

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 10, 2012

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. Control System Annual Software Update/Support. WATER FILTRATION
 - C. S.E.I.U. Unit 1 – Clerical Contract. CITY MANAGER
 - D. S.E.I.U. Unit 2 – DPW Contract. CITY MANAGER
 - E. Agreement – Digital Spectrum Enterprises (DSE). CITY CLERK
- ❑ **PUBLIC HEARINGS:**
- ❑ **COMMUNICATIONS:**
- ❑ **CITY MANAGER’S REPORT:**
- ❑ **UNFINISHED BUSINESS:**
- ❑ **NEW BUSINESS:**
 - A. Amendment to the Zoning Ordinance – Allow Second Hand Merchandise in B-2. PLANNING & ECONOMIC DEVELOPMENT
 - B. Amendment to the Zoning Ordinance – Remove Special Land Uses in B-2. PLANNING & ECONOMIC DEVELOPMENT
 - C. Telephone System. INFORMATION TECHNOLOGY
- ❑ **ANY OTHER BUSINESS:**
- ❑ **PUBLIC PARTICIPATION:**

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

❑ **CLOSED SESSION:**

❑ **ADJOURNMENT:**

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

Date: January 10, 2012
To: Honorable Mayor and City Commissioners
From: Ann Marie Cummings, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the December 12, 2011, Worksession Meeting and the December 13, 2011, City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

City of Muskegon
City Commission Worksession
December 12, 2011
City Commission Chambers
5:30 PM

MINUTES

2011-86

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

Absent: Vice Mayor Gawron.

Improvement Plan for Hackley Park - Donor.

A donor has come forward who wishes to make several landscaping improvements to enhance Hackley Park in honor of her late husband. Schultz Transport, Inc. along with Cathy Brubaker-Clarke made a presentation of the proposed improvements.

This item will be considered by the City Commission at the December 13, 2011 meeting.

Mayors Task Force.

Mayor Warmington made a presentation regarding the Mayors Task Force. The Task Force has been discussing issues currently facing the youth in our community. Problems include lack of employment, community trust, safety, cultural, communication barriers, programs, and outlets for the youth.

Representatives from Michigan Works were present to explain the changes they've made to their approach to youth seeking employment. A nine week program was added which allows younger people to be paired with employers to develop skills needed in a work environment. Muskegon High School has a JAG program that works with students to make sure that school grades are satisfactory, develop employability skills, invite speakers, etc. The program is specifically working with students who have struggled with issues within the society to make them productive members within the community.

Dwana Thompson, Affirmative Action Director, is working with organizations to register with 2-1-1 so residents may obtain information of those services available in one location by through that program.

Chris Carter suggested a program be developed through the high school to teach life skills to students and how to deal with conflict, anger management, and other issues placed on the youth.

The City Commission agreed that the City will fund the first organizational meeting to develop a plan with organizations to teach youth the life skills needed to succeed. All future programs supported by the City will be required to give a small amount of time toward this endeavor to be considered for any grants from the City.

Mr. Churchwell spoke about the Youth Service Counsel.

Dave McGough spoke about a reading program and the difficulties encountered by those that can not read and their lack of employability. Reading credits should be mandatory in the Junior and Senior High Schools.

The Mayor has scheduled meetings with all neighborhood organizations to discuss the program and issues that are being faced by the youth.

Agreement with Digital Spectrum Enterprises.

The Commission indicated they want to continue televising City Commission meetings. City staff will present an agreement for their consideration at the January 10, 2012 meeting.

2012 and 2013 Salary Schedule for Part-Time and Limited-Term Employees and the 2012 and 2013 Salary Schedule and Fringe Benefits for Non-Represented Employees.

The salary schedule for employees was discussed.

This item has been placed on the December 12, 2011 for consideration.

Adjournment.

Motion by Commissioner Carter, seconded by Commissioner Shepherd to adjourn at 7:12 p.m.

MOTION PASSES

**Ann Marie Cummings, MMC
City Clerk**

CITY OF MUSKEGON

CITY COMMISSION MEETING

DECEMBER 13, 2011

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 13, 2011.

Mayor Warmington opened the meeting with a prayer from Mr. George Monroe 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 Chris Carter, Clara Shepherd, Lawrence Spataro, Sue Wierengo, and Steve Wisneski, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Cummings.

2011-87 INTRODUCTIONS/PRESENTATION:

A. New Water Filtration Plant Supervisor, Steve Teunis.

Mohammed Al-Shatel, Public Works Director, introduced Steve Teunis, the new Water Filtration Plant Supervisor.

2011-88 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 22, 2011.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. 2012 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:

- Establishment of new fees to cover costs associated with rental re-inspection “no-shows” and repeated non-compliance inspections;
- Increase in the landlord affidavit filing fee for landlords seeking to have tenants directly responsible for payment of water and sewer bills;
- Modification of some fees related to special events (note: these fees are shown under DPW and under Special Events);
- Changes to Clerk’s fees for gaming licenses, transient businesses/peddlers, encroachments & fireworks.

