

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**SEPTEMBER 22, 2015**

**CITY COMMISSION CHAMBERS @ 5:30 P.M.**

### **AGENDA**

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
- ☐ **CITY MANAGER'S REPORT:**
- ☐ **CONSENT AGENDA:**
  - A. Approval of Minutes City Clerk
  - B. Request to Fly the Breast Cancer Ribbon Flag City Clerk
  - C. Adopt a resolution to set October 13, 2015 Public Hearing Date for Proposed Special Assessment (Street Lights) City Treasurer
  - D. Transportation Improvements Program Submittal for 2018-2020 Projects Engineering
  - E. Request to Distribute Proposed Amendments to Master Land Use Plan to Regional Entities Planning & Economic Development
  - F. Vacant Building Registration Ordinance Amendment Planning & Economic Development
  - G. Certificate of Compliance for Rental Dwellings Planning & Economic Development
  - H. Moratorium on fees for Vacant Buildings Planning & Economic Development
- ☐ **PUBLIC HEARINGS:**
- ☐ **COMMUNICATIONS:**
- ☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

**A. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following**

1506 Park Street – garage only

1280 Sanford Street

**B. Amendment to the Zoning Ordinance** Planning & Economic Development

**C. Allen Edwin Homes – Contract Negotiations** Planning & Economic Development

**D. PILOT-General Capital Acquisitions, LLC** – Planning and Economic Development

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION:**

- ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
- ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
- ▶ Submit the form to the City Clerk.
- ▶ Be recognized by the Chair.
- ▶ Step forward to the microphone.
- ▶ State name and address.
- ▶ Limit of 3 minutes to address the Commission.
- ▶ (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY-FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE MEISCH, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1- TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

**Date: September 15, 2015**  
**To: Honorable Mayor and City Commissioners**  
**From: Ann Marie Meisch, City Clerk**  
**RE: Approval of Minutes**

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SUMMARY OF REQUEST: To approve minutes of the September 8, 2015 City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**SEPTEMBER 8, 2015**

**CITY COMMISSION CHAMBERS @ 5:30 P.M.**

### **MINUTES**

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, September 8, 2015.

Pastor Don Graham from Lakeside United Methodist Church opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

#### **ROLL CALL FOR THE REGULAR COMMISSION MEETING:**

Present: Mayor Stephen Gawron, Vice Mayor Lawrence Spataro, Commissioners Turnquist, Johnson, and Rinsema-Sybenga, City Manager Franklin Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioner German and Commissioner Hood

#### **2015-63 INTRODUCTIONS/PRESENTATION:**

##### **A. Presentation of 2015 Beautification Awards**

Mayor Gawron recognized residents for their participation in the Neighborhood Associations' Yard Beautification Awards program for 2015.

#### **2015-64 CONSENT AGENDA:**

##### **A. Approval of Minutes** City Clerk

SUMMARY OF REQUEST: To approve minutes of the August 25, 2015 City Commission Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

##### **B. Approval of the Use & Maintenance of City Owned Property at 58 E. Grand Avenue** Planning & Economic Development

SUMMARY OF REQUEST: To approve the use and maintenance of the City owned property located at 58 E Grand Avenue for a community garden. The property is unbuildable and the City would retain the right to sell the property with the community garden members having time to remove the garden prior

to any sales.

FINANCIAL IMPACT: The City would save on the cost of maintenance of this property.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and maintenance agreement.

**Motion by Commissioner Turnquist, second by Commissioner Rinsema-Sybenga to accept the Consent Agenda presented.**

**ROLL VOTE: Ayes: Johnson, Gawron, Spataro, Rinsema-Sybenga, and Turnquist.**

**Nays: None**

***MOTION PASSES***

**2015-65 PUBLIC HEARINGS:**

**A. Request to Conduct a Public Hearing of the Community & Neighborhood Services Department Consolidated Annual Performance Evaluation Report (CAPER 2014)** Community & Neighborhood Services

SUMMARY OF REQUEST: To conduct a public hearing of the 2014-2015 CAPER projects funded through CDBG and HOME allocations to the City of Muskegon Community and Neighborhood Services Department.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To submit the 2014-2015 CAPER, including any public comments received during the 30 day comment period ending September 22, 2015.

**Motion by Vice Mayor Spataro, second by Commissioner Johnson, to close the public hearing and submit the 2014-2015 CAPER, including any public comments received during the 30 day comment period ending September 22, 2015.**

**ROLL VOTE: Ayes: Gawron, Spataro, Rinsema-Sybenga, Turnquist, and Johnson**

**Nays: None**

***MOTION PASSES***

**2015-66 NEW BUSINESS:**

**A. Presentation by General Capital Group** Planning & Economic Development

SUMMARY OF REQUEST: General Capital Group will be making a presentation on the site that they are considering for their new mixed use development project. They will be requesting a PILOT for the project in the near future.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: None

**B. West Michigan Lake Hawks** City Manager

SUMMARY OF REQUEST: To authorize staff to support the West Michigan Lake Hawks as follows:

- Purchasing 50 tickets to each of the eight home games to be played at Muskegon High School and to provide those tickets to youth-related community organizations.
- The video broadcasting of all 8 games hosted at Muskegon High School
- Advertising the Watch Muskegon campaign on game uniforms, practice uniforms, and warmups.

FINANCIAL IMPACT: Not to exceed \$7,100

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To authorize city staff to participate in the Lakehawks 2015-2016 season as presented.

**Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to authorize city staff to participate in the Lakehawks 2015-16 season as presented.**

**ROLL VOTE: Ayes: Spataro, Rinsema-Sybenga, Turnquist, Johnson, and Gawron**

**Nays: None**

***MOTION PASSES***

**C. LC Walker Arena** City Manager

SUMMARY OF REQUEST: To authorize staff to hire Tim Taylor as the Chief Executive Office of the LC Walker Arena at a salary not to exceed \$75,000 annually.

FINANCIAL IMPACT: \$75,000 annually

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To authorize city staff to complete the hire and negotiate a contract with Tim Taylor.

**Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to authorize city staff complete the hire and negotiate a contract with Tim Taylor.**

**ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Spataro**

**Nays: None**

***MOTION PASSES***

**ADJOURNMENT:** The City Commission Meeting adjourned at 6:40 p.m.

Respectfully submitted,

Ann Marie Meisch, MMC  
City Clerk

**Date: September 15, 2015**  
**To: Honorable Mayor and City Commissioners**  
**From: Ann Marie Meisch, City Clerk**  
**RE: Request to Fly the Breast Cancer Ribbon Flag**

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SUMMARY OF REQUEST: As they have done in the past, Tempting Tables is requesting use of City Flag Poles at the Farmer's Market, Hackley Park, City Hall, on Shoreline Drive, and at Root Park to fly a Breast Cancer Ribbon Flag during the week of October 11, 2015 in conjunction with the Tempting Tables fundraiser event.

FINANCIAL IMPACT: None

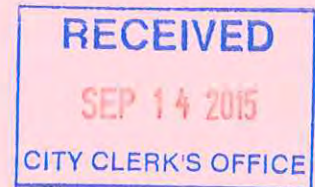
BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: None.

## TEMPTING TABLES

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Contact Person  
J'nai Closz  
Jnai67@comcast.net  
231-744-1767



September 12, 2015

Muskegon City Council  
Muskegon, MI

To Whom it May Concern,

Tempting Tables is a volunteer organization that showcases elaborate Tablescapes. Our mission is to create a greater awareness of breast cancer and raise money for breast cancer research. The event is held every other year. This year it will be held at the Muskegon Holiday Inn during the week of October 11, 2015. We have "decorated" downtown Muskegon with breast cancer ribbon flags for the last two events and would like to continue that tradition again this year. We are asking permission to use the flag poles that are listed below for that week. I have coordinated this effort with Bernadette Young in the past and would work with her again to make this happen.

