

**MINUTES OF REGULAR SESSION  
GALESBURG CITY COUNCIL  
OCTOBER 6, 2008; 7:00 P.M.  
COUNCIL CHAMBERS,  
GALESBURG CITY HALL  
200 E. MICHIGAN AVE.  
GALESBURG, MI**

**GALESBURG**

200 E. Michigan Avenue  
Galesburg, Michigan 49053  
Phone: (269) 665-7000  
Fax: (269) 665-4541

**I. CALL TO ORDER**

The meeting was called to order by Mayor Allen at 7:00 P.M.

PRESENT: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

ABSENT: None

**II. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Allen.

**III. COMMUNITY COMMENT**

Toni Thompson of the Friends of the Kalamazoo River Valley Trail spoke regarding the status of their project which began in 1991. Finally, after all this time they have begun the construction phase of their project. The first piece was done last year and runs from 10<sup>th</sup> St. and connects the Kal Haven Trail to Bicentennial Park and now to Ross Park. Their next section, on Gull Road will be completed in 2009 and will go to the D Ave. Bridge. The next section after that will take it to 35<sup>th</sup> St. in Galesburg. The Michigan Department of Transportation added a designated trail path under the new bridge so that the trail can be brought into the City. These trails are not built by tax payer's dollars, but through transportation tax dollars from the Federal Government and are given back to the states for enhancement projects. These funds can be used for Parks and non-motorized transportation routes. They will be looking to come into the City in 2010 or 2011. She asked Council to find someone in the Community that would consider being on the Board with the Friends of the Kalamazoo River Trail system. There are many benefits to this trail.

Lisa Smith of 134 E. Michigan Ave. said she is here tonight regarding the quality of the concrete work being done on Burgess Drive. This concrete is already cracking in several areas. On New Street there is a huge piece of concrete missing. This is not a good job and the cement look to be only about grade 3. Galesburg tax payer's pad for this work and the City should be making sure that the job is done right. The tax payer should not have to pay this done all over again.

Councilmember Nicolow said that he went over and looked at this job on Friday and met with the inspector that was on this job. This job looked okay to him. The inspector did help him to identify some problems that they are taking care of.

Larry Stehouwer, P.E. of Prein and Newhoff said He looked at the work. In general it looks acceptable. He does see some cracks and voids here and there, and if necessary he willing to reexamine the job. They want the City to be happy. DPW Supervisor, Rob Wilson, generally walks the job before it is finished and indicates to them whether it is acceptable or not. There is a one year warranty on the work. Some of the curbing has already been removed and replaced.

Councilmember Yingling said that she does not think this job looks like brand new concrete work. It does not look like a new job.

Mr. Stehouwer said that they will replace the concrete if it is necessary to do so. Councilmember Doxey asked about the crumbling of the curb. Mr. Stehouwer said that was created by their compactor being driven too close to the edge and chipping the curb. The piece they replaced showed aesthetic issues but no structural ones. He believes it is in conformance with industry standards generally speaking. However, they will make repairs where necessary. The City's specifications required a broom finish which is not as slippery in icy conditions.

Mayor Allen said that there are sidewalk intersections that are covered in white plastic. He asked for an explanation of that. Mr. Stehouwer said this is a requirement of the ADA, meant to alert a handicapped person that they are approaching a street. In the larger view, the whole job is not bad, but there may be some problem spots. He asked that any differences be put into writing and submitted to the Drain Commissioner.

Jim Dorsley, no address given, said that he agrees with the comments made by Lisa Smith about the concrete work. He recently sold the laundry mat that he used to operate to Bill Wilson. He thanked the Council for the work they have done on his behalf.

Linda Carlton thanked everyone who worked on and everyone who came to the Fall Festival, it was successful.

Wrifton Graham, no address given, said he thinks the trail is a great thing to come to Galesburg. He hopes the Council will put the Parks Board to work on this project and also thinks it is a good idea to refer it to the DDA. This is right up their alley.

#### IV. READING AND APPROVAL OF COUNCIL MINUTES

Motion by Councilmember Kissinger, supported by Councilmember Jackson to approve the minutes of September 2, 2008 as submitted.

Motion carried unanimously.

#### V. CORRESPONDENCE

1. Application for appointment to the Parks Board received from Susan Graham.

REFERRED TO THE MAYOR

2. 2008 Tax Rate Request and Millage Request Report from Kalamazoo County Government for their Winter Tax Levy.

RECEIVED AND PLACED ON FILE

3. Letter from Thomas "Curt" Case of 192 Elmwood Blvd. submitting notice of his resignation from the Planning Commission.

REFERRED TO THE MAYOR

4. Letter from Mrs. Sylvia M. Barrett Townsend requesting that she be allowed to transfer ownership of one of her burial plots in Oak Grove Cemetery to a friend's son who is deceased and for whom the parents do not have the ability to make burial arrangements.

Motion by Councilmember Nicolow, supported by Councilmember Doxey to waive the provisions of the cemetery resolution adopted in May 2007 to allow for the transfer of the cemetery burial plot as requested by Mrs. Townsend

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

5. Letter from Jamie Curtis submitting his resignation from the Downtown Development Authority.

REFERRED TO THE MAYOR

6. Letters from the Kalamazoo County Health & Community Services Environmental Health Office regarding the property at 17 Washington St. giving permission to Steve Simonds to be on the property August 29 through September 2, 2008 and September 5 through September 7, 2008 for the purpose of decontamination.

RECEIVED AND PLACED ON FILE

7. Letter from City Clerk Miner to Mayor Gary Allen detailing the circumstances surrounding the occurrence of an error on the City's website.

RECEIVED AND PLACED ON FILE

#### VI. PUBLIC HEARINGS

In consideration of the adoption of an Industrial Facilities Exemption Certificate for Smith Machine & Grinding for the purchase of new equipment (Mazak Horizontal NC Lathe, Integrex 400-460" Universal, Mazatrol Matrix Control plus extra equipment), estimated to cost \$395,000.00

Sheila Garrett asked Scott Ogden of Smith Machine & Grinding if this action will keep them from leaving the area and convince them to stay in Galesburg.

Mr. Ogden said they do not have any plans to leave Galesburg.

#### VII. ACTION ITEMS

##### **RESOLUTION #10062008-01 RESOLUTION OF APPOINTMENT RESOLVED BY THE CITY COUNCIL CITY OF GALESBURG, COUNTY OF KALAMAZOO, MICHIGAN**

At a regularly scheduled meeting of the Galesburg City Council held on Monday, October 6, 2008, at 7:00 P.M. with Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen present, and none absent, the following resolution was offered by Councilmember Nicolow, and supported by Councilmember Jackson.

**Whereas**, the City currently has received an application for appointment to the Downtown Development Authority from Fran Bell, Property and Business Owner in the City of Galesburg; and

**Whereas**, the Downtown Development Authority currently has a vacancy for a business owner on their Board; and

**Now therefore be it resolved**, that the Galesburg City Council hereby approves the appointment of Fran Bell to the Downtown Development Authority.

