

BIRMINGHAM CITY COMMISSION AGENDA
OCTOBER 2, 2023
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Therese Longe, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

ANNOUNCEMENTS

- Happy Birthday Commissioner Haig
- The second annual Birmingham Art Walk is October 12, 2023, from 5-8 p.m. This free strolling event will feature local artists and shops, entertainment and more throughout downtown Birmingham! Stop by participating merchants to meet local artists and enjoy special promotions. For more information visit allinbrimingham.com.
- Next Saturday, October 14, from 1-4 p.m., the Birmingham Fire Department will be hosting their annual open house. The day will be filled with many fire education opportunities, including a live vehicle extrication demonstration. This kid-friendly event will have face painting, popcorn, hot dogs, firehouse chili, and much more. The open house will take place at Station 1, located at 572 S. Adams Rd.
- Proclamation in recognition of Robert S. Kenning's 100th birthday on September 20, 2023

APPOINTMENTS

- A. Board of Zoning Appeals
1. Kevin D. Hart
 2. Nicole Braddock
 3. Jason Canvasser

To appoint _____ as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire February 18, 2026.

To appoint _____ as a regular member to the Board of Zoning Appeals to serve a three-year term to expire October 10, 2026.

To appoint _____ as a regular member to the Board of Zoning Appeals to serve a three-year term to expire October 10, 2026.

EMPLOYEE RECOGNITION

- City Clerk's Office
 - Megan Trapp

IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

V. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a Commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

- A. Resolution to approve the City Commission Workshop meeting minutes of September 11, 2023.
- B. Resolution to approve the City Commission meeting minutes of September 11, 2023.
- C. Resolution to approve the City Commission meeting minutes of September 18, 2023.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 21, 2023, in the amount of \$2,666,040.44.
- E. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 28, 2023, in the amount of \$1,340,637.27.
- F. Resolution appointing election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 7, 2023 General Election pursuant to MCL 168.674, and further grant the City Clerk the authority to make emergency appointments of qualified candidates should circumstances warrant in order to maintain adequate staffing in the various precincts, counting boards and receiving boards.

And

Authorize the use of the Oakland County Absent Voter Counting Board for the purpose of processing and tabulating absent voter ballots on November 7, 2023, as prescribed in the terms and responsibilities previously agreed upon at the July 12, 2020 meeting by Commission resolution 07-120-20.

- G. Resolution to approve a special event permit as requested by the Lutheran Church of the Redeemer to hold the 2023 Christmas Nativity Display daily, beginning on November 22, 2023 and ending December 29, 2023, contingent upon compliance with all permit and insurance requirements and payment of all fees, and further pursuant to any minor modifications or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event.
- H. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the three (3) candidates for the Michigan Municipal League Liability and Property Pool Board of Directors for three-year terms, beginning January 1, 2024.
- I. Resolution to authorize the City Clerk to complete the Local Approval Notice at the request of Churchill's Cigar Shop, Inc. approving the request for a transfer of shares for a business which holds the Class C and SDM License with Sunday Sales (PM) and Outdoor Service

Area located at 116-118 S. Old Woodward Ave., Birmingham, Oakland County, MI to now include Mazin Samona Living Trust, 306 Shares, and John Samona Living Trust, 102 Shares.

- J. Resolution to approve the Memorandum of Understanding with Oakland Community Health Network and to authorize the Chief of Police to sign the agreement on behalf of the City.
- K. Resolution to approve reducing the Advisory Parking Committee from eleven (11) members to nine (9) members by removing one downtown employee position and one restaurant owner position.
- L. Resolution to set a public hearing date of November 13, 2023 to consider the proposed ordinance amendments to Chapter 126 (Zoning), Article 2, Section 2.37 and Article 5, Section 5.12 to allow health club/studio uses in the B4 Business Residential District in the basement levels and floors two and above.

VI. UNFINISHED BUSINESS

None

VII. NEW BUSINESS

- A. Resolution to approve the State of Michigan Hazard Mitigation Assistance Grant Agreement for DR-4607-MI Hazard Mitigation Grant Program between the Michigan Department of State Police, Emergency Management and Homeland Security Division, and the City of Birmingham. In addition, authorize the Mayor to sign the agreement on behalf of the City.

AND make a motion adopting a resolution to charge the cost of this project to account #403.0-901.018-981.0100, and further to approve the appropriations and amendment to the Capital Project Funds – Streambank Improvement as follows:

Revenues:

Appropriation from Fund Balance	403.0-000.000-400.0000	\$ 44,020
Federal Grants	403.0-901.018-503.0000	<u>264,120</u>
Total Revenues		\$308,140

Expenses:

Capital Projects Fund – Capital Outlay	403.0-901.018-981.0100	\$308,140
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- B. Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.
- C. Commission discussion on items from a prior meeting.
 - 1. Infrastructure & Flooding Abatement – Commissioner Host
 - 2. Remediation Strategies for Rodents and Vermin – Commissioner Haig

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intention to appoint to the Ad Hoc Aging in Place Committee
 - 2. Notice of Intention to appoint to the Triangle District
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - 1. Ethics Opinion 2023-02 Requested by Commissioner Clinton Baller regarding the potential establishment and management of a private, non-profit community foundation in Birmingham
- D. Legislation
- E. City Staff
 - 1. EGLE Water Violation Report
 - 2. Policy Regarding Email Distribution Lists

INFORMATION ONLY

XI. ADJOURN

Should you wish to participate in this meeting, you are invited to attend the meeting in person or virtually through ZOOM: <https://zoom.us/j/655079760> Meeting ID: 655 079 760
You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).



