



MEMORANDUM

TO: Mayor and Council

FROM: Corey Schmidt, City Manager

RE: Code of Ordinances Updates

DATE: April 3, 2017

Staff for many months has been reviewing the Code of Ordinances book. This review was started to update the fees and rates listed in the ordinances so that they could all be listed in one master fee and rate schedule. Another goal of the project is to be sure that the current laws of the City are up-to-date and legal. A final goal of the project is to complete this comprehensive update so we can incorporate all ordinances adopted since 1999 into the Code of Ordinances book.

This memorandum provides information to describe proposed changes to various sections of the Code of Ordinances book. A separate ordinance is proposed for each chapter of the book. Each ordinance contains the proposed amendments to the chapter, which are shown in red text. Red text that is underlined (example) is a proposed addition, while red text that has a strikethrough (~~example~~) is a proposed deletion.

Each ordinance is broken down into Sections that contain proposed changes. This memo discusses each of those amendments by the Chapter number first, and the Section number second. The section numbers in this memo that are highlighted in yellow represent the most substantial or new changes proposed. I recommend reading the memo and the chapters side by side while reviewing.

The Ordinance Committee met on March 30, 2017 to review these proposed changes. Much discussion ensued, prompting some changes that have been incorporated in the final drafts before City Council. These proposed changes have also been reviewed by City Attorney Greg Stremers.

Ordinance Adoption Process

The process for considering and adopting an ordinance will include a “first reading” on April 3. A “second reading” would occur at the meeting on May 1, after which City Council may vote on the ordinance. If passed, the ordinance becomes effective 25 days after a notice is published in a newspaper regarding its passage. To ensure maximum transparency, copies of these draft ordinances in “red line” version (so everyone can see what we are proposing) will be posted on our website. The final draft of the ordinance that Council will vote on will not include the “red line” edits.

Fee and Rate Resolution

A copy of the draft fee and rate resolution that resulted from this process is included in the packet for Council’s review; it is not an agenda item on April 3. The resolution would be on the May 1 agenda so it is adopted simultaneously with the new ordinances.

Chapter 2 – Administration

- Section 1: This amends the residency clause requirement for the City Manager. It is no longer legal to require a public employee to live within the City limits, per Act 212 of 1999. Language was inserted stating the requirement is within a 20 mile radius unless otherwise determined by contract. This section also amends a specific reference to selection without regard to religious or political preferences because there are a variety of protected classes which would apply in any hiring decision as an Equal Opportunity Employer.
- Section 2: This increases the City Manager's spending limit to \$5,000. Any purchases above \$5,000 would require City Council approval. This limit was selected after consulting with other area municipalities. The original limit dates back to 1964, and the cost of doing business has greatly increased in the intervening years. At various time, it appears City Council has passed motions to change this amount, but this would formalize the change.
- Section 3 and 4: This deletes a reference to a repealed state law and inserts a reference to a new state law regarding planning commissions. It also establishes the planning commission membership at seven members.

Chapter 10 – Animals

- Section 1: This amends the list of animals allowed in the City limits to include chickens, which are permitted per the Zoning Ordinance. It also establishes that a violation of the subsection is a Grade B municipal civil infraction (\$50 fine).
- Section 2: This establishes violations of Dogs article as a Grade B municipal civil infraction (\$50 fine).
- Section 3: This amends the language regarding dogs creating a nuisance to include language regarding vicious dogs.

Chapter 14 – Buildings and Building Regulations

- Section 1: This amendment removes a reference to a specific fee and instead says the fee will be established by a resolution of City Council.

Chapter 18 – Businesses

- Section 1: This amends the level of municipal civil infraction from the default (Grade A) to Grade B (\$50 fine). The fine should be at least as much as the permit, otherwise it is less costly to forgo the permit and pay the fine.

