

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 11, 2011

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ CALL TO ORDER:
- ❑ PRAYER:
- ❑ PLEDGE OF ALLEGIANCE:
- ❑ ROLL CALL:
- ❑ HONORS AND AWARDS:
- ❑ INTRODUCTIONS/PRESENTATION:
- ❑ CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. Disclosure of Potential Conflict of Interest under Community Development Block Grant Program. COMMUNITY & NEIGHBORHOOD SERVICES
 - C. Agreement for Legal Services. CITY MANAGER
 - D. Special Events Policy – Revision Amendments. PLANNING & ECONOMIC DEVELOPMENT
 - E. Setting Worksession and Commission Meetings. CITY CLERK
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
- ❑ NEW BUSINESS:
 - A. Approval of Sale of City-Owned Home at 627 E. Apple. COMMUNITY & NEIGHBORHOOD SERVICES
 - B. Eliminate Retiree Health Care Benefits for Newly-Hired Non-Represented Employees. CITY MANAGER
- ❑ 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 BECKER, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

Date: January 11, 2011
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes for the December 13th Commission Worksession Meeting and the December 14th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

City of Muskegon
City Commission Worksession
December 13, 2010
City Commission Chambers
5:30 PM

MINUTES

2010-102

Present: Mayor Warmington, Commissioners Spataro, Wisneski, Shepherd, Carter, and Wierengo.

Absent: Vice Mayor Gawron (excused).

Ruddiman Creek Habitat Restoration Design.

Brian Mika, JFNew, gave an overview of the project presenting the three phases.

Motion by Commissioner Wisneski, second by Commissioner Shepherd to approve the Ruddiman Creek Habitat Restoration Design as presented.

MOTION PASSES

Laketon Avenue Realignment between Seaway & Temple.

Mohammed Al-Shatel, DPW Director, explained the realignment. This will eliminate the dedicated right turn lane. Project would start after Labor Day and be completed mid November.

Sunday Morning Liquor Sales.

Mayor Warmington explained the new law that was passed by the Legislature allowing the sale of liquor on Sunday morning starting at 7:00 a.m. If the City wants to opt out and prohibit Sunday sales, then we need to notify the Michigan Liquor Control Commission. We have no issues, no action required.

DNR/Army Corps Permits.

Discussion on whether we should ask the DNR to hold a public hearing if there are issues concerning the citizens. Would like the Neighborhood Associations notified when we get a notice. Tony Kleibecker, Public Safety Director, stated he would forward the notices to the correct Neighborhood President.

Adjournment.

Motion by Commissioner Wisneski, second by Commissioner Shepherd to adjourn at 6:13 p.m.

MOTION PASSES

**Ann Marie Becker, MMC
City Clerk**

CITY OF MUSKEGON

CITY COMMISSION MEETING

DECEMBER 14, 2010

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, December 14, 2010.

Mayor Warmington opened the meeting with a prayer from Vice Mayor Gawron after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Clara Shepherd, Lawrence Spataro, Sue Wierengo, Steve Wisneski, and Chris Carter, Acting City Manager Tony Kleibecker, City Attorney John Schrier, and Deputy City Clerk Linda Potter.

2010-103 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the City Commission Meeting that was held on Tuesday, November 23, 2010.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Liquor License Request – PKT Twelve, Inc., 413-415 W. Western. CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from Paul A. Broussard, Member in 4-1-1 Bistro Lounge, LLC and PKT Twelve, Inc. to add the 4-1-1 Bistro Lounge, LLC as Co-Licensee in a 2010 Class C-SDM Licensed Business with Dance-Entertainment Permit, Direct Connections-2, and total of 3 Bars, located at 413-415 W. Western, Muskegon, MI.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.

C. Pyrotechnics Display Permit. CITY CLERK

REMOVED PER APPLICANT REQUEST

D. Service Agreement with Professional Med Team Inc. PUBLIC SAFETY

SUMMARY OF REQUEST: The Director of Public Safety is requesting approval to enter into a service agreement (calendar year 2011) with Professional Med Team (Pro Med) to provide a paramedic for the purpose of performing a blood draw, when needed, of suspected intoxicated drivers. The paramedic will be dispatched directly to the jail to perform the draw. This service will be utilized by all law enforcement agencies within Muskegon County. Pro Med is located within the City.

FINANCIAL IMPACT: The cost to the department will be \$75 per blood draw.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the agreement.

E. Purchase of Exhaust Venting System. PUBLIC SAFETY

SUMMARY OF REQUEST: The Fire Department has received grant money from the Federal Assistance to Firefighters Act to purchase exhaust venting systems for the Fire Station #5 on Marquette Avenue and for Fire Station #4 on Lakeshore Drive. The venting systems are in place to remove potentially harmful exhaust fumes from the garage areas when the trucks are started.

The following two companies submitted bids for these systems:

Rossman Enterprises LLC of Indianapolis, IN \$28,725.00

Hastings Air-Energy Control, Inc. of Farmington, MI \$29,814.82

Based upon a staff review of the proposals that were submitted, we are recommending the system from Hastings Air-Energy Control of Farmington, MI.

FINANCIAL IMPACT: The grant requires a 10% match which will be provided by general fund monies.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of this request.

G. 2011 User Fee Update. FINANCE

SUMMARY OF REQUEST: City departments have reviewed and updated their user fees and these have been incorporated into the Master Fee Resolution for your consideration.

