

CITY OF MASON

201 West Ash St.
Mason, MI 48854-0370

City Hall 517-676-9155
Fax 517-676-1330

CITY COUNCIL MEETING - COUNCIL CHAMBER

Monday, December 1, 2014

7:30 p.m.

AGENDA

1. Call to Order
2. Roll Call
3. Pledge of Allegiance and Invocation
4. Announcements
5. People from the Floor
6. Consent Agenda
 - A. Approval of Minutes
 - Regular Council Meeting: November 17, 2014
 - B. Approval of Bills
7. Regular Business
 - A. Resolution 2014-55—City Officer Appointment—Attorney
 - B. Resolution 2014-56—Resolution for Changing MERS Benefits
 - C. Discussion—Public Utility Charges
8. Unfinished Business
9. New Business
10. Correspondence
11. Liaison Reports
12. Councilmember Reports
13. Administrator's Report
14. Adjournment

**CITY OF MASON
REGULAR CITY COUNCIL MEETING
MINUTES OF NOVEMBER 17, 2014**

Mayor Clark called the meeting to order at 7:30 p.m. in the Council Chambers at 201 W. Ash Street, Mason, Michigan. Councilmember Droscha led the Pledge of Allegiance and offered the invocation.

Present: Councilmembers: Brown, Bruno, Clark, Droscha, Ferris, Mulvany, Naeyaert
Absent: Councilmember: None
Also present: Martin A. Colburn, City Administrator
Deborah J. Cwierniewicz, City Clerk
Michelle Pietsch, Asst. Finance Director/Asst. Treasurer
David Haywood, Zoning & Development Director
Ken Baker, DPW Superintendent
Dennis McGinty, City Attorney

ANNOUNCEMENTS

- Mason Kiwanis Community Thanksgiving Day Dinner – Mason First United Methodist Church
- Councilmember Brown expressed gratitude to those who voted for him, he congratulated Councilmember Jon Droscha and Councilmember-elect Mike Waltz on their election to City Council, and Ingham County Commissioner-elect Robin Case Naeyaert on her election to office. He also thanked City Clerk Cwierniewicz, and her great crew of Election Workers, for their dutiful administration of the General Election.

PEOPLE FROM THE FLOOR

None.

CONSENT AGENDA

MOTION by Naeyaert, second by Droscha,
to approve the Consent Agenda as follows:

- A. Approval of Minutes – Regular Council Meeting: October 20, 2014
- B. Approval of Bills: \$197,242.07

MOTION APPROVED

EXECUTIVE SESSION – ATTORNEY CLIENT –PRIVILEGED COMMUNICATION

MOTION by Naeyaert,
to adjourn to executive session to discuss an attorney/client privileged
communication dated November 10, 2014.

Yes (7) Brown, Bruno, Droscha, Ferris, Mulvany, Naeyaert, Clark

No (0)

MOTION APPROVED

The meeting adjourned to executive session at 7:34 p.m. and reconvened at 8:20 p.m.

REGULAR BUSINESS

Special Assessment Resolution No. 1—Project No. 2015-1 and Special Assessment Resolution No. 2—Project No. 2015-1

MOTION by Naeyaert, second by Droscha,
to consider Special Assessment Resolution No. 1 and Special Assessment Resolution
No. 2 of Project No. 2015-1 read.

MOTION APPROVED

Special Assessment Resolution No. 1 – Project No. 2015-1 was introduced by Droscha and seconded by Ferris.

**CITY OF MASON
2015 SIDEWALK IMPROVEMENTS
SPECIAL ASSESSMENT RESOLUTION NO. 1
PROJECT NO. 2015-1
November 17, 2014**

WHEREAS, upon its own motion and without petition, the City Council of the City of Mason desires to be advised of the feasibility of certain sidewalk improvements within the City, generally described as follows:

The installation of sidewalks and related improvements, and/or the replacement of sidewalk in the public right-of-way of the following properties and along and adjacent to the following streets: 227 Lawton, 202 E Maple, 203 E Maple, 209 E Maple, 210 E Maple, 215 E Maple, 218 E Maple, 221 E Maple, 224 E Maple, 229 E Maple, 230 E Maple, 235 E Maple, 314 E Maple, 317 E Maple, 321 E Maple, 326 E Maple, 328 E Maple, 332 E Maple, 401 E Maple, 402 E Maple, 406 E Maple, 409 E Maple, 410 E Maple, 415 E Maple, 740 E Maple, 744 E Maple, 758 E Maple, 766 E Maple, 775 E Maple, 788 E Maple, 810 E Maple, 820 E Maple, 821 E Maple, 831 E Maple, 223 S Rogers, 307 S Rogers, 225 Steele, 320 Steele, 300 Temple, 249 Washington, 331 Washington; and

WHEREAS, an estimate of the expenses of the Project and engineering drawings must be made, and the proposed special assessment district therefore must be determined.

NOW THEREFORE BE IT RESOLVED, that

- 1) The City Council does hereby tentatively declare its intention to proceed with the Project;
- 2) The City Administrator and/or Treasurer are hereby ordered to cause plans showing the Project, the location thereof, the proposed special assessment district, and estimates of the cost of the Project, to be prepared by Wolverine Engineers and Surveyors, Inc., Mason, Michigan;
- 3) The City Administrator, when the engineering plans and estimates for the Project are completed, is ordered to file same with the City Clerk, and said plans and estimates shall be made available for public inspection;
- 4) The City Administrator and/or Treasurer are hereby further authorized to proceed with all other necessary actions to initiate the Project;
- 5) All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be, and the same are, hereby rescinded.