Chapter 22 – Cemeteries

Formatting Changes

- Much of the Cemeteries chapter dates back to an ordinance passed in 1970, which established basic rules and procedures for the operation of the cemetery. In 2003, City Council passed an ordinance creating an additional section in this chapter called “Rules and Regulations.” The items listed in this additional section were mostly already contained in the existing 1970-era chapter, with a few changes. Because the ordinance was passed as an addition to the chapter, today there are several sections that are still on the books that conflict with items listed in the rules and regulations of 2003.

To clean this up, the proposed ordinance deletes the “Rules and Regulations” of 2003 and then amends the existing sections to match the intent of the “Rules and Regulations” of 2003. As a simple example, the 2003 rules established a speed limit of 15 miles per hour, while the section of the ordinance that was still in effect said 10 miles per hour. The new proposed ordinance amends the section of the ordinance regarding speed limits to say 15 miles per hour, to be consistent with the 2003 update.

- The existing ordinance has several references to a cemetery superintendent or cemetery manager. The proposed ordinance reflects the fact that these positions do not exist and simply references the Department of Public Works, which currently handles the maintenance and care of the cemetery.
- The new Code of Ordinances book will not reference any specific fees. Instead, areas that used to reference a specific fee will state that fees are established by a resolution of City Council. This will allow for City Council to review fees comprehensively on an annual basis and is consistent with how most municipalities handle review fees today. There are various fees charged for services at the cemetery, and references have been added to reflect that fact.

Chapter 22 – Cemeteries (continued)

Substantive Changes

- The main substantive change is proposed in section 3 of the ordinance. Currently, the cremated remains of two persons may be interred in one grave space. This ordinance proposes allowing up to four persons to be interred in one grave space. This recommendation is based on feedback received from the Department of Public Works, which says that some families have requested more than two interments on one grave space for cremated remains. There is room for more than two per grave. Based on feedback from the Ordinance Committee, it also would allow cremated remains of four persons in addition to one full burial.
- Language was added in Section 22-33 regarding foundations stating that all foundations will be installed by the City of Marlette, per the recommendation of the Ordinance Committee.
- Finally, language was added to state that a municipal civil infraction occurs if a person conducts an interment or inurnment without prior City approval.

Chapter 26 – Community Development

- Section 1: This deletes an article referring to an Economic Development Corporation that no longer exists.
- Section 2: This deletes an article referring to a Local Development Finance Authority Development and Tax Increment Financing Plan that no longer exists.

Chapter 34 – Environment

- Section 1: This moves a sentence about sending mail to the registered taxpayer from subsection (c) to subsection (a). In practice, the letter is sent to the registered taxpayer if the house is a rental.
- Section 2: The amendment in subsection (a) establishes a blight violation as a Grade C violation. This amendment also clarifies the procedure for blight enforcement. It notes that the civil fine is waived if the property owner complies within the time allowed; however, it says that upon repeat offenses, a fee will be charged even if they comply.

Consider the following scenario: a property owner receives a blight notice to cut their overgrown grass within five days. The grass is cut by the fifth day, so the blight ticket is voided and no fees are owed. Later that month, the property owner receives another blight notice regarding the overgrown grass. Once again, the property owner cuts the grass by the fifth day. In this case, the property owner is demonstrating a habitual behavior of waiting to cut the grass until they receive a blight notice. In an attempt to curb this behavior, the civil fine is charged for the second and subsequent notices, to account for the additional staff time required to process the repeat blight violations.

- Section 3: This amends a section that limits shouting and whistling during certain hours. The amendment is to make such loud or obnoxious behavior a violation no matter the time of day in which it occurs.
- Section 4: This amends an ordinance to allow outside storage of recreational vehicles and other similar vehicles during certain circumstances. It allows a property owner to park such vehicles in their driveway for up to three days for maintenance, cleaning, unloading, and loading purposes. It also allows a property owner to have a visitor park such vehicles in their driveway for up to a week in a six-month period of time. This amendment is offered in recognition of property owner's need to prepare such vehicles for vacations or coming back from vacations and receiving guests on occasion.
- Section 5: This deletes the subdivision regarding disabled motor vehicles because any issues with such vehicles are handled within the blight prevention ordinance.
- Section 6: This amends the procedure for receiving a permit to discharge from a private property into the stormwater sewer system. It also references that the fee for such permit is provided for in the annual fee resolution established by City Council.
- Section 7: This establishes a new section noting that violation of the stormwater draining article results in a municipal civil infraction.