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.

C. Request to Deny & Accept Properties That Did Not Sell During the Tax Sale for 2011. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The County of Muskegon held two delinquent tax auctions during 2011. There were twenty three properties left after the last auction. According to the State’s new tax laws, the City must state that they are not interested in obtaining them, otherwise the City will automatically receive them. From the list that was provided, there are four houses, one commercial building, and eighteen vacant lots. Community & Neighborhood Services would like to obtain two of the houses and Planning would like to obtain eleven vacant lots with the remaining parcels being denied.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To deny ten parcels and accept thirteen parcels and authorize both the Mayor and the Clerk to sign said resolution.

D. Deficit Elimination Plan for Home Rehabilitation Fund and State Grants Fund. FINANCE

SUMMARY OF REQUEST: At June 30, 2011 the City of Muskegon Home Rehabilitation Fund had a deficit balance of \$166,174 and the State Grants Fund had a deficit unassigned balance of \$71,930. 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 and State Grants Fund Deficit Elimination Plan Resolutions.

FINANCIAL IMPACT: As presented by the Deficit Elimination Plan the Home Rehabilitation Fund and State Grants Fund will no longer have a deficit by June 30, 2013.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adoption of the Deficit Elimination Plan Resolutions.

E. Improvement Plan for Hackley Park – Donor. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: A potential donor has made a request through the Community Foundation for Muskegon County, to provide funds for improvements to Hackley Park, including a Foundation fund for future park maintenance. Staff has met with the donor, as well as Schultz Transport, Inc., who is designing the improvements. The Master Plan for Hackley Park has been consulted as improvements are being designed. This is an exciting project which will provide for attractive, as well as historic, improvements to the Park, when there are few City funds available. The City has agreed to continue providing water to the Park as part of our responsibility. There will be a marker placed in the park in memory of the donor's husband.

FINANCIAL IMPACT: None for the City. The maintenance fund established through the Community Foundation will pay for future maintenance, as well as replacement, when necessary (with the exception of the water, which the City will provide).

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the general plan for improvements to Hackley Park and the establishment of a maintenance fund through the Community Foundation; and authorize staff to continue coordinating with the Foundation, the donor and Schultz Transport, Inc. on the specific design and improvements to be made. Final improvements must be approved by the Historic District Commission.

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

SUMMARY OF REQUEST: To enter into a service agreement (calendar year 2012) 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.

G. 2012 and 2013 Salary Schedule for Part-Time and Limited-Term Employees and the 2012 and 2013 Salary Schedule and Fringe Benefits for Non-Represented Employees. CITY MANAGER

SUMMARY OF REQUEST:

- 1) To establish the 2012 and 2013 salary ranges for part-time and limited-term employees.
- 2) To approve and adopt the proposed salary ranges and salary schedules for the non-represented administrative, technical, professional, and supervisory employees for 2012 and 2013 (1.0% increase for 2012 and no increase for 2013).
- 3) Increase the employee health insurance bi-weekly premium co-pay from \$30.00 to 10% of premium cost based on the applicable single, double and family rate (1/1/2012).
- 4) Limit paid leave hours to 240 in computing the final average compensation for an employee (1/1/2012).
- 5) Eliminate overtime hours in computing the final average compensation for an employee (1/1/2013).

FINANCIAL IMPACT:

- 1) Minimal. Minor changes are proposed.
- 2) The salary increases will cost approximately \$20,000, plus approximately \$5,000 in added fringe benefit costs.
- 3) City cost savings of approximately \$15,000.
- 4) Unknown reduction in pension costs for City.
- 5) Unknown reduction in pension costs for City.

BUDGET ACTION REQUIRED: To authorize the necessary 2011-2012 budgetary amendments and transfer of money from the affected City funds (Contingency Account for General Fund) to the appropriate salary and fringe benefit accounts to accommodate the salary increases and fringe benefit adjustments.

STAFF RECOMMENDATION:

- 1) To approve the 2012 and 2013 salary ranges for part-time and limited-term employees.
- 2) To approve and adopt the proposed salary ranges, salary schedules, and fringe benefit changes for non-represented employees for 2012 through 2013.

Motion by Vice Mayor Gawron, second by Commissioner Wierengo to approve the Consent Agenda as presented.

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

Nays: None

MOTION PASSES

2011-89 PUBLIC HEARINGS:

A. Parks and Recreation Master Plan Amendment. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: In order to seek a Michigan Natural Resources

Trust Fund grant for projects, they must be included in the Parks & Recreation Master Plan. Therefore, amendments are recommended for the Consumer's Power site and Sheldon Park. In addition, minor amendments are included for other parks, particularly in relation to ADA requirements.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To adopt the "Muskegon Parks & Recreation Master Plan 2009" Amendments and authorize the Mayor and Clerk to sign any documents necessary related to the amendments.

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

Motion by Commissioner Carter, second by Commissioner Wisneski to close the Public Hearing and approve the Parks & Recreation Master Plan Amendments.