Motion by Councilmember Nicolow, supported by Councilmember Jackson to place an affirmative roll call vote on the resolution appointing Fran Bell to the Downtown Development Authority.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

**RESOLUTION #100608-02  
RESOLUTION AUTHORIZING COMBINATION OF  
LOTS #37 & 38  
RESOLVED BY THE CITY COUNCIL  
CITY OF GALESBURG, COUNTY OF KALAMAZOO,  
MICHIGAN**

At a regularly scheduled meeting of the Galesburg City Council held on Monday, October 6, 2008, at 7:00 P.M. with Councilmembers Allen, Doxey, Jackson, Kissinger, Nicolow, VanNess and Yingling present, and None Absent, the following resolution was offered by Councilmember Kissinger, and supported by Councilmember Nicolow:

**Whereas**, the Galesburg Meat Locker has petitioned the City of Galesburg for permission to combine lots 37 & 38 in Assessor's Plat, City of Galesburg for the purpose of adding a customer service area on to their existing business; and

**Whereas**, the Galesburg Planning Commission took up their permit application at their regular meeting held on September 18, 2008 and unanimously recommended approval to the City Council; and

**Now therefore be it resolved**, that the Galesburg City Council hereby authorizes the combination of lots #37 and #38 in Assessors Plat City of Galesburg as requested by the Galesburg Meat Company.

Motion by Councilmember Kissinger, supported by Councilmember Nicolow to place an affirmative roll call vote on the resolution authorizing lot combination.

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT: None

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I, Debbie Miner, Galesburg City Clerk, do hereby certify that the foregoing City of Galesburg Resolution was adopted by the Galesburg City Council at a regularly scheduled meeting held on October 6, 2008, and that the following is a record of the vote of the members of said City Council on said Resolution:

AYES: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSTENTIONS: None

ABSENT: None

**Resolution #100608-03  
Amendment #2  
LEASE AGREEMENT**

This LEASE AGEEMENT is made and entered into this 6<sup>th</sup> day of October 2008, by and between WAYNE J. ROELOF and JUDITH A. ROELOF, husband and wife, whose address is 14120 Peninsula and PHILIP L. ROELOF and MARY E. ROELOF, husband and wife, whose address is 14120 Peninsula ("LESSORS"), and CITY OF GALESBURG (CITY), a Home Rule City, of 200 East Michigan Avenue, Galesburg, MI 49053, ("LESSEE"), on the following terms and conditions:

WITNESSETH:

1. PREMISES: The Leased PREMISES is:

CITY OF GALESBURG, COUNTY OF KALAMAZOO, STATE OF MICHIGAN:

Lot 208 and the West 40 feet of Lot 214, said lots being a part of the Assessor's Plat of the City of Galesburg, according to the Plat thereof as recorded in Liber 13 of Plats, on Page 19, Kalamazoo County Records.

LESSEE has inspected the PREMISES and accepts the PREMISES "as is".

Notwithstanding any other provision herein to the contrary, this Agreement applies only to the real property and appurtenances. Equipment is the possession of the LESSEE. Upon LESSEE'S rights to occupy the PREMISES terminating for any reason, LESSEE shall remove from the PREMISES all equipment located thereon and shall deliver up to LESSOR possession of the PREMISES in substantially the same condition as existed at the time that LESSEE first commenced occupying the PREMISES except as otherwise set forth herein.

2. LEASE TERM: This Lease shall commence September 1, 2008, and shall terminate August 31, 2018, unless sooner terminated as hereinafter set forth. After the term of this Lease, the parties may continue on a month-to-month basis with the same rights and obligations as though this Lease had continued. Once it becomes a month-to-month tenancy, LESSOR or LESSEE may terminate the month-to-month tenancy

with or without cause upon 30 days written notice to the other party.

**3. LESSEE'S RIGHT OF EARLY TERMINATION:**

Lessee, at its sole option, may terminate this Lease by written Notice of Intent to Terminate given no later than July 31<sup>st</sup> of each year. All real property taxes shall be prorated.

**4. USE OF THE PREMISES:** LESSEE may use the PREMISES primarily for public parking or occasional other lawful purpose.

**5. RIGHT OF ACCESS FOR LESSOR:** LESSOR shall have the right of ingress and egress over the premises for access to their adjacent buildings. LESSEE shall not impair or prevent access to LESSOR's adjacent buildings.

**6. BASE RENT:**

(a) Base Rental Amount. The rental amount shall be \$1,000.00 per year to be first paid on September 1, 2008, and on the first day of September each year thereafter, together with C.O.L.A. each year, as set forth below, beginning on September 1, 2009. In addition, Lessee shall pay all real property taxes during the term of this Lease.

(b) C.O.L.A.

(i) Reference to the Bureau of labor Statistics Cost of Living Index is to the official Consumers Price Index, for all Urban Wage Earners and Clerical workers, U.S. City Average, published by the Bureau of Labor Statistics, United States Department of Labor, CPI-U (1967+100), Revised in March, 1989.

(ii) The base monthly rental set forth in Paragraph 4 hereof shall be adjusted upward annually with the first adjustment to be one (1) year after the commencement date of this Lease, and the same day of each year thereafter during the Lease term including any extended Lease term in accordance with the following computation:

The adjustment to be made on the anniversary of the initial term of the Lease shall be made by adjusting the annual rental to reflect any percentage increase as may be shown in the Consumer's Price Index by comparing the Consumer's Price Index for the month and year in which this Lease commenced with the Consumer Price Index for the month and year of the Lease anniversary. The adjustments to be made on the same day of each year thereafter shall be made by adjusting the annual rental to reflect any percentage change as may be shown in the Consumer's Price Index by comparing the Consumer's Price Index for the year preceding the date of the last prior adjustment with the Consumer's Price Index for the year preceding the date scheduled for adjustment, as the case may be. However, the annual adjustment shall in no event exceed Five (5%) percent per annum.

**(c) Change of Price Index.**

If the aforementioned Index is changed so that the initial adjustment year index differs from that used as of the month of January in any succeeding years during the terms of this Lease, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(d) Further, LESSEE promises to perform all of the obligations of LESSEE as set forth herein. The rental provided for herein shall be an absolutely net return to LESSOR for the Term, free from any losses, expenses or charges with respect to the PREMISES, including normal maintenance, , insurance, taxes, assessments and any other charges upon or related to the PREMISES, or with respect to any easements or rights appurtenant thereto (except as otherwise expressly set forth herein). LESSEE shall not be responsible for any capital improvements or repairs outside normal maintenance.

**7. FENCING PRESENTLY ON PREMISES:** The parties agree that the fence presently on Lot 208 shall be moved at the inception of this Lease and shall be replaced at the end of the term of this Lease to its present location upon the following terms:

(a) At the inception of this Lease, the fence shall be professionally moved from Lot 208 to the West edge of Lot 215. Upon receipt of an invoice for moving the fence, not to exceed \$1,700.00, LESSEE shall, within 30 days of receipt of the invoice, reimburse LESSOR for the costs of moving the fence.

(b) At the end of the Lease term, if the LESSOR wishes to have the fence replaced into its present position, LESSEE will pay, within 30 days of the receipt of an invoice, the reasonable labor costs, only, of restoring the fence to its present location. Under no circumstances will the LESSEE pay for new fencing. LESSEE will only pay for the present fence to be moved to its present location.

**8. INSURANCE AND INDEMNIFICATION:**

(a) LESSEE shall, at it sole cost and expense, procure and maintain in full force and effect fire and other casualty insurance on the PREMISES with such companies and coverage and amounts as LESSOR shall reasonably approve.

