

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 9, 2018 @ 5:30 P.M.

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

AGENDA

- ☐ CALL TO ORDER:
- ☐ PRAYER:
- ☐ PLEDGE OF ALLEGIANCE:
- ☐ ROLL CALL:
- ☐ HONORS AND AWARDS:
 - A. Recognition of the Muskegon Big Reds Football team as the 2017 Division 3 State Champions
 - B. Recognition of La'Darius Jefferson as the 2017 MHSAA High School Football Player of the Year
- ☐ INTRODUCTIONS/PRESENTATION:
 - A. Dr. Arbulu – Racial Equity Presentation
- ☐ CITY MANAGER'S REPORT:
- ☐ CONSENT AGENDA:
 - A. Approval of Minutes City Clerk
 - B. Bicycle Ordinance – SECOND READING City Manager
 - C. Amendment to the Zoning Ordinance – Critical Dunes – SECOND READING
Planning & Economic Development
 - D. Adopt a Resolution Approving the Liquor License Application for EAT1635, LLC for a Class C Liquor License at 1635 Beidler City Clerk
 - E. Approval of Neighborhood Enterprise Zone Certificate – 1173 4th Street
Planning & Economic Development
 - F. Ryerson Creek – Clean-up Efforts and Resolution in Support Department
of Public Works
 - G. City Hall East Entrance Roof Replacement Department of Public Works

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

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

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: January 4, 2018

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

REMINDER – THESE ARE THE ONLY MEETINGS SCHEDULED FOR DECEMBER

WORK SESSION

1. There is nothing on the agenda, as we will be moving straight into the CRC Meeting to discuss board appointments.

REGULAR MEETING

1. Under Honors and Awards we will honor the Big Reds football team for winning the state championship and we will be honoring player La'Darius Jefferson for being recognized as the 2017 MHSAA High School Football Player of the Year.
2. Under Presentations, we will hear from Dr. Arbulu on the topic of Racial Equity. Dr. Arbulu is visiting from the Michigan Civil Rights Commission.
3. Under the Consent Agenda, we are asking the Commission to consider the following:
 - a. Approval of meeting minutes from the most-recent City Commission meeting.
 - b. We will have the second reading of the bicycle ordinance.
 - c. We will have the second reading of the critical dune ordinance.
 - d. We are seeking approval for a liquor license (Class C) for the new goulash restaurant located at 1635 Beidler.
 - e. We are seeking approval of a Neighborhood Enterprise Zone Certificate.
 - f. We are seeking an official resolution of support from the City Commission related to clean up efforts at Ryerson Creek.
 - g. We are seeking approval for the replacement of a section of roof at city hall. We would like to undertake the work in the spring.

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

City of Muskegon

State of Michigan

CERTIFICATE OF RECOGNITION

WHEREAS; it gives me a great deal of pleasure to express to all the members of the Muskegon High School Big Reds Football team our sincere admiration for an exciting, hard-fought, and successful season; and

WHEREAS; under the guidance of Coach Shane Fairfield, we congratulate the Muskegon High School Big Reds Football Team on their 2017 Division III State Championship; and

WHEREAS; this fine team of young men demonstrated an outstanding spirit of dedication, enthusiasm and hard work;

NOW THEREFORE BE IT RESOLVED, that I, Mayor Gawron speaking on behalf of the City Commission and entire community deem it an honor and pleasure to present this Certificate of Recognition to the Big Reds football team for a remarkable year in football.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the seal of the City of Muskegon to be affixed this 9th day of February 2018.

Stephen J. Gawron
Mayor

City of Muskegon

State of Michigan

CERTIFICATE OF RECOGNITION

WHEREAS; it gives me a great deal of pleasure to express to La'Darius Jefferson our sincere admiration and congratulations for his outstanding achievement in being named High School Football Player of the Year; and

WHEREAS; La'Darius Jefferson scored 54 touchdowns and topped 2,000 yards rushing and 1,000 yards passing in his senior season, and has signed on with Michigan State University;

NOW THEREFORE BE IT RESOLVED, that I, Mayor Gawron, speaking on behalf of the City Commission and the entire community deem it an honor and a pleasure to present this Certificate of Recognition to La'Darius Jefferson in recognition of his outstanding achievements and commend him for his display of sportsmanship and leadership.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Muskegon to be affixed this 9th day of February 2018.

Stephen J. Gawron
Mayor

Date: January 3, 2018
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the December 11, 2017 Worksession and the December 12, 2017 Regular Meeting minutes.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, December 11, 2017
5:30 p.m.
City Commission Chambers

MINUTES

2017-96

Present: Gawron, Hood, German, Rinsema-Sybenga, Johnson, Warren, and
Turnquist
Absent: None

Amendment to the Zoning Ordinance – Critical Dunes

Discussion took place regarding the staff-initiated request to amend Section 2310 of the zoning ordinance to adopt a local critical dune ordinance. Act 451 of 1994, the Natural Resources and Environmental Protection Act, allows municipalities to enact their own critical dune ordinance and enforce it themselves, rather than relying on the Michigan Department of Environmental Quality to do so. Staff anticipates that this will speed up the approval process for projects located in critical dune areas.

Public comments were received.

2017-97 **CLOSED SESSION:**

Motion by Commissioner Rinsema-Sybenga, second by Commissioner German, to go into closed session.

Ayes: Johnson, Gawron, Hood, Warren, German, Rinsema-Sybenga, and Turnquist
Nays: None

1. Collective Bargaining
2. Attorney/Client Confidential Communication

Motion by Commissioner Rinsema-Sybenga, second by Commissioner German, to come out of closed session.

Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood
Nays: None
Absent: Warren

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to authorize the City Attorney to offer the settlement considered in closed session.

Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, and Gawron

Nays: None

Absent: Hood and Warren

3. Any Other Business

Adjournment The Worksession meeting adjourned at 8:37 p.m.

Respectfully submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

DECEMBER 12, 2017 @ 5:30 P.M.

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

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, December 12, 2017. Pastor Tim Cross, Living Word Church, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Ken Johnson, Byron Turnquist, Willie German, Jr., and Dan Rinsema-Sybenga, City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioner Debra Warren

HONORS AND AWARDS:

- A. Recognition of Pastor Tim Cross, Living Word Church, for support of the City of Muskegon Police Department** Chief Lewis presented Pastor Cross with a token of appreciation in recognition of the support he and Living Word Church have shown the City of Muskegon Police Department.
- B. Recognition of Community Relations Committee Members** The Mayor, on behalf of the entire City Commission, recognized and thanked those members of the City's Community Relations Committees various Boards and Committees that were in attendance at the meeting. This included special recognition and presentation of a proclamation to Addie Sanders-Randall, a 28-year member of the Citizens District Council.