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

Nays: None

MOTION PASSES

2011-90 NEW BUSINESS:

A. Consolidation of Services Plan – EVIP. FINANCE

SUMMARY OF REQUEST: Under the Economic Vitality Incentive Program (EVIP) adopted by the State earlier this year, the City must meet certain criteria in order to continue receiving statutory revenue sharing funds. The first criterion was to prepare and make available a citizen's guide and performance dashboard by October 1, 2011.

The second criterion the City must meet is to certify to the Michigan Department of Treasury that by January 1, 2012 they have produced and made readily available to the public, a plan with one or more proposals to increase its existing level of cooperation, collaboration, and consolidation, either within the jurisdiction or with other jurisdictions.

The ***Economic Vitality Incentive Program - Consolidation of Services Plan*** is presented for your approval. Once approved, the plan will be submitted to the Michigan Department of Treasury and made available to the public on City's website.

FINANCIAL IMPACT: Failure to submit the plan to the State could result in the loss of \$321,642 – the consolidation of services portion of the EVIP payment.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Commission approval of the plan and authorization for staff to submit the plan to the Michigan Department of Treasury.

Motion by Commissioner Carter, second by Commissioner Wierengo to approve the Consolidation of Services Plan – EVIP.

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

Nays: None

MOTION PASSES

B. 2012 National League of Cities Membership Dues. CITY CLERK

SUMMARY OF REQUEST: The 2012 National League of Cities Membership Renewal Notice has been received.

FINANCIAL IMPACT: \$3,813.

BUDGET ACTION REQUIRED: This has not been budgeted for.

STAFF RECOMMENDATION: None.

Motion by Commissioner Spataro, second by Commissioner Shepherd to approve the request for the 2012 National League of Cities Membership Dues.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS:

Mayor Warmington, on behalf of the citizens of the City of Muskegon and City staff, thanked outgoing Commissioners Carter, Shepherd and Wisneski for their leadership and service to our community.

ADJOURNMENT: The City Commission Meeting adjourned at 6:00 p.m.

Respectfully submitted,

Ann Marie Cummings, MMC
City Clerk

Date: January 10, 2012

To: Honorable Mayor and City Commission

From: Water Filtration Plant

RE: Control System Annual Software Update/Support

SUMMARY OF REQUEST:

Renewal of the annual customer support for Filtration Plant operating system with Wonderware North.

FINANCIAL IMPACT:

One time cost of \$10,597.00 for 2012.

BUDGET ACTION REQUIRED:

None. This item is budgeted.

STAFF RECOMMENDATION:

Staff requests authorization to renew the annual customer support agreement at a budgeted cost of \$10,597.00 for 2012.

Date: 12/28/2011

To: Mohammed Al-Shatel, DPW Director

From: Steve Teunis, Water Filtration Plant

Re: Water Plant Control system Software Annual Support Contract

The control system software used at the Water Filtration Plant is a product by Invensys called Wonderware. This software has been the heart of the plant control system since 1993. Wonderware operates as a layer on top of Microsoft Windows and interfaces seamlessly with MS Excel so we can generate reports in a spreadsheet format.

The Wonderware software has been continually improved and features added to enhance plant operation.

In order to take advantage of the improvements to the software over the years we have subscribed to the annual technical support offered by Wonderware. The subscription also allows us and our consultant to obtain solutions to problems as well as guidance in configuring new applications at no cost. Previous years support costs are as follows:

2000	\$7200	2006	\$8565
2001	\$6840	2007	\$10186
2002	\$7605	2008	\$8565
2003	\$5036	2009	\$10221
2004	\$6100	2010	\$9946
2005	\$7411	2011	\$11,385

The cost differences throughout the past years are associated with the level of improvements and changes in the software as it relates to changes in the Microsoft operating systems. Our system began with Windows 3.1 and has evolved through Windows 95, Windows 98, Windows 2000 and we are now planning to upgrade to Windows 7.

The problem faced with not purchasing the annual support is not only in not being able to address and troubleshoot problems that arise but also face costs in excess of \$35,000 to upgrade without the annual support.

The City's IT Director is in agreement with continued support from Wonderware and indicated changes to the City's file server application would require an expenditure to upgrade the plant operating system.

It is my recommendation that we continue to purchase the control system annual upgrade for 2012 from Wonderware at a cost of \$10,597.00.

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: January 3, 2012

RE: S.E.I.U. Unit 1 – Clerical Contract

SUMMARY OF REQUEST:

To approve the negotiated tentative agreement with the S.E.I.U. Unit 1 (Clerical Union).

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the tentative agreement and authorize the Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION:

None

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: January 3, 2012

RE: S.E.I.U. Unit 2 – D.P.W. Contract

SUMMARY OF REQUEST:

To approve the negotiated tentative agreement with the S.E.I.U. Unit 2 (D.P.W. Union).

