



**City of New Buffalo
224 W. Buffalo Street
New Buffalo MI 49117
SPECIAL CITY COUNCIL MEETING AGENDA
June 24, 2020 at 4:00 p.m.**

Call Meeting to Order

Roll Call

Approval of Agenda

Approval of Previous Minutes- 06/15/2020

Public Comment, Presentations and Recognitions

- Sign-up sheet provided – Three-minute time limit enforced

New Business

- Resolution 20.17- Resolution to provide an expedited approval process allowing restaurants and bars to temporarily expand service areas into adjacent sidewalks and other public spaces.
- Resolution 20.18- Resolution to provide an expedited approval process allowing retail stores to temporarily expand merchandise display areas into adjacent sidewalks and other public spaces.
- Resolution 20.19- EDA CARES Act Grant Application- Waterfront Improvements

Miscellaneous

Council Comments

Adjournment

Call to Order at 6:32 p.m.

Roll Call. All Present: Mayor O'Donnell, Councilmember Ennis, Robertson, Kroll and Spirito.

Approval of Agenda. Motion by Mayor O'Donnell, seconded by Kroll to approve the agenda with the addition of new business item, discussion of contribution for promotional film: Roll call vote, motion carried, 5-0

Consent Agenda. Motion by Robertson, seconded by Spirito to approve the Consent agenda: roll call vote, motion carried, 5-0.

Public Comment: Ira Hochberg- Boat slip and issues with storm drain. John Humphrey-Short-term rental resolution. John Natsis- Vacation rentals

Old Business

Branch and Leaf Policy. Motion by Robertson, seconded by, Spirito to approve the branch and leaf policy: roll call vote, motion carried 5-0.

New Business

Discussion of Contribution for promotional film. Contribution is now \$150.00 for the video that was produced for Harbor Country for the production of the video. City Attorney, Nick Curcio would like to know more about the company that produced the video. Motion by Mayor O'Donnell, seconded by Robertson to forward to staff and City Attorney to answer questions about the video production: roll call vote, motion carried, 5-0

Resolution #20.14 Budget Amendments 2020. Motion by Robertson seconded by Kroll to approve Resolution #20.14: roll call vote, motion carried, 5-0

Resolution #20.16 Short-term Rentals. Motion by Kroll seconded by, Ennis to approve Resolution #20.16 short-term extension: roll call vote, motion carried, 5-0

Marquette Drive Improvements. Motion by Spirito seconded by, Kroll to approve 75% participation and send certified letters to Marquette Drive Property owners notifying them of the project. roll call vote, motion carried, 5-0

Round House Development Grant Support. Motion by Robertson seconded by, Kroll to approve the roundhouse grant support with the attorneys amendments: roll call vote, motion carried, 5-0

Third Coast and Outpost Concession Agreement: Motion by Ennis seconded by, Robertson to approve the two businesses to launch equipment at boat launch not at the beach: roll call vote, motion carried, 5-0

Kona Ice Concession Agreement: Motion by Kroll seconded by, Ennis to deny request from Kona Ice Concession for a fee reduction: roll call vote, motion carried, 5-0

Sewer Connections for new Construction: Motion by Kroll, seconded by, Robertson to approve the first reading of Ordinance #246 to amend Section 16-11 of N.B. Code to clarify responsibility for sewer backups: roll call vote, motion carried, 5-0

Graduation Fireworks: Motion by Mayor O'Donnell, seconded by Kroll to approve the graduation fireworks: roll call vote, motion carried, 5-0

Whittaker/Buffalo Streets Parking Agreements: Motion by Kroll, seconded by, Spirito to approve the agreements with Seville Investments and Beer Church: roll call vote, motion carried, 5-0

Dooley's Site Plan Review: Motion by, Spirito seconded by, Robertson to approve Dooley's site plan: roll call vote, motion carried, 5-0

NIES Water Project Pay Request #3: Motion by Kroll, seconded by, Ennis to approve NIES Water Project Pay Request #3 in the amount of \$20,960.51: roll call vote, motion carried, 5-0

Fire Service Agreement: Motion by Kroll, seconded by, Robertson to approve the temporary Fire Service Agreement in the amount of \$2000.00 per month with New Buffalo Township: roll call vote, motion carried, 5-0

Covid Re-Opening Plan: Motion by Robertson, seconded by, Kroll to approve the Covid 19 Preparedness and response plan: roll call vote, motion carried, 5-00

Resolution #20.15 MDOT Lighted masked Armed Signals at Whittaker and Buffalo Street: Motion by Mayor O'Donnell, seconded by, Spirito to table resolution #20.15 MDOT lighted masked armed Signals contract at Whittaker and Buffalo Street to re-address in July: roll call vote, motion carried, 5-0

