


## AGENDA REPORT

TO: Mayor & City Commission  
FROM: Ken Hibl, City Manager   
DATE: January 27, 2010  
RE: City Board & Committee Appointments

For the Agenda of February 1, 2010

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Background. The City Commission had a discussion regarding the process of board and committee appointments at its January 18<sup>th</sup> meeting and directed that all future appointments be held in abeyance until such time that the Commission had an opportunity to review and discuss the process by which individuals are nominated and appointed.

The City Staff, to include our City Attorney (*see copy of att'd memo*), reviewed the City Charter, the current City Ordinance Codes, and other pertinent documents and information regarding this subject. I suggest these following elements are pertinent to the Commission's review, discussion, and decisions regarding this subject:

- The City Charter is mute on the subject of board and committee nominations and appointments with the exception that the City Commission is bound to annually appoint the Board of Review (BOR); there is no prescribed process stipulated in the Charter that outlines how nominations for appointment to the BOR are made. By tradition, the Mayor has historically made the nominations for appointments to the BOR. The only other reference found in the Charter relating to board appointments is the filling of a vacancy on the City Commission. If such a vacancy should occur, the Charter stipulates that the City Commission shall fill the vacancy by appointing a qualified elector within 30 days, but the process to make the selection and appointment is not stipulated in the Charter. During my tenure in Clare, seated commissions have used a variety of means to nominate and select individuals to fill vacant City Commission seats, to include public notice and application; public interviews and selection; mayoral nominations, etc.
- Our current ordinance codes specify that the Mayor appoints the members of the City's Housing Commission (which we do not currently have or utilize); no approval or consent of the City Commission is necessary.
- Our current ordinance codes stipulate that the Mayor nominates and the City Commission consents to the appointments of the members of the Parks & Recreation Advisory Board, the Construction Board of Appeals, and the Planning Commission.
- Our current ordinance codes stipulate that the City Commission appoints the members of the following boards and committees without a specified nomination process: Cemetery Advisory Board and the Zoning Board of Appeals.
- We have no established policy for appointment to the City's Airport Advisory Board and Traffic and Safety Committee. In absence of an established policy, the Mayor has traditionally nominated individuals for appointment, and the City Commission has approved/disapproved those nominations.

- The nomination and appointment process for nearly all the boards and authorities established and governed by state statute, e.g., the Clare Brownfield Redevelopment Authority (BRA), the Clare Local Development Finance Authority (L DFA), the Downtown Development Authority, and the Clare Economic Development Authority (EDC), is prescribed in the state law establishing those authorities and/or taxing jurisdictions. As a general rule, state law prescribes that individuals selected to serve on these boards are nominated by the local mayor and approved by the local governing body (in our case, the Clare City Commission), and the mayor is routinely given the authority to designate individuals to fill unanticipated vacancies for completion of appointed terms.
- Other boards and committees of the City include the Industrial Development Corporation (IDC, which is a body that does specific business as an agent of the City, but it is not a public entity and appoints its own members. The Mayor and the city manager are members of the Authority by position, not appointment); the Lake Shamrock Board (a five member, autonomous board whose membership includes an MDEQ representative, the Clare County Drain Commissioner, a City resident, a Clare City Commissioner, and the Clare County Commissioner representing the City); the Fire Council (the Mayor serves as the chairperson by position. The remaining voting members of the Council are township representatives, the Clare Fire Chief, and a Clare firefighter appointed by the Chief; the city manager is a non-voting member who also serves as the Council's secretary); and the Pere Marquette District Library Board (the City has one permanent seat and one rotating seat – we currently have no formal procedure established for nomination or appointment of the City seats other than the appointments are approved by the City Commission, but this procedure is likely addressed in the state law that governs the establishment of district libraries. Since the inception of our district library, the Mayor has nominated and the City Commission has approved the City's membership on this board.
- The Lake Shamrock Board, the IDC, and the PMDL Board all have the autonomous authority to generate revenue and expend those revenues without the consent or authority of the City Commission. The BOR has the authority to adjust tax assessments, but has no fund expenditure authority. The L DFA, DDA, BRA, EDC, and MSB may generate revenues and make expenditures only within the authority and limitations granted them by the City Commission and in accordance with state law. None of the other boards and committees have fund expenditure authority – they may make fiscal suggestions and/or recommendations, but they neither control nor may they expend or direct the expenditure of City funds.
- The only board and committee members who are compensated are the members of the BOR; all others volunteer their time to serve on the respective boards and committees.
- The membership on all of the City's advisory boards and committees (e.g., Parks & Recreation Advisory Board, Traffic & Safety Committee, and Airport Advisory Board) are at-will of the City Commission. As such the appointments can be terminated without cause or notice of the Commission. Most of the members of