(b) LESSEE shall, at its sole cost and expense, procure and maintain in full force and effect comprehensive public liability and property damage insurance for claims of personal injury, death or property damage occurring in or about or as a result of the use of

the PREMISES, with single limit liability coverage of not less than One Million (\$1,000,000.00) Dollars, with policies and companies and amount and deductibles as reasonably approved by LESSOR.

(c) All insurance policies required hereunder shall (i) name LESSOR, LESSEE and any mortgages of Lessor as insureds; (ii) be payable as provided in Paragraph 11 herein, and (iii) be purchased from companies reasonably satisfactory to LESSOR.

(d) Subject to the provisions of Paragraph 11 herein, LESSEE shall indemnify and hold LESSOR and any Mortgages of LESSOR harmless from all claims, demands, actions, losses, damages and liabilities and all fees, costs and expenses (including reasonable attorneys' fees) relating to or in any way arising from the use of the PREMISES, from any cause whatsoever.

(e) LESSEE, for itself and its respective successors and assigns (including any persons, firm or corporation which may become subrogated to any of its rights) waives any and all rights and claims for recovery against LESSOR, and its employees, agents, personal representatives, heirs and assigns, or any of them, on account of any loss or damage to any of its property insured under any valid and collectible insurance policy or policies, to the extent of any recovery collectible under any such insurance policies.

**9. CONSTRUCTION LIENS:** LESSEE shall keep the PREMISES free from any liens arising out of any work performed thereon, materials furnished thereto or obligations incurred by LESSEE. LESSEE shall indemnify, defend and hold LESSOR harmless against all liability, loss, damage, costs and all other expenses arising out of claims of lien for work performed or materials furnished to or for the benefit of LESSEE.

**10. REPAIRS AND MAINTENANCE:** LESSEE shall keep and maintain the PREMISES, and every part thereof, in good and sanitary order, condition and repair, and will deliver the same to LESSOR at the expiration of the Term in as good condition as when received, except for reasonable wear and tear thereof, and unrepaired damage as controlled by the provisions of Paragraph 11 herein.

**11. ALTERATIONS AND ADDITIONS:** LESSEE may not alter or add to the PREMISES without LESSOR'S prior written consent, which consent shall not be unreasonably withheld. LESSOR shall have no obligation to make any alterations or addition to the PREMISES during the Term. All right, title and interest to any alterations and additions to the PREMISES during the Term, except for trade fixtures and removable equipment, shall be the property of LESSOR and shall be deemed to be part of the PREMISES and shall remain on, and be surrendered with, the PREMISES upon termination of this Lease, without cost or expense to LESSOR.

## **12. RESTORATION:**

(a) If the PREMISES are damaged or destroyed, in whole or in part, LESSEE shall repair, restore, replace or rebuild the PREMISES, or the part thereof so damaged, as nearly as possible to the value, condition and character of the PREMISES immediately prior to the occurrence of the damage or destruction. LESSEE shall not be entitled to an abatement of rent during the repair or reconstruction period.

(b) All insurance proceeds payable as a result of any damage to or destruction of the PREMISES shall be paid to LESSOR or any Mortgagee designated by LESSOR and shall be disbursed as reconstruction work progresses. If the insurance proceeds are insufficient to pay for all restoration or repair work, then LESSEE shall pay any additional amounts necessary to repair or restore the PREMISES, prior to disbursement of the insurance proceeds. Upon completion of the work, and payment for all repair or restoration work, all remaining insurance proceeds shall be retained by LESSOR or any Mortgagee designated by LESSOR.

(c) Notwithstanding the foregoing provisions of this paragraph 11, if the damage to or destruction of the PREMISES cannot be repaired within 120 days of the occurrence, either LESSOR or LESSEE may terminate this Lease by giving 10 days prior written notice to the other party within 30 days after the damage or destruction occurs. If the Lease is terminated pursuant to this paragraph, all insurance proceeds payable as a result of the damage or destruction shall be retained by LESSOR or any Mortgagee designated by LESSOR.

**13. CONDEMNATION:** If all or any substantial part of the PREMISES is taken or condemned by a governmental authority, or shall be conveyed by LESSOR to any governmental authority under a threat of such taking or condemnation, the rights and obligations of LESSOR and LESSEE with respect to such taking or condemnation shall be as provided in this paragraph. To the extent that the award made for the taking is available to LESSOR, LESSOR, at its cost and expense, make all necessary repairs or alterations to the PREMISES so as to constitute the portion of the PREMISES not taken as a complete unit, and LESSEE shall have no obligation to make any such repairs or alterations. LESSOR shall be entitled to the entire award made for any taking, condemnation or conveyance, except that LESSEE shall not be precluded from pursuing directly against the condemning authority for its loss.

**14. ASSIGNMENT AND SUBLETTING:** Neither LESSOR nor LESSEE may assign this Lease or sublet all or any part of the PREMISES without the prior written consent of the other party, which consent may be withheld for any reason. LESSOR shall not transfer or convey the premises without it being subject to LESSEE's option.

**15. DEFAULT:** If default is made by LESSEE in the payment of rent or in the performance of any of the conditions or covenants in this Lease, and if such default continues for a period of ten (10) days after written notice is given to LESSEE by LESSOR specifying the default, then LESSOR shall have the right to reenter the PREMISES and remove LESSEE and all persons there from and shall have the right to terminate this Lease. If default is made by LESSEE and LESSOR exercises its option to terminate this Lease, in addition to all other remedies now or hereafter provided to LESSOR, LESSOR may proceed to re-enter the PREMISES and collect from LESSEE any deficiency between the rent payable hereunder and the rent received from any replacement tenant.

**16. QUIET ENJOYMENT:** LESSOR covenants that, upon LESSEE paying the rent and performing all of the terms, covenants and conditions LESSEE is to perform, LESSEE shall peaceably and quietly enjoy the PREMISES, free of any claims of paramount title or of any person claiming under or through LESSOR, and free and clear of all exceptions, reservations or encumbrances other than those set forth herein, and which LESSEE approves in writing, if any, subsequent to the date of this Lease.

**17. PURCHASE OPTION:** At any time during the term of this Lease, LESSOR grants to LESSEE the first right to purchase the premises and any improvements thereon for the sum of \$50,000.00, cash, at closing subject to an easement to LESSOR for ingress and egress over the premises for access to LESSOR's adjacent buildings and the right of tenants of that building to park on the premises. Upon written notification of LESSEE's intent to exercise this option, closing shall take place within 30 day of written notification of the exercise of the option. The Lease payment and real property taxes for that year shall be pro-rated to the date of closing. Upon purchase, this Lease shall terminate and shall be of no further force and effect.

**18. SUCCESSORS AND ASSIGNS:** This Lease shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, heirs, successors and assigns.

**19. HEADINGS:** The headings contained herein are for the convenience of the parties and are not to be used in construing this Lease.

**20. REMEDIES CUMULATIVE:** All rights and remedies of LESSOR herein are cumulative, and not exclusive, and shall be in addition to all rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy herein shall not operate as a waiver thereof, nor excuse future performance. No waiver, discharge or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in a writing signed by the party so waiving and supported by consideration. Any waiver

of any breach shall be a waiver of that breach only and not of any other breach, whether prior or subsequent thereto.

**21. APPLICABLE LAW AND INVALIDATION OF TERMS:** This Lease is entered into in the State of Michigan and shall be governed by and construed in accordance with the laws of the State of Michigan. The invalidation of one or more of the terms of this Lease shall not affect the validity of the remaining terms.