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the tentative agreement and authorize the Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION:

None

Date: January 10, 2012
To: Honorable Mayor and City Commissioners
From: City Clerk
RE: Agreement – Digital Spectrum Enterprises (DSE)

SUMMARY OF REQUEST: Since May 2005 the City has contracted with Digital Spectrum Enterprises (DSE) for management of the City's government access channel. In exchange for these management rights DSE broadcasts City Commission meetings at no direct cost to the City. The current agreement with DSE dates from December, 2008, through November, 2011.

Proposed is a three-year agreement renewal with DSE. Terms of the agreement are the same as before.

FINANCIAL IMPACT: This contract entails no direct cost to the City. The City benefits by having City Commission meetings broadcast at no cost.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of a three-year contract with DSE for management of the government access channel.

**AGREEMENT BETWEEN THE CITY OF MUSKEGON
AND
DIGITAL SPECTRUM ENTERPRISES OF WEST MICHIGAN, INC.**

This agreement is made this 10th day of January, 2012, by and between the **City of Muskegon**, a Michigan municipal corporation (“City”) and **Digital Spectrum Enterprises of West Michigan, Inc.**, a Michigan nonprofit corporation (“DSE”), who agree as follows:

RECITALS

1. The City desires to provide support for the use of cable television, public, educational, and government (“PEG”) access channels provided pursuant to federal law.
2. The City has granted a franchise to Comcast, as successors of Taft Cable Partners and Robert Fulk, Ltd. (“Cable Company”) to operate a cable television system in the City of Muskegon (“Franchise Agreement”).
3. The Franchise Agreement with Cable Company provides the certain channel capacity be provided for PEG access, including a government access channel for use by area municipal governments served by Cable Company (currently cable channel 96) (“Government Access Channel”).
4. DSE, as the access management entity designated by the City, has indicated its interest in serving the community by providing PEG access programming and services on the Government Access Channel.
5. In exchange for broadcasting City events free of charge as explained in section 1.B below), the City agrees to allow DSE to use Government access Channel to broadcast programming consistent with PEG channel purposes.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES: Pursuant to this Agreement, DSE shall provide the following services:

- A. *OPERATE THE GOVERNMENT ACCESS CHANNEL.* Operate the Government Access Channel for local government and community access programming purposes in the manner consistent with the principles set forth in this Agreement and the franchise Agreement between the City and Cable Company, with the primary purpose being to administer, coordinate, and assist the City of Muskegon in providing local government programming.

- B. *BROADCASTING LOCAL GOVERNMENT PROGRAMMING.* Produce and broadcast, at no expense to the City, City Commission meetings and meetings of other committees, boards and commissions that the City might require, and other reasonable programs or issues that the City Commission may deem necessary.
- C. *DEVELOP OPERATING POLICIES AND PROCEDURES.* Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channel and file such policies and procedures with the City.
- D. *COMPLIANCE WITH LAWS, RULES, AND REGULATIONS.* Administer the Government Access Channel and facilities in compliance with the Franchise Agreement between the City and Cable Company.
- E. *TRAINING.* Train City residents, and when requested, City and school or college employees in the techniques of video production, and provide technical advice in the execution of productions.
- F. *SPECIAL NEEDS GROUPS.* Support special needs groups, including but not limited to the hearing impaired, in program production through training and other means.
- G. *OTHER ACTIVITIES.* Undertake other PEG access programming activities and services as deemed appropriate by DSE and consistent with the obligation to facilitate and promote PEG access programming and provide non-discriminatory access.

SECTION 2. CHANNELS OPEN TO PUBLIC: DSE agrees to keep the PEG Government Access Channel open to all potential users regardless of their viewpoint, subject to FCC regulations and other relevant laws. Neither the City, nor the Cable Company, nor DSE shall have the authority to control the content of programming placed on the Government Access Channel so long as such programming is lawful. Provided that, nothing herein shall prevent DSE, the City, or the Cable Company from producing or sponsoring programming, prevent the City or the Cable Company from underwriting programming, or prevent DSE, the City, or the Cable Company from engaging in activities designed to promote production of certain types of programming or use by targeted groups as consistent with such time, manner, and place regulations as are appropriate to provide for and promote use of PEG access channels, equipment and facilities.

SECTION 3. INDEMNIFICATION: DSE shall indemnify, defend, and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, suits, actions, causes of actions, losses, damages, or liabilities of any kind, nature or description, including payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, however the same may be caused, whether directly or indirectly arising or resulting from any alleged acts or omission of DSE, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

DSE shall indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorneys' fees, arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state, or federal authorities, for claims of libel, slander, invasion of privacy, or infringement of common law or statutory copyright or trademark or any other intellectual property rights, for breach of contract or other injury or damage in law or at equity which claims, directly or indirectly, result from DSE use of channels, funds, equipment, facilities or staff granted under this Agreement or the Franchise Agreement.