the other boards and authorities can be removed for cause as outlined in respective governing state laws.

- By its own adopted by-laws (*copy att'd*), the City Commission's appointment of individuals to the City's various boards and committees is a consent agenda item and thus is not routinely discussed publicly unless a request is made to remove the appointment from the consent agenda by a member of the City Commission or the public.
- We found no record and have no recollection of any board and committee nominations or appointments being contested in at least the last decade.

I view the City's various boards and committees to be a tremendously important aspect of local governance. These respective entities provide our citizens a great forum for public input and extensively expand the opportunity for community involvement – either by appointment to the actual boards or through participation in the board and committee meetings. They also provide the City Staff and the City Commission with invaluable recommendations and/or decisions that are instrumental in setting the current and future direction of the City, e.g., approval of site plans, development of master plans, downtown development, industrial development, airport development, deciding appeals to zoning issues, etc. Consequently, I suggest that the appointment of community members to our board and committees should be a process that is simple, transparent, standardized (the same for all of our boards and committee appointments if not precluded or prohibited by law or charter) easily understood by all (thereby minimizing confusion or misunderstanding of how appointments are made), and documented (specifically outlined in our ordinance codes).

I ask that the City Commission provide us guidance regarding the nomination and appointment process it would like to see used for City board and committee nominations and appointments, and we will use that guidance to draft an amendment to our current ordinance codes that reflects that process for the Commission's consideration.

Issues & Questions Specified. Should the City Commission provide discuss and provide guidance regarding the nomination and appointment process for board and committee appointments?

Alternatives.

1. Discuss the process and provide guidance with which to standardize the process within the City.
2. Do not provide the suggested guidance.
3. Set aside decision regarding this matter to a later date.

Financial Impact. N/A.

Recommendation. I recommend that the City Commission discuss this matter and provide the City Staff guidance with which to draft an ordinance amendment to standardize and simplify the nomination and appointment process for board and committee appointments within the City.

Attachments.

1. City Attorney Memo.
2. City Commission By-Laws.

Memo

To: Ken Hibl

From: Jaynie Smith Hoerauf

Date: January 21, 2010

Re: City Code provisions regarding appointment of subordinate boards and commissions

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State statutes are enacted piecemeal, one at a time. In doing so, the mechanisms for appointment of members of subordinate boards and commissions are all different, and typically without any reason for the difference. One exception to the rule of random procedure is the difference between the mechanisms for appointing Planning Commissions and Zoning Boards of Appeal. The idea is that Planning Commissions are supposed to represent various local interests and thus are advocates for their area of interest. Zoning Boards of Appeal act in a quasi-judicial manner, deciding appeals. As a result, the ZBA is appointed and is to be disinterested persons.

Here is a rundown of the various appointment provisions in the Code:

Board of Review. Charter Section 9.6. Section 2-1222. The Board of Review is created by state statute. The statute provides that you may appoint 3, 6, or 9 "electors of the township" to the board of review, plus up to 2 alternates. (Remember, in the general tax code, the law for townships applies to cities and this statute specifically says it does.) If you appoint more than three individuals they are divided into committees that sit as boards of three. The charter limits this to 3 people, who may hold other offices or employment with the city. The assessor may not serve. The City Commission appoints the members of the Board of Review. There is no provision for the Mayor to nominate or appoint Board of Review. Since the Commission appoints, it will undertake nominations and vote on appointments. Under the State statute, neither City Commissioners nor family members of the Assessor are eligible to serve. See MCL 211.28

Construction Board of Appeals. City Code Section 10-32. Construction Board of Appeals is created and required by statute, and confirmed by the City Code. The state statute provides that it can be at least 3 members but not more than 7. The members are for 2 year terms appointed by the Mayor subject to the approval of the City Commission. Approval by the City Commission is added to the state law by the City Code (which is permitted by the state law). The members are to be qualified by experience or training to be board of appeals members and are not required to be residents. See MCL 125.1514.