2017-98 CONSENT AGENDA:

- A. Approval of Minutes** City Clerk

SUMMARY OF REQUEST: To approve minutes of the November 28, 2017 Regular Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Towing Contract Extension (Ramos Towing) Public Safety

SUMMARY OF REQUEST: The Director of Public Safety requests that the City Commission review and consider approving a contract extension with our current service provider, Ramos Towing. Currently, Ramos Towing provides towing/impoundment/storage service for the City of Muskegon.

Ramos Towing has been under authorized contract services for towing for the last four years. Staff will review the current contract in 2018, and begin exploring and preparing a competitive bid process to select an acceptable tow service upon expiration of this contract.

Ramos Towing is willing to extend towing services for another one year extension or until a new contract can be approved. This is the second and final extension allowed under the current contract.

FINANCIAL IMPACT: None – current contract language in effect until 1/14/2019.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the extended towing contract until a new contract is explored and accepted.

D. 1st Quarter 2017-18 Budget Reforecast Finance Director

SUMMARY OF REQUEST: At this time staff is transmitting the First Quarter 2017-18 Budget Reforecast which outlines proposed changes to the budget that have come about as result of changes in revenue projections, policy priorities, labor contracts, updated economic conditions, or other factors.

FINANCIAL IMPACT: A summary of first quarter proposed adjustments to the budget are as follows:

- General Fund revenues are reforecast to be \$826,849 higher than the original budget, largely due to higher State projections for State Shared Revenue and the adjustments to permit revenue based on actual receipts.
- General Fund expenditures are reforecast to be \$784,000 higher than the original budget, most of the adjustments were for Safebuilt based on the higher revenues projections for permits.
- There were some refinements to the Capital Projects budget resulting in an overall net increase of \$350,000. These are mostly in the Water Fund based on higher than projected project costs.

BUDGET ACTION REQUIRED: City Commission approval of this reforecast will

formally amend the City's 2017-18 budget.

STAFF RECOMMENDATION: Approval.

E. Purchase of HUD Home at 1025 E Forest Avenue Community & Neighborhood Services

SUMMARY OF REQUEST: To approve the purchase of a HUD home located at 1025 E Forest Avenue in Oakview Neighborhood for the price of \$27,000.

After the sale, CNS will rehabilitate the single family dwelling as part of the HOME funded Homebuyer Program.

FINANCIAL IMPACT: The funding used for the purchase and rehabilitation will come from 2017 HOME funds.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request to purchase the property.

F. Pere Marquette Park – Recreational Improvements Department of Public Works

SUMMARY OF REQUEST: The City has been awarded a DNR Trust Fund Grant for recreational improvements at Pere Marquette Park. Westshore Consulting has submitted a quote for professional engineering and surveying services in the amount of \$18,000, to complete plans and bidding documents for the improvements. Staff is requesting that the amount be approved.

FINANCIAL IMPACT: \$18,000

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Westshore Consulting for a cost of \$18,000.

G. Request to Deny & Accept Properties that did not Sell During the Tax Sale for 2017 Planning & Economic Development

SUMMARY OF REQUEST: The County of Muskegon held two delinquent tax auctions during 2017. There were sixty-three properties left after the last auction. According to the State's tax foreclosure laws, the City must state that they are not interested in obtaining them, otherwise the City will be automatically receive ownership of the parcels. From the list that was provided, the City Manager, Planning and Community & Neighborhood Services have gone over the parcels to determine which ones to accept.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

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

I. Bicycle Ordinance City Manager

SUMMARY OF REQUEST: To adopt the proposed ordinance containing rules to govern a driver of a motor vehicle overtaking a bicycle proceeding in the same direction.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To adopt the ordinance as presented.

J. Control System Upgrades – Water Filtration Plant – Administration Building
Department of Public Works

SUMMARY OF REQUEST: Authorize staff to enter into a professional services agreement for control system upgrades at Water Filtration Plant with Tetrtech per their proposal for \$192,000.

FINANCIAL IMPACT: \$192,000

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Tetrtech for a cost of \$192,000.

L. Community Relations Index: Policy Relative to Attendance City Clerk

SUMMARY OF REQUEST: To change attendance reporting policy from quarterly to annual.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of reporting attendance annually.

COMMITTEE RECOMMENDATION: Community Relations Committee unanimously voted to approve the reporting of the attendance to annually.

Motion by Commissioner Johnson, second by Commissioner German, to approve the consent agenda as presented, except Items C, H, and K.

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

Nays: None

MOTION PASSES

2017-99 ITEMS REMOVED FROM THE CONSENT AGENDA:

C. 2018 User Fee Update Finance Director

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 are highlighted on the attached spreadsheet and significant changes include the following:

- Daily launch ramp and seasonal launch ramp fees have been updated;
- Small and large boat basin fees have been adjusted;
- Farmers Market annual stall fees have been adjusted;
- Kitchen 242 is adding fees for occasional or one-time users;
- Cemetery fees have been adjusted;
- Rental registration and re-inspection fees have been adjusted

FINANCIAL IMPACT: Revenue generated for fee supported activities

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

STAFF RECOMMENDATION: Approval of the 2018 Master Fee Resolution.

Motion by Commissioner German, second by Commissioner Johnson, to approve the 2018 Master Fee Resolution.

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

Nays: None

MOTION PASSES

H. Non-Represented Wages and Benefits City Manager

SUMMARY OF REQUEST: Staff is recommending the following wage and benefit changes effective January 1, 2018:

1. 1% cost of living adjustment
2. 1% increase in residency incentive
3. Amendment to the vacation time conversion policy and sick time cash-out policy to allow for unlimited vacation time conversion to sick time (currently limited to 120 hours annually), as well as unlimited sick time cash out annually (currently limited to 160 hours annually).
4. Increase in annual tuition reimbursement from \$1,000 to \$2,000
5. Expansion of tuition reimbursement program to all city employees – regardless of bargaining affiliation or representation.

Staff is further recommending expansion of the residency incentive to DEIU (1%), POLC (2%), and COAM (2%) bargaining units effective July 1, 2018.

FINANCIAL IMPACT: Items 1-5: \$30,224 annually. Residency incentive expansion: \$18,485 annually.

BUDGET ACTION REQUIRED: The proposed changes are currently funded in the FY 2017-18 Budget.