SECTION 4. COPYRIGHT:

- A. *CLEARANCE*: Before cable casting video transmissions, DSE shall require all users to agree in writing that they shall make all appropriate arrangements to obtain 1) all rights to all material cable cast and, 2) clearance from broadcast stations, networks, sponsors, music licensing, organizations' representatives, and any and all other persons as may be necessary to transmit their program material over the Government Access Channel. DSE shall maintain, for the applicable statute of limitations period, copies of all such user agreements for the City's inspection, upon reasonable notice by the City.
- B. *OWNERSHIP*: The City shall own the copyright of any programs that the City requests DSE to produce and DSE agrees to assign all such rights to the City and shall execute all documents reasonably requested to effect such assignment and registration of copyrights assigned. Copyright of all other programs shall be held by the persons(s) who produced the program.

SECTION 5. INSURANCE: DSE shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by DSE.

- A. *COMPREHENSIVE LIABILITY INSURANCE:* Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits of such coverage shall be: (1) bodily injury including death, \$1,000,000 for each person, each occurrence and aggregate; (2) property damage, \$1,000,000 for each occurrence and aggregate.
- B. *EQUIPMENT INSURANCE:* Insurance shall be maintained on all equipment and facilities, including fixtures, to replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the users control, theft, fire or natural catastrophe. The City shall be shown as the lien holder on all policies.
- C. *WORKER'S COMPENSATION:* Full Worker's Compensation Insurance and Employer's Liability with limits as required by Michigan law, provided through an insurance carrier satisfactory to the City.
- D. *CABLECASTER'S ERRORS AND OMISSION INSURANCE:* Insurance shall be maintained to cover the content of productions which are cablecast on the Government Access Channel in at least the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual access producers.
- E. *CITY AS CO-INSURED OR ADDITIONAL INSURED:* The City shall be named as a co-insured or additional insured on all aforementioned insurance coverage's. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or DSE without first giving the City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by the City, its officers, agents, employees, or volunteers shall be in excess of the DSE insurance and shall not contribute to it.
- F. *NOTIFICATION OF COVERAGE:* DSE shall file with the City proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation; (2) equipment insurance upon the acquisition of any equipment; (3) cable caster's error and omission insurance within thirty (30) days of the cable casting of programming on the Government Access Channel.

SECTION 6. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE:

- A. DSE shall not discriminate against any person, employee or applicant for employment or contract work on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental handicap.
- B. DSE shall not discriminate in the delivery of services on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental handicap.

SECTION 7. INDEPENDENT CONTRACTOR: It is understood and agreed that DSE is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and DSE. If in the performance of this Agreement any third persons are employed by DSE, such persons shall be entirely and exclusively under the control, direction and supervision of DSE. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other term of employment, shall be determined by DSE and the City shall have no authority over such persons or terms of employment.

SECTION 8. ASSIGNMENT AND SUBLETTING: Neither this Agreement nor any interest herein shall be assigned or transferred by DSE, except as expressly authorized in writing by the City.

SECTION 9. RECORDS, FISCAL AUDIT:

- A. DSE shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Upon reasonable request from the City, DSE shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.

SECTION 10. ANNUAL REPORT: On or before July 30 of each year in which this Agreement is in effect DSE shall provide to the City an Annual Plan outlining activities and programs planned for the following fiscal year. Such plan shall contain:

- A. A statement of anticipated number of hours of local original PEG access programming;
- B. Training classes to be offered and frequency of classes;
- C. Statistics on programming and services provided; and
- D. Other access activities planned by DSE.

SECTION 11. FUNDING FROM OTHER SOURCES: DSE may during the course of this Agreement, receive funds from other sources, including, but not limited to, fundraising activities. DSE may generate funding for programming through program underwriting and sponsorship in a manner consistent with Federal Communications Commission (FCC) non-commercial rules and regulations.

SECTION 12. TERMS OF AGREEMENT: This Agreement shall be for a period of three years commencing January 10, 2012 and ending December 31, 2014, unless terminated earlier, as provided in this Agreement.

SECTION 13. TERMINATION OF AGREEMENT/TRANSFER OF ASSETS:

- A. The City shall have the right upon sixty (60) days written notice to DSE to terminate this Agreement for
 - 1. Breach of any provision of this Agreement by DSE;
 - 2. Malfeasance, misfeasance, and/or misappropriation of public funds;
 - 3. Notice from Cable Company (and City verification) that DSE is engaging in a commercial advertising and/or fundraising in a manner inconsistent with PEG channels; or
 - 4. Loss of 501(c)(3) status by DSE.
- B. DSE may avoid termination by curing such breaches to the satisfaction of the City within thirty (30) days of notification or within a time frame

agreed to by the City and DSE. The City may also terminate this Agreement at the expiration of its term, or any extension thereof.

SECTION 14. TIME: Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 15. COOPERATION: Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 16. APPLICABLE LAW: This Agreement shall be interpreted and enforced under the laws of the State of Michigan.

SECTION 17. NOTICES: All notices and other communication to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

TO: CITY OF MUSKEGON
Attn: Finance Director
933 Terrace Street
Muskegon MI, 49442

TO: DIGITAL SPECTURM ENTERPRISES
Attn: Ann Bratsburg
105 W. Sherman Blvd
Muskegon MI, 49444

Any party may change its address for notice by written notice to the other party at any time.