PROCLAMATION

In Recognition of Robert S. Kenning's 100th Birthday on September 20, 2023

- WHEREAS,** We are here today to express special recognition to Robert S. Kenning and to celebrate with him in honor of his 100th birthday; and
- WHEREAS,** Robert "Bob" Kenning was born on September 20, 1923. Bob was a member of the United States Marine Corps and served our country for three years during World War II; and
- WHEREAS,** In 1946, Bob married Shirley Petersen (1923-2019) and together they raised three sons: Jim, Steve and Tom; and
- WHEREAS,** In 1948, Bob graduated from the University of Minnesota with degrees in civil engineering and business administration. After working for several engineering firms in the Midwest, Bob was hired on October 1, 1951 as the Assistant Public Works Superintendent for the City of Birmingham; and
- WHEREAS,** In 1965, Bob was selected by the City Commission to the position of City Manager.
- WHEREAS,** In 1989, Bob retired after a remarkable 25 years as City Manager. Bob helped usher in the City's evolution to a modern city with upgraded infrastructure such as parking structures and worked with the City Commission to complete the first comprehensive downtown development proposal in the 1960's. Bob credited City Commissioners with the City's progress, saying, "The things we accomplished were due to commissioners. They were skilled money managers and were sensitive to the future needs of the City and the Central Business District"; and
- WHEREAS,** Bob's legendary kindness and respect for citizens with diverse opinions helped resolve problems during his long tenure. Bob's professionalism and dedication to the community were unsurpassed and through his leadership, the City developed and prospered.

NOW THEREFORE, be it resolved with this official proclamation that I, Therese Longe, Mayor of the City of Birmingham, on behalf of the City Commission, citizens and businesses of Birmingham, congratulate Bob Kenning on this, his 100th birthday. We wish Bob and the Kenning family all the best on this amazing accomplishment and celebrate with him all that he has done in his life and all that he has given to our community. We wish him all the best.

On behalf of the City Commission and the residents of Birmingham on this 2nd day of October, 2023.

Therese Longe, Mayor



**NOTICE OF INTENTION TO APPOINT TO
BOARD OF ZONING APPEALS**

At the regular meeting of Monday, October 2, 2023, the Birmingham City Commission intends to appoint one regular member to the Board of Zoning Appeals to serve a three year term to expire October 10, 2026, and one alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire February 18, 2026.

Interested parties may recommend others or themselves for these positions by submitting a form available from the City Clerk's office. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, September 27, 2023. Applications will appear in the public agenda at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Duties of Board

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The Board hears and decides appeals from and reviews any order, requirement, decision or determination made by the Building Official.

Applicant Name	Criteria	Qualifications
	Applicants shall be property owners of record and registered voters.	
Kevin D. Hart	Birmingham Property owner and registered voter	Current Member, MI Licensed Architect
Nicole Braddock	Birmingham Property owner and registered voter	Current Sustainer Advisor and Past President of Birmingham Junior League, Board of Trustees CARE House of Oakland County, Board of Directors Athlete's Unlimited, Board of Directors Great Lakes Chamber Music Festival
Jason Canvasser	Birmingham Property owner and registered voter	Current Member, MI Licensed Attorney, Board of Directors Birmingham Bloomfield Chamber of Commerce

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To appoint _____ as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire February 18, 2026.

To appoint _____ as a regular member to the Board of Zoning Appeals to serve a three-year term to expire October 10, 2026.

To appoint _____ as a regular member to the Board of Zoning Appeals to serve a three-year term to expire October 10, 2026.



BOARD OF ZONING APPEALS

Chapter 126 – Section 126-671 – Seven Members – Three Year Terms
 Requirements – Property owners of record and registered voter

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The board hears and decides appeals from and reviews any order, requirement, decision or determination made by the building official.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Canvasser 369 Kimberly	Jason	(248) 231-9972 <i>jcanvasser@clarkhill.com</i>	7/9/2018 Attorney	10/10/2023
Hart 2051 Villa	Kevin	(248) 4967363 <i>khartassociates@aol.com</i>	2/27/2012 Architect	10/10/2023
Kona 439 W. Merrill St	Carl	(248)540-2810 <i>carlsbox@hotmail.com</i>	4/25/2022 Alternate Member, Financial Services	2/18/2026
Lilley 648 Cherry Ct.	Richard	248-594-6737 <i>dicklilley@icloud.com</i>	9/6/2018 Regular Member	10/10/2025
Miller 544 Brookside	John	(248) 703-9384 <i>jnmillerstudio@gmail.com</i>	1/23/2012 Architect	10/10/2024
Morganroth 631 Ann	Erik	(248) 762-9822 <i>emorganroth@comcast.net</i>	10/12/2015 Real Estate/Builder	10/10/2024

