reading of an ordinance amendment to repeal Section 9.63 of Chapter 93 of Title IX of the City Code pertaining to begging and soliciting.

City Attorney Huff reviewed the history of soliciting ordinances in the area and noted that while the Grand Rapids ordinance was overturned, the ordinance enacted by Kentwood had been upheld by the courts. The East Grand Rapids ordinance—modeled after the Kentwood ordinance—was enacted in 2014. Mr. Huff noted that the Michigan legislature had changed the state law in 2017 to exempt charitable organizations from regulations banning solicitations in the roadway, requiring the East Grand Rapids ordinance to be changed to avoid conflict with the new state law. During the amendment process, the city commission voted to repeal the entire law rather than amend the one section in conflict.

Commissioner Zagel asked for clarification on the statements made by some questioning the constitutionality of the existing ordinance. City Attorney Huff stated that the current ordinance was constitutional and that the proposed amendment required by state law was also constitutional.

Mayor Seibold questioned whether the Kentwood decision had been appealed. Mr. Huff said it had been appealed to circuit court where it was upheld.

Commissioner Hamrick asked if Kentwood's ordinance was only tested on the section banning soliciting from a vehicle. Mr. Huff said that was correct as far as the appeal was concerned. Assistant City Attorney Tobias stated as far as he knew, the entire ordinance was still in place and being used when needed.

Mayor Seibold opened a public hearing. The following people were present to express their opinions:

- Jeff Olsen, 1112 Eastwood
Thinks EGR is very welcoming with many public properties, restrooms and parking. He felt that repealing the ordinance was not consistent with the new master plan. Asked the commission to listen to the 500+ people who signed an online petition to retain the current ordinance. Concerned about the many children that use Gaslight Village being approached by aggressive solicitors.
- Kris Pachla, 425 Briarwood
Fully support the repeal because the ordinance punishes behavior that is not dangerous. There are other ordinances to keep people safe.
- Brett Bolt, 1701 Pontiac
Submitted petition to keep the existing ordinance. Don't want to risk repealing and experiencing consequences. Gaslight Village businesses want to keep the ordinance; don't see the harm in keeping it as it is.
- Mary Alice Williams, 529 Lakeside
Please repeal this unnecessary ordinance. Has no problem telling people no and they shouldn't be punished for asking. She has been approached but not accosted.
- Julie Newhouse, 1771 Whitfield
Concerned that those asking for money may have mental illness and not react as expected if told no. Asked to keep in place to be used if needed for safety.
- Jason Hubbard, 2205 Heather
Works intimately with those that others fear. Don't feel most are interested in coming to EGR to solicit. Current ordinance isn't used and not needed. Great cities are not built on fear and Public Safety Dept. has tools they need to keep us safe.
- Rob Kowaleski, 2652 Maplewood
Believed solicitation in Gaslight Village would be detrimental to the businesses there. Favored amending the ordinance to keep some provisions in place.
- John Inhulsen, 615 Cambridge
Troubling that some members of the commission had been disseminating misinformation. Current ordinance has been upheld in court and is not unconstitutional. Those wanting ordinance left in place are not doing so out of fear. Stated existing local ordinance is compassionate by regulating unsafe behavior and allowing assistance rather than giving ticket under state law. Increasing the potential for unsafe behavior and risk to children by repealing ordinance is unacceptable.
- Matt Feyen, 630 Rosewood
Felt the petition to retain ordinance warned of lots of bad things if the ordinance was repealed. We haven't had a problem and aren't likely to have one. Children won't be at risk. Life will go on. These people don't present a danger.
- Dave Hollis, EGR Public Safety Officer
Officers have limited tools to use in some situations, asked that it not be repealed. Soliciting is not illegal, just regulated in some areas. Felt the ordinance was reasonable and protected both parties.
- Ellen Schendel, 429 Briarwood
ACLU has great arguments. We don't need this and should repeal it. Most people have never seen a panhandler. Grateful we have other laws to keep us safe. Submitted 170 signatures supporting repeal.