SECTION 18. ENTIRE AGREEMENT: This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or verbal. This Agreement may be amended only by written agreement and no purported verbal amendment to this Agreement shall be valid.

WITNESSES:

CITY OF MUSKEGON

By_____

Stephen Warmington, Its Mayor

and

By_____

Ann Marie Cummings, Its Clerk

DIGITAL SPRECTRUM ENTERPRISES OF WEST MICHIGAN, INC.

By_____

Ann Bratsburg, Owner

IN WITNESS WHEREOF, the parties have executed this agreement as of the date written above.

Commission Meeting Date: January 10, 2012

Date: January 4, 2012
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Zoning Ordinance

SUMMARY OF REQUEST:

Staff initiated request to amend Section 1100 of Article XI of the zoning ordinance to allow second hand merchandise stores as a principal use permitted in B-2, Convenience and Comparison Business Districts.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 12/15 meeting by a 6 to 1 margin.

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

BACKGROUND

1. Stores selling second hand merchandise are currently only allowed as a principal use in B-4, General Business Districts. These stores are allowed under a special use permit in B-2, Convenience and Comparison Business Districts, but they have to be associated with a bonafied charitable organization, such as but not limited to 501(c)3 organizations.
2. Stores selling second hand merchandise were previously allowed in B-2, Convenience and Comparison Business Districts prior to December of 2001, when the ordinance was amended to its current language on the subject. The feeling at that time was that there were too many pawn shops opening up.
3. Since the amendment to the zoning ordinance, many businesses have been told that they cannot locate in B-2 Districts because they sell some second hand merchandise. There have also been times when staff has had to amend the zoning ordinance to allow certain stores to locate in B-2 Districts. For instance, in 2010, the zoning ordinance was amended to allow for “Vintage Shops” so that the furniture store Continuity could locate on 3rd St. This would not have been necessary had second hand merchandise been allowed in B-2 districts.
4. The zoning ordinance does not just limit B-2 districts from having a store that specializes in all second hand merchandise, it also limits stores from selling any second hand merchandise at all.
5. Since the amendment in 2001, many second hand stores have opened up in B-2 districts without staff being aware. In most cases, these stores have simply gone out of business. In other cases, the businesses have gone on to become successful additions to the business corridor (i.e. The Brown Bag Boutique is a successful clothing store that opened on 3rd St in 2010. They sell new and used clothing).
6. Staff feels that with the popularity of eBay, craigslist and other online merchandising stores, new pawn shops are less likely to open than ever before.

B-2 District on 3rd St



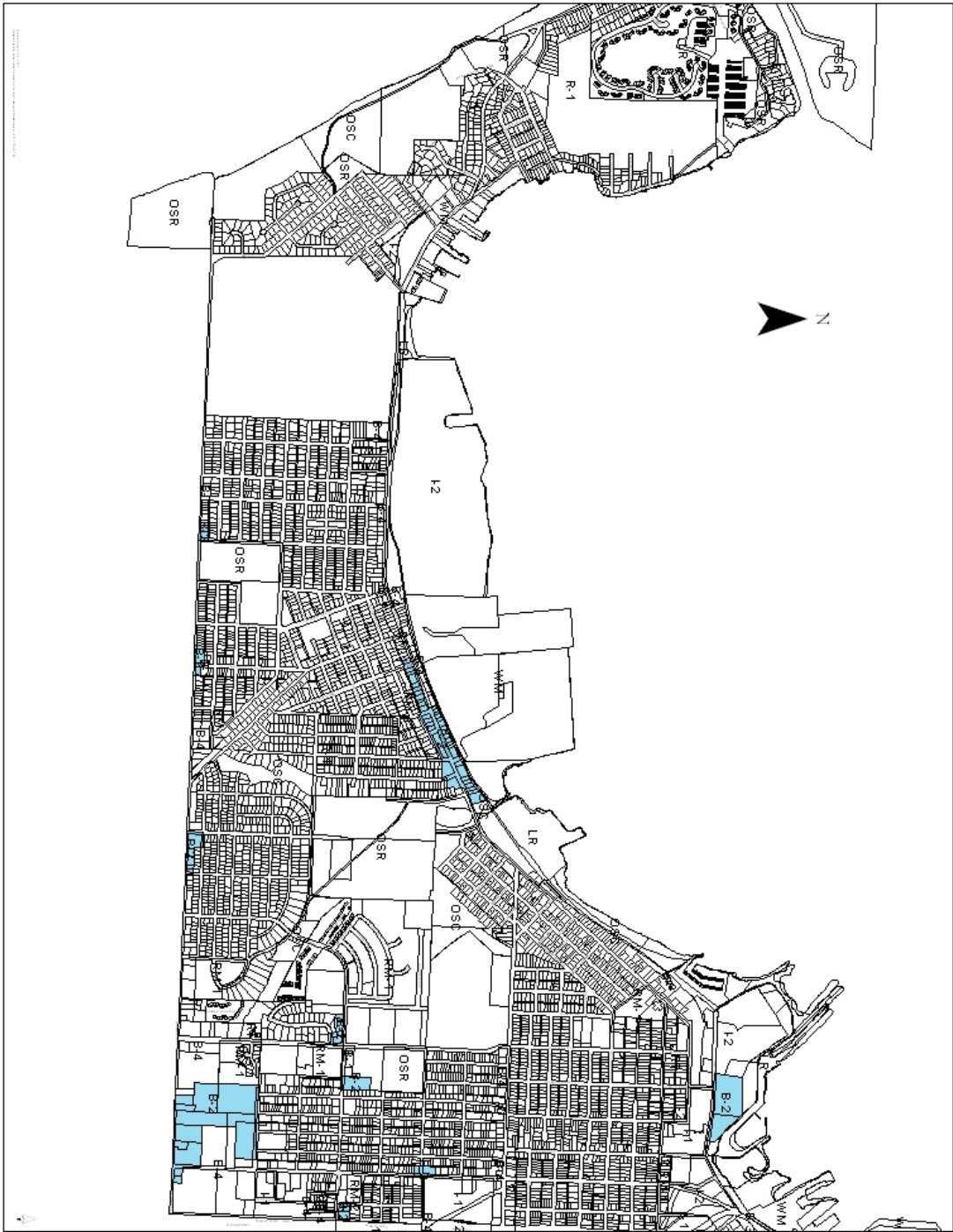
Second hand store in B-2 District on Getty St.



