ROSEVILLE

REQUEST FOR COUNCIL ACTION

Date: August 8, 2016
Item No.: 14.b

Department Approval

City Manager Approval

Item Description: Consider Approval of Amended Agreement with Roseville Area Community Foundation Regarding Disbursement of Lawful Gambling Proceeds

BACKGROUND

In 1991, the City of Roseville entered into an agreement with the North Suburban Community Foundation (now known as the Roseville Area Community Foundation or RACF) that created the Roseville Community Fund. The Roseville Community Fund was established to distribute the City's proceeds received from lawful gambling operations in the city. Under the agreement, one half of the proceeds the foundation received were used to establish a permanent endowment for the Roseville Community Fund. The other half of the proceeds from the lawful gambling proceeds was distributed to area organizations to assist in their programs and mission.

As part of this arrangement, a Donor Advisory Board (DAB) was created to make recommendations to the foundation board on allocation of awards to area organizations. The DAB has been comprised of representatives from youth athletic associations, Roseville School District, fraternal organizations and service clubs, clergy, members of the Chamber of Commerce, board members of the foundation board, and the City Manager.

The distribution of the funds has worked this way for the past 22 years. Recently, there has been discussion by the Roseville Area Community Foundation to streamline the overall process in distributing funds as it has proven to be quite lengthy in getting approvals for the distribution of funds and it has been challenging to get persons to serve of the Donor Advisory Board. To that end, the recent Chairperson of the RACF, Tammy Pust has been in conversations with the City Manager and Mayor about the potential changes to the agreement with the City.

The proposed changes, which were ratified by the RACF Board in June, would disband the Donor Advisory Board and have the RACF Board make the decisions on the distribution of funds to area organizations. In addition, it is proposed that up to 75% of the income from the endowment could be used as part of the allocation of funds in addition to half the incoming proceeds from charitable gambling.

The new proposed agreement along with supporting documentation is included as Attachment A
In addition, in looking at the current City Code regarding lawful gambling activities, it is suggested that the code be updated to reflect the new name of the foundation, better clarify how the lawful gambling proceeds are disbursed, and require RACF to provide an annual report to the City Council. The

proposed ordinance amendment as included as Attachment B.

POLICY OBJECTIVE

Continued distribution of proceeds from lawful gambling to area organizations serving Roseville residents is consistent with the purpose of Minnesota State Statutes Chapter 349 and Chapter 304 of Roseville City Code.

FINANCIAL IMPACTS

There is no financial impact to the City in approving the amended agreement.

STAFF RECOMMENDATION

Staff recommends the City Council approve the amended agreement with the Roseville Area Community Foundation regarding the distribution of charitable gambling proceeds and approve amendments to City Code Chapter 304.04 regarding disbursement of lawful gambling proceeds.

REQUESTED COUNCIL ACTION

A motion to approve the approve the amended agreement with the Roseville Area Community Foundation regarding the distribution of lawful gambling proceeds

- and –

A motion to approve an ordinance amendment City Code Chapter 304.04 regarding disbursement of lawful gambling proceeds.

-and

A motion to approve a summary ordinance regarding the disbursement of lawful gambling proceeds.

Prepared by: Patrick Trudgeon, City Manager (651) 792-7021

Attachments:
A: Minnesota State Statutes Chapter 349.213
B: Existing Agreement and Proposed Amendment to Agreement Related to the Roseville Community Fund.
C: Draft Ordinance Amendment to Chapter 304.04 of the Roseville City Code.
D: Summary Ordinance

349.213 LOCAL AUTHORITY.

Subdivision 1. **Local regulation.** (a) A statutory or home rule city or county has the authority to adopt more stringent regulation of lawful gambling within its jurisdiction, including the prohibition of lawful gambling.

(b) A statutory or home rule city or county may require a permit for the conduct of gambling exempt from licensing under section 349.166. The fee for a permit issued under section 349.166 may not exceed $100.