- Samantha Cornell, 311 Rosewood Urged repeal as she has never feared for the safety of her children here and never encountered anyone asking for money here.
- Miriam Aukerman, 2717 Hall ACLU Attorney. Asking for money is protected speech. EGR ordinance does not comply with the Constitution and contains many violations. Gave examples of situations that would be illegal under the ordinance.
- John Inhulsen, 615 Cambridge Noted an attorney's opinion is not a court decision. Courts had reviewed and issued decision. Felt anything placing kids in potential danger is unacceptable.
- Miriam Aukerman, 2717 Hall Noted there was no way to know if the ordinance would withstand a challenge unless sued. Quoted Judge Jonker regarding prohibiting free speech. Nothing to keep EGR from enforcing motor vehicle code, but can't restrict speech.

The following communications were received at City Hall concerning this variance request:

- 38 emails supporting repeal of ordinance
- Petition containing 171 signatures from across the country supporting repeal of ordinance
- 28 emails supporting retaining and amending the ordinance
- Petition containing 505 signatures from across the country supporting retaining and amending the ordinance

No other public comment was received. Mayor Seibold closed the public hearing.

2018-118-A. Hamrick-Miller. That an ordinance amendment to repeal Section 9.63 of Chapter 93 of Title IX of the City Code pertaining to begging and soliciting be adopted as attached in Exhibit "A."

Public Safety Director Herald stated he was in favor of retaining the current ordinance and amending as needed. He felt the majority of East Grand Rapids is open for solicitation and the ordinance only restricts certain situations to protect people. He felt the restrictions were reasonable and balanced to allow free speech while protecting all citizens.

Commissioner Hamrick noted the Michigan vehicle code contains identical language to the state law and questioned whether it could be used in East Grand Rapids. Attorney Tobias stated it could be used even if the other ordinance is repealed. He did not know why Grand Rapids has chosen not to enforce the Michigan Vehicle Code. Commissioner Hamrick reiterated that EGR is still able to enforce all of the provisions of the existing ordinance—with the exception of the section pre-empted by state law—using other sections of state law and traffic codes.

Commissioner Zagel noted that while all agree they want to keep citizens safe, the difference of opinion comes in how to accomplish this. He stated that officers always use their discretion in handling issues, but need tools to be able to enforce rules when necessary. He noted that it is not the job of the commission to decide what is constitutional, but to represent the stakeholders in the community. He would be voting to keep and amend the existing ordinance because the businesses in Gaslight Village and over 500 others had asked that it be retained.

Commissioner Hamrick felt there was a lot of misinformation about the repeal movement and she did not feel it was taking tools away from the police. She stated that Chief Herald had said there are other ways available so she felt this ordinance wasn't needed. She had never been approached by panhandlers in East, and regulations could be put in place within 30 days if needed. She felt the ordinance made the city vulnerable to many legal issues that would be expensive to defend and she did not want to take the risk. She concluded the ordinance was unnecessary and legally suspect and needs to be repealed.

Commissioner Favale cited many court cases from across the country where similar laws had been overturned in very expensive litigation. She reported there was also a nationwide effort to eliminate panhandling ordinances and felt East would be sued soon. She noted that safety is not at risk here and the ordinance restricts asking for help, which makes the city vulnerable to costly lawsuits.

Commissioner Walters addressed questions he had received about his efforts to repeal the ordinance. He stated understands the concerns raised by many, but did not feel asking for help was a crime to be punished. He agreed that this was not a burning issue here, but felt the ordinance was a problem. He noted he had decided against trying to find a way to revise the ordinance because panhandling is simply not a problem here and it would be a waste of time. He felt there were other ways to address any problems that arise in the future. His advocated for repeal because it was bad public policy to criminalize asking for help, he was concerned about the constitutionality of the current ordinance and the current ordinance was ultimately not necessary.