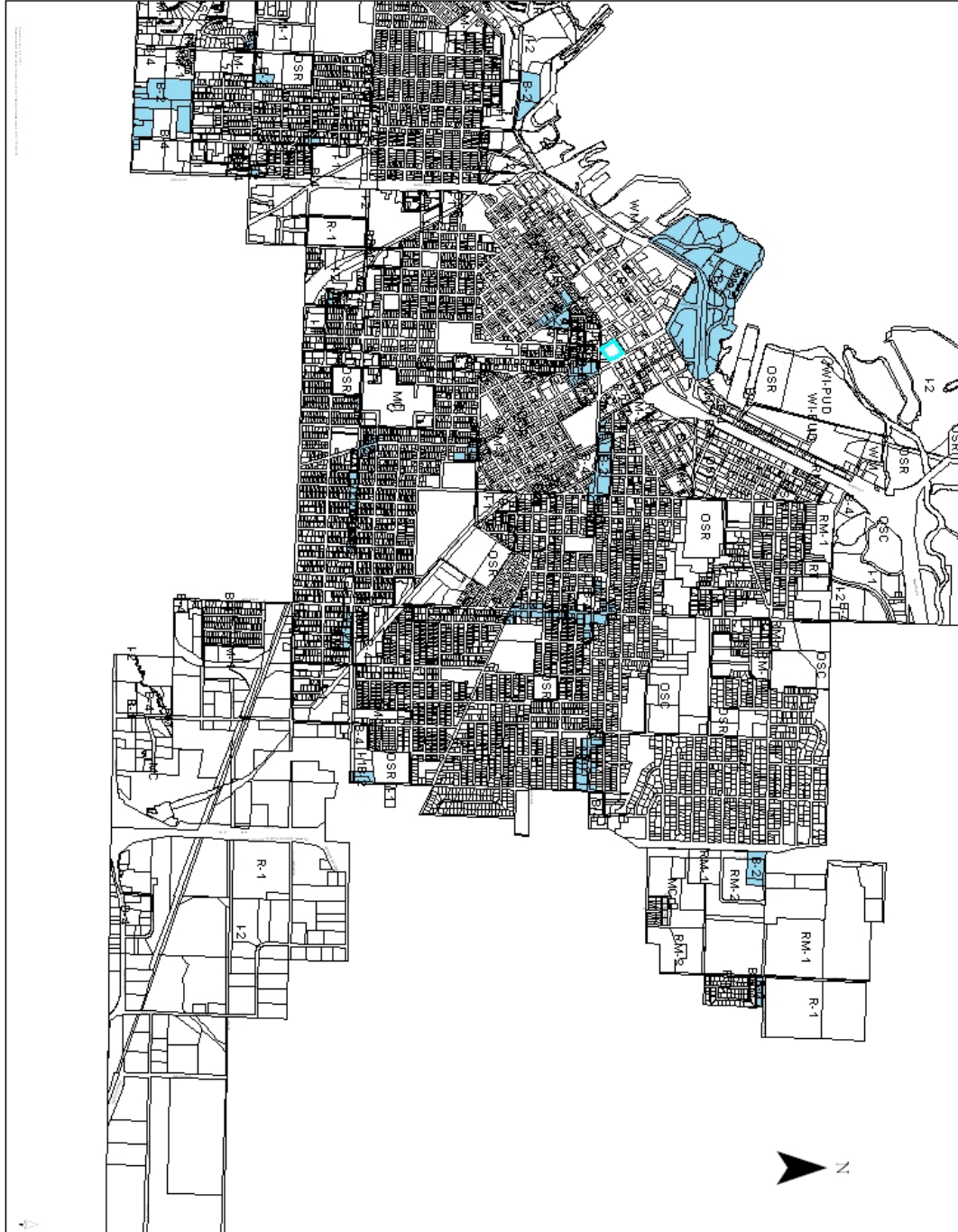
B-2 District on Laketon Ave



B-2 Districts on west side of City



B-2 Districts on east side of City



NEW LANGUAGE

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

Amendment to Section 1100 (Principle Uses Permitted) of Article XI (B-2, Convenience and Comparison Business Districts).