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Reddy 763 Wallace	Ron	(313) 820-7491 <i>ron.reddy01@gmail.com</i>	2/11/2019 Regular member	10/10/2025
Vacant			Alternate Member	2/18/2023
Yaldo 1936 Graefield	Pierre	(248) 534-5585 <i>pierreyaldo1@gmail.com</i>	2/28/2022 Attorney	10/10/2025

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Board of Zoning Appeals**
 Members Required for Quorum: **4**

Year: **2021**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Lillie, Charles	P	P	P	P	P	P	P	A	P	P	P	P	NM	NM	11	1	92%
Miller, John	P	P	P	P	P	P	A	P	P	P	P	P	NM	NM	11	1	92%
Hart, Kevin	P	P	A	P	A	P	A	P	P	P	P	A	NM	NM	8	4	67%
Morganroth, Erik	P	P	P	P	P	P	P	P	P	A	P	P	NM	NM	11	1	92%
Canvasser, Jason	P	P	P	P	P	P	A	P	P	P	P	P	NM	NM	11	1	92%
Rodriguez, Francis	P	A	P	P	P	P	A	P	P	A	A	A	NM	NM	7	5	58%
Lilley, Richard	P	P	P	P	P	P	P	P	P	P	A	P	NM	NM	11	1	92%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
ALTERNATES																	
Reddy, Ron	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Rodenhouse, Erin J.	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	9	8	8	9	8	9	5	8	9	7	7	7	0	0			

- KEY:**
- A = Member absent**
 - P = Member present or available**
 - CP = Member available, but meeting canceled for lack of quorum**
 - CA = Member not available and meeting was canceled for lack of quorum**
 - NA = Member not appointed at that time**
 - NM = No meeting scheduled that month**
 - CM = Meeting canceled for lack of business items**



 Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Board of Zoning Appeals**
 Members Required for Quorum: **4**

Year: **2022**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Lillie, Charles	A	A	A	P	A	A	P	P	P	NA	NA	NA	P	NM	5	5	50%
Miller, John	A	P	A	P	P	P	P	P	P	P	P	A	P	NM	10	3	77%
Hart, Kevin	CP	P	P	P	P	P	A	P	P	P	P	P	P	NM	11	1	92%
Morganroth, Erik	A	P	P	P	P	P	P	P	P	P	P	P	P	NM	12	1	92%
Canvasser, Jason	A	P	P	P	P	P	P	P	P	A	P	P	P	NM	11	2	85%
Reddy, Ron	NA	NA	P	P	P	P	P	P	P	P	P	P	P	NM	11	0	100%
Yaldo, Pierre	NA	NA	P	P	A	P	P	P	P	P	P	P	P	NM	10	1	91%
Rodriguez, Francis	CP	NA			0	0	#DIV/0!										
Lilley, Richard	NA	P				1	0	100%									
ALTERNATES																	
Reddy, Ron	CP	A	NA	0	1	0%											
Rodenhouse, Erin J.	CP	P	NA	1	0	100%											
Kona, Carl	NA	NA	NA	NA	P	P	P	P	P	P	P	P	P		9	0	100%
Lilley, Richard	NA	P	P	NA	NA	NA	NA	2	0	100%							
Present or Available	4	5	5	7	6	7	7	8	9	7	8	6	8	0			

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 Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Board of Zoning Appeals**
 Members Required for Quorum: **4**

Year: **2023**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Miller, John	P														1	0	100%
Hart, Kevin	P														1	0	100%
Morganroth, Erik	A														0	1	0%
Canvasser, Jason	P														1	0	100%
Reddy, Ron	P														1	0	100%
Yaldo, Pierre	P														1	0	100%
Lilley, Richard	P														1	0	100%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
ALTERNATES																	
Kona, Carl	P														1	0	100%
Member 2															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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Department Head Signature



BIRMINGHAM

A WALKABLE CITY

OFFICE USE ONLY

Meets Requirements? Yes No

Will Attend / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest BOARD OF ZONING APPEALS

Specific Category/Vacancy on Board FULL MEMBER OF BOARD (see back of this form for information)

Name KEVIN D. HART

Phone (248) 496-7363

Residential Address 405 S. ETON STREET

Email * KHARTASSOCIATES@AOL.COM

Residential City, Zip BIRMINGHAM, MI. 48009

Length of Residence 31 YEARS

Business Address 405 SOUTH ETON STREET

Occupation ARCHITECT

Business City, Zip BIRMINGHAM, MI 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied I HAVE BEEN IN THE DESIGN AND CONSTRUCTION INDUSTRY FOR OVER 43 YEARS. I AM AN ACTIVE, LICENSED ARCHITECT IN 11 STATES, AND I AM VERY FAMILIAR WITH THE CITY OF BIRMINGHAM'S ORDINANCE AND THE STATE OF MICHIGAN'S BUILDING CODE.

List your related employment experience I WORKED FOR TEXAS INSTRUMENTS IN DALLAS, TEXAS AS A CONSTRUCTION MANAGER. IN MICHIGAN, WITH WALBRIDGE ALDINGER. MY OWN DESIGN FIRM SINCE 1992.

