

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 28, 2019 @ 5:30 P.M.

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

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. Authorization to Sign Community Housing Development Organization (CHDO) Agreements** Community & Neighborhood Services
 - C. Aggregates, Highway Maintenance Materials and Concrete** Department of Public Works
 - D. Contract for Mowing, Trash, and Brush Pickup** Public Safety
 - E. Halaula Hawaiian Ice Shack Concession/Business Contract for City of Muskegon Parks** Department of Public Works
 - F. Trespassing Ordinance (Amendment)** Public Safety
 - G. Disorderly Conduct Ordinance (Amendment)** Public Safety
 - H. Zoning Ordinance Amendment – Critical Dunes** Planning & Economic Development
- ☐ **PUBLIC HEARINGS:**
- ☐ **COMMUNICATIONS:**
- ☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

- A. Amendment to the Form Based Code Section of the Zoning Ordinance** Planning & Economic Development
- B. Rezoning of Several Parcels in the Lakeside Neighborhood** Planning & Economic Development
- C. 2019 CDBG/HOME Budget Recommendations** Community & Neighborhood Services
- D. Convention Center Development Agreement Changes** City Manager
- E. Sale of City Property at 1246 Fifth, 1252 Fifth, and 1258 Fifth** Planning & 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 7-1-1-22 TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: May 24, 2019

Here is a quick outline of the items on our agenda:

1. Under the Consent Agenda, we are asking the Commission to consider the following:
 - a. Approval of meeting minutes from the most-recent City Commission meeting.
 - b. Authorization to sign our CHDO agreement with Community EnCompass to construct affordable housing in the Nelson Neighborhood.
 - c. Approval of the annual bid for highway materials used by the DPW.
 - d. Approval of the mowing, trash, and brush pick up contract with Earth Creations LLC. They have been our contractor for more than a decade. We did receive two bids for this work.
 - e. Approval of a concessions agreement with Halaula Hawaiian Ice Shack to operate in Muskegon Parks. We will receive \$1,000 base rent plus 5% of gross sales.
 - f. We are recommending that the Commission amend its trespassing ordinance.
 - g. We are recommending that the Commission amend its Disorderly Conduct Ordinance.
 - h. We are recommending that the City Commission approve amendments to the critical dune ordinance as recommended by both the State DEQ and the City Planning Commission.
2. Under the New Business, we are asking the Commission to consider the following:
 - a. We are recommending that the Commission concur with the Planning Commission's recommendation to amend the Form Based Code section of the Zoning Ordinance. We made this change to accommodate the use of Form Based Code elements in the Lakeside area.
 - b. We are recommending that the Commission concur with the Planning Commission's recommendation to rezone a number of parcels in Lakeside to various levels of Form Based Code. This is related to Item a.
 - c. We are recommending that the Commission accept the staff recommended CDBG and HOME budgets.

- d. We are seeking Commission concurrence with the convention center development agreement changes recommended by Muskegon County and Parkland Properties. I have attached two memos. The proposed changes are as follows:
 - i. Extend the requirement for Parkland Acquisitions Two, LLC to levy the 44% self-assessment from to December 31, 2050, or the expiration of the convention center debt, whichever is sooner;
 - ii. Reduce the minimum square footage of the multi-purpose hall in the Convention Center to 17,500 square feet;
 - iii. Remove any requirements that contractors pay their employees prevailing wages.

Please note that per my previous memo, we intend to implement a local preference that provides qualified contractors up to 5% preference for hiring local workers.

- e. We are recommending that the Commission authorize the sale of three vacant City Lots for \$3,600 to West Urban Properties LLC. The developer will combine the lots and then split them to accommodate two custom homes.

Let me know if you have any questions/comments/concerns

Frank

Date: May 21, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve the May 13, 2019 Worksession and May 14, 2019 Regular Meeting minutes.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, May 13, 2019
5:30 p.m.
City Commission Chambers

MINUTES

2019-36

Present: Mayor Gawron, Commissioners Turnquist, Warren, Hood, Johnson, German, and Rinsema-Sybenga.

Absent: None.

Purchase Agreement Extension - 1490 Lakeshore Drive

Staff is seeking permission to enter into a purchase agreement to sell the city-owned property at 1490 Lakeshore Drive. The potential developer has been working with City staff, the DEQ, and Amoco/BP to resolve the existing environmental issues on the site. The prognosis for an amicable resolution is good, but it may take a number of years. As such, staff is seeking a five year agreement.

This item has been placed on the May 14, 2019 City Commission meeting for consideration.

Arena Management - Arc Arena Management

Staff is seeking approval with Arc Arena Management to undertake the daily management of the LC Walker Arena. Matt Gongalski and Arc Arena Management have been managing aspects of the arena for the past year. With the departure of the previous arena manager, staff is recommending that Arc be appointed to fill that role.

This item has been placed on the May 14, 2019 City Commission meeting for consideration.

Marina Management Agreement

Staff has been working with the developer of Hartshorn Marina Village to create a plan to co-manage the marina and the condominium association. The two assets will have many of the same users and will share many of the same amenities. Consistency in management is important to both organizations. Staff is recommending approval of the marina management agreement. It is expected the agreement will be cost-neutral compared to the city's previous years' management expenses.

This item has been placed on the May 14, 2019 City Commission meeting for consideration.

Book Review

The Planning Department has purchased copies of the book, Suburban Nation, by Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck for each Commissioner. The first two authors of this book are also the founders of the consulting firm, DPZ, who completed the plans for the Windward Pointe development.

The book is very informative. The authors have written in a way that makes complicated topics easy to understand. It is full of examples and photos that illustrate important points. The intent is to present topics from the book at upcoming work sessions. Because the city is in the midst of so much development, the hope is to be able to provide Commissioners with further understanding of planning principles to better inform decisions.

Parks & Streets Capital Request

Leo Evans, Public Works Director, gave a PowerPoint presentation giving an overview of the needs of the parks and local streets. Commissioners discussed the possibility of asking the public to consider a millage.

Prohibition of Sale and the Consumption of Marihuana in Public Places (Sec 58-4)

The Director of Public Safety requests that the Commission consider approving the prohibition of sale and consumption of marijuana in public places.

A public place is considered any places owned, occupied, or managed by the City of Muskegon.

The penalty is a civil infraction as prescribed by MCL.333.27965.

This ordinance does not supersede rights and obligations with the respect to the transfer or consumption of marihuana on private property to the extent authorized by the person who owns, occupies, or operates such property and with the respect to the use of marijuana for medicinal purpose.

This item has been placed on the May 14, 2019 City Commission meeting for consideration.

Recreational Marihuana Q & A

Mike Franzak, Planning Director, presented the Q&A on Recreational Marihuana produced by the Michigan Municipal League.

Public Participation

Roger Rappaport, 339 Houston, is concerned with closing Fourth Street unless the City opens Fifth Street.

Any Other Business

There was general discussion about other items on the regular meeting agenda. Commissioners were encouraged to ask any questions they had for the City Manager at this meeting, as he would not be present at the Regular Meeting on May 14, 2019.

Warren left at 9:25 p.m., German left at 9:40 p.m., Hood left at 9:55 p.m.

The Worksession meeting adjourned at 10:00 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 14, 2019 @ 5:30 P.M.

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

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, May 14, 2019, Pastor Darrin Longmire, Forest Park Covenant 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 J. Gawron, Vice Mayor Eric Hood, Commissioners Ken Johnson, Byron Turnquist, Debra Warren, Dan Rinsema-Sybenga, and Willie German, Jr., Acting City Manager LeighAnn Mikesell, City Attorney John Schrier, and City Clerk Ann Meisch.

INTRODUCTIONS/PRESENTATION:

A. Recognition of Paul Billings Outstanding Citizen Recipient for 2018

Mayor Stephen J. Gawron and the City Commission recognized Mr. Paul Billings for being selected as the 2018 Outstanding Citizen Recipient. Paul Allen "P.A." Billings is described as an advocate for the community, a visionary, and philanthropist.

2019-37 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve minutes of the April 23, 2019 Regular Meeting.

FINANCIAL IMPACT: None

BUDGET RECOMMENDATION: None

STAFF RECOMMENDATION: Approval of the minutes.

B. 2019-2020 Michigan Municipal League Membership Dues City Clerk

SUMMARY OF REQUEST: Approval to pay the 2019-2020 MML dues in the

amount of \$10,206. This is an increase of \$239.

FINANCIAL IMPACT:

MML Dues	\$9,278
Legal Defense Fund	<u>\$ 928</u>
Total	\$10,206

BUDGET RECOMMENDATION: None

STAFF RECOMMENDATION: Approval.

C. Zoning Ordinance Amendment – Planned Unit Development Section of Single Family Residential Districts – 2nd Reading Planning & Economic Development

SUMMARY OF REQUEST: Staff initiated request to amend Section 403 of the zoning ordinance to revise the intent of the Planned Unit Development option by allowing limited retail options.

FINANCIAL IMPACT: None

BUDGET RECOMMENDATION: None

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended approval of the request 8-0 at their April 11 meeting.

D. Zoning Ordinance Amendment – Landscaping Requirements – 2nd Reading Planning & Economic Development

SUMMARY OF REQUEST: Staff initiated request to amend Section 2331 of the zoning ordinance to allow applicants to donate trees to the City's nursery rather than to replace trees on site during development.

FINANCIAL IMPACT: None

BUDGET RECOMMENDATION: None

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended approval of the request 8-0 at their April 11 meeting.

F. Arena Management City Manager

SUMMARY OF REQUEST: Staff is seeking approval with Arc Arena Management to undertake the daily management of the LC Walker Arena. Matt Gongalski and Arc Arena Management have been managing aspects of the arena for the past year. With the departure of the previous arena manager, staff is recommending that Arc be appointed to fill that role.

FINANCIAL IMPACT: First Year: \$57,000

BUDGET RECOMMENDATION: None at this time.

STAFF RECOMMENDATION: To authorize the city manager to enter into the agreement with Arc Arena Management to manage the LC Walker Arena.

G. Purchase Agreement Extension – 1490 Lakeshore Drive City Manager

SUMMARY OF REQUEST: Staff is seeking permission to enter into a purchase agreement to sell the city-owned property at 1490 Lakeshore Drive. The potential developer has been working with City staff, the DEQ, and Amoco/BP to resolve the existing environmental issues on the site. The prognosis for an amicable resolution is good, but it may take a number of years. As such, staff is seeking a five year agreement.

FINANCIAL IMPACT: None

BUDGET RECOMMENDATION: None at this time.

STAFF RECOMMENDATION: To authorize the city manager to enter into the sales agreement to sell the property at 1490 Lakeshore Drive for \$420,000 to Muskegon Harbor Services, LLC. The agreement shall require a \$5,000 initial earnest deposit, plus an additional \$5,000 earnest deposit due June 1 of each year of the agreement. The earnest deposit shall be refundable only in the event the developer fails to complete the sale, and developer releases all due diligence and planning documents to the City.

H. Tug and Trailer Purchase City Manager

SUMMARY OF REQUEST: Staff has been working with various downtown event organizers to identify ways to make downtown events more accessible. There is significant interest in locally acquiring and operating a low-cost people mover. Staff has identified a used tug system that can move in excess of 40 people at one time, and can accommodate wheel chairs. Staff is seeking permission to purchase the equipment. The equipment identified belongs to Creek County, Oklahoma, and is currently in storage.

FINANCIAL IMPACT: \$44,000

BUDGET RECOMMENDATION: None at this time.

STAFF RECOMMENDATION: To authorize the purchase of one tug and two trailers from Creek County, Oklahoma at a cost not to exceed \$44,000.

I. Storage Garage – Marsh Field City Manager

SUMMARY OF REQUEST: City staff is seeking permission to collaborate with Muskegon Baseball to construct a storage garage at Marsh Field. The garage will be slightly larger than a two-stall garage. The estimated cost of the structure is \$25,000. Muskegon Baseball will reimburse the City of Muskegon 50% of the expense.

FINANCIAL IMPACT: \$25,000

BUDGET RECOMMENDATION: None at this time

STAFF RECOMMENDATION: To authorize the construction of a storage garage at Marsh Field at a cost not to exceed \$25,000, with \$12,500 being reimbursed by Muskegon Baseball.

J. Purchase Agreement – 1192 Pine Street City Manager

SUMMARY OF REQUEST: City staff is seeking permission to purchase the vacant home located at 1192 Pine. Earlier this year, the city acquired the adjacent property via tax foreclosure. The two homes share a yard and off-street parking. It is likely that they once were owned by the same entity in the past. The home at 1192 was offered for auction in late April. Staff put a bid on the property of \$4,500. This was the only bid received. Although it did not meet the auction's reserve price, the sellers agreed to accept the offer. Staff anticipates approximately \$2,500 in transaction-related costs.

FINANCIAL IMPACT: \$7,000 from Public Improvement Fund.

BUDGET RECOMMENDATION: None at this time.

STAFF RECOMMENDATION: To authorize the city manager to complete the purchase of 1192 Pine Street.

K. Tuition Reimbursement City Manager

SUMMARY OF REQUEST: Staff is seeking an update to the existing tuition reimbursement program for active employees. Currently, the City reimburses up to \$2,000 annually for undergraduate-level courses and \$2,500 for graduate-level courses. The updated program will reimburse up to \$2,500 annually for undergraduate-level courses and \$3,000 for graduate-level courses.

FINANCIAL IMPACT: None at this time.

BUDGET RECOMMENDATION: None at this time.

STAFF RECOMMENDATION: To authorize the updated Tuition Reimbursement Program.

M. Hartshorn Marina T-Dock Repairs Department of Public Works

SUMMARY OF REQUEST: Authorize staff to contract with T.R. Ghezzi, LLC for repairs to the T-Dock at Hartshorn Marina. After the ice thawed the T-Dock was found to be in need of repairs prior to opening for the season.

Two contractors were solicited for bids on the project:

T.R. Ghezzi LLC \$10,300.00

Great Lakes Declined to Bid

FINANCIAL IMPACT: \$10,300.00

BUDGET RECOMMENDATION: None

STAFF RECOMMENDATION: Authorize staff to contract with T.R. Ghezzi LLC for the dock repairs.

N. Consumers Energy LED Department of Public Works

SUMMARY OF REQUEST: Authorize the City Clerk to sign the lighting change contract with Consumers Energy. The agreement covers change in billing for lights upgraded to LED due to faults and or burnouts.

FINANCIAL IMPACT: None

BUDGET RECOMMENDATION: None. Faulted or burned out lights are upgraded and replaced with LED at no cost.

STAFF RECOMMENDATION: Authorize the City Clerk to sign the contact with Consumers Energy.

O. SRF – RR Sewer Crossing Department of Public Works

SUMMARY OF REQUEST: Authorize staff to sign the agreement with CSX for the new sanitary sewer crossing under the railroad line near 8th Street. The line is being installed as a part of the 2019 SRF projects.

FINANCIAL IMPACT: \$21,500.00

BUDGET RECOMMENDATION: None. Will be billed to the capital project for 9th Street sewer upgrades.

STAFF RECOMMENDATION: Authorize staff to sign the agreement with CSX for the new sanitary sewer crossing.

P. DPW Carbon Monoxide System Upgrade and Repairs Department of Public Works

SUMMARY OF REQUEST: Award a contract for upgrade and repair to the carbon monoxide monitoring and control system at DPW to the low bidder.

Three contactors submitted bids for this projects as follows:

- Foster Electric Company \$8,650.00
- Fredrickson Electric, Inc. \$11,676.50
- Belasco Electric \$17, 923.00

FINANCIAL IMPACT: \$8,650.00

BUDGET RECOMMENDATION: None.

STAFF RECOMMENDATION: Award the project to the low bidder Foster Electric Company.

R. 2019-20 Healthcare and Wellness Program Finance

SUMMARY OF REQUEST: The City's healthcare coverage renews effective June 1st, for a period 6/1/19 – 5/31/20. This year's Priority Health renewal premium

came in at a 0.003% increase over the previous year. Last year's increase was 7.64%. For several years the City has made numerous benefit changes including increasing deductibles and copays along with changes to the drug copays to keep our increases as low as possible. Last year, to help offset the cost, we increased the employee's premium copay from 10% to 14%. This will keep our employer contribution below the "hard cap limits" set by PA 152.

For 2019-20 the City will continue to pay the HRA deductible if the employee and spouse complete the wellness requirements by March 31st. Non-participants in the wellness program will be required to pay the \$1,000 for single coverage or \$2,000 per double or family coverage of the deductible.

FINANCIAL IMPACT: Following is an estimate of gross premium costs for the Priority Health HMO program compared with the current healthcare plan year.

	2019-20			2018-19		
Monthly Premium	563.93	1268.85	1522.61	561.76	1263.95	1516.75
Rate Change	0.03%	0.03%	0.03%	7.64%	7.64%	7.64%
Annual Premium	6,767.60	15,226.20	18,271.32	6,741.12	15,167.40	18,201.00
Current # Employees	42	35	96	44	40	110
Total Annual Premium	284,239.20	532,917.00	1,754,046.72	296,609.28	606,696.00	2,002,110.00
		\$ 2,571,202.92			2,905,415.28	
Add: HRA Deductible Paid by City		325,000.00			300,000.00	
Less: Employee Premium Copays		(409,159.00)			(408,758.14)	
Equals: Employer Cost		\$ 2,487,043.92			\$ 2,796,657.14	
	2019 PA Hard Cap Limits			2018 PA Hard Cap Limits		
\$ 6,685.17	\$ 13,980.75	\$ 18,232.31		\$ 6,560.52	\$ 13,720.07	\$ 17,892.36
280,777.14	489,326.25	1,750,301.76		\$ 288,662.88	\$ 548,802.80	\$ 1,968,159.60
	\$ 2,520,405.15				\$ 2,805,625.28	

BUDGET RECOMMENDATION: Employee and retiree healthcare costs will be included in the forthcoming 2019-20 budget.

STAFF RECOMMENDATION: Authorize staff to execute documents with Priority Health to renew employee healthcare coverage for the coming year.

S. Delta Dental Renewal Finance

SUMMARY OF REQUEST: The City's dental insurance renews effective June 1st, for the period 6/1/19 – 5/31/20. This year's renewal came in at a 10% decrease over last year. We decided to take this opportunity to increase the benefits which has not been done in over 20 years. We are proposing to increase the annual maximum from \$1,000 to \$2,000. Overall this will net an increase of less than 1%.

FINANCIAL IMPACT: Less than \$1,500 annual increase.

BUDGET RECOMMENDATION: This will be included in the 2019-2020 budget.

STAFF RECOMMENDATION: Authorize the staff to execute documents to

renew the employee dental insurance coverage with the increase in the annual maximum.

T. Financing for Roof Replacement at LC Walker Arena Finance

SUMMARY OF REQUEST: At the December 11, 2018 City Commission meeting the Commission voted to accept the bid from Certified Building Solutions for the roof replacement at the LC Walker Arena for \$1,051,413. At this time we are seeking authorization to enter into a lease agreement with Team Financial for the roof replacement. The proposed terms are for a seven year lease at 4.57% interest rate with the City purchasing the roof at the end of the lease for \$1.

FINANCIAL IMPACT: Annual payments of \$175,800.00

BUDGET RECOMMENDATION: This will be included in the 2019-2020 budget.

STAFF RECOMMENDATION: Authorize the staff to enter into a lease agreement with Team Financial for the roof replacement.

U. Financing for HVAC/Dehumidification Upgrades at LC Walker Arena
Finance

SUMMARY OF REQUEST: At the December 11, 2018 City Commission meeting the Commission voted to accept the bid from Hurst Mechanical for the Dehumidification upgrade at the LC Walker Arena. At this time we are seeking authorization to enter into a lease agreement with Team Financial for the HVAC/Dehumidification upgrades. The proposed terms are for a seven year lease at 4.33 % interest rate with the City purchasing the systems at the end of the lease for \$1.

FINANCIAL IMPACT: Annual payments of \$207,252

BUDGET RECOMMENDATION: This will be included in the 2019-2020 budget.

STAFF RECOMMENDATION: Authorize staff to enter into a lease agreement with Team Financial for the HVAC/Dehumidification upgrades.

V. Notice of Intent Resolution Sanitary Sewer Revenue Bonds Finance

SUMMARY OF REQUEST: A notice of Intent Resolution for Sanitary Sewer System Bonds was approved at the March 12, 2019 meeting for \$8.5 million. Base on recent estimates of the cost of the project we believe it is necessary to request an additional authorization for \$3 million. This will bring the total amount of bonds issued to finance the acquisition and construction of the project to shall not exceed \$11.5 million.

FINANCIAL IMPACT: None

BUDGET RECOMMENDATION: None

STAFF RECOMMENDATION: Approve the Notice of Intent Resolution for an additional \$3 million Sanitary Sewer System Revenue Bonds bringing the total not

to exceed \$11.5 million.

Motion by Commissioner Warren, second by Commissioner German, to approve the consent agenda as presented, except items E, L, and Q.

ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, Warren, German, and Rinsema-Sybenga

Nays: None

MOTION PASSES

2019-38 ITEMS REMOVED FROM CONSENT:

E. Marina Management Agreement City Manager

SUMMARY OF REQUEST: Staff has been working with the developer of Hartshorn Marina Village to create a plan to co-manage the marina and the condominium association. The two assets will have many of the same users and will share many of the same amenities. Consistency in management is important to both organizations. Staff is recommending approval of the marina management agreement. It is expected the agreement will be cost-neutral compared to the city's previous years management expenses.

FINANCIAL IMPACT: None

BUDGET RECOMMENDATION: None at this time.

STAFF RECOMMENDATION: To authorize the city manager to enter into the agreement.

Motion by Commissioner Johnson, second by Commissioner Warren, to authorize the City Manager to enter into the agreement.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to amend the agreement to end February 28, 2024.

ROLL VOTE: Ayes: Gawron, Hood, Warren, German, Rinsema-Sybenga, Turnquist, and Johnson

Nays: None

MOTION PASSES

VOTE ON ORIGINAL MOTION:

ROLL VOTE: Ayes: Johnson, Gawron, Hood, Warren, German, Rinsema-Sybenga, and Turnquist

Nays: None

MOTION PASSES

L. Summer Evening Recreation Program City Manager

SUMMARY OF REQUEST: Construction and scheduling issues at the High School

caused the program to shrink to four weeks. A partnership with the Boys and Girls Club will allow the program to extend four additional weeks. Staff is seeking approval to spend an additional \$13,500 to accommodate this change to the evening recreation program.

FINANCIAL IMPACT: \$13,500

BUDGET RECOMMENDATION: None at this time.

STAFF RECOMMENDATION: To accept the proposal from the Boys and Girls Club of the Muskegon Lakeshore.

Motion by Commissioner German, second by Commissioner Johnson, to accept the proposal from the Boys and Girls Club of Muskegon Lakeshore.

ROLL VOTE: Ayes: Hood, Warren, German, Rinsema-Sybenga, Turnquist, Johnson, and Gawron

Nays: None

MOTION PASSES

Q. Change Order #003 – West Shore CF Demolition Department of Public Works

SUMMARY OF REQUEST: Authorize staff to process Change Order #003 for the proposed demolition work at the West Shore Correctional Facility.

Change Order #003 amends the contract to include removal of all existing underground utilities from the site. This was not included in the original bid request, but was later determined to be essential to facilitate future redevelopment.

FINANCIAL IMPACT: \$120,000.00

BUDGET RECOMMENDATION: None. Staff is seeking an amendment to the purchase agreement to offset the added demolition costs. Costs will be reimbursed through the state MEDC grant if the purchase agreement cannot be amended.

STAFF RECOMMENDATION: Authorize staff to process Change Order #003 for the proposed demolition work at the West Shore Correctional Facility.

Motion by Commissioner German, second by Commissioner Johnson, to authorize staff to process Change Order #003 for the proposed demolition work at the West Shore Correctional Facility.

ROLL VOTE: Ayes: Warren, German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

2019-39 PUBLIC HEARINGS:

A. Public Hearing for Amendment to the Brownfield Plan for DMDC Redevelopment Project-Former Muskegon Mall Planning & Economic Development

SUMMARY OF REQUEST: To hold a public hearing and approve the resolution approving and adopting the amendment for the first amendment to the Brownfield Plan for DMDC Redevelopment Project – Former Muskegon Mall. The amendment is intended to identify additional eligible activities proposed for the eligible property owned by Sweetwater Development, LLC (“Sweetwater”) that was previously included in the Brownfield Plan.

FINANCIAL IMPACT: Brownfield Tax Increment Financing will be used to reimburse the developer for “eligible expenses” incurred in association with development of The Leonard building downtown which is anticipated to be an \$8.7 million investment.

“Eligible Expenses” would be reimbursed to Sweetwater starting in 2020. The estimated tax capture and payment schedule is included as Attachment L-4 in the proposed Brownfield Plan Amendment.

After all eligible costs incurred by the various parties are reimbursed, the BRA may, as the capture term provides, continue to capture local taxes for five more years for deposit into a Local Brownfield Revolving Fund.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To hold the public hearing and approve the resolution and authorize the Mayor and Clerk to sign the resolution.

COMMITTEE RECOMMENDATION: The Muskegon City Commission set the public hearing for May 14, 2019 at their April 23, 2019 meeting. Since that time, a notice of the public hearing has been sent to taxing jurisdictions. In addition, the Brownfield Redevelopment Authority approved the Plan amendment on March 12, 2019 and further recommends that the Muskegon City Commission approve the Plan amendment.

PUBLIC HEARING COMMENCED:

Jared Balkema, Warner Norcross & Judd, gave a brief explanation of the project.

Cory Leonard, owner, gave a general overview of the project.

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to close the public hearing and approve the resolution and authorize the mayor and clerk to sign the resolution referencing the amendment to the Brownfield Development Plan for DMDC Redevelopment Project – Former Muskegon Mall.

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and Warren

Nays: None

MOTION PASSES

**B. Public Hearing for Amendment to Brownfield Plan – City of Muskegon
(Developer) Planning & Economic Development**

SUMMARY OF REQUEST: To hold a public hearing and approve the resolution approving and adopting the amendment for the Brownfield Plan. The amendments are for the inclusion of properties owned by the City of Muskegon LLC in the Brownfield Plan.

FINANCIAL IMPACT: Brownfield Tax Increment Financing will be used to reimburse the developer for “eligible expenses” incurred in association with development of 48 residential units in the Nelson Neighborhood.

“Eligible Expenses” would be reimbursed starting in 2020. The estimated tax capture and payment schedule is included at Attachment B in the proposed Brownfield Plan Amendment.

After all eligible costs incurred by the various parties are reimbursed (estimated to begin in 2032), the BRA is authorized to continue to capture local taxes for five more years for deposit into a Local Site Remediation Revolving Fund.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To hold the public hearing and approve the resolution and authorize the Mayor and Clerk to sign the resolution.

COMMITTEE RECOMMENDATION: The Muskegon City Commission set the public hearing for May 14, 2019 at their April 23, 2019 meeting. Since that time, a notice of public hearing has been sent to taxing jurisdictions. In addition, the Brownfield Redevelopment Authority approved the Plan amendment on April 9, 2019 and further recommends that the Muskegon City Commission approve the Plan Amendment.

PUBLIC HEARING COMMENCED:

Venita Cole, 516 Marshall Street, asked if there were any plans to bring jobs to Muskegon.

