

**OFFICIAL PROCEEDINGS
CITY COUNCIL
CITY OF ESCANABA, MICHIGAN
Regular Council Meeting
Thursday, June 21, 2012**

The meeting was called to order by the Honorable Mayor Leo J. Evans at 7:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Leo J. Evans, Council Members, Walter A. "Pete" Baker, Patricia A. Baribeau, Ronald J. Beauchamp, and Brady L. Nelson.

Absent: None

Also Present: City Manager James V. O'Toole, Assistant City Attorney Russell Hall, City Department Heads, media, and members of the public.

City Clerk Robert S. Richards gave the invocation and led Council in the Pledge of Allegiance.

Nelson moved, Baribeau seconded, **CARRIED UNANIMOUSLY**, to approve Special Meeting Minutes from May 9, 2012, Regular Meeting Minutes from June 6, 2012, and Special Meeting Minutes from June 7, 2012, as submitted.

ADJUSTMENTS TO THE AGENDA

Beauchamp moved, Baker seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

CONFLICT OF INTEREST DECLARATION - None

BRIEF PUBLIC COMMENT - None

UNFINISHED BUSINESS - None

PUBLIC HEARINGS

Public Hearing - Notice of Street Improvement – South 21st Street between 10th Avenue South and 12th Avenue South.

The City of Escanaba received a property owner petition for the construction of a 24-foot wide chip-seal paved street without curbing and gutter for South 21st Street between 10th Avenue South and 12th Avenue South. As part of the special assessment process, the City of Escanaba was required to conduct a public hearing so that citizen comments and objections to proposed assessments could be heard. After the Public Hearing, Administration recommended Council approval of the proposed special assessments.

This being a public hearing, Mayor Evans asked if there was any public comment.

Hearing no further public comment, Mayor Evans closed the public hearing.

PH-1 Nelson moved, Baker seconded, to approve the assessments for construction of a 24-foot wide chip-seal paved street without curbing and gutter for South 21st Street between 10th Avenue South and 12th Avenue South.

Upon a call of the roll, the vote was as follows:

Ayes: Nelson, Baker, Baribeau, Beauchamp, Evans
Nays: None

MOTION CARRIED.

Second Reading, Public Hearing of Ordinance No. 1129 – Amendment to the Ordinance to Regulate Licensing of Peddlers, Solicitors and Canvassers.

Ordinance No. 1129 amended Chapter 20, Article IV, Sections 20-110 and Section 20-112(9) of the City's Peddler's License, by allowing Ice Cream Trucks to operate between the hours of 11:00 am to 8:00 pm.

This being a public hearing, Mayor Evans asked if there was any public comment.

Hearing no further public comment, Mayor Evans closed the public hearing.

PH-2 "By Council Member Nelson, seconded by Council Member Baribeau;

Resolved, That Ordinance No. 1129, An Ordinance to Amend Chapter 20, Article IV, Sections 20-110 and Section 20-112(9) of the City's Peddler's License, by allowing Ice Cream Trucks to operate between the hours of 11:00 am to 8:00 pm., given its second reading and public hearing at this meeting, be and is hereby adopted and that it be published in accordance with the requirements of the City Charter."

The vote was as follows:

Ayes: Nelson, Baribeau, Baker, Beauchamp, Evans
Nays: None

RESOLUTION DECLARED ADOPTED.

Herewith Ordinance No. 1129 adopted by title:

"AN ORDINANCE TO AMEND ORDINANCE NO.754 AS CODIFIED BY AN ORDINANCE TO AMEND ORDINANCE NO.874 AS CODIFIED BY ORDINANCE NO. 890, ENTITLED "ORDINANCE TO REGULATE LICENSING PEDDLERS, SOLICITORS AND CANVASSERS" OF THE CODE OF ORDINANCES OF THE CITY OF

Full text in Ordinance Record “K”.

Approval – Ordinance No. 1130 - Appropriations Ordinance Amendment.

Administration requested Council amend the current Appropriations Ordinance for the fiscal year ending June 30, 2012, in order to balance out over and under expenditures within various departmental budgets for the 2011-12 fiscal year. This action was mandated by State law and adjusts budget accounts to help ensure that no individual line items are overrun.