List your related community activities I DO VOLUNTEER WORK FOR THE PULTE FAMILY CHARITABLE FOUNDATION AND ANGEL'S PLACE. I HAVE SERVED ON THE CITY'S B.Z.A. SINCE 2012. (11 YEARS)

List your related educational experience I HAVE A MASTER'S DEGREE IN ARCHITECTURAL ENGINEERING FROM THE UNIVERSITY OF NOTRE DAME.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? YES

Kevin D. Hart

Date

9/13/23

Signature of Applicant

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to clerk@bhamgov.org or fax to 248.530.1080.

Updated 11/18/2020

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest BOARD OF ZONING APPEALS

Specific Category/Vacancy on Board ALT MEMBER (see back of this form for information)

Name NICOLE BRADDOCK Phone 248-640-1347

Residential Address 647 N. OLD WARDWARD Email * nicolembraddock@aol.com

Residential City, Zip BIRMINGHAM MI 48009 Length of Residence 12 yrs

Business Address TAPPERS SOMERSET MAN 2800 WEST BIG BEAVER Occupation Manager

Business City, Zip TROY, MI 48064

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

Ive lived in town for awhile and understand community needs & concerns. In addition I serve on multiple boards for non profits.

List your related employment experience 22 years in my career and leadership and management.

List your related community activities past president Junior League of Birmingham & a member for 15 years

BOARD OF DIRECTORS: CARE House Cabland County, Athletics Great Lakes Chamber Music Festival & Community House Unlimited

List your related educational experience BAA of Applied Arts Resume Attached

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? Yes

Signature of Applicant [Signature] Date 9/14/2023

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to clerk@bhamgov.org or fax to 248.530.1080. Updated 11/18/2020

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Education
Central Michigan University

BAA: Bachelor of Applied Arts
Major: Apparel Merchandising & Design
Minor: Marketing CSA

Skills

Adobe Illustrator, Adobe Photoshop, Mikalis PDM, Macromedia Dreamweaver, Lectra U4IA, Microsoft Power Point, Word, & Excel

Personal Attributes

Enthusiastic
Team player
Self-starter
Supportive
Inspires
Builds positive team Relationships
Ethical
Motivating
Dedicated
Passionate
Integrity
Superb people and sales skills
Resolve issues in a solution-oriented, objective and productive manner
Open to trying new ideas
Leads change effectively
Encourage Others
Organized
Future Focused
Determined

Nicole Braddock CSA

647 N. Old Woodward
Birmingham, MI 48009
(p) 248.640.1367 (e) nicolebraddock@aol.com

Areas of Expertise

- 22 years of experience in the hospitality/retail industry, 17 years in management & development
- Develop and train individuals to attain unprecedented levels of skill and ability, while delivering outstanding service
- Develops, coordinates and conducts effective developmental and leadership trainings
- Intuitive understanding of staff, clientele and business needs
- Creating an enthusiastic and passionate environment for superior customer service
- Possess strong commitment to achieving personal and professional goals
- Effective execution and planning of events
- Builds and maintains relationships with staff, customers, vendors, and community
- Field experience in philanthropy and non-profit sector, public relations, event planning, F&B, recruitment, fund development, training and development, donor relations, university environments, marketing, & operations

Professional Profile

2017-2021

Store Director

Tapper's Diamonds & Fine Jewelry Headquarters

2021-Present

Assistant Store Manager

Tapper's Diamonds & Fine Jewelry

Somerset Collection

- *Oversee and Manage over \$30M worth of business in Fine Jewelry & Timepieces, this includes Loose Diamonds, Custom Jewelry, Timepieces, Bridal, and Luxury Brands including Rolex, Cartier, Pomellato, David Yurman, Mikimoto, Marco Bicego, John Hardy, IWC, Breitling, Grand Seiko, and Charles Krypell.*
- *Merchandise Manager for the store overseeing product needs & assortment with buying office.*
- *Hired, on-boarded, trained, and developed staff while immersing employees with core values and culture of the company*
- *Coached and trained staff to achieve goals and improve skill set to grow business and to elevate the client experience. This included increasing leadership capability, placing Brand Ambassadors, and growing business YOY*

2015-2017

Division Manager, Designer RTW

Contemporary Collections (additional responsibility 2016-2017)

Saks Fifth Avenue, Troy, MI

- *Managed approximately \$12M worth of multiple businesses in a flagship Saks Fifth Avenue*
- *Hired, on-boarded, trained, and developed staff while immersing employees with core values and culture of the company*
- *Coached and trained staff to achieve goals and improve skill set to grow business and to elevate the client experience. This included increasing leadership capability and placing Brand Ambassadors. Employee's generated \$7.5M in personal sales*
- *Managed and developed (3) Million Dollar books of business*
- *Identified needs of division and developed key strategies to implement to ensure an elevated experience for customer*