**22. NOTICES:** All notices required herein shall be given in writing upon the parties at the addresses set forth on Page 1 hereof. Any notice shall be deemed to have been given when personally delivered or when sent by certified mail, return receipt requested and postage prepaid. The addresses for notices may be changed from time to time by written notice to the other party.

**23. AMENDMENT:** This Lease represents the entire agreement between the parties. It may not be amended, altered or modified except by a writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above set forth.

LESSORS:

\_\_\_\_\_  
Wayne J. Roelof

\_\_\_\_\_  
Judith A. Roelof

\_\_\_\_\_  
Philip L. Roelof

\_\_\_\_\_  
Mary E. Roelof

WITNESSES:

LESSEE:

CITY OF GALESBURG

\_\_\_\_\_  
By: Gary Allen  
Its: Mayor

\_\_\_\_\_  
By: Debbie Miner  
Its: Clerk

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
Motion by Councilmember Nicolow, supported by Councilmember Jackson to place an affirmative roll call vote on the amended agreement for lease of the Roelof Parking Lot.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

B. Ordinances for Adoption

**CITY OF GALESBURG  
KALAMAZOO COUNTY, MICHIGAN  
ORDINANCE NO. 100608-01**

AN ORDINANCE TO AMEND CHAPTER 50 (PARKS AND RECREATION) OF THE GALESBURG CITY CODE OF ORDINANCES TO ESTABLISH THE GALESBURG CITY PARKS BOARD; TO ESTABLISH DUTIES AND PROCEDURES FOR THE USE OF CITY PARKS; AND TO MAKE VIOLATION OF PARK REGULATIONS A CIVIL INFRACTION; TO REPEAL ALL OTHER ORDINANCES AND PARTS THEREIN INCONSISTENT OR CONTRARY TO THIS ORDINANCE; AND TO ESTABLISH AN EFFECTIVE DATE.

THE CITY OF GALESBURG ORDAINS:

ARTICLE I

Chapter 50, Article I, Sections 50-3 to 50-10 are hereby reserved.

ARTICLE II

Chapter 50, Article II, Division 5, City Parks Board, is hereby added and shall now read:

**Sec. 50-11. Purpose.**

It is the purpose of the Parks Board to advise the City Council regarding protection, promotion and usage of Galesburg City Parks. The Parks Board shall also prepare and adopt a Recreation Plan, which may be used to secure grand funding.

**Sec. 50-12. Parks Board Established.**

The City of Galesburg Parks Board is hereby established.

**Sec. 50-13. Appointment and Terms of Members.**

The Parks Board shall consist of five (5) members. The members shall be a member of the Galesburg City Council, a member of the Galesburg Downtown Development Authority, a member of the Galesburg Business Association and two (2) persons who are

either residents of the City or business owners within the City. Members shall be appointed by the City Council for a period of three (3) years commencing January 2<sup>nd</sup> of each year. Parks Board members shall serve at the will of the City Council and may be removed from the Parks Board before expiration of their term with or without cause.

**Sec. 50-14. Quorum - Officers.**

A majority of the members of the Parks Board shall constitute a quorum for the transaction of business. The Board shall annually, at its first meeting, elect a Chairperson, Vice Chair, Secretary and such other officers as it deems necessary.

**Sec. 50-15. Meetings and Procedures.**

The Parks Board shall establish rules of procedure for its operation. The Board shall meet on a regular basis no less than quarterly. All meetings shall be subject to the Open Meetings Act.

**Sec. 50-16. Annual Report.**

In November of each year, the Parks Board shall file with the City Council a report consisting of a concise statement of the activities of the Board for the past year and a list of suggested topics or projects for the upcoming year.

**Sec. 50-17. Records.**

The Secretary of the Parks Board shall keep a written record of business and transactions of the Board. Such records shall be filed with the City Clerk and shall be a public record open for inspection.

**Sec. 50-18. Budget.**

The City Council shall adopt a budget and appropriate such funds as the City Council feels necessary for the operation of City parks.

ARTICLE III

Chapter 50, Park Regulations, is hereby added and shall now read:

**Sec. 50-19. Title.**

This Chapter shall be called the Galesburg Park Regulations Ordinance.

**Sec. 50-20. Violations.**

The following actions in a park shall be deemed violations of this Ordinance:

(A) No person shall possess or use any firearms, bows, bb guns, pellet guns, air rifles, cross bows or other items

used primarily for hunting or target practice, except as may be authorized by the Parks Board for the control of nuisance animals.

(B) No person shall possess or use any trapping or capturing device, except as may be authorized by the Parks Board for the control of nuisance animals.

(C) No person shall possess or consume any alcoholic beverage, except in conjunction with a community event approved by the City Council.

(D) No person shall possess or consume any illegal controlled substance.

(E) No person shall engage in violent or combative activities or games, except at such times and areas as may be authorized by the Parks Board.

(F) No person shall camp or erect or use any camping equipment, except as may be authorized by the City Council or Parks Board.

(G) No person shall cut down, destroy or remove any trees, including trees that are down, shrubs, bushes or other plant life, except as may be authorized by the Parks Board.

(H) No person shall excavate or remove any earth, sand or gravel, except as may be authorized by the Parks Board.

(I) Except as otherwise provided in this Ordinance, no person shall injure or damage, in any manner, any monument, fence, bridge, seat, tree, flower, playground equipment or any other public property on or in a park.

(J) No person shall place or deposit any garbage, glass, tin can, paper, refuse or other waste in the park except in containers provided for such purpose. Dumping of household waste is specifically prohibited.

(K) No person shall kindle or build a fire in a park, except in a fireplace or grill designed for that purpose. Upon leaving such fire, the person last using it shall see to it that the fire is extinguished. Dumping of ashes, except in a container provided for that purpose, is expressly prohibited.

(L) No person shall permit any pet to run at large in the park. Pet feces shall be picked up by the pet owner and disposed of properly when such feces are left on any foot path, road or improved area of a park.

(M) No person shall sell, hawk or peddle in a park any merchandise of any nature, except in connection with a community event authorized by the City Council or Parks Board.

(N) No person shall beg nor solicit money or merchandise within a park. The sale of merchandise in

connection with an event or activity may be authorized by the Parks Board.

(O) Galesburg City parks are designated animal preserves. No person shall trap, capture, attempt to trap or capture, or disturb any animal or an animal's nest or burrow, except as may be authorized by the Parks Board for the control of nuisance animals.

(P) No person shall drive or park a motor vehicle, moped, motorcycle, off-road recreational vehicle or snowmobile in a park except in spaces set aside and designated as driving and parking areas, except for emergency vehicles and those vehicles used by City representatives for the repairs or maintenance of the park. Except for emergency vehicles and those vehicles used by City representatives, no motorized vehicle may be driven or parked within the gated portion of a park when the gates are closed.

(Q) No person shall operate a motor vehicle, moped, motorcycle, off-road recreational vehicle or snowmobile in the park in any manner contrary to state law or ordinance.

(R) No person shall use any facility within the park including, but not limited to, baseball fields, restroom facilities or drinking fountains, except for their intended use.

(S) No person shall use any threatening, obscene or profane language in a park or engage in any disorderly or indecent conduct therein, calculated or intended, to interfere with the proper enjoyment of other persons using the park.