STAFF RECOMMENDATION: To approve the non-represented wage and benefit structure, as presented.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to approve the non-represented wage and benefit structure, as presented.

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

Nays: None

MOTION PASSES

K. Western Market City Clerk

SUMMARY OF REQUEST: The chalets at Western Market remain very popular. We would like to add five more chalets to the site in 2018. We have found a company to build the base of four of the chalets with our builder putting the final touches on it. The fifth chalet will be built by our builder onsite. We will be collecting applications for use of the chalets and a committee composed of the Chamber, DMN, and City staff will make the final determination of selected applicants.

FINANCIAL IMPACT: \$30,000

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Authorize the \$30,000 in expenditures for the addition of five chalets.

Motion by Commissioner Turnquist, second by Commissioner Rinsema-Sybenga, to authorize the \$30,000 in expenditures for the addition of five chalets.

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

Nays: None

MOTION PASSES

2017-100 NEW BUSINESS:

A. Transmittal of 6/30/17 Comprehensive Annual Financial Report
Finance Director

SUMMARY OF REQUEST: The City's June 30, 2017 Comprehensive Annual Financial Report (CAFR) will be distributed to the City Commissioners via email and hard copy. The CAFR will also be available on the City's website. The CAFR includes the annual independent auditor's report as required by state law. At this time the CAFR is being formally transmitted to the City Commission. The CAFR has been prepared in accordance with all Governmental Accounting

Standards Board (GASB) pronouncements and also includes the single audit of federal grants received by the City.

FINANCIAL IMPACT: The CAFR report summarizes the City's financial activities for the year and includes the independent auditor's unmodified opinion on the City's financial statement.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Acceptance of the June 30, 2017 CAFR and authorization for staff to transmit the CAFR to appropriate federal, state and private agencies. <http://www.muskegon-mi.gov/cresources/2016-17CAFR.pdf>

Motion by Commissioner Johnson, second by Commissioner German, to accept the June 30, 2017 CAFR and authorize staff to transmit the CAFR to appropriate federal, state and private agencies.

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

Nays: None

MOTION PASSES

B. Amendment to the Zoning Ordinance – Critical Dunes Planning & Economic Development

SUMMARY OF REQUEST: Staff-initiated request to amend Section 2310 of the zoning ordinance. Act 451 of 1994, the Natural Resources and Environmental Protection Act, allows municipalities to enact their own critical dune ordinance and enforce it themselves, rather than relying on the Michigan Department of Environmental Quality to do so. Staff anticipates that this will speed up the approval process for projects located in critical dune areas.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended approval of the ordinance amendment at their November 16, meeting.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to approve the zoning ordinance amendment.

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

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Comments were received by the public.

ADJOURNMENT: The City Commission Meeting adjourned at 6:52 p.m.

Respectfully Submitted,

Ann Meisch, MMC, City Clerk

Date: January 5, 2018
To: Honorable Mayor and City Commissioners
From: City Manager
RE: Bicycle Ordinance – SECOND READING

SUMMARY OF REQUEST: To adopt the proposed ordinance containing rules to govern a driver of a motor vehicle overtaking a bicycle proceeding in the same direction.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To adopt the ordinance as presented.

CITY OF MUSKEGON
COUNTY OF MUSKEGON
STATE OF MICHIGAN

AN ORDINANCE TO ADD SECTION 92-33 OF THE CITY OF MUSKEGON CODE OF
ORDINANCES TO ADDRESS THE PASSING OF BICYCLES

ORDINANCE NO. _____

THE CITY OF MUSKEGON ORDAINS:

Section 92-33. Rule 598 of Article III of Chapter 92 of the City of Muskegon City Code is added to read as follows:

- (1) **Rule 598. – Passing of bicycles.** Except when overtaking and passing on the right is permitted, the following rules shall govern a driver of a motor vehicle overtaking a bicycle proceeding in the same direction:
- a. If there is more than one lane for traffic proceeding in the same direction, move the vehicle to the lane to the immediate left, if the lane is available and moving into the lane is reasonably safe.
 - b. If there is only one lane for traffic proceeding in the same direction, pass to the left of the person operating a bicycle at a safe distance, which must be not less than 5 feet between any portion of the vehicle and the bicycle, and shall not move again to the right side of the highway until the vehicle is safely clear of the overtaken person operating a bicycle
 - c. The driver of a motor vehicle may drive to the left of the center of a roadway, including when a no passing zone is marked, to pass a person operating a bicycle only if the roadway to the left of the center is unobstructed for a sufficient distance to permit the driver to pass the person operating the bicycle safely and avoid interference with oncoming traffic. This paragraph does not authorize driving on the left side of the center of the roadway when otherwise prohibited by local ordinance or state law.
 - d. Any person violating the provision of this Section shall be responsible for a municipal civil infraction.
- (2) Severability. Should any part of this ordinance be held invalid by a court of competent jurisdiction, the remaining parts shall be severable and shall continue in full force and effect.

(3) Ordinance Repeal. All ordinances in conflict with the provisions of this ordinance are hereby repealed.

(4) Effective Date. This ordinance shall be effective 10 days after adoption and publication.

Ann Marie Meisch, City Clerk

Introduced:

Adopted:

Published:

Effective:

Commission Meeting Date: December 12, 2017

Date: January 4, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Zoning Ordinance – Critical Dunes

SUMMARY OF REQUEST:

Staff-initiated request to amend Section 2310 of the zoning ordinance to adopt a local critical dune ordinance. Act 451 of 1994, the Natural Resources and Environmental Protection Act, allows municipalities to enact their own critical dune ordinance and enforce it themselves, rather than relying on the Michigan Department of Environmental Quality to do so. Staff anticipates that this will speed up the approval process for projects located in critical dune areas.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the ordinance amendment at their November 16 meeting.

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

Hearing, Case 2017-30: Request to amend the zoning ordinance by adopting a local critical dune ordinance, per Public Act 451 of 1994, the Natural Resources and Environmental Protection Act.

SUMMARY

1. Critical Dunes in Michigan are regulated by the Michigan Department of Environmental Quality (MDEQ). Anyone doing work in a critical dune must first receive a permit from the MDEQ. These permits can take several months to get approved, so it often times slows down projects.
2. Act 451 of 1994 allows local municipalities to enact their own critical dune ordinance and enforce it themselves. Staff has created the enclosed draft ordinance, which has been reviewed by the MDEQ.
3. Staff plans to either enforce the ordinance in-house by doing our own inspections or possibly contracting with a private firm for inspections.
4. Please see the enclosed map that shows the locations of Critical Dunes in Muskegon.
5. Please see the enclosed proposed ordinance.