Commissioner Miller stated that every protection offered by the current ordinance is found somewhere else in either state or local ordinances, and there would be no harm in repealing the current ordinance. He reviewed several sections of city code and how people and officers will be able to handle any situations that arise. He felt we already have good laws and there is not a need for this specific ordinance which focuses on begging.

Commissioner Duncan stated she has looked at the laws we have and what we need. She did not feel that we should prohibit people from coming into East Grand Rapids and asking for help. She felt the specific prohibitions in the current ordinance were very problematic and impossible to police. She stated those who want to keep the existing ordinance were praying on fear and politicizing the issue, which shouldn't happen. She stated that the emails she received from local residents held more weight than online petitions. Ms. Duncan stated that asking for money is not unsafe and the five commissioners in favor of repealing the ordinance have kids in school so they are very focused on safety. She noted the situation at the high school today showed there are truly scary situations that happen here, but that panhandling is not one of them.

Mayor Seibold addressed several of the reasons for repeal cited in the online repeal petition. She noted that there are many city ordinances that are not used regularly but are put in place to prevent issues or address problems immediately when they occur. She noted that an identical ordinance in Kentwood had been tested by the courts and had not been overturned, so the argument that the current ordinance is unconstitutional is not correct. She noted that the ordinance does not prohibit free speech but only puts some parameters on where solicitation can occur to address safety concerns. She noted that the business owners were in favor of amending and retaining the current ordinance so that people using Gaslight Village will be safe. She listed many cities across Michigan that have nearly identical ordinances and they are not being accused of being unwelcoming or unfriendly. She noted that 75% of those sending emails or signing petitions were in favor of keeping safeguards in place and felt the commission listen to the preference of the majority by keeping the ordinance. She did not understand why it was an issue to have one ordinance that organized rules for soliciting if all of these same laws were already in place elsewhere in state and local laws.

Yeas: Duncan, Favale, Hamrick, Miller, Walters – 5

Nays: Zagel and Seibold – 2

- 2018-119. Introduction of an ordinance to amend Sections 2.1, 2.4, 2.5, 2.5A, 2.5-1, 2.10, 2.11 and 2.13 of Chapter 21 of Title II of the City Code pertaining to combustible waste and solid waste.

City Attorney Huff explained this amendment added wording for compost hauling, consolidated the insurance requirements and adjusted language to match current practices.

- 2018-119-A. Walters-Zagel. That an ordinance to amend Sections 2.1, 2.4, 2.5, 2.5A, 2.5-1, 2.10, 2.11 and 2.13 of Chapter 21 of Title II of the City Code pertaining to combustible waste and solid waste be introduced as attached in Exhibit "B."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7

Nays: -0-

- 2018-120. Introduction of an ordinance to amend Sections 2.77 and 2.79 of Chapter 23 of Title II of the City Code pertaining to city sewer service.

2018-120-A. Miller-Duncan. That an ordinance to amend Sections 2.77 and 2.79 of Chapter 23 of Title II of the City Code pertaining to city sewer service be introduced as attached in Exhibit "C."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-121. Introduction of an ordinance to amend Chapter 80 of Title VIII of the City Code pertaining to the building code.

City Attorney Huff noted this section would consolidate many codes that are now referenced separately and would address the city's use of Cascade Township for code enforcement and appeal procedures.

2018-121-A. Walters-Miller. That an ordinance to amend Chapter 80 of Title VIII of the City Code pertaining to the building code be introduced as attached in Exhibit "C."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-122. Introduction of an ordinance to amend Chapter 82 of Title VIII of the City Code pertaining to swimming and other pools.

Mr. Huff noted this amendment would eliminate some obsolete language, change the established fee to reference the fee schedule and referring to county standards for water quality. The amendment also removes the allowance to use an automatic pool cover as a fence due to safety concerns in densely populated neighborhoods.