(T) City parks shall be opened daily to the public between 9:00 a.m. and sunset. No one shall use, occupy or be present in any park except during the above hours. Provided, if any person shall wish to use the park between sunset and 9:00 a.m., for a public or civic function, he shall apply to the City Clerk for a permit. The City Clerk may issue a permit if the function is, in fact, civic or public, if satisfactory arrangements are made to police the said park, and if such use is not detrimental to the City or personal living near the park.

(U) The operation of motor vehicles in any park is prohibited except in that area laid out and appropriated as a driving lane or lanes for motor vehicles by the Parks Board. No motor vehicle shall be driven or operated on said lane or lanes at a speed greater than five miles per hour.

(V) No person shall stop, stand or park a motor vehicle except in such areas as may be laid out and designated as a parking area by the Parks Board.

(W) No person shall kindle or build, or cause to be kindled or built, a fire in any park except in places designated by the Parks Board. In those areas where



fires are permissible, such fires must be contained in a receptacle designed for the purpose of holding a fire and must be attended at all times.

(X) No person shall bring in, cause or allow any dog or cat which he owns or has possession or control of within the confines of any park unless such animal is attached to a leash not to exceed six feet in length; such leash to be of sufficient strength to hold such animal in constant check.

#### **Sec. 50-21. Additional Regulations.**

The City Council may, with the advice of the Parks Board, make such additional rules and regulations pertaining to the conduct and use of a park as is necessary to administer the parks and to protect public property and the health, safety and welfare of the public.

#### **Sec. 50-22. Use by Groups or Organizations.**

The City Council, following review and recommendation by the Parks Board to the City Council, may grant groups or individuals the right to use a City park on a continuing basis upon such terms and conditions as may be required by the City Council to protect the park and public property therein and to minimize any anticipated negative effect upon neighbors and all residents of the City for the protection and promotion of residents' health, safety and welfare.

#### **Sec. 50-23. Issuance of Citations.**

Any certified police officer or those persons duly authorized by the Parks Board as Park Rangers may issue and serve municipal civil infractions upon any person who violates this Ordinance or any park rules and regulations as adopted.

#### **Sec. 50-24. Penalties.**

Any person who violates or fails to comply with this Ordinance or any park rule or regulation as adopted shall be responsible for a municipal civil infraction. A civil fine, including costs, shall be imposed according to the schedule adopted by the City Council.

#### ARTICLE IV

All other Ordinances or parts thereof in conflict herewith are hereby repealed and shall be of no further force and effect.

#### ARTICLE V

Any and all sections, terms, provisions and/or clauses herein shall be deemed independent and severable. Should any court of competent jurisdiction hold any section, term, provision or clause void and/or invalid, all

remaining sections, terms, provisions and/or clauses not held void and/or invalid shall continue in force and effect.

#### ARTICLE VI

This Ordinance shall take force and effect on October 30, 2008.

Motion by Councilmember Kissinger, supported by Councilmember Nicolow to place an affirmative roll call vote on the ordinance.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT: None

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#### CERTIFICATE

I, Debbie Miner, City Clerk for the City of Galesburg, do hereby certify that the foregoing Galesburg Ordinance No. 100608-01 was adopted by the City Council at a regular meeting held on October 6, 2008, and that the following is a record of the vote of the members of said City Council on said Ordinance.

AYES: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT: None

ABSTAIN: None

Debbie Miner, Clerk

#### **CITY OF GALESBURG KALAMAZOO COUNTY, MICHIGAN ORDINANCE 100608-02**

AN ORDINANCE TO AMEND THE GALESBURG CITY CODE OF ORDINANCES TO MAKE CERTAIN ORDINANCE VIOLATIONS ENUMERATED HEREIN MUNICIPAL CIVIL INFRACTIONS; TO ESTABLISH APPROPRIATE CIVIL SANCTIONS; TO ESTABLISH THE GALESBURG CITY ORDINANCE VIOLATION BUREAU; TO AUTHORIZE CITY OFFICIALS TO ISSUE APPEARANCE TICKETS; TO ESTABLISH PROCEDURES FOR THE PROCESSING OF CIVIL INFRACTION CITATIONS; TO AMEND THOSE ORDINANCES ENUMERATED

HEREIN FROM MISDEMEANORS TO MUNICIPAL CIVIL INFRACTIONS; TO PROVIDE FOR SEVERABILITY AND THE REPEAL OF ORDINANCES INCONSISTENT HERewith AND TO SET AN EFFECTIVE DATE.

## GALESBURG CITY ORDAINS:

### ARTICLE I

Chapter 46, Article III, Sections 46-18 to 46-20 are hereby reserved.

### ARTICLE II

Chapter 46, Article III, Municipal Civil Infractions, is hereby added and shall now read:

#### Sec. 46-21. Definitions.

The following terms, as used in this Ordinance, shall have the meanings herein ascribed to them:

Bureau shall mean the Municipal Ordinance Violations Bureau established in the following section.

Citation or Court Citation means a written complaint or notice prepared by an authorized person directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction.

Municipal Civil Infraction shall mean a violation of a provision of this Ordinance for which the remedy and/or penalty is prescribed to be a civil fine or other sanction other than a criminal penalty. A municipal civil infraction is not a lesser-included offense of a criminal offense or of an ordinance violation that is not a civil infraction.

Municipal Civil Infraction Determination shall mean a determination that a Defendant is responsible for a municipal civil infraction by one of the following:

- a. An admission of responsibility for the municipal civil infraction.
- b. An admission of responsibility for the municipal civil infraction, "with explanation".
- c. A preponderance of the evidence at an informal hearing or formal hearing.
- d. A Default Judgment for failing to appear at a scheduled appearance.

Municipal Civil Infraction Violation Notice shall mean a written notice prepared by an authorized official, directing a person to appear at the City Ordinance Violations Bureau for the purpose of paying a civil fine and/or costs for a violation which is prescribed to be a municipal civil infraction.

Person means a natural person, or the principal, officer, director, partner or agent of any other entity, wherein he or she acted in bringing about a violation or municipal infraction.

Repeat Offense shall mean a determination of responsibility for second or any subsequent municipal civil infraction with regard to the same code provisions committed by the same person.

Responsible or Responsibility shall mean a voluntary admission or determination entered by a Court or Magistrate that a person is in violation of a provision of this Ordinance prescribed to be a municipal civil infraction.

Violation shall mean any act which is prohibited or made or declared to be unlawful or an offense under this Ordinance, including affirmative acts as well as omissions and/or failure to act where the act is required by this Ordinance.

Zoning Violation means any violation or municipal civil infraction of the Sections of the City Code adopted pursuant to the City Zoning Act, Act 184 of the Public Acts of 1943, as amended. A zoning violation is declared a nuisance per se in accordance with Section 24 of the Act.

#### Sec. 46-22. Establishment of Galesburg City Civil Infraction Violations Bureau.

The Galesburg City Civil Infraction Violations Bureau is hereby established for the purpose of accepting admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices.

Payments made to the bureau shall be retained and accounted for as fines and costs, and shall be deposited in the general fund of the City.

The Bureau shall be located in the office of the City Clerk and shall be under the supervision and control of the City Clerk and Mayor, subject to the review of the City Council.

