

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**AUGUST 12, 2014**

**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. SECOND READING: Hours at City Parks – Ordinance Amendment. CITY CLERK**
  - C. Farmers' Market – Third Amendment to Purchase Agreement. PLANNING & ECONOMIC DEVELOPMENT**
  - D. MDOT-City Agreement for Muskegon & Webster. ENGINEERING**
  - E. Prosecution Services for Muskegon Police Department. PUBLIC SAFETY**
  - F. Property Tax Settlement Agreement with Consumers Energy B.C. Cobb Plant. CITY MANAGER**
  - G. SECOND READING: Marihuana Ordinance. CITY CLERK**
- ☐ **PUBLIC HEARINGS:**
- ☐ **COMMUNICATIONS:**
- ☐ **UNFINISHED BUSINESS:**
- ☐ **NEW BUSINESS:**
- ☐ **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 CUMMINGS, 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.

# Memorandum

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To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Work Session

Date: August 7, 2014

We have a number of items on the agenda, and I thought you could use a little background on them as you prepare for our meeting next week.

1. Representatives from the MEDC will be on hand to discuss the Redevelopment Ready Communities Program, as well as their initial assessment on Muskegon's current redevelopment ready status. They will try to keep the presentation to 10-15 minutes to allow time for questions. At this point, staff is committed to becoming a recognized redevelopment-ready community – it'll be a lot of work, and a major commitment, but we agree with a number of their principles and would like access to the incentives that the program would offer. As part of the first steps, we are planning to partner with the MEDC to hold a developers showcase in downtown Muskegon on September 11<sup>th</sup>.
2. We have a final draft Medical Marijuana Ordinance ready for Commission action. We are asking for Commissioners to vote at the work session and again at the Commission meeting. This will allow us to begin implementation and formally end the moratorium. Michelle Landis will be on hand to explain the ordinance and answer any questions. A subsequent zoning ordinance will be presented to the Planning Commission at an upcoming meeting to limit medical marijuana businesses to B-2, B-3, B-4, B-5, I-1, and I-2 zoning districts.
3. Working in conjunction with Downtown Muskegon Now, we are exploring the idea of creating a Business Improvement District in the downtown. A BID is a mechanism to make investments in a particular area – this one being focused on the downtown. The funds would be raised via special assessments on the properties within the district, and would in-turn be expended within the district based on the decisions/desires of the group being assessed. A board would be put in place to formally make those decisions. Likely expenditures will include marketing, snow removal, beautification, Christmas decorations, special events, etc. We are not asking the Commission to act on this item at this time – we are simply looking to share the concept and take your feedback. If it appears there is support from the Commission and the downtown business community, we will likely bring the BID to the commission for formal approval in September or October.

4. We have had an initial meeting with residents and business owners in the Muskegon/Webster construction area to take comments on the types of amenities they would like. We need to move forward with the design ASAP. Accordingly, we are bringing the discussion forward to this work session with the hope of settling on a plan for both streets. Because we have heard so many varying requests for the street, and because our funds are limited, staff is making the following recommendation for the two corridors:
  - a. Two 11-foot traffic lanes and one 7-foot parking lane on both streets. This will narrow the street width from 44 feet to 33 feet.
  - b. Terraces will be widened approximately five feet each from their current size.
  - c. The 33-foot crossing path will not require bump-outs for safe crossing; accordingly, bump-outs are not recommended.
  - d. A left-turn lane will be established at the intersection of Terrace Street for both Muskegon and Webster.
  - e. Staff will review the Commission's previous action regarding the traffic signals being removed with the elimination of turn lanes.

I recognize that this plan does not increase parking, but I do believe it accomplishes some of the neighborhood's priorities:

- a. Replacing the road surface
  - b. Slowing traffic
  - c. Narrowing the road width
  - d. Increasing terraces
  - e. Providing adequate parking for normal daily activity
5. We are recommending the Commission enter into a 1-year agreement with the Prosecutor's Office for prosecuting local ordinances. Later we will ask for a 6-month extension on the current Parmenter O-Toole contract. The long-term goal will be to seek proposals for both of these services from one vendor.
6. We have reached a tentative agreement with Consumers Energy to settle our current tax tribunal appeal. The loss in value at the BC Cobb is great, but it is within the figures we budgeted. We have negotiated a number of essential services payments, and plan to use those payments to maintain service levels during the three year agreement. The expectation is to continue to work with Consumers to ensure timely redevelopment of the property and continued use of the deep water port.

**Date: August 12, 2014**  
**To: Honorable Mayor and City Commissioners**  
**From: Ann Marie Cummings, City Clerk**  
**RE: Approval of Minutes**

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SUMMARY OF REQUEST: To approve minutes of the July 22<sup>nd</sup> City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**JULY 22, 2014**

**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, July 22, 2014.

Mayor Gawron opened the meeting with prayer from Vice Mayor Spataro 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 Eric Hood, Willie German, and Ken Johnson, City Manager Franklin Peterson, City Attorney John Schrier, and City Clerk Ann Marie Cummings.

Commissioner Byron Turnquist arrived at 5:35 p.m.

Absent: Commissioner Dan Rinsema-Sybenga (excused)

#### **2014-53 CONSENT AGENDA:**

##### **A. Approval of Minutes.** CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the July 7<sup>th</sup> Commission Worksession Meeting, and the July 8<sup>th</sup> City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

##### **C. Approval of Vinyl Siding Installers for Fiscal Year 2014-2015.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve Community & Neighborhood Services to sign a contract with Mark Tucker Construction, 1620 Fruitvale Rd., Holton, MI, and Cutting Edge, 766 Chatterson Road, Muskegon, MI, to install vinyl siding at an agreed price of \$50 per building square for the Vinyl Siding Program's 2014-2015 fiscal year.

The Community & Neighborhood Services office received one other bid from

vinyl siding installers: Schmidt Roofing and Construction, 552 W. Southern, Muskegon, MI 49441: \$85 per building square.

FINANCIAL IMPACT: Funding will be disbursed from the 2014-2015 Community Development Block Grant Vinyl Siding fund.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve the request.

**D. Approval of the Housing Development Grant Agreement for Target Market Analysis.** COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: The Cities of Muskegon, Norton Shores, Muskegon Heights, along with the County of Muskegon, are interested in pursuing a Target Market Analysis Study to forecast our future housing needs; this will enable each City to have a tool for investors and developers and may lead to future investment. The agreement is with MSHDA for a match up to \$15,000 for this study.

FINANCIAL IMPACT: None at this time.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve and authorize the City Manager to sign the Agreement and Designation Form.

**E. Hours at City Parks – Ordinance Amendment.** CITY CLERK

SUMMARY OF REQUEST: Staff has found a discrepancy in the code of ordinances for park hours. City parks have opened at 5:00 a.m. for many years. Under the Uniform Traffic Code, Chapter 92-33, section 8.10(v), it inadvertently list the park opening as 7:00 a.m.

The amendment would change subsection (v) to list the hours of the park as being closed from the hours of 11:00 p.m. and 5:00 a.m.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the ordinance amendment.

(REQUIRES SECOND READING.)

**F. Michigan Irish Music Festival (MIMF) – Request to Serve Spirits at the Festival.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The Michigan Irish Music Festival has filed a special event application for their annual festival to be held at Heritage Landing September 11-14, 2014. They are requesting City Commission approval to serve spirits (Jameson Irish Whiskey) at the festival, as follows:

1. In measured 1.5 oz. servings over ice or mixed with ginger ale.
2. At a tasting event on Saturday & Sunday, along with craft beer & cider tastings they have hosted in the past.

They have served liquor in the past (Baileys Irish Crème).

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the request.

**G. Vacation of the Alley between Vulcan Street and Brunswick Street, from Nims Street to Keating Avenue.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Newkirk Electric at 1875 Roberts Street is requesting to vacate the alley between Vulcan Street and Brunswick Street, from Nims Street to Keating Avenue. They would then replat the alley so they can utilize it for business operations.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends vacation of the street, with the condition that all utility easement rights be retained.

COMMITTEE RECOMMENDATION: The Planning Commission recommended vacation of the alley at their July meeting.