Thank you for considering our request.

Sincerely,

J'nai Closz

On behalf of the Tempting Tables Committee

Farmers Market  
Hackley Park  
City Hall  
Shoreline Dr  
Root Park

AGENDA ITEM NO. \_\_\_\_\_

CITY COMMISSION MEETING: September 22, 2015

**TO:** HONORABLE MAYOR AND CITY COMMISSIONERS

**FROM:** Kenneth D. Grant, Treasurer

**DATE:** September 14, 2015

**RE:** Adopt a resolution to set October 13, 2015 Public Hearing Date for  
Proposed Special Assessment (Street Lights)

**SUMMARY OF REQUEST:**

To approve and adopt the attached resolution to set a public hearing date of Tuesday, October 13, 2015 regarding creation of a city-wide special assessment for street lights.

**FINANCIAL IMPACT:**

**BUDGET ACTION REQUIRED:**

None

**STAFF RECOMMENDATION:**

Approval recommended

**COMMITTEE RECOMMENDATION:**

## City Commission

# Memo

**To:** City Commissioners

**From:** Kenneth D. Grant, City Treasurer



**Date:** September 16, 2015

**Re:** Notice Of Hearing Special Assessment for Street Lighting

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### **Estimated Costs:**

It is hereby determined that, based on the estimates of cost for street lights, the City will assess \$175 per parcel with a state equalized value of over \$1,000 including all City owned parcels, payable in five installments commencing with the Winter 2015 tax bill, which means that approximately 80% of the cost of street lighting will be paid by special assessments. (A tax parcel having a state equalized value of over \$1,000 will pay an extra \$35 per year for five years for street lighting.)

The budgeted amount for street lights for 2015/16 fiscal year is \$660,000.

CITY OF MUSKEGON

Resolution No. \_\_\_\_\_

Resolution To Set Hearing For  
Proposed Special Assessment District

RECITALS:

1. The City Commission has received recommendations from the staff for the City-wide special assessment to satisfy a portion of the cost for street lights.
2. That the City Commission has examined the estimate of costs, valuation and benefit information and has determined that the project is feasible.

THEREFORE, BE IT RESOLVED, that the first hearing on the said special assessment shall be held on Tuesday, October 13, 2015, at 5:30 o'clock p.m. at City Commission Chambers.

Notice shall be given by mail and by publication to the persons owning property proposed to be assessed in the said proposed district, as required by law.

This resolution adopted.

Ayes \_\_\_\_\_

\_\_\_\_\_

Nays \_\_\_\_\_

\_\_\_\_\_

CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Marie Meisch, Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on September 22, 2015. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public acts of 1976.

CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Marie Meisch, Clerk

Date: September 22, 2015

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Transportation Improvements Program Submittal for:  
2018-2020 Projects

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### SUMMARY OF REQUEST:

Authorize staff to submit the following projects to the West Michigan Shoreline Regional Development Commission for funding consideration and inclusion in the FY 2018 – 2020 Transportation Improvement Program (TIP).

- 1- For 2018: Black Creek Road from Sherman to Latimer & Beach Street from Lakeshore to Oval
- 2- For 2019: Lakeshore Dr. from Beach to Lincoln
- 3- For 2020: Lakeshore Dr. from Lincoln to Laketon

Projects submitted will be considered for Federal and State transportation funding. Adoption of the attached resolution is required as part of the submittal to commit the local match should funds become available.

### FINANCIAL IMPACT:

None at this time; however, a local match will be required should we receive a grant for all/any project.

### BUDGET ACTION REQUIRED:

None

### STAFF RECOMMENDATION:

Approve the project submittal and resolution.

### COMMITTEE RECOMMENDATION:

Resolution No. \_\_\_\_\_

RESOLUTION FOR AUTHORIZATION TO REQUEST THE WEST MICHIGAN SHORELINE REGIONAL  
DEVELOPMENT COMMISSION TO INCLUDE THE CITY'S PROJECTS IN THE 2018-2020  
TRANSPORTATION IMPROVEMENT PROGRAM

WHEREAS, the Federal Transit Administration, the Federal Highway Administration and the Federal Aviation Administration, through the Intermodal Surface Transportation Efficiency Act of 1991; Act 51, P.A. 1951; and various other Federal and State acts, in cooperation with the Michigan Department of Transportation, makes funding available for local jurisdictions and agencies for transportation improvements projects; and

WHEREAS, the West Michigan Shoreline Regional Development Commission (WMSRDC) is the organization designated by the Governor as being responsible, together with the state, for carrying out provisions of 23 U.S.C. 134 (Federal Aid Planning Requirements) and the WMSRDC has deferred to the Muskegon Area Transportation Planning Program's (MATPP's) Policy Committee upon recommendation of the MATPP Technical Committee all matters of policy and approval related to transportation planning work programs, the long range transportation plan, and the Transportation Improvement Programs; and

WHEREAS, the WMSRDC is responsible, through the MATPP Advisory Committees (Technical and Policy), for implementing the federally required "3-C" urban transportation planning process, including the development of the transportation Improvement Program; and

WHEREAS, the 3-C planning process for Muskegon County has been certified according to the requirements of 25 CFR 450.114(c); and

WHEREAS, the City of Muskegon desires to secure financial assistance from the federal and/or State government to help defray the cost of the attached proposed transportation projects; and

WHEREAS, the required local match for the requested funding is available [or will be available] and committed to the proposed projects upon grant approval;

NOW, THEREFORE BE IT RESOLVED that the City of Muskegon requests the West Michigan Shoreline Regional Development Commission to consider inclusion of the projects in the priority list of Transportation Improvement Program for the Fiscal Years 2018-2020.

BY: \_\_\_\_\_  
Stephen Gawron, Mayor

Attest: \_\_\_\_\_  
Ann Marie Meisch, Clerk

\_\_\_\_\_  
Date

**Commission Meeting Date: September 22, 2015**

**Date: September 16, 2015**  
**To: Honorable Mayor and City Commissioners**  
**From: Planning & Economic Development**  
**RE: Request to Distribute Proposed Amendments to Master Land Use Plan to Regional Entities**

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**SUMMARY OF REQUEST:**

Staff has initiated a request to amend the City of Muskegon Master Land Use Plan to remove all references to Fisherman's Landing. This will include amendments to the 1997 Master Land Use Plan and the 2008 Downtown & Lakeshore Redevelopment Plan. The Planning Commission recommended approval of these amendments and now the City Commission must approve the distribution of the amended plan to regional entities. The regional entities will have 42 days to review and make comments. Then, a public hearing must be held at the Planning Commission meeting and they must approve the amendments by a 2/3rds vote.

**FINANCIAL IMPACT:**

None

**BUDGET ACTION REQUIRED:**

None

**STAFF RECOMMENDATION:**

Staff recommends the proposed amendments.

**COMMITTEE RECOMMENDATION:**

The Planning Commission unanimously recommended the proposed amendments at their September 10 meeting, with one member absent.

SEPTEMBER 10, 2015 PLANNING COMMISSION EXCERPT:

**Hearing, Case 2015-16:** Staff initiated request to amend the Master Land Use Plan to remove all references to Fisherman's Landing.

Fisherman's Landing is mentioned in the following areas:

Page 5.4

7. Large field and marsh, Northeast of **Fisherman's Landing**

Page 5.20

Other specific areas where habitat improvement with native species are recommended include public launch sites, especially the Grand Trunk, **Fisherman's Landing**, and Hartshorn Marina sites. In areas such as **Fisherman's Landing**, planting areas with trees and other cover will serve as aesthetic breaks from railroad or industrial properties.

Woodlands and Trees

Develop and implement a plan to increase habitat and native vegetation for disturbed areas which have been filled or impacted. The plan should include tree planting recommendations for areas along Muskegon Lake, such as **Fisherman's Landing** and the public launch site near the Grand Trunk Railroad dock.