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to close the public hearing and approve the resolution and authorize the Mayor and Clerk to sign the resolution referencing the amendment to the Brownfield Plan – City of Muskegon - Developer.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, Warren, and German

Nays: None

MOTION PASSES

2019-40 NEW BUSINESS:

A. Fireworks Ordinance Update Public Safety

SUMMARY OF REQUEST: The Director of Public Safety requests that the Commission consider approving an update to our local fireworks ordinance. The State of Michigan has amended the state law effective December 28, 2018 as it relates to fireworks use and also providing civil fines for violations. It significantly shortens the days and times that fireworks can be discharged within the City of Muskegon. The penalty for discharging fireworks will be a civil infraction carrying a fine of \$1,000.00 for the first offense with \$500.00 of the fine collected shall be remitted to the City of Muskegon Police Department as provided for in MCL 28,457(3).

FINANCIAL IMPACT: Revenue generated will be put into a separate account as prescribed above.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the Use of Consumer Fireworks prohibited ordinance.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to approve the Use of Consumer Fireworks Prohibited Ordinance.

ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, Warren, German, and Rinsema-Sybenga

Nays: None

MOTION PASSES

B. Prohibition of Sale and the Consumption of Marihuana in Public Places (Sec 58-4) Public Safety

SUMMARY OF REQUEST: The Director of Public Safety requests that the Commission consider approving the prohibition of sale and consumption of marijuana in public places.

- A public place is considered any places owned, occupied, or managed by the City of Muskegon.
- The penalty is a civil infraction as prescribed by MCL 333.27965.
- This ordinance does not supersede rights and obligations with respect to the transfer or consumption of marihuana on private property to the extent authorized by the person who owns, occupies, or operates such property and with respect to the use of marihuana for medicinal purpose.

FINANCIAL IMPACT: Revenue generated will be put into a separate account.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the prohibition of sale and consumption of marijuana in public places.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Turnquist, to approve the Prohibition of Sale and Consumption of Marijuana in Public Places.

ROLL VOTE: Ayes: Johnson, Gawron, Hood, Warren, German, Rinsema-Sybenga, and Turnquist

Nays: None

MOTION PASSES

C. 2019 CDBG/HOME Budget Recommendations Community and
Neighborhood Services

REMOVED PER STAFF REQUEST

D. Purchase Agreement – Former Farmers Market Site City Manager

REMOVED PER STAFF REQUEST

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 7:40 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

Commission Meeting Date: May 28, 2019

Date: May 20, 2019

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services
Department

RE: Authorization To Sign Community Housing
Development Organization (CHDO) Agreements

SUMMARY OF REQUEST: To direct the Mayor and City Clerk to sign the approved agreement for the City's CHDO Reserve and Operating Funds, for Bethany Housing Ministries, Inc. d/b/a Community enCompass. Community enCompass, has proposed to build a multi-family home, located at 480 Houston in the Nelson Neighborhood. The total budget for this project is \$108,000.00. Community enCompass has been allocated \$100,000.00 (CHDO Reserve) and \$8,000.00 (CHDO Operating), in HOME funds to assist in the completion of this home. Community enCompass will be providing decent affordable housing within the City of Muskegon.

After the Mayor and Clerk sign the contracts, the CNS office will retain one copy for our files and a copy will be supplied to Community enCompass for their records.

FINANCIAL IMPACT: NONE

BUDGET ACTION REQUIRED: HOME Funds prior to 2018.

STAFF RECOMMENDATION: To direct Mayor and Clerk to sign agreements.

COMMITTEE RECOMMENDATION: NONE

Affirmative Action
(231)724-6703
FAX (231)722-1214

Assessor
(231)724-6708
FAX (231)726-5181

Cemetery
(231)724-6783
FAX (231)726-5617

City Manager
(231)724-6724
FAX (231)722-1214

Civil Service
(231)724-6716
FAX (231)724-4405

Clerk
(231)724-6705
FAX (231)724-4178

Comm. & Neigh.
Services
(231)724-6717
FAX (231)726-2501

Engineering
(231)724-6707
FAX (231)727-6904

Finance
(231)724-6713
FAX (231)724-6768

Fire Department
(231)724-6792
FAX (231)724-6985

Income Tax
(231)724-6770
FAX (231)724-6768

Info. Technology
(231)724-4126
FAX (231)722-4301

Inspection Services
(231)724-6715
FAX (231)728-4371

Leisure Services
(231)724-6704
FAX (231)724-1196

Mayor's Office
(231)724-6701
FAX (231)722-1214

Planning/Zoning
(231)724-6702
FAX (231)724-6790

Police Department
(231)724-6750
FAX (231)722-5140

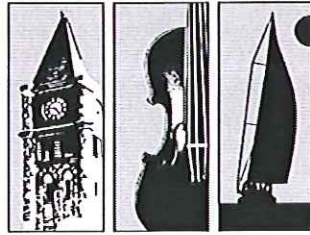
Public Works
(231)724-4100
FAX (231)722-4188

Treasurer
(231)724-6720
FAX (231)724-6768

Water Billing
(231)724-6718
FAX (231)724-6768

Water Filtration
(231)724-4106
FAX (231)755-5290

MUSKEGON



West Michigan's Shoreline City
www.shorelinecity.com

May 23, 2019

Mrs. Sarah Rinsema-Sybenga
Executive Director
Community enCompass
1107 Terrace Street
Muskegon, MI 49442

Dear Mrs. Rinsema-Sybenga:

Subject: Phoenix Project

Bethany Housing Ministries DBA Community encompass has been reviewed to certify their non-profit organization as a Muskegon County Community Housing Development Organization (CHDO). I have completed my review of the requested documents as a guide to verify eligibility as a CHDO and Support the City of Muskegon 2018 funding agreement with Community encompass as a CHDO agency.

Community encompass has been awarded for the 2018 fiscal year \$108,000. The agreement will go to Commission the fourth Tuesday of May, 2019. Your agreement will be available after for signatures.

Per the annual allocation, the City of Muskegon will provide your agency as follows:

CHDO Operating	\$ 8,000.00	Administrative Costs
CHDO Reserve	\$100,00.00	Rehabilitation/New Construction <i>only</i>

If you have questions regarding the Phoenix Project certification, please call me at 724-6968 or email me at sharonda.carson@shorelinecity.com.

Sincerely,

Sharonda Carson
Community Development Specialist
City of Muskegon



AGENDA ITEM NO. _____
CITY COMMISSION MEETING ____

TO: Honorable Mayor and City Commission
FROM: Department of Public Works
DATE: May 24, 2019
SUBJECT: Aggregates, Highway Maintenance Materials and Concrete

SUMMARY OF REQUEST:

Award supply of Calcium Chloride 38% (road brine) and 32% (winter salting) to Great Lakes Chloride

Award bid to supply bituminous products (Base and Top) to Asphalt Paving, Inc.

Award bid to supply Sylvax patching material to Unique Paving Materials

Award bid to supply AE-90 Asphalt Emulsions to Bit-Mat Products

Award bid for crack sealant to Surface Coatings, Co.

Award bid to supply H1/32FA limestone chip blend to Verplank Trucking Company

Award bid to supply road slag to Yellow Rose Transport

Award bid to supply road gravel to Yellow Rose Transport and Verplank

Award bid to supply 2NS sand to Verplank Trucking Company

Award bid to supply screened top soil to Accurate Excavators

Award bid to supply Fill Sand to Accurate Excavators

Award bid to supply concrete mix to Port City Redi-Mix

FINANCIAL IMPACT:

\$516,030.00

BUDGET ACTION REQUIRED:

None; funds appropriated in several budgets.

STAFF RECOMMENDATION:

Recommend approval of bids as outlined in Summary of Request.

To: The City Commission
From: Leo Evans, Director of Public Works
Date: May 24, 2019
Subject: 2019 Aggregates, Highway Maintenance Materials, and Concrete

Purchases will be made from recommended bidder (in bold), contingent upon product availability, timely deliveries, and prices as quoted.

85,000 gallons Calcium Chloride 38% (road brine) (\$66,300.00)

Great Lakes Chloride **P.O. Box 634, Grand Haven, MI 49417** **\$0.78 per gallon, spread**

15,000 gallons Calcium Chloride 32% (winter salting) (\$8,250.00)

Great Lakes Chloride **P.O. Box 634, Grand Haven, MI 49417** **\$0.55 per gallon, storage**

200 ton Bituminous Asphalt Base (\$13,700.00)

Asphalt Paving, Inc. 1000 E. Sherman Boulevard, Muskegon MI 49444-0190 **\$68.50 per ton, picked up**

1,000 ton Bituminous Asphalt Top (\$69,500.00)

Asphalt Paving, Inc. 1000 E. Sherman Boulevard, Muskegon MI 49444-0190 **\$69.50 per ton, picked up**

500 tons SylvaX Patching Materials – UPM-CP-7, or ASTM Specification C-136 #9 or Statite CP-6, or similar product (\$54,250.00)

Unique Paving Materials 3993 E. 93rd Street, Cleveland, OH 44105 **\$108.50 per ton, delivered**
Asphalt Paving, Inc. 1000 E. Sherman Boulevard, Muskegon MI 49444-0190 **\$110.00 per ton, picked up**

30,000 gallons AE-90 Asphalt Emulsions (\$64,800.00)

Bit-Mat Products **401 Tiernan Rd, Bay City, MI 48706** **\$2.16 per gallon, delivered**
Tri-State Asphalt **1362 Bungalow Rd, Morris, Illinois 60450** **\$2.19 per gallon, delivered**

50,000 pounds Crack Sealant (block form) (\$20,500.00)

Surface Coatings, Co. 2280 Auburn Rd, Auburn Hills, MI 48326 **\$0.41 per pound, delivered**
Sherwin Industries, Inc 2129 West Morgan Ave., Milwaukee, WI 53221 **\$0.45 per pound, delivered**

500 ton H1/32FA Limestone Chip Blend (\$11,000.00)

Verplank Trucking Co. PO Box 8, Ferrysburg, MI 49409 **\$22.00 per ton, delivered**
Yellow Rose Transport 3531 Busch Dr., Grandville, MI 49418 **\$22.50 per ton, delivered**

5,000 ton Road Slag 22-A Natural (\$66,250.00)

Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$13.95 per ton, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$13.25 per ton, delivered

500 ton Road Gravel 22-A (\$6,250.00)

Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$12.50 per ton, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$12.50 per ton, delivered

Note: Bid amounts same. Purchases will be split between both vendors.

500 ton 2NS Sand (\$5,000.00)

Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$11.15 per ton, delivered
Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$10.00 per ton, delivered

500 yards Screened Top Soil (\$4,000.00)

Accurate Excavators	2821 Central Rd, Muskegon, MI 49445	\$8.00 per cubic yard, delivered
Verplank	P.O. Box 8, Ferrysburg, Muskegon, MI 49409	\$10.00 per cubic yard, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$14.50 per ton, delivered
McCormick Sand	5430 Russell Rd, Twin Lake, MI 49457	\$15.00 per cubic yard, delivered

2000 ton Fill Sand (\$12,000.00)

Accurate Excavators	2821 Central Rd, Muskegon, MI 49445	\$6.00 per cubic yard, delivered
Verplank Trucking Co.	PO Box 8, Ferrysburg, MI 49409	\$7.25 per cubic yard, delivered
Yellow Rose Transport	3531 Busch Dr., Grandville, MI 49418	\$7.50 per cubic yard, delivered
McCormick Sand	5430 Russell Rd, Twin Lake, MI 49457	\$7.30 per cubic yard, delivered

Concrete mix as needed (\$114,230.00 based on previous purchases)

Port City Redi-Mix **\$112.00 per cubic yard, 7 Sack Mix, delivered***
1780 Sheridan Road, Muskegon, MI 49442

Consumers Concrete \$117.00 per cubic yard, 7 Sack Mix, delivered
4400 E. Evanston Avenue, Muskegon MI 49442

**The 7-sack mix is the most commonly used product. Low bid based on inclusion of other charges for "multiple drop locations" and "small load charges". It should also be noted that concrete purchases may include several miscellaneous charges, including, but not limited to, hot water, chloride, winter price, and extra unload time.*

COMMISSION MEETING DATE May 28, 2019

Date: May 16, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

RE: Contract for mowing, trash, and brush pickup

SUMMARY OF REQUEST:

The city of Muskegon had requested contract fee proposals for mowing, trash, and brush clean up on both private and public properties throughout the City of Muskegon for a three (3) year limit with the option to be extend one (1) year upon mutual agreement from both parties with a 60 day notice before expiration of contract.

This request resulted in two submissions from area contractors to perform the services needed and can be seen later in this document. Because of the varying prices, we would like to recommend that a three (3) year contract be awarded to Earth Creations LLC with the option to extend one (1) year upon mutual agreement.

Earth Creations LLC has served as the contractor for these services for the past 11 years; they have worked diligently and seamlessly with the City of Muskegon. The rates Earth Creations have applied to this bid are higher than in previous years due to increased costs in insurance, equipment, and labor. Awarding contract as indicated would also be accepting the lowest bidder.

FINANCIAL IMPACT:

Funds budgeted for this activity.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve a three (3) year contract with Earth Creations LLC.

AGREEMENT FOR CONTRACTED SERVICES

This Agreement for Contracted Services ("**Agreement**") is entered into by and between **The City of Muskegon** having a principal place of business at 933 Terrace St., Ste 201, Muskegon, MI, 49440 ("**The City of Muskegon**"), and **Earth Creations LLC**, having a principal place of business located at **1657 S. Getty, Muskegon, MI 49442** ("**Contractor**"), as of this day of _____, 20____ (the "**Effective Date**") with regard to the following terms and conditions.

1. **General.** In consideration of the intent and mutual covenants contained in this Agreement, The City of Muskegon and Contractor have entered into this Agreement with respect to the performance by Contractor of the Services (as defined in **Section 2(a)**) related to the Project. This Agreement is intended to and shall govern all work and services provided by Contractor for the Project, whether initiated or performed prior to or subsequent to the execution of this Agreement. This Agreement shall last for a term of three (3) years, unless terminated earlier pursuant to the terms below. If Contractor is not in default under the terms herein, it may extend the term of this Agreement for a period of one (1) additional year by providing written notice to The City of Muskegon not less than sixty (60) days prior to the end of the initial term.
2. **Contractor Responsibilities.**
 - (a) **Performance of the Services.** Contractor agrees to provide all contracted services and perform all other obligations described in this Agreement, including without limitation those set forth on **Exhibit A** attached hereto and incorporated herein by reference, and any and all services reasonably inferable therefrom (collectively, the "**Services**"). The Services, collectively at all sites where they are performed, may be referred to as the "**Project**" in this Agreement. Contractor represents and warrants that it understands the requirements of this Agreement and that it is experienced and qualified to perform the Services required.
 - (b) **Supervision; Licensure; Standard of Care, Skill and Diligence.** Contractor shall provide all labor and supervision necessary to perform the Services. Contractor shall obtain all necessary permits and licenses necessary for Contractor to perform the Services. Contractor represents and warrants that it shall perform all Services in accordance with the standard of care, skill and diligence that equals or exceeds that which is recognized in the industry for the performance of services of the nature and/or type of the Services.
 - (c) **Safety; Responsibility for Others.** Contractor shall be solely responsible for the safety and protection of Contractor's employees and shall take all reasonable safety precautions. Additionally, Contractor shall be solely responsible for, and shall insure, its own tools, equipment, materials, supplies and any other items used by Contractor in furtherance of performing under this Agreement. Contractor shall be responsible to The City of Muskegon for the acts, errors and omissions of Contractor's employees, its Subcontractors (as hereinafter defined)

and their respective agents and employees and all other persons performing any portion of any Services under the direction or control of Contractor. Contractor shall at all times maintain good order among its employees.

- (d) **Hazardous Materials.** Contractor shall not bring any Hazardous Materials onto the Project site and shall bear all responsibility and liability for such Hazardous Materials; provided, however, that Contractor may bring onto a Project site such Hazardous Materials as are necessary to perform the Services so long as the same is done in compliance with all Laws and Contractor shall remain responsible and strictly liable for all such Hazardous Materials. As used herein, "**Hazardous Materials**" shall mean any hazardous or toxic substance or hazardous or toxic waste, contaminant, or pollutant as defined by or regulated by any applicable governmental authority.
3. **Subcontractors.** Contractor may delegate or subcontract any of its duties or obligations under this Agreement to any person or entity with the prior written consent of The City of Muskegon. In the event The City of Muskegon elects, in its sole and absolute discretion, to permit Contractor to engage a Subcontractor, such use shall be upon such terms and conditions as The City of Muskegon may determine, in its sole and absolute discretion. As used herein, "**Subcontractor**" means a person or entity of any tier (a) that has been approved by The City of Muskegon in writing prior to Contractor retaining such subcontractor, and (b) who has a contract either directly or indirectly with Contractor or perform any portion of the services.
4. **Representations and Warranties.** Contractor represents and warrants that (a) Contractor will comply with all federal, state and local laws, codes, ordinances, rules, regulations, recorded covenants, conditions and/or restrictions, and statutes applicable to the Project (collectively, "**Laws**"), (b) Contractor shall be responsible for the quality and coordination of all Services provided by or through Contractor under this Agreement, and (c) the Services performed will conform to the requirements of this Agreement. All Services not conforming to this Agreement will be considered defective and, in addition to any other rights or remedies available to The City of Muskegon, Contractor will re-perform the non-conforming portion of the Services at no additional cost or expense. All representations and warranties provided in this Section 4 or elsewhere in this Agreement shall survive any termination of this Agreement.
5. **Contract Time.** Contractor shall commence the Services upon its receipt of a written notice to proceed from The City of Muskegon, whereupon Contractor shall diligently perform such Services in accordance with this Agreement and the schedule attached hereto as Exhibit B, which Services shall be properly completed on or before the date set forth thereon (the "**Contract Time**"). Timely completion of the Services is of the essence with respect to this Agreement. Contractor agrees to perform all Services and all portions thereof promptly, diligently and in such order and sequence as is necessary to assure the efficient, expeditious and timely completion of all Services. Contractor shall proceed with the Services so as not to hinder, delay, or interfere with the work or

services of others. In the event Contractor causes delay on the Project, Contractor shall be responsible for costs and expenses associated with such delay. Contractor shall, upon written request from The City of Muskegon, reimburse The City of Muskegon for such delay damages.

6. **Additional Services.** The City of Muskegon, without invalidating this Agreement, may require the Contractor to make changes in the Services within the general scope of the Services, consisting of additions or other revisions ("**Additional Services**"), and may order deletions in the scope of Services to be performed by Contractor by issuing a written order to the Contractor pursuant to the provisions of this Agreement (a "**Change Order**"). The Change Order will describe any adjustments to the Contract Price and/or Contract Time. In order to be effective, such Change Order must be executed by The City of Muskegon and Contractor.

7. **Payment.**

- (a) **Compensation.** Except as may be adjusted pursuant to the terms of this Agreement, The City of Muskegon shall pay Contractor, as full and complete compensation for the proper performance of all Services in accordance with and consistent with this Agreement, as described on Exhibit C attached hereto (the ("**Contract Price**"). If the City of Muskegon corrects any breach of this Agreement by Contractor and/or corrects any deficient, defective or nonconforming Services performed by the Contractor or anyone for whom Contractor is responsible, then the Contract Price shall be reduced in the amount reasonably determined by The City of Muskegon to compensate for such breach. If the unpaid balance of the Contract Price is less than the total amount by which the Contract Price is reduced pursuant to this Section, the difference shall be paid by Contractor to the City of Muskegon. The City of Muskegon shall pay Contractor with the frequency described on Exhibit C.

- (b) **Related Information.** Contractor acknowledges and agrees that as a condition to payment, Contractor shall deliver such documentation as The City of Muskegon requests, to ensure the Services have been properly completed.

8. **Insurance and Indemnity.**

- (a) **Contractor's Insurance.** Contractor shall purchase and maintain, from a company or companies authorized to do business in the state in which the Project is located, insurance in such amounts and coverage as required by The City of Muskegon. All such insurance shall be on an occurrence basis and shall be procured from carriers maintaining an A.M. Best Rating of A-VII or higher. Such insurance shall include, but not be limited to: general liability coverage with limits not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, and with commercial vehicle coverage; and Worker's' Compensation insurance with coverage as required by law. Contractor shall submit to The City of Muskegon certificates of the insurance procured by Contractor with respect to the performance of Services. With the exception of Workers' Compensation, the

insurance coverage required by this Section shall name The City of Muskegon as an additional insured and shall not be canceled or allowed to expire without thirty (30) days prior written notice to The City of Muskegon. The coverage on all such policies required from Contractor pursuant to this Section shall be primary to any valid and collectible insurance carried by The City of Muskegon.

- (b) **Indemnity.** Contractor shall, to the maximum extent permitted by Law, defend, indemnify and hold harmless The City of Muskegon and any owner of real property where Services are performed, and their respective owners, affiliates, subsidiaries, successors, assigns, officers, directors, employees, agents and any other party to whom The City of Muskegon may be liable (collectively, the "**Indemnitees**") from and against any and all claims, liabilities, losses, demands, damages, losses, causes of action, costs and expenses, including by way of example and not of limitation, attorneys' fees, The City of Muskegon expenses, litigation expenses and punitive damages (collectively, "**Losses**") arising out of, resulting from or in connection with, this Agreement, including by way of example, but not of limitation, performance of any and all Services. This indemnity obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 8. Contractor shall not be obligated to indemnify an Indemnatee for claims arising from the sole negligence of such Indemnatee. The indemnification obligation shall not be limited in any way by any limitation on the amounts or type of damages, compensation, termination of this Agreement, or benefits payable by or for The City of Muskegon under worker's compensation acts, disability benefit acts, other employee benefit acts or applicable insurance policies. Without limiting the foregoing, Contractor's indemnity obligations under this Agreement shall survive termination of this Agreement.

9. **Termination.**

- (a) **Termination for Cause.** If Contractor fails to perform any Services properly and diligently or fails to perform any provisions of this Agreement, the same shall be considered a breach of this Agreement. Such breach by Contractor shall entitle The City of Muskegon to, without limitation, (1) terminate this Agreement upon delivery of written notice to Contractor and/or (2) cause the Services to be completed by others selected by The City of Muskegon for Contractor's account. Contractor agrees to immediately pay all costs and damages sustained by The City of Muskegon because of such breach, which amounts may be deducted from amounts otherwise owed Contractor hereunder.
- (b) **Termination for Convenience.** The City of Muskegon, at its sole option, may terminate this Agreement at any time and for any reason or no reason, by giving Contractor at least fifteen (15) days prior written notice, and should such termination be made other than for cause, as provided in Section 9(a) hereof,

The City of Muskegon shall pay Contractor the cost of the Services actually completed by Contractor, less all sums previously paid by The City of Muskegon to Contractor, and any deductions made by The City of Muskegon in accordance herewith, provided, however, the total amount to be received by Contractor shall not in the aggregate exceed the Contract Price.

- (c) **Termination by Contractor.** Contractor may only terminate its performance hereunder in the event The City of Muskegon fails to timely pay Contractor in accordance with the payment provisions of this Agreement. In such event, Contractor shall first provide The City of Muskegon with fifteen (15) days prior written notice of Contractor's intent to terminate pursuant to this Section 9 and provide The City of Muskegon with fifteen (15) days to cure such non-payment.
- (d) **Survival of Termination.** In the event this Agreement is terminated for any reason, Contractor's duties, indemnities and all other obligations which by their nature survive termination hereof, with respect to its Services provided through the date of termination, shall survive such termination and be in full force and effect for the period of time prescribed by this Agreement, or applicable Law, whichever is longer.

10. **Dispute Resolution.**

- (a) **THE PARTIES AGREE THAT ANY DISPUTE UNDER THIS AGREEMENT SHALL, (a) BE RESOLVED BY THE MUSKEGON COUNTY COURT SYSTEM, and (b) CONTRACTOR AND THE CITY OF MUSKEGON KNOWINGLY AND WILLINGLY WAIVE ANY RIGHT THEY HAVE UNDER APPLICABLE LAW TO A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE ISSUES RAISED BY THAT DISPUTE.** The party which substantially prevails on the issues in dispute shall be entitled to an award of its reasonable attorney fees incurred, plus all costs and expenses reasonably incurred in prosecuting or defending such claims including, but not limited to, costs of The City of Muskegon.
- (b) **Duty to Continue Performance.** The existence of any claim, dispute or legal proceeding shall not relieve Contractor from its obligation to continue to properly perform its Services as set forth herein. In the event of a dispute with respect to amounts payable to Contractor hereunder, The City of Muskegon shall pay all undisputed amounts and Contractor shall continue performing any remaining Services hereunder. Continued performance by either party shall not waive any claims, rights or remedies Contractor or The City of Muskegon may have concerning the dispute.

11. **Miscellaneous.**

- (a) **Entire Agreement; Severability; Governing Law.** The parties have entered into this Agreement in good faith, and it constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. Except as contemplated by Section 6 hereof, this

Agreement shall not be modified, amended, extended or changed in any manner except in writing, signed by persons duly authorized to represent, respectively, The City of Muskegon and Contractor. The parties intend that all terms and provisions of this Agreement be legal and enforceable under applicable Law as written. In the event any of these provisions should be found to be unenforceable, it shall be stricken, and the remaining provisions shall be enforceable. This Agreement, including its interpretation, validity and enforcement, shall be governed by and construed in accordance with the Laws of the State where the Project is located without regard to its choice of law provisions.

- (b) **Assignment.** Contractor may not assign this Agreement, in whole or in part, without the prior written consent of The City of Muskegon, any such permitted assignment shall be upon such terms and conditions as specified by The City of Muskegon. The City of Muskegon shall have the right to freely assign its rights and obligations under this Agreement.
- (c) **Independent Contractor; Headings and Interpretation.** Pursuant to the terms of this Agreement, Contractor shall be an independent contractor to The City of Muskegon and shall have no other relationship to The City of Muskegon or the projects and activities of The City of Muskegon other than as defined in this Agreement. The headings of the Sections in this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms and conditions of this Agreement in any manner. Contractor agrees and represents that Contractor has carefully considered this Agreement, including all exhibits and schedules hereto, and that ambiguities, if any, shall not be construed or enforced against the drafter.
- (d) **Notices.** Any notice or communication provided for hereunder will be in writing and will be deemed given and received (1) upon delivery, if delivered personally or by facsimile transmission with receipt acknowledged, (2) one business day after having been deposited for overnight delivery with Federal Express or a comparable overnight courier, or (3) three business days after deposit in U.S. mail when sent by registered or certified mail, postage prepaid, with proof of delivery to the address of the party shown on the signature page hereof or such other address as a party may specify in a written notice to the other. As used herein, "**business day**" means any day in which banking institutions are open for business in the State where the Project is located.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

THIS AGREEMENT CONTAINS BINDING ARBITRATION AND JURY **WAIVER PROVISIONS**.