The new fees and fee changes that are being proposed include the following:

- Elimination of recreation program fees since City is contracting out these

programs;

- Adjustments to Farmers' Market and Flea Market stall rentals to help offset higher program costs;
- Restructuring of fees related to special events (note: these fees are shown under DPW and under Special Events);
- Simplify McGraft Park Building rental fees;
- Elimination of various obsolete fees.

FINANCIAL IMPACT: Increased revenue for fee supported activities.

BUDGET ACTION REQUIRED: None at this time. Adoption of the Master Fee Resolution will help the City attain its budgeted revenue estimates.

STAFF RECOMMENDATION: Approval.

H. Deficit Elimination Plan for Home Rehabilitation Fund, Brownfield Redevelopment Authority Fund and Engineering Fund. FINANCE

SUMMARY OF REQUEST: At June 30, 2010, the City of Muskegon Home Rehabilitation Fund had a deficit balance of \$241,404; the Brownfield Redevelopment Authority Fund had a deficit balance of \$9,217; and the Engineering Fund had a deficit balance of \$102,318. Act 275 of the Public Acts of 1980 requires that the City file a Deficit Elimination Plan with the Michigan Department of Treasury. Staff is requesting adoption of the Home Rehabilitation Fund, Brownfield Redevelopment Authority Fund and Engineering Funds Deficit Elimination Plan Resolutions.

FINANCIAL IMPACT: As presented by the Deficit Elimination Plan the Home Rehabilitation Fund, Brownfield Redevelopment Authority and Engineering funds will no longer have a deficit by June 30, 2011.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adoption of the Deficit Elimination Plan Resolutions.

Motion by Vice Mayor Gawron, second by Commissioner Carter to accept the Consent Agenda as presented minus item F.

ROLL VOTE: Ayes: Warmington, Wierengo, Wisneski, Carter, Gawron, Shepherd, and Spataro

Nays: None

MOTION PASSES

2010-104 ITEM REMOVED FROM THE CONSENT AGENDA:

F. Medical Marijuana Facilities Moratorium Extension. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: For the City Commission to extend the moratorium on

medical marijuana facilities for an additional three months. Staff is currently drafting the ordinance and is preparing to present its recommendation to the Planning Commission in February 2011.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends the three-month extension of the moratorium.

Motion by Commissioner Shepherd, second by Commissioner Spataro to approve the medical marijuana facilities moratorium extension.

ROLL VOTE: Ayes: Gawron, Spataro, Warmington, Wierengo, Wisneski, and Carter

Nays: Shepherd

MOTION PASSES

2010-105 PUBLIC HEARING:

A. Request for an Industrial Facilities Exemption Certificate – Re-Source Industries. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 198 of 1974, as amended, Re-Source Industries, 1485 S. Getty, has requested the issuance of an Industrial Facilities Exemption Certificate. The total capital investment is approximately \$281,466 in personal property, which qualifies them for a six-year exemption on personal property.

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

BUDGET ACTION REQUIRED: None.

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

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

Motion by Commissioner Spataro, second by Commissioner Shepherd to close the Public Hearing and approve the resolution granting an Industrial Facilities Exemption Certificate for a term of six years for personal property for Re-Source Industries.

ROLL VOTE: Ayes: Wisneski, Carter, Gawron, Shepherd, Spataro, Warmington, and Wierengo

Nays: None

MOTION PASSES

2010-106 UNFINISHED BUSINESS:

A. SECOND READING: Amendment to the Zoning Ordinance – Regulations on Fencing. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Staff initiated request to amend Section 2324 (Temporary Buildings, Structures and Uses) of Article XXIII (General Provisions) to provide regulations on fencing as part of erosion control measurements.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their November 10th meeting.

Motion by Vice Mayor Gawron, second by Commissioner Carter to approve the zoning ordinance amendment to provide regulations on fencing as part of erosion control measurements.

ROLL VOTE: Ayes: Spataro, Warmington, Wierengo, Wisneski, Carter, Gawron, and Shepherd

Nays: None

MOTION PASSES

B. SECOND READING: Rezoning Request for the Property Located at 1823 Commerce Street (Tabled from November 23, 2010). PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone the property at 1823 Commerce from B-4, General Business District to B-5, Governmental Service District, by West Michigan Therapy. The applicant would like to run a Transitional Living Center at this location.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their October 14th meeting.

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the rezoning request for the property located at 1823 Commerce Street.

ROLL VOTE: Ayes: Carter, Shepherd, Warmington, and Wierengo

Nays: Gawron, Spataro, and Wisneski

MOTION PASSES

PUBLIC PARTICIPATION: Comments were made reference the City's junk vehicle ordinance. This will be discussed at the next Worksession.

ADJOURNMENT: The City Commission Meeting adjourned at 6:32 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

Commission Meeting Date: January 11, 2011

Date: December 13, 2010

To: Honorable Mayor and City Commission

From: Community and Neighborhood Services Department

**RE: Disclosure of Potential Conflict of Interest under CDBG
(Community Development Block Grant) Program**

SUMMARY OF REQUEST: Under Community Development Block Grant regulations, potential conflicts of interest must be disclosed to the public prior to requesting a waiver from HUD. Rasheedah Muhammad-Gillespie, 1044 E. Isabella Avenue, has applied for CDBG assistance for plumbing/sewer under the City's Emergency Repair Program. She is a member of the Citizen's District Council. The City Attorney has determined that no conflict of interest is present in this case; however, this must be disclosed to the public before any further action can be taken.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve for the City's Community and Neighborhood Services Department to submit the waiver of conflict of interest to the U. S. Department of Housing and Urban Development.