Chapter 38 – Fire Prevention and Protection

- Section 1: This amends the current fireworks ordinance to be consistent with current State law. Section 7 of Act 256 of 2011 states that local ordinances may not regulate use of fireworks, except for determining the hours that they are allowed to be used on the day before, the day of, or the day after a national holiday.
[http://www.legislature.mi.gov/\(S\(jvyjlr10c2yasxpukxo1roxq\)\)/mileg.aspx?page=getObject&objectName=mcl-28-457](http://www.legislature.mi.gov/(S(jvyjlr10c2yasxpukxo1roxq))/mileg.aspx?page=getObject&objectName=mcl-28-457)
- Section 2: This amendment adds leaves and grass clippings to the list of materials that are not allowed to be burned in the city limits.

Chapter 44 – Municipal Civil Infractions

- Section 1: This amends the definition of repeat offense to eliminate the time frame under which a second offense can occur.
- Section 2: This amends the way a municipal civil infraction can be delivered to include language recommended by the City Attorney.
- Section 3: Subsection (c) amends language to recognize the fact that the City waives a municipal civil infraction fine if the violation is corrected within the five-day period allowed for correction. Subsection (e) adds language noting the City may take a municipal civil infraction violation to a court, as recommended by the City Attorney. **Please note that these fines are not included in the proposed fee resolution because fines must be set by ordinance according to Section 2.09 of the Charter.

Chapter 46 – Offenses

- Section 1: This deletes a section regarding carrying fire arms, which is covered by State law.
- Section 2: This deletes a section regarding tobacco use, which is covered by State law.
- Section 3: This deletes a section regarding tobacco use on school grounds, which is covered by State law.
- Section 4-8: These delete a series of sections regarding offenses on school grounds, all of which would be written under State law if they occurred.

Chapter 50 – Solid Waste

- Section 1: This amends a section that establishes a fee for solid waste pickup to note the fees and penalties will be established by a resolution of City Council. It also takes out a reference to a specific date on which delinquent charges would be assessed, as this is traditionally done twice per year for summer and winter taxes.
- Section 2: This amends a section to remove arbitrary size and weight limits of solid waste containers, and instead sets the limit at the limit determined by the City's contract with a third-party solid waste removal company.

- Section 3-6: These delete a series of sections that are either already covered in earlier sections or feature language that is no longer applicable with modern garbage pickup equipment and contracted collection methods.

Chapter 54 – Special Assessments

- Section 1: This is a small amendment recommended by the City Attorney to account for possible differences in assessment methods depending on the type of assessment.
- Section 2: This amends the possible number of years of an assessment from 30 to 40 years, which is the maximum years debt can be issued under a program such as the United States Department of Agriculture (USDA).
- Section 3: This is a small amendment recommended by the City Attorney to account for other assessment methods allowed under state and federal law.