NEW LANGUAGE

SECTION 2310: Critical Dune Overlay District

1. Purpose. In keeping with the findings of the Michigan legislature and the authority granted to local government in Public Act 451 of 1994, as amended, the City of Muskegon hereby declares that:
 - a. The critical dune areas within the City of Muskegon are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this community, to the state, and to the people from other states and countries who visit this resource.
 - b. The purpose of this ordinance is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this ordinance is intended to do all of the following:
 - Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.
 - Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.
 - Coordinate and streamline governmental decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.

- c. The benefits derived from alteration, industrial, residential, commercial, agricultural, silvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.
- d. The following regulations embodied in this Dune Overlay Zone are adopted as the minimum measures necessary to achieve these ends.

2. Definitions – As used in this section,

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

3. **Area Affected.** The provisions of the Dune Overlay Zone apply to all lands so depicted on the City of Muskegon Zoning Map which is a part of this ordinance. These lands include the entire critical dune area as designated by the Michigan Department of Natural Resources pursuant to Public Act 451 of 1994, and to such other lands as locally designated and depicted thereon. Locally designated sand dunes together with dunes designated under Public Act 451 shall be known as critical dune areas for the purpose of this ordinance. Lands that are within 250 feet of a critical dune area, that are determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall also receive all the protection afforded to critical dunes in the Overlay Zone, even if not so depicted on the City of Muskegon Zoning Map.
4. **Nonconforming Building and Lots After the effective date of the adoption of this Section:**
 - a. No subdivision or condominium development shall occur within the Dune Overlay Zone except in compliance with the minimum standards of this ordinance and after review and approval of a site plan and other documents as required herein.
 - b. No structure shall be constructed, reconstructed, altered, or relocated except in strict compliance with the requirements of this ordinance.
 - c. No use which is in existence as of the effective date of this Article shall be expanded, except in strict compliance with the minimum standards of this Ordinance.
 - d. No existing nonconforming building or structure shall be altered except provided in Article XXII, Section 2203.
5. **Application Requirements.** All applications for permits for the use of a critical dune area shall include in writing showing evidence:
 - a. That Muskegon County, which administers Part 91 Soil Erosion and Sedimentation Control, of Public Act 451 of 1994, as amended, finds that the project is in compliance with the act and any applicable soil erosion and sedimentation control ordinance that is in effect in Muskegon County.
 - b. That a proposed sewage treatment or disposal system on the site has been approved by the county health department, if applicable.
 - c. Assuring that the cutting and removing of trees and other vegetation will be performed according to the forestry management guidelines for Michigan prepared by the Society of American Foresters in 1987, as revised in 2010, and will include instructions or plans to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation on the site than were removed by the proposed use.
 - d. Except as otherwise provided in this subsection, a site plan that contains data required by this Section and Article XXIII, Section 2330, concerning the physical development of the site and extent of disruption of the site by the proposed development.
 - e. The Zoning Administrator shall not require an environmental site assessment or environmental impact statement as part of a permit application for a use in a critical dune overlay zone except for a "Special Use" project.
 - f. The Zoning Administrator will require that the applicant supply a contour map of the site with 1-foot contour intervals at or near any proposed structure or roadway for any new construction.
 - g. The payment of any required fees for processing and/or professional review of the submitted site plan.

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

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

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

- a. A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this ordinance. Additional driveways, if any, shall meet the applicable requirements for any other use under this ordinance. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record

- b. Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
- c. Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- d. Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

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

- a. Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.
- b. All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
- c. Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.
- d. To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
- e. In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.

- f. In the cases of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.
10. Accessibility. Notwithstanding any other provision of this section, at the request of the applicant, the construction, improvement and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject only to applicable permit requirements of this section and the following:
 - a. Accessibility measures on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements.
 - b. Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

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

11. Prohibited Uses. The following uses are not permitted in a critical dune area:
 - a. The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
 - b. A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323 of Public Act 451 of 1994.
 - c. A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.
 - d. Production facilities regulated under parts 615 and 625 of Act 451 of 1994, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.

12. Non-Permitted Uses, Unless a Variance is Granted. Unless a variance is granted, the following uses are not permitted in a critical dune area:
- a. A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
 - b. A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
 - c. A use involving a contour change if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
 - d. Sylvicultural practices, as described in the "Forest Management Guidelines for Michigan", prepared by the Society of American Foresters as revised in 2010, if the City of Muskegon determines that they are more likely than not to increase erosion or decrease stability.
 - e. A use that involves a vegetation removal if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
13. Site Plan Review. When reviewing a site plan submitted, along with all the application information required, the Zoning Administrator shall:
- a. Ensure that the requirements of the zoning ordinance have been met and the plan is consistent with existing laws.
 - b. Determine whether the advice or assistance of Muskegon County will be helpful in reviewing a site plan, and if so, to so seek it.
 - c. Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to ensure compliance with all applicable state and local requirements.
 - d. Determine that the proposed use will ensure and enhance the diversity, quality, function and values of the critical dune in a manner that is compatible with private property rights; allows for compatible economic development and multiple human uses of the critical dune, using the most competent, accurate and reliable information and scientific data available.
14. Use Standards. Any lot or parcel which in whole or part which falls within the Dune Overlay Zone and/or within 250 feet outside the Dune Overlay Zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall not be used except upon receipt of a permit from the Zoning Administrator. No zoning permit shall be issued for the use of land within this zone or within 250 feet outside the zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area until a site plan meeting the requirements of this Section and those of Article XXIII, Section 2330, have been met. If requested, the Planning Commission will make the final determination as to whether or not these standards have been met and shall exercise its lawful discretion in all cases in favor of protection of the critical dune area.
15. Prohibition of Construction Without Permit. No grading or clearing of a site shall be done prior to issuance of a zoning permit as required in this Ordinance.