COMMITTEE RECOMMENDATION: Not Applicable

Bailey, Oneata

From: Rasheedah Gillespie-Muhammad [rasheedahgm@gmail.com]
Sent: Thursday, November 18, 2010 9:53 AM
To: ellen.chung@hud.gov
Cc: Bailey, Oneata
Subject: Conflict of Interest Clause

Ellen Chung
 Department of Housing and Development

Dear Ms. Chung,

Please accept this letter as my notice of Conflict of Interest Clause for the the City of Muskegon, MI.

I am on the Citizens Committee for Community Development Block Grant. I have recently become in need of the CBDG funding for emergency repairs. There is water coming into my basement and I am unsure of where it is coming from. I personally suspect that is coming from the City water supply and leaking into the front wall of my basement. I am unemployed and am receiving compensation allotment for these circumstances. My limited budget does not allow for any repairs at this time.

I was told that there is a need to make notice of conflict to you on behalf of my need for emergency repair funding. Because of my affiliation with the CDBG this could be seen as specialized treatment. Could you please respond promptly as this is a problem that needs to be resolved ASAP. Listed below are my monthly living cost. As you can see my expenses run beyond my revenue.

Monthly Unemployment allotment	1216.00
Land Contract	500.00
Consumers Energy	70.00
Mich Con	171.00
Water/Sewage	70.00
Car/House Insurance	271.00
2 cars/College age daughter	
Car	278.00
Phone	74.00
Internet	49.00
Food	200.00

Thank you,

11/29/2010

Michael L. Rolf
Thomas H. Thornhill
George W. Johnson
W. Brad Groom
Eric R. Gielow
John C. Schrier
Christopher L. Kelly
Linda S. Kaare
James R. Scheuerle
William J. Meier
Keith L. McEvoy
Anna Urick Duggins
Scott M. Knowlton

PARMENTER O'TOOLE

Attorneys at Law

601 Terrace Street ■ P.O. Box 786 ■ Muskegon, Michigan 49443-0786
Phone 231.722.1621 ■ Fax 231.722.7866 or 231.728.2206
www.ParmenterOToole.com

Jeffery A. Jacobson
Nancy Ann Hornacek
Adam G. Zuwerink
Douglas J. Winkle
Michelle R. Heckman
Rachel L. Terpstra

Of Counsel
Eric J. Fauri
John M. Briggs, III
Michael M. Knowlton

George A. Parmenter, 1903-1993
Thomas J. O'Toole 1926-2008

December 9, 2010

E-MAIL and HAND DELIVER

Oneata Bailey
Director of Community and Neighborhood Services
City of Muskegon
P.O. Box 536
Muskegon, MI 49443-0536

Re: Rasheedah Gillespie-Mohammed

Dear Ms. Bailey:

As a follow-up to your recent e-mail and attachments, the following opinion is provided.

The e-mail indicates that Rasheedah Gillespie-Mohammed has applied for City of Muskegon Community Development Block Grant (CDBG) funding for emergency repairs. Rasheedah Gillespie-Mohammed owns her residence located at 1044 E. Isabella, Muskegon, Michigan. Rasheedah Gillespie-Mohammed has recently discovered water entering her basement from an unknown source. Rasheedah Gillespie-Mohammed lacks the financial ability to pay for repairs and thus needs CDBG funding for emergency repairs.

In addition, Rasheedah Gillespie-Mohammed serves on the Community Development Block Grant – Citizen's District Council. The Community Development Block Grant – Citizen's District Council recommends to the City Commission the allocation of Community Development Block Grant monies between different programs. The Community Development Block Grant – Citizen's District Council is neither the decision-maker nor involved in the use of monies once allocated to various programs.

FEDERAL CONFLICT OF INTEREST CONCERNS

Rasheedah Gillespie-Mohammed is not in a position to determine or influence the use of program monies on the house she owns. Further, Rasheedah Gillespie-Mohammed is not in a position to increase or decrease the amount of money to be spent in this program.

The federal regulations provide that:

The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

24 CFR 570.611(b). Persons covered by this prohibition include appointed officials of the City.
24 CFR 570.611(c).

Rasheedah Gillespie-Mohammed is appointed by the City Commission to serve on the Community Development Block Grant – Citizen's District Council and is in a position to participate in a decisionmaking process with regard to CDBG related activities. As such, Rasheedah Gillespie-Mohammed has a conflict of interest.

Where a conflict of interest exists, the federal regulations permit the U.S. Department of Housing and Urban Development (HUD) to provide a waiver. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions on a case-by-case basis when it determines that the exception will serve to further the purposes of the Act and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- (2) An opinion of the [City's] attorney that the interest for which the exception is sought would not violate State or local law.

24 CFR 570.611(d).

While Rasheedah Gillespie-Mohammed will personally benefit, the benefit is provided to anyone who is qualified, subject to budget constraints. Rasheedah Gillespie-Mohammed is an intended beneficiary of the program, and will receive, generally, the same benefit as is made available to others, as the federal guidelines exist.

A waiver would appear to be appropriate.