RESOLUTION APPROVED

Special Assessment Resolution No. 2– Project No. 2015-1 was introduced by Droscha and seconded by Naeyaert

**CITY OF MASON
2015 SIDEWALK IMPROVEMENTS
SPECIAL ASSESSMENT RESOLUTION NO. 2
PROJECT NO. 2015-1
November 17, 2014**

WHEREAS, the City Council has ordered plans and estimates of costs of certain sidewalk improvements described more specifically below, to be made; and

WHEREAS, the City Council of the City of Mason, deems it advisable and necessary for the public health, safety and welfare of the City and its inhabitants to carry out the following generally described sidewalk improvement project:

The installation of sidewalks and related improvements, and/or replacement of sidewalk in the public right-of-way of the following properties and along and adjacent to the following streets: 227 Lawton, 202 E Maple, 203 E Maple, 209 E Maple, 210 E Maple, 215 E Maple, 218 E Maple, 221 E Maple, 224 E Maple, 229 E Maple, 230 E Maple, 235 E Maple, 314 E Maple, 317 E Maple, 321 E

Maple, 326 E Maple, 328 E Maple, 332 E Maple, 401 E Maple, 402 E Maple, 406 E Maple, 409 E Maple, 410 E Maple, 415 E Maple, 740 E Maple, 744 E Maple, 758 E Maple, 766 E Maple, 775 E Maple, 788 E Maple, 810 E Maple, 820 E Maple, 821 E Maple, 831 E Maple, 223 S Rogers, 307 S Rogers, 225 Steele, 320 Steele, 300 Temple, 249 Washington, 331 Washington;

Further, the City Council deems it advisable to defray all or a portion of the cost of the Project through special assessments assessed against the properties specially benefited thereby; and

WHEREAS, the City Council desires to proceed further with the Project.

NOW THEREFORE BE IT RESOLVED, that:

- 1) The City Council tentatively declares its intention to proceed with the Project as generally described above, and to defray all or a portion of the cost thereof by special assessments against the properties specially benefited thereby in the proposed sidewalk improvement special assessment district;
- 2) There is hereby tentatively designated a special assessment district against which all or a portion of the costs of the Project are to be assessed, consisting of the lots and parcels of land described in **Exhibit A**, attached hereto and made a part hereof by reference;
- 3) The City Council shall meet at a regular meeting in the City Hall, 201 West Ash Street, Mason, Michigan 48854, on Monday, the 15th day of December, 2014 at 7:30 p.m., at which time and place the City Council will hear any objections to the Project and to the proposed special assessment district therefore;
- 4) The City Clerk is hereby ordered to cause notice of such hearing to be made to the owners of the lots and parcels of land described in **Exhibit A**, attached hereto and made a part hereof by reference, pursuant to Section 66-4 of the Mason Code and the provisions of the City Charter. Said notice shall be in substantially the following form:

**NOTICE OF HEARING
CITY OF MASON
INGHAM COUNTY, MICHIGAN
NOTICE OF PUBLIC HEARING ON THE
SPECIAL ASSESSMENT ROLL FOR THE
SIDEWALK IMPROVEMENTS
SPECIAL ASSESSMENT PROJECT NO. 2015-1**

TO THE RESIDENTS AND PROPERTY OWNERS OF THE CITY OF MASON, INGHAM COUNTY, MICHIGAN, the owners of the land described below within the proposed Sidewalk Special Assessment District 2015-1, and any other interested persons:

PLEASE TAKE NOTICE that the City Council of the City of Mason, acting on its own initiative, proposes to make the following generally-described sidewalk improvements with respect to the proposed Sidewalk Improvement Special Assessment District-Project 2015-1:

The installation of sidewalks and related improvements, and/or replacement of sidewalk in the public right-of-way of the following properties and along and adjacent to the following streets: 227 Lawton, 202 E Maple, 203 E Maple, 209 E Maple, 210 E Maple, 215 E Maple, 218 E Maple, 221 E Maple, 224 E Maple, 229 E Maple, 230 E Maple, 235 E Maple, 314 E Maple, 317 E Maple, 321 E Maple, 326 E Maple, 328 E Maple, 332 E Maple, 401 E Maple, 402 E Maple, 406 E Maple, 409 E Maple, 410 E Maple, 415 E Maple, 740 E Maple, 744 E Maple, 758 E Maple, 766 E Maple, 775 E Maple, 788 E Maple, 810 E Maple, 820 E Maple, 821 E Maple, 831 E Maple, 223 S Rogers, 307 S Rogers, 225 Steele, 320 Steele, 300 Temple, 249 Washington, 331 Washington;

TAKE FURTHER NOTICE that the City Council will meet on Monday, the 15th day of December, 2014, at 7:30, p.m., in the City Hall, 201 West Ash Street, Mason, Michigan 48854, for the purpose of hearing any objections to the proposed sidewalk improvement project and the proposed special assessment district therefore.

Appearance and protest at the hearing, in person or in writing, are required in order to appeal the action of the City Council in approving the proposed sidewalk improvement project, the special assessment district or the amount of the special assessment to the state tax tribunal. A property owner or party in interest, or his or her agent, may appear in person at the hearing to protest the special assessment proceedings or may file his or her appearance and protest by letter and his or her personal appearance will not be required. The owner or any person having an interest in the real property who protests in person or in writing at the hearing may file a written appeal of a special assessment with the state tax tribunal within 35 days of the date the special assessment roll is confirmed by the City Council.