The fines and costs shall be in an amount in accordance with the schedule thereof for each offense in accordance with Section 10 herein or in accordance with amendments thereto as established by the City Council Resolution. The Bureau is not authorized to alter the amount of the fines and costs or to adjudicate the violation in any way.

#### Sec. 46-23. Violation Notice; Payment at Municipal Ordinance Violations Bureau.

Prior to the issuance of a court citation, authorized local officials may issue a violation notice for the commission of a civil infraction to any person responsible therefor

under the law. The violation notice form shall be approved by the State Court Administrator within the time allowed on the Notice of Civil Infraction, the person or entity designated as reasonable therefore may avoid the issuance of Ordinance continued: court citation by the acknowledgment of responsibility on the Notice, together with payment of the fines and costs, as prescribed on the established scheduled of fines and costs, at the Galesburg City Civil Infraction Violations Bureau, in person or by mail.

Failure to pay the fines and costs within the time allowed on the notice may result in a court citation being filed pursuant to MCL 600.8707 and Section 8.

**Sec. 46-24. Service of Municipal Civil Infraction Violation Notice.**

- a. Except as provided in subparagraph (b) below, an authorized official shall personally serve a copy of the Municipal Civil Infraction Violation Notice upon an alleged violator.
- b. In a municipal civil infraction involving the use or occupancy of land or a building or other structure, a copy of the Municipal Civil Infraction Violation Notice need not be personally served upon the alleged violator but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the Notice shall be sent by first-class mail to the owner of the land, building or structure at the owner's last known address.

**Sec. 46-24. Grounds for Issuance of Violation Notice or Court Citation.**

The basis for issuance of a Municipal Civil Infraction Notice or Court Citation shall be as set forth below, as the case may be:

- a. An authorized official who witnesses a person violate an Ordinance, the violation of which is a municipal civil infraction, shall prepare and subscribe, as soon as possible and as completely as possible, an original and three (3) copies of a citation unless such official issues a Municipal Civil Infraction Violation Notice.
- b. An authorized official may issue a violation notice or a citation to a person if, based upon investigation, the official has reasonable cause to believe that a person is responsible for a municipal civil infraction.
- c. An authorized official may issue a violation notice or a citation to a person if, based upon investigation of a complaint by someone who allegedly witnessed the person violate an Ordinance, a violation of which is a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the attorney for the City

for whom the authorized local officer is acting approves in writing the issuance of the citation.

**Sec. 46-25. Municipal Civil Infraction Violations Notice Unresolved; Issuance of Court Citation; Service by First-Class Mail.**

In the event a person elects not to admit responsibility and pay the specified civil fine and costs prescribed for the respective violation, a municipal civil infraction citation may be filed with the District Court, in which case a copy of the citation shall be served by first-class mail upon the person charged with the municipal civil infraction at such person's last known address. The citation filed with the Court shall consist of a sworn complaint containing the allegations stated in the Municipal Ordinance Violation Notice and shall fairly inform the Defendant how to respond to the citation. The citation shall comply with MCL 600.8707. The citation or complaint may contain a request by the Code Officer or attorney issuing it to the Court that, upon the entry of a not responsible plea, the matter shall be set for a formal hearing. Without such designation by the Code Officer, the Defendant shall have the option of an informal or formal hearing.

**Sec. 46-26. Appearance Tickets.**

Officers, employees and other individuals employed by and in the service of the City who are authorized by state law and/or the provisions of the Ordinances of the City to enforce the provisions of such Ordinances, including, but not limited to, the Zoning and Ordinance Enforcement Officers, Building Inspector, Fire Inspector, Fire Officer, Firefighters and their assistants, are hereby specifically authorized in accordance with state law, including MCL 764.9 et seq., MSA 28.868(3) et seq.; to issue and serve upon a person an appearance ticket if the officer, employee or other individual employed by or in the service of the City has reasonable cause to believe that the person has committed a violation of the provisions of the Ordinances of the City or state law, except where the issuance of such an appearance ticket is expressly prohibited by the provisions of the Ordinances or applicable state law.

An appearance ticket, as used above, means a complaint or written notice issued and subscribed by a police officer or other officer, employee or individual employed by or in the service of the City who is by law or Ordinance authorized to issue it, directing a designated person to appear in the designated local criminal court at a designated future time in connection with his alleged infraction. The appearance ticket shall be numbered consecutively, be in such form as determined by the Attorney General, the State Court Administrator and the Director of the Department of State Police and shall consist of the following parts:

1. The original, which shall be a complaint or notice to appear by the officer, employee or other individual filed with the Court.
2. The first copy, which shall be an abstract of court records.
3. The second copy, which shall be retained by the appropriate local enforcement agency.
4. The third copy, which shall be delivered to the alleged violator.

With the prior approval of such state officials, the appearance ticket may be appropriately modified as to content or number of copies to accommodate the law enforcement agency and local Court procedures and practices.

**Sec. 46-27. Failure to Respond to Court Citation; Criminal Sanctions.**

In the event a person fails to appear and respond to a court citation issued herein, such person shall be deemed to have admitted responsibility and Default Judgment shall be entered, in accordance with Sections 10, 11 and 12 of this Ordinance. The issuance of a Default Judgment for failure to appear before the court for a civil infraction court citation shall be in accordance with the procedures set forth by law and this Ordinance.

**Sec. 46-28. Bureau Schedule of Fines.**

The Galesburg City Council, from time-to-time by Resolution, shall adopt a schedule of fines for an admission of responsibility to a municipal civil infraction.

**Sec. 46-29. Sanctions for Civil Infraction Court Citation.**

a. Determination of responsibility or responsibility with explanation. Upon being found responsible or responsible with explanation, the District Court or other Court of competent jurisdiction shall order the Defendant to pay a civil fine as set forth in Section 10 above, Court costs of not less than \$25.00 nor more than \$500.00, plus the City's actual costs of enforcement and litigation including, but not limited to, subpoena fees, costs of City Officials having to appear at hearings and actual attorney's fees and expenses incurred.

**Sec. 46-30. Remedies Not Exclusive.**

In addition to any remedies provided by this Ordinance, the City may seek additional relief under all other provisions of law or equity, including remediating the infraction and placing the cost of remediation on the tax bill, obtaining injunctions to abate Code violations and the issuance of Compliance Orders.

**Sec. 46-31. Amendment of Ordinances.**

The following Sections of the Galesburg City Code of Ordinances shall be amended to read: "Violation of this Chapter or Article shall be a municipal civil infraction."

Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_  
 Section \_\_\_\_\_

**ARTICLE III**

Any and all sections, terms, provisions and/or clauses herein shall be deemed independent and severable. Should any court or competent jurisdiction hold any section, term, provision or clause void and/or invalid, all remaining sections, terms, provisions and/or clauses not held void and/or invalid shall continue in force and effect.

**ARTICLE IV**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed and shall be of no further force or effect upon the effective date of this Ordinance.

**ARTICLE V**

This Ordinance shall take effect on October 30, 2008.

Motion by Councilmember Kissinger, supported by Councilmember Nicolow to place an affirmative roll call vote on the ordinance.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT: None

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**CERTIFICATE**

I, Debbie Miner, Galesburg City Clerk, do hereby certify that the foregoing Galesburg City Ordinance No. 100608-02 was adopted by the Galesburg City Council at a Regular Meeting held on October 6, 2008, and that the following is a record of the vote of the members of said City Council on said Ordinance.