This being a public hearing, Mayor Evans asked if there was any public comment.

Hearing no further public comment, Mayor Evans closed the public hearing.

City Controller Dewar briefly updated Council on the different portions of the City Budget. He advised the City General Fund was expected to have a \$900,000 deficit, and was now only \$200,000. Council Members thanked Administration and the City Employees for their efforts in helping reducing the City expenses.

PH-3 “By Council Member Nelson, seconded by Council Member Baker;

Resolved, That Ordinance No. 1130, the Appropriations Ordinance Amendment, given its public hearing at this meeting, be and is hereby adopted and that it be published in accordance with the requirements of the City Charter.”

Upon a call of the roll, the vote was as follows:

Ayes: Nelson, Baker, Baribeau, Beauchamp, Evans
Nays: None

RESOLUTION DECLARED ADOPTED.

Herewith Ordinance No. 1130 adopted by title:

“AN ORDINANCE TO AMEND ORDINANCE NO. 1113 ENTITLED AN ORDINANCE TO MAKE APPROPRIATIONS AND CORRESPONDING REVENUES FOR THE YEAR ENDED JUNE 30, 2012.”

Full text in Ordinance Record “K”.

NEW BUSINESS

Consent Agenda – Use of Public Spaces – Community Events.

City Administration recommended Council approval of the following community events utilizing public space with the following conditions: 1) Proper insurance was provided naming the City of Escanaba and 2) The event sponsors provide all labor and material to clean up at the conclusion of the event.

a. APPROVAL OF A REQUEST TO RESERVE AN AREA OF ARONSON ISLAND FOR AMATEUR RADIO SOCIETY GATHERING

Mr. Justin Poquette of the Delta County Amateur Radio Society requested use of the northeast end of Aronson Island for the 2nd Annual Amateur Radio and Emergency Preparedness gathering. Not more than three (3) camping units will be set up in this area beginning June 22, 2012 at 5:00 pm through June 24, 2012, at 1:00 am. Organizers have agreed to provide liability insurance and cleanup following the conclusion of the event.

b. APPROVAL OF A REQUEST TO RESERVE LUDINGTON PARK PAVILION FOR THE ANNUAL MCINNIS MEMORIAL WALK

Anne (McInnis) Erickson requested use of the Ludington Park Pavilion on Saturday, July 21, 2012 from 8:00 am to 1:00 pm for the Annual Don McInnis Memorial Walk to benefit Brain Tumor Research. Organizers agreed to provide liability insurance and cleanup following the conclusion of the event. Council approval was recommended.

c. APPROVAL OF A REQUEST BY THE WILLIAM BONIFAS ARTS CENTER TO RESERVE THE LUDINGTON PARK BAND SHELL

The William Bonifas Arts Center requested permission to hold the Annual Waterfront Arts Festival at the Ludington Park Band Shell on Saturday, August 4, 2012 from 6:00 am to 5:00 pm. Request for City support services included sanitation, clean-up assistance, and a dumpster. Approval was recommended contingent upon the Arts Center providing the necessary insurance, food licenses, and volunteers to clean up following the conclusion of the event.

d. APPROVAL OF A REQUEST TO RESERVE OPEN SPACE IN LUDINGTON PARK ACROSS FROM HARBOR HIDE-OUT FOR VINTAGE BICYCLE SHOW

Mr. Brian LaFave of Pedals by the Bay requested use of the open space across from Harbor Hide-Out for a Vintage Bicycle Show to be held on Saturday, August 4, 2012 from 9:00 am to 3:00 pm. Approval was recommended contingent upon providing the necessary insurance and cleanup following the conclusion of the event.

e. APPROVAL OF A REQUEST TO RESERVE LUDINGTON PARK FOR THE PAUL MITCHELL "THE SCHOOL" ESCANABA RUN/WALK FUNDRAISER

Ms. Jessica Lynch of Paul Mitchell "The School" Escanaba requested use of the Ludington Park on Saturday, August 18, 2012 from 7:30 am to 11:30 am for a run/walk fundraiser. Organizers have agreed to provide liability insurance and cleanup following the conclusion of the event. Council approval was recommended.