Further information regarding the street and sidewalk improvement special assessment project is available at the City Clerk's offices, City Hall, 201 West Ash Street, Mason, Michigan 48854.

Dated: November 17, 2014

Deborah J. Cwierniewicz, City Clerk
City of Mason
Ingham County, Michigan

- 5) All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be, and the same are, hereby rescinded.

RESOLUTION APPROVED

Resolution No. 2014-53—A Resolution Declaring an Additional Moratorium on the Issuance of Licenses for Primary Caregiver Operations and Dispensaries in the City of Mason

Haywood elaborated on his submitted report.

MOTION by Naeyaert, second by Brown,
to consider Resolution No. 2014-53 read.

MOTION APPROVED

Resolution No. 2014-53 was introduced by Ferris and seconded by Naeyaert.

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2014-53
A RESOLUTION DECLARING AN ADDITIONAL TEMPORARY MORATORIUM ON THE
ISSUANCE OF LICENSES FOR PRIMARY CAREGIVER OPERATIONS AND DISPENSARIES
IN THE CITY OF MASON
November 17, 2014**

WHEREAS, the People of the state of Michigan have adopted, by initiative, the Michigan Medical Marihuana Act (the "Act"); and

WHEREAS, the Act authorizes primary caregivers to assist qualifying patients in obtaining medical marihuana by allowing the primary caregiver to grow, possess, and deliver limited amounts of marihuana to the patients and receive compensation for doing so; and

WHEREAS, the Act's provisions have resulted in primary caregivers combining to form what has come to be termed "dispensaries" in adjacent municipalities in which multiple registered primary caregivers operate from a single building to create situations in which amounts of marihuana greater than the act would otherwise allow for a single primary caregiver are being possessed and stored on single lots and properties; and

WHEREAS, the Act does not regulate or even necessarily allow for dispensaries and many significant aspects of the operation of a dispensary could affect the health, safety and welfare of the citizens of the city of Mason; and

WHEREAS, the Act does not regulate many significant aspects of the operation of a primary caregiver that could affect the health, safety and welfare of the citizens of the city of Mason; and

WHEREAS, the City had previously adopted an ordinance which was understood to have the effect of prohibiting primary caregiver operations and dispensaries within the City; and

WHEREAS, the Michigan Supreme Court has determined such ordinances to be in conflict with the Act but also has stated that the use of Marihuana pursuant to the Act may be regulated; and

WHEREAS, the City of Mason intends to regulate primary caregiver operations and dispensaries to ensure the health, safety and welfare of its citizens; and

WHEREAS, the City of Mason, as part of the regulatory process, has adopted an ordinance requiring primary caregiver operations and dispensaries to be licensed; and

WHEREAS, in light of pending legislation, court rulings, and position statements of the Michigan Attorney General, the Michigan Sheriffs' Association, and the Michigan Association of Chiefs of Police, the City of Mason is in the process of considering and studying how to effectively regulate dispensaries and primary caregiver operations to meet the intent of the Act while preserving the health, safety and welfare of its citizens; and

WHEREAS, the City Council desires that no licenses be authorized or issued in the city of Mason for dispensaries or primary caregiver operations until the process is concluded to determine the appropriate and necessary regulations;

NOW, THEREFORE, BE IT RESOLVED that:

1. No applications for licenses for primary caregiver operations shall be accepted and no licenses shall be issued from the effective date of this resolution and while the moratorium enacted by this resolution or any subsequently adopted resolutions which may extend this moratorium shall remain in effect.
2. No applications for licenses for dispensaries shall be accepted and no licenses shall be issued from the effective date of this resolution and while the moratorium enacted by this resolution or any subsequently adopted resolutions which may extend this moratorium shall remain in effect.
3. This limited moratorium on the issuance of primary care giver operation licenses and dispensary licenses shall be effective for 180 days from passage.

Yes (6) Brown, Bruno, Clark Ferris, Mulvany, Naeyaert

No (1) Droscha

RESOLUTION APPROVED

MOTION by Brown, second by Droscha,
to refer the matter adopted by Resolution No. 2014-53 to the Planning Commission to consider and study if and how to effectively regulate dispensaries and primary caregiver operations to meet the intent of the Michigan Medical Marihuana Act while preserving the health, safety and welfare of its citizens.

MOTION APPROVED

Resolution No. 2014-54—A Resolution to Award the Rehabilitation of Franklin Farms Well to Northern Pump & Well

Discussion was held to consider awarding the contract with Option No. 2 to Peerless Midwest. Much discussion ensued regarding the two bid options. Mr. Baker was expected to arrive shortly.

MOTION by Droscha, second by Brown,
to consider Resolution No. 2014-54 read.

MOTION APPROVED

Resolution No. 2014-54 was introduced by Ferris and seconded by Naeyaert.

MOTION by Brown, second by Mulvany,
to table consideration of Resolution No. 2014-54 until the Public Works
Superintendent arrived.

MOTION APPROVED

Mr. Baker arrived at 8:09 p.m. He was requested to explain the two options he requested for
from bidders on the Franklin Farms Well. Discussion ensued whether to approve Option No. 1
or Option No. 2.