Quote for Temporary Seawall from the Beach Parking Lot to the Revetment: Motion by Kroll, seconded by, Spirito to approve the quote to extend the temporary seawall to the end of the beach parking lot in the amount of \$7,070.00: roll call vote, motion carried, 5-0

Appointments:

Motion by Mayor O'Donnell, seconded by, Spirito to approve Arlene Pokuta and Thomas Smith to the Zoning Board of Appeals: roll call vote, motion carried, 5-0

Motion by Mayor O'Donnell, seconded by, Spirito to approve William McCollum and Mark Joseph to the Planning Commission: roll call vote, motion carried, 5-0

Updates:

Council Comments: Mayor O'Donnell wanted to let residents know that John Krusl passed away. He was an integral part of the Pokagon Fund. Mayor O'Donnell had a moment of silence for Mr. Krusl.

Motion by Mayor O'Donnell, seconded by, Robertson to adjourn the meeting at 8:30 p.m.

Adjournment at 8:30 p.m.

amf

Lou O'Donnell IV, Mayor

Ann M. Fidler, City Clerk



MANAGER'S REPORT

June 24, 2020

AGENDA ITEM: Resolution 2020-17 Providing a Process to Allow Temporary Expanded Service Areas to Restaurants and Bars in to Sidewalks and other Public Spaces

SUMMARY: In response to COVID 19 impacts the DDA has asked that restaurants and bars be allowed to expand their service areas to outdoor areas. This resolution allows restaurants and bars to make application to the DDA which will recommend to the City Manager and Clerk who are authorized to sign and approve license agreements on behalf of the City. The application requires a site plan, signatures and an application fee set by the City Council. The license is terminable by either the Council or the applicant.

COST: None

RECOMMENDATION: Approve Resolution 2020-17 Providing a Process to Allow Temporary Expanded Service Areas to Restaurants and Bars in to Sidewalks and other Public Spaces

Respectfully submitted,

David Richards, City Manager

**CITY COUNCIL
CITY OF NEW BUFFALO
Berrien County, Michigan**

Council member _____, supported by Council member _____, moved the adoption of the following resolution:

RESOLUTION 2020- 17

A RESOLUTION TO PROVIDE AN EXPEDITED APPROVAL PROCESS ALLOWING RESTAURANTS AND BARS TO TEMPORARILY EXPAND SERVICE AREAS INTO ADJACENT SIDEWALKS AND OTHER PUBLIC SPACES

WHEREAS, in response to a worldwide pandemic, the Governor has issued a series of executive orders that caused a number of restaurants and bars in the City of New Buffalo to close or partially close for the last several months; and

WHEREAS, the businesses that were closed or partially closed are, pursuant to Executive Order 2020-110, now permitted to reopen subject to new regulations that include limiting capacity to 50% of normal seating and requiring six feet of separation between parties or groups at different tables or bar tops (e.g., spread tables out, use every other table, remove or put up chairs or barstools that are not in use); and

WHEREAS, in order to assist businesses to operate profitably under these new regulations, the Michigan Liquor Control Commission ("MLCC") has modified its rules to allow the expansion of outdoor service areas in an expedited manner; and

WHEREAS, the new MLCC rules allow businesses to expand outdoor service areas into public right-of-way and other public spaces with the approval of the local municipality having jurisdiction over the space; and

WHEREAS, the City Council wishes to provide an efficient and expedited process to review and approve requests for outdoor service areas in public rights-of-way and other adjacent public spaces under the control of the City.

NOW, THEREFORE, the City Council resolves as follows:

- A. Businesses wishing to temporarily expand their outdoor service areas into adjacent public spaces shall submit a written request to the City Clerk that includes all the following:
 1. A drawing or sketch depicting the public space desired for use and the proposed layout of any objects (tables, chairs, trash cans, serving stations, etc.) to be placed in the public space. The layout must be consistent with the regulations provided in the temporary license agreement attached as **Exhibit A** to this resolution.
 2. A signature indicating the approval of the owner of the premises in which the business operates, if different than the business owner.
 3. An application fee of \$ [REDACTED].
- B. Requests shall be reviewed by the City's Downtown Development Authority ("DDA") at a public meeting held in compliance with the Open Meetings Act or with any alternative rules for open meetings established by executive order of the Governor. The DDA shall endeavor to schedule meetings to consider requests in a timely manner.
- C. The DDA shall review each request to determine compliance with the regulations provided in the License Agreement. If such regulations are satisfied, and if the DDA otherwise determines that the proposed use of the public space would not negatively impact the public health, safety and welfare, the DDA shall by motion approve the application, conditioned upon the execution of a license agreement substantially in form attached as **Exhibit A**.