2018-122-A. Zagel-Favale. That an ordinance to amend Chapter 82 of Title VIII of the City Code pertaining to swimming and other pools be introduced as attached in Exhibit "E."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-123. Introduction of an ordinance to amend Chapter 84 of Title VIII of the City Code pertaining to the property maintenance code.

City Attorney Huff noted this amendment removed some outdated sections and added provisions for the city to recover costs if needed.

2018-123-A. Miller-Hamrick. That an ordinance to amend Chapter 84 of Title VIII of the City Code pertaining to the property maintenance code be introduced as attached in Exhibit "F."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-124. Introduction of an ordinance to repeal Chapter 86 of Title VIII of the City Code pertaining to the plumbing code.

City Attorney Huff noted that with the adoption of the new building code in Chapter 80, Chapters 86, 87 and 89 would no longer be needed and should be repealed.

2018-124-A. Zagel-Favale. That an ordinance to repeal Chapter 86 of Title VIII of the City Code pertaining to the plumbing code be introduced as attached in Exhibit "G."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-125. Introduction of an ordinance to repeal Chapter 87 of Title VIII of the City Code pertaining to the electrical code.

2018-125-A. Miller-Favale. That an ordinance to repeal Chapter 87 of Title VIII of the City Code pertaining to the electrical code be introduced as attached in Exhibit "H."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-126. Introduction of an ordinance to repeal Chapter 89 of Title VIII of the City Code pertaining to the mechanical code.

2018-126-A. Duncan-Favale. That an ordinance to repeal Chapter 89 of Title VIII of the City Code pertaining to the mechanical code be introduced as attached in Exhibit "I."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-127. Introduction of an ordinance to repeal Article VI of Chapter 91 of Title IX of the City Code pertaining to grass and noxious weeds.

City Attorney Huff noted that the provisions of Article VI are now covered by the property maintenance code in Chapter 84.

2018-127-A. Walters-Miller. That an ordinance to repeal Article VI of Chapter 91 of Title IX of the City Code pertaining to grass and noxious weeds be introduced as attached in Exhibit "J."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2018-128. Zagel-Miller. To approve the consent agenda as follows:

2018-128-A. Minutes of the regular meeting held September 4, 2018.

2018-128-B. Payroll disbursements of \$227,993.30; county and school disbursements of \$502,680.79, and total remaining disbursements of \$157,660.00.

2018-128-C. Quarterly financial statements for the period ending June 30, 2018.

2018-128-D. The purchase of extrication equipment from MI Rescue Resources, LLC of Hastings in the amount of \$11,040.50.

2018-128-E. An updated Grounds Maintenance Agreement with the East Grand Rapids Public Schools as attached in Exhibit "K."

2018-128-F. The purchase of internet service and of failover equipment through Trivalent Group at a cost of \$890 per month.

2018-128-G. Preliminary minutes of the Parks & Recreation Commission meeting held August 13, 2018.

2018-128-H. Preliminary minutes of the Planning Commission meeting held August 14, 2018.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

The meeting adjourned at 8:12 p.m., subject to the call of the Mayor until October 1, 2018.

Karen K. Brower, City Clerk

Attachments: A – Ordinance amendment to repeal Section 9.63 pertaining to begging and soliciting
 B – Ordinance amendment to Chapter 21 regarding combustible waste
 C – Ordinance amendment to Chapter 23 regarding city sewer service
 D – Ordinance amendment to Chapter 80 regarding the building code
 E – Ordinance amendment to Chapter 82 regarding swimming pools
 F – Ordinance amendment to Chapter 84 regarding property maintenance code
 G – Ordinance amendment to repeal Chapter 86 pertaining to the plumbing code
 H – Ordinance amendment to repeal Chapter 87 pertaining to the electrical code
 I – Ordinance amendment to repeal Chapter 89 pertaining to the mechanical code
 J – Ordinance amendment to repeal Article VI of Chapter 91 regarding grass and weeds
 K – Grounds Maintenance Agreement with EGR Schools

Attachments listed above are available for inspection at the office of the City Clerk.