STATE CONFLICT OF INTEREST CONCERNS

The state has adopted the Contracts for Public Entities Act, which generally prohibits contracts between a public servant and a "*public entity of which he or she is an officer or employee.*" MCL Section 15.322(1). Rasheedah Gillespie-Mohammed is, arguably, a public servant because public servant is defined as "all persons serving any public entity". MCL Section 15.321(a). However, Rasheedah Gillespie-Mohammed is not an officer or employee of the City of Muskegon. A technical reading of the Act would result in a determination that the Act does not apply.

On previous occasions, the City has elected to satisfy the exceptions in case the Act does apply and I would recommend that here. The Contracts of Public Servants with Public Entities Act recognizes that, at times, it may be in the best interest of the public entity to enter into contracts, notwithstanding a conflict with one or more of the individuals involved with the public entity. As such, even if there is a conflict, a contract may be entered into, if the following occurs:

- 1) Rasheedah Gillespie-Mohammed discloses in writing to the Mayor her interest in the house and the value of the benefits to be provided by the City seven days prior to action of the City Commission. The disclosure must be made public the same as a public meeting notice;
- 2) The contract is approved by a vote of not less than two-thirds of the full membership in open session; and
- 3) The minutes for the official body disclose the name of each party involved in the contract, the terms of the contract, and the nature of the pecuniary interest of the public servant with the conflict.

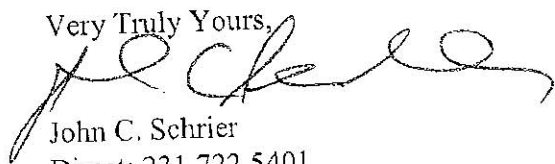
The requirement of approval of the contract by two-thirds of the full membership of the approving body will require five elected officials to vote affirmatively. The "super majority" requirement provides protection for the public entity.

CITY OF MUSKEGON CONFLICT OF INTEREST CONCERNS

The City of Muskegon Charter regulates, and generally prohibits, contracts between the City and officers and employees of the City. However, Rasheedah Gillespie-Mohammed is neither an officer nor employee of the City. As such, the City of Muskegon Charter prohibition on certain conflicts of interest is not applicable.

If you have any further questions or concerns, please feel free to contact me.

Very Truly Yours,



John C. Schrier

Direct: 231.722.5401

Fax: 231.722-5401

E-Mail Address: jcs@parmenterlaw.com

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: December 22, 2010

RE: Agreement for Legal Services

SUMMARY OF REQUEST:

To approve an agreement with Parmenter O'Toole, LLC to provide legal services to the City for 2011-2014.

FINANCIAL IMPACT:

The cost stays the same for 2011 and goes up \$5.00/hour for each of the following three years.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the agreement.

COMMITTEE RECOMMENDATION:

None.

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made between the CITY OF MUSKEGON, hereinafter called "the City," and PARMENTER O'TOOLE, LLC., hereinafter known as "the Law Firm," JOHN C. SCHRIER and WILLIAM J. MEIER, the law firm and the said persons being sometimes referred to collectively as "the attorneys."

RECITALS:

1. The City of Muskegon is a home rule city, organized by charter, which provides for the office of City Attorney.
2. The City makes this agreement for the purpose of naming the City Attorney and the Assistant City Attorney, and further to provide for legal services to the City by the said Law Firm and John C. Schrier and William J. Meier.
3. The City Attorney and the Assistant City Attorney are expected to be members of the Law Firm, and the City believes it necessary and advisable to contract with the Law Firm as well as the City Attorney and Assistant City Attorney because of the extent and scope of legal services necessary to be performed.

THE PARTIES THEREFORE AGREE:

1.0 APPOINTMENT OF CITY ATTORNEY, ASSISTANT CITY ATTORNEY AND RETENTION OF LAW FIRM.

1.1 The City appoints John C. Schrier, City Attorney, pursuant to charter, and William J. Meier as Assistant City Attorney. The said attorneys accept the appointments, committing to perform their legal duties to the best of their ability and in accordance with the highest standards of the legal profession, both as to standards of law practice and its ethics and rules of professional conduct.

1.2 John C. Schrier and William J. Meier shall exercise their appointments in connection with their practice as members of the Law Firm, and the City therefore retains the Law Firm for the performance of the legal services described herein. Members of the Law Firm are authorized to appear as Special Assistant City Attorneys.

2.0 COMPENSATION FOR SERVICES.

2.1 Compensation shall be by fees for services payable to the Law Firm. No additional compensation shall be due to the City Attorney or Assistant City Attorney or any other member of the Law Firm by virtue of their appointments made pursuant to this agreement.

2.2 The schedule of fees for attorneys shall be:

2011	\$125 per hour
2012	\$130 per hour
2013	\$135 per hour
2014	\$140 per hour

Time for paralegals shall be billed at one-half of the rate for attorneys.

2.3 City shall pay to the Law Firm a monthly retainer of \$18,000. To the extent that billed fees exceed \$216,000 per year, the Law Firm shall be paid an additional amount based upon the above hourly rate. To the extent that the billed fees are less than \$216,000 per year, the Law Firm shall reimburse the City based upon the above hourly rate. The additional compensation or reimbursement shall occur on a semi-annual basis.

3.0 TERM AND TERMINATION.

3.1 The term of this agreement is four (4) years, beginning January 1, 2011. Renewals may occur only on mutually agreeable terms.