**Motion by Commissioner German, second by Commissioner Hood to accept the Consent Agenda as read minus Item B.**

**ROLL VOTE: Ayes: Hood, Spataro, German, Turnquist, Johnson, and Gawron**

**Nays: None**

***MOTION PASSES***

**2014-54 ITEM REMOVED FROM THE CONSENT AGENDA:**

**B. Permanent Traffic Control Order.** PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to install “2 (two) hour parking” limit signage from 8:30 a.m. to 5:30 p.m., where permissible to install, in the specified downtown areas bordering 7<sup>th</sup> Street up to Terrace Street and from Shoreline Drive to Muskegon Avenue, with the exception of 1<sup>st</sup> Street from Morris Street to Western Avenue, per Traffic Control Work Order #15-(2014).

FINANCIAL IMPACT: Cost of signs/posts and man-power to install, if approved.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize DPW staff to install “2 (two) hour parking” limit signs per Traffic Control Work Order #15-(2014).

**Motion by Vice mayor Spataro, second by Commissioner German to authorize DPW staff to install “2 (two) hour parking” limit signs per Traffic Control Work Order #15-(2014).**

**ROLL VOTE: Ayes: Spataro, German, Turnquist, Johnson, Gawron, and Hood**

**Nays: None**

**MOTION PASSES**

**2014-55 PUBLIC HEARINGS:**

**A. Request for an Industrial Facilities Exemption Certificate – The Bold Companies. PLANNING & ECONOMIC DEVELOPMENT**

SUMMARY OF REQUEST: Pursuant to Public Act 198 of 1974, as amended, The Bold Companies, 2291 Olthoff Drive, has requested the issuance of an Industrial Facilities Tax Exemption Certificate. The total capital investment will be \$403,031 in personal property and will create 20 jobs. This qualifies them for a tax abatement of nine years under the current City policy.

FINANCIAL IMPACT: The City will capture certain additional property taxes generated by the expansion.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the resolution granting an Industrial Facilities Exemption Certificate for a term of nine years for personal property.

The Public Hearing opened to hear and consider any comments from the public. No public comments were made.

**Motion by Vice Mayor Spataro second by Commissioner Johnson to close the Public Hearing and approve the resolution granting an Industrial Facilities Exemption Certificate for a term of nine years for personal property for Bold Companies, 2291 Olthoff Drive.**

**ROLL VOTE: Ayes: German, Turnquist, Johnson, Gawron, Hood, and Spataro**

**Nays: None**

**MOTION PASSES**

**2014-56 NEW BUSINESS:**

**A. Approval of Sale of City-Owned Property at 2279 Austin. COMMUNITY & NEIGHBORHOOD SERVICES**

SUMMARY OF REQUEST: To approve the resolution and direct the Mayor and Clerk to sign Quit Claim Deed to Mark and Christine Rice, of 2283 Austin, for the

property at 2279 Austin, including the garage. Mr. and Mrs. Rice will purchase it for \$700.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of vacant houses through the HOME program to sustain our current investments to stabilize and revitalize neighborhoods.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct Community & Neighborhood Services staff to file the Quit Claim Deed.

**Motion by Commissioner Johnson, second by Vice Mayor Spataro to approve the resolution and direct Community & Neighborhood Services staff to file the Quit Claim Deed on 2279 Austin.**

**ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, Spataro, and German**

**Nays: None**

**MOTION PASSES**

**B. Approval of Sale of City-Owned Home at 2035 Harding. COMMUNITY & NEIGHBORHOOD SERVICES**

SUMMARY OF REQUEST: To approve the resolution and instruct the Community & Neighborhood Services Department to complete the sales transaction between Ms. Sharon L. Williams for the rehabilitated home at 2035 Harding, which is part of the City's HOME Infill Program through the U.S. Department of Housing and Urban Development. Ms. Williams purchase price is \$85,000.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of vacant houses through the HOME program to sustain our current investments to stabilize and revitalize neighborhoods.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the Community & Neighborhood Services staff to complete the sale.

**Motion by Commissioner Johnson, second by Commissioner German to approve the resolution and direct Community & Neighborhood Services staff to complete the sale.**

**ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, Spataro, and German**

**Nays: None**

**MOTION PASSES**

**C. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following: PUBLIC SAFETY**

**1747 7<sup>th</sup> Street**

**766 W. Southern**

**SUMMARY OF REQUEST:** This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structures are unsafe, substandard, a public nuisance and that they be demolished within 30 days by the owner or agent or infraction tickets may be issued for noncompliance and/or that administration may be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

**FINANCIAL IMPACT:** General Funds for 1747 7<sup>th</sup> Street and CDBG Funds for 766 W. Southern.

**BUDGET ACTION REQUIRED:** None.

**STAFF RECOMMENDATION:** To concur with the Housing Board of Appeals decision to demolish.

**Motion by Vice Mayor Spataro, second by Commissioner Johnson to concur with the Housing Board of Appeals notice and order to demolish 766 W. Southern.**

**ROLL VOTE: Ayes: Johnson, Gawron, Hood, Spataro, German, and Turnquist**

**Nays: None**

***MOTION PASSES***

**Motion by Vice Mayor Spataro, second by Commissioner German to concur with the Housing Board of Appeals notice and order to demolish 1747 7<sup>th</sup> Street.**

**ROLL VOTE: Ayes: Gawron, Hood, Spataro, German, Turnquist, and Johnson**

**Nays: None**

***MOTION PASSES***

**PUBLIC PARTICIPATION:** Public comments were received.

**ADJOURNMENT:** The City Commission Meeting adjourned at 6:37 pm.

Respectfully submitted,

Ann Marie Cummings, MMC  
City Clerk

**Date: July 22, 2014**  
**To: Honorable Mayor and City Commissioners**  
**From: City Clerk**  
**RE: Hours at City Parks - Ordinance Amendment**

---

**SUMMARY OF REQUEST:**

Staff has found a discrepancy in the code of ordinances for park hours. City parks have opened at 5:00 a.m. for many years. Under the Uniform Traffic Code, Chapter 92-33, section 8.10 (v), it inadvertently list the park opening as 7:00 a.m.

The amendment would change subsection (v) to list the hours of the park as being closed from the hours of 11:00 p.m. and 5:00 a.m.

**FINANCIAL IMPACT:**

None.

**BUDGET ACTION REQUIRED:**

N/A

**STAFF RECOMMENDATION:**

Staff recommends approval of the ordinance amendment.

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

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 92 "Traffic and Vehicles," Article II "Uniform Traffic Code," Section 92-33 "Changes in code," Section 8.10 "Stopping, standing or parking vehicles; violations as civil infraction" of the Code of Ordinances of the City of Muskegon is amended as follows:

- (1) A person shall not stop, stand, or park a vehicle in any of the following places, except when necessary to avoid conflict with other traffic or to comply with the law or the directions of a police officer or traffic control device:
  - (a) On a sidewalk
  - (b) In front of a public or private driveway
  - (c) Within an intersection.
  - (d) Within 15 feet of a fire hydrant.
  - (e) On a crosswalk.
  - (f) Within 20 feet of a crosswalk or, if none, then within 15 feet of the intersection of property lines at an intersection of streets.
  - (g) Within 30 feet of any flashing beacon, stop sign, yield sign, or traffic control signal located at the side of a street.
  - (h) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings.
  - (i) Within 50 feet of the nearest rail of a railroad crossing.
  - (j) Within 20 feet of the driveway entrance to any fire station and, on the side of a street opposite the entrance to any fire station, within 75 feet of the entrance when property signposted.
  - (k) Alongside or opposite any street excavation or obstruction when such stopping, standing, parking would obstruct traffic.
  - (l) On the street side of any vehicle stopped or parked at the edge or curb of a street.
  - (m) On any bridge or other elevated structure on a street or within a street tunnel.
  - (n) Within 200 feet of an accident at which police officers are in attendance.
  - (o) In front of a theater.
  - (p) In any place or in any manner so as to block immediate egress from any emergency exit or exits which are conspicuously marked as building emergency exits.
  - (q) In any place or in a manner so as to block or hamper the immediate use of an immediate egress from any fire escape which is conspicuously marked as a fire escape and which provides an emergency means of egress from any building.
  - (r) At any place where official signs prohibit stopping, standing, or parking.
  - (s) In a parking space which is clearly identified by an official sign as being reserved for use by handicappers and which is on public property or private property that is

available for public use, unless the person is a handicapper as described in the act or unless the person is parking the vehicle for the benefit of a handicapper. A certificate of identification issued under section 675(5) of the Act (MCL 257.675(5)) to a handicapper shall be displayed on the lower left corner of the front windshield. A special registration plate issued under section 803d of the Act (MCL 257.803d) to a handicapper shall be displayed on the vehicle.