- *Coordinated and conducted trainings with vendors; responsibilities included booking, F&B, providing training materials, and execution of training*
- *Planned and executed special events including off site, for high profile clientele and vendors; responsibilities included logistics, marketing, merchandise, special orders, elevated client appointments, and employee training and development*
- *Built and maintained relationships with vendors, clientele, and employees*
- *Worked closely with vendors to manage the store matrix in Designer (30+ vendors) and contemporary collections (50+ vendors) including buying and assortment, including new hard shop openings such as Valentino, CELINE, and Prada*
- *Executed CHANEL off-site event in Detroit with CHANEL NYC team, this included logistics, marketing, merchandise, special orders, elevated client appointments, associate training, and creating materials needed for organizational effectiveness of the event*

2012-2015

Designer Point Person, Department Manager, Designer RTW and Via C Nordstrom Somerset Collection North, Troy, MI

- *Conducted, organized, and prepared materials all store designer trainings for new hires, selling, and product immersion*
- *Prepared reporting and materials to lead monthly associate and manager trainings for all designer employees including RTW, shoes, handbags, and men's designer*
 - *Doubled RTW designer volume in 2 years*
 - *Recruited, hired, and on-boarded top talent, which includes a Pace Setter & Customer Service All Star*
 - *Coached staff to achieve goals and improve skill set to grow business and to elevate the client experience*
 - *Worked closely with vendors and buyers to add 6 new points of distribution to department to total 20+ points of distribution. Evaluated and communicated developmental needs of the department to ensure the right mix of product, sizing, and depth*
 - *Consistently hit sell through expectations and had YOY increases*
 - *Planned and executed successful events for Designer areas of business*
 - *Managed all operations of department including visual merchandising, inventory control, & scheduling*

2011-2012

Department Manager, BP Department

Nordstrom Somerset Collection North, Troy, MI

- *Managed the 2nd largest square foot BP. department in the company; multi-million dollar business that is fast-paced & unit-intense, comprised of clothing, accessories, and jewelry*
- *YOY increase and used effective hiring, on-boarding, developmental training, and creative scheduling to build passionate and effective staff to increase business*
- *Identified future opportunities to affect product offering with collaboration with buying office.*
- *Managed a team of over 25+ associates and promoted 4 assistant managers into managerial leadership roles*
- *Coached staff to achieve goals and improve skill set to grow business and to elevate the client experience*
- *Managed all operations of department including visual merchandising, inventory control, & scheduling*

2007-2011

Opening Department Manager, BP. Department

Nordstrom Twelve Oaks, Novi MI

- *Opened full line store, recruited, hired, and on-boarded entirely new team of over 25 people*
- *Developed training materials and conducted ongoing training for new employees*
- *Promoted 5 assistant managers into managerial leadership roles*
- *During the crash of 2008, was the only women's apparel department to have an increase over LY*
- *YOY increases and grew the business consistently for 4 years*
- *With growing new store, ensured we had the right product mix, breadth and depth, and had the right staffing to drive effective business by identify opportunities and needs of the business*
- *Managed all operations of department including visual merchandising, inventory control, & scheduling*

2007-2007

Department Manager, BP. Department

Nordstrom Somerset Collection North, Troy, MI

- *Managed, coached, and developed team of 40 employees of different skill sets and responsibilities from salespeople, fitting room attendants, cashiers, and clothes runners*
- *Hired, on boarded, and developed 2 new assistant managers with key leadership skills*
- *Managed all operations of department including visual merchandising, inventory control, & scheduling*

2006-2007

Assistant Department Manager, BP. Department

Nordstrom Somerset Collection North, Troy, MI

- *Manager of Fashion Board Internship; consisted of 20 young high school women looking for careers in fashion leadership. Mentored young women and developed skill sets for collegiate leadership and work experiences*
- *Recruited, prepared, and led trainings at local high schools regarding Nordstrom and the Fashion Board Internship and conducted monthly meetings for Fashion Board*
- *Directly supervised management of 40 employees*
- *Coached and developed team comprised of sales and support roles*

2001-2006

Sales & Support Roles, BP. Department

- *Clothes Runner, Fitting Room Attendant, Cashier, & Salesperson*
- *Responsible for overall cleanliness of fitting rooms and ensured merchandise is put back timely on the sales floor. This includes stock management, and department is sized, colorized, and filled in from back stock*
- *Handled all register operations and gave superior service to all customers.*
- *Exceeded personal sales goals, and received many customer service letters in regards to an exceptional experience*

Professional Affiliations and Associations

Sustainer Advisor, Membership & Recruitment, Junior League of Birmingham (2018-Present)

- *Assists with planning and executing of Recruitment Events & New Member Meetings and Education*
- *Actively recruits members and participates in all activities in with engaging prospective members*
- *Actively participates and hosts New Member Meetings at the BAC*

Immediate Past President, Nominating Committee, Junior League of Birmingham (2017-2018)

- *Assumes duties as the Immediate Past President of the organization to ensure the effective governance and fiduciary responsibility of the Junior League is followed*
- *Nominating Committee interviews, slates, and presents upcoming leadership into the organization*

President, Board of Directors, Junior League of Birmingham (2016-2017)