(c) The authority granted by this subdivision does not include the authority to require a license or fee for a license or permit to conduct gambling by organizations, gambling managers, gambling employees, or sales by distributors or linked bingo game providers licensed by or registered with the board.

(d) The authority granted by this subdivision does not include the authority to require an organization to make specific expenditures of more than ten percent per year from its net profits derived from lawful gambling.

(e) For the purposes of this subdivision, net profits are gross profits less amounts expended for allowable expenses and paid in taxes assessed on lawful gambling.

(f) A statutory or home rule charter city or a county may not require an organization conducting lawful gambling within its jurisdiction to make an expenditure to the city or county as a condition to operate within that city or county, except:

(1) as authorized under section 349.16, subdivision 8, or 297E.02; or

(2) by an ordinance requirement that such organizations must contribute ten percent per year of their net profits derived from lawful gambling conducted at premises within the city's or county's jurisdiction to a fund administered and regulated by the responsible local unit of government without cost to such fund. The funds must be disbursed by the local unit of government for (i) charitable contributions as defined in section 349.12, subdivision 7a, or (ii) police, fire, and other emergency or public safety-related services, equipment, and training, excluding pension obligations. A contribution made by an organization is not considered an expenditure to the city or county nor a tax under section 297E.02, and is valid and lawful. A city or county receiving and making expenditures authorized under this clause must by March 15 of each year file a report with the board, on a form the board prescribes, that lists all such revenues collected, interest received on fund balances, and expenditures for the previous calendar year.

(g) A statutory or home rule city or county may by ordinance require that a licensed organization conducting lawful gambling within its jurisdiction expend all or a portion of its expenditures for lawful purposes on lawful purposes conducted or located within the city's or county's trade area. Such an ordinance must be limited to lawful purpose expenditures of gross profits derived from lawful gambling conducted at premises within the city's or county's jurisdiction, must define the city's or county's trade area, and must specify the percentage of lawful purpose expenditures which must be expended within the trade area. A trade area defined by a city under this subdivision must include each city and township contiguous to the defining city.

(h) A more stringent regulation or prohibition of lawful gambling adopted by a political subdivision under this subdivision must apply equally to all forms of lawful gambling within the jurisdiction of the political subdivision, except a political subdivision may prohibit the use of paddlewheels.

Subd. 2. **Local approval.** The board may not issue an initial premises permit unless approval is received from:

(1) the city council of the statutory or home rule city in which the organization's premises is located; or

(2) the county board of the county where the premises is located.

The organization must submit a resolution from the city council or county board approving the premises permit. The resolution must have been adopted within 90 days of the date of application for the new permit.

Subd. 3. **Local gambling tax.** A statutory or home rule charter city that has one or more licensed organizations operating lawful gambling, and a county that has one or more licensed organizations outside incorporated areas operating lawful gambling, may impose a local gambling tax on each licensed organization within the city's or county's jurisdiction. The tax may be imposed only if the amount to be received by the city or county is necessary to cover the costs incurred by the city or county to regulate lawful gambling. The tax imposed by this subdivision may not exceed three percent per year of the gross receipts of a licensed organization from all lawful gambling less prizes actually paid out by the organization. A city or county may not use money collected under this subdivision for any purpose other than to regulate lawful gambling. All documents pertaining to site inspections, fines, penalties, or other corrective action involving local lawful gambling regulation must be shared with the board within 30 days of filing at the city or county of jurisdiction. A tax imposed under this subdivision is in lieu of all other local taxes and local investigation fees on lawful gambling. A city or county that imposes a tax under this subdivision shall annually, by March 15, file a report with the board in a form prescribed by the board showing (1) the amount of revenue produced by the tax during the preceding calendar year, and (2) the use of the proceeds of the tax.