f. APPROVAL OF A REQUEST BY THE BAYS DE NOC GOBBLERS TO RESERVE THE MARINA AREA

Mr. Ken Buchholtz of the Bays de Noc Gobblers requested permission to hold "Recreating in the Great Outdoors" for individuals with disabilities in the marina area on Saturday, August 25, 2012 from 9:00 am to 5:00 pm. Approximately 100 participants were anticipated with pre-registration required. The event included kayaking, fishing, hand cycling, sailing, and pontoon boat rides. Organizers have agreed to provide liability insurance and cleanup following the conclusion of the event. Council approval was recommended.

g. APPROVAL OF A REQUEST TO RESERVE LUDINGTON PARK PAVILION FOR THE CEDAR HILL MEDICAL 5K RUN

Ms. Claire Schultz of Cedar Hill Medical requested use of the Ludington Park Pavilion on Saturday, September 22, 2012 from 7:00 am to 1:00 pm for a 5k run. Organizers have agreed to provide liability insurance and cleanup following the conclusion of the event. Council approval was recommended.

h. APPROVAL OF A REQUEST TO HOLD SECOND ANNUAL MARINA FEST AT THE ESCANABA MUNICIPAL MARINA.

Harbor Master Larry Gravatt sought Council approval to hold the 2nd Annual Marina Fest on Saturday, August 4, 2012 from 2:00 p.m. to 10:00 p.m. at the Escanaba Municipal Marina. Activities included live music, adult and children's games, food and beverage vendors and other activities.

NB1(a-h) By Council Member Baker, seconded by Council Member Nelson, that the consent agenda items be approved as proposed.

Upon a call of the roll, the vote was as follows:

Ayes: Baker, Nelson, Baribeau, Beauchamp, Evans

Nays: None

MOTION CARRIED.

Approval – Resolution - MERS Health Care Savings Plan.

On April 5, 2012, Council approved a resolution for non-Public Safety employees to participate in the MERS Health Care Savings Plan (HCSP). After conferring with MERS, Public Safety employees were, in fact, eligible. At this time, it was the intent to make the MERS Health Care Savings Plan available to all full-time City employees. Administration requested Council to readopt the MERS Health Care Savings Plan, with the intent to include "all employees." The MERS Health Care Savings Plan, if implemented, would be voluntary in nature to employees, and had no direct cost to the City.

NB-2 "By Council Member Nelson, seconded by Council Member Baker;

MERS HEALTH CARE SAVINGS PROGRAM UNIFORM RESOLUTION

WHEREAS, the Municipal Employees' Retirement System ("MERS") Plan Document of

1996, effective October 1, 1996, authorized the Municipal Employees' Retirement Board ("Board") to establish additional programs including but not limited to defined benefit and defined contribution program (MERS Plan Document Section 36(2)(a)); MCL 38.1536(2)(a)).

WHEREAS, the Board has authorized MERS' establishment of the health care savings program ("HCSP" or "Program"), which a participating municipality or court, or another eligible public employer that is a political subdivision of the State which constitutes a "municipality" under MERS Plan Document Section 2B(4); MCL 38.1502b(2) ("Eligible Employer"), may adopt for its Eligible Employees.

WHEREAS, MERS has been determined by the Internal Revenue Service to be a taxqualified "governmental plan" and trust under section 401(a) of the Internal Revenue Code of 1986, and all trust assets within MERS reserves are therefore exempt from taxation under Code section 501(a) (IRS Letter of Favorable Determination dated June 15, 2005).

WHEREAS, the Board has established a governmental trust (the "Trust Fund") to hold the assets of the HCSP, which Trust Fund shall be administered under the discretion of the Board as fiduciary, directly by (or through a combination of) MERS or MERS' duly-appointed Program Administrator.

WHEREAS, 1999 PA 149, the Public Employee Health Care Fund Investment Act, MCL 38.1211 et seq. ("PA 149") provides for the creation by a public corporation of a public employee health care fund, and its administration, investment, and management, in order to accumulate funds to provide for the funding of health benefits for retirees and beneficiaries.

WHEREAS, a separate MERS health care trust fund created under PA 149 also constitutes a governmental trust established by a public corporation ("municipality") as an Eligible Employer, provided that all such employers shall be the State of Michigan, its political subdivisions, and any public entity the income of which is excluded from gross income under Section 115 of the Internal Revenue Code; provided further, that the PA 149 trust shall not accept assets from any defined benefit health account established under Section 401(h) of the Internal Revenue Code.