- 11. Stores selling second hand merchandise.**

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 1100 of Article XI of the zoning ordinance to allow second hand merchandise stores as a principal use permitted in B-2, Convenience and Comparison Business Districts.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

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

Amendment to Section 1100 (Principle Uses Permitted) of Article XI (B-2, Convenience and Comparison Business Districts).

11. Stores selling second hand merchandise.

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Cummings, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 10th day of January, 2012, 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 2008, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2012.

Ann Cummings, 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 January 10th, 2012, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1100 of Article XI of the zoning ordinance to allow second hand merchandise stores as a principal use permitted in B-2, Convenience and Comparison Business Districts. Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

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

Published _____, 2012.

CITY OF MUSKEGON

By _____
Ann Cummings, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: January 10, 2012

Date: January 4, 2012
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Zoning Ordinance

SUMMARY OF REQUEST:

Staff-initiated request to amend Section 1101 of Article XI of the zoning ordinance to remove second hand merchandise stores, vintage shops and antique shops as special land uses permitted in B-2, Convenience and Comparison Business Districts. This would be necessary if the previous request is approved.

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 12/15 meeting by a 6 to 1 margin.

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

BACKGROUND

1. This amendment would clean up the zoning ordinance language should Case 2011-19 be approved.
2. If Case 2011-19 is approved, then there would not be a need to allow second hand merchandise stores, vintage shops and antique shops as special uses permitted in B-2 Convenience and Comparison Business Districts because they would already be allowed as principal uses.

NEW LANGUAGE

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

Amendment to Section 1101 (Special Land Uses Permitted) of Article XI (B-2, Convenience and Comparison Business Districts).

6. ~~Stores selling second hand merchandise, subject to the following: [amended 12/01]~~
 - a. ~~The site shall be located within or adjacent to an established, identifiable commercial corridor.~~
 - b. ~~The store will be associated with a bona fide charitable organization, such as but not limited to, 501(c)3 organizations.~~
13. ~~Antique Shops [amended 10/05]~~
14. ~~Vintage Shops [amended 2/10]~~

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 1101 of Article XI of the zoning ordinance to remove second hand merchandise stores, vintage shops and antique shops as special land uses permitted in B-2, Convenience and Comparison Business Districts

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

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

Amendment to Section 1101 (Special Land Uses Permitted) of Article XI (B-2, Convenience and Comparison Business Districts).

7. ~~Stores selling second hand merchandise, subject to the following: [amended 12/01]~~
- c. ~~The site shall be located within or adjacent to an established, identifiable commercial corridor.~~
 - d. ~~The store will be associated with a bona fide charitable organization, such as but not limited to, 501(c)3 organizations.~~
13. ~~Antique Shops [amended 10/05]~~
14. ~~Vintage Shops [amended 2/10]~~

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Cummings, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 10th day of January, 2012, 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 2008, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2012.

Ann Cummings, 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 January 10th, 2012, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1101 of Article XI of the zoning ordinance to remove second hand merchandise stores, vintage shops and antique shops as special land uses permitted in B-2, Convenience and Comparison Business Districts. Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

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

Published _____, 2012.

CITY OF MUSKEGON

By _____
Ann Cummings, MMC
City Clerk

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

Account No. 101-80400-5354

Date: January 10, 2012
To: Honorable Mayor and City Commissioners
From: Jim Maurer, Information Technology Director
RE: Telephone System

SUMMARY OF REQUEST: The City has been collaborating with Muskegon Central Dispatch, along with other municipalities, to upgrade our municipal telephone service. The agreement will allow the City to utilize Central Dispatch's internet telephone gateway, saving the City a significant amount of money. The new technology will have many capabilities well beyond our current phone system.

The project, including network upgrade and enhancements, is estimated to cost \$150,000. Projections indicate that the new system will pay for itself within 15 to 25 months by lowering our monthly phone costs from \$10,000 to \$1,700. The City could save as much as \$1,000,000 within the next ten years with the upgraded equipment.

FINANCIAL IMPACT: \$90,000 is included in the 2011-2012 budget for this project. Central Dispatch has offered 0% financing over five years which will keep our FY12 costs well under budget.

STAFF RECOMMENDATION: To approve the proposal to upgrade the phone and network infrastructure for a cost not to exceed \$150,000.