16. Special Use Project Review Procedures. A proposed special use project shall be reviewed and a recommendation for approval, approval with conditions, or denial is made by the Planning Commission pursuant to the special use procedures of this ordinance shall be completed.
17. Department of Environmental Quality Review. Prior to issuing a permit allowing a special use project within a critical dune area, the Planning Commission shall submit the special use project application and site plan and their proposed decision to the Department of Environmental Quality, Land and Water Management Division following the procedures of this ordinance.
18. Nonconforming Uses. The lawful use of land or a structure, as existing and lawful within a critical dune area in the time of the adoption of this overlay zone, may be continued although the use of that land or structure does not conform to the provisions of this overlay zone. The continuance, completion, restoration, reconstruction, extension or substitution of existing nonconforming uses of land or a structure may continue consistent with the nonconforming use requirements of this Ordinance. See Article XXII, Section 2202.
19. Rebuilding of Lawful Structures. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, may be rebuilt or replaced if the structure or use was lawful at the time it was constructed or commenced; and a replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.
20. Variance. The Zoning Board of Appeals may grant a variance from the requirements of this overlay zone if an unreasonable hardship will occur to the owner of the property if the variance is not granted. The procedural requirements of Article XXIII (Site Plan Review) and Article XXV (Zoning Board of Appeals) shall be adhered to. A variance shall be subject to the following limitations:
 - a. The Zoning Board of Appeals may issue variances under Article XXV of the zoning ordinance if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this Section unless the Zoning Board of Appeals determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - The diversity of the critical dune areas within the local unit of government.
 - The quality of the critical dune areas within the local unit of government.
 - The functions of the critical dune areas within the local unit of government.
 - b. The decision of the Zoning Board of Appeals shall be in writing and shall be based upon evidence that would meet the standards in Section 75 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
 - That the City of Muskegon has met the burden of proof under subsections 1A through 1C.
 - That the decision is based upon sufficient facts or data.

- That the decision is the product of reliable scientific principles and methods.
 - That the decision has applied the principles and methods reliably to the facts.
 - That the facts or data upon which the decision is based are recorded in the file.
- c. The City of Muskegon shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.
- d. A variance shall not be granted from a setback requirement provided for under Section 35034 pursuant to Part 353 of the Public Act 451 of 1994 unless the property for which the variance is requested is one of the following:
- A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of Part 353.
 - A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.
 - Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.
21. Penalties. In addition to the penalty provisions of this Ordinance, the provisions of Public Act 451 of 1994 shall apply in the event of any violation. Pursuant to the Public Act, a court may impose on a person who violates any provision of this Dune Overlay Zone, or a provision of a permit issued hereunder, a civil fine of not more than \$5,000 for each day of violation, or order a violator to pay the full cost of the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both. If a person is ordered by the Zoning Administrator to restore a critical dune that has been degraded by that person, the Zoning Administrator shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.
22. Applicable Law. Incorporated by reference herein is Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.
23. Severability. If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The City Commission hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid. However, if any provision of the Ordinance is declared invalid, the City must seek written confirmation from the DEQ that the Ordinance still complies with Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend section 2310 of the zoning ordinance to adopt a local critical dune ordinance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

SECTION 2310: Critical Dune Overlay District

1. Purpose. In keeping with the findings of the Michigan legislature and the authority granted to local government in Public Act 451 of 1994, as amended, the City of Muskegon hereby declares that:
 - a. The critical dune areas within the City of Muskegon are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this community, to the state, and to the people from other states and countries who visit this resource.
 - b. The purpose of this ordinance is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this ordinance is intended to do all of the following:
 - Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.
 - Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.
 - Coordinate and streamline governmental decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.
 - c. The benefits derived from alteration, industrial, residential, commercial, agricultural, sylvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.
 - d. The following regulations embodied in this Dune Overlay Zone are adopted as the minimum measures necessary to achieve these ends.
2. Definitions – As used in this section,
 - a. "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining.
 - b. "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

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

3. Area Affected. The provisions of the Dune Overlay Zone apply to all lands so depicted on the City of Muskegon Zoning Map which is a part of this ordinance. These lands include the entire critical dune area as designated by the Michigan Department of Natural Resources pursuant to Public Act 451 of 1994, and to such other lands as locally designated and depicted thereon. Locally designated sand dunes together with dunes designated under Public Act 451 shall be known as critical dune areas for the purpose of this ordinance. Lands that are within 250 feet of a critical dune area, that are determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall also receive all the protection afforded to critical dunes in the Overlay Zone, even if not so depicted on the City of Muskegon Zoning Map.

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

- a. No subdivision or condominium development shall occur within the Dune Overlay Zone except in compliance with the minimum standards of this ordinance and after review and approval of a site plan and other documents as required herein.
 - b. No structure shall be constructed, reconstructed, altered, or relocated except in strict compliance with the requirements of this ordinance.
 - c. No use which is in existence as of the effective date of this Article shall be expanded, except in strict compliance with the minimum standards of this Ordinance.
 - d. No existing nonconforming building or structure shall be altered except provided in Article XXII, Section 2203.
5. Application Requirements. All applications for permits for the use of a critical dune area shall include in writing showing evidence:
 - a. That Muskegon County, which administers Part 91 Soil Erosion and Sedimentation Control, of Public Act 451 of 1994, as amended, finds that the project is in compliance with the act and any applicable soil erosion and sedimentation control ordinance that is in effect in Muskegon County.
 - b. That a proposed sewage treatment or disposal system on the site has been approved by the county health department, if applicable.
 - c. Assuring that the cutting and removing of trees and other vegetation will be performed according to the forestry management guidelines for Michigan prepared by the Society of American Foresters in 1987, as revised in 2010, and will include instructions or plans to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation on the site than were removed by the proposed use.
 - d. Except as otherwise provided in this subsection, a site plan that contains data required by this Section and Article XXIII, Section 2330, concerning the physical development of the site and extent of disruption of the site by the proposed development.
 - e. The Zoning Administrator shall not require an environmental site assessment or environmental impact statement as part of a permit application for a use in a critical dune overlay zone except for a "Special Use" project.
 - f. The Zoning Administrator will require that the applicant supply a contour map of the site with 1-foot contour intervals at or near any proposed structure or roadway for any new construction.
 - g. The payment of any required fees for processing and/or professional review of the submitted site plan.
6. Environmental Assessment. When an environmental assessment is required under a "Special Use" project, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the application's proprietary interest in the site.
 - c. The name, address, and professional qualification of the person preparing the environmental assessment and his/her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.
 - d. The description and purpose of the proposed use.
 - e. The location of existing utilities and drainage ways.
 - f. The general location and approximate dimensions of proposed structures.
 - g. Major proposed change of land forms such as new lakes, terracing or excavating.