MOTION by Brown, second by Naeyaert,
to remove consideration of Resolution No. 2014-54 from the table.

MOTION APPROVED

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2014-54
AWARD OF FRANKLIN FARMS WELL NO. 6 REHABILITATION
November 17, 2014**

WHEREAS, it is in the best interests of the City of Mason to maintain our wells; and

WHEREAS, Franklin Farms well is in the need of rehabilitation and is budgeted for in the 2014-
2015 budget; now

THEREFORE BE IT RESOLVED, that the Mason City Council does hereby approve the award of
the Franklin Farms well rehabilitation to Northern Pump & Well in the amount of \$17,932.80

Yes (5) Brown, Droscha, Ferris, Mulvany, Naeyaert

No (2) Bruno, Clark

RESOLUTION APPROVED

Motion—Amend the 2014-2015 Fiscal Year Budget

Colburn stated that three budget amendments were presented for approval for the quarter. The
Vactor hydraulic water pump failed and had to be replaced. The Fire Station front apron and
sidewalk replacement, and the Cedar Street Slip Line Project were items budgeted in
2013/2014 and not started until the 2014/2015 budget year.

MOTION by Brown, second by Droscha,
to amend the 2014-2015 Fiscal Year Budget as presented.

MOTION APPROVED

Motion— Motion to Approve Installment Purchase Agreement for Plow Truck

Colburn stated that three quotes for financing the purchase of a plow truck were submitted for a
2015 International 7400 with a dump and plow package for the term of five years, in the total
amount of \$139,643. Dart Bank quoted an interest rate at 2.50%, Mason State Bank quoted
3.99%, and Independent Bank quoted 4.25%. .

MOTION by Naeyaert, second by Droscha,
to approve the quote from Dart Bank.

MOTION APPROVED

Motion—1020 E. Ash St. – Proposal for Asbestos Abatement Services

Haywood elaborated on his report regarding the quote for asbestos abatement for the property

located at 1020 East Ash Street. At its October 20, 2014 meeting, Council requested Mr. Haywood to obtain information from the contractors explaining the basis of their quote and to provide Council with the proposals for asbestos abatement.

It was discussed that the ALAM Inc., proposal did not include adding the tar roof. The addition of the tar roof cost brings the proposal closer in range to the other two quotes. Because water is used in the tar roof process, it was stated that the approximate \$1,800 anti-freeze fee could have been avoided if the quotes received in August had been presented to Council before October.

MOTION by Naeyaert, second by Droscha,
to accept the proposal from ALAM Inc. in the amount of \$10,780 and authorize
the City Administrator to enter into an agreement for asbestos abatement
services at 1020 East Ash Street.

Yes (6) Brown, Clark, Droscha, Ferris, Mulvany, Naeyaert

No (1) Bruno

MOTION APPROVED

UNFINISHED BUSINESS

Discussion was held concerning implementing a new form for the administrator's evaluation this year. Colburn stated he had completed his portion of the process and asked if the new process could be considered for next year. Council agreed. Mr. Colburn disseminated completed copies of his portion of the process to each council member.

Also discussed was the City Charter mandate that calls for two City Council meetings to be held each month. McGinty stated that there are legitimate reasons for cancelling a meeting, such as the lack of a quorum. As in the case of the first meeting in November, the pressures of the election were a legitimate reason to not comply with the Charter. The determination by Council was in recognition that it would be administratively difficult because the room is utilized for election precincts, and there is no other available room for Council to meet in. Public notice would need to be provided. Also, the approved schedule would need to be amended to set a second meeting date. Council may determine to cancel any meeting for a legitimate reason.

NEW BUSINESS

It was discussed that the street sign at Kerns Road has yet to be replaced with the correct spelling of the road. Also, the street sign for Maine Court has Maine Street on the reverse side.

CORRESPONDENCE

All correspondence was distributed. Attorney McGinty provided a letter of retirement, effective December 31, 2014, and a proposal for transition with his law firm.

LIAISON REPORTS

- Brown informed Council regarding the Sesquicentennial Committee business
- Mulvany informed Council regarding Historic District Commission business
- Naeyaert informed Council regarding Planning Commission business
- Clark informed Council regarding Downtown Development Authority business

COUNCILMEMBER REPORTS

None.

ADMINISTRATOR'S REPORT

Colburn informed Council regarding current City business. He presented a plaque to Council from the University of Michigan in recognition of economical development involvement by the City of Mason.

ADJOURNMENT

The meeting adjourned at 9:43 p.m.

Deborah J. Cwierniewicz, City Clerk

Leon R. Clark, Mayor

11/24/2014 12:49 PM
User: TF
DB: Mason City

INVOICE APPROVAL BY INVOICE REPORT FOR CITY OF MASON
EXP CHECK RUN DATES 11/21/2014 - 12/03/2014
BOTH JOURNALIZED AND UNJOURNALIZED
BOTH OPEN AND PAID
COUNCIL REPORT
MONDAY, DECEMBER 1, 2014