THE CITY OF MUSKEGON

The City of Muskegon

Printed Name: _____

Title: _____

933 Terrace St., STE 201

Muskegon, MI 49443

213-724-6715

Contractor

Earth Creations LLC

Printed Name: _____

Title: _____

1657 S. Getty

Muskegon, MI 49442

(231) 206-5759

EXHIBIT A

DESCRIPTION OF CONTRACTED SERVICES

1. **Services.** Contractor shall provide the following services, under the direction and supervision of The City of Muskegon Building Safety Dept., relating to yard maintenance and trash clean-up of the properties in The City of Muskegon. Contractor shall perform the services set forth in this contract in a timely, workman-like manner.
 - (a) **Mowing.** Contractor shall mow all grass, weeds and brush including moving around all obstacles, up to three inches (3") in diameter, leaving no ridges of high or uncut grass.
 - (b) **Trimming/Cutting/Raking.** Contractor shall trim all bushes and unsightly branches, cut large tree limbs that have fallen or logs, rake and remove heavy concentrations of yard clippings, small debris and fallen leaves and/or branches. Contractor shall clear sidewalk of debris and clippings as needed.
 - (c) **Garbage, debris and waste removal.** Contractor shall pick up and remove all garbage, rubbish, debris, trash and waste materials, including but not limited to cans, bottles, loose papers, dead tree limbs, grass and brush clippings, abandoned/broken/unused household appliances, furniture, and other like items.
 - (d) **Disposal.**
 - i. Contractor shall handle and dispose of Freon according to the applicable State and Federal mandates.
 - ii. Contractor shall ensure the separation and individual disposal of garbage and lawn debris.
 - iii. All garbage, debris, trash, waste materials, grass, weeds, brush, appliances, furniture and other items removed from each site shall be transported by the Contractor for disposal to a location predetermined by The City of Muskegon.
 - (e) **Photographs.** Contractor shall photograph each job site prior to and after completion. The photographs will indicate each job site address and/or location to ensure proper identification of the location and/or property. The photographs shall also indicate the time and date the picture was taken. All processing cost associated with this service shall be the sole responsibility of the Contractor. Photographs are to be marked with the enforcement number that corresponds with the work order they represent.

- (f) **Record Keeping.** Contractor agrees to keep proper records of all work performed on behalf of The City of Muskegon. This includes electronic daily data entry of work orders completed on a shared source.
 - (g) **Other.** Contractor may be required to perform other related work as deemed necessary by The City of Muskegon.
- 2. **Expenses.** Contractor shall be responsible to pay for all expenses incurred by Contractor related to the performance of its duties under this Agreement and for all compensation owed to its workers and/or subcontractors.
- 3. **Contract Price.** The City of Muskegon agrees to pay Contractor, in full consideration for the complete performance of Contractor's obligations under this Agreement, the amount set forth in the Contractor's bid proposal and documents described in paragraph 1.
- 4. **Assignments.** Work assignments are determined on an as needed basis.
- 5. **Contractor Work Crew.**
 - (a) The City of Muskegon reserves the right to limit the size of work crews at any time.
 - (b) The City of Muskegon Representatives. The City of Muskegon may assign one or more persons to the job site as its Representative(s). The City of Muskegon Representative(s) may supervise work crew in their performance at the job site and may instruct the work crews as to what tasks must be performed.
- 6. **Specific Reservations.**
 - (a) The City of Muskegon reserves the right to have Contractor bag or remove debris and/or trash from the property and place the same on the terrace at the property for removal by the City refuse contractor.
 - (b) The City of Muskegon reserves the right to have the City refuse contractor clean up the debris and/or trash left on the terrace at a work site property on an as needed basis.
 - (c) The City of Muskegon reserves the right to use volunteers, court ordered public service workers and/or prisoners in lieu of Contractor's services for any work indicated throughout this Agreement.

EXHIBIT B

Schedule

1. Schedule.

- (a) Work schedules shall be completed by The City of Muskegon on a daily or as needed basis.
- (b) Provisions shall be made, at Contractor's expense, for contacting the Contractor on short notice or in an emergency situation by any of the following methods:
 - i. Telephone
 - ii. Cellular Telephone

2. Work Orders.

- (a) **Distribution.** Work orders will be distributed to the Contractor electronically at the end of each day.
- (b) **Completion.** All jobs listed must be completed within five (5) working days following receipt of the work order by Contractor and on a first-come, first-serve basis.
 - i. Rush or special requests may be made on occasion, as determined by The City of Muskegon.
 - ii. Time extensions may be permitted for inclement weather and similar restricting circumstances, as determined by The City of Muskegon.
 - iii. All completed work orders and billing shall be presented to The City of Muskegon every Friday.
- (c) **Travel Time.** Travel time shall be charged by Contractor as follows:
 - i. Time may be charged for travel from a completed job site to another job site. Travel time shall be shown on a voucher completed for the destination site.
 - ii. Time may be charged for travel to and from a disposal site with a full load of garbage, trash, waste and other items. Travel time shall be indicated on a dump voucher or slip.
 - iii. Travel time shall only be compensated for direct and logical routes.
 - iv. All vouchers, bills, slips and pictures pertaining to a work order or a job site shall be submitted to The City of Muskegon at the same time.
 - v. Requests for payment that are submitted without the proper documentation, including but not limited to vouchers, bills, slips

and pictures will not be accepted until such time all such items are submitted.

EXHIBIT C

Contract Price

Contractor shall be paid based on the hourly rate schedule set forth below. Services performed on an hourly rate basis will be performed at the rates set forth below (the "**Hourly Rates**") are as follows:

<u>Position Description</u>	<u>Hourly Rate</u>			
	<u>1 Year Bid</u>	<u>2 Year Bid</u>	<u>3 Year Bid</u>	<u>4 Year Bid</u>
Trash Pickup	\$52.00	\$54.00	\$56.00	\$57.00
Tractor Mowing	\$52.00	\$55.00	\$56.00	\$57.00
Zero Turn Mowing	\$52.00	\$55.00	\$56.00	\$57.00
Hand Mowing	\$43.00	\$43.00	\$44.00	\$45.00
Terrace/24 Hr. Pickup	\$52.00	\$54.00	\$56.00	
\$57.00				
Leaf/Brush	\$52.00	\$55.00	\$56.00	\$57.00

Contractor shall send The City of Muskegon any invoice setting forth the aggregate Hourly Rates for the immediately preceding month as required by Section 7 of this Agreement

1. Payment.

1. Form

- i. Requests shall include a list of job numbers, addresses and with the corresponding cost of each job.
- ii. Requests shall be on a per-quarter hour basis; total time per job to be agreed to by the Contractor and The City of Muskegon Representative.
- iii. Requests for work completed that were not performed in compliance with subsection 9(b) may not be compensated. This includes but is not limited to work that was not completed due to being asked to leave the property, inability to perform work on the property, work orders that The City of Muskegon or The City of Muskegon have asked to be removed, work that was completed in the time between the work order being issued and contractors arriving to the site.

- iv. Inadvertent payment made to the Contractor for work not performed in compliance with the terms of this contract, or for any other reason, will be deducted by The City of Muskegon from subsequent payments.
- 2. **Frequency.** Request for payment shall be made every Friday and payment will be made twice per month pursuant to the City of Muskegon's standard payment practices.

ADDENDUM

Contractor shall furnish or supply all the equipment and labor necessary to carry out its obligations under this Agreement. The equipment and labor includes but is not limited to: general labor, daily office manager, technical personnel, machinery, tools, transportation, fuel, and all other such materials. All equipment must meet the safety standards as required by MIOSHA.

- 1. **Inspection.** The City of Muskegon or its designated agents shall be able to inspect for safety, appearance and sanitation, all equipment used by Contractor to carry out its obligations under this Agreement. The City of Muskegon may refuse Contractor the right to utilize any equipment that is deemed unsafe, unsanitary or of an unsightly appearance based on that inspection. In that event, Contractor shall repair, replace or restore the equipment to a suitable condition as soon as reasonably possible.
- 2. **Required Equipment**
 - (a) Four (4) trucks for 2-man hand mow crews
 - (b) Eight (8) Push mowers
 - (c) Eight (8) Weed trimmers
 - (d) Four (4) tractors with a 60" brush hog mower with a mower deck of a minimum five feet (5') diameter for each.
 - (e) Two (2) dump trucks or two (2) heavy duty trucks with trailers. Minimum size: 10 yards with a 4,000 lb. capacity.
 - (f) Two (2) Zero turn riding mowers
 - (g) Chain saws
 - (h) Hand tools, including rakes, brooms, wheel barrels, shovels, pitch forks, and other tools as deemed appropriate for the job site.
 - (i) Twelve (12) Digital cameras, minimum 3-megapixel resolution with automatic time and dating capacity.

- (j) Twelve (12) whiteboard signs with ability to measure 6" to show proof of work and grass height.
 - (k) Online database for required pictures, job status updating and receiving work orders.
 - (l) Alternative equipment may be proposed for use but requires The City of Muskegon approval prior to use.
3. **Method of Transportation.** Contractor agrees to haul tractors, mowers and other equipment to the job location, unless otherwise approved by The City of Muskegon.

Earth Creations, LLC
1657 S. Getty
Muskegon, MI 49442
231-206-6759

April 30, 2019

To : City of Muskegon

For the past 11 years our company has effectively served as a contractor performing the services described for the City of Muskegon in the Environmental Mowing Trash and Brush Contract. We have carried out these services both under the supervision of city staff and then a few years ago under Safebuilt. Increasing insurance, equipment and labor costs have resulted in a significant increases in overhead that required us to look much closer at our bottom line for submitting a bid for the new 2019 contract. It is important to note our biggest increase comes from attracting willing and able individuals, especially in the current labor market to fulfill the work required which is at times can be stressful as well as dangerous to enter private homeowners properties uninvited to perform city enforcement work-orders.

Below are hourly bid amounts per terms spelled out in contract agreement for the respective 3 and 4 year terms.

<u>Position Description</u>	<u>1-Year Bid</u>	<u>2-Year Bid</u>	<u>3-Year Bid</u>	<u>Possible 4-Year Bid</u>
Trash Pickup	\$ <u>52</u> /hr	\$ <u>54</u> /hr	\$ <u>56</u> /hr	\$ <u>57</u> /hr
Tractor Mowing	\$ <u>52</u> /hr	\$ <u>55</u> /hr	\$ <u>56</u> /hr	\$ <u>57</u> /hr
Zero Turn Mowing	\$ <u>52</u> hr	\$ <u>55</u> /hr	\$ <u>56</u> /hr	\$ <u>57</u> /hr
Hand Mowing (2 man crew)	\$ <u>43</u> /hr	\$ <u>43</u> /hr	\$ <u>44</u> /hr	\$ <u>45</u> /hr
Terrace/24 Hr Pickup	\$ <u>52</u> /hr	\$ <u>54</u> /hr	\$ <u>56</u> /hr	\$ <u>57</u> /hr
Leaf/Brush	\$ <u>52</u> /hr	\$ <u>55</u> /hr	\$ <u>56</u> /hr	\$ <u>57</u> /hr

Earth Creations, LLC provides bid reserving the right to terminate contract for services at anytime with 60 days of advance notice.

Respectfully Submitted,

Earth Creations, LLC

EXHIBIT C

Contract Price

Contractor shall be paid based on the hourly rate schedule set forth below. Services performed on an hourly rate basis will be performed at the rates set forth below (the "Hourly Rates") are as follows:

<u>Position Description</u>	<u>1-Year Bid</u>	<u>2-Year Bid</u>	<u>3-Year Bid</u>	<u>Possible 4-Year</u>
<u>Bid</u>				
Trash Pickup	\$ <u>120</u> /hr	\$ <u>123</u> /hr	\$ <u>125</u> /hr	\$ <u>127</u> /hr
Tractor Mowing	\$ <u>65</u> /hr	\$ <u>67</u> /hr	\$ <u>69</u> /hr	\$ <u>71</u> /hr
Zero Turn Mowing	\$ <u>55</u> /hr	\$ <u>57</u> /hr	\$ <u>59</u> /hr	\$ <u>61</u> /hr
Hand Mowing	\$ <u>50</u> /hr	\$ <u>52</u> /hr	\$ <u>54</u> /hr	\$ <u>56</u> /hr
Terrace/24 Hr Pickup	\$ <u>65</u> /hr	\$ <u>67</u> /hr	\$ <u>69</u> /hr	\$ <u>71</u> /hr
Leaf/Brush	\$ <u>65</u> /hr	\$ <u>67</u> /hr	\$ <u>69</u> /hr	\$ <u>71</u> /hr

Contractor shall send The City of Muskegon any invoice setting forth the aggregate Hourly Rates for the immediately preceding month as required by Section 7 of this Agreement

1. Payment.

1. Form

- i. Requests shall include a list of job numbers, addresses and with the corresponding cost of each job.
- ii. Requests shall be on a per-quarter hour basis; total time per job to be agreed to by the Contractor and The City of Muskegon Representative.
- iii. Requests for work completed that were not performed in compliance with subsection 9(b) may not be compensated. This includes but is not limited to work that was not completed due to being asked to leave the property, inability to perform work on the property, work orders that The City of Muskegon or The City of Muskegon have asked to be removed, work that was completed in the time between the work order being issued and contractors arriving to the site.
- iv. Inadvertent payment made to the Contractor for work not performed in compliance with the terms of this contract, or for any other reason, will be deducted by The City of Muskegon from subsequent payments.

AGENDA ITEM NO._____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: May 28, 2019

SUBJECT: Halaula Hawaiian Ice Shack Concession/Business Contract for City of Muskegon Parks.

SUMMARY OF REQUEST:

Staff is asking permission to enter into a seasonal contractual agreement, for 2019, with Kim Fegel of “Halaula Hawaiian Ice Shack”, at Pere Marquette Park, Margaret Drake Park and Kruse Park located within the City of Muskegon, to sell various items, as stated in their proposal, from a mobile concession.

FINANCIAL IMPACT:

Concession revenue is \$1000.00 plus 5% of gross receipts.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Enter into a seasonal Concession/Business contractual agreement, for 2019, with Kim Fegel of “Halaula Hawaiian Ice Shack”.

COMMITTEE RECOMMENDATION:



KF Halaula LLC
231-220-5724

Proposal

To: Doug Sayles

From: June 1, 2019 to October 1, 2019

Seasonal shack

Location: Pierre Marquette Park, Margaret Drake Park, and Kruse Park

Hours of operation: Sunday 1pm-8pm, Wednesday and Thursday 12pm-9pm, and Friday and Saturday 12pm-10pm (weather permitting).

We agree to pay \$1,000 for the season and 5% of the gross sales. We also agreed to advertise(online) location and events of and for primary business.

Agreement and terms are in effect as long as each party desires. No permanent is asked, offered, or implied.

☐ SHACK SETUP

- Shack to code on site (trailerable and self contained)
- Two service windows
- Two ice shavers
- 30 flavors
- Signage and lights
- Power requirements - 110 v. (generator available for power if needed)

☐ TRAILER

- Trailer unit to code (self-contained)
- Two service windows
- Two ice shavers
- 30 flavors
- Signage and lights
- Power requirements -110 v. (generator available for power if needed)

☐ TIKI BAR (portable setup)

- 5 flavors
- One ice shaver
- Signage and lights
- Power required 110 v. (generator available for power if needed)

☐ TABLE TOP MANUAL

- 5 flavors
- One hand operated ice shaver
- No power required





COMMISSION MEETING DATE May 28, 2019

Date: May 20, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

RE: Trespassing Ordinance (amendment)

SUMMARY OF REQUEST:

The Director of Public Safety requests the Commission consider amending the City of Muskegon Trespassing Ordinance to reflect the change in the new State Law (MCL 750.552), which has been amended from a 93 day misdemeanor with a maximum fine of \$500.00 to a reduced penalty.

A city ordinance cannot exceed the State Law penalty and/or fine schedule, this adjustment will align our trespassing ordinance and bring our local law into compliance with the statute. The city's penalty and fine for trespassing would be reduced to a 30 day misdemeanor and/or a fine of \$250.00.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the reduced penalty to comply with State Law.

**City of Muskegon
Muskegon County, Michigan
Ordinance Amendment No. _____**

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 54 "Offenses and Miscellaneous Provisions," Article II "Offenses Involving Property Rights," Section 54-35 "Trespass," of the Code of Ordinances of the City of Muskegon is amended as follows:

- (a) It shall be unlawful for any person to willfully enter upon the lands or premises of another, whether publicly or privately owned, without lawful authority, after having been forbidden to do so by the owner or occupant, or the agent or servant of the owner or occupant, or for any person, being on the land or premises of another, whether publicly or privately owned, upon being notified to depart therefrom by the owner or occupant, or the agent or servant of either, to without lawful authority neglect or refuse to depart therefrom; and all police and other peace officers are hereby authorized to arrest any person detected by them in such unlawful act and to detain such person in custody until the proper complaint can be made against such person.
- (b) It shall be unlawful for any person to commit any trespass, as defined in subsection (a) of this section, in or upon any land or buildings owned, occupied or otherwise used by a school within the city, and all persons not having legitimate business in and around the schools located in the city shall be presumed to be trespassing within the meaning of subsection (a) of this section; and all police and other peace officers are hereby authorized to arrest such persons.
- (c) No person not a student or employee of any school located in the city, or parent or guardian of any student enrolled therein, shall remain within any school during normal school hours without securing the written permission of the principal or person in charge of such school. The term "student," as used in this subsection, is hereby defined as any person of school age and properly enrolled in the school at which he then is present.
- (d) No person not a student, as defined in subsection (c) of this section, or employee of any school located in the city, or parent or guardian of any student enrolled therein, shall remain on any lands owned, occupied or use by any school within the city and adjacent to a school, without securing written permission of the principal or person in charge of such school.
- (e) Any person convicted of a violation of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 30 days or by a fine of not more than \$250.00, or both.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By _____

Ann Marie 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 _____, 2019, 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: _____, 2019

Ann Marie 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 _____, 2019, the City Commission of the City of Muskegon adopted an amendment to Chapter 54 "Traffic and Vehicles," Article II "Offenses Involving Property Rights," Section 54-35 "Trespass," of the Code of Ordinances of the City of Muskegon, whereby the following change was made:

1. A person who violates the trespass of this ordinance shall be guilty of a misdemeanor punishable by not more than 30 days in jail or by a fine of not more than \$250.00, or both.

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: _____, 2019 By: _____
Ann Marie Meisch, MMC, Its Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.552 Trespass upon lands or premises of another; exception; violation; penalty; "process server" defined.

Sec. 552. (1) Except as otherwise provided in subsection (2), a person shall not do any of the following:

(a) Enter the lands or premises of another without lawful authority after having been forbidden to do so by the owner or occupant or the agent of the owner or occupant.

(b) Remain without lawful authority on the land or premises of another after being notified to depart by the owner or occupant or the agent of the owner or occupant.

(c) Enter or remain without lawful authority on fenced or posted farm property of another person without the consent of the owner or his or her lessee or agent. A request to leave the premises is not a necessary element for a violation of this subdivision. This subdivision does not apply to a person who is in the process of attempting, by the most direct route, to contact the owner or his or her lessee or agent to request consent.

(2) Subsection (1) does not apply to a process server who is on the land or premises of another while in the process of attempting, by the most direct route, to serve process upon any of the following:

(a) An owner or occupant of the land or premises.

(b) An agent of the owner or occupant of the land or premises.

(c) A lessee of the land or premises.

(3) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 30 days or by a fine of not more than \$250.00, or both.

(4) As used in this section, "process server" means a person authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947, or supreme court rule to serve process.

History: Add. 1951, Act 102, Imd. Eff. May 31, 1951;—Am. 2007, Act 167, Eff. Mar. 20, 2008;—Am. 2013, Act 230, Imd. Eff. Dec. 26, 2013.

COMMISSION MEETING DATE May 28, 2019

Date: May 20, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

RE: Disorderly Conduct Ordinance (amendment)

SUMMARY OF REQUEST:

The Director of Public Safety requests the Commission consider the amendment to 54-101 (Disorderly Conduct Ordinance) Subsection (a.3) amplifying the sound produced by a radio or other electronic device from a motor vehicle (public place, roadway, or park).

This adjustment will define a violation for amplified sound being produced in such a manner to be plainly audible at a distance 50 feet from the location of said motor vehicle. A person who violates 54-101 (a.3) shall be responsible for a civil infraction.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the amendment to the Disorderly Conduct Ordinance (54-101 a.3)

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. _____**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Section 54-101 is amended to read as follows:

54-101. Disorderly Conduct.

- (a) A person commits disorderly conduct if he or she disturbs the peace or quiet of a neighborhood, family or person by:

- (1) Engaging in fighting, violent or seriously disruptive behavior;
- (2) Making unreasonable noise;
- (3) Amplifying the sound produced by a radio or other electronic sound-making device from within a motor vehicle in such a manner as to be plainly audible at a distance of 50 feet from the physical location of such motor vehicle;
- (4) Using abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person;
- (5) Making protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or
- (6) Refusing to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency.

- (b) A person who violates 54-101(a)(3) shall be responsible for a civil infraction, A person who violates any other provision in 54-101(a) shall be guilty of a misdemeanor.

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 adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By _____

Ann Marie 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 _____, 2019, 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 an 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: _____, 2019

Ann Marie 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 _____, 2019, the City Commission of the City of Muskegon amended Chapter 54, Article IV by amending Sections 54-101.

Section 54-101(a) has been amended to make it a violation for an individual to amplify sound from a motor vehicle in a manner that is plainly audible from a distance of 50 feet.

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: _____, 2019

By: _____
Ann Marie Meisch, MMC, Its Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Commission Meeting Date: May 28, 2019

Date: May 22, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Zoning Ordinance Amendment – Critical Dunes

SUMMARY OF REQUEST:

Staff initiated request to amend section 2310 of the zoning ordinance to make several changes to the critical dune ordinance.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the request at their May 16 meeting.

SUMMARY

1. The Department of Environmental Quality asked that we make several minor amendments to our Critical Dune ordinance to better reflect their model zoning ordinance. The changes are more clerical and will not change how we enforce our procedures.
2. Please see the comments from the DEQ email below.
3. Please see the revised Critical Dune ordinance enclosure.

EMAIL FROM DEQ

Dear Mr. Franzak,

The Department of Environmental Quality (DEQ) has reviewed the ordinance submitted for approval on February 13, 2019 by the City of Muskegon. The ordinance was also reviewed by the Department of Attorney General's office as requested by the DEQ Water Resources Division (WRD). This letter details questions and required changes regarding the submitted ordinance that need to be addressed before DEQ WRD approval. Sections refer to the City's zoning ordinance section 2310: Critical Dune Overlay District. Subsections refer to Part 353, Sand Dunes Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. [MCL 324.35301 *et seq.*]

1. The legislative findings Subsections 35302(b)(i) and (ii) are included in 13d of the Site Plan Review section. These findings are not in the model zoning plan defined in Subsection 35301(f). Explain why this language was put in the Site Plan Review section and not the Purpose section.
2. Include the 20 day comment period and public hearing provisions per Subsection 35304(1)(b), (c), and (d) or explain why it is not included in Section 2310.
3. Include the length of the review period and considerations for an emergency permit per Subsection 35304(1)(e) or explain why it is not included in Section 2310.
4. Include the language of Subsection 35304(1)(g) in Site Plan Review. Specifically, the permit shall be approved unless the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following: the diversity, quality or functions of the critical dune areas within the local unit of government.
5. Include the prohibited use of building lakeward of the first lakeward facing slope as noted in Subsection 35304(3).

"A permit shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or foredune except on a lot of record that was recorded prior to July 5, 1989 that does not have sufficient buildable area landward of the crest to construct the dwelling or other permanent building as proposed by the applicant. The proposed construction, to the greatest extent possible, shall be placed landward of the crest. The portion of the development that is lakeward of the crest shall be placed in the location that has the least impact on the critical dune area."

6. Include the permitted use within 100 feet of the crest as noted in Subsection 35304(4).

"Except as provided in subsection (3), a permit shall provide that a use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the use shall meet all of the following requirements:

- a. The structure and access to the structure shall be in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan shall provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
 - b. Access to the structure shall be from the landward side of the dune.
 - c. The dune shall be restabilized with indigenous vegetation.
 - d. The crest of the dune shall not be reduced in elevation.”
 7. The exemption for utilities is included in Section 2310 but the exemption for permitted uses by July 5, 1989 per Subsection 35306 (5) is not. Include in Section 2310 or explain why it is not included.
 8. The statute provides the local unit of government the option of requesting a surety bond per Subsection 35309(5). Explain why requesting a surety bond has not been included in Section 2310.
 9. Section 8 Driveways includes a reference to Sections 35312 through 35325 of Part 353 but Section 10 Accessibility does not. Either include the reference in both sections or remove the reference.
 10. Add to Section 2 Definitions the definition for accessibility measure per Subsection 35311b(2).
 11. Clarify the reference to 1A through 1C in 20b of Section 20 Variances.
 12. Include the request for revaluation per Subsection 35318 or explain why it is not included in Section 2310.
 13. The term “unreasonable hardship” is used in Section 20 Variances. This term was removed from Part 353 by the State of Michigan legislature. Explain why the term is included in this section.
 14. Correct the typographical errors in section 2h where “dine” should be “dune”, and in section 17 where “Land and Water Management Division” should be “Water Resources Division”.
- Please let me know of further questions or concerns.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2310 of the zoning ordinance to update the Critical Dune ordinance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

SECTION 2310: CRITICAL DUNES

1. Purpose. In keeping with the findings of the Michigan legislature and the authority granted to local government in Public Act 451 of 1994, as amended, the City of Muskegon hereby declares that:
 - a. The critical dune areas within the City of Muskegon are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this community, to the state, and to the people from other states and countries who visit this resource.
 - b. The purpose of this ordinance is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this ordinance is intended to do all of the following:
 - Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.
 - Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.
 - Coordinate and streamline governmental decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.
 - Determine that the proposed use will ensure and enhance the diversity, quality, function and values of the critical dune in a manner that is compatible with private property rights; allows for compatible economic development and multiple human uses of the critical dune, using the most competent, accurate and reliable information and scientific data available.
 - c. The benefits derived from alteration, industrial, residential, commercial, agricultural, sylvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.
 - d. The following regulations embodied in this Dune Overlay Zone are adopted as the minimum measures necessary to achieve these ends.
2. Definitions – As used in this section,
 - a. "Accessibility measures" means a circulation path and at least 1 entrance on a circulation path complying with American national standards institute chapter 4 standards for accessible routes, from a road or easement serving the property, and, at the option of the applicant, from

a sidewalk, a driveway, or a garage. As used in this section, accessibility measures do not include driveways.

- b. "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining.
- c. "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.
- d. "Critical dune area" means a geographic area designated in the "Atlas of Critical Dune Areas" dated February 1989 that was prepared by the Michigan Department of Natural Resources and any other locally designated sand dune areas included on the City of Muskegon Zoning Map.
- e. "Driveway" means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.
- f. "Foredune" means one or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.
- g. "Permit" means a permit for a use within a critical dune area.
- h. "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.
- i. "Sand dune mining" means the removal of sand from sand dune areas for commercial or industrial purposes.
- j. "Special use project" means any of the following:
 - A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.
 - A multifamily use of more than 3 acres.
 - A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.
 - A proposed use in a critical dune area, regardless of size of the use, that the planning commission determines would damage or destroy features of archaeological or historical significance.
- k. "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining.

3. Area Affected.

- a. The provisions of the Dune Overlay Zone apply to all lands so depicted on the City of Muskegon Zoning Map which is a part of this ordinance. These lands include the entire critical dune area as designated by the Michigan Department of Natural Resources pursuant to Public Act 451 of 1994, and to such other lands as locally designated and depicted thereon. Locally designated sand dunes together with dunes designated under Public Act 451 shall be known as critical dune areas for the

purpose of this ordinance. Lands that are within 250 feet of a critical dune area, that are determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall also receive all the protection afforded to critical dunes in the Overlay Zone, even if not so depicted on the City of Muskegon Zoning Map.