D. The City Manager and City Clerk are authorized and directed to sign approved license Agreements on behalf of the City. To the extent required by law, the City Manager's signature on the license agreement shall signify that the site plan for the business has been temporarily modified (as a minor amendment) to include the new outdoor service area, pursuant to 19-8 of the City's Zoning Ordinance. Upon expiration or termination of the license agreement, the modified site plan shall revert back to the site plan that was in effect immediately prior to its approval.

E. All resolutions and parts of resolutions are, to the extent of any conflict with this resolution, rescinded.

Yeas: Council member: _____

Nays: Council member: _____

Abstain: Council member: _____

Absent: Council member: _____

RESOLUTION DECLARED ADOPTED.

CERTIFICATION

As its Clerk, I certify that this is a true and complete copy of a resolution adopted by the City Council of the City of New Buffalo, Berrien County, Michigan, at a special meeting held on June _____, 2020.

Date: June _____, 2020

Ann M. Fidler, City Clerk

**TEMPORARY LICENSE AGREEMENT FOR
RESTAURANT/BAR OUTDOOR SERVICE AREA**

This License Agreement is made as of _____, 20____, between the City of New Buffalo, a Michigan municipal corporation, whose principal business address is 224 W Buffalo St., New Buffalo, MI 49117 (the "City") and _____, a _____ of _____ (the "Licensee")

RECITALS

- A. The Licensee owns, leases, or otherwise occupies real property in the City of New Buffalo at the address of _____, Tax I.D. No. _____ (the "Property"), and operates a restaurant and/or bar therein.
- B. There exists immediately adjacent to the Property a public right-of way or other public space controlled by the City.
- C. The Licensee wishes to temporarily use a portion of the adjacent public space as an outdoor service area and has requested the City's permission for such.
- D. In light of the ongoing COVID-19 pandemic and the restaurant capacity limitations now in place pursuant to the Governor's executive orders, the City is willing to accommodate the Licensee's request pursuant to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

Now therefore, in exchange for the consideration in and referred to by this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. License. The City licenses to the Licensee the public space designated on the drawing attached as **Exhibit 1** (the "Licensed Area") to operate an outdoor service area in a manner compliant with applicable ordinances of the City, subject to the terms and conditions of this Agreement and for no other purpose. The layout of the outdoor service area shall be in accordance with that depicted in Exhibit 1.
2. Term. The term of the license shall commence upon the date of this Agreement and continue until November 30, 2020, unless terminated early pursuant to the terms of this Agreement.
3. Maintenance. The Licensee shall, without cost to the City, maintain the Licensed Area as reasonably necessary to comply with applicable ordinances, policies, laws, rules, regulations, good practices, and to reasonably ensure its proper function, safety and general appearance.
4. Requirements of the Licensee. This license is subject to the following terms and conditions:
 - a. The Licensee shall clean the area of all trash, litter and food at the time of the service and not allow food or trash to enter other areas of the public right-of-way or other public spaces. The Licensed Area must be thoroughly cleaned at the time the outdoor service area each evening.
 - b. The Licensee shall arrange the outdoor sales and service area presentably for the public at the time business opens each day.
 - c. The Licensee shall not leave tables and chairs stacked in the Licensed Area or in other public spaces during hours that the restaurant is open.
 - d. The Licensee shall provide sufficient trash receptacles for patrons in order to prevent the accumulation of trash and litter in the public space. The use of public trash receptacles to satisfy this requirement is prohibited.

- e. The Licensee shall restrict the number of patrons to the number of chairs provided in the allotted space and must require patrons to wear shirts and shoes.
- f. No amplified music is allowed in the Licensed Area.
- g. The use of the right-of-way can be temporarily revoked as necessary for community events which may require use of the space, therefore the seating and other amenities should be reasonably portable.
- h. No alcoholic beverages shall be sold or consumed in the Licensed Area unless the area is also licensed by the Liquor Control Commission for outdoor service.
- i. The Licensee may begin conducting business in in the Licensed Area each day at 7:00 A.M. No customer shall be seated the Licensed Area after 10:30 P.M., and the Licensee shall ensure that no customers remain in the Licensed Area after 11:00 P.M.
- j. All tables, chairs, furniture, and other amenities placed in the Licensed Area under this Agreement shall be removed from the right-of-way at the time the outdoor space closes each evening.
- k. Outdoor bussing or service stations are prohibited.
- l. Outdoor food preparation is prohibited
- m. Outdoor service areas located on City sidewalks shall be arranged in such a manner as to maintain a minimum three feet of clear distance from the curb edge.
- n. Any use of public rights-of-way for private purposes shall fully comply with the Americans with Disabilities Act (ADA). By entering into this Agreement, the Licensee represents and warrants that its proposed layout is ADA compliant.
- o. Upon the termination or expiration of this Agreement, the Licensee shall, unless the City otherwise consents by resolution of the City Council, without cost to the City, remove any objects placed in the Licensed Area by the Licensee.
- p. The Licensee accepts the Licensed Area “AS IS” and with all faults. The City has not made, does not make, and has not authorized anyone else to make any representation or warranty as to the Licensed Area. Without limiting the generality of the previous statement, the City makes no representation about the presence or absence of any hazardous substances or materials or other contaminants and makes no representation about the suitability of the Licensed Area for any purpose or use.