- **Chief Governance Officer:** *assure the effective governance and fiduciary responsibility of the Junior League through its duly elected board of directors. This ensuring duty of care, duty of loyalty, and duty of obedience is followed*
- **Chief Executive Officer:** *assure the effective operations of the Junior League through the Board's oversight of programs and activities. Ensuring the mission, planning and policy making, prudent board operations, membership, programming, marketing, public relations, legal compliance, and financial management are followed and executed*
- **Mission:** *Promote voluntarism, develop the potential of women, and improve community through effective action and leadership of trained volunteers, it's purpose is exclusively educational and charitable*
- *Prepared materials and conducted Board of Directors meetings, general membership meetings, league developmental trainings, board of director & management team leadership trainings & transitions*

President Elect & Executive Vice President, Board of Directors, JLB 2015-2016

- *Oversee all operations of the league as noted under the President*
- *Responsible for organizational management of league*
- *Prepared materials and conducted monthly Management Team meetings*
- *Responsible for the Management Team, comprised of Secretary, Fund Development, Membership, Sustainer, Communication, and Community Impact Council Directors, Assistant Treasurer, Secretary directly overseeing the day to day operations of the league*

Fund Development Council Director, Board of Directors, JLB 2013-2015

- *Oversee all fundraising elements of the organization, includes developmental training, budgets, profit and loss statements, member of the finance committee, and event planning*
- *Oversaw annual revenue of over \$100,000, and monitored budget and spending*
- *Maintained all donor relations and sponsorship packages of the organization*
- *Oversee 5 committees of 80 women, which includes preparing and conducting training*

Social Fundraising Chairman, JLB 2012-2013

- *Led and oversaw all operations of a committee of 15 women*
- *Planned and executed 8 events and exceed budgeted fundraising goal by 35%*
- *Responsibilities included soliciting donations, booking venues, planning all interworking of events, contracts, food & beverage, labor, PR, operations, ticket sales, and marketing*

IT Committee, JLB 2011-2012

- *Gathered information and created the electronic email blasts that went to league members*

Social Fundraising Committee, JLB 2010-2011

- *Member of committee that executed monthly social events for league and the community*
- *Responsibilities included, soliciting donations, booking venues, planning all interworking of events, contracts, food & beverage, labor, PR, operations, ticket sales, and marketing*

American Girl Committee, JLB 2009-2010

- *Signature Fundraising Event held at the Townsend in Birmingham*
- *Responsibilities included, soliciting donations, planning all interworking of event, food & beverage, labor, PR, operations, ticket sales, merchandise sales, seating and marketing*

Board of Trustee's (2015-Present) & Executive Committee (2015-2017), CARE House of Oakland County

- *Child Advocacy Center that provides services to victims of child abuse and neglect*
- **Mission:** *To be an advocate for the safety of all children through education, intervention, treatment, and research, in collaboration with the community*
- *Board of Trustee's governs this non-profit organization, overseeing \$2M annual budget, to support its programs and services it provides to the community of 5,000 people actively taking part in*

Board of Directors, Athlete's Unlimited, (2018-Present)

- *Athletes Unlimited is a non-profit organization dedicated to providing social, recreational and athletic outlets to people with disabilities. Our guiding philosophy is that life is not intended to be a spectator sport. Everyone, regardless of ability, can benefit from participating in sports. It continues to be Athletes Unlimited's primary goal to provide these opportunities to as many physically challenged individuals as possible.*
- *Actively fundraises and executes the Annual Golf Outing, by raising funds by donations with Sponsorship Packages, securing donations for Silent Auction & Raffle, creating informational collateral to send to prospective donors and executed Auction & Raffle.*

Board of Directors, Great Lakes Chamber Music Festival, (2018-Present)

- *GLCMF is to be an ongoing program of international stature which brings together people of diversity to celebrate and foster the special intimate musical conversation that is central to great chamber music. Each June, the GLCMF brings a contingent of the world's finest chamber musicians to metro Detroit for two weeks of performances in spectacular downtown and suburban venues.*

Fitness Committee, Birmingham Athletic Club (2019-Present)

- *Assist the club in providing effective action in regards to our fitness center, staff, services offered, and equipment.*

Membership Committee Chairman, Birmingham Athletic Club (2021)

Membership Committee, Birmingham Athletic Club (2019-Present)

- *Assist the club on retaining and recruitment members, member satisfaction, club concerns, hosting member centric events, hosting recruitment events, reviewing member qualifications and applications.*

F&B Committee, Michigan Opera Theatre, BravoBravo! (2013-2017)

- *Sole largest fundraiser for the Detroit Opera House*
- *Procured donations for silent auction, assisted with restaurants (30) participating in event, execution of event setup with committee members*
- *Event raises \$150,000 annually*
- *Filling the Detroit Opera House with an event capacity of 2,500 patrons for over 15 years, and includes, food, beverage, and music from all over the Metro Detroit Area. Specifically targeted to the young professionals demographic, 21-50 year old, predominately educated, successful professional with sincere interest in assisting and support of this major cultural resource of the City of Detroit and the State of Michigan. Since the event launch in 1999, this fundraising has brought more than 1.5M that directly supports our artistic and educational endeavors and the continued improvement and sustainability of the Detroit Opera House*

College Chapter Director, Appointed Officer, Delta Zeta, Eastern Michigan University (2011-2019)