- b. Any lot or parcel which in whole or part which falls within the Dune Overlay Zone and/or within 250 feet outside the Dune Overlay Zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall not be used except upon receipt of a permit from the Zoning Administrator. No zoning permit shall be issued for the use of land within this zone or within 250 feet outside the zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area until a site plan meeting the requirements of this Section and those of Article XXIII, Section 2330, have been met. If requested, the Planning Commission will make the final determination as to whether or not these standards have been met and shall exercise its lawful discretion in all cases in favor of protection of the critical dune area.
- c. Except as provided in subsection 11 (e), a permit shall provide that a use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the use shall meet all of the following requirements:
 - i. The structure and access to the structure shall be in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan shall provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
 - ii. Access to the structure shall be from the landward side of the dune.
 - iii. The dune shall be restabilized with indigenous vegetation.
 - iv. The crest of the dune shall not be reduced in elevation.

4. Nonconforming Building and Lots After the effective date of the adoption of this Section:

- a. No subdivision or condominium development shall occur within the Dune Overlay Zone except in compliance with the minimum standards of this ordinance and after review and approval of a site plan and other documents as required herein.
- b. No structure shall be constructed, reconstructed, altered, or relocated except in strict compliance with the requirements of this ordinance.
- c. No use which is in existence as of the effective date of this Article shall be expanded, except in strict compliance with the minimum standards of this Ordinance.
- d. No existing nonconforming building or structure shall be altered except provided in Article XXII, Section 2203.

5. Application Requirements. A site plan review must be conducted before the issuance of a permit.

- a. Uses that have received all necessary permits from the state or the City by July 5, 1989, are exempt for purposes for which a permit is required. Such uses shall be regulated pursuant to local ordinances in effect by that date.
- b. A permit shall be approved unless the local unit of government or the department determines that the use will significantly damage the public interest on the privately owned land, or, if the

land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:

- i. The diversity of the critical dune areas within the local unit of government.
 - ii. The quality of the critical dune areas within the local unit of government.
 - iii. The functions of the critical dune areas within the local unit of government
- c. All applications for permits for the use of a critical dune area shall include in writing showing evidence:
- i. That Muskegon County, which administers Part 91 Soil Erosion and Sedimentation Control, of Public Act 451 of 1994, as amended, finds that the project is in compliance with the act and any applicable soil erosion and sedimentation control ordinance that is in effect in Muskegon County.
 - ii. That a proposed sewage treatment or disposal system on the site has been approved by the county health department, if applicable.
 - iii. Assuring that the cutting and removing of trees and other vegetation will be performed according to the forestry management guidelines for Michigan prepared by the Society of American Foresters in 1987, as revised in 2010, and will include instructions or plans to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation on the site than were removed by the proposed use.
 - iv. Except as otherwise provided in this subsection, a site plan that contains data required by this Section and Article XXIII, Section 2330, concerning the physical development of the site and extent of disruption of the site by the proposed development.
 - v. The payment of any required fees for processing and/or professional review of the submitted site plan.
- d. The Zoning Administrator shall not require an environmental site assessment or environmental impact statement as part of a permit application for a use in a critical dune overlay zone except for a "Special Use" project.
- e. The Zoning Administrator will require that the applicant supply a contour map of the site with one foot contour intervals at or near any proposed structure or roadway for any new construction.
- f. The City shall provide notice of an application filed under this section to each person who makes a written request to the City for notification of pending applications. The City may charge an annual fee for providing this notice. The City shall prepare a monthly list of the applications made during the previous month and shall promptly provide copies of the list for the remainder of the calendar year to the persons who have requested notice. Notice of an application shall also be given to the local conservation district office, the county clerk, the county health department. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The City may hold a public hearing on pending applications.
- g. The notice shall state that unless a written request is filed with the City within 20 days after the notice is sent, the City may grant the application without a public hearing. Upon the written request of two or more persons who own real property within two miles of the project, the City shall hold a public hearing pertaining to a permit application.
- h. At least 10 days notice of a hearing to be held pursuant to this section shall be given by publication in one or more newspapers of general circulation in the county, and by providing notice to the persons who have requested notice and to the person requesting the hearing.

- i. After the filing of an application, the City shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. If a permit is denied, the City shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the City may issue a conditional permit before the expiration of the 20-day period.
6. Environmental Assessment. When an environmental assessment is required under a “Special Use” project, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the application’s proprietary interest in the site.
 - c. The name, address, and professional qualification of the person preparing the environmental assessment and his/her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.
 - d. The description and purpose of the proposed use.
 - e. The location of existing utilities and drainage ways.
 - f. The general location and approximate dimensions of proposed structures.
 - g. Major proposed change of land forms such as new lakes, terracing or excavating.
 - h. Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
 - i. Approximate location and type of proposed drainage, water, and sewage facilities.
 - j. Legal description of property.
 - k. A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
 - l. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
 - m. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
7. Environmental Impact Statement. When an environmental assessment is required, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the applicant's proprietary interest in the site of the proposed use.
 - c. The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.
 - d. The description and purpose of the proposed use.
 - e. Six copies and one reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
 - f. The location of the existing utilities and drainage ways.
 - g. The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
 - h. The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.

- i. The general location and approximate dimensions of proposed structures.
- j. Major proposed change of land forms such as new lakes, terracing, or excavating.
- k. Approximate existing and proposed contours and drainage patterns, showing at least five-foot contour intervals.
- l. Sketches showing the scale, character, and relationship of structures, streets, or driveways, and open space.
- m. Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.
- n. A legal description of the property.
- o. An aerial photo and contour map showing the development site in relation to the surrounding area.
- p. A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- q. A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "United Soil Classification System" as adopted by the United States Government Corps of Engineers and Bureau of Reclamation, dated January 1952, or the natural cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.
- r. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- s. A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.
- t. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
- u. At a minimum, plans for compliance with all of the following standards shall be required for construction and post-construction periods:
 - Surface drainage designs and structures are erosion proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design in order that drainage waters may be impeded in their flow and percolation encouraged.
 - The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.
 - Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.
 - If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it shall be the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, and windbreaks and other similar barriers.

8. Driveways. The construction, improvement, and maintenance of a driveway shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this ordinance or a lawful nonconforming use, subject only to applicable permit requirements under Sections 35312 through 35325 of Part 353 of Public Act 451 of 1999, as amended, and the following:

- a. A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this ordinance. Additional driveways, if any, shall meet the applicable requirements for any other use under this ordinance. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record
- b. Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
- c. Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- d. Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

9. Utilities. A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this section or under Part 353 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, is exempt for purposes for which the permit was issued from the operation of this section if the maintenance, repair, or replacement is completed in compliance with all of the following:

- a. Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.
- b. All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
- c. Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.

- d. To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
- e. In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.
- f. In the cases of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.

10. Accessibility. Notwithstanding any other provision of this section, at the request of the applicant, the construction, improvement and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject only to applicable permit requirements under Sections 35312 through 35325 of Part 353 of Public Act 451 of 1999, as amended, and the following:

- a. Accessibility measures on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements.
- b. Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

The choice of components for an accessible route under American national standards institute standard 402.2 shall be at the option of the applicant.

11. Prohibited Uses. The following uses are not permitted in a critical dune area:

- a. The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
- b. A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323 of Public Act 451 of 1994.
- c. A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The

continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.

- d. Production facilities regulated under parts 615 and 625 of Act 451 of 1994, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.
- e. A permit shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or foredune except on a lot of record that was recorded prior to July 5, 1989 that does not have sufficient buildable area landward of the crest to construct the dwelling or other permanent building as proposed by the applicant. The proposed construction, to the greatest extent possible, shall be placed landward of the crest. The portion of the development that is lakeward of the crest shall be placed in the location that has the least impact on the critical dune area

12. Non-Permitted Uses, Unless a Variance is Granted. Unless a variance is granted, the following uses are not permitted in a critical dune area:

- a. A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
- b. A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
- c. A use involving a contour change if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
- d. Sylvicultural practices, as described in the "Forest Management Guidelines for Michigan", prepared by the Society of American Foresters as revised in 2010, if the City of Muskegon determines that they are more likely than not to increase erosion or decrease stability.
- e. A use that involves a vegetation removal if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.

13. Prohibition of Construction Without Permit. No grading or clearing of a site shall be done prior to issuance of a zoning permit as required in this Ordinance.

14. Special Use Project Review Procedures. A proposed special use project shall be reviewed and a recommendation for approval, approval with conditions, or denial is made by the Planning Commission pursuant to the special use procedures of this ordinance shall be completed.

15. Department of Environmental Quality Review. Prior to issuing a permit allowing a special use project within a critical dune area, the Planning Commission shall submit the special use project application and site plan and their proposed decision to the Department of Environmental Quality, Water Resources Division following the procedures of this ordinance.

16. **Nonconforming Uses.** The lawful use of land or a structure, as existing and lawful within a critical dune area in the time of the adoption of this overlay zone, may be continued although the use of that land or structure does not conform to the provisions of this overlay zone. The continuance, completion, restoration, reconstruction, extension or substitution of existing nonconforming uses of land or a structure may continue consistent with the nonconforming use requirements of this Ordinance. See Article XXII, Section 2202.
17. **Rebuilding of Lawful Structures.** A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, may be rebuilt or replaced if the structure or use was lawful at the time it was constructed or commenced; and a replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.
18. **Variance.** The Zoning Board of Appeals may grant a variance from the requirements of this overlay zone if a practical difficulty will occur to the owner of the property if the variance is not granted. The procedural requirements of Article XXIII (Site Plan Review) and Article XXV (Zoning Board of Appeals) shall be adhered to. A variance shall be subject to the following limitations:
- a. The Zoning Board of Appeals may issue variances under Article XXV of the zoning ordinance if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this Section unless the Zoning Board of Appeals determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - The diversity of the critical dune areas within the local unit of government.
 - The quality of the critical dune areas within the local unit of government.
 - The functions of the critical dune areas within the local unit of government.
 - b. The decision of the Zoning Board of Appeals shall be in writing and shall be based upon evidence that would meet the standards in Section 75 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
 - That the City of Muskegon has met the burden of proof under the Variance section of this ordinance.
 - That the decision is based upon sufficient facts or data.
 - That the decision is the product of reliable scientific principles and methods.
 - That the decision has applied the principles and methods reliably to the facts.
 - That the facts or data upon which the decision is based are recorded in the file.
 - c. The City of Muskegon shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.
 - d. A variance shall not be granted from a setback requirement provided for under Section 35034 pursuant to Part 353 of the Public Act 451 of 1994 unless the property for which the variance is requested is one of the following:

- A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of Part 353.
- A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.
- Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

19. Request for Revaluation to Determine Fair Market Value. If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.
20. Penalties. In addition to the penalty provisions of this Ordinance, the provisions of Public Act 451 of 1994 shall apply in the event of any violation. Pursuant to the Public Act, a court may impose on a person who violates any provision of this Dune Overlay Zone, or a provision of a permit issued hereunder, a civil fine of not more than \$5,000 for each day of violation, or order a violator to pay the full cost of the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both. If a person is ordered by the Zoning Administrator to restore a critical dune that has been degraded by that person, the Zoning Administrator shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.
21. Surety Bond. The City may require the holder of a permit to file with the City a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.
22. Applicable Law. Incorporated by reference herein is Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.
23. Severability. If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The City Commission hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid. However, if any provision of the Ordinance is declared invalid, the City must seek written confirmation from the DEQ that the Ordinance still complies with Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

This ordinance adopted:

Ayes: _____

Nayes: _____

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 28th day of May, 2019, 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: _____, 2019.

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 May 28, 2019, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2310 of the zoning ordinance update the Critical Dune ordinance.

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 _____, 2019.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: May 28, 2019

Date: May 28, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Form Based Code section of the Zoning Ordinance

SUMMARY OF REQUEST:

Staff initiated request to amend the form based code section of the zoning ordinance to create new context areas for Lakeside.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the request at their May 16 meeting.

Hearing, Case 2019-14: Staff initiated request to amend the form based code section of the zoning ordinance to create new context areas for the Lakeside area.

SUMMARY

1. The Form Based Code section of the zoning ordinance was created in 2015 and established six different context areas; Downtown, Mainstreet, Mainstreet Waterfront, Neighborhood Core, Neighborhood Edge and Urban Residential. These context areas establish the uses and development guidelines for each parcel in the Form Based Code.
2. Staff is proposing to utilize the same Form Based Code document and create four new context areas for the Lakeside area; Lakeside Commercial, Lakeside Heavy Commercial, Lakeside Mixed Residential, Lakeside Residential.
3. Below is a description of the new context areas:
 - Lakeside Commercial: This context area will replace most of the B-2 and B-4 business districts in Lakeside. Buildings will be required to be placed closer to the street (0 to 3 feet front setback). Buildings currently located on the south side of Lakeshore Dr are already placed at zero lot line, however, the current B-2 and B-4 zoning requires a 10-foot setback. This change will keep the small setback on the south side of Lakeshore Dr and start to create the same development pattern on the north side of the street as new buildings are constructed. This new context area will also allow buildings to be up to four stories tall, compared to the two-story limit now. This will allow properties to utilize their full potential and create lake views. The new code will also eliminate new curb cuts (unless an alley or street is not present), creating a more walkable environment.
 - Lakeside Heavy Commercial – This context area is similar to the Lakeside Commercial context area, but allows for more intense uses, such as auto repair. This context area was created to allow the current uses in this area, while designing the properties to fit in better with the area. If these current high-intensity businesses (car repair) eventually leave the area, the context area could simply be eliminated.
 - Lakeside Mixed Residential – This context area will replace the residential zoning on Lakeshore Drive. It will also replace some of the B-2 zones on the north side of Lakeshore Drive that are mostly homes. The rezoning from B-2 to Lakeside Mixed Residential will help property owners sell and refinance their homes, which has been a problem because of the commercial zoning. Homes in this district will be allowed to have a 3rd story to take in lake views. More housing options will now be available; such as duplexes, small multi-plexes, and rowhouses. Homes may also have small retail options with the addition of a cottage retail building option.
 - Lakeside Residential – This context area will replace some of the residential zoning behind the Lakeside Business District. This area currently has many parcels zoned for high-density residential that would allow large apartments, even though there aren't any parcels large enough to meet the minimum standards. This area consist of detached houses, some of them which are duplexes and triplexes. This context area would allow single family, duplexes and small multi-plexes (up to 6 units), but no commercial.
4. Notices were mailed to property owners that have parcels listed for the rezoning.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend the Form Based Code Section of the Zoning Ordinance to create new context areas for Lakeside.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

See Lakeside Form Based Code attachment.

This ordinance adopted:

Ayes: _____

Nayes: _____

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 28th day of May, 2019, 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: _____, 2019.

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 March 28, 2019, the City Commission of the City of Muskegon adopted an ordinance to amend the Form Based Code section of the Zoning Ordinance to create new context areas for Lakeside.

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 _____, 2019.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

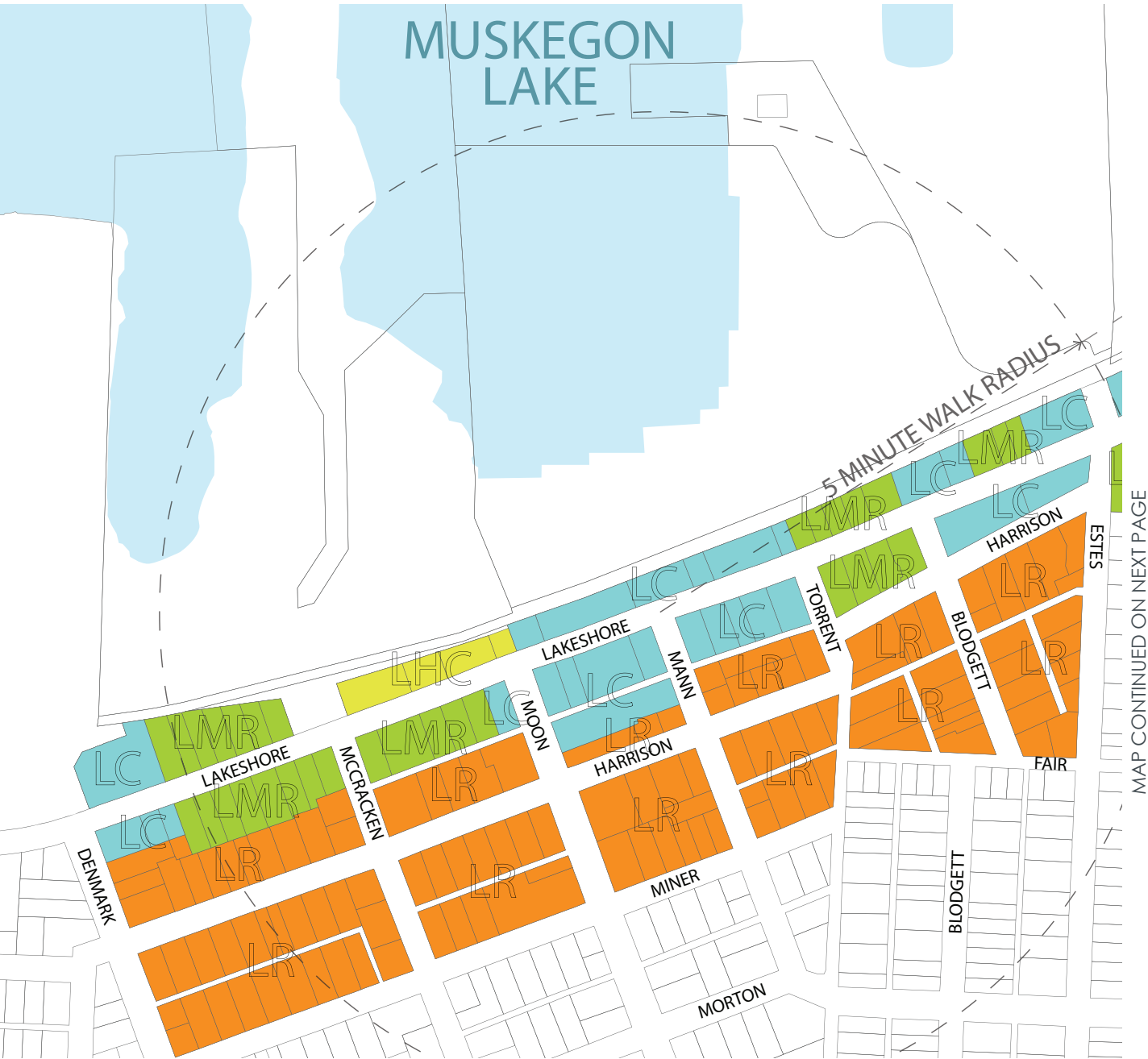
PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

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2005.02 CONTEXT AREA MAP

This Map contains Context Areas for the Lakeside Form Based Code

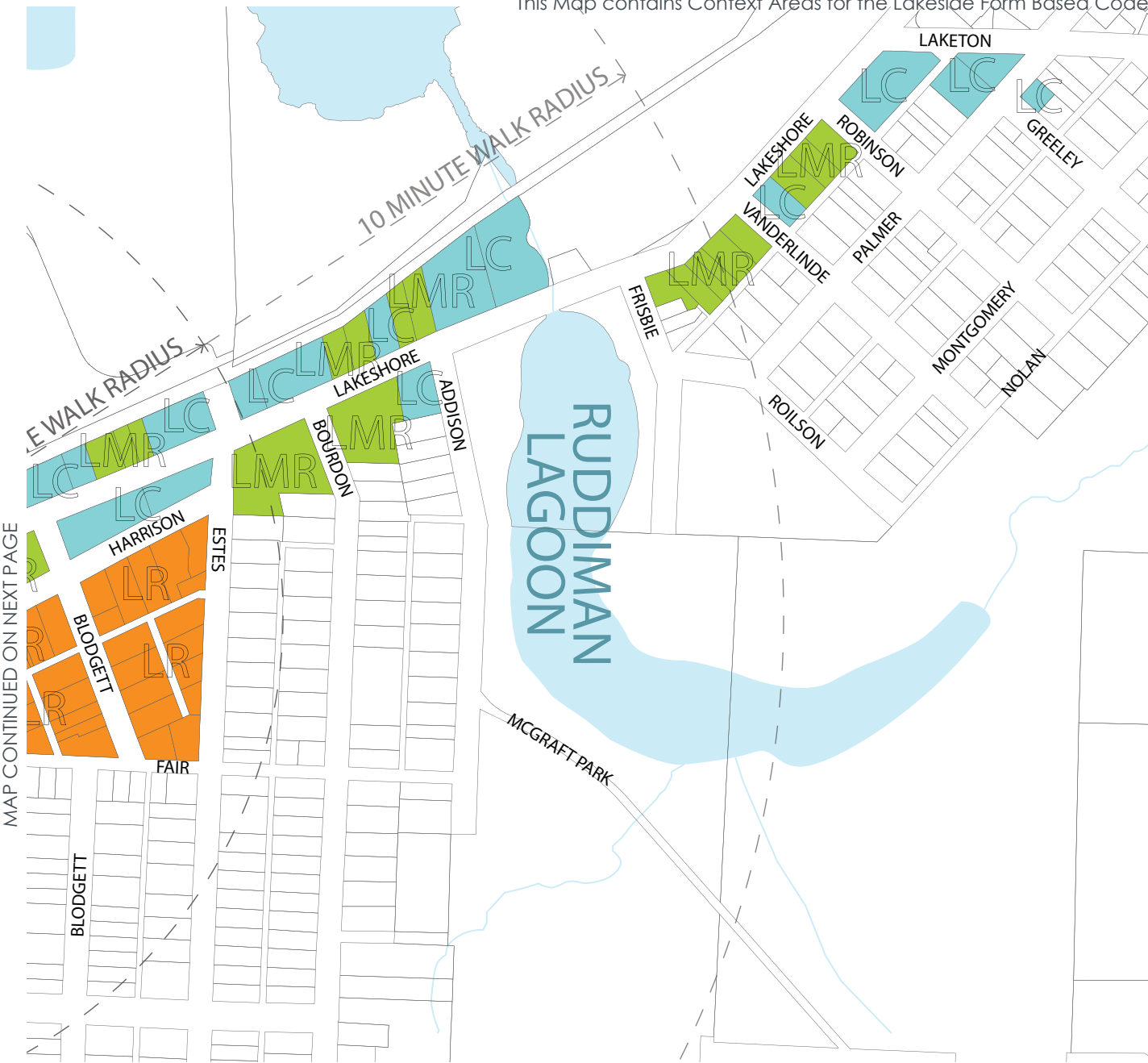


PUBLIC REALM CONTEXT AREA MAP LEGEND



2005.02 CONTEXT AREA MAP (continued)

This Map contains Context Areas for the Lakeside Form Based Code



PUBLIC REALM CONTEXT AREA MAP LEGEND


NORTH

 COMMERCIAL (LC)

 HEAVY COMMERCIAL (LHC)

 MIXED RESIDENTIAL (LMR)

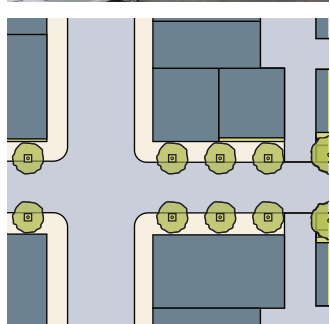
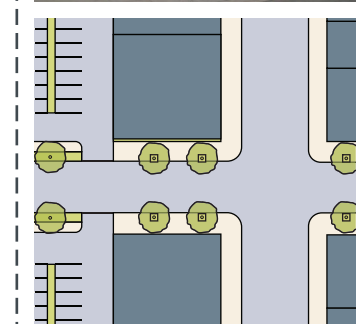
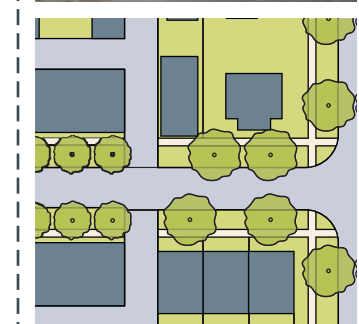
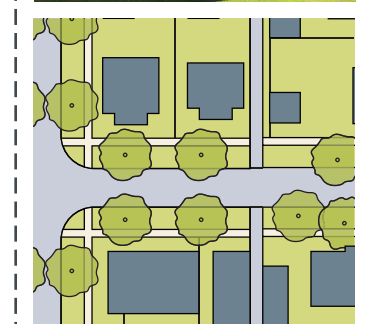
 RESIDENTIAL (LR)

2005.03 CONTEXT AREAS OVERVIEW

Context Areas for the Lakeside Form Based Code are summarized as follows:

MORE URBAN

LESS URBAN

LC LAKESIDE COMMERCIAL  	LHC LAKESIDE HEAVY COMMERCIAL  	LMR LAKESIDE MIXED RESIDENTIAL  	LR LAKESIDE RESIDENTIAL  
DESCRIPTION This Context Area is characterized by mixed uses set along sidewalks to help promote walkability and commerce. The regulations have been created to continue the development pattern of the street wall on the south side of Lakeshore Drive, and the more detached, farther set back, development type on the north side of Lakeshore Drive. Maximum building heights have increased from prior regulations, allowing development with views of Muskegon Lake. The following are generally appropriate form elements in this Context Area: A. Attached buildings on south side of Lakeshore Dr. Attached or detached buildings on north side of Lakeshore Dr. B. Building at the Right-of-Way on south side of Lakeshore Dr. Small setback on the north side of Lakeshore Dr. C. Medium to large building footprint D. Storefront frontages	DESCRIPTION This Context Area is similar to the Lakeside Commercial Context Area, but also allows for more intense uses, such as auto repair and research & development. Mixed-use and retail buildings are set adjacent to the sidewalk, however, garage type frontages are set back farther to allow for vehicle circulation and pedestrian safety. The following are generally appropriate form elements in this Context Area: A. Attached or detached buildings on the south side of Lakeshore Dr. B. Buildings at or near the right-of-way C. Medium to large building footprint D. Storefront or garage door frontage option	DESCRIPTION This Context Area is characterized by the mixture of commercial and residential uses that helps to promote walkability and commerce. Homes fronting Lakeshore Drive are allowed a third story to take advantage of lake views. The following are generally appropriate form elements in this Context Area: A. Detached homes / live-work buildings B. Small to medium building footprint C. Storefront frontages	DESCRIPTION This Context Area is characterized by a wide variety of residential building types that have a range of setback conditions within a compact walkable block structure. This Context area is typically adjacent to single family residential districts. The following are generally appropriate form elements in this Context Area: A. Attached and detached residential buildings B. Medium to small building footprint C. Varied front setbacks D. Medium side setbacks E. Primarily stoops and porch frontages

2005.04 SUMMARY OF BUILDING TYPES PERMITTED IN EACH CONTEXT AREA

BUILDING TYPE WITH FRONTAGE OPTION		CONTEXT AREAS			
		LC COMMERCIAL	LHC HEAVY COMMERCIAL	LMR MIXED RESIDENTIAL	LR RESIDENTIAL
MIXED-USE BUILDING TYPE	with STOREFRONT	By Right	By Right		
	with BALCONY	By Right	By Right		
	with TERRACE	Conditional	Conditional		
	with FORECOURT				
	with DRIVE-THROUGH				
RETAIL BUILDING TYPE	with STOREFRONT	By Right	By Right		
	with TERRACE	Conditional	Conditional		
	with DRIVE-THROUGH				
FLEX BUILDING TYPE	with STOREFRONT				
	with TERRACE				
	with FORECOURT				
	with DOORYARD				
COTTAGE RETAIL BUILDING	with STOREFRONT			By Right	
	with DOORYARD			By Right	
	with STOOP			By Right	
LIVE / WORK BUILDING TYPE	with STOREFRONT				
	with DOORYARD				
	with LIGHTWELL				
	with STOOP				
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT				
	with DOORYARD				
	with STOOP				
	with PROJECTING PORCH				
SMALL MULTI-PLEX BUILDING TYPE	with STOOP			By Right	By Right
	with PROJECTING PORCH			By Right	By Right
	with ENGAGED PORCH			By Right	By Right
ROWHOUSE BUILDING TYPE	with LIGHTWELL				
	with STOOP			By Right	
	with PROJECTING PORCH			By Right	
DUPLEX BUILDING TYPE	with STOOP			By Right	By Right
	with PROJECTING PORCH			By Right	By Right
	with ENGAGED PORCH			By Right	By Right
DETACHED HOUSE BUILDING TYPE	with STOOP			By Right	By Right
	with PROJECTING PORCH			By Right	By Right
	with ENGAGED PORCH			By Right	By Right
CARRIAGE HOUSE BUILDING TYPE				By Right	By Right
CIVIC BUILDING TYPE		By Right	By Right	By Right	By Right

Shaded areas represent Building Types that are not permitted in specified Public Realm Context Area.