5. Ownership. This license does not grant or convey to the Licensee any rights, title, or interest in the Licensed Area. The City retains all of its property rights in the Licensed Area. No provision of this Agreement shall be construed to limit the City’s right to enter upon, control and/or perform work within the Licensed Area.

6. Assignment or Use by Others Prohibited. The Licensee may not assign this Agreement or its rights, privileges, duties or obligations under this Agreement without the City’s prior written consent.

7. Indemnification. The Licensee shall hold the City (defined for purposes of this paragraph to include the City’s officers and employees) harmless from, indemnify it for and defend it (with legal counsel reasonably acceptable to the City) against any demand, claim, judgment, award, legal proceeding or loss of any kind arising from the Licensee’s use of the Licensed Area under this Agreement.

8. Breach and Remedies. All remedies in this Agreement are cumulative of all other remedies available at law or in equity. Remedies may be exercised simultaneously or sequentially. The failure to initially use any remedy is not a waiver of that remedy. To the extent not otherwise prohibited by law, the prevailing party in any action brought pursuant to or to enforce any provision of this Agreement shall, in addition to any other remedies, be entitled to recover its actual costs, including without limitation, actual reasonable attorney's fees, incurred to bring, maintain or defend such action from the first demand through any and all appellate proceedings, and jurisdiction and venue of any action brought pursuant to or to enforce this Agreement shall be solely in the state courts in Berrien County, Michigan. The failure of either party to act upon any breach of this Agreement shall not be deemed a waiver of that breach.

9. Termination. The license granted pursuant to this Agreement is terminable at the will of either the City Council of the City or the Licensee. Prior to terminating the license, the City shall first give the Licensee written notice that it is considering such action and the date and time of the City Council meeting at which such action will initially be considered so that the Licensee may address the City Council.

10. Binding Effect. This Agreement shall be binding upon the parties to this Agreement as well as their successors and permitted assigns.

11. Miscellaneous.

a. This is the entire agreement between the parties regarding its subject matter. There are no prior or contemporaneous agreements. It may not be modified or amended except in writing, signed by all parties. It shall not be affected by any course of dealing. The captions are for reference only and shall not affect its interpretation, however the recitals are an integral part of this Agreement. More than one copy of this Agreement may be signed, but all constitute but one agreement.

b. Any notices shall be made in writing to the addresses first written above or such other addresses as indicated by notice and shall be made by personal delivery or by postage prepaid United States first-class mail and shall be deemed completed when actually received or, if by first-class mail, three business days after mailing. The parties have caused this Agreement to be executed as of the date first above written.

c. The City Manager is authorized to enter into this Agreement on the City's behalf under the authority granted by resolution of the City Council, after review and approval of the proposed use by the City's Downtown Development Authority and payment of the applicable application fee, if any.

The parties have signed and entered into this agreement as of the date first stated above.

CITY OF NEW BUFFALO

LICENSEE

By: _____
Dave Richards, City Manager

By: _____

By: _____
Ann M. Fidler, City Clerk

Its: _____

EXHIBIT 1
LICENSED AREA LAYOUT

[Insert Depiction of Licensed Area with All Proposed Items to be Placed Within It]



MANAGER'S REPORT

June 24, 2020

AGENDA ITEM: Resolution 2020-18 Providing an Expedited Process to Allow Retail Stores Temporary Expanded Merchandise Display Areas in to Sidewalks and other Public Spaces

SUMMARY: In response to COVID 19 impacts the DDA has asked that retail stores be allowed to expand their merchandise display areas to outdoor areas. This resolution allows retail stores to make application to the DDA which will recommend to the City Manager and Clerk who are authorized to sign and approve license agreements on behalf of the City. The application requires a site plan, signatures and an application fee set by the City Council. The license is terminable by either the Council or the applicant.