Muskegon Lake and Lakeshore

Several parcels of land along the lake, especially these eight Natural Areas identified by Day & Associates, Inc., should be preserved. Preservation can be accomplished through zoning, and/or actual acquisition of the land. Preservation and enhancement can be in concert with development when done correctly, so one does not preclude the other. However, some areas such as the former Pigeon Hill area, Cottage Grove shoreline area, and Old Field Community northeast of **Fisherman's Landing** are areas where conservation and passive recreational usage is recommended.

Page 7.3

**Fisherman's Landing** (paving, landscaping)

Page 7.4

Major Parks

Major parks serve the City, region, and outlying areas. Major parks include **Fisherman's Landing** (sportfishing/ tourism industry), McGraft Park (large improved and natural areas), Pere Marquette Park

(northernmost point along a 2.5 mile long City owned segment of Lake Michigan shoreline), Bronson Park (dune system, sandy beach, picnic facilities).

Page 7.6

Special Facilities

The City provides a limited number of facilities geared toward the handicapped or elderly. Senior citizens use the community buildings at McGraft and Smith-Ryerson parks, and the shuffleboard complex at McGraft Park. Barrier free facilities are

provided at **Fisherman's Landing** (wheelchair lift at boat launch), Bronson Park (Lake Michigan access), and Heritage Landing (pathways, play structure, Muskegon Lake overlook, fishing area, and paved parking). Additional and augmented barrier free facilities will be included in future recreational and park development and redevelopment efforts.

Page 11.38

The southern one-half of the sub-area is comprised of strip commercial, industrial, undeveloped sites (due in large part to their wetland character), and **Fisherman's Landing** (a public boat launching site).

Page 12.2

**Fisherman's Landing** Marine/ Recreational Area

Page 12.5

The site occupied by the waterfront aggregate operation could, if located elsewhere along the waterfront (see **Fisherman's Landing** Marine/Recreational Area), be developed for mixed use residential, recreational or marina uses.

**Fisherman's Landing** Marine/Recreation Area

This area presents opportunities for additional public and private boat launching facilities; private marina and boat storage facilities consistent with nearby public uses; and public recreational facilities such as boardwalks and a nature interpretive center. Commercial properties along Western Avenue can provide for marine oriented convenience retail and service uses. Such uses might include bait and tackle shops, boat sales and service facilities, general sporting goods sales, and a party store. Because of the area's proximity to the Consumers Power power plant, its northern most portion might accommodate a maritime use dependent upon location on the waterfront, such as a tug/barge facility, aggregate facility, or other similar use.

Fisherman's Landing is also mentioned in the 2008 Downtown & Waterfront Redevelopment Plan, which was adopted as part of the Master Plan. It is mentioned in the following places:

Page 15

Objective 1: Achieve within the downtown core a strong central focus concentrating efforts first in the area bounded by 5th, Webster, Terrace and the lakeshore, expanding to eventually include Hartshorn Center on the west to **Fisherman's Landing** on the east.

Page 17

Remove fences at **Fisherman's Landing**.

Community Charrette notes

Children go up bike trail & swim in river by power plant. Make **Fisherman's Landing** more welcoming to area residents. Take down fences along bike path.

Take down fences @ **Fisherman's Landing**

Crossing @ shoreline from **Fisherman's Landing** to City Hall  
Improve **Fisherman's Landing**

RESOLUTION NO. \_\_\_\_\_

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING THE DISTRIBUTION OF THE PROPOSED  
AMENDMENTS TO THE MASTER LAND USE PLAN FOR REVIEW BY REGIONAL  
ENTITIES

WHEREAS, the City of Muskegon will amend the Master Land Use Plan, which includes the Downtown & Lakeshore Redevelopment Plan; and

WHEREAS, all references to Fisherman's Landing will be removed; and

WHEREAS, on September 10, 2015, the Muskegon City Planning Commission recommended the proposed amendments; and

WHEREAS, the amended plan will be distributed to regional entities and be given 42 days to review and comment; and

WHEREAS, after the 42 day review period, a public hearing will be set to vote on the proposed amendments at a Planning Commission meeting.

NOW, THEREFORE, BE IT RESOLVED that the Muskegon City Commission endorses the distribution of the proposed amendments to the Master Land Use Plan to regional entities for a 42 day review period.

Adopted this 22<sup>nd</sup> day of September, 2015.

Ayes:

Nayes:

Absent:

By \_\_\_\_\_  
Stephan J. Gawron, Mayor

By: \_\_\_\_\_  
Ann Meisch, MMC, City Clerk

### CERTIFICATION

This resolution was adopted at a regular meeting of the City Commission, held on September 22, 2015. The meeting was properly held and notices pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

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Ann Meisch, MMC  
City Clerk

**Commission Meeting Date: September 22, 2015**

**Date: September 15, 2015**  
**To: Honorable Mayor and City Commissioners**  
**From: Planning & Economic Development**  
**RE: Vacant Building Registration Ordinance Amendment**

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**SUMMARY OF REQUEST:**

Request to amend the Code of Ordinances Chapter 10, Section 107, Annual Registration of Vacant Buildings and Registration Fees, for the purpose of clarifying that the vacant building registration fees are a lien against the property.

The changes is to Sec. 10-107(b)(7) *Delinquent registration fees as a lien*. The addition is in bold.

**FINANCIAL IMPACT:**

None

**BUDGET ACTION REQUIRED:**

None

**STAFF RECOMMENDATION:**

Staff recommends amendment of Chapter 10, Section 107, Annual Registration of Vacant Buildings and Registration Fees, for the purpose stated.

**COMMITTEE RECOMMENDATION:**

None

**City of Muskegon  
Muskegon County, Michigan  
Ordinance Amendment No. \_\_\_\_\_**

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 10 “Buildings and Building Regulations,” Section 107 “Annual registration of vacant buildings and registration fees” of the Code of Ordinances of the City of Muskegon is amended as follows:

**Sec. 10-107. Annual registration of vacant building and registration fees.**

(a) *Purpose.* The purpose of this section requiring the registration of all vacant buildings, including dwellings that are subject to this chapter as referenced below, and the payment of registration fees is to assist the city government, particularly the department of public safety (DPS) and planning departments in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the city, to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of this Code.

(b) *Definitions and applicability; registration statement and fees.*

- (1) *Definitions.* For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

*Boarded.* A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.

*Exterior maintenance and major systems.* The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable and as enforced by the DPS, particularly in connection with sections 10-82 (inspection of unoccupied building; initiation of processing) and 10-101 (abatement of dangerous buildings).

*Occupied.* Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business- occupant, or as the legal or equitable owner/occupant or tenant on a permanent, non-transient basis, or any combination of

the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license, or the most recent federal, state, or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection.

*Open.* A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and, or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.

*Owner.* An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.

*Seasonal residence.* A legal residential structure that has been used as a residence by the owner for a period of at least three consecutive months within the previous nine months and the same owner intends to resume residing at the property. A non-owner-occupied home does not qualify as a seasonal residence.

*Vacation home.* A secondary legal residential dwelling used by the owner or one or more immediate member of the owner's family, such as a son or daughter, for a period less than three consecutive months out of the previous nine months but still has verifiable occupancy periods spread throughout the year. If the home is rented or leased it does not qualify as a vacation home.

*Vacant.* A building or structure shall be deemed to be vacant if no person actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner or tenant-occupant, or owner-occupants, or tenant on a permanent, non-transient basis, unless the structure is legally being used for storage purposes. Such storage use must be a legally allowed principal use of the zoning district where the structure is located and the use must be in compliance with all appropriate provisions of city ordinances, building and fire codes pertaining to the storage use.