- (t) Within 500 feet of a fire at which fire apparatus are in attendance when the scene of the fire lies outside of a city or village. However, volunteer firefighters responding to the fire may park within 500 feet in a manner that does not interfere with fire apparatus at the scene. Vehicles legally parked before the fire shall be exempt from this subsection.
- (u) Along or on any unpaved parkway, except where the same is used for a driveway to enter private or public property.
- (v) In any public park, beach or other public area between the hours of 11:00 p.m. and 5:00 a.m.
- (w) In any public or municipal parking areas between the hours of 2:00 a.m. and 7:00 a.m.
- (x) Other than between painted lines in designated parking areas.
- (y) On unimproved side or front yards of residential lots.

This ordinance adopted:

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

Adoption Date: \_\_\_\_\_  
Effective Date: \_\_\_\_\_  
First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_

CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Cummings, 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 \_\_\_\_\_, 2014, 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: \_\_\_\_\_, 2014

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

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

**Commission Meeting Date: August 12, 2014**

**Date: August 6, 2014**  
**To: Honorable Mayor & City Commission**  
**From: Planning & Economic Development Department**  
**RE: Farmers' Market- Third Amendment to Purchase Agreement**

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SUMMARY OF REQUEST: The City is waiting for the contractor's lien period on the Farmers' Market to expire, so the property can be transferred from the DMDC to the City free of any claims. This should occur in the near future. Therefore, a Third Amendment to the Purchase Agreement is recommended to extend the closing date. The Third Amendment allows for a 90-day extension. It is anticipated that the closing will occur prior to that time. The Amendment allows for continued operation of the Farmers' Market prior to the official closing on the property, with the City "fully responsible for any and all liability related to operating the farmers' market" during that time. The Closing is moved to November 8, 2014 or before.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached "Third Amendment to Purchase Agreement" and authorize the City Manager's signature (after the fact).

### **THIRD AMENDMENT TO PURCHASE AGREEMENT**

This Amendment ("Amendment") is made effective on \_\_\_\_\_, 2014 ("Effective Date") by and between the **City of Muskegon**, a Michigan municipal corporation, with offices located at 933 Terrace Street, Muskegon, Michigan 49440 ("City"), and **Downtown Muskegon Development Corporation**, a Michigan non-profit corporation, with offices located at 425 W. Western, Muskegon, Michigan 49442 ("DMDC"). City and DMDC, may each be referred to as a "Party" or collectively as "Parties".

#### ***Background***

A. City and DMDC entered into a purchase agreement on August 13, 2013 ("Purchase Agreement") for certain Premises (as defined in the Purchase Agreement). The Premises are being sold be DMDC to City for the purpose of operating a farmer's market in downtown Muskegon.

B. The intent of the Purchase Agreement was to have a Closing (as defined in the Purchase Agreement) upon the completion of construction of certain elements and structures by DMDC. The farmer's market opened on May 3, 2014, however, the Parties were not be able to close prior to such date.

C. The Parties now desire to move the Closing to on or before November 14, 2014, or such other date mutually agreed upon by the Parties. During the time period between May 3, 2014 and the Closing, the Parties desire for the City to operate the farmer's market on the Premises.

**Therefore, for good and valuable consideration, and the mutual promises contained in this Amendment, the Parties agree to amend Purchase Agreement as follows:**

1. **Closing.** The Closing shall occur on or before November 14, 2014, or such other date mutually agreed upon by the Parties.

2. **Operations.** From the date the farmer's market opens on the Premises until Closing, the City shall operate the farmer's market ("Operations Period"). City shall have full use of the Premises during the Operations Period.

3. **Liability.** During the Operations Period, City shall be fully responsible for any and all liability on the Premises related to operating the farmer's market. In addition, City shall include operating the farmer's market on its general liability insurance coverage. Notwithstanding the preceding, DMDC shall be responsible for any liability on the Premises related to its actions, and the actions of its employees or agents.

4. **No Other Modification.** Except as expressly modified by the terms of this Amendment, the Purchase Agreement shall remain in full force and effect. In the event of any inconsistency or conflict between the Purchase Agreement and this Amendment, the provisions of this Amendment shall govern and control.

The Parties have executed this Amendment as of the Effective Date.

[Signatures to appear on the following page]

**CITY:**           **City of Muskegon,**  
                    a Michigan municipal corporation

By: \_\_\_\_\_  
Name: Frank Peterson  
Title: City Manager  
Date: \_\_\_\_\_, 2014

**DMDC:**           **Downtown Muskegon Development Company,**  
                    a Michigan non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**Date: August 12, 2014**  
**To: Honorable Mayor and City Commissioners**  
**From: Engineering**  
**RE: MDOT-City Agreement for Muskegon & Webster**

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**SUMMARY OF REQUEST:**

Authorize staff to sign the agreement with Michigan Department of Transportation accepting Priority Road funding to reconstruct Muskegon & Webster from 9<sup>th</sup> to Spring and adopt a resolution naming the authorized staff.

**FINANCIAL IMPACT:**

None at this time as all elements of the projects are eligible for the awarded 3.3 million, however, some adjustments (needing more money) might be necessary as we proceed with the design and evaluation of utility needs.

**BUDGET ACTION REQUIRED:**

Authorize staff to incorporate the project into the 2014/2015 budget.

**STAFF RECOMMENDATION:**

Authorize staff to sign the agreement/contract with the MDOT and adopt the resolution naming the authorize staff.

**COMMITTEE RECOMMENDATION:**

RESOLUTION \_\_\_\_\_

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE RECONSTRUCTION OF MUSKEGON & WEBSTER AVENUES BETWEEN 9<sup>TH</sup> STREET & SPRING STREET TOGETHER WITH OTHER NECESSARY RELATED WORK ITEMS AND AUTHORIZATION FOR MOHAMMED AL-SHATEL, CITY ENGINEER EXECUTE SAID CONTRACT

Moved by \_\_\_\_\_ and supported by \_\_\_\_\_

Commissioner \_\_\_\_\_ that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **2014-0854** between the Michigan Department of Transportation and the City of Muskegon for the **reconstruction of Muskegon & Webster Avenues between 9<sup>th</sup> & spring** within the City is in the best interests of the City of Muskegon.

**RESOLVED**, that entry by the City into Contract Agreement Number **2014-0854** be and the same is hereby authorized and approved and Mohammed AL-Shatel, City Engineer is authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY

\_\_\_\_\_  
Stephen J. Gawron, Mayor

ATTEST

\_\_\_\_\_  
Ann Cummings, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on \_\_\_\_\_, **2014**. 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 Cummings, City Clerk

**MICHIGAN DEPARTMENT OF TRANSPORTATION**

**CITY OF MUSKEGON**

**CONTRACT**

This Contract is made and entered into this date of \_\_\_\_\_ by and between the Michigan Department of Transportation (MDOT), of 425 West Ottawa Street, P.O. Box 30050, Lansing, Michigan 48909, and the City of Muskegon (AGENCY) of 933 Terrace Street, Muskegon, MI 49443, in accordance with Public Act 34 of 2014 for the purpose of establishing the amount of the allocation from the Priority Roads Investment Program (PRIP) Fund to the AGENCY, and setting forth the services to be provided as a result of such allocation.

The PRIP Fund is to be expended on construction projects. MDOT is responsible for administering these funds.

MDOT and the AGENCY recognize and affirm that the funds provided under this Contract shall not be used for any purpose other than those provided in Section 704 of Public Act 34 of 2014, and as provided herein. It is intended for all work activities to be completed by December 31, 2015.

This Contract sets forth a grant from MDOT to the AGENCY for the completion of the reconstruction of Muskegon Avenue and Webster Avenue from 9<sup>th</sup> Street to Spring Street (PROJECT).