COST: None

RECOMMENDATION: Approve Resolution 2020-18 Providing an Expedited Process to Allow Temporary Expanded Merchandise Display Areas to Retail Stores In to Sidewalks and other Public Spaces.

Respectfully submitted,

David Richards, City Manager

**CITY COUNCIL
CITY OF NEW BUFFALO
Berrien County, Michigan**

Council member _____, supported by Council member _____, moved the adoption of the following resolution:

RESOLUTION 2020- 18

**A RESOLUTION TO PROVIDE AN EXPEDITED APPROVAL PROCESS ALLOWING
RETAIL STORES TO TEMPORARILY EXPAND MERCHANDISE DISPLAY AREAS
INTO ADJACENT SIDEWALKS AND OTHER PUBLIC SPACES**

WHEREAS, in response to a worldwide pandemic, the Governor has issued a series of executive orders that caused a number of retail stores in the City of New Buffalo to close or partially close for the last several months; and

WHEREAS, the businesses that were closed or partially closed are, pursuant to Executive Order 2020-110, now permitted to reopen subject to new regulations that include limiting capacity and requiring six feet of separation between customers; and

WHEREAS, in order to assist businesses to operate profitably under these new regulations, the City Council wishes to provide an efficient and expedited process to review and approve requests for outdoor merchandise display areas in public rights-of-way and other adjacent public spaces under the control of the City.

NOW, THEREFORE, the City Council resolves as follows:

- A. Businesses wishing to temporarily expand their merchandise display areas into adjacent public spaces shall submit a written request to the City Clerk that includes all the following:
 1. A drawing or sketch depicting the public space desired for use and the proposed layout of any objects (display racks, etc.) to be placed in the public space. The layout must be consistent with the regulations provided in the temporary license agreement attached as **Exhibit A** to this resolution.
 2. A signature indicating the approval of the owner of the premises in which the business operates, if different than the Licensee.
 3. An application fee of \$.
- B. Requests shall be reviewed by the City's Downtown Development Authority ("DDA") at a public meeting held in compliance with the Open Meetings Act or with any alternative rules for open meetings established by executive order of the Governor. The DDA shall endeavor to schedule meetings to consider requests in a timely manner.
- C. The DDA shall review each request to determine compliance with the regulations provided in the License Agreement. If such regulations are satisfied, and if the DDA otherwise determines that the proposed use of the public space would not negatively impact the public health, safety and welfare, the DDA shall by motion approve the application, conditioned upon the execution of a license agreement substantially in form attached as **Exhibit A**.
- D. The City Manager and City Clerk are authorized and directed to sign approved license agreements on behalf of the City. To the extent required by law, the City Manager's signature on the License Agreement shall signify that the site plan for the business has been temporarily modified (as a minor amendment) to include the new outdoor service area, pursuant to 19-8 of the City's Zoning Ordinance. Upon expiration or termination of the license agreement, the modified site plan shall revert back to the site plan that was in effect immediately prior to its approval.

E. All resolutions and parts of resolutions are, to the extent of any conflict with this resolution, rescinded.

Yeas: Council member: _____

Nays: Council member: _____

Abstain: Council member: _____

Absent: Council member: _____

RESOLUTION DECLARED ADOPTED.

CERTIFICATION

As its Clerk, I certify that this is a true and complete copy of a resolution adopted by the City Council of the City of New Buffalo, Berrien County, Michigan, at a special meeting held on June ____, 2020.

Date: June ____, 2020

Ann M. Fidler, City Clerk

**TEMPORARY LICENSE AGREEMENT FOR
OUTDOOR MERCHANDISE DISPLAY**

This License Agreement is made as of _____, 20____, between the City of New Buffalo, a Michigan municipal corporation, whose principal business address is 224 W Buffalo St., New Buffalo, MI 49117 (the "City") and _____, a _____ of _____ (the "Licensee")

RECITALS

- A. The Licensee owns, leases, or otherwise occupies real property in the City of New Buffalo at the address of _____, Tax I.D. No. _____ (the "Property"), and operates a retail store therein.
- B. There exists immediately adjacent to the Property a public right-of way or other public space controlled by the City.
- C. The Licensee wishes to temporarily use a portion of the adjacent public space as an outdoor merchandise display area and has requested the City's permission for such.
- D. In light of the ongoing COVID-19 pandemic and the restaurant capacity limitations now in place pursuant to the Governor's executive orders, the City is willing to accommodate the Licensee's request pursuant to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