- *Manage and individually develop women's leadership organization of 55*
- *Oversee all entities of organization which includes, policies, procedures, federal laws, housing, billing/financial, recruitment, membership, fundraising, leadership skills, risk management, academics, service, ADA requirements, and leadership training*
- *Manage working annual budget of roughly \$50,000 for the chapter*
- *Prepare and Conduct developmental trainings for the organization at large, including executive board and advisory board*

Philanthropic Collegiate Leadership

Vice President of Recruitment, Delta Zeta Sorority

Continuous Open Bidding Chairman, Delta Zeta Sorority

Junior Invitation Committee Representative, Delta Zeta Sorority

Junior Nominating Committee Representative, Delta Zeta Sorority

Social Chairman, New Member Class, Delta Zeta Sorority

Social Chairman, College PanHellenic Council, Central Michigan University

Fashion Association of Merchandising & Design, Member, Central Michigan University

Kappa Omicron Nu, Honors Fraternity, Member, Central Michigan University

Public Relations Chairman, Threads Fashion Show, Central Michigan University

Teacher Assistant, Threads Fashion Show, Central Michigan University

Nordstrom, Internship, BP. Department, Somerset Collection North

Fashion Group International, Chicago, IL

GAMMA

Michigan Humane Society, Mega March for Animals

OFFICE USE ONLY
Meets Requirements? Yes No
Will Attend / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Board of Zoning Appeals

Specific Category/Vacancy on Board Member (see back of this form for information)

Name Jason Canvasser

Phone 248-231-9972

Residential Address 369 Kimberly St.

Email * jcanvasser@clarkhill.com

Residential City, Zip Birmingham, MI 48009

Length of Residence 12 years

Business Address Clark Hill PLC, 500 Woodward Ave., Suite 3500

Occupation Attorney

Business City, Zip Detroit, MI 48226

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____
I have sat on the BZA since approx. 2015. In my legal practice, I routinely help businesses and homeowners navigate complex zoning issues. As a resident of Birmingham, I am interested in continuing my service to the City by utilizing that knowledge to help regulate land use and act on questions relating to that use.

List your related employment experience Clark Hill PLC, June 1, 2012 through present.

List your related community activities Board of Directors - Birmingham Bloomfield Chamber of Commerce

List your related educational experience University of Michigan - BA, Political Science 2003; Wayne State Law School - JD, 2006

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No.

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes



Signature of Applicant

9/27/2023

Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to clerk@bhamgov.org or fax to 248.530.1080.

Updated 11/18/2020

**By providing your email to the City, you agree to receive 3A & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

- A. Appeals may be filed under the following conditions:
1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
 2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
 3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.
- B. Procedures of the Board of Zoning Appeals (BZA) are as follows:
1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
 2. All applications for appeal shall be submitted to the Community Development Department on or before the 12th day of the month preceding the next regular meeting. If the 12th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
 3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
 4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
3. Interested parties' comments and view on the appeal.
4. Rebuttal by applicant.
5. The BZA may make a decision on the matter or request additional information.

D. Motions and Voting

1. A motion is made to either grant or deny a petitioner's request
 - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
 - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
 - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.

2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.
3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

ARTICLE II - Results of an Appeal

- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.

B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.

Signature of Applicant

CHAPTER 126 - ZONING

ARTICLE 8: ENFORCEMENT AND PENALTIES

8.01 The Board of Zoning Appeals

- A. Establish: There shall be established and appointed by the City Commission, in accordance with Section 5, Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.585, MSA 5.2935), as amended, a Board of Zoning Appeals consisting of seven members each to be appointed for a term of three years.
- B. Alternate Members: The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Zoning Appeals. The alternate member may be called on a rotating basis to sit as a regular member of the Board of Zoning Appeals in the absence of a regular member. An alternate member may also be called to service in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Board of Zoning Appeals.
- C. Procedure: Meetings of the Board of Zoning Appeals shall be held at the call of the chairperson, and at such other times as the Board of Zoning Appeals may determine. Such chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. The Board of Zoning Appeals shall adopt rules of procedure and shall keep records of applications and the action thereon, which shall be a public record.
- D. Appeals: An appeal to the Board of Zoning Appeals, based in whole or in part on the provisions of the Zoning Ordinance, may be taken by any person aggrieved, or by any governmental officer, department, Board of Zoning Appeals or bureau affected by the decision of the Building Official. Such appeal shall be taken by filing with the Board of Zoning Appeals a notice of appeal, on forms provided by the Building Official, specifying the ground thereof, and by paying the required fee. The Building Official shall transmit to the Board of Zoning Appeals all papers constituting the records upon which the appeal action was taken.
- E. Hearing and Notice: The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal and shall give due notice of the appeal to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single- and two-family dwellings within 300 feet, the notice to be delivered personally or by mail to the respective owners and tenants at the address given in the last assessment roll. If the tenant's name is not known, the term "occupant" may be used. A notice sign shall also be posted in a conspicuous place on the subject property. Notice signs will be provided by the City of Birmingham. It is the responsibility of the applicant to post the notice sign as required, to ensure that the notice sign remains posted during the entire notice period and to remove the notice sign the day after the public hearing the notice sign was advertising. At the hearing, any person or party may appear in person, by agent or by attorney. All such hearings shall be open to the public.
- F. Powers and Duties: The Board of Zoning Appeals shall have the powers and duties set forth in MCL 125.581 et seq., MSA 5.2931 et seq. and as more particularly hereinafter enumerated. The Board of Zoning Appeals shall not have the power to change the zoning district of any property. The Board of Zoning Appeal's power and duties shall include the following:
1. Review of administrative decisions.
 - a. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance.
 - b. It may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the situation, and to that end shall have all the powers of the officer from whom the appeal is taken.
 2. Mapping disputes.
 - a. Where disputes arise as to the location of the floodplain boundary or the limits of the floodway, the Board of Zoning Appeals shall resolve the dispute and establish the boundary location in accordance with Section 1.15.