- h. Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
- i. Approximate location and type of proposed drainage, water, and sewage facilities.
- j. Legal description of property.
- k. A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- l. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- m. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

7. Environmental Impact Statement. When an environmental assessment is required, it shall include the following information concerning the site of the proposed use:

- a. The name and address of the applicant.
- b. A description of the applicant's proprietary interest in the site of the proposed use.
- c. The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.
- d. The description and purpose of the proposed use.
- e. Six copies and one reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
- f. The location of the existing utilities and drainage ways.
- g. The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
- h. The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.
- i. The general location and approximate dimensions of proposed structures.
- j. Major proposed change of land forms such as new lakes, terracing, or excavating.
- k. Approximate existing and proposed contours and drainage patterns, showing at least five-foot contour intervals.
- l. Sketches showing the scale, character, and relationship of structures, streets, or driveways, and open space.
- m. Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.
- n. A legal description of the property.
- o. An aerial photo and contour map showing the development site in relation to the surrounding area.
- p. A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- q. A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "United Soil Classification System" as adopted by the United States Government Corps of Engineers and Bureau of Reclamation, dated January 1952, or the natural cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.

- r. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- s. A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.
- t. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
- u. At a minimum, plans for compliance with all of the following standards shall be required for construction and post-construction periods:
 - Surface drainage designs and structures are erosion proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design in order that drainage waters may be impeded in their flow and percolation encouraged.
 - The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.
 - Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.
 - If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it shall be the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, and windbreaks and other similar barriers.

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

- a. A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this ordinance. Additional driveways, if any, shall meet the applicable requirements for any other use under this ordinance. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record
- b. Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
- c. Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:

- Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- d. Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.
9. Utilities. A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this section or under Part 353 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, is exempt for purposes for which the permit was issued from the operation of this section if the maintenance, repair, or replacement is completed in compliance with all of the following:
- a. Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.
 - b. All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
 - c. Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.
 - d. To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
 - e. In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.
 - f. In the cases of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.
10. Accessibility. Notwithstanding any other provision of this section, at the request of the applicant, the construction, improvement and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject only to applicable permit requirements of this section and the following:
- a. Accessibility measures on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:

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

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

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

- a. The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
- b. A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323 of Public Act 451 of 1994.
- c. A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.
- d. Production facilities regulated under parts 615 and 625 of Act 451 of 1994, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.

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

- a. A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
- b. A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
- c. A use involving a contour change if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.

- d. Sylvicultural practices, as described in the "Forest Management Guidelines for Michigan", prepared by the Society of American Foresters as revised in 2010, if the City of Muskegon determines that they are more likely than not to increase erosion or decrease stability.
 - e. A use that involves a vegetation removal if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
- 13. Site Plan Review. When reviewing a site plan submitted, along with all the application information required, the Zoning Administrator shall:
 - a. Ensure that the requirements of the zoning ordinance have been met and the plan is consistent with existing laws.
 - b. Determine whether the advice or assistance of Muskegon County will be helpful in reviewing a site plan, and if so, to so seek it.
 - c. Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to ensure compliance with all applicable state and local requirements.
 - d. Determine that the proposed use will ensure and enhance the diversity, quality, function and values of the critical dune in a manner that is compatible with private property rights; allows for compatible economic development and multiple human uses of the critical dune, using the most competent, accurate and reliable information and scientific data available.
- 14. Use Standards. Any lot or parcel which in whole or part which falls within the Dune Overlay Zone and/or within 250 feet outside the Dune Overlay Zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall not be used except upon receipt of a permit from the Zoning Administrator. No zoning permit shall be issued for the use of land within this zone or within 250 feet outside the zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area until a site plan meeting the requirements of this Section and those of Article XXIII, Section 2330, have been met. If requested, the Planning Commission will make the final determination as to whether or not these standards have been met and shall exercise its lawful discretion in all cases in favor of protection of the critical dune area.
- 15. Prohibition of Construction Without Permit. No grading or clearing of a site shall be done prior to issuance of a zoning permit as required in this Ordinance.
- 16. Special Use Project Review Procedures. A proposed special use project shall be reviewed and a recommendation for approval, approval with conditions, or denial is made by the Planning Commission pursuant to the special use procedures of this ordinance shall be completed.
- 17. Department of Environmental Quality Review. Prior to issuing a permit allowing a special use project within a critical dune area, the Planning Commission shall submit the special use project application and site plan and their proposed decision to the Department of Environmental Quality, Land and Water Management Division following the procedures of this ordinance.
- 18. Nonconforming Uses. The lawful use of land or a structure, as existing and lawful within a critical dune area in the time of the adoption of this overlay zone, may be continued although the use of that land or structure does not conform to the provisions of this overlay zone. The continuance, completion, restoration,

reconstruction, extension or substitution of existing nonconforming uses of land or a structure may continue consistent with the nonconforming use requirements of this Ordinance. See Article XXII, Section 2202.

19. **Rebuilding of Lawful Structures.** A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, may be rebuilt or replaced if the structure or use was lawful at the time it was constructed or commenced; and a replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.
20. **Variance.** The Zoning Board of Appeals may grant a variance from the requirements of this overlay zone if an unreasonable hardship will occur to the owner of the property if the variance is not granted. The procedural requirements of Article XXIII (Site Plan Review) and Article XXV (Zoning Board of Appeals) shall be adhered to. A variance shall be subject to the following limitations:
 - a. The Zoning Board of Appeals may issue variances under Article XXV of the zoning ordinance if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this Section unless the Zoning Board of Appeals determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - The diversity of the critical dune areas within the local unit of government.
 - The quality of the critical dune areas within the local unit of government.
 - The functions of the critical dune areas within the local unit of government.
 - b. The decision of the Zoning Board of Appeals shall be in writing and shall be based upon evidence that would meet the standards in Section 75 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
 - That the City of Muskegon has met the burden of proof under subsections 1A through 1C.
 - That the decision is based upon sufficient facts or data.
 - That the decision is the product of reliable scientific principles and methods.
 - That the decision has applied the principles and methods reliably to the facts.
 - That the facts or data upon which the decision is based are recorded in the file.
 - c. The City of Muskegon shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.
 - d. A variance shall not be granted from a setback requirement provided for under Section 35034 pursuant to Part 353 of the Public Act 451 of 1994 unless the property for which the variance is requested is one of the following:
 - A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of Part 353.

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

21. Penalties. In addition to the penalty provisions of this Ordinance, the provisions of Public Act 451 of 1994 shall apply in the event of any violation. Pursuant to the Public Act, a court may impose on a person who violates any provision of this Dune Overlay Zone, or a provision of a permit issued hereunder, a civil fine of not more than \$5,000 for each day of violation, or order a violator to pay the full cost of the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both. If a person is ordered by the Zoning Administrator to restore a critical dune that has been degraded by that person, the Zoning Administrator shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

22. Applicable Law. Incorporated by reference herein is Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

23. Severability. If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The City Commission hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid. However, if any provision of the Ordinance is declared invalid, the City must seek written confirmation from the DEQ that the Ordinance still complies with Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

This ordinance adopted:

Ayes:_____

Nays:_____

Adoption Date:_____

Effective Date:_____

First Reading:_____

Second Reading:_____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 12th day of December, 2017, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2017.