Vendor Code Invoice GL Number	Vendor Name Invoice Description GL Description	Invoice Date	Amount
07800	BLUE CROSS BLUE SHIELD OF MICHIGAN		
G#7029499710DIV#0&2 750-000.00-231.015	CITY EXPENSE HEALTH INSURANCE DEC 2014 CITY EXPENSE HEALTH INSURANCE DEC 2014	11/21/2014	21,158.93
G#70294999DIV#001 101-855.00-874.001	CITY EXPENSE RETIREES HEALTH INSURANCE DEC 2014 CITY EXPENSE RETIREES HEALTH INS DEC	11/21/2014	5,368.54
VENDOR TOTAL:			26,527.47
05016	GRANGER		
NOV 2014 101-528.00-818.000	NOVEMBER REFUSE #2300 CUSTOMERS NOVEMBER REFUSE #2300 CUSTOMERS	12/01/2014	27,761.00
VENDOR TOTAL:			27,761.00
06205	KEMIRA WATER SOLUTIONS		
9017420923 592-555.00-757.000	9.74 DRY TONS OF FERRIC CHLORIDE 9.74 DRY TONS OF FERRIC CHLORIDE	12/01/2014	5,134.34
VENDOR TOTAL:			5,134.34
TOTAL - ALL VENDORS:			59,422.81

I hereby certify that I have reviewed the above bills and expenses and to the best of my knowledge and belief, they cover expenditures of City services and materials and are within current budget appropriations.



Martin A. Colburn
City Administrator

CITY OF MASON
STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: December 1, 2014

Agenda Item: 7 (A)

AGENDA ITEMS

Resolution No. 2014-55—City Officer Appointment—Attorney

EXHIBITS

- Letter of Retirement from Attorney Dennis McGinty dated November 17, 2014

STAFF REVIEW

Administration

SUMMARY STATEMENT

After more than 38 years of service as the City of Mason's attorney, Dennis McGinty has announced his plans to retire at the end of this year. His replacement will be attorney Thomas Hitch of the same law firm, McGinty, Hitch, Housefield, Person, Yeadon & Anderson, P.C.

RECOMMENDED ACTIONS

Move to approve Resolution 2014-55.

McGINTY, HITCH, HOUSEFIELD, PERSON,
YEADON & ANDERSON, P.C.

ATTORNEYS AT LAW

601 ABBOT ROAD

P.O. BOX 2502

EAST LANSING, MICHIGAN 48826

TELEPHONE (517) 351-0280

FAX (517) 351-3583

www.mcgintrylaw.com

MOLLY L. COSCARELLI
ERIN E. HOUSEFIELD
DAVID W. MEYERS

OF COUNSEL:
MARK W. JAKUBIAK

DENNIS E. McGINTY
THOMAS M. HITCH
TERRY MCKENNEY PERSON
THOMAS M. YEADON
MARK A. ANDERSON
J. WILLIAM HOUSEFIELD, JR.

November 17, 2014

Mason City Council
201 W. Ash
P.O. Box 370
Mason, MI 48854

Re: **Legal Representation**

Dear Mayor Clark and Mason City Council Members:

In June, 1976, I was given the honor and privilege by the City Council to serve as the Mason City Attorney. Since then, I and the members of my firm have served the City to the best of our ability under eight mayors, 20 separate City Councils, and two city administrators. Throughout this time, the City's elected and appointed officials have, without exception, consistently demonstrated the highest standards of professional and ethical conduct in the performance of their official duties. You and they have volunteered countless hours of personal time and effort so that Mason could be and remain the wonderful city that it is today. It has been most satisfying and rewarding to be associated with all of these individuals – both on a professional and personal level. However, there comes a time in one's professional life when retirement must be considered and, for me, that time is now. I have therefore decided to retire from the full-time practice of law and will take the opportunity to now enjoy retirement with my spouse, children, and grandchildren. I would therefore propose that my appointment as Mason City Attorney come to an end effective December, 2014.

Our firm's relationship with the City has been an at will employment agreement and I would propose that nothing change in that regard. My firm would like to continue representation of the City of Mason upon the same terms and conditions that now exist. My partner, Thomas Hitch, would accept appointment as the designated City Attorney.

Tom Hitch has been with the firm since 1977 – the year following our initial appointment, and has performed legal services for the City of Mason in many capacities over the past years. One of his more notable involvements concern the annexations which expanded the Mason city boundaries to the east. Tom has also served as an Assistant East Lansing City Attorney for 36 years, was the Potterville City Attorney for over 30 years, and most recently has served as the Charlotte City Attorney for the past ten years, which position he would continue to hold. Tom is a very skilled and highly-respected municipal attorney.

**McGINTY, HITCH, HOUSEFIELD, PERSON,
YEADON & ANDERSON, P.C.**

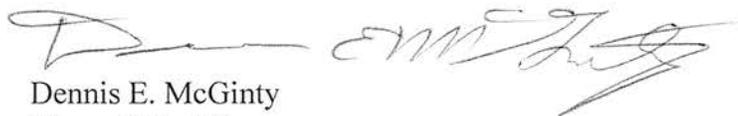
Page Two
November 17, 2014

In addition, another partner, Tom Yeadon, who assumed the office of the East Lansing City Attorney three years ago, continues to serve and supervise the City of Mason's legal work in connection with criminal and ordinance enforcement matters, with our associate, Molly Coscarelli handling day-to-day district court matters. Tom Yeadon's and Molly Coscarelli's relationship would likewise continue with the City on the same terms if agreeable with the City Council. I also intend to continue my professional relationship with our law firm and continue to practicing on a part-time intermittent basis for at least the next year or two. During this time, I will make myself available on a priority basis as a legal resource to my firm and the City to ensure a smooth and lasting transition.

Again, it has been an honor and a pleasure to be associated with such a wonderful community and the dedicated elected and appointed officials serve and have served the City.