*Vacancy date.* The date when the building or structure became vacant. This is not the same as the date the property was purchased/sold.

- (2) *Applicability.* The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 90 consecutive days and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 90 consecutive days. Each such owner shall cause to be filed a registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information

deemed necessary by the city. The registration fees as required by sub- section (b)(3) of this section shall be billed annually by the city and shall be paid within 30 days of the invoice date. For purposes of this section, the following shall also be applicable:

- a. If the owner is a corporation or a limited liability corporation, the registration statement shall provide the names and residence addresses of all officers, directors and/or members and shall be accompanied by a copy of the most recent annual tax report filed with the state;
  - b. If an estate, the name and business address of the executor of the estate;
  - c. If a trust, the name and address of all trustees, grantors, and beneficiaries;
  - d. If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater;
  - e. If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;
  - f. If an individual person, the name and residence address of that individual person.
- (3) *Registration statement and fees; local agent.* If none of the persons listed, as above, are shown at an address within the state or the home is a qualified vacation home or seasonal residence, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 90 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other state construction code requirement. The owner of the vacant property, at the time of billing, shall be responsible for the payment of the nonrefundable registration fee. Said fee shall be billed annually by the city and based on the duration of the vacancy as determined by the master fee resolution.
- (4) *Appeal rights.* The owner shall have the right to appeal the imposition of the registration fees to a committee appointed by the city manager, upon filing an application in writing with the applicable \$50.00 nonrefundable filing fee to the city manager's office no later than 30 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy.
- (5) *One-time waiver of registration fee.* A one- time waiver of the registration fee may be granted by the committee appointed by the city manager upon application of the owner, if all taxes and fees, such as, but not limited to, property taxes, mowing charges, past vacant building registration fees, landlord registrations, business registrations, utilities and any other applicable charges, have been paid prior to

application for the waiver. If the owner:

- a. Demonstrates with satisfactory proof that he is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and
- b. Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
- c. Provides satisfactory proof that he was actively attempting to sell or lease the property during the vacancy period.

(6) *Two-year waiver.*

- a. Upon application by the owner and satisfaction of subsection (b)(5) of this section, the committee appointed by the city manager may grant a two-year waiver of the registration fee if the owner meets the criteria for nonprofit organizations as defined by Section 501(c)(3) of the Internal Revenue Code.
- b. Upon application by the homeowner who is temporarily residing in a medical care facility, or a legal representative of the homeowner, the committee may grant a renewable two-year waiver of the registration fee. To be eligible for a two-year waiver of fee, satisfactory proof that the structure will only be temporarily vacant and the property and structures must remain in good repair and free of any enforcement actions by city departments. Should the structure or property not be properly maintained, or be in violation of city Code, the waiver may be revoked by the appeal committee.
- c. Upon application by the homeowner or a legal representative, the committee may grant a two-year waiver of the registration fee. To be eligible for a two-year waiver of fee, satisfactory proof that the structure will only be temporarily vacant due to property being in probate court, being actively rehabbed to city code so it may become occupied or the structure is in good repair and has the presence that the structure is not vacant (per zoning code for allowable uses), and free of any enforcement actions by city departments. Should the structure or property not be properly maintained or in violation of city code, the waiver may be revoked by the appeal committee.

(7) *Delinquent registration fees as a lien.* After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to subsection (b)(4) of this section, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the city, and the city may commence a civil action to collect such the unpaid debt. **The City shall have a lien upon the premises for said unpaid debt, which lien shall have priority over all other liens or encumbrances except taxes, assessments or mortgages recorded previous to the existence of such lien. Such lien may be enforced by levy as in the case of real property taxes, by personal action or judicial foreclosure. The lien shall be effective on the date billed by the city.**

(c) *Duty to amend registration statement.* If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the planning department within 30 days of the occurrence of such change and advise the department in writing of those changes. Except that valid

seasonal residence or vacation home, as defined by this section, are not required to notify the city of changes in occupancy status.

(d) *Exceptions.* The fees imposed by this section shall not apply to any legitimate vacation or seasonal residence, as defined by this section, or any building owned by the United States, the State of Michigan or a governmental entity. Any fees billed prior to their ownership are a lien against the property, unless extinguished by operation of law. Notwithstanding a waiver of the fee, registration of all structures outlined in this section is still required.

(e) *Violations; penalties.* The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.

(Ord. No. 2240, § 10.107, 1-8-2008; Ord. No. 2256, § 10.107, 12-9-2008; Ord. No. 2260, § 10.107, 12-9-2009; Ord. No. 2276, § 10.107, 4-27-2010; Ord. No. 2300, § 10.107, 11-7-2011)

CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Meisch, MMC  
City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the \_\_\_\_ day of \_\_\_\_\_, 2015, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: \_\_\_\_\_, 2015

\_\_\_\_\_  
Ann Meisch, MMC  
Clerk, City of Muskegon

Publish:      Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON  
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on \_\_\_\_\_, 2015, the City Commission of the City of Muskegon adopted an amendment to Chapter 10 "Buildings and Building Regulations," Section 107 "Annual registration of vacant buildings and registration fees" of the Code of Ordinances of the City of Muskegon, whereby the following changes were made:

**Section 107(7)** was amended to indicate that the city shall have a lien upon the premises for any debt to the city incurred under Section 107, which lien may be enforced by levy as in the case of real property taxes, by personal action or judicial foreclosure and shall be effective on the date billed by the city.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

CITY OF MUSKEGON

Published: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ann Meisch, MMC, Its Clerk

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PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

**Commission Meeting Date: September 22, 2015**

**Date: September 15, 2015**  
**To: Honorable Mayor and City Commissioners**  
**From: Planning & Economic Development**  
**RE: Certificate of Compliance for Rental Dwellings.**

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**SUMMARY OF REQUEST:**

Request to amend the Code of Ordinances Chapter 10, Subdivision III. Rental Property Sec. 10-352. Certificate of compliance for rental dwellings in order to clarify the following:

**Section 10-352(b)** was amended to clarify that a certificate of compliance may be suspended if any fees and debts to the city are incurred and not paid in full after the initial issuance of the certificate.

**Section 10-352(b)(5)** was amended to clarify that the fees, fines, penalties or debts that must be paid to maintain a valid certificate of compliance may be based on any provision within all of Chapter 10, not only under the property maintenance code.

**FINANCIAL IMPACT:**

None

**BUDGET ACTION REQUIRED:**

None

**STAFF RECOMMENDATION:**

Staff recommends amendment of Chapter 10, Section 10-352(b) & Section 10-352(b)(5), for the purpose stated.

**COMMITTEE RECOMMENDATION:**

None

**City of Muskegon  
Muskegon County, Michigan  
Ordinance Amendment No. \_\_\_\_**

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 10 “Buildings and Building Regulations,” Article VI “Property Maintenance Code,” Division 2, Subdivision III. “Rental Property” Section 10-352 of the Code of Ordinances of the City of Muskegon is amended as follows:

**Subdivision III. Rental Property**

**Sec. 10-352. Certificate of compliance for rental dwellings.**

(a) *Required.* Rental dwellings shall not be occupied without a certificate of compliance or a temporary certificate of compliance.

(b) *Issuance.* The city shall issue a certificate of compliance for a rental dwelling when the city finds that the rental dwelling, its units and accessory structures and yards comply with the standards set forth in this article. However, no certificate of compliance shall be issued **or retained unless**/until all of the following fees and debts to the city have been paid in full:

- (1) All previously billed property taxes;
- (2) All current or past due special assessment installments;
- (3) Water or sewer bills outstanding;
- (4) All charges against the property for mowing, cleanup, weed or debris removal and similar charges by the city;
- (5) Any fees, fines, penalties or debts of any sort arising from the provisions or enforcement of this **Chapter**.