Ann Meisch, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on December 12, 2017, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2310 of the zoning ordinance to adopt a local critical dune ordinance. Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

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

Published _____, 2017.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

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

Account No. 101-80400-5354

Date: January 3, 2018
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
**RE: Adopt a Resolution Approving the Liquor License
Application for EAT1635, LLC for a Class C Liquor
License at 1635 Beidler**

SUMMARY OF REQUEST: To adopt a resolution approving a Class C Liquor License for Eat1635, LLC at 1635 Beidler.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adopt a resolution approving the request for a Class C Liquor License for EAT1635, LLC at 1635 Beidler.



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll-Free: 866-813-0011 - www.michigan.gov/lcc

Business ID: _____
Request ID: _____
(For MLCC Use Only)

Retailer License & Permit Application

For information on retail licenses and permits, including a checklist of required documents for a completed application, please visit the Liquor Control Commission's frequently asked questions website [by clicking this link](#).

Part 1 - Applicant Information

Individuals, please state your legal name. Corporations or Limited Liability Companies, please state your name as it is filed with the State of Michigan Corporation Division.

Applicant name(s): EAT1635, LLC	
Address to be licensed: 1635 Beidler St.	
City: Muskegon	Zip Code: 49441
City/township/village where license will be issued: Muskegon	County: Muskegon
Federal Employer Identification Number (FEIN): 82-3436358	

1. Are you requesting a new license? ☐ Yes ☒ No
2. Are you applying ONLY for a new permit or permission? ☐ Yes ☒ No
3. Are you buying an existing license? ☒ Yes ☐ No
4. Are you modifying the size of the licensed premises? ☐ Yes ☒ No
If Yes, specify: ☐ Adding Space ☐ Dropping Space ☐ Redefining Licensed Premises
5. Are you transferring the location of an existing license? ☒ Yes ☐ No
6. Is this license being transferred as the result of a default or court action? ☐ Yes ☒ No
7. Do you intend to use this license actively? ☒ Yes ☐ No

Leave Blank - MLCC Use Only

Part 2 - License Transfer Information (If Applicable)

If transferring ownership of a license ONLY and not transferring the location of a license, fill out only the name of the current licensee(s)

Current licensee(s): West Star Management, LLC	
Current licensed address: 1720 E. Sternberg Rd.	
City: Muskegon	Zip Code: 49444
City/township/village where license is issued: Fruitport Twp.	County: Muskegon

Part 3 - Licenses, Permits, and Permissions

Off Premises Licenses - Applicants for off premises licenses, permits, and permissions (e.g. convenience, grocery, specialty food stores, etc.) must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

On Premises Licenses - Applicants for on premises licenses, permits, and permissions (e.g. restaurants, hotels, bars, etc.) must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

Part 4 - Inspection, License, and Permit Fees - Make checks payable to State of Michigan

Inspection Fees - Pursuant to MCL 436.1529(4) a nonrefundable inspection fee of \$70.00 shall be paid to the Commission by an applicant or licensee at the time of filing of a request for a new license or permit, a request to transfer ownership or location of a license, a request to increase or decrease the size of the licensed premises, or a request to add a bar. Requests for a new permit in conjunction with a request for a new license or transfer of an existing license do not require an additional inspection fee.

License and Permit Fees - Pursuant to MCL 436.1525(1), license and permit fees shall be paid to the Commission for a request for a new license or permit or to transfer ownership or location of an existing license.

Inspection Fees:	\$70.00	License & Permit Fees:	\$600.00	TOTAL FEES:	\$670.00
------------------	---------	------------------------	----------	--------------------	-----------------

Schedule A - Licenses, Permits, & Permissions

Applicant name: EAT1635, LLC

Off Premises License Type:

New Transfer

Base Fee:

Fee Code
MLCC Use
Only

- ☐ ☐ SDM License \$100.00
- ☐ ☐ SDD License \$150.00
- ☐ ☐ Resort SDD License Upon Licensure/\$150.00

Off Premises Permits:

Base Fee:

- ☐ Sunday Sales Permit (AM)* \$160.00
- ☐ Sunday Sales Permit (PM)** \$22.50
(Held with SDD License)
- ☐ Catering Permit \$100.00
- ☐ Secondary Location Permit - Complete Form LCC-201
- ☐ Beer and Wine Tasting Permit No charge
- ☐ Living Quarters Permit No charge

On/Off Premises Permission Type:

Base Fee:

- ☐ Off-Premises Storage No charge
- ☐ Direct Connection(s) No charge
- ☐ Motor Vehicle Fuel Pumps No charge

*Sunday Sales Permit (AM) allows the sale of liquor, beer, and wine on Sunday mornings between 7:00am and 12:00 noon, if allowed by the local unit of government.

**Sunday Sales Permit (PM) allows the sale of liquor on Sunday afternoons and evenings between 12:00 noon and 2:00am (Monday morning), if allowed by the local unit of government. No Sunday Sales Permit (PM) is required for the sale of beer and wine on Sunday after 12:00 noon. The Sunday Sales Permit (PM) fee is 15% of the fee for the license that allows the sale of liquor. Additional bar fees and B-Hotel room fees are also calculated as part of the permit fee.

Licenses, permits, and permissions selected on this form will be investigated as part of your request. Please verify your information prior to submitting your application, as some licenses, permits, or permissions cannot be added to your request once the application has been sent out for investigation by the Enforcement Division.

Inspection, License, Permit, & Permission Fee Calculation

Number of Licenses: 1 x \$70.00 Inspection Fee

Total Inspection Fee(s): Fee Code: 4036 \$70.00

Total License Fee(s): \$600.00

Total Permit Fee(s):

TOTAL FEES DUE: \$670.00

Please note that requests to transfer SDD licenses will require the payment of additional fees based on the seller's previous calendar year's sales. These fees will be determined prior to issuance of the license to the applicant.