Now therefore, in exchange for the consideration in and referred to by this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. License. The City licenses to the Licensee the public space designated on the drawing attached as **Exhibit 1** (the "Licensed Area") for use an outdoor merchandise display area in a manner compliant with applicable ordinances of the City, subject to the terms and conditions of this Agreement and for no other purpose. The layout of the outdoor merchandise display area shall be in accordance with that depicted in Exhibit 1.
- 2. Term. The term of the license shall commence upon the date of this Agreement and continue until November 30, 2020, unless terminated early pursuant to the terms of this Agreement.
- 3. Maintenance. The Licensee shall, without cost to the City, maintain the Licensed Area as reasonably necessary to comply with applicable ordinances, policies, laws, rules, regulations, good practices, and to reasonably ensure its proper function, safety and general appearance.
- 4. Requirements of the Licensee. This license is subject to the following terms and conditions:
 - a. The Licensee shall clean the area of all trash and litter throughout the day.
 - b. The Licensee shall arrange the outdoor merchandise area presentably for the public at the time business opens each day.
 - c. The aggregate maximum coverage area of outdoor merchandise displays shall be 35 square feet.
 - d. No amplified music is allowed in the Licensed Area.
 - e. The use of the right-of-way can be temporarily revoked as necessary for community events which may require use of the space, therefore the seating and other amenities should be reasonably portable.

- f. The Licensee may begin conducting business in in the Licensed Area each day at 7:00 A.M. All items must be removed from the Licensed Area by no later than 10:30 P.M.
 - g. Any use of public rights-of-way for private purposes shall fully comply with the Americans with Disabilities Act (ADA). By entering into this Agreement, the Licensee represents and warrants that its proposed layout is ADA compliant.
 - h. Upon the termination or expiration of this Agreement, the Licensee shall, unless the City otherwise consents by resolution of the City Council, without cost to the City, remove any objects placed in the Licensed Area by the Licensee.
 - i. The Licensee accepts the Licensed Area “AS IS” and with all faults. The City has not made, does not make, and has not authorized anyone else to make any representation or warranty as to the Licensed Area. Without limiting the generality of the previous statement, the City makes no representation about the presence or absence of any hazardous substances or materials or other contaminants and makes no representation about the suitability of the Licensed Area for any purpose or use.
5. Ownership. This license does not grant or convey to the Licensee any rights, title, or interest in the Licensed Area. The City retains all of its property rights in the Licensed Area. No provision of this Agreement shall be construed to limit the City’s right to enter upon, control and/or perform work within the Licensed Area.
6. Assignment or Use by Others Prohibited. The Licensee may not assign this Agreement or its rights, privileges, duties or obligations under this Agreement without the City’s prior written consent.
7. Indemnification. The Licensee shall hold the City (defined for purposes of this paragraph to include the City’s officers and employees) harmless from, indemnify it for and defend it (with legal counsel reasonably acceptable to the City) against any demand, claim, judgment, award, legal proceeding or loss of any kind arising from the Licensee’s use of the Licensed Area under this Agreement.
8. Breach and Remedies. All remedies in this Agreement are cumulative of all other remedies available at law or in equity. Remedies may be exercised simultaneously or sequentially. The failure to initially use any remedy is not a waiver of that remedy. To the extent not otherwise prohibited by law, the prevailing party in any action brought pursuant to or to enforce any provision of this Agreement shall, in addition to any other remedies, be entitled to recover its actual costs, including without limitation, actual reasonable attorney’s fees, incurred to bring, maintain or defend such action from the first demand through any and all appellate proceedings, and jurisdiction and venue of any action brought pursuant to or to enforce this Agreement shall be solely in the state courts in Berrien County, Michigan. The failure of either party to act upon any breach of this Agreement shall not be deemed a waiver of that breach.
9. Termination. The license granted pursuant to this Agreement is terminable at the will of either the City Council of the City or the Licensee. Prior to terminating the license, the City shall first give the Licensee written notice that it is considering such action and the date and time of the City Council meeting at which such action will initially be considered so that the Licensee may address the City Council.
10. Binding Effect. This Agreement shall be binding upon the parties to this Agreement as well as their successors and permitted assigns.
11. Miscellaneous.

a. This is the entire agreement between the parties regarding its subject matter. There are no prior or contemporaneous agreements. It may not be modified or amended except in writing, signed by all parties. It shall not be affected by any course of dealing. The captions are for reference only and shall not affect its interpretation, however the recitals are an integral part of this Agreement. More than one copy of this Agreement may be signed, but all constitute but one agreement.

b. Any notices shall be made in writing to the addresses first written above or such other addresses as indicated by notice and shall be made by personal delivery or by postage prepaid United States first-class mail and shall be deemed completed when actually received or, if by first-class mail, three business days after mailing. The parties have caused this Agreement to be executed as of the date first above written.

c. The City Manager is authorized to enter into this Agreement on the City's behalf under the authority granted by resolution of the City Council, after review and approval of the proposed use by the City's Downtown Development Authority and payment of the applicable application fee, if any.