WHEREAS, the Board acts as investment fiduciary for the pooled assets of each MERS participating municipality and court enrolled in MERS Defined Benefit Plan, Health Care Savings Program, the Retiree Health Funding Vehicle, and the Investment Services Pool Program, on whose behalf MERS performs all plan administration and investment functions, and such participating municipalities and courts have full membership, representation and voting rights at the Annual Meeting as provided under Plan Section 45; MCL 38.1545.

WHEREAS, the Board also acts as investment fiduciary for those participating employers who are non-MERS participating municipalities and courts that have adopted the MERS Health Care Savings Program, Retiree Health Funding Vehicle, or Investment Service Pool

Program, and such entities are not accorded membership, representation or voting rights provided to MERS participating municipalities and courts at the Annual meeting under Plan Section 45; MCL 38.1545.

WHEREAS, adoption of this Uniform Resolution and Participation Agreement (the “Uniform Resolution”) by each Eligible Employer is necessary and required in order that the benefits available under the MERS HCSP may be extended.

- It is expressly agreed and understood as an integral and nonseverable part of extension or continuation of coverage under this HCSP Resolution that Section 43B of the MERS Plan Document shall not apply to this Uniform Resolution Adopting MERS HCSP, the Participation Agreement, the Trust Plan Document, the Trust Agreement, and their administration or interpretation.
- In the event any alteration of the language, terms or conditions stated in this Uniform Resolution Adopting MERS HCSP is made or occurs, under MERS Plan Document Section 43B or other plan provision or other law, it is expressly recognized that MERS and the Board, as fiduciary of the MERS Plan and its trust reserves, and whose authority is nondelegable, shall have no obligation or duty: to administer (or to have administered) the Trust; or to continue administration by the Program Administrator or by MERS directly.

WHEREAS, concurrent with this HCSP Uniform Resolution, and as a continuing obligation, this governing body has completed, approved, and submitted to MERS documents necessary for participation in and implementation of the HCSP. This obligation applies to any documents deemed necessary to the operation of the Trust by the Program Administrator.

NOW, THEREFORE, BE IT RESOLVED that the governing body adopts (or readopts) the MERS HCSP as provided below.

SECTION 1. HCSP PARTICIPATION

EFFECTIVE April 5, 2012, (to be known as the ADOPTION DATE) the

MERS HCSP is hereby adopted by the City of Escanaba

- (A) **CONTRIBUTIONS** shall be as allowed and specified in the MERS Health Care Savings Program Adoption Agreement. Basic Employer Contributions, Mandatory Salary Reduction Contributions, Mandatory Leave Conversion Contributions, and Post-Tax Employee Contributions, shall be remitted pursuant to MERS by the Eligible Employer, and credited to the Eligible Employer’s separate fund within the MERS Trust Fund.
- (B) **INVESTMENT** of funds accumulated and held in the Health Care Savings Program Trust Fund shall be held in a separate reserve and invested on a pooled basis by MERS subject to the Public Employee Retirement System

Investment Act ("PERSIA"), 1965 PA 314, as provided by MERS Plan Document Section 39; MCL 38.1539, and PA 149.

- (C) **THE ELIGIBLE EMPLOYER** shall abide by the terms of the HCSP, including all investment, administration, and service agreements, and all applicable provisions of the Code and other law. It is affirmed that no assets from any defined benefit health account established under Section 401(h) of the Internal Revenue Code shall be transferred to, or accepted by, MERS.