Make checks payable to **State of Michigan**

On Premises License Type:

New Transfer

Base Fee:

Fee Code
MLCC Use
Only

- ☐ ☐ B-Hotel License \$600.00
- Number of guest rooms: _____
- ☐ ☐ A-Hotel License \$250.00
- Number of guest rooms: _____
- ☐ ☒ Class C License \$600.00 4034
- ☐ ☐ Tavern License \$250.00
- ☐ ☐ Resort License Upon Licensure
- ☐ ☐ Redevelopment License Upon Licensure
- ☐ ☐ Brewpub License \$100.00
- ☐ ☐ G-1 License \$1,000.00
- ☐ ☐ G-2 License \$500.00
- ☐ ☐ Aircraft License \$600.00
- ☐ ☐ Watercraft License \$100.00
- ☐ ☐ Train License \$100.00
- ☐ ☐ Continuing Care Retirement Center License \$600.00
- ☐ MCL 436.1545(1)(b)(i) ☐ MCL 436.1545(1)(b)(ii)

B-Hotel or Class C Licenses Only:

- ☐ ☐ Additional Bar(s)

Number of Additional Bars: _____

B-Hotel or Class C licenses allow licensees to have one (1) bar within the licensed premises. A \$350.00 licensing fee is required for each additional bar over the one (1) bar initially issued with the license.

On Premises Permits:

Base Fee:

- ☐ Sunday Sales Permit (AM)* \$160.00
- ☐ Sunday Sales Permit (PM)** 15%**
- ☐ Catering Permit \$100.00
- ☐ Banquet Facility Permit - Complete Form LCC-200

A Banquet Facility Permit is an extension of the license at a different location. It may have its own permits and permissions. It is not a banquet room on the licensed premises.

- ☐ Outdoor Service No charge
- ☒ Dance Permit No charge
- ☒ Entertainment Permit No charge
- ☐ Extended Hours Permit: No charge

☐ Dance ☐ Entertainment Days/Hours: _____

- ☐ Specific Purpose Permit: No charge

Activity requested: _____

Days/Hours requested: _____

- ☐ Living Quarters Permit No charge
- ☐ Topless Activity Permit No charge

Commission Meeting Date: January 9, 2018

Date: January 4, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Approval of a Neighborhood Enterprise Zone Certificate

SUMMARY OF REQUEST:

An application for a Neighborhood Enterprise Zone (NEZ) certificate has been received from Community enCompass for the rehabilitation of the home at 1173 4th St. The rehab will include upgrades to the roof, bathroom, paint, flooring and windows and will cost about \$25,000. Community encompass will hold the NEZ certificate in abeyance until it is transferred to a new owner within two years. The applicant has met local and state requirements for the issuance of the NEZ certificate.

FINANCIAL IMPACT:

The property taxes will be frozen at the pre-rehabilitated rate for the duration of the certificate.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the NEZ certificate.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE REHABILITATED CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Community enCompass to rehabilitate a home at 1173 4th St in the Nelson neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate will be approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Cheryl Parker be approved.

Adopted this 9th day of January, 2017.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on January 9, 2017.

By: _____
Ann Meisch
City Clerk

Date: 12/20/2017

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: Ryerson Creek – Clean-up Efforts and Resolution of Support

SUMMARY OF REQUEST:

The West Michigan Shoreline Regional Development Commission and ATY Metals (Teledyne Continental Motors) are seeking funding from the Environmental Protection Agency and Michigan Department of Environmental Quality to continue cleanup efforts related to contaminated soils in watersheds affecting the Great Lakes with the eventual goal of delisting Muskegon Lake. WMSRDC is gathering support and contributions as match for the federal funding. In an effort to provide in-kind contribution, staff have reviewed sanitary sewer capacity and recommend allowing up to 100,000 gallons of wastewater into our system at no cost to the project. Lost revenue associated with this request amounts to approximately \$200. The project will not restrict future development or dredging. Staff is requesting that a resolution of support for the project be approved.

FINANCIAL IMPACT:

\$200

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Approve resolution of support for the Ryerson Creek Great Lakes Legacy Act contaminated sediment cleanup project.

City of Muskegon

RESOLUTION

SUPPORT OF MUSKEGON LAKE AREA OF CONCERN DELISTING AND CONTAMINATED SEDIMENT CLEANUP of RYERSON CREEK and MUSKEGON LAKE

WHEREAS, Muskegon City Commissioners desire to promote and support delisting of the Muskegon Lake Area of Concern (AOC); and

WHEREAS, Muskegon City Commissioners desire to support efforts to remediate and restore environmental and ecological impairments to Ryerson Creek and Muskegon Lake; and

WHEREAS, Muskegon City Commissioners support development of the Feasibility Study & Remedial Design to remediate contaminated sediments; and

NOW, THEREFORE LET IT BE RESOLVED, that Muskegon City Commissioners support and commit to reducing waste disposal costs as in-kind contributions to enhance remediation of Ryerson Creek and Muskegon Lake and that the City of Muskegon Department of Public Works be directed to work collaboratively with federal, state, and local stakeholders in restoring Muskegon Lake's ecosystems.

Dated this _____ of _____ 20__.

Stephen J. Gawron
Mayor

Ann Marie Meisch
City Clerk

Date: 12/27/2017

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: City Hall East Entrance Roof Replacement

SUMMARY OF REQUEST:

The roof over the east entrance to City Hall needs to be replaced due to age and improper drainage. Last spring, the project was advertised, and bids were taken with the low bid amount being \$42,000. In order to capitalize on that bid amount, commitment for the work had to be given and materials ordered prior to the end of the calendar year. If delayed, the increased cost of materials and labor would be \$4,200. The Finance Director confirmed that there is available funding for the work, and the City Manager gave approval to move forward with the bid and seek Commission approval at the January 9 meeting since there was no meeting planned for the fourth Tuesday in December.

Staff is requesting that the budget increase be approved to fund the replacement of the roof.

FINANCIAL IMPACT:

\$45,000

BUDGET ACTION REQUIRED:

Increase City Hall Maintenance budget by \$45,000 in next reforecast

STAFF RECOMMENDATION:

Approve budget increase for the roof replacement for the east entrance to City Hall.

DATE: 27-Dec-17

		NAME OF BIDDER		NAME OF BIDDER		NAME OF BIDDER		NAME OF BIDDER	
	VENDOR					ALLIED ROOFING			
	TELEPHONE					616-291-2433			
	QUOTED BY					WAYNE ALLEN			
QUANTITY	DESCRIPTION					UNIT PRICE	TOTAL PRICE		
	2017 REPLACEMENT						\$ 41,800.00		
2017 TOTAL PRICE							\$ 41,800.00		
YEARLY INFLATION % (MATERIAL & LABOR)						10%			
ESTIMATED 2018 PRICE						\$ 45,980.00			
ESTIMATED COST SAVINGS						\$ 4,180.00			