2006.06 BUILDING TYPE OVERVIEW

Building Types for the Muskegon Form Based Code are summarized as follows:

	MIXED USE BUILDING TYPE This Building Type is a medium- to large-sized typically attached structure. It is intended to provide a vertical mix of uses with ground floor retail or service uses and upper floor service or residential uses. This Type makes up the primary component of a main street and downtown, and is a Building Type that can provide street vibrancy and enhanced walkability.	FRONTAGE OPTIONS STOREFRONT BALCONY TERRACE	CONTEXT AREAS LC COMMERCIAL LHC HEAVY COMMERCIAL LMR MIXED RESIDENTIAL LR RESIDENTIAL
	RETAIL BUILDING TYPE This Building Type is a medium- to large-sized typically attached structure. It is intended to provide a single story building with ground floor retail or service uses. This Type makes up the secondary component of a main street and is a Building Type that can provide street vibrancy and enhanced walkability.	FRONTAGE OPTIONS STOREFRONT TERRACE	CONTEXT AREAS LC COMMERCIAL LHC HEAVY COMMERCIAL LMR MIXED RESIDENTIAL LR RESIDENTIAL
	FLEX BUILDING TYPE This Building Type is a medium- to large-sized attached or detached structure, typically built on a large lot. It can be used to provide a vertical mix of uses with ground floor industrial, service, retail, or residential uses; or it may be a single-use building. This Type is a primary component in a variety of urban context areas that provide a mix of Building Types.	FRONTAGE OPTIONS Building Type not permitted in Lakeside	CONTEXT AREAS LC COMMERCIAL LHC HEAVY COMMERCIAL LMR MIXED RESIDENTIAL LR RESIDENTIAL
	COTTAGE RETAIL BUILDING TYPE This Building Type is a small- to medium-sized detached structure. It is intended to provide retail or service uses at the ground floor. This Type will typically have a residential mass, scale, and composition that allows it to integrate into adjacent residential areas.	FRONTAGE OPTIONS STOREFRONT DOORYARD STOOP	CONTEXT AREAS LC COMMERCIAL LHC HEAVY COMMERCIAL LMR MIXED RESIDENTIAL LR RESIDENTIAL
	LIVE / WORK BUILDING TYPE This Building Type is a small- to medium-sized attached structure that consists of one dwelling unit above and/or behind a flexible ground floor space that can be used for residential, service, or retail uses. Both the ground floor space and the dwelling unit are owned by one entity. This Type is especially appropriate for incubating retail and service uses and allowing neighborhood retail to expand as the market demands.	FRONTAGE OPTIONS Building Type not permitted in Lakeside	CONTEXT AREAS LC COMMERCIAL LHC HEAVY COMMERCIAL LMR MIXED RESIDENTIAL LR RESIDENTIAL
	LARGE MULTI-PLEX BUILDING TYPE This Building Type is a medium- to large-sized structure that consists of 7 or more side-by-side and / or stacked dwelling units, typically with one shared entry. This Type is appropriately scaled to fit in medium-density neighborhoods and enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types and promoting walkability.	FRONTAGE OPTIONS Building Type not permitted in Lakeside	CONTEXT AREAS LC COMMERCIAL LHC HEAVY COMMERCIAL LMR MIXED RESIDENTIAL LR RESIDENTIAL

Context Areas represented in black indicate that building is not allowed in that Context Area.

2006.06 BUILDING TYPE OVERVIEW (continued)

Building Types for the Muskegon Form Based Code are summarized as follows:

**SMALL MULTI-PLEX BUILDING TYPE**

This Building Type is a medium-sized structure that consists of 3 to 6 side-by-side and / or stacked dwelling units, typically with one shared entry or individual entries along the front. This Type has the appearance of a large single-family house and is appropriately scaled to fit in single family neighborhoods. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types and promoting walkability.

FRONTAGE OPTIONS

STOOP
PROJECTING PORCH
ENGAGED PORCH

CONTEXT AREAS

LC
COMMERCIAL

LHC
HEAVY
COMMERCIAL

LMR
MIXED
RESIDENTIAL

LR
RESIDENTIAL

**ROWHOUSE BUILDING TYPE**

This Building Type is a small- to medium-sized attached structure that consists of 2 to 8 rowhouses placed side-by-side. This Type is typically located within medium-density neighborhoods or in a location that transitions from single-family to mixed-use. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types and promoting walkability.

FRONTAGE OPTIONS

STOOP
PROJECTING PORCH

CONTEXT AREAS

LC
COMMERCIAL

LHC
HEAVY
COMMERCIAL

LMR
MIXED
RESIDENTIAL

LR
RESIDENTIAL

**DUPLEX BUILDING TYPE**

This Building Type is a small- to medium-sized detached structure that consists of two side-by-side or stacked dwelling units, both facing the street and within a single building massing. This Type has the appearance of a medium-sized single-family house and is appropriately scaled to fit in single family neighborhoods. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types.

FRONTAGE OPTIONS

STOOP
PROJECTING PORCH
ENGAGED PORCH

CONTEXT AREAS

LC
COMMERCIAL

LHC
HEAVY
COMMERCIAL

LMR
MIXED
RESIDENTIAL

LR
RESIDENTIAL

**DETACHED HOUSE BUILDING TYPE**

This Building Type is a small- to medium-sized detached structure that incorporates one dwelling unit. It is typically located within a primarily single-family neighborhood in a walkable urban setting. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types.

FRONTAGE OPTIONS

STOOP
PROJECTING PORCH
ENGAGED PORCH

CONTEXT AREAS

LC
COMMERCIAL

LHC
HEAVY
COMMERCIAL

LMR
MIXED
RESIDENTIAL

LR
RESIDENTIAL

**CARRIAGE HOUSE BUILDING TYPE**

This Building Type is an accessory structure typically located at the rear of a lot. It typically provides either a small residential unit or home office space above the first floor garage. This Type is important for providing affordable housing choices that are integrated into diverse neighborhoods. This Type shall only be used in conjunction with the Detached House, Duplex, Rowhouse, or Live/Work Building Types.

FRONTAGE OPTIONS

Not applicable to this Building Type

CONTEXT AREAS

LC
COMMERCIAL

LHC
HEAVY
COMMERCIAL

LMR
MIXED
RESIDENTIAL

LR
RESIDENTIAL

**CIVIC BUILDING TYPE**

This Building Type is a small-, medium- or large-sized detached structure that incorporates uses of special public importance including, but not limited to municipal buildings, churches, libraries and schools. Civic Buildings typically have less form regulations than other Building Types because their prominence within the community requires more iconic and distinctive form.

FRONTAGE OPTIONS

Not applicable to this Building Type

CONTEXT AREAS

LC
COMMERCIAL

LHC
HEAVY
COMMERCIAL

LMR
MIXED
RESIDENTIAL

LR
RESIDENTIAL

Context Areas represented in black indicate that building is not allowed in that Context Area.

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2005.05 LAKESIDE COMMERCIAL (LC) CONTEXT AREA

1.0 CONTEXT AREA INTENT AND DESCRIPTION

INTENT

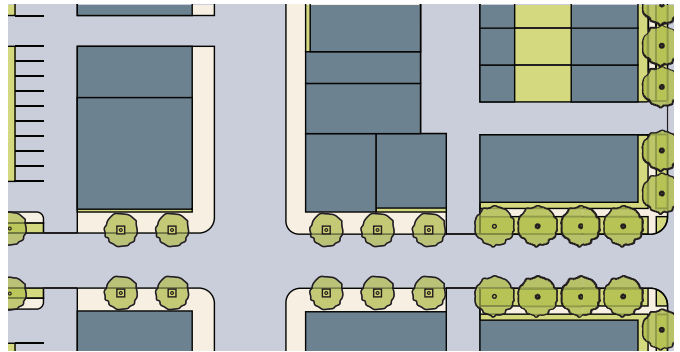
To reinforce and enhance the Lakeside Business District and strengthen its ability to thrive as a destination place for local consumers and tourists that provides service, retail, entertainment, civic and public uses, as well as a variety of housing choices in a walkable, urban form.

DESCRIPTION

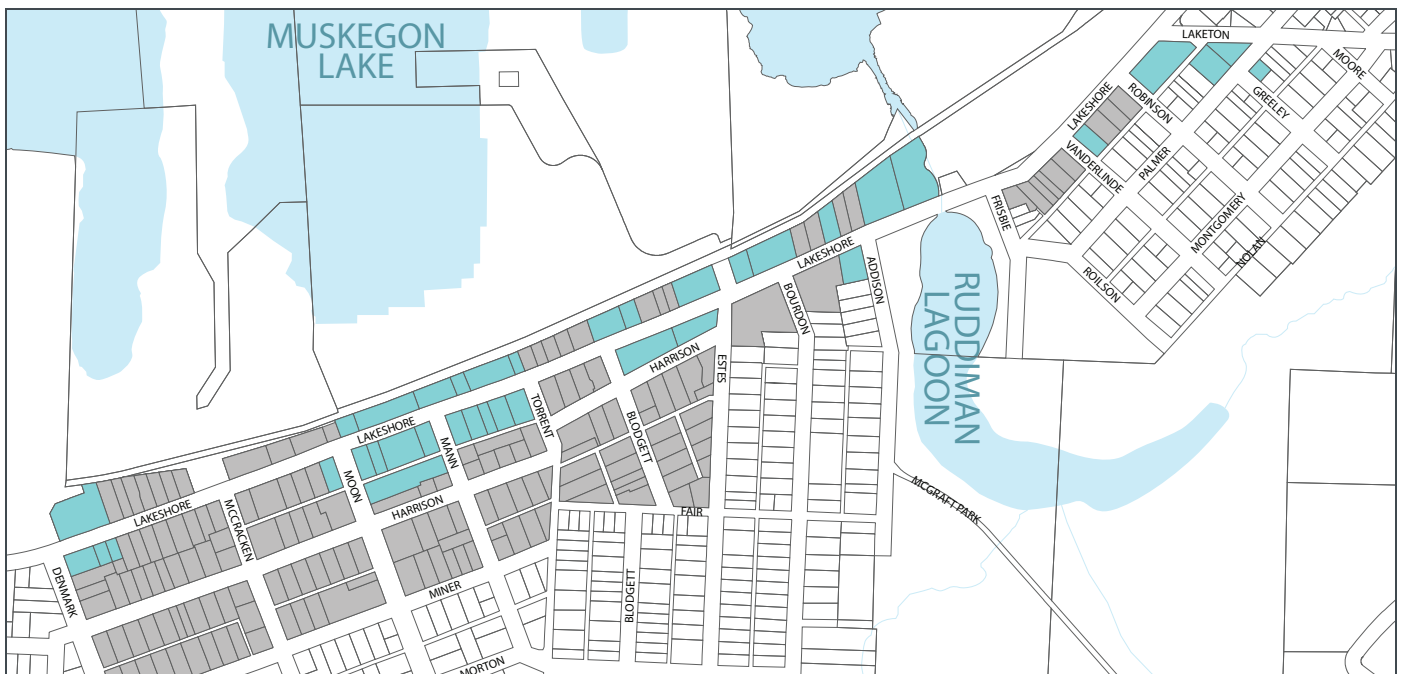
This Context Area is characterized by mixed uses set along sidewalks to help promote walkability and commerce. The regulations have been created to continue the development pattern of the street wall on the south side of Lakeshore Drive, and the more detached, farther set back, development type on the north side of Lakeshore Drive. Maximum building heights have increased from prior regulations, allowing development with views of Muskegon Lake.

The following are generally appropriate form elements in this Context Area:

- A. Attached buildings on south side of Lakeshore Dr. Attached or detached buildings on north side of Lakeshore Dr.
- B. Building at the Right-of-Way on south side of Lakeshore Dr. Small setback on the north side of Lakeshore Dr.
- C. Medium to large building footprint
- D. Storefront frontages



2.0 CONTEXT AREA LOCATION



2005.05 LAKESIDE COMMERCIAL (LC) CONTEXT AREA

3.0 PERMITTED BUILDING TYPES, BUILDING TYPE HEIGHTS, AND BUILDING TYPE LOT SIZES

BUILDING TYPE WITH FRONTAGE OPTION		LAKESIDE COMMERCIAL (LC) CONTEXT AREA		
		PERMITTED IN CONTEXT AREA	BUILDING HEIGHT	BUILDING LOT SIZE
MIXED-USE BUILDING TYPE	with STOREFRONT	By Right	4 story max. / 2 story min.	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with BALCONY	By Right	4 story max. / 2 story min.	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with TERRACE	Conditional*	4 story max. / 2 story min.	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with FORECOURT			
	with DRIVE-THROUGH			
RETAIL BUILDING TYPE	with STOREFRONT	By Right	1 story building limit	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with TERRACE	Conditional*	1 story building limit	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with DRIVE-THROUGH			
FLEX BUILDING TYPE	with STOREFRONT			
	with TERRACE			
	with FORECOURT			
	with DOORYARD			
COTTAGE RETAIL BUILDING	with STOREFRONT			
	with DOORYARD			
	with STOOP			
LIVE / WORK BUILDING TYPE	with STOREFRONT			
	with DOORYARD			
	with LIGHTWELL			
	with STOOP			
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT			
	with DOORYARD			
	with STOOP			
	with PROJECTING PORCH			
SMALL MULTI-PLEX BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
ROWHOUSE BUILDING TYPE	with LIGHTWELL			
	with STOOP			
	with PROJECTING PORCH			
DUPLEX BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
DETACHED HOUSE BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
CARRIAGE HOUSE BUILDING TYPE				
CIVIC BUILDING TYPE		By Right	2 story max. / 1 story min.	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.

Shaded areas represent Building Types and / or frontages that are not permitted in specified Context Area.

* Refer to the Building Type with specific frontage option in Section 2006 for buildings and frontages labeled as Conditional.

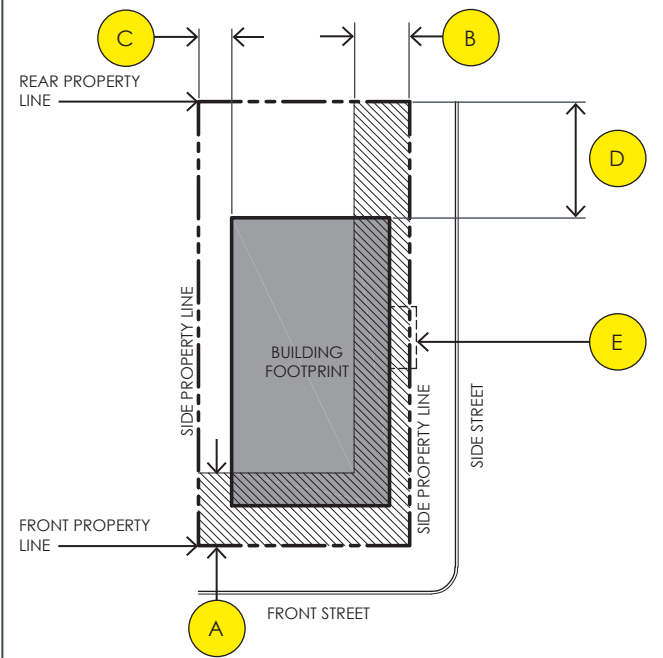
2005.05 LAKESIDE COMMERCIAL (LC) CONTEXT AREA

4.0 BUILDING SITE PLACEMENT

Refer to Illustration 5.01 for building site placement.

- A. Front Build-to-Zone (at front street):
 - Required build-to-zone from 0 to 3 feet from front property line.
- B. Side Build-to-Line/Zone (at side street):
 - 0 feet - required build-to-line on the south side of Lakeshore Drive.
 - 0-10 feet - required build-to-zone on the north side of Lakeshore Drive.
- C. Side Setback (at non-street locations):
 - 0 feet from side property line.
- D. Rear Setback:
 - 0 feet from rear property line.
- E. Encroachments: Balconies, awnings, canopies, eaves, cornices, and bay windows may project into required setbacks, beyond required build-to-zones, or into the public right-of-way as indicated in Section 2003.02.

ILLUSTRATION 5.01 BUILDING SITE PLACEMENT

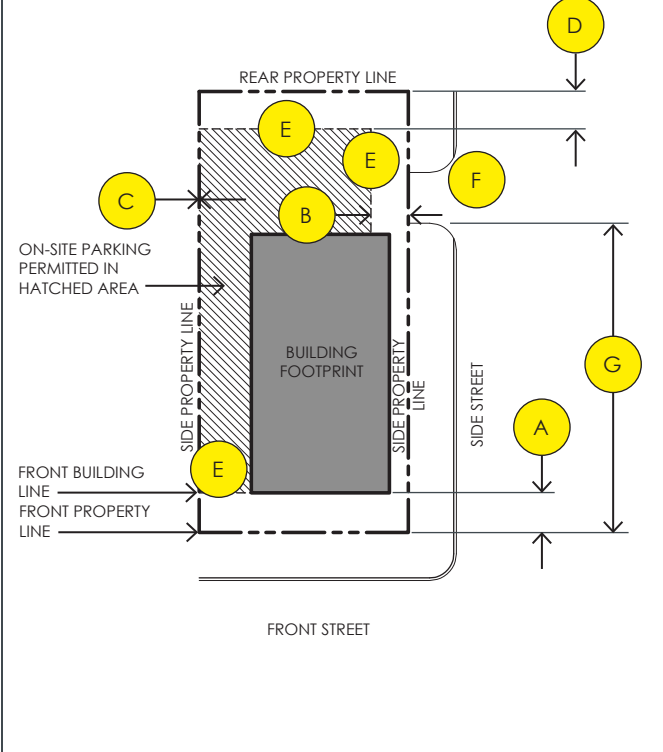


5.0 PARKING PLACEMENT

Refer to Illustration 5.02 for on-site parking placement.

- A. Front Setback:
 - 30 feet minimum from front property line on the south side of Lakeshore Drive.
 - Parking must be located behind front building line on the north side of Lakeshore Drive.
- B. Side Setback (from side street):
 - 5 feet minimum from side property line.
- C. Side Setback (from non-street locations):
 - 0 feet from side property line.
- D. Rear Setback:
 - 0 feet from rear property line at non-street locations.
 - 5 feet from rear property line at street locations.
- E. Parking located at side, rear, or front street locations shall be screened from the street as required by Section 2008.14.
- F. Parking / service areas:
 - Parking / service areas shall not be accessed from Lakeshore Dr., unless an alley or side street is not available for driveway placement. Maximum width of driveway is 20 feet.
 - Additional requirement for North side of Lakeshore Dr.: Parking / service areas shall not be accessed from Lakeshore Dr., unless the property has over 100' of road frontage on Lakeshore Dr.
- G. Driveway access location:
 - Corner lot: 40 feet minimum from street corner.
 - Interior lot: within 5 feet of side property line, when alley is not available.

ILLUSTRATION 5.02 PARKING PLACEMENT



2005.05 LAKESIDE COMMERCIAL (LC) CONTEXT AREA

6.0 PERMITTED USES

LAKESIDE COMMERCIAL (LC) CONTEXT AREA PERMITTED USES

Specific Use	MIXED USE BUILDING TYPE	RETAIL BUILDING TYPE	FLEX BUILDING TYPE	COTTAGE RETAIL BUILDING TYPE	LIVE / WORK BUILDING TYPE	LARGE MULTI-PLEX BUILDING TYPE	SMALL MULTI-PLEX BUILDING TYPE	ROWHOUSE BUILDING TYPE	DUPLEX BUILDING TYPE	DETACHED HOUSE BUILDING TYPE	CARRIAGE HOUSE BUILDING TYPE	CIVIC BUILDING TYPE
Accessory buildings and uses	P	P										
Amusement and recreation facility	P	P										
Auto service station												
Bank	P	P										
Business school/private or public school/higher ed.	S											
Church												
Club, lodge, hall												
Gallery/museum	P											P
Hotel/motel	P											
Indoor theater/live music concert hall	P											
Light manufacturing												
Machine shop												
Micro brewery, distillery, winery under 2500 barrels	P	P										
Micro brewery, distillery, winery over 2500 barrels												
Multi-family	P*											
Office	P	P										
Outdoor recreation												
Outdoor theater												
Parking structure	S											
Personal service	P	P										
Railway terminal												P
Research and development												
Restaurant, cocktail lounge, brewpub	P	P										
Retail	P	P										
Shipping, port related activity												

P = Permitted Use

P* = Permitted Use on floors two and above

P# = Permitted Use on first floor only

S = Special Land Use (refer to Section 2002.02)

Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.

Blank cell = Use not permitted in this Context Area

Shaded areas represent Building Types that are not permitted in this Context Area.

6.0 PERMITTED USES (continued)

Specific Use

P = Permitted Use
P* = Permitted Use on floors two and above
P# = Permitted Use on first floor only
S = Special Land Use (refer to Section 2002.02)
Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.
Blank cell = Use not permitted in this Context Area
Shaded areas represent Building Types that are not permitted in this Context Area.

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2005.06 LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA

1.0 CONTEXT AREA INTENT AND DESCRIPTION

INTENT

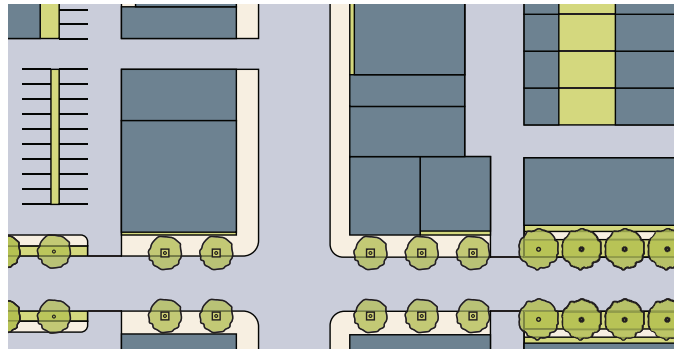
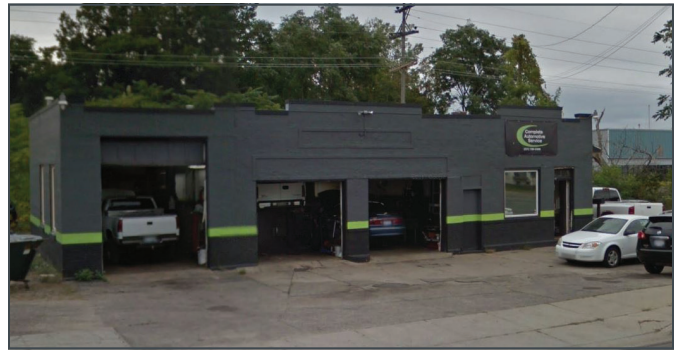
To continue the dense retail and mixed-use development pattern of the district, but to also allow for more intense uses, such as auto repair and research & development. To incorporate these more intense uses harmoniously within the walkable development pattern.

DESCRIPTION

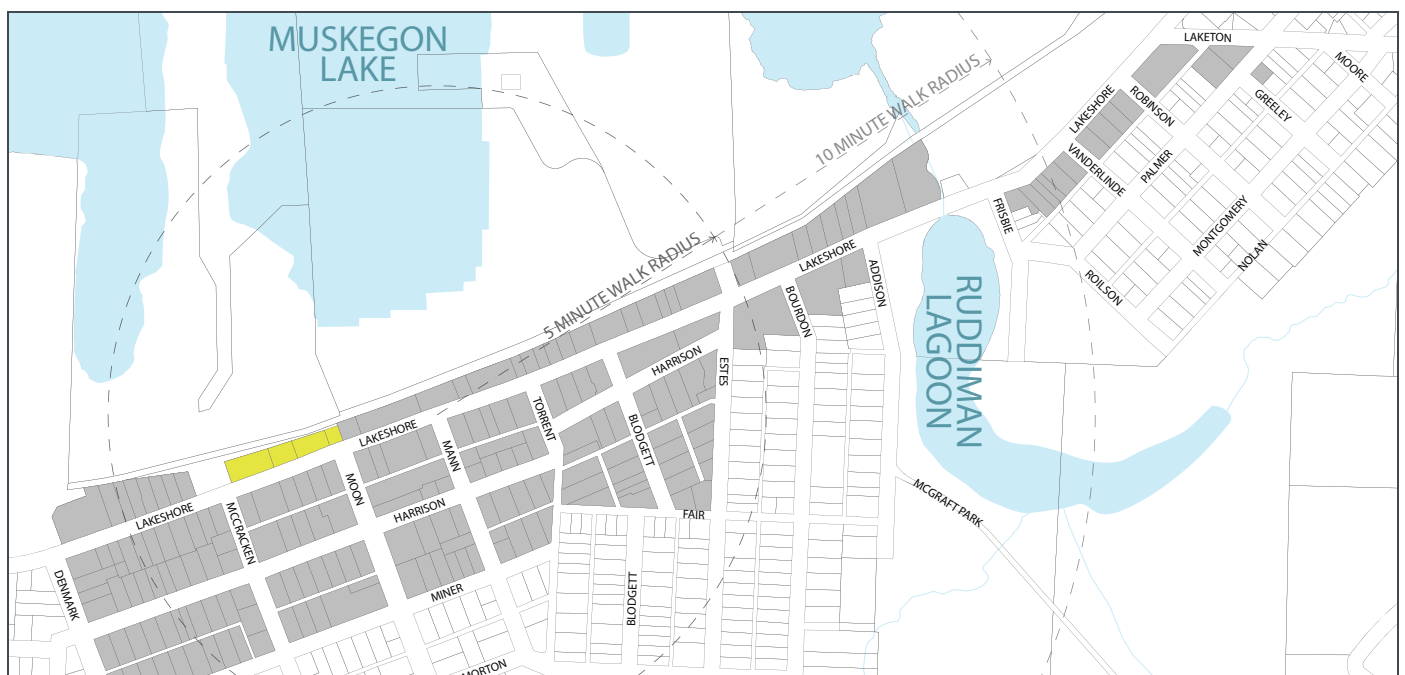
This Context Area is similar to the Lakeside Commercial Context Area, but also allows for more intense uses, such as auto repair and research & development. Mixed-use and retail buildings are set adjacent to the sidewalk, however, garage type frontages are set back farther to allow for vehicle circulation and pedestrian safety.