The Parties agree that:

The AGENCY will:

1. Undertake and complete the PROJECT in accordance with the terms and conditions of this Contract.
2. The PROJECT cost will be paid for by a grant of PRIP funds. PRIP funds will be applied to the PROJECT costs at a participation ratio of 100 percent up to an amount not to exceed Three Million Three Hundred Thousand Dollars (\$3,300,000.00). The AGENCY will be responsible for all costs in excess of the funds shown above.

The AGENCY agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The AGENCY also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

4. Submit a copy of Exhibit B to MDOT for review and approval.
5. Certify that the PROJECT shall be in compliance with all applicable laws, ordinances, and codes of the United States, the State of Michigan, and the local government(s) in the area(s) in which the PROJECT is performed and obtain all permits, licenses, and other authorizations that are required for the performance of the PROJECT.
6. Ensure that any unspent above-mentioned funds at PROJECT completion are lapsed back to the PRIP Fund.
7. For auditing processes, all records, including executed contracts, are to be maintained for three years from the date of the project completion date. MDOT, or its representative, may inspect, copy, or audit the Records at any reasonable time after giving reasonable notice.
8. If the construction of the PROJECT is to be contracted, certify that the contracting procedures followed in connection with the administration of the construction contract for the PROJECT were based on an open competitive bid process and that the construction contract for the PROJECT was publicly advertised and awarded on the basis of the lowest responsive and responsible bid in accordance with applicable State and local statutes, regulations, and ordinances. Selection of Consultants and subcontracts will be in conformance with the AGENCY's contracting process.
9. If the construction of the PROJECT is to be contracted, ensure the contractor who is awarded the contract for the construction of the PROJECT has the appropriate bonds/liability insurance.
10. Certify that the PROJECT shall be obligated and construction shall be underway or design work shall be completed by July 1, 2014.

MDOT will:

11. Make one payment of the amount shown in Section 2 to the AGENCY upon receipt of a Request for Payment Form (Exhibit A).
12. May conduct a follow-up review of work activity.

IT IS FURTHER AGREED THAT:

13. Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). The AGENCY is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

14. Each party to this Contract will remain responsible for any claims arising out of the performance of this Contract, as provided by this Contract or by law.

This Contract is not intended to increase or decrease either party's liability for or immunity from tort claims.

This Contract is not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this Contract.

MDOT will not be subject to any obligations or liabilities by contractors of the AGENCY or their subcontractors or any other person not a party to the Contract without its specific consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

15. The parties will consider the PROJECT to be complete when certified by the agency. This certification is not intended to nor does it relieve the AGENCY of any of its obligations and responsibilities herein.
16. This Contract will be in effect from the date of award through the estimated construction completion date on Exhibit A. All documented costs associated with this project are eligible for reimbursement, not to exceed the amount shown in Section 2 of this Contract.
17. Prior to expiration, the time for completion of performance under this Contract may be extended by MDOT upon written request and justification from the AGENCY. Upon approval and authorization by MDOT, a written time extension amendment will be prepared and issued by MDOT. Any such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
18. In connection with the performance of SERVICES under this Contract, the AGENCY (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated June 2011. This provision will be included in all subcontracts relating to this Contract.
19. This Contract may be terminated at such time as may be agreed upon by both parties or by either party giving thirty (30) days written notice to the other party. Furthermore, it

may be modified at any time as agreed upon by both parties. In the event, the AGENCY terminates this Contract; it will make full repayment to MDOT.

20. Failure to submit all required forms and/or failure to comply with Contract terms may result in withholding of future Act 51 funds.
21. In case of any discrepancies between the body of this Contract and any exhibits hereto, the body of this Contract will govern.

22. This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the AGENCY and MDOT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the AGENCY, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

CITY OF MUSKEGON

By: \_\_\_\_\_  
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Title: Department Director



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
LANSING

KIRK T. STEUDLE  
DIRECTOR

July 29, 2014

Dear City of Muskegon:

**MDOT CONTRACT 2014-0854**  
**Priority Road Investment Program Project (PRIP)**

Enclosed are the Contract(s) and other PRIP forms issued between your organization and the Michigan Department of Transportation. Please take the time to read and understand this Contract. If this Contract meets with your approval, please complete the following checklist, and **return** this checklist, the Contract and Exhibit A for each project as soon as possible. **Upon its award you will receive an electronic scan for your files. The original signed Contract will be maintained in CSD files.**

\_\_\_\_\_ **Please do not date the Contract.** MDOT will date the Contract when it is executed. This Contract is **not** executed until it has been signed by all parties. Upon all final approvals the Contract will be sent to the MDOT Director for execution.

\_\_\_\_\_ **Secure the necessary signatures on the Contract.**

\_\_\_\_\_ **Include a certified resolution/authorization.** The resolution/authorization should specifically name the officials who are authorized to sign the Contract. The resolution/authorization must be submitted, even though you may have submitted one in the past.

\_\_\_\_\_ **Return the Contract with the certified resolution/authorization to the attention of Bill Rottiers in the Bureau of Finance, Contract Services Division at the address at the bottom of the page for MDOT execution. A scanned electronic copy of the executed Contract will be forwarded to your attention via e-mail.** Our street address for the use of an overnight carrier, should you need it, is 425 W. Ottawa St., Lansing MI 48933.

\_\_\_\_\_ **Complete and return Exhibit A electronically by email to [DoyleL@Michigan.gov](mailto:DoyleL@Michigan.gov) or include it with the signed Contract**

\_\_\_\_\_ Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). **The CONSULTANT is required to register to receive payments of EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).**

\_\_\_\_\_ **Upon completion of the project complete and return Exhibit B by email to [DoyleL@Michigan.gov](mailto:DoyleL@Michigan.gov)**

If you have any questions regarding the Contract, please feel free to contact Bill Rottiers, Contract Administrator at (517) 373-2895 or by email at [RottiersW@Michigan.gov](mailto:RottiersW@Michigan.gov). If you have any other questions please contact Larry Doyle, LAP Engineer at (517) 335-2233 or by email at [DoyleL@Michigan.gov](mailto:DoyleL@Michigan.gov).

Enclosures: 3

**Date:** July 31<sup>st</sup>, 2014

**To:** Honorable Mayor and City Commissioners

**From:** Director of Public Safety Jeffrey Lewis

**RE: Prosecution Services for Muskegon Police Department**

---

**SUMMARY OF REQUEST:**

The Director of Public Safety requests that the City Commission review and authorize the proposed contract for prosecutorial services required for the police department as it relates to civil infractions and misdemeanor ordinance cases generated by Muskegon Police Department during enforcement efforts. The service time of this proposed contract will be for a one (1) year period, expiration date of July 31<sup>st</sup>, 2015.

Request for prosecutorial service letters were sent to; two (2) law firms on June 10<sup>th</sup>, 2014 outlining the terms and conditions of said services to be provided. Parmenter O'Toole & Muskegon County Prosecutor Office both responded (*see attachments for details of services and costs*).

The Muskegon County Prosecutor forwarded a "flat rate" fee of \$75,000.00, which is a savings over the contract that is now in place with the prosecutor's office. Parmenter O'Toole offered a "flat rate" fee of \$90,000.00. Parmenter O'Toole added additional information that all other city matters would be handled at the current rate until year 2017; information was received, but not considered in the decision to select a firm for specific prosecutorial services.

**FINANCIAL IMPACT:**

Positive impact - proposal forwards a savings over 20% over current legal expenditures for civil infractions & misdemeanor representation.

**BUDGET ACTION REQUIRED:**

N/A

**STAFF RECOMMENDATION:**

Staff recommends approving Muskegon County Prosecutor's Proposal.



Muskegon Fire Division  
770 Terrace Street  
231-724-6795

# Muskegon Department of Public Safety

Jeffrey Lewis  
Director of Public Safety  
933 Terrace Street, Muskegon, MI 49440  
Phone: 231-724-6955 Fax: 231-725-2043

[www.shorelinecity.com](http://www.shorelinecity.com)



Muskegon Police Division  
980 Jefferson  
231-724-6750

June 10, 2014

John Schrier, Attorney  
Parmenter O'Toole  
601 Terrace Street  
Muskegon, MI 49443

Dear John Schrier:

Re: Request for Proposal for Prosecution Services

The City of Muskegon is seeking prosecution services relating to civil infractions and misdemeanor ordinance cases generated by the Muskegon Police Department during enforcement efforts.