History: *1984 c 502 art 12 s 18; 1986 c 467 s 25; 1987 c 327 s 21; 1988 c 705 s 1; 1989 c 209 art 1 s 35; 1989 c 334 art 2 s 44,45; 1989 c 335 art 1 s 220; 1990 c 590 art 1 s 37; 1991 c 199 art 2 s 1; 1991 c 336 art 2 s 34; 1994 c 633 art 2 s 19; art 5 s 96; 1994 c 633 art 2 s 2; 1995 c 264 art 17 s 11; 1998 c 322 s 6; 2000 c 300 s 8; 2001 c 96 s 13; 2005 c 166 art 1 s 36; 2006 c 205 s 28; 2009 c 124 s 58,59*

Amended Agreement

Establishing the Roseville Community Fund

This Amended Agreement made this 24 day of October, 1994, by and between the City of Roseville (the Donor) and the North Suburban Community Foundation, a Minnesota nonprofit corporation (the Trustee), effective as of 24 October 1994.

Whereas, the Donor desires to establish, and the Trustee is willing to hold and administer, a charitable fund to be known as the Roseville Community Fund (the Fund), it is agreed as follows:

1. The Trustee will hold and administer all property which the Donor or any other person or organization contributes to the Fund in accordance with the provisions of this Amended Agreement and the charitable purposes of the Trustee contained in its Articles of Incorporation, all of which provisions and amendments are hereby incorporated by reference.

2. One half of the proceeds from lawful gambling received from the Donor shall be held and maintained by the Trustee as a permanent endowment.

Subject to paragraphs 3, 4, and 5, the Trustee shall make available one half of the proceeds from lawful gambling received from the Donor and the income from the endowment for allocation.

3. Unless amended or changed by the Donor, a Donor Advisory Board (the D.A.B) shall be established to represent the Community of Roseville on behalf of the City Council. The D.A.B. shall evaluate and recommend to the Trustee the distribution of monies from the Fund for the benefit of the Community of Roseville.

A. The D.A.B. shall be made up of the following membership and shall be governed under by-laws and rules as set out by resolution passed by the Trustee:

Youth Athletic organizations	2
Schools	1
Chamber of Commerce	1
Non-athletic 501 (c) 3 organization's	2
Roseville City Manager or designee	1
Clergy	1
North Suburban Community Foundation	3
Fraternal organizations	1
Service Clubs	1

B. As further required by the City Council of the City of Roseville, at least 5 members of the D.A.B must be female.

C. The Trustee shall follow the recommendation of the D.A.B.to the extent possible and appropriate, so long as the charitable use is a qualified exempt purpose under the Internal Revenue Code, is of primary benefit to the Community of Roseville, and is in accordance with lawful purposes of Minnesota State Gambling Statutes.

4. Unless agreed to otherwise the Trustee shall

- continue to meet full IRS requirements for a tax-exempt foundation.

- provide administration including legally required reports, proper banking and investment, administrative controls and an annual independent audit.

- invest no less than 75% of the Roseville Community Fund's endowment and other available funds in investments as permitted under (M.S. 475.66)

- provide administrative oversite to the D.A.B.

- provide quarterly or other such reports to be made to the City Council including participating in an annual meeting with the Council.

5. If the D.A.B. does not recommend allocation of the monies from this Fund to the Trustee by the close of the Trustee's fiscal year, the Trustee reserves the right to distribute any unallocated funds. All eligible funds must be allocated by the Trustee within 120 days after the close of the Trustee fiscal year in accordance with Section 3 of this Amended Agreement.

6. The Trustee shall be paid an administrative fee in accordance with the policies adopted by the Trustee and amended from time to time.

A. Such fees not to exceed three percent (3%) per annum on the first $500,000 of all Fund assets, 1% on all Fund assets over $500,000.00, plus 1% of all grants paid from the Fund. Asset value shall be based on the average of the annual market value computed on a quarterly basis.

B. In addition, the Fund shall pay for a pro-rata share of the annual audit fee.

C. The Fund shall provide for any legal fees incurred as a result of any action filed against the Trustees acting in their capacity as Trustees, or against the members of the D.A.B. acting in their advisory role.

7. The Trustee may commingle the assets of the Fund with the assets of any other fund or funds which the Trustee holds and administers, provided that the separate identity of the new Fund,

and the distributions therefrom, are at all times maintained.