(c) *Temporary certificates.*

- (1) Where a certificate of compliance is required, the city may issue a temporary certificate of compliance for the following reasons only:
  - a. For a newly registered rental dwelling until such time as the city is able to make a compliance inspection;
  - b. To enable the city to balance compliance inspection work loads;
  - c. To coincide with compliance time periods set forth in a notice citing violations of this article if such periods extend beyond the expiration date of a certificate;
  - d. A temporary certificate of compliance may be issued if an appeal contesting the obligation to pay the charges set forth in subsections (b)(2) through (b)(5) of this section is pending, and the appeal is bona fide and pursued to a timely conclusion. Thereafter, the property must qualify for a permanent certificate of occupancy,

and the temporary certificate shall be revoked. No temporary certificate may be issued if amounts due under subsection (b)(1) of this section are unpaid.

- (2) No temporary certificate of compliance shall be issued if any of the amounts set forth in subsections (b)(2) through (b)(5) of this section are unpaid and are not the subject of a bona fide timely appeal, or if there are significant health and safety defects present on the premises constituting an imminent danger to life, health or property.

(d) *Validity.* A certificate of compliance shall be valid for four years for all rental units, unless suspended as set forth in subsection (g) of this section. The administrator may authorize up to eight additional months on the certificate of a dwelling for the sole purpose of balancing inspection workloads for the city.

(e) *Expiration.* Certificates of compliance and temporary certificates of compliance may not be extended beyond their expiration dates except as may be permitted in subsections (c) or (d) of this section to enable the department of inspections to balance inspection workloads.

(f) *Length of time certificate of compliance is valid.* Any new certificate of compliance issued to an owner for a dwelling shall have an expiration date four years from the date of issuance, except that if a temporary certificate has been previously issued, the certificate shall expire four years from the date the temporary certificate was issued.

(g) *Suspension.*

- (1) The director of inspections shall suspend a certificate of compliance if the owner or responsible local agent has not complied with a complaint notice. The administrator shall issue a notice of suspended certification to the owner or responsible local agent. The notice of suspended certification will inform the owner or responsible local agent:
  - a. That the certificate of compliance has been suspended as of the date of the notice.
  - b. Of the reason for the suspension.
  - c. That it is unlawful for any rental unit to continue to be occupied for more than 60 days after the date of suspension of the certificate of compliance, or, if substantial and immediate danger to life, health or safety exists, that no occupancy may occur after the suspension and the property shall be immediately vacated.
  - d. That any rental unit which is vacant at the time of suspension or which becomes vacant during the period of suspension shall not be rented or reoccupied until the certificate of compliance is reinstated or a new certificate of compliance is issued.
- (2) Failure to comply with the terms of suspension as set out in this subsection shall be a violation of this article.

(h) *Reinstatement of suspended certificate of compliance.* A suspended certificate of compliance shall be reinstated if the city determines that a rental dwelling has been brought into compliance with the standards of this article and that the charges made under subsection (b) of this section have been paid. The city shall notify the owner or responsible

agent by regular mail, noting the reinstatement of the certificate of compliance of the rental dwelling. Reinstatement of the certificate shall not extend or change the expiration date of the certificate. A reinstatement fee and all inspection fees and amounts to be determined by the city commission shall be paid by the owner prior to reinstatement of the certificate.

(i) *Appeal.* Suspension of a certificate of compliance may be appealed to the housing board of appeals as provided for in this article.

(j) *Notifying tenants of suspended certificate.* The city shall send a copy of a notice of suspended certificate to each dwelling unit within a certified rental dwelling. The copy shall be addressed to "occupant" and shall be sent by regular mail. Failure of an occupant to receive a copy shall not invalidate any other proceedings authorized by this article.

(k) *Certification fees.* The director of inspections, subject to approval by the city commission, shall establish and charge a uniform and reasonable fee for certification from time to time.

(Code 1975, § 4-83; Code 2002, § 10-352; Ord. No. 2052, 8-28-2001)

CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Meisch, MMC  
City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the \_\_\_\_ day of \_\_\_\_\_, 2015, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: \_\_\_\_\_, 2015

\_\_\_\_\_  
Ann Meisch, MMC  
Clerk, City of Muskegon

Publish:      Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON  
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on \_\_\_\_\_, 2015, the City Commission of the City of Muskegon adopted an amendment to Chapter 10 "Buildings and Building Regulations," Article VI "Property Maintenance Code," Division 2, Subdivision III. "Rental Property," Section 10-352 of the Code of Ordinances of the City of Muskegon, whereby the following changes were made:

**Section 10-352(b)** was amended to clarify that a certificate of compliance may be suspended if any fees and debts to the city are incurred and not paid in full after the initial issuance of the certificate.

**Section 10-352(b)(5)** was amended to clarify that the fees, fines, penalties or debts that must be paid to maintain a valid certificate of compliance may be based on any provision within all of Chapter 10, not only under the property maintenance code.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

CITY OF MUSKEGON

Published: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ann Meisch, MMC, Its Clerk

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PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

**Commission Meeting Date: September 22, 2015**

**Date: September 15, 2015**  
**To: Honorable Mayor & City Commission**  
**From: Planning & Economic Development Department**  
**RE: Moratorium on fees for Vacant Buildings**

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SUMMARY OF REQUEST: Request to allow the moratorium to continue with the guidelines that are in place so staff would not need to bring this before the City Commission for approval each year. Should the need arise to change this in the future; this will be brought back to the City Commission.

FINANCIAL IMPACT: Exact amount unknown but should be minimal.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval to continue the fee moratorium for vacant building invoice fees for 2016 and into the future.

COMMITTEE RECOMMENDATION: None

### **Vacant Building Registration Moratorium on fees.**

A proposed appeal moratorium has been approved each year since the first initial waiver of fee as allowed by the ordinance. By keeping the moratorium in affect; staff can work with property owners that have been maintaining their properties while it is for sale or while they rehab the structure. There has been an increase in the number of property owners that are working to comply with the moratorium and do not wait to appeal. This moratorium would apply only to structures that meet certain criteria to insure that the structure is being properly maintained and the owners are current on all their responsibilities to the various city departments.

The criteria staff feels a vacant building would have to meet to qualify for a moratorium of fee are:

1. All taxes & fees, such as mowing charges, vacant building registration, landlord registrations, business registrations and any other applicable fees, must be fully paid and current.
2. All city supplied utilities for the property must be fully paid.
3. There were no more than 2 environmental letters sent to the address with no work being performed at the address in the vacancy years in question. The City does not have to perform any board up action at the property.
4. The building owner can demonstrate that they have made recent investments in the vacant building during the vacancy period or in the case of a building in good condition, they have continued to provide the necessary financial support for the building to be in usable and move-in condition.
5. The property has been listed during the vacancy period and is still currently listed for sale with a professional realty firm.

Due to the complexities of the overall program, city staff would utilize our current appeal process to administer the moratorium and the owners that feel they qualify would be required to apply for the moratorium after being billed. If the owner felt they could meet the criteria, they would apply with supporting documentation, if they do not meet the criteria we would hope they would not apply for it and consume staff time with the reviews.

Because of the criteria that must be met and the large number of structures that we will be billing, staff would not be able to review all the invoices prior to billing. We simply do not know if all of the structures can meet the criteria and we do not have the staff to make those determinations in advance.

Using the appeal process, staff can make the determination by requiring the owner to provide some of the above listed information and this will cut down on staff time spent. Even so, this will substantially increase the amount of time staff must spend processing paperwork for this program.

**COMMISSION MEETING DATE: SEPTEMBER 22, 2015**

**TO:** Honorable Mayor and Commissioners  
**FROM:** Jeffrey Lewis, Director of Public Safety  
**RE:** Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN155691

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**SUMMARY OF REQUEST:** This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1506 PARK ST. (garage only)** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days or infraction tickets may be issued. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent or responsible party if they do not demolish the structure.