The following are generally appropriate form elements in this Context Area:

- A. Attached or detached buildings on the south side of Lakeshore Dr.
- B. Buildings at or near the right-of-way
- C. Medium to large building footprint
- D. Storefront or garage door frontage option



2.0 CONTEXT AREA LOCATION



2005.06 LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA

3.0 PERMITTED BUILDING TYPES, BUILDING TYPE HEIGHTS, AND BUILDING TYPE LOT SIZES

BUILDING TYPE WITH FRONTAGE OPTION		LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA		
		PERMITTED IN CONTEXT AREA	BUILDING HEIGHT	BUILDING LOT SIZE
MIXED-USE BUILDING TYPE	with STOREFRONT	By Right	4 story max. / 2 story min.	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with BALCONY	By Right	4 story max. / 2 story min.	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with TERRACE	Conditional*	4 story max. / 2 story min.	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with FORECOURT			
	with DRIVE-THROUGH			
RETAIL BUILDING TYPE	with STOREFRONT	By Right	1 story building limit	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with TERRACE	Conditional*	1 story building limit	Lot Width: 25' min. / 100' max. Lot Depth: 50' min.
	with DRIVE-THROUGH			
FLEX BUILDING TYPE	with STOREFRONT			
	with TERRACE			
	with FORECOURT			
	with DOORYARD			
COTTAGE RETAIL BUILDING TYPE	with STOREFRONT			
	with DOORYARD			
	with STOOP			
LIVE / WORK BUILDING TYPE	with STOREFRONT			
	with DOORYARD			
	with LIGHTWELL			
	with STOOP			
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT			
	with DOORYARD			
	with STOOP			
	with PROJECTING PORCH			
SMALL MULTI-PLEX BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
ROWHOUSE BUILDING TYPE	with LIGHTWELL			
	with STOOP			
	with PROJECTING PORCH			
DUPLEX BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
DETACHED HOUSE BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
CARRIAGE HOUSE BUILDING TYPE				
CIVIC BUILDING TYPE		By Right	2 story max. / 1 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.

Shaded areas represent Building Types and / or frontages that are not permitted in specified Context Area.

* Refer to the Building Type with specific frontage option in Section 2006 for buildings and frontages labeled as Conditional.

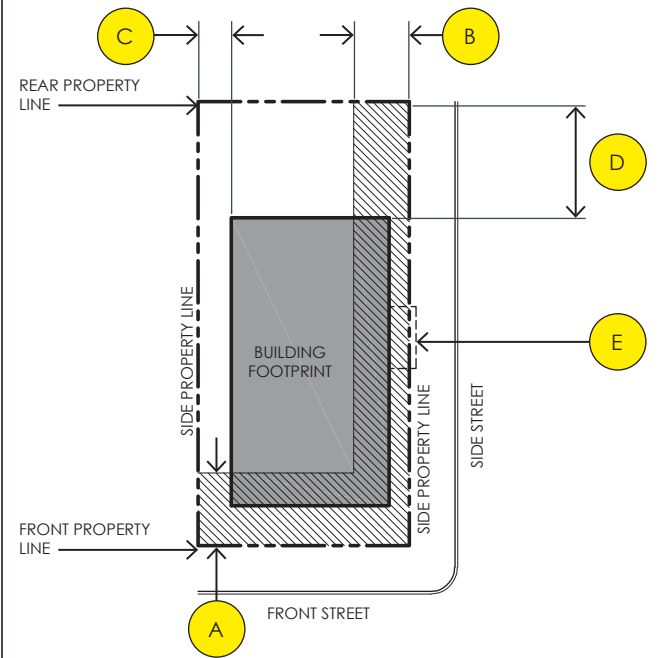
2005.06 LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA

4.0 BUILDING SITE PLACEMENT

Refer to Illustration 5.03 for building site placement.

- A. Front Build-to-Zone (at front street):
 - Required build-to-zone from 0 to 3 feet from front property line.
- B. Side Build-to-Zone (at side street):
 - Required build-to-zone from 0 to 3 feet from side property line.
- C. Side Setback (at non-street locations):
 - 0 feet from side property line.
- D. Rear Setback:
 - 0 feet from rear property line.
- E. Encroachments: Balconies, awnings, canopies, eaves, cornices, and bay windows, may project into required setbacks, beyond required build-to-zones, or into the public right-of-way as indicated in Section 2003.02.

ILLUSTRATION 5.03 BUILDING SITE PLACEMENT

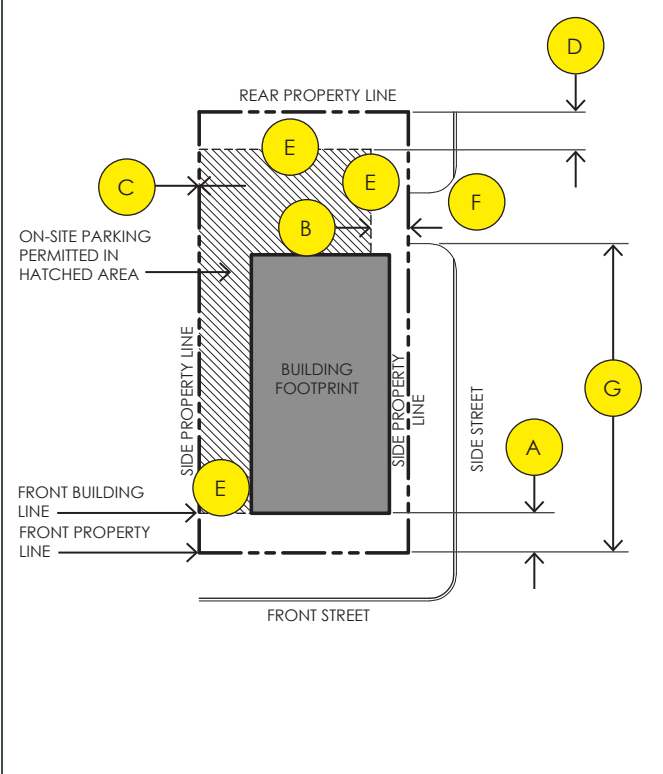


5.0 PARKING PLACEMENT

Refer to Illustration 5.04 for on-site parking placement.

- A. Front Setback:
 - Parking must be located behind front building line. When garage door frontage option is used, parking may be located in front of front building line, though active uses are encouraged along the street.
- B. Side Setback (from side street):
 - 3 feet minimum from side property line.
- C. Side Setback (from non-street locations):
 - 0 feet from side property line.
- D. Rear Setback:
 - 0 feet from rear property line at non-street locations.
 - 3 feet from rear property line at street locations.
- E. Parking located at side, rear, or front street locations shall be screened from the street as required by Section 2008.14.
- F. Parking / service areas:
 - Parking / service areas shall not be accessed from Lakeshore Dr., unless an alley or side street is not available for driveway placement. Maximum width of driveway is 20 feet.
 - Additional requirement for North side of Lakeshore Dr.: Parking / service areas shall not be accessed from Lakeshore Dr., unless the property has over 100' of road frontage on Lakeshore Dr.
- G. Driveway access location:
 - Corner lot: 40 feet minimum from street corner.
 - Interior lot: within 5 feet of side property line, when alley is not available.

ILLUSTRATION 5.04 PARKING PLACEMENT



2005.06 LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA

6.0 PERMITTED USES

LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA PERMITTED USES

Specific Use	MIXED USE BUILDING TYPE	RETAIL BUILDING TYPE	FLEX BUILDING TYPE	COTTAGE RETAIL BUILDING TYPE	LIVE / WORK BUILDING TYPE	LARGE MULTI-PLEX BUILDING TYPE	SMALL MULTI-PLEX BUILDING TYPE	ROWHOUSE BUILDING TYPE	DUPLEX BUILDING TYPE	DETACHED HOUSE BUILDING TYPE	CARRIAGE HOUSE BUILDING TYPE	CIVIC BUILDING TYPE
Accessory buildings and uses	P	P										
Amusement and recreation facility	P	P										
Auto service station		P										
Bank	P	P										
Business school/private or public school/higher ed.	S											
Church												
Club, lodge, hall												
Gallery/museum	P											P
Hotel/motel	P											
Indoor theater/live music concert hall	P											
Light manufacturing												
Machine shop												
Micro brewery, distillery, winery under 2500 barrels	P	P										
Micro brewery, distillery, winery over 2500 barrels												
Multi-family	P*											
Office	P	P										
Outdoor recreation												
Outdoor theater												
Parking structure	S											
Personal service	P	P										
Railway terminal												P
Research and development		P										
Restaurant, cocktail lounge, brewpub	P	P										
Retail	P	P										
Shipping, port related activity												

P = Permitted Use

P* = Permitted Use on floors two and above

P# = Permitted Use on first floor only

S = Special Land Use (refer to Section 2002.02)

Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.

Blank cell = Use not permitted in this Context Area

Shaded areas represent Building Types that are not permitted in this Context Area.

2005.06 LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA

6.0 PERMITTED USES (continued)

LAKESIDE HEAVY COMMERCIAL (LHC) CONTEXT AREA PERMITTED USES

[illegible]

P = Permitted Use

P* = Permitted Use on floors two and above

P# = Permitted Use on first floor only

S = Special Land Use (refer to Section 2002.02)

Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.

Blank cell = Use not permitted in this Context Area

Shaded areas represent Building Types that are not permitted in this Context Area.

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2005.07 LAKESIDE MIXED RESIDENTIAL (LMR) CONTEXT AREA**1.0 CONTEXT AREA INTENT AND DESCRIPTION****INTENT**

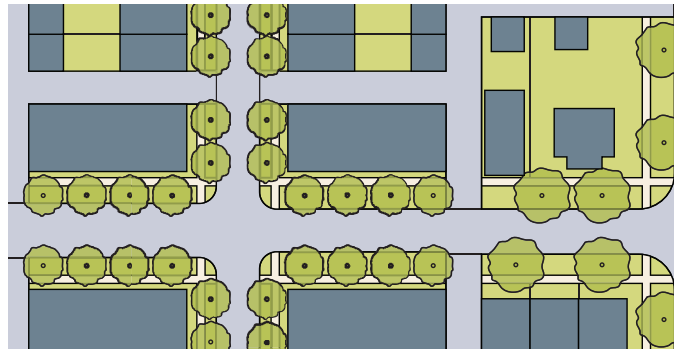
To allow for the cohesive existence of residential and business uses within the district. This Context Area allows for residential and small scale commercial uses to be placed alongside each other in a walkable, urban form.

DESCRIPTION

This Context Area is characterized by the mixture of commercial and residential uses that helps to promote walkability and commerce. Homes fronting Lakeshore Drive are allowed a third story to take advantage of lake views.

The following are generally appropriate form elements in this Context Area:

- A. Detached homes / live-work buildings
- B. Small to medium building footprint
- C. Storefront frontages

**2.0 CONTEXT AREA LOCATION**

2005.07 LAKESIDE MIXED RESIDENTIAL (LMR) CONTEXT AREA

3.0 PERMITTED BUILDING TYPES, BUILDING TYPE HEIGHTS, AND BUILDING TYPE LOT SIZES

BUILDING TYPE WITH FRONTAGE OPTION		LAKESIDE MIXED RESIDENTIAL (LMR) CONTEXT AREA		
		PERMITTED IN CONTEXT AREA	BUILDING HEIGHT	BUILDING LOT SIZE
MIXED-USE BUILDING TYPE	with STOREFRONT			
	with BALCONY			
	with TERRACE			
	with FORECOURT			
	with DRIVE-THROUGH			
RETAIL BUILDING TYPE	with STOREFRONT			
	with TERRACE			
	with DRIVE-THROUGH			
FLEX BUILDING TYPE	with STOREFRONT			
	with TERRACE			
	with FORECOURT			
	with DOORYARD			
COTTAGE RETAIL BUILDING	with STOREFRONT	By Right	3 story cond.* / 1 story min.	Lot Width: 25' min. / 80' max. Lot Depth: 80' min.
	with DOORYARD	By Right	3 story cond.* / 1 story min.	Lot Width: 25' min. / 80' max. Lot Depth: 80' min.
	with STOOP	By Right	3 story cond.* / 1 story min.	Lot Width: 25' min. / 80' max. Lot Depth: 80' min.
LIVE / WORK BUILDING TYPE	with STOREFRONT			
	with DOORYARD			
	with LIGHTWELL			
	with STOOP			
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT			
	with DOORYARD			
	with STOOP			
	with PROJECTING PORCH			
SMALL MULTI-PLEX BUILDING TYPE	with STOOP	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
	with ENGAGED PORCH	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
ROWHOUSE BUILDING TYPE	with LIGHTWELL			
	with STOOP	By Right	2 story building required	Lot Width: 16' min. / 30' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	2 story building required	Lot Width: 16' min. / 30' max. Lot Depth: 100' min.
DUPLEX BUILDING TYPE	with STOOP	By Right	3 story cond.* / 2 story min.	Lot Width: 35' min. / 60' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	3 story cond.* / 2 story min.	Lot Width: 35' min. / 60' max. Lot Depth: 100' min.
	with ENGAGED PORCH	By Right	3 story cond.* / 2 story min.	Lot Width: 35' min. / 60' max. Lot Depth: 100' min.
DETACHED HOUSE BUILDING TYPE	with STOOP	By Right	3 story cond.* / 1 story min.	Lot Width: 25' min. / 60' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	3 story cond.* / 1 story min.	Lot Width: 25' min. / 60' max. Lot Depth: 100' min.
	with ENGAGED PORCH	By Right	3 story cond.* / 1 story min.	Lot Width: 25' min. / 60' max. Lot Depth: 100' min.
CARRIAGE HOUSE BUILDING TYPE		By Right	2 story building required	Not Applicable - Carriage House Building Type must be used as an accessory building to another building type (refer to Section 2006)
CIVIC BUILDING TYPE		By Right	2 story max. / 1 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.

Shaded areas represent Building Types and / or frontages that are not permitted in specified Context Area.

* Building height labeled Conditional is permitted if fronting Lakeshore Drive.

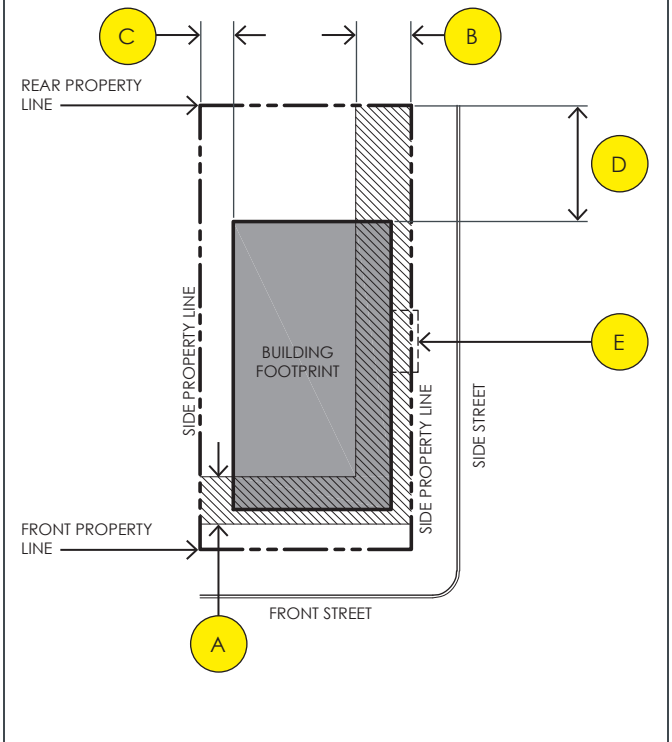
2005.07 LAKESIDE MIXED RESIDENTIAL (LMR) CONTEXT AREA

4.0 BUILDING SITE PLACEMENT

Refer to Illustration 5.05 for building site placement.

- A. Front Build-to-Zone (at front street):
 - Required build-to-zone from 5 to 12 feet from front property line.
- B. Side Build-to-Zone (at side street):
 - Required build-to-zone from 0 to 12 feet from side property line.
- C. Side Setback (at non-street locations):
 - 0 feet from side property line.
- D. Rear Setback:
 - 0 feet from rear property line.
- E. Encroachments: Balconies, awnings, canopies, eaves, cornices, and bay windows, may project into required setbacks, beyond required build-to-zones, or into the public right-of-way as indicated in Section 2003.02.

ILLUSTRATION 5.05 BUILDING SITE PLACEMENT

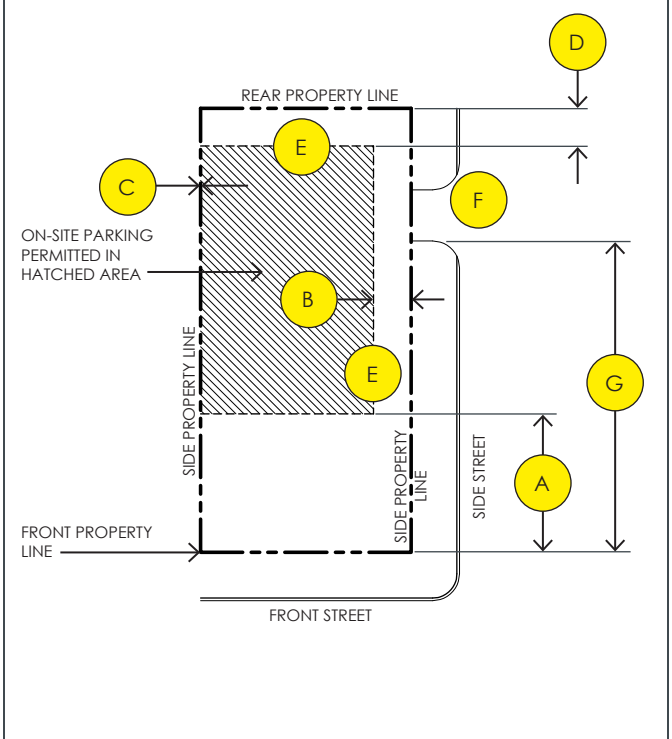


5.0 PARKING PLACEMENT

Refer to Illustration 5.06 for on-site parking placement.

- A. Front Setback:
 - 40 feet minimum from front property line.
- B. Side Setback (from side street):
 - 5 feet minimum from side property line.
- C. Side Setback (from non-street locations):
 - 0 feet from side property line.
- D. Rear Setback:
 - 0 feet from rear property line at non-street locations.
 - 5 feet from rear property line at street locations.
- E. Parking located at side or rear street locations shall be screened from the street as required by Section 2008.14.
- F. Parking / service areas shall not be accessed from front streets, unless an alley or side street is not available for driveway placement. Maximum width of driveway is 20 feet.
- G. Driveway access location:
 - Corner lot: 40 feet minimum from street corner.
 - Interior lot: within 5 feet of side property line, when alley is not available.

ILLUSTRATION 5.06 PARKING PLACEMENT



2005.07 LAKESIDE MIXED RESIDENTIAL (LMR) CONTEXT AREA

6.0 PERMITTED USES

LAKESIDE MIXED RESIDENTIAL (LMR) CONTEXT AREA PERMITTED USES

Specific Use	MIXED USE BUILDING TYPE	RETAIL BUILDING TYPE	FLEX BUILDING TYPE	COTTAGE RETAIL BUILDING TYPE	LIVE / WORK BUILDING TYPE	LARGE MULTI-PLEX BUILDING TYPE	SMALL MULTI-PLEX BUILDING TYPE	ROWHOUSE BUILDING TYPE	DUPLEX BUILDING TYPE	DETACHED HOUSE BUILDING TYPE	CARRIAGE HOUSE BUILDING TYPE	CIVIC BUILDING TYPE
Accessory buildings and uses				P			P	P	P	P	P	
Amusement and recreation facility												
Auto service station				S								
Bank												
Business school/private or public school/higher ed.												
Church												P
Club, lodge, hall				S*			S*	S*	S*	S*		S*
Gallery/museum				P			P	P	P	P	P	P
Hotel/motel												
Indoor theater/live music concert hall												
Light manufacturing												
Machine shop												
Micro brewery, distillery, winery under 2500 barrels				P								
Micro brewery, distillery, winery over 2500 barrels												
Multi-family							P					
Office				P								
Outdoor recreation												
Outdoor theater												
Parking structure												
Personal service				P								
Railway terminal												P
Research and development												
Restaurant, cocktail lounge, brewpub				P								
Retail				P								
Shipping, port related activity												

P = Permitted Use

P* = Permitted Use on floors two and above

P# = Permitted Use on first floor only

S = Special Land Use (refer to Section 2002.02)

S* = Special Land Use requires minimum 200 feet of frontage on one street

Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.

Blank cell = Use not permitted in this Context Area

Shaded areas represent Building Types that are not permitted in this Context Area.

6.0 PERMITTED USES (continued)

Specific Use

P = Permitted Use
P* = Permitted Use on floors two and above
P# = Permitted Use on first floor only
S = Special Land Use (refer to Section 2002.02)
S* = Special Land Use requires minimum 200 feet of frontage on one street
Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.
Blank cell = Use not permitted in this Context Area
Shaded areas represent Building Types that are not permitted in this Context Area.

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2005.08 LAKESIDE RESIDENTIAL (LR) CONTEXT AREA

1.0 CONTEXT AREA INTENT AND DESCRIPTION

INTENT

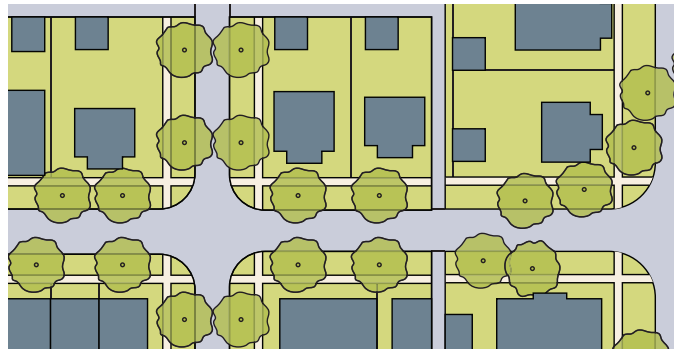
To provide a variety of urban housing choices, in small to medium footprint, medium-density Building Types, which reinforce the neighborhood's walkable nature.

DESCRIPTION

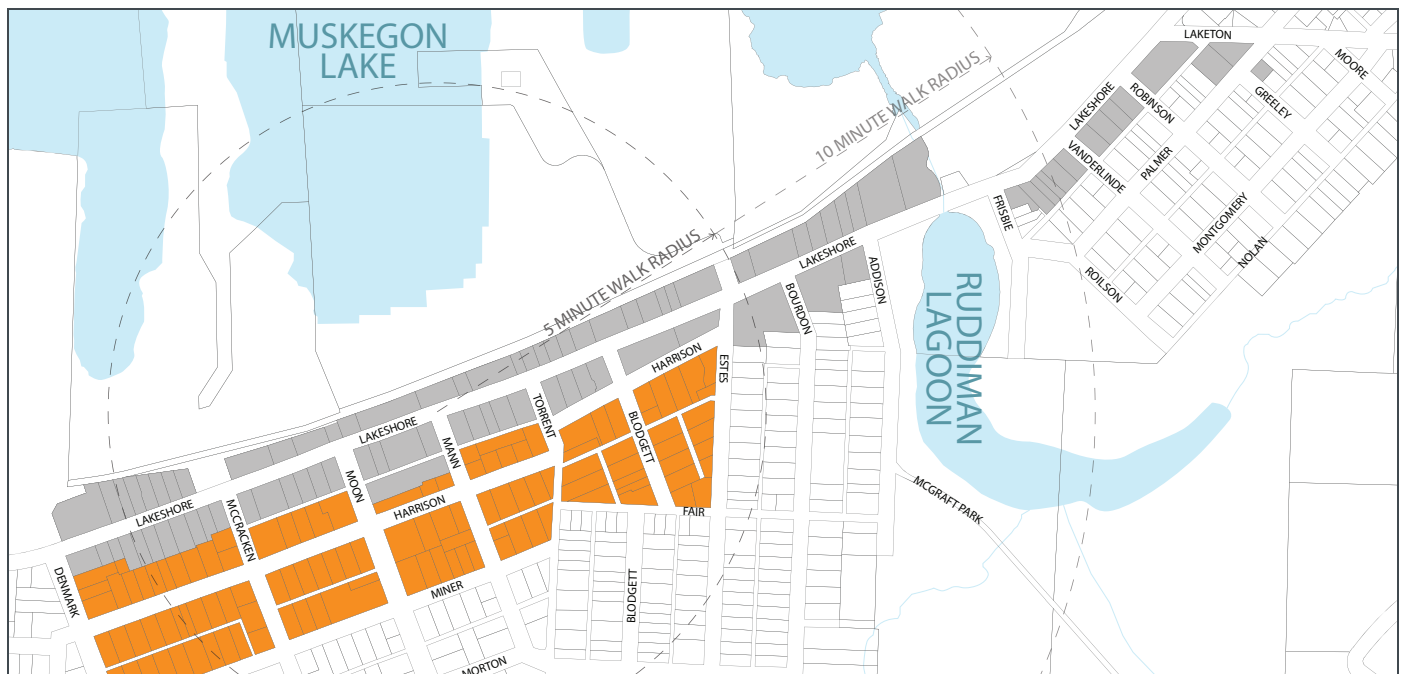
This Context Area is characterized by a wide variety of residential building types that have a range of setback conditions within a compact walkable block structure. This Context Area is typically adjacent to single family residential districts.

The following are generally appropriate form elements in this Context Area:

- A. Attached and detached residential buildings
- B. Medium to small building footprint
- C. Varied front setbacks
- D. Medium side setbacks
- E. Primarily stoops and porch frontages



2.0 CONTEXT AREA LOCATION



2005.08 LAKESIDE RESIDENTIAL (LR) CONTEXT AREA

3.0 PERMITTED BUILDING TYPES, BUILDING TYPE HEIGHTS, AND BUILDING TYPE LOT SIZES

BUILDING TYPE WITH FRONTAGE OPTION		LAKESIDE RESIDENTIAL (LR) CONTEXT AREA		
		PERMITTED IN CONTEXT AREA	BUILDING HEIGHT	BUILDING LOT SIZE
MIXED-USE BUILDING TYPE	with STOREFRONT			
	with BALCONY			
	with TERRACE			
	with FORECOURT			
	with DRIVE-THROUGH			
RETAIL BUILDING TYPE	with STOREFRONT			
	with TERRACE			
	with DRIVE-THROUGH			
FLEX BUILDING TYPE	with STOREFRONT			
	with TERRACE			
	with FORECOURT			
	with DOORYARD			
COTTAGE RETAIL BUILDING	with STOREFRONT			
	with DOORYARD			
	with STOOP			
LIVE / WORK BUILDING TYPE	with STOREFRONT			
	with DOORYARD			
	with LIGHTWELL			
	with STOOP			
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT			
	with DOORYARD			
	with STOOP			
	with PROJECTING PORCH			
SMALL MULTI-PLEX BUILDING TYPE	with STOOP	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
	with ENGAGED PORCH	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
ROWHOUSE BUILDING TYPE	with LIGHTWELL			
	with STOOP			
	with PROJECTING PORCH			
DUPLEX BUILDING TYPE	with STOOP	By Right	2 story building required	Lot Width: 40' min. / 60' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	2 story building required	Lot Width: 40' min. / 60' max. Lot Depth: 100' min.
	with ENGAGED PORCH	By Right	2 story building required	Lot Width: 40' min. / 60' max. Lot Depth: 100' min.
DETACHED HOUSE BUILDING TYPE	with STOOP	By Right	2 story max. / 1 story min.	Lot Width: 30' min. / 60' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	2 story max. / 1 story min.	Lot Width: 30' min. / 60' max. Lot Depth: 100' min.
	with ENGAGED PORCH	By Right	2 story max. / 1 story min.	Lot Width: 30' min. / 60' max. Lot Depth: 100' min.
CARRIAGE HOUSE BUILDING TYPE		By Right	2 story building required	Not Applicable - Carriage House Building Type must be used as an accessory building to another building type (refer to Section 2006)
CIVIC BUILDING TYPE		By Right	2 story max. / 1 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.

Shaded areas represent Building Types and / or frontages that are not permitted in specified Context Area.