Sincerely,

McGINTY, HITCH, HOUSEFIELD,
PERSON, YEADON & ANDERSON, P.C.



Dennis E. McGinty
Mason City Attorney

bks

cc Martin A. Colburn, City Administrator
Deborah Cwierzniwicz, City Clerk

Introduced:
Second:

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2014-55**

RESOLUTION OF CITY OFFICER APPOINTMENT – ATTORNEY

December 1, 2014

WHEREAS, in accordance with the Charter, City of Mason Michigan, Adopted June 26, 1951; and

WHEREAS, as listed in section 4.6, the Administrative Officers of the City are listed; and

WHEREAS, it is the recommendation of the City Administrator to fill the City Officer vacancy by appointing Thomas M. Hitch as the Attorney for the City of Mason; now

THEREFORE, BE IT RESOLVED, that the City Council of the City of Mason does hereby appoint Thomas M. Hitch as an Administrative Officer to the office of Attorney and is hereby charged with performing the duties and responsibilities of the office.

Yes

No

CLERK'S CERTIFICATION: I hereby certify that the foregoing is a true and accurate copy of a resolution adopted by the City Council at its regular meeting held Monday, December 1, 2014, the original of which is part of the Council's minutes.

Deborah J. Cwierniewicz, City Clerk
City of Mason
Ingham County, Michigan

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: December 1, 2014

Agenda Item: 7 (B)

AGENDA ITEM

- Resolution No. 2014-56—Resolution For Changing MERS Benefits

EXHIBITS

STAFF REVIEW

Administration

SUMMARY STATEMENT

Effective October 1, 1997 AFSCME Local #1390 (General Union group in MERS) was approved by Resolution of the Mason City Council to move from the Defined Benefit Retirement Plan B-2 to the Defined Benefit Retirement Plan B-3. The B-2 plan has a 2.0% benefit multiplier, and the B-3 plan has a 2.25% benefit multiplier. At the time of the change, the employer contribution was 0.00%.

A special conference was called between the City and AFSCME Union to discuss consideration of adjusting the MERS contributions. City Council has agreed that the City pay the remainder of 6.13% for the lifespan of the current contract, which terminates September 2016. The new employee contribution would be 11.89% and the AFSCME Union members are responsible for any increased adjustments for the lifespan of the current contract.

RECOMMENDED ACTION

Approve Resolution No. 2014-56.



Defined Benefit Plan Adoption Agreement

1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Mason Municipality #: 3304

If new to MERS, please provide your municipality's fiscal year: July through June.
Month Month

II. Effective Date

Check one:

A. If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20__.

This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible participant shall be credited as follows (choose one):

- All prior service from date of hire
- Prior service proportional to assets transferred; all service used for vesting
- Prior service and vesting service proportional to assets transferred
- No prior service but grant vesting credit
- No prior service or vesting credit

Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 01), the effective date shall be the first day of December, 2014. *Please note:* You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20__.

E. If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20__.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

01 General Union

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

Only retirees will be in this division.

These employees are (check one or both):

In a collective bargaining unit (attach cover page, retirement section, signature page)

Subject to the same personnel policy

To receive one month of service credit (check one):

An employee shall work 10 _____ hour days.

An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

Probationary Periods are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

Temporary employees in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: December 31, 20 12

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

Our MERS representative presented and explained the valuation results to the Administration/Finance on 06/18/2014.
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

As an authorized representative of this municipality, I _____
(Name)
_____ waive the right for a presentation of the results.
(Title)

Defined Benefit Plan Adoption Agreement

2. This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.
3. Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.
4. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

Termination Final Average Compensation (calculated over the members entire wage history)

Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

5. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years
6. Vesting (5 -10 yrs, increments of 1 yr) _____ years
7. Required employee contribution (Max 10%, increments of 0.01%) 11.89 %
8. Compensation, for retirement purposes, is defined as base wages and all of the following. Check applicable boxes to *exclude* these types from your MERS reported wages:

Longevity pay

Overtime pay

Shift differentials

Pay for periods of absence from work by reason of vacation, holiday, and sickness

Workers' compensation weekly benefits (if reported and are higher than regular earnings)

A member's pre-tax contributions to a plan established under Section 125 of the IRC

Transcript fees paid to a court reporter

A taxable car allowance

Short term or long term disability payments

Payments for achievement of established annual (or similar period) performance goals

Payment for attainment of educational degrees from accredited colleges, universities, or for acquisition of job-related certifications

Lump sum payments attributable to the member's personal service rendered during the FAC period

Other: _____

Other 2: _____

Defined Benefit Plan Adoption Agreement

9. Early Normal Retirement with unreduced benefits

- Age 50 with 25 years of service Age 50 with 30 years of service
- Age 55 with 15 years of service Age 55 with 20 years of service
- Age 55 with 25 years of service Age 55 with 30 years of service
- Any age with (20-30 yrs, in 1 yr increments) _____ years of service
- _____

10. Other

- Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the participant's benefit
- Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
- DROP + with _____%

11. Cost-of-Living Adjustment

<input type="checkbox"/> All current retirees as of effective date <input type="checkbox"/> Retirees who retire between ____/01/____ and ____/01/____ <i>(one time increase only)</i>	<input type="checkbox"/> Future retirees who retire after effective date
Increase of ____% or \$____ per month	Increase of ____% or \$____ per month
Select one: <input type="checkbox"/> Annual automatic increase <input type="checkbox"/> One-time increase	<input type="checkbox"/> Annual automatic increase
Select one: <input type="checkbox"/> Compounding <input type="checkbox"/> Non-compounding	Select one: <input type="checkbox"/> Compounding <input type="checkbox"/> Non-compounding
Employees must be retired ____ months (6-12 months, increments of 1 month)	Employees must be retired ____ months (6-12 months, increments of 1 month)

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event any conflict between MERS Plan Document and the MERS Defined Benefit Plan, the provisions of the Plan Document control.