Case# & Project Address: # EN155691 – 1506 PARK ST. (garage only)

Location and ownership: This structure is located on Park St. between W. Grand Ave. and W. Southern Ave. and is owned by Benny Bankhead.

Staff Correspondence: A dangerous building inspection was conducted on 5/27/2015. The Notice and Order to Repair was issued on 7/2/2015. On 8/6/2015 the HBA declared the structure substandard and dangerous.

**Financial Impact:** CDBG or General Funds

**Budget action required:** None

**State Equalized value:** \$ 15,300 (entire property) with the garage being valued at \$8,190.

**Estimated cost to repair:** \$ 5,200 (garage only)

**Staff Recommendation:** To concur with the Housing Board of Appeals decision to demolish.

Notification procedures:

- 1) Title search is performed so all interested parties are notified.
- 2) All notifications are posted on the structure.
- 3) All notifications are mailed by certified mail with a return card for signature.

Owner Contact: No contact from the owner. Jackie from Field Asset Services had phoned and the bank is getting ready to foreclose on this property. She agreed the garage is in poor condition. She was going to try to get bids for the demolition but this can't be done until the bank has foreclosed on it. She did not know when they would have actual possession.

Permits obtained: None.

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

**CITY OF MUSKEGON**  
**CODE COMPLIANCE DEPARTMENT**  
933 TERRACE ST STE 202; MUSKEGON, MI 49440  
(231) 724-6702 (Office); (231) 724-6790 (Fax)

**DANGEROUS BUILDING REPORT**

1506 PARK ST (garage only)

Inspection noted:

Dilapidated garage:



This listing is a list of exterior items. An interior inspection had not been completed. You would need to contact SAFEbuilt for a trades inspection to get a complete listing of any additional items that need to be completed.

BASED UPON A RECENT INSPECTION OF THE ABOVE PROPERTY, IT HAS BEEN DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

**COMMISSION MEETING DATE: SEPTEMBER 22, 2015**

**TO:** Honorable Mayor and Commissioners

**FROM:** Jeffrey Lewis, Director of Public Safety

**RE:** Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN150273

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**SUMMARY OF REQUEST:** This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1280 SANFORD ST.** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days or infraction tickets may be issued. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent or responsible party if they do not demolish the structure.

Case# & Project Address: # EN150273 – 1280 SANFORD ST.

Location and ownership: This structure is located on Sanford St. between Strong Ave. and Morrall Ave. and is owned by JM Diamond LLC.

Staff Correspondence: A dangerous building inspection was conducted on 11/24/2014 (exterior only) & 4/2/2015 (Trades-interior inspection). The Notice and Order to Repair was issued on 3/5/2015. On 8/6/2015 the HBA declared the structure substandard and dangerous at the 4<sup>th</sup> hearing for this property.

**Financial Impact:** CDBG or General Funds

**Budget action required:** None

**State Equalized value:** \$ 32,600.

**Estimated cost to repair:** \$ 55,000.

**Staff Recommendation:** To concur with the Housing Board of Appeals decision to demolish.

Notification procedures:

- 1) Title search is performed so all interested parties are notified.
- 2) All notifications are posted on the structure.
- 3) All notifications are mailed by certified mail with a return card for signature.

Owner Contact: The owner of the property has had no contact with staff. The property owner's local Agent (Westshore Property Management) had scheduled the Trades inspection and attended the 1<sup>st</sup> three meetings of the HBA. The 4<sup>th</sup> meeting had no representatives for the meeting itself; but one did speak with K. Briggs of SAFEbuilt briefly stating they were no longer pursuing this.

Permits obtained: None. Some areas of the structure had been painted.

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.





**CITY OF MUSKEGON**  
CODE COMPLIANCE DEPARTMENT  
933 TERRACE ST STE 202; MUSKEGON, MI 49440  
(231) 724-6702 (Office); (231) 724-6790 (Fax)

**DANGEROUS BUILDING REPORT**

1280 SANFORD ST

Inspection noted:

1. Garage- Overhead, sliding, or swing door is broken or missing parts so it may not work properly.
2. Roof has some shingles or parts of shingles missing. Roof has shingles that are deteriorated and need replacing. Rafters may also need replacing. The elements may have also caused more deterioration to the interior of the structure where there are shingles missing.
3. Have eave boards that are rotted or missing.
4. Siding has holes in it or is rotted or missing. Siding is loose or falling off. Has broken siding.
5. Doors are boarded up as well as many windows.
6. Has peeling paint that needs to be scraped and needs to be protected from weather by properly applied water-resistant paint or waterproof finish.
7. Wood is exposed to the elements due to being unprotected. The extent of damage to the exposed wood to the interior has not been determined. This could be assessed by the owner or agent scheduling to have an inspection of the interior completed. Wood is not protected from weather by a properly applied water-resistant paint or waterproof finish. Surface must be scraped prior to applying any water -resistant paint or waterproof finish.
8. The trim is loose/rotted/exposed to the elements. The trim is bare wood and not protected. Exterior trim has peeling paint that needs to be properly scraped and needs to be protected from weather by properly applied water-resistant paint or waterproof finish.
9. Window is not weather tight and in good repair. Window trim is broken or missing. Window sill is broken, missing or rotted. Window frame is rotted and exposed to the elements. Window has glazing that is missing or deteriorated.
10. Concrete steps are deteriorated and cracked.
11. Foundation walls have missing mortar or open cracks. Foundation walls have missing brick or block. Foundation footing is sinking or missing.

This listing is a list of exterior items. An interior inspection had not been completed. You would need to

contact SAFEbuilt for a Trades inspection to get a complete listing of any additional items that need to be completed.

BASED UPON A RECENT INSPECTION OF THE ABOVE PROPERTY, IT HAS BEEN DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.



**DANGEROUS BUILDING INSPECTION REPORT**  
**04/02/2015**

**Owner** JM DIAMOND LLC  
13721 WEST 59TH AVE  
ARVADA, CO 80004

**CC:** Westshore Property Management  
4265 Grand Haven Rd  
Muskegon, MI 49441

**Enforcement # EN150273**

**Property Address:** 1280 SANFORD ST  
**Parcel:** 24-205-394-0001-00

**Date completed:** 4/2/15

**DEFICIENCIES (PER ELECTRICAL INSPECTOR):**

**Apt. #1**

- Bathroom light missing.
- Ensure 3 wire outlets are grounded.
- Install hardwired smoke alarms to code.
- Kitchen counter to have 2 circuits w/GF

**Apt. #2**

- Ensure 3 wire outlets are grounded.
- Install hardwired smoke alarms to code.
- Kitchen counter to have 2 circuits w/GFI.

**Apt. #3**

- Ensure 3 wire outlets are grounded.
- Install hardwired smoke alarms to code.
- Kitchen counter to have 2 circuits w/GFI.

**Basement**

- Repair all cut wiring.
- Ground service to code throughout.
- Ensure separation of units.
- Supply power from each unit @ front porch and stairway.
- Electric service to be converted to single occupancy.