3.2 Either party reserves the right to terminate this agreement on 30 days notice or in the event of a material breach of the terms and conditions hereof by the other.

3.3 Notwithstanding the above provisions, the City Charter concerning the appointment of the City Attorney shall prevail, and nothing herein is intended to abrogate those provisions.

4.0 DESCRIPTION OF SERVICES

4.1 Services to be provided are:

4.1.1 Attendance at all regular and special City Commission meetings.

4.1.2 Attendance, as needed, at meetings of committees of the City Commission, Zoning and/or Housing Board of Appeal, the Civil Service Commission, etc.

4.1.3 The rendering of legal advice and opinions, preparation and drafting services in connection with the City Charter or Charter revisions/amendments, preparation of legal documents, drafting of ordinances and resolutions, and consultation on City matters with the City Commission, City Manager, and City employees.

4.1.4 Appearance in court for the prosecution of ordinance violations and civil infractions, and lawsuits for injunctions and civil enforcement of civil ordinances.

4.1.5 Labor negotiations, arbitration, and advice on labor relations and personnel matters.

4.1.6 Services rendered in connection with Authorities or other entities associated with the City regardless of the funding source. Such bodies include, but are not limited to, the Downtown Development Authority, Tax Increment Finance Authority, Local Development Finance Authority, and the Hospital Finance Authority and the Brownfield Development Authority.

4.1.7 Appearance and prosecution of defense of cases before the Michigan Tax Tribunal or State Tax Commission.

4.1.8 Work associated with bond issues, except for the duties traditionally required of Bond Counsel.

4.1.9 Real estate transactions and condemnation proceedings.

4.1.10 Possible defense of the City in litigation subject to insurance coverage.

5.0 GENERAL CONDITIONS.

5.1 **COORDINATION.** The City Attorney shall coordinate the services of the Assistant City Attorney and members of the Law Firm on City matters.

5.2 **EXPENSES.** Expenses shall be separately charged and billed monthly.

5.3 **BILLINGS AND COMPENSATION.** Payment of compensation shall generally be made on a monthly basis as provided above. Billings for expenses shall also be rendered monthly. The attorneys shall maintain records of time and services, which shall be available for inspection by the City Manager at reasonable times.

5.4 **INDEPENDENT CONTRACTORS.** The City Attorney, the Assistant City Attorney and the Law Firm are not employees of the City. They are determined to be independent legal counsel and independent contractors.

5.5 **MALPRACTICE INSURANCE.** The attorneys commit to carry legal malpractice insurance through the policy or policies issued to the Law Firm.

5.6 **SUPPLIES.** Generally, the firm shall have its own supplies and office equipment. On occasion supplies will be required for City services and, with the approval of the City Manager and by his authority, the City will furnish same at its expense. By way of example, City stationery will normally be supplied by the City.

5.7 **CONFLICTS OF INTEREST.** The attorneys agree to exercise their best efforts to avoid representation of any person, party or entity in any cause contrary to the interest of the

City. The attorneys and firm shall absolutely desist from representing any private person or entity on any matter in which the City is or may become an opposing party.

The parties understand that the attorneys currently represent a number of clients, including businesses, private parties and municipalities. Where a potential conflict of interest because of such representation may occur, the parties shall proceed as follows:

5.7.1 In the event of a potential conflict of interest, the City Attorney shall identify the conflict and inform both parties in writing identifying the potential cause of conflict.

5.7.2 The City shall determine whether the conflict is material, and if it determines that it is not, instruct the City Attorney to continue representation of the City; provided, however, the City Attorney and the Law Firm may determine that the conflict cannot be overcome and advise the City accordingly, taking steps to assist in obtaining alternative representation of the City and of the other party.

5.7.3 In the event the City determines that the conflict is material, the City shall so inform the City Attorney and the City Attorney shall assist the City and the other party in obtaining alternative representation for that matter.

5.7.4 In the event the City authorizes the attorneys to continue representation of the City in the matter, the attorneys shall do so in a manner that avoids disclosure of confidential communications to any member of the Law Firm representing the other party and the City Attorney shall not represent the other party in connection with that matter.

5.7.5 The attorneys especially commit not to represent any party against the City in any matter of litigation.

5.7.6 Notwithstanding the above, the attorneys shall act in accordance with the letter and spirit of the Michigan Rules of Professional Conduct ("MRPC") as adopted by the Michigan Supreme Court as they apply to any matter involving a conflict of interest or potential conflict of interest. In case the MRPC conflict with this agreement, the MRPC shall prevail.

6.0 **COUNTERPARTS.** This agreement may be executed in multiple counterparts. Any copy of this agreement may be relied upon as the original. Amendments to this agreement must be in writing on documents of equal dignity with this agreement.

7.0 **CONTINUITY/BENEFIT.** In the event the Law Firm experiences the addition of personnel or there are changes in membership of the Law Firm, this agreement shall continue in effect unless such change adversely affects the representation of the City. The City Attorney and Assistant City Attorney shall be members of the Law Firm.

IN WITNESS WHEREOF, the parties execute this agreement this ____ day of _____, 2011.