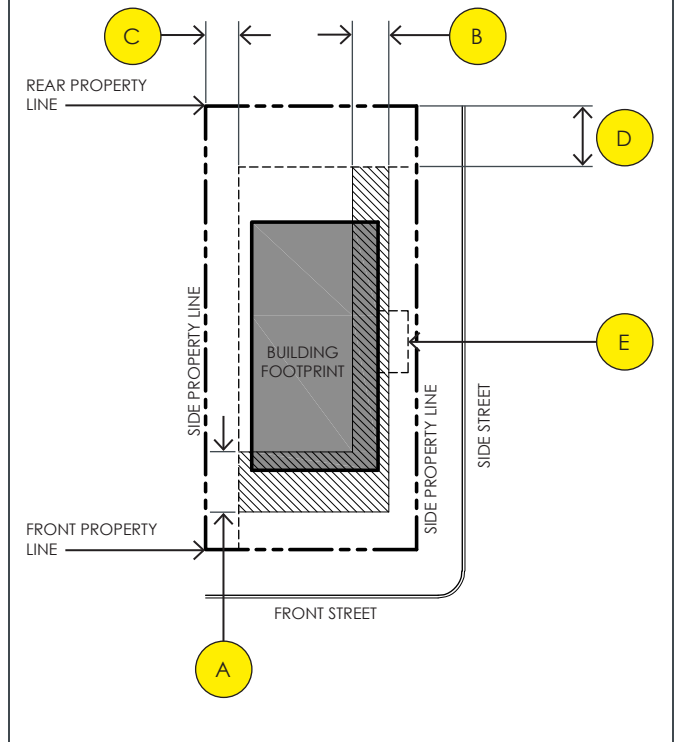
2005.08 LAKESIDE RESIDENTIAL (LR) CONTEXT AREA

4.0 BUILDING SITE PLACEMENT

Refer to Illustration 5.12 for building site placement.

- A. Front Build-to-Zone (at front street):
 - Required build-to-zone from 5 to 20 feet from front property line.
- B. Side Build-to-Zone (at side street):
 - Required build-to-zone from 5 to 20 feet from side property line.
- C. Side Setback (at non-street locations):
 - 6 feet from side property line.
- D. Rear Setback:
 - 15 feet from rear property line.
- E. Encroachments: Balconies, awnings, canopies, eaves, cornices, and bay windows, may project into required setbacks, beyond required build-to-zones, or into the public right-of-way as indicated in Section 2003.02.

ILLUSTRATION 5.12 BUILDING SITE PLACEMENT

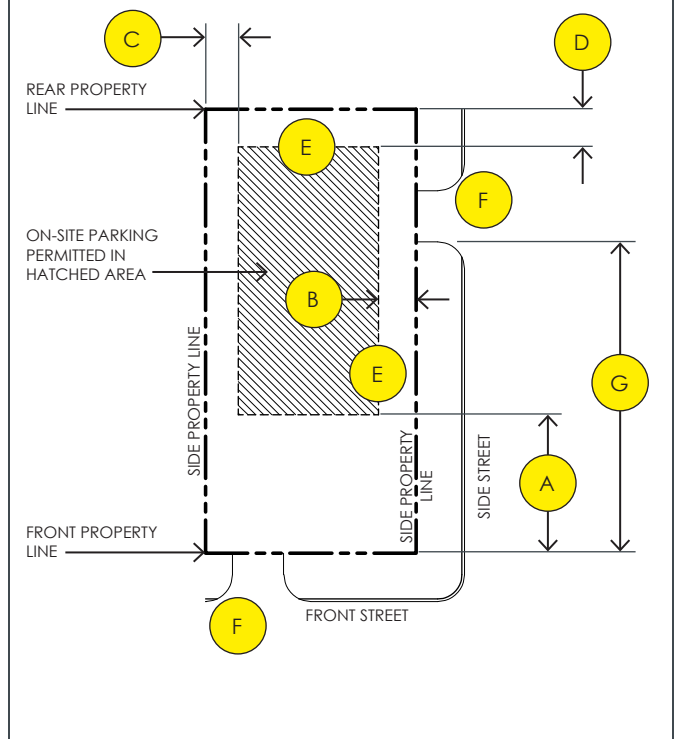


5.0 PARKING PLACEMENT

Refer to Illustration 5.13 for on-site parking placement.

- A. Front Setback:
 - 40 feet minimum from front property line.
- B. Side Setback (from side street):
 - 10 feet minimum from side property line.
- C. Side Setback (from non-street locations):
 - 1 foot from side property line.
- D. Rear Setback:
 - 5 feet from rear property line at non-street locations.
 - 10 feet from rear property line at street locations.
- E. Parking located at side or rear street locations shall be screened from the street as required by Section 2008.14.
- F. Parking / service areas shall not be accessed from front streets, unless an alley or side street is not available for driveway placement. Maximum width of driveway is 20 feet.
- G. Driveway access location:
 - Corner lot: 40 feet minimum from street corner.
 - Interior lot: within 5 feet of side property line, when alley is not available.

ILLUSTRATION 5.13 PARKING PLACEMENT



2005.08 LAKESIDE RESIDENTIAL (LR) CONTEXT AREA

6.0 PERMITTED USES

LAKESIDE RESIDENTIAL (LR) CONTEXT AREA PERMITTED USES

Specific Use	MIXED USE BUILDING TYPE	RETAIL BUILDING TYPE	FLEX BUILDING TYPE	COTTAGE RETAIL BUILDING TYPE	LIVE / WORK BUILDING TYPE	LARGE MULTI-PLEX BUILDING TYPE	SMALL MULTI-PLEX BUILDING TYPE	ROWHOUSE BUILDING TYPE	DUPLEX BUILDING TYPE	DETACHED HOUSE BUILDING TYPE	CARRIAGE HOUSE BUILDING TYPE	CIVIC BUILDING TYPE
Accessory buildings and uses							P		P	P	P	
Amusement and recreation facility												
Auto service station												
Bank												
Business school/private or public school/higher ed.												
Church												
Club, lodge, hall												
Gallery/museum												P
Home Business							P		P	P	P	
Hotel/motel												
Indoor theater/live music concert hall												
Light manufacturing												
Machine shop												
Micro brewery, distillery, winery under 2500 barrels												
Micro brewery, distillery, winery over 2500 barrels												
Multi-family							P					
Non-profit Supportive Housing												
Office												
Outdoor recreation												
Outdoor theater												
Parking structure												
Personal service												
Railway terminal												
Research and development												
Restaurant, cocktail lounge, brewpub												

P = Permitted Use

P* = Permitted Use on floors two and above

P# = Permitted Use on first floor only

S = Special Land Use (refer to Section 2002.02)

Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.

Blank cell = Use not permitted in this Context Area

Shaded areas represent Building Types that are not permitted in this Context Area.

6.0 PERMITTED USES (continued)

Specific Use

P = Permitted Use
P* = Permitted Use on floors two and above
P# = Permitted Use on first floor only
S = Special Land Use (refer to Section 2002.02)
Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.
Blank cell = Use not permitted in this Context Area
Shaded areas represent Building Types that are not permitted in this Context Area.

Commission Meeting Date: May 28, 2019

Date: May 22, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Rezoning of Several Parcels in the Lakeside Neighborhood

SUMMARY OF REQUEST:

Staff initiated request to rezone several properties in Lakeside to Form Based Code.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

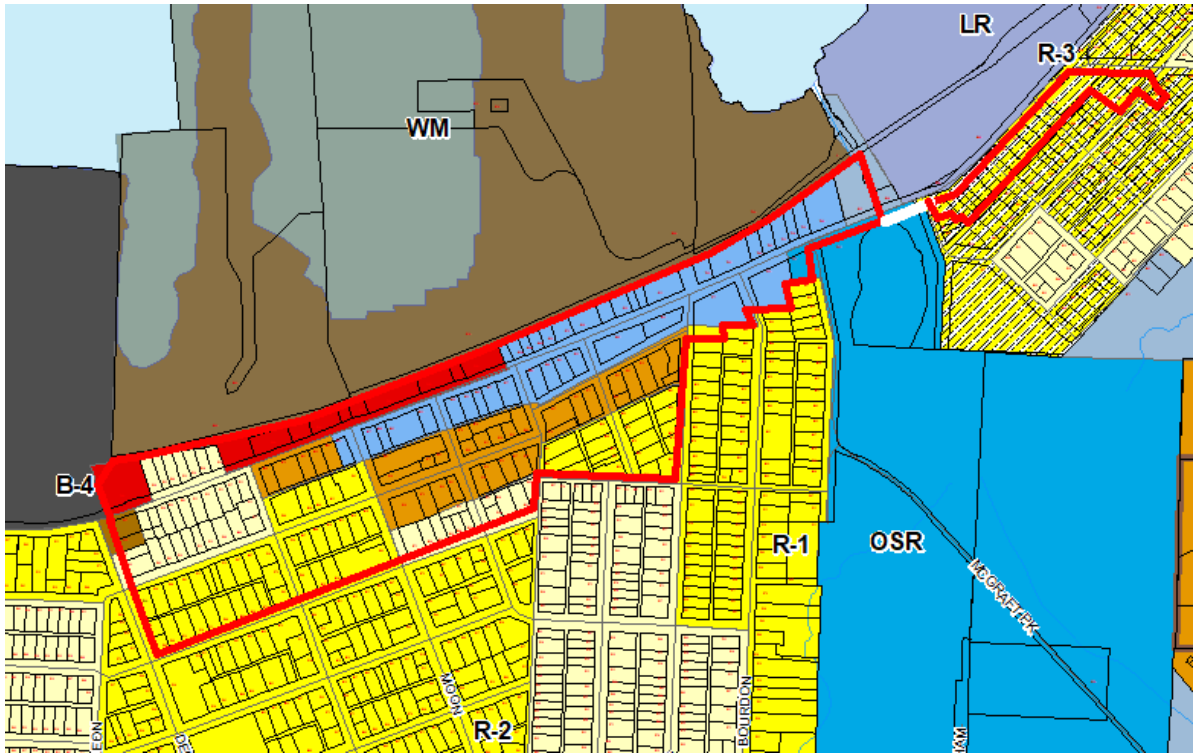
STAFF RECOMMENDATION:

Staff recommends approval of the rezonings.

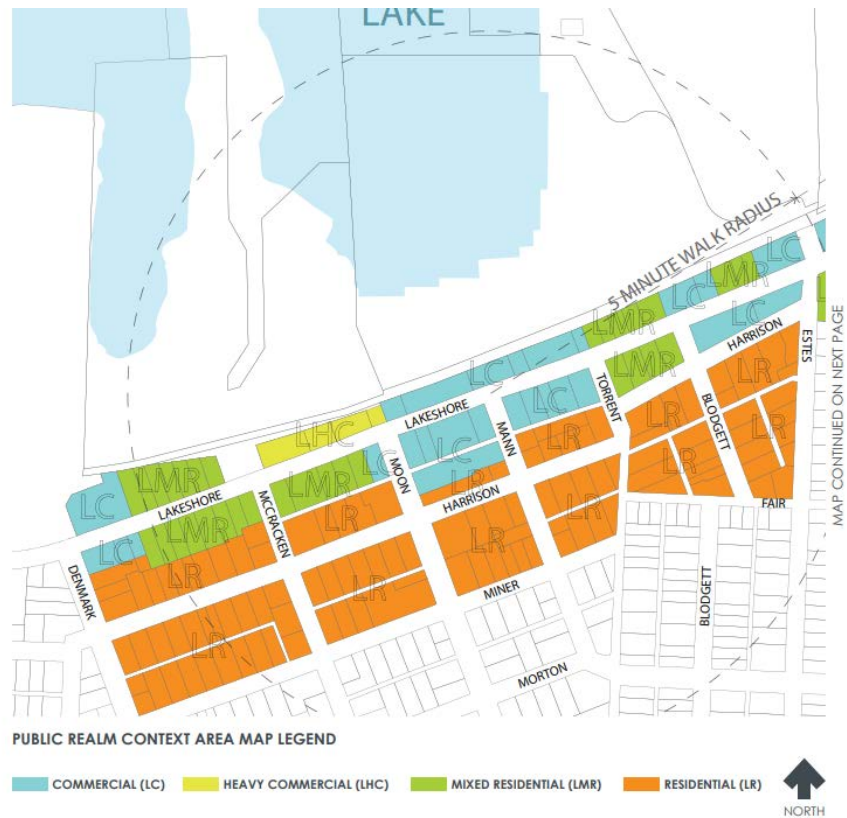
COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the rezonings, contingent upon the approval of the zoning ordinance amendment by City Commission.

Current Zoning



Proposed Zoning





CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend the zoning map of the City to provide for zoning changes for several parcels in the Lakeside Neighborhood.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning for several parcels in the Lakeside neighborhood (see map).

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC
City Clerk

CERTIFICATE (Rezoning of several parcels in the Lakeside Neighborhood to Form Based Code)

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 28th day of May, 2019, 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: _____, 2019

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 May 28, 2019, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for several parcels in the Lakeside Neighborhood to Form Based 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 days from the date of this publication.

Published _____, 2019

CITY OF MUSKEGON

By _____

Ann Meisch, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: May 28, 2019

Date: May 21, 2019

To: Honorable Mayor and City Commission

From: Community and Neighborhood Services Department (CNS)

RE: 2019 CDBG/HOME Budget Recommendations

SUMMARY OF REQUEST: To approve the 2019 Budget recommendations for CDBG/HOME Allocations.

FINANCIAL IMPACT: Budget will be published for release of funds request.

BUDGET ACTION REQUIRED: To finalize the budget for the CNS department and direct staff to publish approved 2019 CDBG/HOME Allocation and Budget for Release of Funds and Environmental Review of Projects.

STAFF RECOMMENDATION: To approve the 2019 CDBG and HOME Budgets.

COMMITTEE RECOMMENDATION: The Citizens District Council has made their recommendations. (See attached spreadsheet)

CDBG Organization/Agency	Activity	CNS-Staff Proposed 2019	CDC Proposed 2019
COM - Finance	Youth Opportunities/Summer Internships	\$ 20,000.00	\$ 20,000.00
COM - CNS	CDBG Admin **	\$ 197,690.20	\$ 197,690.20
COM - CNS	Priority Home Repair	\$ 100,000.00	\$ 125,000.00
COM - CNS	Services Delivery	\$ 65,000.00	\$ 65,000.00
COM - CNS	Residential Façade Program	\$ 50,000.00	\$ 50,000.00
COM - Finance	Fire Station Bond Repayment	\$ 254,166.66	\$ 254,166.66
COM - Inspections	Dangerous Bldgs - Demolition	\$ 25,000.00	\$ 25,000.00
COM - Inspections	Dangerous Bldgs - Board-Ups	\$ -	\$ -
COM - Leisure Services	Youth Recreation*	\$ 100,000.00	\$ 100,000.00
COM - Planning	Code Enforcement Staff	\$ -	\$ -
COM - Planning	Economic Development	\$ 10,000.00	\$ -
COM - CNS	Youth Center	\$ 111,594.14	\$ 86,594.14
COM - Engineering	Sidewalks	\$ 10,000.00	\$ 20,000.00
COM - DPW	Skate Park	\$ 30,000.00	\$ 20,000.00
CDC - STAFF		\$ 973,451.00	\$ 963,451.00

*\$10,000 uncommitted

HOME Organization/Agency	Activity	CNS-Staff Proposed 2019	CDC Proposed 2019
CHDO Allocation	Housing Affordable Units****	\$ 50,222.70	\$ 50,222.70
CHDO Administration	Administration	\$ -	\$ -
COM - CNS	HOME Administration***	\$ 33,481.80	\$ 33,481.80
COM - CNS	Rental Rehab	\$ 20,000.00	\$ 20,000.00
COM - CNS	HOME Rehab Construction *	\$ 110,000.00	\$ 110,000.00
COM - CNS	HOME Infill	\$ 121,113.50	\$ 121,113.50
		\$ 334,818.00	\$ 334,818.00

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners
FROM: Frank Peterson, City Manager
DATE: May 24, 2019
RE: Convention Center Development Agreement Changes

SUMMARY OF REQUEST:

City staff is seeking approval to accept the following proposed changes to the Convention Center Development Agreement

1. Extend the requirement for Parkland Acquisitions Two, LLC to levy the 4% self-assessment from to December 31, 2050, or the expiration of the convention center debt, whichever is sooner;
2. Reduce the minimum square footage of the multi-purpose hall in the Convention Center to 17,500 square feet;
3. Remove any requirements that contractors pay their employees prevailing wages.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To accept the changes and authorize the manager to proceed with the development, as amended.

COMMITTEE RECOMMENDATION:

Memorandum

To: Mayor and City Commissioners

From: Frank Peterson, City Manager

Re: Convention Center Prevailing Wage Discussion

Date: May 20, 2019

There has been a significant amount of discussion in the past two weeks about the use of local labor on the convention center construction project and if there should be a requirement that subcontractors agree to pay prevailing wage rates to employees as a condition of contract award.

Background

At the onset of the project, leadership of the trade unions approached city and county staff in an effort to secure the use of local labor in exchange for a Community Benefit Agreement (CBA). The group estimated that a CBA could generate nearly \$60,000 for community-related needs. Additionally, leadership at the County of Muskegon predicated their participation in the project on the use of a county purchasing policy that requires prevailing wages in all projects over \$100,000. Eventually, a development agreement was executed by the City, County, and Parkland Properties that outlined the scope of the project, including timelines, facility size, costs, reimbursement method, and the use of prevailing wages.

Per the development agreement, the original facility was to include 20,000 square feet of contiguous convention space and 5,000 square feet of breakout space; the entire facility was to be no less than 35,000 square feet, inclusive of all convention, breakout, circulation, and restroom space. The construction costs were to be no less than \$12 Million, but no more than \$14 Million; the City agreed to pay 100% of all expenses over \$20 Million. The debt funding commitment was for 25 years – leaving the assessments and room taxes in place until December 31, 2043.

The project itself has faced a number of hurdles – some of them site-specific, and some of them based on changes in the market. As a result, the cost estimates have grown substantially. In an effort to keep the costs reasonable, the development team has worked to right size the facility and value engineer certain components. We have spent significant hours as a team reviewing cost savings measures and redesigning components of the building. The result of that effort is a convention center that no longer meets the cost or size requirements of development agreement.

Per the attached legal opinion by the City Attorney, we must have agreement among all three parties in order to amend the development agreement. Each of the parties will have to compromise on components of the agreement, or there is a real likelihood of delayed and/or abandoned construction.

Partner Organization Requests

As noted above, we have two partner organizations on this project: County of Muskegon and Parkland Properties. Those two organizations will be financing the convention center construction as well as the operations with a combination of room taxes, hotel self-assessments, and operating revenues. The city will own the facility and carry the debt, with reimbursement in full from the other two entities.

Please find two communications attached to this memo. The first communication is from County Administrator Mark Eisenbarth. The second is from Parkland Properties owner Jon Rooks.

Mr. Eisenbarth is asking that the City Commission accept the County Commission's recent decision to remove the use of prevailing wages as a requirement of bidders on the upcoming convention center project. It is my understanding that they hired an outside attorney in partnership with their liability insurer; this attorney subsequently opined that requiring prevailing wage *could* cause the county a certain level of liability. The County Administrator's letter did indicate that the County Commission encourages the use of local businesses and labor on the project.

The letter from Mr. Rooks indicates that he is supportive of amending the original convention center development agreement to account for a longer term on his hotel's 4% self-assessment as well as a reduction in the main convention center space from 20,000 square feet to 17,500 square feet. Mr. Rooks also does not object to the removal of prevailing wage requirements. An important part of Mr. Rooks' letter is the acknowledgement of his conditional support of the amendments upon the City of Muskegon's removal of all prevailing wage requirements.

Staff Analysis

We are in a difficult position; there is no question about that. I have been intimately involved from the conceptual phase through the groundbreaking. There are a lot of moving parts, and at any point, a market force could have derailed/stopped the project. The plan today is significantly more money than originally anticipated and we have reduced the scope/size to offset the high construction costs. The numerous changes in value/size/scope have also started to cause cost overruns in the architectural and engineering line items, which further exacerbates the problem.

As of today, our current top-line budget is approximately \$19.5 Million. Financing this over 30 years is our only option to successfully cash flow the debt with the committed revenue. There is no room for significant project/scope changes, cost increases, or change orders. There is also very little room for furniture and/or audio/visual investments. We are at the top of our budget and the bottom of our size requirement.

We have essentially value-engineered the building to a bare-minimum position. This has already affected functionality, rent-ability, and aesthetics. We have two options: disagree with our partner organizations; leaving the prevailing wage requirements in place (and increasing the space back to 20,000 square feet while reducing the debt service to 25 years), or agree with our partner organizations by removing prevailing wages (and bid the project as designed).

Option 1 – Leave Prevailing Wage Requirement

It is hard to estimate what the net financial impact prevailing wage requirements may be to the project/community. Even if there are additional costs associated with the project directly because of the prevailing wage requirement, there may be mitigating advantages to the local economy by putting more disposable income in workers' hands. Our development agreement speaks only to direct impacts (project scope, size, costs, etc.), rather than ancillary or indirect impacts. If the City Commissions chooses this option, we should carefully consider the direct impacts on the city's budget.

Option 2 – Remove Prevailing Wage Requirement

Removing the prevailing wage requirement is unlikely to have a direct negative financial impact on the project costs. However, the perception could be that the City is not supporting local labor. If the City Commission chooses this option, we should consider providing a local preference to bidders.

Staff Recommendation

We have been very hesitant to put a value/cost on the prevailing wage piece because it was not our request/requirement, and we did not want our analysis to affect the project's use (or non-use) of prevailing wage requirements. However, we do feel there is a chance that leaving prevailing wage requirement in the project *could* cost the City and its partners between \$1.5 Million and \$2.2 Million, as follows:

Staff has spoken to professional construction accounting specialists, and we are estimating that the project will require approximately 25 hours of monthly servicing from an independent auditor for approximately 18 months. The costs are likely between \$150 and \$200 per hour. This puts the cost of reviewing wages

at approximately \$67,000-\$90,000. Our construction management group and our owner's representative have worked to identify an *approximate* cost for the potentially higher labor rate associated with prevailing wage. There is currently a \$17 Million construction estimate, with an allocation of 45%-55% to labor (\$7.65-\$9.53 Million). This figure already includes our estimate for requiring prevailing wages. This was very hard to estimate, but our team believes that prevailing wage requirements represent between 7% and 15% of that number – depending on the trades (\$535,000-\$1,429,500). We also expect the additional 2,500 square feet of required convention space to cost between \$375 and \$400 per square foot and add to the project between \$900,000 and \$1,000,000.

If this analysis is correct, we also have to understand the development agreement's clause requiring the City to pay for all project costs in excess of \$20 Million. Our bonding authority resolution only calls for \$20 Million in bond debt associated with the project – inclusive of bond-related fees. Assuming we come in on our current projected budget of \$19.5 Million, the additional \$900,000-\$1.1 Million could push the project to \$20.4-\$20.6 Million; we would need to contribute approximately \$500,000 directly from the City of Muskegon.

We would also have a timing issue. Selecting Option 1 will likely lead us to incur additional design time/cost, and move us into an adversarial position with our two partner organizations – requiring some time to renegotiate the impact(s). This could cause us problems in meeting our deadline to deliver the convention center to Parkland Properties in time for the January 2021 deadline. Failing to meet that deadline could jeopardize Parkland's requirement to continue to self-assess their hotel.

Rather than fight these battles and possibly delay the project, staff feels that our time would be better spent implementing a plan that focuses on local workers and locally owned companies – with less emphasis of their participation in the prevailing wage structure.

Therefore, the staff recommendation is as follows:

Remove the prevailing wage requirement from the bid package and replace it with a local preference. I would recommend implementation as follows:

Adopt a local living wage preference of 5% to all qualified subcontractors. Access to the 5% preference would require that residents of Muskegon County must fill 40% of the qualified subcontractor's project payroll. The contract award would be at the actual accepted bid price, assuming it is within 5% of the lowest bid. The City would retain the difference between the lowest bid and the local qualified bid until the project is complete. If the qualified local subcontractor can demonstrate that 40% of its payroll went to laborers from Muskegon County residents, they

would receive the difference between the low bid and their qualified bid (up to 5%).

We would accomplish this by holding post-bid meetings with the three lowest bidders of each trade. As part of this process, we will review the qualifications of the bidders as well as the commitment to hire local labor. We would award the contract to the lowest qualified bidder unless another qualified bidder committing to 40% local labor is within 5% of the bid price.

Example 1

Lansing Company Bid:	\$3,000,000
Muskegon Company Bid:	\$3,150,000
Difference in Bid Cost:	5%

We hire the Muskegon Company at \$3,000,000. Upon completion of the project, the City may review payroll records to ensure that county residents earn 40% of wages associated with the project. We pay the additional \$150,000 to the local contractor for meeting the 40% threshold; otherwise, we do not pay the additional \$150,000.

Example 2

Lansing Company Bid:	\$3,000,000
Muskegon Company Bid:	\$3,500,000
Difference in Bid Cost:	16.6%

We hire the Lansing Company at \$3,000,000; they are the low bidder and there is not a qualified local contractor within 5% of their bid.

This is a fair solution to support local labor without specifically accounting for prevailing wages. It will also allow union contractors some wiggle room in competing with non-union contractors. We want to see local companies and local laborers build this structure; this is the best way to ensure successful local participation while building the structure on time and on budget.

I anticipate bringing this recommendation to the next City Commission meeting. Please let me know in advance if you have any comments or concerns.

MUSKEGON COUNTY

MICHIGAN

Board of Commissioners

Susie Hughes
Chair, District 3

Gary Foster
Vice-Chair, District 7

Marcia Hovey-Wright
District 2

Zach Lahring
District 5

Kenneth Mahoney
District 9

Robert Scolnik
District 4

I. John Snider, II
District 8

Rillastine R. Wilkins
District 1

May 10, 2019

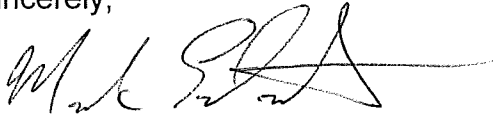
Mr. Frank Peterson
City of Muskegon
933 Terrace Street
Muskegon, MI 49440-1397

Dear Frank,

On April 30th the Muskegon County Board of Commissioners repealed the prevailing wage requirement with respect to the Convention Center in Muskegon County. Attached is copy of the minutes of the Board actions made on that date (page 93). The Development Agreement shall reflect the Boards' decision to repeal prevailing wage. The Board does encourage the use of local businesses and local workers as stated in the agreement.

If you have any questions regarding this information please feel free to contact me.

Sincerely,



Mark Eisenbarth
Muskegon County Administrator

**Muskegon County
Board of Commissioners**
*Hall of Justice, 990 Terrace, 4th Floor
Muskegon, MI 49442*

*Susie Hughes, Chairman
Marcia Hovey-Wright
Zach Lahring
Kenneth Mahoney
Charles Nash*

*Gary Foster, Vice Chair
Robert Scolnik
I. John Snider II
Rillastine R. Wilkins*

Board Minutes may be found on the web at <http://co.muskegon.mi.us/clerk>

Full Board Meeting

Tuesday, April 30, 2019
3:30 p.m.

Chairman Susie Hughes, Presiding

The Full Board Meeting of the Board of Commissioners was called to order by Chairman Susie Hughes. The Invocation was given by Pastor Nate Parsekian, Shores Community Church, 3800 Lake Harbor Road, Norton Shores. The Pledge of Allegiance was led by Administrator Mark E. Eisenbarth and recited in unison.