Defined Benefit Plan Adoption Agreement

VI. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 45A(3), and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

Defined Benefit Plan Adoption Agreement

VIII. Execution

Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by City of Mason on
the ____ day of _____, 20____. (Name of Approving Employer)

Authorized signature: _____

Title: _____

Witness signature: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)

CITY OF MASON
STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: December 1, 2014

Agenda Item: 7 (C)

AGENDA ITEMS

Discussion—Public Utility Charges

EXHIBITS

- Memo from Dennis McGinty, dated November 26, 2014

STAFF REVIEW

Administration

SUMMARY STATEMENT

There have been several issues this year that arose on the City Council floor regarding billings for water and sewer services as well as tap-in fees for new development. The City of Mason operates a water/sewer fund that is treated as a business account. These are not taxed funds, but fees for service. As there has been an interest as to how we can best serve the public while operating within the law, I have requested a legal review so that we can develop a discussion to fully understand our obligations and options.

RECOMMENDED ACTIONS

Discussion

**McGINTY, HITCH, HOUSEFIELD, PERSON,
YEADON & ANDERSON, P.C.**

MEMORANDUM

TO: Mason City Council

FROM: Dennis E. McGinty, City Attorney *DEM*

RE: **WATER AND SEWER UTILITY SERVICE CHARGES AND CONNECTION FEES**

DATE: November 26, 2014

The City has, on several recent occasions, been petitioned by water and sewer customers seeking relief from water and sewer bills substantially in excess of the typical historical charges for the premises. In such cases, there is a process in the City Code where the City meters may be tested for accuracy and the costs of service and testing adjusted accordingly based upon the tests. In some cases, this process has been followed but has not resolved the dispute, with the property owner appealing to Council for rate relief based upon general hardship claims.

A second area of contention concerns the sewer connection fees which are charged when a new building is constructed or expanded. These connection fees are established by Section 82-265 of the City Code. The fee is based upon a residential equivalent unit ("REU") factor with the minimum equivalent for any premises being 1.0 REUs. The table of unit factors establishing REUs based upon the type and use of the property is established by City Council Resolution No. 2002-56. This unit factor table takes into account such considerations as types of use, number of employees, occupancy levels, and other use factors which contribute to utility consumption. Recently, a property owner seeking to expand a professional practice appeared before Council objecting to the application of this residential unit factor table to his particular premises, claiming the fees were excessive.

As a result of these issues, the City Administrator has requested that this office review the general legal rules in Michigan concerning how municipal utility fees may be assessed, collected, and adjusted in certain cases.

Municipal utility charges are governed by two over-arching provisions of the Michigan Constitution of 1963. The first provision is Article 7, § 26, which states that "no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose." This provision has been interpreted by the courts to prohibit any gift or donation of money, property, or services by a municipal corporation. *Kaplan v Huntington Woods*, 357 Mich 612 (1959). The City respects this constitutional prohibition against free utility services through City Code Section 82-242, which provides as follows:

No free service shall be service by the system to any person or to any public agency or instrumentality, but service so furnished by the system shall be paid for in accordance with the schedule of rates . . . in compliance with the provisions of this article.
Section 82-242.

The “system” referenced here is defined at Code Section 82-1 to mean the complete water supply and sanitary sewage disposal system of the City.

The Michigan Revenue Bond Act, 1933 PA 94, MCL 141.101, *et seq.*, provides further obligations with respect to the setting, collection, and accounting for utility service charges. Rates for services shall be fixed before issuance of bonds and shall be sufficient to provide for all expenses of the operation and maintenance of the system, payment of principal and interest on the bonds, bond reserves, and such other expenditures and funds (capital improvement) as the bond ordinance shall provide. MCL 141.121(1). Further, the revenues and expenses of the public improvement systems financed through bond funds shall be accounted for separately to cover all of the expenses noted above. MCL 141.122.

The City’s enterprise funds carry substantial long-term debt to finance the water and sewer infrastructure. The bond ordinances and underwriting practices prohibit free or discounted services where the rates and charges are pledged to the bond holders as security for the payment of principal and interest on the bonds sold by the City.

A related state statute, 1939 PA 178, provides that a municipality which operates a water distribution system or a sewage system shall have as security for the collection of water and sewer system rates and charges a lien upon the premises to which the sewage system service or water was supplied. MCL 123.162. This statute further provides that this lien becomes immediately effective upon distribution of the water or provision of the sewer system services and is enforceable for three years thereafter (MCL 123.162). This lien has priority over all other liens against the property, and shall be enforced by the City in the same manner as provided in its Charter and in the State Tax Code for the enforcement and collection of tax liens (MCL 123.165). The City incorporated the provisions of Act 178 at Section 82-246 of the Mason City Code, which state that if the utility charges are not paid within six months after the charges are due, the Finance Director shall certify to the City Tax Assessor the facts of such delinquency and the City Tax Assessor shall enter such delinquent taxes on the next city general tax roll and such tax lien shall be enforced in the same manner as provided by law for delinquent and unpaid taxes, Ordinance Section 82-246(a). The provisions of this ordinance and the incorporated state statute place mandatory duties on the City Finance Director and Assessor to perfect and collect the City’s lien for utility services. Failure to follow these provisions would constitute a breach of official duty.