CITY OF MUSKEGON

By _____
Stephen J. Warmington, Mayor

And _____
Ann Marie Becker, Clerk

PARMENTER O'TOOLE

By _____
John C. Schrier
City Attorney

By _____
William J. Meier
Assistant City Attorney

Commission Meeting Date: January 11, 2011

Date: December 21, 2010
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department
RE: Special Events Policy- Revision Amendments

SUMMARY OF REQUEST: The City Commission approved the Revised Special Events Policy presented by staff on November 23, 2010. Some of those revisions included fee changes, earlier submission deadlines and costs for City equipment and labor. In addition, for any events with approved street closures, the closures must not occur until 12:01 a.m. the day of the event and the streets must be open to traffic by 6:00 a.m. the day after the event. The Commission had extensive discussion regarding the time of the street closures, however, and suggested the street closure time be amended from 12:01 a.m. of the day of the event, to 6:00 p.m. the evening prior to the event. In addition, the Commission requested that events not requiring a liquor license (or simply an extension of their existing license) be allowed to take place on Labor Day weekend. However, event requests requiring a special liquor license must be presented to City Commission for approval.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the revised, amended City of Muskegon Special Event Policy, to include the new time for street closures to be 6:00 p.m. the night prior to the event, and to require Labor Day weekend events requesting special liquor license's to go before the City Commission for approval.

COMMITTEE RECOMMENDATION: None.

CITY OF MUSKEGON SPECIAL EVENT POLICY

Revised December 2010



INTRODUCTION

The City of Muskegon receives many requests from organizations to supply various services for special events. While there are several City departments involved in the special event process, this policy centralizes the administration of special events with the City's Planning Department, and provides rules and regulations to govern both the granting of the special event request and the on-site administration of the event. A Special Event Application is required for any public event held on City property. Events held on private property that do not utilize any City services may not require a Special Event Application.

For events with alcohol, applicants must submit a liquor license application to the Muskegon Police Department, in addition to completing the Special Event Application, if required. Liquor license approval is a separate process from the Special Event Application, with separate fees and regulations. The final authority for signing special liquor licenses is with the Public Safety Director. Requests to serve liquor at an event will also require City Commission approval. For liquor license regulations and information, please visit the State of Michigan's website at www.michigan.gov/dleg.

SPECIAL EVENT APPLICATION PROCEDURE

I. Special Event Application ("Application") Submission & Fee Schedule

All Applications shall be filed with the Planning Department at least sixty (60) days prior to the event, along with the required proof of insurance for the event naming the City as additional insured [see Schedule B for insurance requirements].

The non-refundable administration fee for Special Event Applications is as follows:

Events occurring during peak event season April 15 – September 30	Events occurring outside of peak season January 1 – April 14 & October 1 – December 31
<i>Applications submitted prior to April 15 will receive a 50% discount off the regular fee.</i>	
\$100 fee for applications submitted 60 days or more prior to the event date (if application is submitted by April 15, this fee is reduced to \$50)	\$50 fee for applications submitted 60 days or more prior to the event date
\$250 fee for applications submitted 59-45 days prior to the event date	\$200 fee for applications submitted 59-45 days prior to the event date
\$400.00 fee for applications submitted 44-30 days prior to the event	\$300.00 fee for applications submitted 44-30 days prior to the event
Applications submitted less than 30 days prior to the event date will not be accepted.	\$500 fee for applications submitted less than 30 days prior to the event

Failure to submit an Application within 60 days of the event may result in denial of the application.

Special Event permit application fees will be waived for Veteran Groups, per the City Commission. In addition, the City's recognized Neighborhood Associations are entitled to one application fee waiver per year, in addition to National Night Out festivities, provided that the application is submitted to the Planning Department at least 30 days in advance of the event date. Rental fees may be waived for City equipment transported by neighborhood association representatives.

The Special Event Application shall be in writing and must be submitted on the appropriate form. The *City of Muskegon Request for Special Event* form can be found on the City's website at www.muskegon-mi.gov, or you may call 231.724.6702 to have one mailed to you, or you may visit the Planning Department on the 2nd floor of City Hall. If your event will require City services (e.g. picnic tables, barricades, police services), you must also complete Part II, Schedule A of the Special Event Application, indicating which items you are requesting. *Please keep in mind that there may be additional costs for these items and/or services. See*

Schedule A (pg. 4) for fee estimates. You are welcome to provide your own equipment (tables, trash cans, etc.) instead of renting City equipment.

Block Parties & Similar Events. The City is not inclined to approve applications for these types of events where the closure of City street(s) is requested. We encourage the use of City parks for these gatherings.

Labor Day Weekend – Applicants requesting a special liquor license for Labor Day events must go before the City Commission for approval. Events without alcohol or those needing only an extension of an existing license do not require City Commission approval.

II. Event Requirements

All special event permittees agree to the following:

(a) **Police Officers.** While a Police Officer's presence may not be required at all special events, it shall be the discretion of the Public Safety Director as to whether or not, and how many, city police officers will be required at any event. The Special Event Applicant Organization will be responsible for payment of officer(s) service based on the time-and-one-half or triple time established rate plus benefits and overhead costs. See Schedule A for fee estimates. If the event is cancelled with less than 72 hours notice, the Applicant will be responsible for paying two hours' pay per officer, per contract requirements.

(b) **Insurance.** Where the event is being held in the City of Muskegon, the applicant must provide an amount of insurance as set by the City for general liability insurance, naming the City as an additional insured. The language shall read as follows:

The City of Muskegon, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof are listed as additional insured under the general liability and auto liability policies. The City of Muskegon is held harmless with regard to the General Liability Policy.