Chapter 58 – Streets, Sidewalks and Certain Other Public Places

- Section 1: Everyone’s favorite law circa 1936 – a prohibition on throwing objects on certain streets within the City of Marlette. This relic is symbolic of the challenge of keeping the laws of any government current. This language would delete this section, while keeping the language establishing that a violation of this chapter is a municipal civil infraction.
- Section 2: This amendment reflects the fact that the City of Marlette does not typically assess the cost of sidewalk improvements back to the benefitting property owner. Thus, “may bill” was inserted in place of “shall bill.” City Council passed a motion at the April 4, 2011 meeting to state that the City would split the cost of sidewalk rebuilding, repairing, or maintenance on a 50/50 basis with property owners. However, in several large sidewalk projects that followed, the City did not charge the property owners. By all accounts, this is a topic City Council has discussed many times over the years. It is no doubt a tough policy issue. The language as presented does not change our current practices.
- Section 3: In the event the City of Marlette did require a property owner to repair or rebuild sidewalks, the additional language makes clear that the responsibility to keep sidewalks free of disrepair falls to the property owner.
- Section 4: This states that a right-of-way permit must be received before working on sidewalks.
- Section 5: This is new language stating that a property owner may not remove sidewalks without written approval from the City Manager and a right-of-way permit. I have had three residents inquire about removing sidewalks abutting their homes in my little over a year here. There is no clear language stating that this can’t be done. It is in the City’s interest to protect these investments and provide for a walkable community.
- Section 6: The maintenance responsibility of driveway approaches has been another hot topic I have been asked about several times by residents. In dealing with these cases, I have referred to driveway approaches as a “certain other public place,” as referenced in the chapter title, to state that it is the maintenance responsibility of the property owner. Language making this clear would be very helpful in day-to-day operations. Just like with sidewalks, if the City were to entertain a large sidewalk replacement project, it can choose to include or not include the driveway approach in the cost.

- **Section 7 and 8:** These sections add language regulating when a person or entity can excavate within the municipal right-of-way. On at least two occasions in the last year, public utility companies have worked within our right-of-way and left the scene worse off than they found it. It took several months to get the issues corrected. With a formal right-of-way permit in place, we can educate these companies about our expectations. Many companies expect that there is a permit application for such work, as it is customary in many municipalities. These sections establish the requirement for a permit and expectation that the scene be left as good as it was prior to the work.
- **Section 9:** This is a new section establishing the right-of-way permit, the contents of the permit application, and a fee for the permit.

Chapter 66 – Traffic and Vehicles

- **Section 1:** The City has not traditionally towed and impounded vehicles when a dispute arises on private property; thus, this section is proposed for deletion.
- **Section 2:** This provides an amendment to the parking overnight on City streets rule, by inserting that parking is not allowed between the months of November 1 and April 1. Thus, this becomes a seasonal rule that helps winter snow event operations by clearing cars from the roads in the winter months.
- **Section 3:** With the proposed elimination of Sec. 66-61 described in Section 1 of the ordinance, this amendment removes a reference to a procedure laid out in Sec. 66-61.
- **Section 4:** This section outlines the fines for an overnight parking violation. The amendment simply says that these fines will be presented in the fine schedule shown in Sec. 66-86.
- **Section 5:** This section presents the fine table for the parking violations bureau. The fine schedule has been updated to remove references to violations that either can't or don't exist within the City of Marlette. All of the fees, which were in the \$10 range, have been increased to \$25 to reflect the increase in cost of doing business since it was last updated in the 1960s. **Please note that these fines are not included in the proposed fee resolution because fines must be set by ordinance according to Section 2.09 of the Charter.

Chapter 74 – Vegetation

- **Section 1:** The City's current practice for trees within the right-of-way is to assume all maintenance responsibility when requested from a property owner. We budget approximately \$10,000 per year trimming, removing, and replacing trees within the right-of-way. Several years ago when the City was exploring this topic, a draft ordinance was developed that would require the adjacent property owner to maintain trees in the right-of-way. Some language from this ordinance was used in coming up with the proposed changes, however the responsibility for street trees will remain with the City of Marlette as has been practice over the last several years.

Specifically, the changes in this chapter include:

- Stating that property owners must maintain trees on private premises if they begin to overhang or interfere with the right-of-way. A new Section 74-35 titled “Failure to trim” lays out the procedure the City would follow if the property owner did not trim such trees within a certain time period after receiving notification. This section would enable the City to recoup the cost of trimming such trees.
- A new Section 74-36 lays out the fact that street tree maintenance is the responsibility of the City of Marlette and creates a procedure for the maintenance. This language was modeled after language in Brown City’s tree ordinance. It states that the City will maintain street trees as requests for maintenance come in, subject to funds being available and a contractor being available.

Chapter 70 – Utilities

Please note that Chapter 70 regarding utilities has not been included at this time. The chapter requires a deeper dive due to regulations regarding water and sewer. It will be revisited in the future.