Based upon the foregoing Constitution, statutes, and ordinances, it is, therefore, my opinion that City utility charges become a lien immediately upon service to the premise, creating a property interest in favor of the City for the collection of these charges. No statute has been found authorizing the City to waive all or part of these charges based upon hardship or any other social purpose and to do so would be contrary to Article 7, § 26 and the statutes and ordinances of the City cited above.

However, once the utility bill has been added to the summer tax bill, there is a right of appeal to any person who wishes to dispute such bill based upon an error in fact or procedure. Upon receipt of the tax bill containing disputed utility charges, the taxpayer has, in our opinion, a right of appeal to the Michigan Tax Tribunal. Under Section 35a of the Tax Tribunal Act, a party aggrieved by a decision of the property taxing authority may file a written petition with the MTT within 35 days after receipt of the bill. MCL 205.735a(6).

In regard to disputes concerning sewer connection fees, we believe an opportunity for appeal could be established by the City Council regarding the determination and assessment of the sewer connection fees set by Code Section 82-265. These charges are established upon review of the building plans by the City Engineer and assessed by the Zoning and Development Director upon issuance of the building permit. In cases where a property owner believes the table of unit factors established by Resolution 2002-56 is not being correctly calculated or applied by the official, the City Council could, by ordinance, provide for a right to appeal to an independent third party. This could be an appeal similar to that currently allowed with respect to the municipal separate storm sewer system pursuant to Section 82-276(c) where an individual may appeal a decision to the Mason Building Code Board of Appeals by filing a written application for appeal within 20 days of the decision or order of the authority. As an alternative, the Council might authorize by ordinance an appeal of such decisions directly to the City Council with procedures authorizing the Council to appoint a hearings officer to conduct a hearing and present findings of fact and a proposal for a decision to the City Council for its determination on such an appeal. Absent any such appeal procedures, any party aggrieved by the decision establishing sewer connection fees under the Residential Equivalent Unit Factor Tables at present has only a right to an appeal to the Ingham County Circuit Court.

There is a provision in state law, MCL 211.761, which allows the deferment of special assessments on homestead properties and the City does allow the deferral of special assessments for hardship in certain cases, Code Section 66-19. We've considered suggesting the possibility of a similar deferral in the case of the sewer connection fees, but such deferral does not seem necessary or practical since connection fees are assessed at the time building permits are pulled for the construction or addition and the connection fees are typically paid along with the permit fees and included in the cost of construction of the building or improvement.

The second constitutional limitation regarding the establishment of utility rates is the Headlee Amendment, 1963 Const, Art 9, § 33, which prohibits any local unit of government from levying

a tax without the approval of the voters. The Headlee Amendment was first applied to utility user fees by the Michigan Supreme Court in *Bolt v City of Lansing*, 459 Mich 152 (1998). Here, the Court stated that one factor to determine whether a utility service charge was a valid user fee or a tax in violation of Headlee was the requirement that the user fee must be reasonably proportionate to the necessary costs of the services, which test the City of Lansing failed to meet in the case of this so-called “rain tax.” This and subsequent decisions following *Bolt* tell us that user fees cannot serve a revenue raising purpose and must be reasonably proportionate to the costs of constructing, operating, and maintaining the sewer utility system. Subsequent courts have stated that municipalities will not be held to a mathematical computation with a scientific exactitude so long as the fee is reasonably proportionate to the costs of service. *Futernick v Sumpter Twp*, 2002 WL483507 (Mich App 2002).

The City complies with the requirements of the Revenue Bond Act and insures that utility rates be sufficient to pay all administration, operation, and maintenance expenses, and interest on principal and bonds, and necessary reserves as mandated by the provisions of the Act discussed above through the annual audit and periodic review of rates as required by City Code Section 82-266. However, were the City to engage in the wholesale practice of granting waivers and exemptions of utility user fees based upon hardship or other social goals, such rates could be challenged as in violation of the Revenue Bond Act or the Headlee Amendment. Likewise, if the City were to favor certain rate payers based upon hardship or other social concerns, the rates to the remaining rate payers would need to be increased accordingly to satisfy the legal mandate that aggregate charges be sufficient to cover all costs of service. Those rate payers subject to higher rates in such case could challenge such rates under Headlee on the basis that such rates exceed the actual cost of this service and constitute a tax.

Some utilities in Michigan offer budget billing options to assist customers where there is a disproportionate use of utility services due to seasonal or other factors. A budget billing practice where customers might elect to pay a fixed amount based upon their average annual usage over the four preceding quarters might assist those users who happen to experience excessive usage due to summer conditions or other exceptional circumstances. We believe budget billing would be permitted under 1963 Const, Art 7, § 26. However, a form of budget billing is currently followed by the Finance Director where there is an unexpectedly large bill due to conditions on the property – typically a plumbing defect. In such cases, the Finance Director will allow payment of the excess charges to occur over several billing cycles.

bks
cc Martin A. Colburn, City Administrator
Ref 086
Ret Pub Works - Water & Sewer Connection Fees