You may use an insurance agent of your choice. An acceptable certificate of insurance must be submitted prior to event approval. See Page 4, Schedule B for the amount of insurance required.

(c) **Restroom Facilities.** All outdoor events shall provide adequate restroom facilities (i.e. portable toilets) including handicapped-accessible facilities per ADA requirements.

(d) **Digging & Staking.** Digging or staking into paved areas, including roadways, sidewalks, and public parking areas, is not permitted. Digging or staking into non-paved ground shall be cleared through Miss Dig in order to avoid damage to underground utilities. The Applicant Organization is responsible for contacting Miss Dig (1-800-482-7171, or dial 811) a minimum of 5 working days prior to event set-up. The applicant will also be responsible for paying an electrician to locate underground City electrical lines, if required. The Applicant Organization will be responsible for the cost of any damages to underground utilities caused by digging or staking.

(e) **Electrical and Water Hook-up** The applicant must adapt to electrical power available on-site, or provide their own generator. There may be additional labor charges if City staff time is required for water hook-up. It is the responsibility of the applicant to provide acceptable hoses for potable water usage, which meet Health Department requirements.

(f) **Inspections.** The event location is subject to all building, plumbing, mechanical, electrical, and fire codes. The permittee will schedule an inspection by any and all required inspectors and pay the inspection fee(s) as set by the City Commission in the adopted fee schedule. It may be possible that a fire watch will be required by the Fire Marshal. The permittee is responsible for all costs associated with providing this service, including but not limited to current wage rate plus benefits and all overhead costs.

(g) **Event Set-up and Tear-down.** For events utilizing any public roadway, no tents, booths, vendors, or equipment shall be set up in the roadway prior to 6:00 p.m. the day before the event. All signs,

tents, booths, vendors, and equipment must be removed from the roadway prior to 6:00 a.m. the day after the event.

(h) **Site Clean-up.** Where an event is held on City-owned or -controlled property, the Applicant shall be responsible for clean-up of City facilities after the event and for providing a dumpster. If the event is on private property, clean-up shall be the responsibility of the property owner. The City shall have the right to enforce cleanup measures, including but not limited to, entry and cleaning of property by City personnel and charging and liening the cost to the owner, occupant, applicant or all of those. In the case of repeat problems with clean-up for any particular event, the City may require a cleaning deposit prior to event approval.

(i) **Merchandise Sales.** Sales of all items for Special Events must be out of the public right-of-way, unless prior authorization is received. Exempted items are listed in paragraph (j) below.

(j) **Street Sales.** Street sales of newspapers, poppies, etc. shall not be allowed except for those events that have existed before September 1, 1996, which will be allowed as long as they exist. These events include: The Old Newsies, Muskegon High School Band Tag Sale, The Veteran's Poppy sale, and the Kiwanis.

(k) **Compliance with all regulations.** Special Event applicants are responsible to ensure that all applicable laws and ordinances are followed. Failure to comply with all city ordinances, rules and regulations may result in the denial of future special event requests.

III. Special Event Application Processing

(a) **Application Intake.** Planning Department staff shall be responsible for intake of Special Event Applications and dissemination to appropriate City staff for review and approval.

(b) **Application Denial.** Where City staff reviews an Application and denies same, it shall state in writing the reasons for the denial. An appeal of that decision may be made to the City Commission, whose decision shall be final.

(c) **Unpaid Invoices.** Any past due fees/invoices owed to the City may result in the denial of the Application and/or future Special Event requests.

(d) **Street Closures/Barricading.** Requests that include road closings/barricading shall require approval of the Public Safety Director and the DPW Superintendent. Planning staff will forward these requests to the appropriate personnel once the Special Event Application and fee are submitted. The applicant will be responsible for all associated costs, which may include barricades and police services. City Commission approval may be required in some cases. If a street closure is approved for an event, the Applicant must provide written notification to all businesses and residences located on the street(s) to be closed at least *10 days* prior to the event date. **Streets shall not be closed prior to 6:00 p.m. the day before the event**, and must be open by 6:00 a.m. the day following the conclusion of the event. Street closures will not be approved for block party-type events.

(e) **Runs/Walks.** For races, runs, walks, or parades, the Applicant must provide a map with the Application, showing the proposed route. In addition, if any streets will be closed or partially closed, the Applicant must provide written notification to all residences and businesses on those streets at least *10 days* prior to the event date. Event organizers shall meet with City staff to discuss the race route at least *15 business days* prior to the event.

(f) **Site Plan.** The City may require submittal of a site plan showing the event grounds and the location of tents, vendors, portable toilets, and other structures.

(g) **Meetings.** City staff may require a meeting with event sponsors, where staff needs clarification of service(s) requested. Failure to attend the meeting may result in denial of the application.

IV. Use of City Equipment & Labor

(a) The City has some items available for rent for special events. See Schedule A for available items. You are not required to rent City equipment; you may provide your own.

(b) The Applicant may be responsible for City employee labor costs to move City equipment to and from the event location. See Schedule A for fee estimates. You may be able to eliminate or reduce this cost by transporting equipment yourself. Arrangements must be made with the City's DPW Superintendent or Parks Maintenance Supervisor.

(c) There is a stage in Hackley Park available for events held in the Park. The stage is up from approximately the beginning of June until mid-August. There is no additional fee for use of the stage, as long as your event is held in the Park. The stage is not to be removed from Hackley Park.