The parties have signed and entered into this agreement as of the date first stated above.

CITY OF NEW BUFFALO

LICENSEE

By: _____
Dave Richards, City Manager

By: _____

By: _____
Ann M. Fidler, City Clerk

Its: _____

EXHIBIT 1
LICENSED AREA LAYOUT

[Insert Depiction of Licensed Area with All Proposed Items to be Placed Within It]



MANAGER'S REPORT

June 24, 2020

AGENDA ITEM: Resolution #20.19; Resolution authorizing submission of grant application to the Economic Development Administration for waterfront and marina improvements

SUMMARY: City Staff has identified a grant opportunity which may assist with a portion of the costs associated with planned improvements to the community's waterfront via the recently passed CARES Act stimulus bill. The bill contained \$40 million for economic development projects in the State of Michigan to be granted through the Economic Development Administration (EDA).

The proposed project would contain two components. The first and largest component would be the addition of a broadside dock downstream from the marina to accommodate larger vessels, increase marina capacity, and provide erosion control. The broadside dockage would consist of 732' of steel sheet pile wall, 600' of fixed fender system, slip utilities, fire extinguisher/life ring cabinets and dry standpipe fire suppression system. A concrete promenade with lighting, wayfinding signage, site amenities and landscaping would be included to provide user and ADA access. Dock location would be on the riverbank along Whittaker Street. Following is an overview of the proposed improvements:

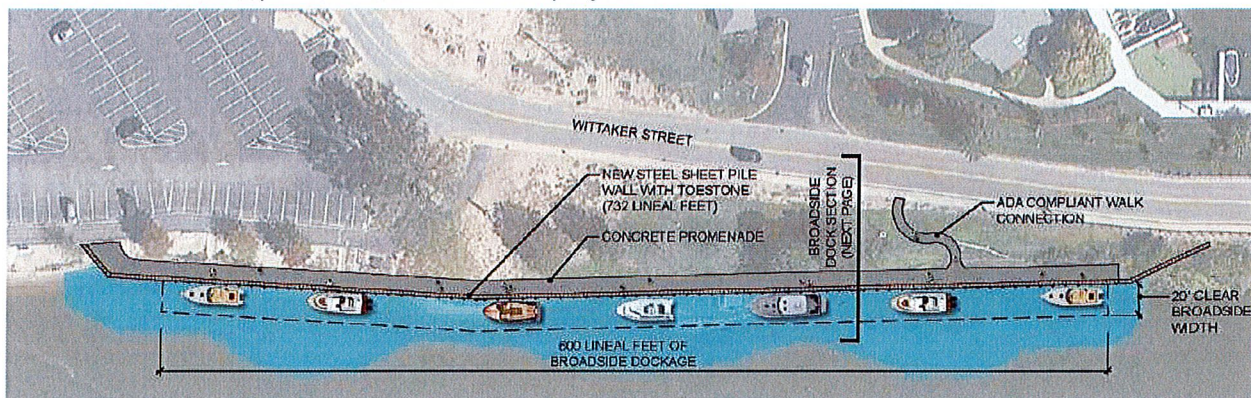
Broadside Docks

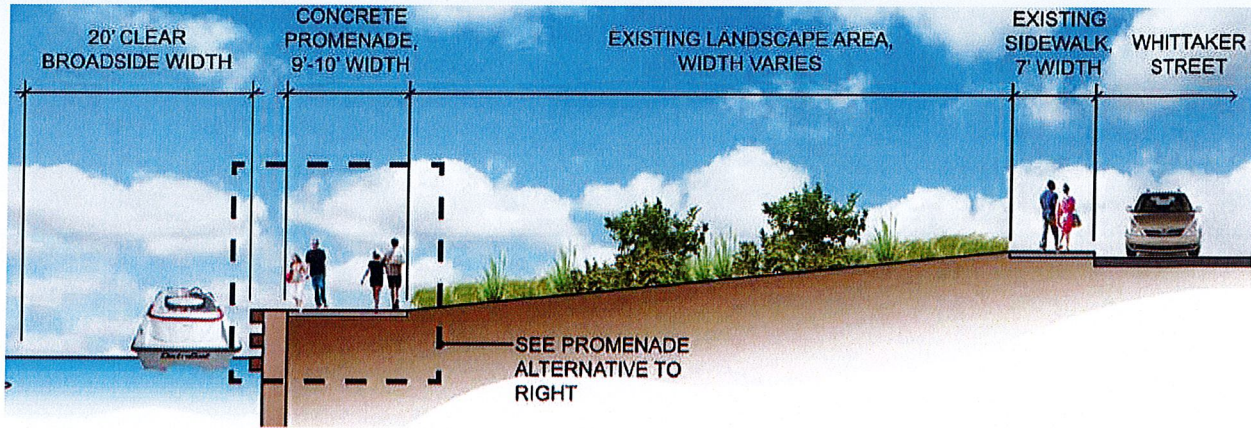
- Sheet Pile Wall & Toe Stone
- Wall 'king' piles & structural bracing
- Fendering
- Slip utilities
- Fire extinguisher/life ring cabinets
- Dry standpipe fire suppression system