8. All records of the Fund shall be open for public inspection during reasonable hours.

9. This Amended Agreement may be terminated by either party upon a 180 day written notice. All unallocated assets, including the endowment fund, shall be distributed to a community foundation with similar purposes as the Trustee.

IN WITNESS WHEREOF, the parties hereto have executed this Amended Agreement as of the date written above.

North Suburban Community Foundation

By Frances L Breslin

Its President

City of Roseville

By Steven R. Sarkozy

Its City Manager

Subscribed and sworn to before me this 28th day of October, 1994.

Mardell I. Olesen

MARDELL I. OLESEN
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Comm. Expires Sept. 9, 1997

SECOND AMENDED AGREEMENT
RELATED TO THE
ROSEVILLE COMMUNITY FUND

This Second Amended Agreement is made by and between the City of Roseville (City) and the Roseville Area Community Foundation (RACF), a Minnesota nonprofit corporation, effective as of the date executed below.

WHEREAS, the City desires to establish, and RACF is willing to hold and administer, a charitable fund to be known as the Roseville Community Fund (Fund).

THEREFORE, the parties agree as follows:

1. RACF will hold and administer all property which the City or any other person or organization contributes to the Fund in accordance with the provisions of this Second Amended Agreement and the charitable purposes of the RACF as described in its Articles of Incorporation and effective Bylaws, all of which provisions and amendments are hereby incorporated by reference.

2. One half of the proceeds from lawful gambling received from the City shall be held and maintained by RACF as a permanent endowment. Subject to paragraphs 3, 4 and 5 of this Second Amended Agreement, RACF shall make available one half of the proceeds from lawful gambling received from the City and not more than 75% of the income from the endowment, as established annually by the RACF, for allocation.

3. The RACF shall make grants only to organizations that have established a charitable use that is a qualified exempt purpose under the Internal Revenue Code, is of primary benefit to the community of Roseville, and is in accordance with lawful purposes of Minnesota State gambling statutes.

4. Unless agreed to otherwise, the RACF shall

A. Continue to meet full IRS requirements for a tax-exempt community foundation.

B. Provide administration including legally required reports, proper banking and investment, administrative controls and an annual independent audit to the extent required by law.

C. Invest no less than 75% of the Fund’s endowment and other available funds in investments as permitted under Minnesota law.

D. Provide quarterly or other such reports to the City Council, including participating in an annual meeting with the Council, upon request.

E. Disburse all funds provided by the City in strict accordance with Minnesota Statutes Chapter 349 and all other applicable law.

5. ll eligible funds must be allocated by the RACF within 120 days after the close of the RACF's fiscal year.

6. The RACF shall be paid an administrative fee in accordance with the policies adopted by the RACF as amended from time to time.

A. Such fees shall not exceed three percent (3%) per annum of all Fund assets, plus 1% of all grants paid from the Fund. Asset value shall be based on the average of the annual market value computed on a quarterly basis.

B. In addition, the Fund shall pay for a pro-rata share of the audit fee.

C. The Fund shall provide for any legal fees incurred as a result of any action filed against the Directors acting in their capacity as Directors.

7. The RACF may commingle the assets of the Fund with the assets of any other fund or funds which the RACF holds and administers, provided that the separate identity of the Fund, and the distributions therefrom, are at all times maintained.

8. All records of the Fund shall be open for public inspection during reasonable hours.

9. This Second Amended Agreement may be terminated by either party upon a 180 day written notice. Upon termination, all unallocated assets, including the endowment fund, shall be distributed to a community foundation with similar purposes as the RACF.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended Agreement as of the date indicated below.

Dated: June 30, 2016 ROSEVILLE AREA COMMUNITY FOUNDATION

____

Tammy L. Pust
President

Dated: June __, 2016 CITY OF ROSEVILLE

____

Daniel Roe
Mayor

City of Roseville
ORDINANCE NO.