#####

SCHEDULE A – CITY EQUIPMENT AVAILABLE FOR RENT

Item:
55-gallon metal trash cans
Plastic trash bags (by the case)
Snow fence (wood)
Fence posts
Picnic tables

Only the items listed above are available from the City for event use. Labor charges may be added to equipment rental fees if delivery and/or pick-up of equipment by City staff is required.

Current equipment rental and labor rates can be found on the City of Muskegon Fee Schedule on the City's website at www.muskegon-mi.gov.

SCHEDULE B – LIABILITY INSURANCE REQUIREMENTS

LOW RISK (L) - Requires \$300,000 liability insurance coverage. No physical activity by participants and no severe exposure to spectators. Examples of low-risk events include such things as indoor or outdoor meetings, small theatrical performances, auctions, and social gatherings (with no alcoholic beverages).
MEDIUM RISK (M) - Requires \$500,000 liability insurance coverage. Limited physical activity by participants and minimal exposure to spectators. Examples of medium-risk events include dances, animal shows, political rallies, flea markets, picnics, parades with no floats, and family type concerts. Also included is any event with a crowd size of 500 to 10,000.
HIGH RISK (H) - Requires \$1,000,000 liability insurance coverage. Major participation by participants and/or moderate to severe exposure to spectators. Events in this category include team or individual sporting events (non-professional), circuses and carnivals with rides, parades with floats, and marathons or similar races. Also included is any event with a crowd size of over 10,000 but under 25,000. Examples of events requiring high risk insurance coverage are: Parties in the Park, Summer Celebration, Bike Time, Chronicle Seaway Run, Winterfest, and most events with alcohol licenses.
Language on the insurance certificate shall read: <i>"The City of Muskegon, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof are listed as additional insured under the general liability and auto liability policies. The City of Muskegon is held harmless with regard to the General Liability Policy."</i>

Date: January 11, 2011
To: Honorable Mayor and City Commissioners
From: City Clerk
RE: Setting Worksession and Commission Meetings

SUMMARY OF REQUEST: Approval of the scheduled meetings.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

CITY OF MUSKEGON CITY COMMISSION WORKSESSIONS 2011

City Hall Commission Chambers (Room 107)
5:30 PM

January	10
February	7
March	7
April	11
May	9
June	13
July	11
August	8
September	12
October	10
November	7 Commission Meeting
December	12

The meetings will begin at 5:30 p.m. in the City Commission Chambers at City Hall, 933 Terrace Street, Muskegon, MI.

Ann Marie Becker, MMC
City Clerk

CITY OF MUSKEGON CITY COMMISSION MEETINGS 2011

City Hall Commission Chambers (Room 107)
5:30 PM

January	11 25
February	8 22
March	8 22
April	12 26
May	10 24
June	14 28
July	12 26
August	9 23
September	13 27
October	11 25
November	7 (Monday) 22
December	13

The meetings will begin at 5:30 p.m. in the City Commission Chambers at City Hall, 933 Terrace Street, Muskegon, MI.

Ann Marie Becker, MMC
City Clerk

Commission Meeting Date: January 11, 2011

Date: January 3, 2011

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services Department

RE: Approval of Sale of City owned home at 627 E. Apple

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete the sales transaction between Mr. Christian D. Adame for the totally rehabilitated home at 627 E. Apple, which is part of the City's Neighborhood Stabilization Program through the Michigan State Housing Development Authority Office of Community Development. Mr. Adame's purchase price is \$43,000 with a subsidy of at least \$8,000.

The beautiful three bedroom, two full-bath home was previously vacant. As a part of the City's continuous neighborhood redevelopment efforts, the house was purchased by the CNS office with HOME funds, abated for Lead through our S.A.F.E. Housing Program and totally rehabilitated with Neighborhood Stabilization Program funds.

FINANCIAL IMPACT: The proceeds from the sale will be used to cover any extra costs associated with this rehab and to sustain our current investments under NSP program activities. Program Income funds will be used to cover HOME and Lead Program activity costs for the City of Muskegon.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the CNS staff to complete the sale.

COMMITTEE RECOMMENDATION: None.



MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE PURCHASE OF
CURRENTLY STATE OWNED PROPERTY AT 627 E Apple Avenue

WHEREAS, the City of Muskegon is dedicated to the redevelopment of its neighborhoods and;

WHEREAS, the City of Muskegon is dedicated to promoting high quality affordable single-family housing in the community and;

WHEREAS, the City of Muskegon is dedicated to promoting homeownership throughout its neighborhoods;

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approves the sale of 627 E Apple Avenue to Christian D Adame of 2522 Holton Road Muskegon. Mr. Adame will purchase the house as an owner-occupied structure.

Adopted this 11th day of January 2011

Ayes:

Nays:

By _____
Stephen J. Warmington, Mayor

By _____
Ann Marie Becker, MMC City Clerk

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: December 20, 2010

RE: Eliminate Retiree Health Care Benefits for Newly-Hired Non-Represented Employees

SUMMARY OF REQUEST:

To eliminate retiree health care benefits for non-represented employees hired on or after 1/1/2011. Instead, the City will match a mandatory two percent (2%) contribution into a Health Care Savings Plan (HCSP).

FINANCIAL IMPACT:

Significant savings will be achieved.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the request.

COMMITTEE RECOMMENDATION:

None.