

**CITY OF SWARTZ CREEK  
SWARTZ CREEK, MICHIGAN  
MINUTES OF THE REGULAR COUNCIL MEETING  
DATE 07/11/2016**

The meeting was called to order at 7:00 p.m. by Mayor Krueger in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance.

Councilmembers Present: Abrams, Florence, Gilbert, Hicks, Krueger, Pinkston, Porath.

Councilmembers Absent: None.

Staff Present: City Manager Adam Zettel, City Clerk Connie Eskew.

Others Present: Tommy Butler, Jim Barclay, Steve Shumaker, Boots Abrams, Sharon Shumaker, Bob Plumb, Dennis Cramer, Lania Roche, Penny Messer, Elaine Tucker, Maria Suzette Hodge, Wanda Tyler .

**APPROVAL OF MINUTES**

**Resolutions No. 160711-01**

**(Carried)**

Motion by Councilmember Porath  
Second by Mayor Pro Tem Abrams

**I Move** the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting held Monday June 27, 2016 to be circulated and placed on file.

YES: Florence, Gilbert, Hicks, Krueger, Pinkston, Porath, Abrams.  
NO: None. Motion Declared Carried.

**APPROVAL OF AGENDA**

**Resolution No. 160711-02**

**(Carried)**

Motion by Mayor Pro Tem Abrams  
Second by Councilmember Gilbert

**I Move** the Swartz Creek City Council approve the Agenda as amended for the Regular Council Meeting of July 11, 2016, to be circulated and placed on file.

YES: Gilbert, Hicks, Krueger, Pinkston, Porath, Abrams, Florence.  
NO: None. Motion Declared Carried.

## City Manager's Report

### **Resolution No. 160711-03**

**(Carried)**

Motion by Councilmember Florence  
Second by Councilmember Gilbert

**I Move** the Swartz Creek City Council accept the City Manager's Report of July 11, 2016, including reports, communications and discussions about water tower, to be circulated and placed on file.

Discussion Ensued.

YES: Hicks, Krueger, Pinkston, Porath, Abrams, Florence, Gilbert.  
NO: None. Motion Declared Carried.

### **MEETING OPENED TO THE PUBLIC:**

Steve Shumaker, resides at 7446 Country Meadow, commented on the KWA.

### **GFWC-Swartz Creek Women's Club**

### **Presentation**

The GFWC-SCWC presented to the City a check for \$1256.25 for the police dog. This was from donations from the rock-a-thon during hometown days.

### **MERS HEALTH CARE SAVINGS PROGRAM ESTABLISHMENT**

#### **Resolution No. 160711-04**

**(Carried)**

Motion by Councilmember Hicks  
Second by Councilmember Porath

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

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

**WHEREAS**, MERS has been determined by the Internal Revenue Service to be a tax qualified "governmental plan" and trust under section 401(a) of the Internal Revenue Code of 1986, and all trust assets within MERS reserves are therefore

exempt from taxation under Code section 501(a) (IRS Letter of Favorable Determination dated June 15, 2005); and

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

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

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

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

**WHEREAS**, the Board also acts as investment fiduciary for those participating employers who are non-MERS participating municipalities and courts that have adopted the MERS Health Care Savings Program, Retiree Health Funding Vehicle, or Investment Service Pool Program, and such entities are not accorded membership, representation or voting rights provided to MERS participating municipalities and courts at the Annual meeting under Plan Section 45; MCL 38.1545; and

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

- It is expressly agreed and understood as an integral and nonseverable part of extension or continuation of coverage under this HCSP Resolution that Section 43B of the MERS Plan Document shall not apply to this Uniform Resolution Adopting MERS HCSP, the Participation Agreement, the Trust

Plan Document, the Trust Agreement, and their administration or interpretation.