Ayes: Councilmembers Doxey, Jackson, Kissinger,  
Nicolow, VanNess, Yingling, Allen

Nays: None

Absent: None

Abstain: None

Debbie Miner, City Clerk

**CITY OF GALESBURG  
KALAMAZOO COUNTY, MICHIGAN  
ORDINANCE #100608-03**

**AN ORDINANCE TO AMEND THE GALESBURG CITY CODE OF ORDINANCES; TO PROMOTE AND PROTECT THE HEALTH, SAFETY AND WELFARE OF THE RESIDENTS AND PROPERTY OWNERS OF THE CITY OF GALESBURG BY REGULATING, PREVENTING, REDUCING OR ELIMINATING BLIGHT, BLIGHTING FACTORS OR CAUSES OF BLIGHT WITHING THE CITY OF GALESBURG; TO PROVIDE FOR THE ENFORCEMENT THEREOF; TO MAKE VIOLATION THEREOF A MUNICIPAL CIVIL INFRACTION; TO REPAL ALL OTHER ORDINANCES OR PARTS THEEIN INCONSISTENT OR CONTRARY TO THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE FOR THIS ORDINANCE.**

**THE CITY OF GALESBURG ORDAINS:**

**ARTICLE 1**

Chapter 46, Sections 46-32 through 46-40, are hereby reserved.

**ARTICLE II**

Chapter 46, Article IV, Blight, is hereby added and shall now read:

**Sec. 46-41. Definitions**

*Junk Automobile* shall include any motor vehicle which is not licensed for use upon the highways of the State of Michigan, and shall also include, whether licensed or not, any motor vehicle which is inoperable or does not have all its main component parts attached.

*Building Materials* shall include lumber, bricks, concrete, cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws or any other materials used in constructing any structure.

*Junk, Trash, Rubbish, or Refuse of Any Kind* shall include without limitations, motorized or unmotorized vehicles, metal, iron, steel, cooper, brass, zinc, tin, lead, rope, rubber, rags, clothing, wood, plastic, paper, glass, garbage, appliances, mobile homes not meeting the

minimum standards for inhabitation by humans, unusable trailers, pick-up truck caps/covers, televisions, furniture, or any other scrap or waste material of any kind, including parts of any of the above, but not including domestic refuse stored in such a manner as not to create a nuisance for a period not exceeding thirty (30) days, and not including firewood stored in an orderly fashion.

**Sec. 46-42. Prohibition Against Public Nuisances.**

No person, firm or corporation owning, occupying or in control of any real property, public or private, within the City of Galesburg shall allow, permit or suffer a public nuisance as hereinafter declared, to arise or remain on its real property.

**Sec. 46-43. Nuisance Declared.**

The following are declared to be public nuisances:

a. The parking or storage of junk automobiles and unlicensed trailers and similar items outside a wholly enclosed building for a period in excess of ten (10) days within any calendar year. This Subsection shall not apply to any property having a valid junkyard/salvage yard permit issued by the City or the State of Michigan.

b. The keeping or storage of "building materials" outside a wholly enclosed building for a period of in excess of thirty (30) days within any calendar year. This Subsection shall not apply to open air businesses permitted by the Galesburg City Zoning Ordinance or a site under construction for which a valid building permit has been issued where said materials are intended for use in the building being constructed.

c. The keeping or storage of "junk, trash, rubbish or refuse of any kind" outside a wholly enclosed building for a period in excess of thirty (30) days within any calendar year. This Subsection shall not apply to any property having a valid junkyard/salvage yard permit issued by the City or the State of Michigan.

d. Any occupied or unoccupied structure which has been destroyed, damaged or deteriorated that is no longer habitable as a dwelling or is not in compliance with Galesburg City Ordinances or State law.

e. Any unfilled basements, excavations or holes that may be attractive and dangerous to children unless the property is completely fenced or otherwise protected against entry.

f. Unused, inoperable or abandoned recreational vehicles, equipment machinery or appliances outside a wholly enclosed building.

g. The keeping or storage of furniture designed for indoor use outside, including on a porch that is not completely enclosed. This Subsection shall not apply to furniture designed for outdoor use provided it is complete and usable as such.

#### **Sec. 46-44. Enforcement.**

Except in the case of an emergency as determined by the City Council, or in the case of grass or vegetation in excess of 10 inches high, before a citation for violation of this Ordinance is issued, the owner or occupant of the property in violation of this Ordinance shall be given written notice of the violation and the opportunity to abate the nuisance within thirty (30) days of the date of the notice. In the case of grass or vegetation in excess of 10 inches high, the owner or occupant shall be given 48 hours to abate the nuisance. Notice may be served in person or by first-class mail.

#### **Sec. 46-45. Violation as Municipal Civil Infraction.**

A person who violates any of the provisions of this Article shall be deemed guilty of a municipal civil infraction punishable in accordance with Section 1-7.

### **ARTICLE III**

All Ordinances or parts thereof in conflict herewith are hereby repealed and shall be of no further force and effect.

### **ARTICLE IV**

Any and all sections, terms, provisions and/or clauses herein shall be deemed independent and severable. Should any court of competent jurisdiction hold any section, term, provision or clause void and/or invalid, all remaining sections, terms, provisions and/or clauses not held void and/or invalid shall continue in force and effect.

### **ARTICLE V**

This Ordinance shall take force and effect on October 30, 2008.

Motion by Councilmember Nicolow, supported by Councilmember Jackson to place an affirmative roll call vote on the ordinance.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT:None

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### **CERTIFICATE**

I, Debbie Miner, City of Galesburg Clerk, do hereby certify that the foregoing City of Galesburg Ordinance Number 100608-1 was adopted by the City Council at a regular meeting held on October 6, 2008, and that the following is a record of the vote of the members of said City Council on said Ordinance

AYES: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT:None

ABSTAIN: None

Debbie Miner, City Clerk

### **CITY OF GALESBURG KALAMAZOO COUNTY, MICHIGAN ORDINANCE 100608-04**

**AN ORDINANCE TO AMEND CHAPTER 78, ARTICLE III, WEEDS, OF THE GALESBURG CITY CODE OF ORDINANCES; TO CHANGE THE MAXIMUM HEIGHT OF GRASSES AND WEEDS TO 10 INCHES AND TO CHANGE THE NOTICE PERIOD TO 48 HOURS; TO MAKE VIOLATION A MUNICIPAL CIVIL INFRACTION; TO REPEAL ALL OTHER ORDINANCES OR PARTS THEREIN INCONSISTENT OR CONTRARY TO THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE FOR THIS ORDINANCE.**

**THE CITY OF GALESBURG ORDAINS:**

### **ARTICLE I**

Chapter 78, Article III, Weeds, Section 78-64, Permitting Growth of Weeds, is hereby amended and shall now read:

#### **Sec. 78-64. Permitting Growth of Grasses and Weeds - Mowing.**

No person owning, occupying or in control of any lot or land within the City of Galesburg, with the exception of any land zoned OS (Open Space District), shall allow or maintain on such lot or land any growth of weeds or grasses which have obtained the height of 10 inches or in the seed bearing stage of their growth. For the purpose of this section, weeds shall include, but are not

limited to, any noxious weeds, rank vegetation, including grasses that may conceal persons, rubbish or filthy deposits.