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Ken Murar, Electrical Inspector

**Building Inspector Report**  
**Uncertified/Unregistered Vacant Building Since 10-1-2007**  
**1280 Sanford**  
**Muskegon, MI 49441**  
**4-2-2015**

1. **Entire Roof** structure including front porch area to be repaired or replaced. Including the repair of damaged and or rotted decking material, soffit and fascia material. "Roof and Flashing shall be sound, tight and not have defects that admit rain".
2. **Exterior surfaces** require compliance, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and steps, shall be maintained in good condition. Exterior wood surfaces shall be protected from the elements by painting or other protective coverings. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Included in this is the rebuilding of the exterior steps and landing per code for Apartment #2. (north entrance) and Main entrance Apartment #1 Stafford Street side. Window screens shall all be repaired or replaced. Windows shall be easily openable and capable of being held in position by window hardware.
3. **Interior of Structure.** All interior surfaces shall be repaired to be in good, clean and sanitary condition. Damaged plaster or drywall shall be repaired or replaced and peeling, chipping, flaking or abraded paint shall be repaired. Any decayed wood or other defective surface condition shall be corrected. Most damaged to ceiling and walls is in apartment #2 but corrective action shall take place to entire house.
4. **Structural Members Basement.** All floor joist member in the basement that have been cut, notched, or bored are required to be fixed. Including the addition of any joist hangers were needed. Surrounding foundation shall be free from open cracks and breaks. Crawl spaces in basement will require to be capped with vapor barrier per code, because non treated floor joist above are within 30" of bare soil.
5. Structure must meet all Electrical, Plumbing, and Mechanical Codes before the issue of a Certificate of Occupancy. All permits for work required shall be performed by licensed contractors.

**Commission Meeting Date: September 22, 2015**

**Date: September 16, 2015**  
**To: Honorable Mayor and City Commissioners**  
**From: Planning & Economic Development**  
**RE: Amendment to the Zoning Ordinance**

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SUMMARY OF REQUEST:

Staff initiated request to amend section 400 of the zoning ordinance to allow multiple family dwellings under certain circumstances in R-1, Single Family Residential districts.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the ordinance amendment by a 7-1 vote, with one member absent.

**Staff Report (EXCERPT)**  
CITY OF MUSKEGON  
PLANNING COMMISSION  
REGULAR MEETING

**Hearing, Case 2015-14 (TABLED):** Staff initiated request to amend section 400 of the zoning ordinance to allow multiple family dwellings under certain circumstances in R-1, Single Family Residential districts.

**BACKGROUND**

1. The R-1, Single Family Residential district is the most prominent zoning district in the city. Only single family residential units are allowed in these districts. However, many of these homes were previously approved to allow for more than one dwelling unit. These homes with additional dwelling units are considered “grandfathered” and are allowed to be utilized as multiple-family homes as long as the additional dwelling units do not remain vacant for more than two years. Currently, the zoning ordinance does not allow these “grandfathered” homes to add additional dwelling units, even if there is enough space to create one. This amendment would make it possible to create additional dwelling units in underutilized homes.
2. Many of the homes that would be able to take advantage of this amendment are located near downtown. There are many former lumber baron homes that were built in the late 1800’s and early 1900’s as mansions for affluent single-family home owners. However, as time has progressed, many of these homes were split into duplexes and turned into rental units, as the price of maintaining the homes increased. Turning these homes into profitable income-generating sources has helped keep these homes from falling into disrepair. As these homes continue to age, they become increasingly difficult to maintain, as well as heat in the winter. Allowing landlords to create additional dwelling units can increase the profitability of these homes, which would likely encourage investments into the homes.
3. The current ordinance makes it difficult to maintain some of these older homes. If a large 3,000+ sf home has two units and one becomes vacant for more than two years, the ordinance states that it must revert back to single family. However, it is not likely that this home would generate much interest as a single-family home, as it would be much larger than most people living downtown would need and it wouldn’t be feasible for one family to heat a home of this size, especially one that is over 100 years old and not insulated very well. Having a landlord with a vested interest in maintaining the home may help preserve the home.
4. Allowing additional units to be built in these downtown homes will give more housing options to those that want to live near downtown. Many people are forced to live away from downtown, as there are not enough market-rate rental options in the area.

5. This amendment would only allow previously split-up homes to continue to add additional dwelling units, when there is enough space. Homes that have never been split-up would not have the option of adding another dwelling unit. Also, new homes would not be allowed to be constructed as multi-family homes.

Below is an excerpt from Section 2319, which gives the guidelines for multi-family homes with more than two units. These guidelines would have to be followed if a home was to add a third (or more) unit: Each dwelling unit shall have a minimum living area (excluding all basement area) of six hundred and fifty (650) square feet for a one (1) bedroom unit, of eight hundred and seventy-five (875) square feet for a two (2) bedroom unit, and of twelve hundred (1200) square feet for a three (3) bedroom unit. For each bedroom thereafter, an additional 100 square feet of living space shall be provided.

6. **The proposed ordinance amendment has been modified since it was last presented in August.**

## **NEW LANGUAGE**

Deletions are ~~crossed-out~~ and additions are in **bold**:

### SECTION 400: PRINCIPAL USES PERMITTED

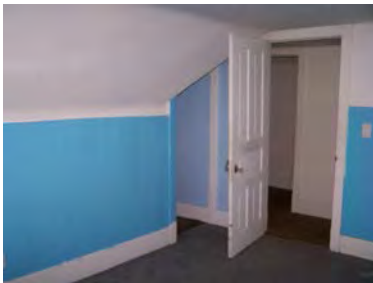
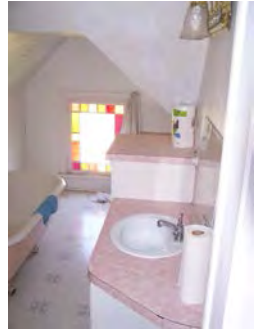
In R, One Family Residential, Districts no building or land shall be used and no building shall be erected, structurally altered, or occupied except for one or more of the following specified uses, unless otherwise provided in this Ordinance;

1. One Family detached dwellings.
2. **Multiple family dwellings under the following conditions:**
  - a. **The home has already been altered with prior approval to allow for multiple dwellings. One family dwellings may not be altered to allow for multiple dwellings, nor may new homes be built for multiple dwellings.**
  - b. **Homes that have already been altered for multiple dwellings may add additional dwellings as long the total number of dwellings does not exceed the number of dwellings that historically existed in the structure (for example, if a three-unit building was converted to a two-unit building, that building could legally be converted back to a three-unit building, but not a four+ unit building), and that all dwellings meet the living area standards listed in Section 2319.**

**House at 71 W Southern Ave (approved for 2 dwelling units)**



**Unoccupied 3<sup>rd</sup> floor of 71 W Southern Ave**



CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. \_\_\_\_\_

**An ordinance to amend 400 of the zoning ordinance to allow multiple family dwellings under certain circumstances in R-1, Single Family Residential districts.**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

## NEW LANGUAGE

Deletions are ~~crossed out~~ and additions are in **bold**:

### SECTION 400: PRINCIPAL USES PERMITTED

In R, One Family Residential, Districts no building or land shall be used and no building shall be erected, structurally altered, or occupied except for one or more of the following specified uses, unless otherwise provided in this Ordinance;

1. One Family detached dwellings.
2. **Multiple family dwellings under the following conditions:**
  - a. **The home has already been altered with prior approval to allow for multiple dwellings. One family dwellings may not be altered to allow for multiple dwellings, nor may new homes be built for multiple dwellings.**
  - b. **Homes that have already been altered for multiple dwellings may add additional dwellings as long the total number of dwellings does not exceed the number of dwellings that historically existed in the structure (for example, if a three-unit building was converted to a two-unit building, that building could legally be converted back to a three-unit building, but not a four+ unit building), and that all dwellings meet the living area standards listed in Section 2319.**

This ordinance adopted:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Adoption Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

CITY OF MUSKEGON

By: \_\_\_\_\_  
Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 22nd day of September, 2015, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: \_\_\_\_\_, 2015.

\_\_\_\_\_  
Ann Meisch, MMC  
Clerk, City of Muskegon

Publish:        Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON  
NOTICE OF ADOPTION**

Please take notice that on September 22, 2015, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1301 of the Zoning Ordinance to allow multiple family dwellings under certain circumstances in R-1, Single Family Residential districts. Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published \_\_\_\_\_, 2015.

CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Meisch, MMC  
City Clerk

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PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

**Commission Meeting Date: September 22, 2015**

**Date: September 16, 2015**  
**To: Honorable Mayor & City Commission**  
**From: Planning & Economic Development Department**  
**RE: Allen Edwin Homes- Contract Negotiations**

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SUMMARY OF REQUEST: Staff has been working with Allen Edwin Homes to develop plans for 9 homes on property bounded by Houston, Monroe, Fourth and Fifth. Meanwhile, City Commission authorized staff to proceed with the acquisition of this property from MSI at the August 25, 2015 Commission meeting. As staff is prepared to implement plans for the new homes, it is necessary to enter into a formal contract with Allen Edwin Homes for the home construction.

FINANCIAL IMPACT: This will be dependent on the actual terms of the Contract.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize staff to negotiate with Allen Edwin Homes for the construction of nine homes, with final terms and execution to be determined by staff.

COMMITTEE RECOMMENDATION:

## **Commission Meeting Date: September 22, 2015**

**Date: September 16, 2015**  
**To: Honorable Mayor & City Commission**  
**From: Planning & Economic Development Department**  
**RE: PILOT- General Capital Acquisitions, LLC**

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**SUMMARY OF REQUEST:** Josh Hafron, General Capital Acquisitions, LLC presented plans to City Commission at the September 8 meeting for an affordable senior housing development at 275 W. Clay. The City Commission was generally favorable with his plans. Mr. Hafron is now requesting a Payment in Lieu of Taxes (PILOT) for the project. The development, Berkshire Housing Apartments, will include 47 units (60% Area Median Income), 26 units (40% Area Median Income), and 6 units (30% Area Median Income). Berkshire Housing Apartments will contain both 1- and 2-bedroom units, common area, a community room, exercise room, library/business center and outdoor courtyard and terrace areas. In addition, Mr. Hafron is in discussions with Tanglewood, to include a satellite office on site that would provide services for Berkshire residents and the larger community. It will also include 2,200 s/f for commercial space on the first floor of the building (an increase from the original amount of 1,800 s/f presented to Commission at the last meeting). The minimum service charge of 4% will be imposed, as well as a service fee to the City of 1% (see "Contract for Housing Exemption" attached). If approved, this will be the first building downtown to comply with the new Form Base Code standards.

**FINANCIAL IMPACT:** Although the PILOT for the project will be less than the taxes captured for a similar market-rate project, the situation with this particular property is that the contribution towards the City will be greater to the City with the development under a PILOT than it is as a vacant lot. In addition, taxes would apply to the commercial square footage within the building.

**BUDGET ACTION REQUIRED:** None.

**STAFF RECOMMENDATION:** To approve the attached "Contract for Housing Exemption" and "Development Agreement" and authorize the Mayor and Clerk to sign.

## DEVELOPMENT AGREEMENT

This Agreement between **GENERAL CAPITAL ACQUISITIONS, LLC**, a Wisconsin limited liability company (the “Developer”) and **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, Michigan (the “City”) is made pursuant to the following terms:

### Background

- A. Concurrent with this Agreement, Developer and City have entered into a Contract for Housing Exemption, an executed copy of which is attached hereto as Exhibit 1, for development of a low-income senior housing project for the elderly, Berkshire Muskegon, located at 275 West Clay (“the Development”).
- B. The City has granted an exemption from all ad valorem property taxes for the Development.
- C. In addition to the terms of the agreement regarding the Development’s tax exempt status, the parties wish to memorialize additional details herein.

Now, therefore, for good and valuable consideration, the parties agree as follows:

- 1. Developer shall include as part of the Berkshire Muskegon 2,200 square feet of commercial space on the first floor of the building.
- 2. In addition to imposition of the minimum service charge of four percent (4%) of contract rents, as outlined in the Contract for Housing Exemption, Developer shall pay to the City a service fee of one percent (1%) of contract rents, for the provision of essential services such as police and fire protection, pursuant to the same time line as that of the service charge.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below.

### CITY OF MUSKEGON

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Steve Gawron, Mayor

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ann Meisch, Clerk

### GENERAL CAPITAL ACQUISITIONS, LLC

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Josh Hafron

## EXHIBIT 1

### CONTRACT FOR HOUSING EXEMPTION

## CITY OF MUSKEGON

### CONTRACT FOR HOUSING EXEMPTION

This Agreement between **GENERAL CAPITAL ACQUISITIONS, LLC**, a Wisconsin limited liability company (the “Developer”) and **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, Michigan (the “City”) is made pursuant to the following terms:

#### RECITALS

A. The City has adopted Chapter 82, Article II “Taxation” of the City Code of Ordinances, providing for tax exemption (the “Ordinance”).

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income senior persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of the housing projects that is constructed or rehabilitated with financing extended in reliance on such tax exemption.

C. Developer has acquired an option to purchase a site in the City of Muskegon (275 West Clay) for the construction of a proposed low-income housing project (for the elderly) as defined in City Section 82-46 of the Ordinance (the “Project”).

D. Developer and an affiliate of Developer, to be formed, have or will enter into an agreement to form a limited dividend housing association limited liability company to function as owner of the proposed low-income housing Project. The owning entity to be formed will be identified as Berkshire Muskegon Limited Dividend Housing Association, LLC.

E. The City encourages construction and financing of the said low-income housing project which is identified by the working name of Berkshire Muskegon Apartments.

F. To further enable and encourage the construction of the housing project, Developer and the City enter into this Agreement.

G. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the “Act”), the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible low income senior persons and families as defined by the Michigan State Housing Development Authority (the “Authority”).

2. Term of Exemption. This exemption shall continue for the period of time the housing units remain subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Codes of 1986, as amended (IRS Codes), or the Authority Regulatory Agreement not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is financed by the Authority or receives low income housing tax credits under Section 42 of the IRS Codes, provided that the said loan or a loan originally financed by the low income housing tax credits continues outstanding and not in default as more particularly set forth in Section 82-50(3) of the Ordinance, not to exceed 25 years.

3. Responsibilities of the Developer. The Developer agrees to perform the following:

3.1 The Developer shall pay the service charge and payment in lieu of taxes on or before July 1, of each year during the time the exemption is in effect. The service charge shall equal four percent (4%) of the rents charged for the total of all units in the exempt housing project, whether the units are occupied or not and whether or not the rents are paid.

3.2 The Developer agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority’s administration of the low income housing tax credit program.

3.3 In lieu of the requirement to submit a statement of contract rents within 30 days after December 31, as required by the Ordinance, Developer shall submit an annual audit by April 1<sup>st</sup>. If not timely filed, and 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

4. Interpretation of Financing. The City agrees that the use of low income housing tax credits constitutes financing of the loan by the Authority in fulfillment of the requirements of Section 82-50(3) of the Ordinance.

5. Third Party Beneficiary. This Agreement shall benefit the parties named, including the limited dividend housing association to be formed, and further shall benefit the Authority, or such other mortgagee as may have financed the housing project, which may enforce this Agreement, both as its interest may appear, and on behalf of the Developer and its successors and assigns. No other party is a beneficiary of this Agreement.

6. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 3, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

7. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

8. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

9. Effective Date. The effective date of this Agreement is the date that Developer or its assignee acquires the Property.

10. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

11. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

12. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

**City of Muskegon**

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Steve Gawron, Mayor

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ann Meisch, Clerk

**General Capital Acquisitions, LLC**

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Josh Hafron

## EXHIBIT A

### LEGAL DESCRIPTION

Land situated in the City of Muskegon, County of Muskegon, and State of Michigan, described as: Lots 1 through 3, inclusive, and Lots 10 through 12, inclusive, including the Easterly 198 feet of vacated alley, Block 328, REVISED PLAT OF 1903 IN THE CITY OF MUSKEGON, as recorded in Liber 3 of Plats, Page 71, Muskegon County Records. Address: 275 West Clay Avenue Muskegon, MI 49440