Over the past year prosecution services generated approximately seventy four (74) cases per month. We are requesting a quote (*flat rate*) to render annual prosecutorial services to handle and mitigate said civil/criminal cases. The service time of said contract will be in effect for a period of three (3) years, flat rate to be reviewed annually.

Please contact my office if you have any questions or need further information; we are requesting a proposal for services no later than June 24, 2014. Awarded contract to begin on/about August 1, 2014.

Sincerely,

Jeffrey A. Lewis, Director  
Public Safety  
City of Muskegon  
[jeff.lewis@shorelinecity.com](mailto:jeff.lewis@shorelinecity.com)  
231-724-6954

JAL/erp



# Muskegon Department of Public Safety

Jeffrey Lewis  
Director of Public Safety

933 Terrace Street, Muskegon, MI 49440  
Phone: 231-724-6955 Fax: 231-725-2043



Muskegon Fire Division  
770 Terrace Street  
231-724-6795

[www.shorelinecity.com](http://www.shorelinecity.com)

Muskegon Police Division  
980 Jefferson  
231-724-6750

June 10, 2014

DJ Hilson, Prosecutor  
Muskegon County Prosecutor's Office  
990 Terrace Street, Suite 505  
Muskegon, MI 49442

Dear DJ Hilson:

Re: Request for Proposal for Prosecution Services

The City of Muskegon is seeking prosecution services relating to civil infractions and misdemeanor ordinance cases generated by the Muskegon Police Department during enforcement efforts.

Over the past year prosecution services generated approximately seventy four (74) cases per month. We are requesting a quote (*flat rate*) to render annual prosecutorial services to handle and mitigate said civil/criminal cases. The service time of said contract will be in effect for a period of three (3) years, flat rate to be reviewed annually.

Please contact my office if you have any questions or need further information; we are requesting a proposal for services no later than June 24, 2014. Awarded contract to begin on/about August 1, 2014.

Sincerely,

Jeffrey A. Lewis, Director  
Public Safety  
City of Muskegon  
[jeff.lewis@shorelinecity.com](mailto:jeff.lewis@shorelinecity.com)  
231-724-6954

JAL/erp



OFFICE OF THE  
**MUSKEGON COUNTY PROSECUTOR**

**RECEIVED**

JUN 23 2014

MUSKEGON POLICE DEPT.  
CHIEF of POLICE

HALL OF JUSTICE  
FIFTH FLOOR  
990 TERRACE STREET  
MUSKEGON, MICHIGAN 49442

CRIMINAL DIVISION (231) 724-6435  
VICTIM SERVICES (231) 724-6676  
CRIMINAL DIVISION FACSIMILE (231) 724-6685  
[www.co.muskegon.mi.us/prosecutor/](http://www.co.muskegon.mi.us/prosecutor/)

June 23, 2014

Chief Lewis  
Muskegon Department of Public Safety  
933 Terrace Street  
Muskegon, MI 49440

Re: Request for Proposal for Prosecution Services

Dear Chief Lewis:

In response to your letter dated June 10, 2014 we are writing to make an offer for contracted legal services for City of Muskegon ordinance prosecutions.

-A flat fee of \$75,000.00 per year for three continuous years.

Alternatively, our office is willing to agree to a flat rate of \$84.50 per case. This amount is determined by taking the \$75,000 amount and dividing it by last year's number of cases (888).

Our office will provide all representation and consultation regarding any city ordinance violations. Our office will also designate a single assistant prosecutor to be your contact person for any case or issues regarding enforcement or prosecution. Your contact person will be our Chief Assistant, Timothy M. Maat. You will also have access to the other 14 assistant prosecutors to provide legal counsel and representation. Our office will also provide all victim/witness services in such cases.

Your office will also have 24 hour access to our on call prosecutor and any search warrants and other legal matters will be handled by our office regardless of the time of day.

Our current contract with the City allows us to effectively coordinate our curfew enforcement which is part of our "Safe Days, Quiet Night's" initiative. Likewise, we believe that aggressive city ordinance enforcement regarding blighted property, loitering and other types of ordinances is one of the best ways to reduce violent crime and drug activity. We can assure you that any case that is important to you will be important to us and aggressively pursued. If you have any concerns regarding a particular case, you may contact me personally or our chief assistant for resolution.

Currently, we fund an assistant prosecutor and a support person from the City Contract. The reason we are reducing our contract price from previous years, is we believe keeping this contract will not only help to continue funding those positions, but also strengthen the partnership between our two agencies. We have sought additional funding sources to assist in recouping the reduced contract amount.

Our office is committed solely to the prosecution of criminal offenses and therefore has developed an expertise that benefits the City of Muskegon. We also believe that the consolidation of services is beneficial since we already handle state complaints that arise from the City of Muskegon.

In a time of budget deficits we all are required to do more with less and we believe that continuing the partnership between our offices will better serve the citizens of Muskegon and make our community safer.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DJ Hilson', with a long horizontal flourish extending to the right.

DJ Hilson  
Muskegon County Prosecutor

**PARMENTER O'TOOLE**

*Attorneys at Law*

601 Terrace Street • P.O. Box 786 • Muskegon, Michigan 49443-0786  
Phone 231.722.1621 • Fax 231.722.7866 or 231.728.2206  
[www.Parmenterlaw.com](http://www.Parmenterlaw.com)

RECEIVED

JUN 18 2014

MUSKEGON POLICE DEPT.  
CHIEF of POLICE

June 17, 2014

Jeff Lewis  
Director of Public Safety  
City of Muskegon  
933 Terrace Street  
Muskegon, MI 49442

**RE: Prosecution Services for Muskegon Police Department**

Dear Director Lewis:

In response to your letter of June 10, 2014, we appreciate the opportunity to offer our services and handle the City's prosecution services relating to civil infractions and misdemeanor ordinance cases generated by the Muskegon Police Department during enforcement efforts.

We have handled prosecution services for the Muskegon Police Department for a number of years and continue to be able to provide this service. More important than the cost of the service, you can be assured that your satisfaction is our primary concern. (Our involvement in City prosecutions insured that the City's interest were paramount and fulfilled.) You can be assured that City staff will be provided with responsive legal service. By our handling of prosecution services for the Muskegon Police Department, we will have multiple tools to address the City's concerns. City staff will not have to rely on attorneys that are not interested in the City's priorities.

Our contract with the City expires December 31, 2014. We would be willing to coordinate the timing of that contract with this proposal and change the dates to conform to the City's fiscal year. Parmenter O'Toole's complete proposal is as follows:

**Parmenter O'Toole proposes to handle city prosecutions for a flat fee of \$7,500 per month for the period August 1, 2014 through July 31, 2015 and extend our existing contract for 6 months at the current rate.**

Parmenter O'Toole values the relationship it has with the City. We look forward to continuing that relationship and assisting the City. We are hopeful this offer is responsive to the City's needs.

Very truly yours,



John C. Schrier  
**PARMENTER O'TOOLE**  
*Attorneys at Law*

Direct Dial & Fax: (231) 722-5401

E-mail: [jcs@parmenterlaw.com](mailto:jcs@parmenterlaw.com)

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**PARMENTER O'TOOLE**

*Attorneys at Law*

601 Terrace Street ■ P.O. Box 786 ■ Muskegon, Michigan 49443-0786  
Phone 231.722.1621 ■ Fax 231.722.7866 or 231.728.2206  
[www.Parmenterlaw.com](http://www.Parmenterlaw.com)

June 30, 2014

**VIA E-MAIL ONLY**

Jeff Lewis  
Director of Public Safety  
City of Muskegon  
933 Terrace Street  
Muskegon, MI 49442

**RE: Prosecution Services for Muskegon Police Department**

Dear Director Lewis:

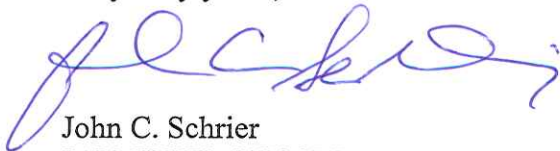
As a follow-up to our earlier proposal, you have asked us to be more specific as to our fees in the second and third year of a proposed contract and the savings on our existing contract. Specific to those questions we are willing to commit as follows:

- 1) **We have previously offered to handle city prosecutions for a flat fee of \$7,500 per month for the period August 1, 2014 through July 31, 2015;**
- 2) **Parmenter O'Toole proposes to handle city prosecutions for a flat fee of \$7,000 per month for the period August 1, 2015 through July 31, 2017; and**
- 3) **Parmenter O'Toole proposes to handle all other city matters at the current rate through December 31, 2017.**

While our fees for city prosecutions is greater than quoted by the Muskegon Prosecutor (approximately \$33,000), our willingness to freeze our fees in all other aspects of representing the City will provide a savings to the City in excess of \$40,000. Recognizing that attorney fees are not a part of any particular department's budget, we believe our proposal is more responsive to the City's overall budgetary needs.