Cemetery Board. City Code Section 14-33 "Cherry Grove Cemetery Advisory Board." Five members appointed by and serving at the will of the City Commission.

Housing Commission. City Code Section 16-32. Five members appointed by the Mayor. No approval by the City Commission. Consistent with state law at MCL 125.654.

Downtown Development Authority Board. City Code Chapter 16, Article IV. The Code lacks the details as to the Board. State law provides that the Board is not less than 8 people, nor more than 12. Appointed by the Mayor subject to the approval of the City Commission. A majority to be property owners in the DDA district, and at least 1 to be a resident of the DDA if there are at least 100 people living in it,. Four year terms. Vacancies to be filled by the Mayor without City Commission approval. MCL 125.1654.

Police Auxiliary Corps. City Code Section 26-31. Appointed by Chief of police.

Parks and Rec Advisory Board. City Code Section 30-31 through 30-38. Six members appointed by the Mayor with confirmation by City Commission. One member appointed by the school district.

Planning Commission. Section 52-51. Nine members appointed by the Mayor on approval of the City Commission. Membership to be reflective of the various community interests.

Zoning Board of Appeals. Section 52-72. Five members appointed by the City Commission.

Traffic Control. I know that you have a traffic control or traffic safety board. I don't see it in the City Code, so you may have developed it by policy. The Uniform Traffic Code allocates that responsibility to the Traffic Engineer, who is bound by the state's traffic engineer rules. The Chief of Police has authority to make emergency traffic control orders. See UTC Sections 125, 126, 127, 153. The state's Motor Vehicle Code gives cities limited authority to enact traffic regulations, but good authority over roads that are local (not state trunk lines) but there is no traffic control board created under the state statute. MCL 257.605, 606, 609, 610, etc.... Perhaps it's not an actual board but simply an administrative committee? I am not really familiar with how that group is constituted.

# CLARE CITY COMMISSION BYLAWS

Adopted 02/18/02 by Clare City Commission Resolution 2002-034

*The bylaws outlined herein establish the rules and order of business of the Clare City Commission. The bylaws are adopted to ensure consistency, order, efficiency, and democracy in the conduct of all official business of the City Commission.*

*The governing procedures of the City Commission are outlined in Chapter 6, Procedure of the City Commission, of the Charter of the City of Clare. The bylaws outlined herein simply serve to reiterate and augment those procedures. In the event any rule established by these bylaws is lacking or conflicts with the City Charter, the Clare City Charter shall prevail.*

*Any revision or modification of these bylaws shall be accomplished by adopted and numbered Resolution of the Clare City Commission.*

**Regular Meetings.** The Clare City Commission shall meet on the first and third Mondays of each month commencing at 6:00 p.m. If the meeting shall fall on a City holiday, the meeting shall be held on the following Tuesday. All meetings shall be held in the Commission Chambers of Clare City Hall unless posted otherwise. All meetings shall comply with the provisions of the Michigan Open Meetings Act.

**Special Meetings.** Special meetings may be called by the City Clerk on written request of the Mayor, the City Manager, or by any two members of the Commission on at least 24 hours written notice to each member of the Commission. All special meetings shall comply with the provisions of the Michigan Open Meetings Act.

**Attendance.** If a Commissioner shall miss five consecutive regular meetings of the Commission or 25% or more of such meetings in any fiscal year of the city, unless the Commission shall excuse such absence and the reason therefore entered in the proceedings, his/her office shall become vacant.

**Quorum.** Three members of the Commission shall be a quorum for the transaction of any business at Commission meetings.