AN ORDINANCE CREATING

TITLE 3, CHAPTER 304

AN ORDINANCE RELATING TO THE DISBURSEMENT OF LAWFUL GAMBLING PROCEEDS

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1:Title 1, Chapter 304of the Roseville City Code is amended to read as follows:

304.04: CONTRIBUTIONS:

A. Each organization conducting lawful gambling within the City shall contribute at least 10% of its net profits derived from lawful gambling in the City to a ~~fund~~ Fund administered and regulated by the City. This contribution shall be for the purposes defined in Minnesota Statutes Chapter 349. ~~The~~ Except for disbursements for police, fire, and other emergency or public safety-related services, as provided for in Minnesota Statutes Chapter 349, which shall be made directly from the Fund by action of the City Council, the City then shall make disbursements from the Fund to the Roseville Area Community ~~Fund, administered by the North Suburban Community~~ Foundation, a Minnesota nonprofit corporation, which shall maintain the funds for further disbursement as charitable contributions. ~~This contribution shall be for the purposes defined in Minnesota Statutes Chapter 349.~~ The City's directive to the Roseville Area Community ~~Fund, administered by the North Suburban Community~~ Foundation~~,~~ as to the use of the funds shall be ~~made at the time of the City's adoption of its annual budget or any amendments thereto~~ provided for in a written formal agreement ~~Memorandum of Understanding,~~ executed between the City and the Foundation, and approved by the City Council, as amended from time to time. (Ord. 1327, 10-10-05) (Ord. 1412, 7-11-2011)

B. The Roseville Area Community Foundation shall provide an annual report to the City Council in writing and by oral presentation, outlining the financial condition of the City funds, including changes since the previous report, and the names of the recipients, purposes, and, as available, outcomes of charitable contributions from the City funds since the previous report.

~~B~~C. Each organization conducting lawful gambling shall expend or contribute a minimum of 75% of its net profits from Roseville gambling sites by the end of each premises permit year. The remaining percentage may be carried over to the subsequent permit or license year. The City Council may grant a variance authorizing the organization to carry over more ~~that~~ than 25% of all its net profits for expenditure in the subsequent permit or license year.

~~C~~D. In the event any organization contributes to the City any sum in excess of the10% as required in subsection A above, said funds will be deposited and allocated to the Roseville Area Community ~~Fund, as administered by the North Suburban Community~~ Foundation~~. In the event the Roseville Community Fund, as administered by the North Suburban Community Foundation~~

~~is in any way unable to receive the allocated funds~~ as set forth in subsection A above~~, the funds will be deposited in an interest bearing escrow account in a bank located in the City and allocated to uses by further order of the City Council~~. (Ord. 1114, 9-24-92) (Ord. 1412, 7-11-2011)

SECTION 2: Effective date. This ordinance shall take effect upon its passage and publication.

(SEAL)

CITY OF ROSEVILLE

BY: ___________________________________
Daniel J. Roe, Mayor

ATTEST: _______________________________
Patrick J. Trudgeon, City Manager

Attachment C

CITY OF ROSEVILLE
OFFICIAL SUMMARY OF ORDINANCE NO.

AN ORDINANCE RELATING TO CITY OF ROSEVILLE ADVISORY COMMISSIONS

The City Council of the City of Roseville adopted Ordinance No. __________on August 8, 2016 which is summarized as follows:

> The Roseville City Code, Title 304, Contributions has been amended to allow for proceeds from lawful gambling to be sent to the Roseville Area Community Foundation for disbursement to community groups and to require an annual report of such disbursements to the City Council.

A printed copy of the ordinance is available for inspection by any person during regular office hours in the office of the City Manager at the Roseville City Hall, 2660 Civic Center Drive, Roseville, Minnesota 55113. A copy of the ordinance and summary is also be posted at the Reference Desk of the Roseville Branch of the Ramsey County Library, 2160 Hamline Avenue, Roseville, MN. 55113, and on the internet website of the City of Roseville (www.cityofroseville.com).

BY:

____
Daniel J. Roe, Mayor

ATTEST:

____
Patrick J. Trudgeon, City Manager