Parmenter O'Toole values the relationship it has with the City and looks forward to continuing that relationship and assisting the City. We are hopeful this offer is responsive to the City's needs and would be glad to discuss it in further detail.

Very truly yours,



John C. Schrier  
PARMENTER O'TOOLE  
Attorneys at Law

Direct Dial & Fax: (231) 722-5401

E-mail: [jcs@parmenterlaw.com](mailto:jcs@parmenterlaw.com)

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**Date: August 12, 2014**  
**To: Honorable Mayor and City Commissioners**  
**From: City Manager**  
**RE: Property Tax Settlement Agreement with  
Consumers Energy B.C. Cobb Plant**

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SUMMARY OF REQUEST: The City and Consumers Energy wish to avoid any additional cost of a tax appeal before the Michigan Tax Tribunal. Staff has come to a tentative agreement with Consumers to stipulate a true cash value for the property located at 151 North Causeway. Attached is a property tax settlement agreement that states the following:

2014 Assessed Value agreed to - \$24,000,000

2015 Assessed Value agreed to - \$20,000,000

2016 Assessed Value agreed to - \$11,000,000

In recognition of the ongoing financial cost to the City for essential services, Consumers will make the following payments:

\$100,000 on October 1, 2014

\$100,000 on July 1, 2015

\$25,000 on July 1, 2016

These payments are conditioned upon the City's compliance with all other provisions of the agreement, including payment of any refunds and interest owed under the Stipulation for Entry of Consent Judgment.

FINANCIAL IMPACT: None. This is a budgeted item.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To authorize the Mayor and Clerk to sign the agreement as written.

**PROPERTY TAX SETTLEMENT AGREEMENT**  
**CONSUMERS ENERGY B.C. COBB PLANT**

This Agreement is made effective as of \_\_\_\_\_, 2014 (the "Effective Date"), between City of Muskegon, a Michigan municipal corporation with its principal office at 933 Terrace, Muskegon, Michigan ("City"), and Consumers Energy, a Michigan corporation with its principal office at One Energy Plaza, Jackson, Michigan, 49201-2277 ("Consumers Energy").

**1. Recitals.**

**1.1 Property Ownership.** Consumers Energy presently owns various parcels of real and personal property in the City. Consumers Energy owns real property, including land, a coal-fired power plant and other related improvements with an address of 151 North Causeway, Muskegon, Michigan. The real property located at this address is subject to assessment by the City under parcel number 61-24-117-300-0001-00 and is the location of the B.C. Cobb Power Plant (the "Plant").

**1.2 Plant Closing.** As of the date of this agreement, the Plant does not have Selective Catalytic Reduction, Activated Carbon Injection, Flue Gas Desulfurization, or carbon sequestration technologies. Under federal and/or state environmental regulations, some or all of these technologies would be required for continued operation beyond April of 2016. As a direct result of these environmental regulations, and because it is not economic to retrofit the Plant with these technologies, Consumers Energy announced that it intends to idle the Plant by April of 2016.

**2. Valuation for Real Property taxes.** On or around May of 2014, Consumers Energy timely filed a tax appeal before the Michigan Tax Tribunal challenging the 2014 Tax Year true cash value, assessed value, and taxable value. The case is captioned as *Consumers Energy v. City of Muskegon*, MTT Docket No. 14-002061-TT. Both parties desire to avoid the additional cost of any tax appeal during the remaining period until the scheduled closing of the Plant. To that end, City and Consumers Energy hereby agree to stipulate a True Cash Value for the property located at 151 North Causeway and subject to assessment under parcel number 61-24-117-300-0001-00, including the Plant, of \$24,000,000 as of December 31, 2013, \$20,000,000 as of December 31, 2014, and \$11,000,000 as of December 31, 2015. The parties agree that a 2014 Stipulation for Entry of Consent Judgment, attached as Exhibit B, must be entered by the Tax Tribunal in order to execute this agreement.

**3. Essential City Services.** In recognition of the ongoing financial cost to the City for the provision of essential city services, Consumers Energy will make the following payments to the City: \$100,000 on October 1, 2014, \$100,000 on July 1, 2015 and \$25,000 on July 1, 2016. These payments are conditioned upon the City's compliance with all other provisions of this agreement, including payment of any refunds and interest owed under the Exhibit B Stipulation for Entry of Consent Judgment.

4. **Miscellaneous.**

4.1 **Governing Law.** 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.

4.2 **Entire Agreement.** This Agreement shall constitute the entire agreement, and shall supersede any other agreements, written or oral, that may have been made or entered into, by and between the parties with respect to the subject matter of this Agreement and shall not be modified or amended except in a subsequent writing signed by the party against whom enforcement is sought.

4.3 **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties and their respective legal representatives, permitted successors and assigns.

4.4 **Interpretation.** City and Consumers Energy each agree that this Agreement was drafted and negotiated by both of them so neither party will have its terms construed against it as the drafter of this Agreement.

4.5 **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last of the parties identified below executes this Agreement and that date will be inserted in the introductory sentence to this Agreement.

**City of Muskegon**

By: \_\_\_\_\_  
Name: Stephen Gawron  
Title: Mayor  
Date: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Name: Ann Marie Becker  
Title: City Clerk  
Date: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Name: Donna VanderVries  
Title: City Assessor  
Date: \_\_\_\_\_, 2014

**Consumers Energy Company**

By: \_\_\_\_\_  
Name: Theodore J. Vogel  
Title: Vice President & Chief Tax  
Counsel  
Date: \_\_\_\_\_, 2014

**STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
MICHIGAN TAX TRIBUNAL**

CONSUMERS ENERGY COMPANY,  
Petitioner,

v

MTT Docket No. 14-002061

MUSKEGON,  
Respondent.

\_\_\_\_\_/

**STIPULATION FOR ENTRY OF CONSENT JUDGMENT**

1. The case is pending in the X Entire Tribunal OR \_\_ Small Claims Division.
2. Property Parcel No: 61-24-117-300-0001-00.
3. The values for the property identified above as established by Respondent's Board of Review are:

| <b>Tax<br/>Year</b> | <b>True Cash<br/>Value</b> | <b>Assessed<br/>Value</b> | <b>Taxable<br/>Value</b> |
|---------------------|----------------------------|---------------------------|--------------------------|
| 2014                | \$40,000,000               | \$20,000,000              | \$20,000,000             |

4. The values for the property identified above as stipulated by the parties for settlement purposes are:

| <b>Tax<br/>Year</b> | <b>True Cash<br/>Value</b> | <b>State Equalized<br/>Value</b> | <b>Taxable<br/>Value</b> |
|---------------------|----------------------------|----------------------------------|--------------------------|
| 2014                | \$24,000,000               | \$12,000,000                     | \$12,000,000             |

5. If stipulation addresses tax years other than the tax year originally appealed or tax years added through motions to amend that have been granted by the Tribunal, list the separate facts upon which the parties rely to invoke the Tribunal's authority over those tax year or years (attach additional page if necessary):
6. List separately any special terms or conditions being proposed by the parties that would affect the execution of this Consent Judgment

including, but not limited to, the joint payment of the refund, the waiver of interest, etc.:

**IT IS FURTHER ORDERED AND ADJUDGED that refunds shall be made payable to the Petitioner, Consumers Energy Company, and sent to Brian VanBlarcum, Corporate Tax – Property Tax, One Energy Plaza, Jackson, MI 49201. Calculations of the refund amount shall also be sent to the same address.**

HONIGMAN MILLER  
SCHWARTZ AND COHN LLP  
Attorneys for Petitioner,

PARMENTER O'TOOLE  
Attorneys for Respondent,

By: \_\_\_\_\_  
Steven P. Schneider (P46605)  
660 Woodward Avenue  
2290 First National Bldg.  
Detroit, Michigan 48226-3506  
(313) 465-7544

By: \_\_\_\_\_  
John Schrier, Esq. (P31556)  
601 Terrace Street  
Muskegon, MI 49440-  
(231) 722-1621

Dated: August \_\_, 2014

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Carolee Kvoriak Cameron (P57484)  
Senior Tax Attorney for CMS Energy Corp  
One Energy Plaza  
Jackson, MI 49201  
(517) 788-2209

Dated: August \_\_, 2014

**Date: June 10, 2014**  
**To: Honorable Mayor and City Commissioners**  
**From: CITY CLERK'S OFFICE**  
**RE: Marihuana Ordinance**

---

SUMMARY OF REQUEST: The City Commission issued a moratorium on the current marihuana ordinance to give staff and counsel the opportunity to review the State law and make changes to be in conformance. An amended ordinance is attached for your review.

The ordinance will require dispensaries and caregivers to obtain a license with the City Clerk's Office. The City Clerk will serve as the medical marijuana officer of the community. Inspections will be required of the Building Inspector and Fire Marshal. Applicants will be responsible to pay all inspection fees as well as a \$1500 application fee and a \$1,100 renewal fee. Caretakers growing from a residence will be subject to a \$100 application fee and annual renewal fee. Signage will not be allowed.

Facilities used by a primary caregiver are permitted in the following zoning districts: B-2, B-3, B-4, B-5, MC, I-1 and I-2. No facility may be located within 1000 feet of a preschool, elementary school, middle school or high school.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the ordinance and authorize the fees as outlined above be added to the fee schedule.

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

**[8-6-14 revision]**

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 34, Article IV of the Code of Ordinances of the City of Muskegon, Michigan is amended in its entirety, replacing sections 34-101 through 34-115 with the following:

**Sec. 34-101. Purpose and Intent.**

It is the intent of this ordinance to give effect to the intent of Initiated Act 1 of 2008, MCL 333.26421, et seq, (the Act) as approved by the electors, and not to determine and establish an altered policy with regard to marihuana. The act authorizes a narrow exception to the general rule and state policy that the cultivation, distribution, and use of marihuana amount to criminal acts. It is the further intent of this ordinance to protect the public health, safety, and general welfare of persons and property, and to issue licenses. It is the further intent of this ordinance to comply with the Act while concurrently attempting to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably expected to occur in the absence of the provisions of this ordinance. This ordinance is designed to recognize the fundamental intent of the Act to allow the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation, distribution, and use of marihuana for medical purposes; and to regulate around this fundamental intent in a manner that does not conflict with the Act so as to address issues that would otherwise expose the community and its residents to significant adverse conditions, including the following: adverse and long-term influence on children; substantial serious criminal activity; danger to law enforcement and other members of the public; discouragement and impairment of effective law enforcement with regard to unlawful activity involving the cultivation, distribution, and use of marihuana; the creation of a purportedly lawful commercial enterprise involving the cultivation, distribution and use of marihuana that is not reasonably susceptible of being distinguished from serious criminal enterprise; and, the uninspected installation of unlawful plumbing and electrical facilities that create dangerous health, safety, and fire conditions.

This ordinance permits authorization for activity based on the Act. Nothing in this ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, cultivation, growth, possession or control of marihuana not in strict accordance with the express authorizations of the Act and this ordinance; and, nothing in this ordinance shall be construed to undermine or provide immunity from federal law as it may be enforced by the federal or state government relative to the cultivation, distribution, or use of marihuana. Thus, the authorization of activity, and the approval of a license under this ordinance shall not have the effect of superseding or nullifying federal law applicable to the cultivation, use, and possession of marihuana, and all applicants and grantees of licenses are on notice that they may be subject to prosecution and civil penalty, including forfeiture of property.

## **Sec. 34-102. Definitions.**

**Act** means Initiated Law of 2008, MCL 333.26421, et seq., and Michigan Administrative Rules, R 333.101, et seq.

**Department** means the State of Michigan Department of Community Health.

**Dispensary** means one or more primary caregivers growing, storing, delivering, transferring, and/or providing qualifying patients with Medical marihuana out of a building or structure.

**Qualifying patient** or **patient** means a person as defined under MCL 333.26423(h) of the Act, who has been issued and possesses a Registry Identification Card under the Act.

**Primary caregiver** or **caregiver** means a person as defined under MCL 333.26423(g) of the Act, and who has been issued and possesses a Registry Identification Card under the Act.

**Registry Identification Card** means the document defined under MCL 333.26423(i) of the Act.

**Distribution** means the physical transfer of any amount of marihuana in any form by one person to any other person or persons, whether or not any consideration is paid or received.

**Distributor** means a primary caregiver who engages in any one or more acts of Distribution.

**Facility** or **Premises** means a commercial business having a separate or independent postal address, one private office having a separate or independent postal address, one single family residence having a separate or independent postal address, one apartment unit having a separate or independent postal address, one condominium unit having a separate or independent postal address, or one free-standing industrial building having a separate or independent postal address.

**Medical Marihuana Home Cultivation Operation** means the cultivation of marihuana by a registered patient within a single family dwelling that is the registered patient's primary residence and which cultivation is in conformity with the restrictions and regulation contained in the Act.

**Marihuana** means the substance or material defined in section 7106 of the public health code, 1976 PA 368, MCL 333.7106.

**Principal residence** means the place where a person resides more than half of the calendar year.

## **Sec. 34-103. Licensure requirements.**

(1) The cultivation of marihuana by a caregiver or any other person permitted under the Act, and the provision of caregiver services relating to medical marihuana use, shall be permitted in accordance with the Act. No cultivation, distribution, and other assistance to patients shall be lawful in this community at a location unless and until such

location for such cultivation, distribution, and assistance shall have been licensed under this ordinance.

(2) The license requirements set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law.

(3) Each caregiver operating at a facility or dispensary shall obtain a separate license prior to operating.

(4) The following locations shall require licensure:

- (a) A facility used for the cultivation of marihuana by caregivers or patients permitted under the Act;
- (b) A dispensary or facility used for distribution;
- (c) Any facility used to provide any other assistance to patients by caregivers permitted under the Act relating to medical marihuana;
- (d) A location other than a patient's principal residence where a patient cultivates or uses marihuana exclusively for such patient's personal consumption.
- (e) The principal residence of a patient where marihuana is cultivated or used exclusively for such patient's personal consumption.

(5) Operating as a primary caregiver is prohibited in a residence.

(6) Any portion of the structure where energy usage and heat exceeds typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the fire department to insure compliance with the City's adopted International Fire Code.

(7) The premises shall be open for inspection upon request by the City's appointed inspectors, building officials, fire department, and/or law enforcement officials for compliance with all applicable laws and rules, during the stated hours of operation/use and as such other times as anyone is present on the premises.

#### **Sec. 34-104. Application for license.**

(1) An application for an annual license or renewal under this section shall be submitted to the City Clerk. A license shall be issued or renewed upon payment of the required fee and submission of a completed application in compliance with the provisions of this article, and compliance with all provisions and requirements of this article.

(2) An application renewal shall be submitted annually. Application to renew a license under this ordinance shall be filed at least 30 days prior to the date of expiration. Such renewal shall be accompanied by the annual fee.

(3) An application shall include the names of all caregivers operating in the same facility or on the same premises, with proof of registration, including current Registry Identification Card, pursuant to the Act.

(4) The applicant and all Registry Identification Card holders shall not have any felony convictions within the past ten years and shall not have ever been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. If a criminal background check reveals any such felony conviction, no license shall be issued and/or an existing license shall be revoked.