- In the event any alteration of the language, terms or conditions stated in this Uniform Resolution Adopting MERS HCSP is made or occurs, under MERS Plan Document Section 43B or other plan provision or other law, it is expressly recognized that MERS and the Board, as fiduciary of the MERS Plan and its trust reserves, and whose authority is nondelegable, shall have no obligation or duty: to administer (or to have administered) the Trust; or to continue administration by the Program Administrator or by MERS directly; and

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

**NOW, THEREFORE, BE IT RESOLVED** that the governing body adopts the MERS HCSP as provided below.

#### **SECTION 1. HCSP PARTICIPATION**

**EFFECTIVE** July 1, 2016, (to be known as the ADOPTION DATE) the MERS HCSP is hereby adopted by the City of Swart Creek

- A. **CONTRIBUTIONS** shall be as allowed and specified in the MERS Health Care Savings Program Adoption Agreement. Basic Employer Contributions, Mandatory Salary Reduction Contributions, Mandatory Leave Conversion Contributions, and Post-Tax Employee Contributions, shall be remitted pursuant to MERS by the Eligible Employer, and credited to the Eligible Employer's separate fund within the MERS Trust Fund.
- B. **INVESTMENT** of funds accumulated and held in the Health Care Savings Program Trust Fund shall be held in a separate reserve and invested on a pooled basis by MERS subject to the Public Employee Retirement System Investment Act ("PERSIA"), 1965 PA 314, as provided by MERS Plan Document Section 39; MCL 38.1539, and PA 149.
- C. **THE ELIGIBLE EMPLOYER** shall abide by the terms of the HCSP, including all investment, administration, and service agreements, and all applicable provisions of the Code and other law. It is affirmed that no assets from any defined benefit health account established under Section 401(h) of the Internal Revenue Code shall be transferred to, or accepted by, MERS.

## **SECTION 2. IMPLEMENTATION DIRECTIONS FOR MERS**

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

## **SECTION 3. EFFECTIVENESS OF THIS HCSP UNIFORM RESOLUTION**

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

approval upon this Resolution, and return a copy to the Eligible Employer's designated primary contact.

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

Discussion Ensued.

YES: Krueger, Pinkston, Porath, Abrams, Florence, Gilbert, Hicks.  
NO: None. Motion Declared Carried.

## **APPOINTMENTS**

### **Resolution No. 160711-05**

**(Carried)**

Motion by Councilmember Gilbert  
Second by Councilmember Hicks

**I Move** the Swartz Creek City Council concur with the Mayoral appointment as follows, said terms subject to provisions of the city charter, code of ordinances, state law, and *various bylaws (rules and procedures)*:

#### **#160711-05a MAYORAL APPOINTMENT:**

**Betty Binder**

Planning Commission

Remainder of Three-Year Term Expiring June 30, 2017

Discussion Ensued.

YES: Pinkston, Porath, Florence, Gilbert, Hicks, Krueger.  
NO: Abrams. Motion Declared Carried.

## **MEETING OPENED TO THE PUBLIC**

Maria Suzette Hodge, business owner at 8057 Miller Rd., inquired about dates of the next DDA meeting and the façade program.

Dennis Cramer, resides at 5299 Worchester Dr., stated letters of thanks to various businesses from the Save our Streets committee.

## **REMARKS BY COUNCILMEMBERS:**

Councilmember Gilbert commented on the decrease of fire runs on the 4<sup>th</sup> of July.

Councilmember Hicks thanks the women's club for all their contributions.

Councilmember Florence had an opportunity at the United Methodist Church, to observe Officer Szmansky during Camp 911 and was very impressed.

Councilmember Porath commented he is interested in more discussion in regards to the water tower prospects.

Mayor Krueger mentioned an option in regards to the water tower.

**Adjournment**

**Resolution No. 160711-06**

**(Carried)**

Motion by Mayor Pro Tem Abrams  
Second by Councilmember Hicks

**I Move** the Swartz Creek City Council adjourn the regular meeting at 7:50 pm.

Unanimous Voice Vote.

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**David A. Krueger, Mayor**

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**Connie Eskew, City Clerk**