Site Improvements

- Promenade concrete sidewalk
- Lighting
- Wayfinding/Signage
- Landscaping
- Site amenities

Below are two conceptual illustrations of the project:





The second and smaller component would include improvements to the public boat launch area including the launch ramps and skid piers.

COST: \$1,290,966.36 in grant matching funds

BUDGETED: Yes No NA

If the City is successful in securing the grant other funding would be sought to offset the local match for the grant. The City currently has a \$500,000 pending grant application with the State of Michigan that would cover a portion of the required matching funds.

RECOMMENDATION: Approval for City staff to submit application in the amount of \$1,290,966.36 to the Economic Development Administration.

Respectfully submitted,
David Richards, City Manager



**CITY OF New Buffalo
RESOLUTION NO. 20.19**

A RESOLUTION TO ESTABLISH A REQUEST FOR FUNDING, DESIGNATE AN AGENT, ATTEST TO THE EXISTENCE OF FUNDS AND COMMIT TO IMPLEMENTING A MAINTENANCE PROGRAM FOR THE CITY OF NEW BUFFALO WATERFRONT PROJECT FUNDED BY THE U.S. ECONOMIC DEVELOPMENT ADMINISTRATION PROGRAM.

Minutes of a regular meeting of the City of New Buffalo in Berrien County, Michigan, held at the New Buffalo City Hall, 224 W Buffalo Street, New Buffalo, MI 49117 on June 24, 2020 at 4:00 PM.

PRESENT: COMMISSIONERS:

ABSENT: COMMISSIONERS:

The following preamble and resolution were offered by _____ and supported by Council Member _____.

WHEREAS, the City of New Buffalo is applying for \$1,290,966.36 in funding through EDA from the 2020 CARES Act Recovery Assistance Program to develop the waterfront area in New Buffalo, MI 49117.

WHEREAS, EDA requires a formal commitment from the public agency that will be receiving these funds and will be implementing and maintaining these infrastructure projects.

NOW, THEREFORE, BE IT RESOLVED THAT, the City of New Buffalo has authorized David Richards, City Manager, to act as agent on behalf of the City of New Buffalo to request 2020 CARES Act Recovery Assistance funding, to act as the applicant's agent during the project development, and to sign a project agreement upon receipt of a funding award.

BE IT FURTHER RESOLVED THAT, the City of New Buffalo attests to the existence of, and commits to, providing \$1,290,966.36 (50%) toward the total construction costs of \$2,581,932.72, and all costs for design, permit fees, administration costs, and cost overruns.

BE IT FURTHER RESOLVED THAT, the City of New Buffalo commits to owning operating, funding and implementing a maintenance program over the design life of the facilities constructed with 2020 CARES Act Recovery Assistance Program funding.

PRESENT: COMMISSIONERS:

NAYS: COMMISSIONERS:

ABSENT: COMMISSIONERS:

RESOLUTION DECLARED ADOPTED.

Ann M. Fidler, City Clerk

CERTIFICATION

The forgoing resolution was certified at a special meeting of the City of New Buffalo, held at the New Buffalo City Hall, 224 W Buffalo Street, New Buffalo, MI 49117 on June 24, 2020.

Ann M. Fidler, City Clerk



224 West Buffalo Street
New Buffalo, MI 49117
(269) 469-1500
CityOfNewBuffalo.org

Monday, June 15, 2020

U.S. Department of Commerce
1401 Constitution Avenue, NW
Suite 71014
Washington, DC 20230

To Whom It May Concern:

The City of New Buffalo is prepared to invest 50% of the proceeds required to retain the services of Abonmarche for site design and engineering work. This work is an important part of our plans to develop the waterfront area for the attraction of good paying jobs and investment to southwest Michigan.

The City of New Buffalo greatly appreciates your evaluation of our grant application. We're excited at the prospect of doing our part to help preserve the rural way of life in southwest Michigan.

Respectfully,

Mr. David Richards, City Manager