**Conduct of Meetings.** All meetings shall be chaired and controlled by the Mayor. In the absence of the Mayor, these duties shall transfer to the Mayor Pro Tem. In the absence of the Mayor and Mayor Pro Tem, the City Clerk or Deputy Clerk shall call the meeting to order and, subsequent to the Pledge of Allegiance and Roll Call, call for a motion to designate a seated City Commissioner to chair the meeting. Upon majority vote of the seated Commissioners, the designated Commissioner shall then chair and control the meeting. Except where exempted by a specific procedure outlined within these bylaws, the conduct of all meetings and the rules of procedure shall be in accordance with *Robert's Rules of Order Newly Revised*.

**Agenda.** The agenda for all regular meetings of the Clare City Commission shall be presented to the Commission in the following manner:

1. Call to Order
  - A. Pledge of Allegiance
  - B. Roll Call
2. Consent Agenda - All items listed with an asterisk (\*) are considered to be routine by the City Commission and shall be enacted by one motion. There will be no separate discussion of these items unless a Commissioner or citizen requests to do so, in which event the item will be removed from the General Order of Business and considered in its normal sequence of the agenda.
3. \*Approval of Minutes
4. \*Approval of Agenda
5. Old/Unfinished Business
6. New Business
  - A. Regular Business
  - B. \*Consent Agenda Business (See list below for approved New Business Consent Agenda items)
7. \*Treasurer's Report (1<sup>st</sup> meeting of the month)
8. \*Department Reports (2<sup>nd</sup> meeting of the month)
9. \*City Manager's Report
10. \*Other Committee and/or Advisory Board Reports
11. \*Communications
12. \*Approval of Bills
13. Public Comment
14. Closed Session (as needed)
15. Adjournment

New Business Consent Agenda Items. All items listed below shall be New Business Consent Agenda Items. As such, they will be designated by an asterisk (\*), are considered routine by the City Commission, and shall be enacted by one motion. There will be no separate discussion of these items unless a Commission or citizen requests to do so, in which event the item will be considered in its normal sequence within New Business on the agenda:

- \*Appointments and/or Resignations
- \*Approval of leases, contracts, and/or agreements
- \*First readings of proposed ordinances
- \*Approval of license applications and bonds
- \*Set dates for hearings
- \*Approval of contract modifications and/or amendments

**Public Comment.** The following rules are established for all individuals desiring to be heard at any City Commission meeting:

- Before an individual can be heard, the Mayor or Commissioner in charge of the Commission meeting must recognize him/her.

- Individuals recognized to be heard shall provide their name and address and state the primary topic of their comment(s).
- The individual(s) addressing the Commission shall use a podium and microphone if they are available.
- All comments shall be addressed directly to the Commission – not to other individuals within the room.
- Individuals addressing the City Commission shall be limited to one (1) opportunity of five (5) minutes per topic of discussion in presenting their statements/comments.
- Individuals making statements during public hearings are encouraged to avoid repetition of ideas that have already been presented.
- If deemed appropriate or necessary by the Mayor or Commissioner in charge of the hearing or meeting, rebuttal comments/remarks of not more than two (2) minutes per person may be allowed. If rebuttal comments are allowed, the Mayor/Commissioner in charge of the meeting individual(s) must again recognize the individual prior to the presentation of his/her rebuttal comments.
- All comments shall be made with appropriate courtesy and in a civil tone.
- Inflammatory or degrading comments or remarks made against or intended toward other individuals will not be allowed.
- Heckling or chiding will not be allowed.
- Obscene or indecent language will not be allowed.
- Written comments may be submitted in lieu of verbal comments.
- The individual acting as secretary of the Commission (routinely, the City Clerk or Deputy Clerk) shall record and maintain a synopsis of all public remarks/comments, to include a record of the individual(s) responsible for the remarks.
- The Commission's secretary shall be responsible for timekeeping and shall inform the Commission chair when an individual's allowed time has elapsed.
- The Mayor or Commissioner in charge of the hearing may modify or change the aforementioned procedures if necessary to ensure order and democracy.

**Sergeant-at-Arms.** The City of Clare Chief of Police shall serve at the Sergeant-at-Arms of the Commission in the enforcement of the provisions of these bylaws.

**Amendments.** These bylaws may be amended at any regular or special meeting by a majority vote of the City Commission.