(5) The application shall include the marihuana facility history of the applicant; whether such person has had a business license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.

(6) No license shall be issued and/or an existing license may be revoked if applicant or business owes to the City any outstanding back taxes, fines, fees or liens.

(7) Applications shall include the address of the precise premises at which there shall be possession, cultivation, distribution or other assistance in the use of marihuana.

(8) If the premises are rented and not owned by the applicant, the landlord/owner of the premises must sign the application acknowledging that they are aware of the legal growth, storage and/or distribution of medical marijuana on the premises.

(9) Specify the name and address of the place where all unused portions of marihuana plants cultivated in connection with the use of marihuana or caregiver activity at the premises shall be disposed.

(10) Describe the enclosed, locked facility in which any and all cultivation of marihuana is proposed to occur, or where marihuana is stored, with such description including: location in building, precise measurements in feet, of the floor dimensions and height; the security device for the facility; and in the case of facilities with more than one primary caregiver, the name of the single primary caregiver designated to solely oversee and have access to each separate enclosed, locked facility.

(11) Describe all locations in the premises where a caregiver or other person authorized under the Act shall render assistance to a qualifying patient.

(12) Specify the number of patients to be assisted by each caregiver, including the number of patients for whom marihuana is proposed to be cultivated, and the number of patients to be otherwise assisted on the premises, and the maximum number of plants to be grown or cultivated at any one time.

(13) For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation of marihuana plants.

(14) The initial application fee and renewal fees shall be established by special resolution of the City Commission; thereafter they shall be established by annual budget resolution of the City Commission.

(15) In the case of corporations, partnerships, non-profit organizations, or other business types, the applicant shall be the highest level official or employee of the entity such as, board President, Chief Executive Officer, Executive Director, or comparable position.

(16) If the applicant is a corporation, a copy of the articles of incorporation and current corporation records disclosing the identity and residential addresses of all directors, officers, and shareholders shall be included. Include the address of the corporation itself, if different from the address of the marihuana dispensary or growing/manufacturing facility and the name and address of the resident agent for the corporation.

(17) If the applicant is a partnership, the names and residence address of each of the partners and the partnership itself, if different from the address of the marihuana dispensary or growing/manufacturing facility, and the name and address of the resident agent.

#### **Sec. 34-105. Number of Marijuana Plants.**

(1) In a patient's principal residence, there shall be not more than twelve marihuana plants per licensed patient being cultivated at any one time.

(2) At a facility at which a caregiver cultivates marihuana for use by patients, there shall not be more than twelve marihuana plants being cultivated at any one time per patient, and in no event more than seventy-two marihuana plants being cultivated at any one time per caregiver (which assumes cultivation for five patients, plus an additional

twelve plants if the caregiver is also a patient that has not designated a caregiver to assist in providing medical marihuana).

**Sec. 34-106. Locations**

(1) Facilities used by a primary caregiver are permitted in the following zoning districts: B-2, B-3, B-4, B-5, MC, I-1 and I-2.

(2) No facility may be located within 1,000 feet of a preschool, elementary school, middle school or high school. Measurements for purposes of this section shall be made from property boundary to property boundary.

**Sec. 34-107. No Signs or Advertising.**

(1) The distribution of marihuana is generally unlawful, and the Act does not authorize any activity such as a “dispensary.” Reading the Act as a whole, the activities of caregivers are interpreted as being limited to private and confidential endeavors. Moreover, the location and identity of a caregiver may be readily known to his or her patients. Accordingly, there shall be no signage identifying a facility, dispensary or any place where a caregiver is operating.

(2) Unless conducted as part of a related licensed professional medical or pharmaceutical practice, caregiver activity shall not be advertised as a “clinic,” “hospital,” “dispensary,” or other name customarily ascribed to a multi-patient professional practice.

**Sec. 34-108. Primary caregiver operations.**

The following additional standards shall apply to all primary caregiver operations:

(1) Shall not be operated from a business which sells alcoholic beverages.

(2) The establishment shall be designed, operated, and maintained at all times consistent with responsible business practices and so that no excessive demands shall be placed upon public safety services, nor any excessive risk of harm to the public health, safety, or sanitation, interference with vehicular or pedestrian traffic or parking, or the continuance or maintenance of any unlawful conduct, public nuisance, or disorderly conduct either within the establishment or on or about the adjacent businesses and public streets, alleys, parks, parking facilities, or other areas open to the public. The establishment shall make reasonable effort to report to authorities any unlawful conduct that is observed from the premises.

(3) No drive-through facilities shall be permitted.

(4) All transfers and deliveries of medical marihuana to qualifying patients must occur within the structure out of public view.

(5) The consumption of medical marihuana on the premises is prohibited.

**Sec. 34-109. Medical Marihuana Home Cultivation Operation.**

In addition to the requirements of home occupations outlined in the City's zoning ordinance, patients who chose to cultivate their own medical marijuana at home shall be subject to the following requirements:

(1) All use of marijuana on the premises shall comply with the Act at all times.

(2) All medical marijuana shall be contained within an enclosed, locked facility inside a primary or accessory building.

(3) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the building in which electrical wiring, lighting, storage and/or watering devices that support the cultivation, growing or harvesting of marihuana are located.

(4) The City Clerk shall coordinate electrical, fire, mechanical, plumbing inspectors (and any other inspector(s) deemed necessary under the circumstances) with regard to site of such cultivation for the purpose of determining whether all lights, plumbing, equipment, and all other means used to facilitate the cultivation of marihuana plants is in accordance with all applicable codes.

(5) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential levels between the hours of 11 pm and 7am shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties or vehicles on adjacent right of ways.

**Sec. 34-110. Use of land in accordance with approved application.**

(1) If approved, all use of property shall be in accordance with an approved license application, including all information and specifications submitted by the applicant in reliance on which the application shall be deemed to have been approved.

(2) Any facility that exists on the effective date of this ordinance shall cease operations and may make application for and receive approval to continue to operate. An application for such existing operations must be filed within fifteen days following the effective date of this ordinance.

**Sec. 34-111. No Vested Rights**

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment of this ordinance.

**Sec. 34-112. Effect of license; suspension; penalties; daily violation.**

(1) A license is valid only for the location identified on the license and cannot be transferred to another location within the city without a new application.

(2) A license does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the Act or other violations not protected by the Act.

(3) Compliance with city ordinances and state statutes is a condition of maintenance of a license and a license may be suspended for cause pursuant to the provisions of this chapter.

(4) Suspension of a license is not an exclusive remedy and nothing contained herein is intended to limit the city's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by the Act.

(5) Each day that a person shall conduct a primary caregiver operation or Medical Marihuana Home Cultivation Operation without a license or allow, operate, or assist in said operation shall constitute a separate offense.

(6) A violation of any section of this article is a misdemeanor.

**Sec. 34-113. Non-renewal revocation.**

The City Clerk may choose to not renew or to revoke a license based on any of the following:

(1) A failure to meet the conditions or maintain compliance with the standards established by this division in reference to applications for a new license or the renewal of an existing license; or

(2) One or more violations of any city ordinance, state or federal law or regulation, on the premises; or

- (3) Maintenance of a nuisance on the premises; or
- (4) A demonstrated history of excessive calls for public safety (police, fire, and EMS) originating from the premises, being three or more calls in any 30 day period; or
- (5) Nonpayment of real and/or personal property taxes, fines, fees or liens owed to the City; or
- (6) Failure to comply with any City adopted building or fire codes.

**Sec. 34-114. Appeals Process**

If an applicant or licensee chooses to appeal denial of a license or revocation of a license, the applicant or licensee can enter in a written appeal to the City Clerk's office using a city generated form including the appellants signature, the requirement or decision from which the appeal is made, and shall state the specific grounds on which the appeal is based. Appeals shall be filed within 30 days of the decision in question. City Commission shall consider the appeal within 30 days of the receipt of the appeal.

**Sec. 34-115. Severability**

If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this ordinance and the application of such provision to other persons, firms, corporation, legal entities, or circumstances by such shall be confined in its operation to the clause, sentence, section, paragraph, or part of this ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to the legislative intent of this body that the ordinance would have been adopted had such invalid or unconstitutional provisions have not been included in this ordinance.