Roll Call

Present: Gary Foster, Marcia Hovey-Wright, Susie Hughes, Zach Lahring,
Kenneth Mahoney, Charles Nash, Robert Scolnik, I. John Snider II,
Rillastine R. Wilkins

Also Present: Mark E. Eisenbarth, Administrator
Nancy A. Waters, County Clerk
Jeanne Pezet, Deputy County Clerk
Doug Hughes, Corporate Counsel

2019-161 **APPROVAL OF THE AGENDA**

Moved by Commissioner Wilkins, seconded by Commissioner Mahoney, to approve the agenda.

Voice vote

Motion Carried

2019-162 **APPROVE THE BOARD MINUTES OF THE SPECIAL MEETING MINUTES OF
MARCH 28, 2019 AND REGULAR MEETING OF APRIL 16, 2019**

Moved by Vice Chair Foster, seconded by Commissioner Mahoney, to approve the Minutes of the Special Meeting Minutes of March 28, 2019 and the Regular Meeting of April 16, 2019.

Voice vote

Motion Carried

PUBLIC COMMENT (on an agenda item)

Benjamin Spencer, Anna Derwin, Sandy Glore, Katherine Kroll, Charlene Hilt addressed the Board requesting the Board to remain transparent and not go into closed session. Ryan Bennett, Local 174 Plumbers and Pipefitters, invited Board Members to an apprenticeship program event Thursday and Friday of this week for the State-wide Apprenticeship Contest of

Plumbers, Pipefitters, Welders, HVAC Service Techs, and Sprinkler fitters from around the State will be competing at the facility in Coopersville and asked Commissioners to RSVP if they would like a tour of the training facility. Mr. Bennett also shared a handout about the training.

COMMUNICATIONS

The following Communication items were provided to the Board for informational purposes (see attached):

- A. Antrim County Board of Commissioners: Resolution #17-2019 – Medicare Prescription Drug Bill of 2003 – Support the Process of Legislators to Commence Revising Bill
- B. Bay County Board of Commissioners: Resolution #2019-88 – Opposition to Slashing Federal Funding for the Great Lakes Restoration Initiative
- C. Cheboygan County Board of Commissioners: Resolution #19-06 – Support of HB 4227 The Creation of a “Committee on Michigan’s Mining Future”

2019-163 **ACCEPT AND PLACE ON FILE THE PRESENTED COMMUNICATION ITEMS**

Moved by Commissioner Mahoney, seconded by Commissioner Wilkins, to accept and place on file the presented communication items.

Voice vote

Motion Carried

Commissioner Hovey-Wright asked that Muskegon County Board of Commissioners forward support to Michigan Association of Counties (MAC) and Antrim County and Bay County for their resolutions.

PRESENTATIONS

Vice Chair Foster presented a Tribute in Recognition of Steve Jackson's generous donation of a flag pole at Veterans Memorial Park and presented to Steve Jackson and Gary Merkey, a Tribute in Recognition of Jackson-Merkey's generous donation of equipment and labor at Veterans Memorial Park.

HUMAN RESOURCES UPDATE: Kristen Wade, HR Director, presented a PowerPoint that updated services given to County employees. (See attached)

COMMITTEE/BOARD REPORTS

2019-164 **APPROVE THE AMENDED BYLAWS OF THE LAKESHORE MUSEUM CENTER BOARD AS PRESENTED**

CD/SP19/04-07

The Community Development/Strategic Planning Committee recommends, moved by Commissioner Nash, seconded by Vice Chair Foster, to approve the amended bylaws of the Lakeshore Museum Center Board as presented.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-165 **ADOPT THE LICENSE AGREEMENT WITH B. BASKIN ENTERPRISES, LLC, TO PROVIDE A LICENSE FOR THE USE OF HERITAGE LANDING JULY 3-7, 2019 FOR THE ROCKSTOCK MUSIC FESTIVAL, AN INDEPENDENCE DAY FIREWORKS DISPLAY, AND A CARNIVAL, AND AUTHORIZE THE CHAIRPERSON OF THE COUNTY BOARD TO EXECUTE THE AGREEMENT**

CD/SP19/04-08

The Community Development/Strategic Planning Committee recommends, moved by Commissioner Nash, seconded by Vice Chair Foster, to adopt the License Agreement with B. Baskin Enterprises, LLC, to provide a license for the use of Heritage Landing July 3-7, 2019 for the Rockstock music festival, an Independence Day fireworks display, and a carnival, and authorize the Chairperson of the County Board to execute the agreement.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, Rillastine Wilkins, Susie Hughes

No: None

Abstain: I. John Snider, II

Motion Carried

2019-166 **PROVIDE A LICENSE FOR THE USE OF HERITAGE LANDING JULY 11-13, 2019 FOR THEIR "150TH ANNIVERSARY CELEBRATION" MUSIC FESTIVAL, AND AUTHORIZE THE CHAIRPERSON OF THE COUNTY BOARD TO EXECUTE THE AGREEMENT**

CD/SP19/04-09

The Community Development/Strategic Planning Committee recommends, moved by Commissioner Nash, seconded by Vice Chair Foster, to adopt the License Agreement with the City of Muskegon, to provide a license for the use of Heritage Landing July 11-13, 2019 for their "150th Anniversary Celebration" music festival, and authorize the Chairperson of the County Board to execute the agreement.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-167 **AUTHORIZE THE MUSKEGON AREA TRANSIT SYSTEM TO PUBLISH THE PUBLIC NOTICE REGARDING THE FY2019 FEDERAL OPERATING AND CAPITAL ASSISTANCE APPLICATION AND TO AUTHORIZE STAFF TO EXECUTE THE ELECTRONIC GRANT APPLICATION IF THERE IS NO REQUEST FOR A PUBLIC HEARING**

TR19/04-15

The Transportation Committee recommends, moved by Commissioner Wilkins, seconded by Vice Chair Foster, to authorize the Muskegon Area Transit System to publish the public notice regarding the FY2019 Federal Operating and Capital assistance application and to authorize staff to execute the electronic grant application if there is no request for a public hearing.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-168 **APPROVE PAYMENT OF THE ACCOUNTS PAYABLE OF \$7,875,815.74, COVERING THE PERIOD OF APRIL 2, 2019 THROUGH APRIL 11, 2019 FOR CHECKS AS PRESENTED BY THE COUNTY CLERK**

WM19/04-42

The Ways and Means Committee recommends, moved by Commissioner Scolnik, seconded by Vice Chair Foster, to approve payment of the accounts payable of \$7,875,815.74, covering the period of April 2, 2019 through April 11, 2019 for checks as presented by the County Clerk.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-169 **APPROVE THE SELECTION OF GOVERNMENTAL CONSULTING SERVICES TO PROVIDE LEGISLATIVE CONSULTING SERVICES, PER COUNTY RFP 19-2343 FOR A THREE-YEAR TERM WITH OPTION TO RENEW IN AMOUNT NOT TO EXCEED \$48,000 PER YEAR**

WM19/04-43

The Ways and Means Committee recommends, moved by Commissioner Scolnik, seconded by Vice Chair Foster, to approve the selection of Governmental Consulting Services to provide legislative consulting services, per County RFP 19-2343 for a three-year term with option to renew in amount not to exceed \$48,000 per year.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-170 **APPROVE THE RESOLUTION ADOPTING THE 2019 EQUALIZED VALUATION FOR MUSKEGON COUNTY AS DETERMINED AND SUBMITTED BY THE MUSKEGON COUNTY EQUALIZATION DEPARTMENT**

WM19/04-44

The Ways and Means Committee recommends, moved by Commissioner Scolnik, seconded by Vice Chair Foster, to approve the resolution adopting the 2019 equalized valuation for Muskegon County as determined and submitted by the Muskegon County Equalization Department.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-171 **APPROVE THE CHANGES TO THE PERSONNEL RULES, AS A RESULT OF THE PAID MEDICAL LEAVE ACT, EFFECTIVE MARCH 29, 2019**

WM19/04-45

The Ways and Means Committee recommends, moved by Commissioner Scolnik, seconded by Vice Chair Foster, to approve the changes to the Personnel Rules, as a result of the Paid Medical Leave Act, effective March 29, 2019.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-172 **AWARD A THREE (3) YEAR INSURANCE BROKERAGE SERVICES CONTRACT, WITH THE OPTION OF TWO (2), ONE (1) YEAR EXTENSIONS, TO ARTHUR J GALLAGHER AND THEY BE COMPENSATED SOLELY BY BENEFIT VENDOR'S STANDARD COMMISSIONS, EFFECTIVE MAY 1, 2019**

WM19/04-46

The Ways and Means Committee recommends, moved by Commissioner Scolnik, seconded by Vice Chair Foster, to award a three (3) year Insurance Brokerage Services contract, with the option of two (2), one (1) year extensions, to Arthur J Gallagher and they be compensated solely by benefit vendor's standard commissions, effective May 1, 2019.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

2019-173 **APPROVE THE RECLASSIFICATION OF THE RECRUITMENT COORDINATOR POSITION, N61801, TO A HUMAN RESOURCES SPECIALIST AND PROVIDE A SALARY RANGE ADJUSTMENT TO THE NEW HUMAN RESOURCES SPECIALIST POSITION AND THE TWO (2) EXISTING HUMAN RESOURCES SPECIALIST POSITIONS, N39702 AND N39704, FROM PAY TABLE/GRADE NO-00210 (\$17.89/HR - \$22.531) TO A NO-00218 (\$18.733/HR - \$23.582), EFFECTIVE MAY 1, 2019**

WM19/04-47

The Ways and Means Committee recommends, moved by Commissioner Scolnik, seconded by Vice Chair Foster, to approve the reclassification of the Recruitment Coordinator position, N61801, to a Human Resources Specialist and provide a salary range adjustment to the new Human Resources Specialist position and the two (2) existing Human Resources Specialist positions, N39702 and N39704, from pay table/grade NO-00210 (\$17.89/hr - \$22.531) to a NO-00218 (\$18.733/hr - \$23.582), effective May 1, 2019.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

CHAIRMAN'S REPORT/COMMITTEE LIAISON REPORTS

2019-174 **APPROVE A PROCLAMATION FOR READ EARLY. READ OFTEN. WEEK, MAY 18TH – MAY 25TH, 2019**

The Chairman recommends, moved by Commissioner Nash, seconded by Commissioner Mahoney, to approve a proclamation for Read early. Read often. Week, May 18th – May 25th, 2019

Voice vote

Motion Carried

Chairman Susie Hughes announced that the Muskegon Farmers Market opens for the season on Thursday, May 2nd; and the Historic Hackley & Hume Sites also open Thursday, May 2nd.

Chairman Hughes noted the Hero Mud Run is scheduled for Saturday, May 4th beginning at 8 a.m. until 1 p.m. at the Muskegon County Fairgrounds.

Commissioner Mahoney reported that the accommodations tax revenue increased from last year in spite of several hotel rooms being closed for construction. Commissioner Mahoney also announced that, in 2020, we are expecting 31 visits to the port from 3 different cruise lines.

Commissioner Mahoney also noted, for ASCET, that it was an honor and privilege to vote to help Ryan Bennett become a member of the West Michigan Works Governing Board.

Commissioner Lahring provided a Road Commission Update working on several County roads.

Commissioner Snider reported that this April's Recycling event exceeded participation in any past year and complimented the staff.

Chairman Hughes thanked Matt Farrar and staff for a great event.

2019-175 **APPROVE A PROCLAMATION IN SUPPORT OF THE NATIONAL DAY OF PRAYER ON MAY 2, 2019**

Moved by Commissioner Wilkins, seconded by Commissioner Mahoney, to approve a Proclamation in support of the National Day of Prayer on May 2, 2019.

Voice vote

Motion Carried

ADMINISTRATOR'S REPORT

Administrator Eisenbarth reported that the Convention Center design is going well and things are going well with hotel improvements.

Commissioner Lahring asked about additional costs due to soil issues.

Administrator Eisenbarth noted they are waiting on test results.

OLD BUSINESS

There was no old business to come before the Board.

NEW BUSINESS

There was no new business to come before the Board.

PUBLIC COMMENT

Several citizens addressed the Board in opposition to extending the Planned Parenthood lease with the County and also spoke against prevailing wage.

Donna Pennington addressed the Board about the above issues and the Kids Count Report

Matt Farrar, Public Works Director, reported that more than 900 visitors participated in the recycle event where the County filled three semi's with tires. Commissioner Snider asked Mr. Farrar for a list of Volunteers from the Recycle Event and Commission Snider read a portion of the County staff members that volunteered into the record: Brenda Newman, Pam Roesch, Greg Leverage, Gensen Schwartz, Steve Barnard, Joe Tardani, Dave (DJ) Johnson, Steve Fink, and Rob Ribbons and others from the Sheriff's office who volunteered for in excess of four hours.

2019-176 **GO INTO CLOSED SESSION: PURSUANT TO MCL 15.268(H) AND 15.243(G)
TO DISCUSS ITS ATTORNEY'S APRIL 2019 WRITTEN LEGAL OPINION**

Moved by Commissioner Mahoney, seconded by Commissioner Snider, to go into Closed Session Re: Attorney's April 2019 Written Legal Opinion.

Commissioner Lahring asked for an explanation of why the County Board would go into closed session. Corporate Counsel explained that closed session is a process for public meetings provided by the Open Meetings Act to provide the Board members information on legal opinions and further noted that no action is taken in a closed session meeting.

Roll Call:

Yes: Gary Foster, Marcia Hovey-Wright, Zach Lahring, Kenneth Mahoney, Charles Nash,
Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: None

Motion Carried

Went into closed session at 4:24 p.m.

Returned to open session at 5:00 p.m.

2019-177 **REPEAL PREVAILING WAGE REQUIREMENT WITH RESPECT TO THE
DEVELOPMENT OF THE COUNTY'S PARTICIPATION IN THE CONVENTION
CENTER**

Moved by Commissioner Snider, seconded by Commissioner Lahring, to repeal prevailing wage requirement with respect to the development of the County's participation in the Convention Center.

Discussion ensued.

Moved by Commissioner Lahring to remove prevailing wage from the Convention Center and every contract moving forward from our purchasing procurement process

Commission Snider did not accept the friendly amendment.

Discussion continued.

2019-178 **POSTPONE THE VOTE FOR INFORMATION FROM BOTH SIDES AND HAVE TIME TO EVALUATE THE RAMIFICATIONS**

Moved by Commissioner Hovey-Wright, seconded by Commissioner Mahoney, to postpone the vote for information from both sides and have time to evaluate the ramifications..

Roll Call:

Yes: Marcia Hovey-Wright, Kenneth Mahoney, Charles Nash

No: Gary Foster, Zach Lahring, Bob Scolnik, I. John Snider, II, Rillastine Wilkins,
Susie Hughes **Motion Failed**

Roll call on 2019-177: To repeal prevailing wage requirement with respect to the development of the County's participation in the Convention Center

Yes: Gary Foster, Zach Lahring, Bob Scolnik, I. John Snider, II, Rillastine Wilkins, Susie Hughes

No: Marcia Hovey-Wright, Kenneth Mahoney, Charles Nash **Motion Carried**

2019-179 **MOVED BY COMMISSIONER MAHONEY, SECONDED BY COMMISSIONER SNIDER, TO ADJOURN.**

Meeting adjourned at 5:17 p.m.

Nancy A. Waters, County Clerk

NAW/jmp

To Be Approved at Full Board Meeting on Tuesday, May 14, 2019



Parkland Acquisition Two, LLC
75 W. Walton, STE A
Muskegon, MI 49440

City of Muskegon
933 Terrace St.
Muskegon, MI 49440

RE: Development Agreement for the Muskegon Convention Center Dated June 12, 2018

Dear Frank:

I am writing to confirm that Parkland Acquisition Two, LLC, agrees to the following modifications to the Convention Center Development Agreement with the City of Muskegon:

1. The original Development Agreement special assessment period was through December 31, 2043, but the City could ask for an extension for four additional years if needed. So, effectively the outside deadline was December 31, 2047. We are willing to extend the special assessment period for two years past the outside deadline. Therefore, with regard to paragraph 1.2, Parkland agrees to extend the original December 31, 2047 outside deadline date by 2 years (December 31, 2043 plus 4 years) so that the specifically-enacted additional 4.0% PA 59 lodging tax assessment from the PA 59 Authority in downtown Muskegon may not be reduced or removed without the consent of the County prior to: (i) the Convention Center debt being paid in full; or (ii) January 1, 2050, whichever is sooner. This agreement is based on the understanding that Parkland's first purchase bid opportunity identified in paragraph 3.2 of the Development Agreement shall also be extended until December 31, 2044.
2. With regard to paragraph 3.1, Parkland agrees that the multi-purpose hall in the Convention Center may be a minimum of 17,500 contiguous square feet instead of the 20,000 contiguous square feet identified in the Development Agreement.
3. Parkland also agrees to not object to a decision by the City to not require the use of prevailing wages in the construction of the Convention Center.

4. The above Parkland concessions are agreeable because of, and conditioned upon, the City's and the County of Muskegon's ability to build the Convention Center without the requirement of prevailing wage to ensure its ability to meet budget and size requirement.

I believe this letter suffices to supplement and amend our Development Agreement. Please let me know if you have any questions or if I can provide any additional clarifications.

Sincerely,



Jon Rooks
Manager
Parkland Acquisition Two, LLC

Commission Meeting Date: May 28, 2019

Date: May 28, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Sale of the property at 1246 Fifth, 1252 Fifth, & 1258 Fifth.

SUMMARY OF REQUEST:

Staff is seeking approval to sell the three vacant parcels at 1246, 1252 and 1258 Fifth Street to West Urban Properties, LLC, a Michigan Domestic Limited Liability Company. These parcels are zoned R-3 (Single-Family Residential). The parcels will be combined then split into two parcels with a single-family home being constructed on each.

FINANCIAL IMPACT:

Staff recommends a sale price of \$3,600.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval and signature of the attached purchase agreement, resolution and deed.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING THE SALE OF A BUILDABLE LOT AT 1246 FIFTH STREET AND TWO ADJACENT UNBUILDABLE LOTS AT 1252 FIFTH STREET AND 1258 FIFTH STREET IN NELSON NEIGHBORHOOD FOR \$3,600.

WHEREAS, West Urban Properties, LLC, a Michigan Domestic Limited Liability Company, be allowed to purchase the parcels designated as parcel numbers: 24-205-378-0006-00, located at 1246 Fifth St.; 24-205-378-0006-10, located at 1252 Fifth St.; and 24-205-378-0006-20, located at 1258 Fifth St. for a total of \$3,600; and

WHEREAS, the combination of the parcel numbers 24-205-378-0006-00, 24-205-378-0006-10, & 24-205-378-0006-20 would have the purchase price of \$3,600, which is 75% of the True Cash Value (TCV) listed with the City Assessor's Office; and

WHEREAS, the sale would generate additional tax revenue for the City and relieve the City of further maintenance costs; and

WHEREAS, the sale is consistent with City policy regarding the disposition of buildable lots, in that, these parcels will be combined and split into two buildable parcels with the construction of a single-family home on each (total of two single-family homes) and sold for the price of \$3,600; and

NOW THEREFORE BE IT RESOLVED, that parcel numbers 24-205-378-0006-00, 24-205-378-0006-10, & 24-205-378-0006-20, located at 1246 Fifth St., 1252 Fifth St., & 1258 Fifth St. be sold to West Urban Properties, LLC, a Michigan Domestic Limited Liability Company, for \$3,600.

CITY OF MUSKEGON REVISED PLAT OF 1903 NORTH 46 FEET LOT 6 BLOCK 378

CITY OF MUSKEGON REVISED PLAT OF 1903 NORTHERLY 44 FEET OF SOUTHERLY 86 FEET LOT 6 BLOCK 378

CITY OF MUSKEGON REVISED PLAT OF 1903 SOUTHEASTERLY 42 FEET LOT 6 BLOCK 378

Adopted this 28th day of May 2019

Ayes:

Nays:

Absent:

By: _____
Stephen Gawron
Mayor

Attest: _____
Ann Marie Meisch, MMC
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on May 28, 2019.

By: _____
Ann Marie Meisch, MMC
City Clerk

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is made May 23, 2019, by and between the **CITY OF MUSKEGON**, a Municipal Corporation, of 933 Terrace St., Muskegon, Michigan 49440 ("Seller"), and **WEST URBAN PROPERTIES, LLC**, a Michigan Domestic Limited Liability Company, of 3265 Walker Ave. NW Suite D, Grand Rapids, MI 49544 ("Buyer").

1. **General Agreement and Description of Premises.** Seller agrees to sell, and Buyer agrees to buy, marketable record title of real estate, and all improvements thereon, with all beneficial easements, and with all of Seller's right, title and interest in all adjoining public ways, the real property located in the City of Muskegon, Muskegon County, Michigan ("Premises"), and specifically described as:

CITY OF MUSKEGON REVISED PLAT OF 1903 NORTH 46 FEET LOT 6 BLOCK 378
CITY OF MUSKEGON REVISED PLAT OF 1903 NORTHERLY 44 FEET OF SOUTHERLY
86 FEET LOT 6 BLOCK 378

CITY OF MUSKEGON REVISED PLAT OF 1903 SOUTHEASTERLY 42 FEET LOT
6 BLOCK 378

Subject to the reservations, restrictions and easements of record, provided said reservations, restrictions and easements of record are acceptable to Buyer upon disclosure and review of the same, and subject to any governmental inspections required by law.

2. **Purchase Price and Manner of Payment.** The purchase price for the Premises shall be Three Thousand Six Hundred and no/100 Dollars (\$3,600.00), payable in cash or bank certified check.

3. **Taxes and Assessments.** All taxes and assessments that are due and payable at the time of Closing shall be paid by Seller prior to or at Closing. All taxes and special assessments that become due and payable after Closing shall be the responsibility of Buyer.

4. **Title Insurance.** Seller agrees to deliver to the Buyer, ten (10) days prior to closing, a commitment for title insurance, issued by Transnation Title Insurance Company, for an amount not less than the purchase price stated in this Agreement, guaranteeing title on the conditions required herein. In the event the reservations, restrictions or easements of record disclosed by said title commitment is, in the sole discretion of Buyer, deemed unreasonable, Seller shall have forty-five (45) days from the date Seller is notified in writing of such unreasonableness of restriction and such unmarketability of title, to remedy such objections. If Seller resolves such restrictions and remedies the title (by obtaining satisfactory title insurance or otherwise) within the time specified, Buyer agrees to complete this sale as herein provided, within ten (10) days of written notification thereof. If Seller fails to resolve such restrictions or remedy the title within the time above specified or fails to obtain satisfactory title insurance, this Agreement will be terminated at Buyer's option. The premium for the owner's title policy shall be paid by Seller.

5. **Covenant to Construct Improvements and Use.** Buyer acknowledges that, as part of the consideration inuring to the City, Buyer covenants and agrees to construct on the premises two (2) single-family homes, up to all codes, within eighteen (18) months of the closing of this transaction. Buyer may only remove those trees necessary for construction of the home and driveway. The home shall be substantially completed within eighteen (18) months and, in the event said substantial completion has not occurred, or the restriction of this paragraph relating to tree removal is violated, in the sole judgment of the City, the property and all improvements then installed shall revert in title to the City, without any compensation or credit to Buyer. Buyer further covenants that the home shall be owner occupied for five (5) years after the closing. The covenants in this paragraph shall survive the closing and run with the land.

6. **Survey.** Buyer at its own expense may obtain a survey of the Premises, and Buyer or its surveyor or other agents may enter the Premises for that purpose prior to Closing. If no survey is obtained, Buyer agrees that Buyer is relying solely upon Buyer's own judgment as to the location, boundaries and area of the Premises and improvements thereon without regard to any representations that may have been made by Seller or any other person. In the event that a survey by a registered land surveyor made prior to closing discloses an encroachment or substantial variation from the presumed land boundaries or area, Seller shall have the option of effecting a remedy within thirty (30) days after disclosure, or tendering Buyer's deposit in full termination of this Purchase Agreement, and paying the cost of such survey. Buyer may elect to purchase the Premises subject to said encroachment or variation.

7. **Condition of Premises and Examination by Buyer.** NO IMPLIED WARRANTIES OF HABITABILITY, QUALITY, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER IMPLIED WARRANTIES SHALL OPERATE BETWEEN SELLER AND BUYER, AND BUYER EXPRESSLY WAIVES ANY AND ALL SUCH IMPLIED WARRANTIES. BUYER UNDERSTANDS AND AGREES THAT THE PREMISES ARE TAKEN "AS IS," SUBJECT TO THE EXPRESS COVENANTS, CONDITIONS AND/OR EXPRESS WARRANTIES CONTAINED IN THIS PURCHASE AGREEMENT. BUYER FURTHER SAYS THAT HE HAS PERSONALLY INSPECTED THE PREMISES AND IS SATISFIED WITH THE CONDITION OF THE LAND, AND THE BUILDINGS AND IMPROVEMENTS THEREON, AND THAT THE PROPERTY IS BEING PURCHASED AS A RESULT OF SUCH INSPECTION AND INVESTIGATION AND NOT DUE TO ANY REPRESENTATIONS MADE BY OR ON BEHALF OF SELLER. SELLER KNOWS OF NO HAZARDOUS SUBSTANCES OR CONTAMINATION, AND BUYER WAIVES ANY CLAIM AGAINST SELLER IN THE EVENT SUCH SUBSTANCES ARE FOUND.

8. **Closing.** The closing date of this sale shall be held 90 days from City Commission approval of the sale, more specifically on or before August 28, 2019 ("Closing"). The Closing shall be conducted at Transnation Title Insurance Company, 570 Seminole Rd. Ste 102, Muskegon, Michigan 49444. If necessary, the parties shall execute an IRS closing report at the Closing.

9. **Delivery of Deed.** Seller shall execute and deliver a quit claim deed to Buyer at Closing for the Premises.

10. **Affidavit of Title.** At the Closing, Seller shall deliver to Buyer an executed Affidavit of Title.

11. **Date of Possession.** Possession of Premises is to be delivered to Buyer by Seller on the date of Closing.

12. **Costs.** Seller shall be responsible to pay the Michigan transfer tax, if any, in the amount required by law. In addition, Seller shall be responsible to pay for the recording of any instrument that must be recorded to clear title to the Premises, to the extent required by this Agreement.

Buyer shall pay for the cost of recording the deed to be delivered at Closing.

13. **General Provisions.**

a. **Paragraph Headings.** The paragraph headings are inserted in this Agreement only for convenience.

b. **Pronouns.** When applicable, pronouns and relative words shall be read as plural, feminine or neuter.

c. **Merger.** It is understood and agreed that all understandings and agreements previously made between Buyer and Seller are merged into this Agreement, which alone fully and completely expresses the agreement of the parties.

d. **Governing Law.** This Agreement shall be interpreted and enforced pursuant to the laws of the State of Michigan.

e. **Successors.** All terms and conditions of this Agreement shall be binding upon the parties, their successors and assigns.

f. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been contained herein.

g. **Survival of Representations and Warranties.** The representations, warranties, covenants and agreements contained in this Agreement and in any instrument provided for herein shall survive the Closing and continue in full force and effect after the consummation of this purchase and sale.

h. **Modification of the Agreement.** This Agreement shall not be amended except by a writing signed by Seller and Buyer.

The parties have executed this Real Estate Purchase Agreement the day and year first above written.

WITNESSES:

SELLER: CITY OF MUSKEGON

By _____
Stephen Gawron, Its Mayor

Ann Marie Meisch, MMC, Its Clerk

BUYER:

David Dusendang, Its President/Owner