## **ARTICLE II**

Chapter 78, Article III, Weeds, Section 78-65, Notice to Destroy, is hereby amended and shall now read:

### **Sec. 78-65. Notice to Destroy.**

The public works administrator is hereby authorized and empowered to notify, in writing, the owner or person in control of any such lot or land within the City or the agent thereof to cut, destroy, and/or remove any such weeds, grass or deleterious, unhealthful, uncultivated growths or other noxious matter, found growing, lying or located on such owner's property or upon the sidewalk abutting the same, within 48 hours of the date of notice. Notice may be mailed to the owner or occupant of the property, given personally to the owner or any occupant, posted at any place visible from a street or sidewalk or in any other manner reasonably calculated to give the owner or occupant notice.

## **ARTICLE III**

Chapter 78, Article III, Weeds, Section 78-66, Action Upon Non-Compliance, is hereby amended and shall now read:

### **Sec. 78-66. Action Upon Non-Compliance.**

Upon the failure, neglect or refusal of any such person or agent so notified to cut, destroy, and/or remove weeds, grass or deleterious, unhealthful, uncultivated growths or other noxious matters lying or located upon such property within the limits of the City or upon the sidewalk abutting the same within 48 hours after notice has been given, the City may arrange to contract for the cutting, destroying and/or removal of the same and immediately bill the expense thereof to the owner or occupant of such property, which the owner and occupant, if different than the owner, shall be liable to pay immediately upon receipt.

## **ARTICLE IV**

Chapter 78, Article III, Weeds, Section 78-70, Further Penalties, is hereby amended and shall now read:

### **Sec. 78-70. Further Penalties.**

In addition to the aforesaid remedies and charges, any violation of this Article shall be a Municipal Civil Infraction.

## **ARTICLE V**

All Ordinances or parts thereof in conflict herewith are hereby repealed and shall be of no further force and effect.

## **ARTICLE VI**

Any and all sections, terms, provisions and/or clauses herein shall be deemed independent and severable. Should any court of competent jurisdiction hold any section, term, provision or clause void and/or invalid, all remaining sections, terms, provisions and/or clauses not held void and/or invalid shall continue in force and effect.

## **ARTICLE VII**

This Ordinance shall take force and effect on October 30, 2008.

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to place an affirmative roll call vote on the ordinance as adopted.

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT: None

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## **CERTIFICATE**

I, Debbie Miner, City of Galesburg Clerk, do hereby certify that the foregoing City of Galesburg Ordinance Number 100608-04 was adopted by the City Council at a regular meeting held on October 6, 2008, and that the following is a record of the vote of the members of said City Council on said Ordinance:

AYES: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT: None

ABSTAIN: None

Debbie Miner, City Clerk

## **VIII. REPORTS OF OFFICERS & BOARDS**

### **a. Accounts payable**

Motion by Councilmember Jackson, supported by Councilmember VanNess to approve payment of the bills as submitted by the City Clerk in the amount of \$93,975.14.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

c. Treasurer's Report

Motion by Councilmember Nicolow, supported by Councilmember Jackson to accept the report of the City Treasurer showing a balance, in all funds, totaling \$1,653,373.15.

Motion approved by the following vote;

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

b. Department of Public Works

Supervisor Wilson reported that Leaf Collection will begin on October 15, 2008. The DPW staff assistant, Art Green, has been off of work due to his wife's open heart surgery. They are not sure when he will return to work. He is informing Council of this problem because the potential exists that they may have to hire a new part time person.

The street paving project is looking pretty good and should be done tomorrow.

Mayor Allen reported that the curb cuts for this project have been corrected to make them work out better for property owners because they are wider than they were specified in the plans and the curbs are back farther than they used to be. This is much improved.

c. Police Department

Chief Mau reported 37 complaints last month with only one outside assist. Traffic stops and verbal warnings have been added to the report, as have civil infractions. Additional warnings were issued, that do not appear on the report. He reported that Officer Swickley qualified today.

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to accept the Police Report.

Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

e. Minutes of City Boards & Commissions;

- Galesburg Historical Museum Minutes of August 20, 2008
- Galesburg DDA Meeting of August 26, 2008

THE ABOVE MINUTES WERE RECEIVED AND PLACED ON FILE

**IX. NEW BUSINESS**

A. Appointment to the Galesburg Local Officers Compensation Commission

City Clerk Miner reported that the City Charter calls for members of this commission to be seated by October so that the Commission can be convened in January of the following odd numbered year. To date we have no applications for membership on this board. Investigation into previous membership has revealed that the members of the last board to be convened are either deceased or moved out of the jurisdiction.

She urged Councilmembers and audience members to help find residents who are willing to serve in this capacity. It is by charter mandate that this board is the body that determines the level of compensation for City Councilmembers. In her opinion Councilmembers in Galesburg receive less than the norm for the services they provide, and are deserving of an increase.

B. File Server and Tape Backup System for City Hall

City Clerk Miner reported to the Council on the failure of the tape backup component of the City's computer system.

Monies were budgeted for replacement of the tape backup, but when the IT Professional at Siegfried & Crandall was contacted to order the replacement, he recommended that the City replace the entire file server. The tape backup will cost \$1,300 to replace, which is the amount that has been budgeted. A new file server with the backup system included will cost \$3,500, with another \$1,200 - \$1,800 in labor for the installation.

Clerk Miner asked for the Council's direction with regard to the replacement.

Councilmember Nicolow asked the Clerk if she has looked at any of the services who offer file backups online.

Clerk Miner answered no. She said that online file backup systems would, in her opinion, leave the City vulnerable to unauthorized access of data, and given the sensitivity of the files retained by the City it is not a viable option.

Discussion followed regarding the advisability of replacing the entire file server versus replacing the backup system only.

Motion by Councilmember Yingling, supported by Councilmember Doxey to approve the purchase of a new file server, including backup system.



Motion approved by the following vote:

YEAS: Councilmembers Doxey, Jackson, Kissinger, Yingling, Allen.

NAYS: Councilmembers Nicolow, VanNess

Councilmember Nicolow asked the City Clerk to check to see if any of the other municipalities in the area are using online backup systems, prior to ordering the new server.

## **X. OLD BUSINESS**

### **A. Employee Health Insurance Benefits**

Councilmember Nicolow reported that the Personnel Committee voted to recommend to the council a reduction in the City contribution towards employee health insurance by 10%. They are recommending to the Council tonight a decrease in City contributed funds to 70% which will increase employee contributions to 30%.

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to approve the recommendations of the Personnel Committee to decrease the amount the City pays towards employee health care to 70%.

Motion approved by the following vote:

YEAS: Councilmembers Kissinger, Nicolow, VanNess, Yingling

NAYS: Councilmembers Allen, Doxey, Jackson

## **XI. COUNCIL COMMENT**

Councilmember Kissinger thanked Councilmember Doxey, Susan Weston, Debbie Miner, Carol Wortinger and Barb Horn for the card expressing their condolences on the death of his Wife's Father.

Councilmember Nicolow announced that there will be a memorial this Saturday at 2:00 for Jim Sullivan.

## **XII. ADJOURNMENT**

Motion by Councilmember Nicolow, supported by Councilmember Kissinger to adjourn.

Motion approved unanimously.

Meeting adjourned at 9:40 P.M.

**Respectfully submitted,**

**Debbie Miner, CMC**  
City Clerk