SECTION 2. IMPLEMENTATION DIRECTIONS FOR MERS

- (A) The governing body of this Eligible Employer desires that all assets placed in its MERS HCSP Trust Fund (as a sub-fund within all pooled HCSP trust funds with MERS) be administered by MERS, which shall act as investment fiduciary with all powers provided under Public Employee Retirement System Investment Act, pursuant to PA 149, all applicable provisions of the Internal Revenue Code and other relevant law.
- (B) The governing body desires, and MERS upon its approval of this Resolution agrees, that all funds accumulated and held in the MERS HCSP Trust Fund shall be invested and managed by MERS within the collective and commingled investment of all HCSP funds held in trust for all Eligible Employers.
- (C) All monies in the MERS HCSP Trust Fund (and any earnings thereon, positive or negative) shall be held and invested for the sole purpose of paying health care benefits for the exclusive benefit of "Eligible Employees" who shall constitute "qualified persons" who have retired or separated from employment with the Eligible Employer, and for any expenses of administration, and shall not be used for any other purpose, and shall not be distributed to the State.
- (D) The Eligible Employer will fund on a defined contribution, individual account, basis its MERS HCSP Trust sub-fund to provide funds for health care benefits for "Eligible Employees" who shall constitute "qualified persons." Participation in and any coverage under HCSP shall not constitute nor be construed to constitute an "accrued financial benefit" under Article 9 Section 24 of the Michigan Constitution of 1963.
- (E) The Eligible Employer designates and incorporates as "Eligible Employees" who shall constitute "qualified persons" under this HCSP Resolution those who are "Eligible Employees as defined in the HCSP Participation Agreement under this HCSP.
- (F) The Eligible Employer may designate the appropriate employer contacts who shall receive necessary reports, notices, etc.; shall act on behalf of

the Eligible Employer; and may delegate any administrative duties relating to the

Fund to appropriate departments.

SECTION 3. EFFECTIVENESS OF THIS HCSP UNIFORM RESOLUTION

This Resolution shall have no legal effect until a certified copy of this adopting Resolution is filed with MERS, and MERS determines that all necessary requirements under MERS Plan Document Section 36(2)(a), 1999 PA 149 and other relevant laws, and this Resolution have been met. Upon MERS' determination that all necessary documents have been submitted, MERS shall record its formal approval upon this Resolution, and return a copy to the Eligible Employer's designated primary contact.

In the event an amendatory resolution or other action by the Eligible Employer is required by MERS, such Resolution or action shall be deemed effective as of the date of the initial Resolution or action where concurred in by this governing body and MERS (and the Program Administrator if necessary). Section 54 of the MERS Plan Document shall apply to this Resolution and all acts performed under its authority. The terms and conditions of this Resolution supersede and stand in place of any prior resolution, and its terms are controlling.

Upon a call of the roll, the vote was as follows:

Ayes: Nelson, Baker, Beauchamp, Baribeau, Evans

Nays: None

RESOLUTION DECLARED ADOPTED

Discussion – Policy Revision – Alcohol in Public Places – Special Events – Policy No. 060101-01

Administration sought Council approval of a revision to the Alcohol in Public Places Policy, Section 9, paragraph a. Area, which would change the requirement of having a double fence. On June 20, 2012, the Harbor Advisory Committee recommended Council approval of the revision.

NB-3 Beauchamp moved, Baribeau seconded, to approve of a revision to the Alcohol in Public Places Policy, Section 9, paragraph a. Area, which would change the requirement of having a double fence.

Update – Power Generation/Plant Operation Options – City Administration.

City Manager O'Toole updated the City Council and public on the sale of the Power Plant, with the intent to close the Asset Purchase Agreement by June 30, 2012, and briefly updated Council on the MISO Attachment Y-1 filing.

APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES

Mayor Evans, with Council consensus, appointed Janice Hallet to the Library Board of Trustees, partial term ending June 2014.

BOARD, COMMISSION, AND COMMITTEE REPORTS

Council Members reviewed City Board and Commission meetings each attended since the last City Council Meeting.

Mr. Ken Buchholtz of the Bays de Noc Gobblers thanked Council for approving “Recreating in the Great Outdoors” for individuals with disabilities in the marina area on Saturday, August 25, 2012. Approximately 100 participants were anticipated with pre-registration required. The event included kayaking, fishing, hand cycling, sailing, and pontoon boat rides.

GENERAL PUBLIC COMMENT - None

ANNOUNCEMENTS

- Retirement Proclamation – James D. McNeil;
- Council recognized the new Bays de Noc magazine which included a directory of the services in Delta County;
- Council wished everyone a safe and Happy fourth of July;

Hearing no further public comment, the Council adjourned at 7:44 p.m.

Respectfully submitted,

Robert S. Richards, CMC
City Clerk

Approved: _____
Leo J. Evans, Mayor