In all cases, the decision of the Board of Zoning Appeals shall be based upon the most current floodplain studies issued by the Office of Federal Insurance and Hazard Mitigation. Where the Office of Federal Insurance and Hazard Mitigation information is not available, the best available floodplain information shall be utilized.

- b. Where a dispute involves an allegation that the boundary is incorrect as mapped and Office of Federal Insurance and Hazard Mitigation floodplain studies are being questioned, the Board of Zoning Appeals shall modify the boundary of the floodplain or the floodway only upon receipt of an official letter of map amendment issued by the Office of Federal Insurance and Hazard Mitigation.

3. Variances.

- a. The Board of Zoning Appeals shall hear and grant or deny requests for variances from the strict application of the provisions of the Zoning Ordinance where there are practical difficulties or unnecessary hardships in carrying out the strict letter of such chapter. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance. The Board of Zoning Appeals shall not grant any variance unless it first determines that:
 - i. Because of special conditions applicable to the property in question, the provisions of the Zoning Ordinance, if strictly applied, unreasonably prevent the property owner from using the property for a permitted purpose;
 - ii. Literal enforcement of the chapter will result in unnecessary hardship;
 - iii. The granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety and welfare; and
 - iv. The granting of the variance will result in substantial justice to the property owner, the owners of property in the area and the general public.
- b. Variances from the provisions of Section 4.13, Floodplain Regulations, shall only be granted by the Board of Zoning Appeals upon a determination of compliance with the general standards for variances contained in the Zoning Ordinance and in accordance with the following:
 - i. The variance granted will not result in flood heights in excess of those permitted by the Zoning Ordinance, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
 - ii. The variance granted shall be the minimum necessary, considering the flood hazard, to afford relief to the applicant.
 - iii. Variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the Michigan Historic Markers listing of historic sites, or any other state register of historic places without meeting the requirements of this section.
- c. Sign Variance Procedure. Any person who feels aggrieved by a decision of the City Planner or Design Review Board may have the sign reviewed by the Board of Zoning Appeals. A variance may be granted by the Board of Zoning Appeals only in cases involving practical difficulties when the evidence in the official record of the appeal supports all the following affirmative findings:
 - i. That the alleged practical difficulties are peculiar to the property of the person requesting the variance by reasons of the physical and/or dimensional constraints of the building and/or site, and result from conditions which do not exist generally throughout the City;
 - ii. That the granting of the requested variance would not be materially detrimental to the property owners in the immediate vicinity;
 - iii. That the granting of the variance would not be contrary to the general objectives of this Chapter and is in keeping with the spirit and intent of this ordinance; and
 - iv. That granting the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board of Zoning Appeals to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

- v. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance and the conditions specified in the sign ordinance, Chapter 86, Article 02, Section 2.06.

G. Miscellaneous:

1. No order of the Board of Zoning Appeals permitting the erection or alteration of buildings shall be valid for a period longer than one year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is commenced and proceeds to completion in accordance with the terms of such permit.
2. No order of the Board of Zoning Appeals permitting a use of a building or premises shall be valid for a period longer than one year unless such use is established within such period; provided, however, that if the use of such permit is dependent upon the erection or alteration of a building, such order shall continue in full force and effect if a building permit for such use, erection or alteration is obtained within such period and such erections or alterations are commenced and proceed to completion in accordance with the terms of such permit.

CITY AND VILLAGE ZONING ACT (EXCERPT)
Act 207 of 1921

***** 125.585 THIS SECTION IS REPEALED BY ACT 110 OF 2006 EFFECTIVE JULY 1, 2006 *****

125.585 Board of appeals; rules governing procedure; appointment and terms of members; powers and duties of board; appeals; variances; remuneration; finality of decision; judicial review.

Sec. 5. (1) The legislative body of a city or village may act as a board of appeals upon questions arising under a zoning ordinance. The legislative body may establish rules to govern its procedure as a board of appeals. In the alternative, the legislative body may appoint a board of appeals consisting of not less than 5 members, each to be appointed for a term of 3 years. Appointments of the first members shall be for terms of 1, 2, and 3 years, respectively, so as nearly as possible to provide for the subsequent appointment of an equal number of members each year. After the initial appointments, each member shall hold office for the full 3-year term.

(2) Under procedures specified in the zoning ordinance, the legislative body of a city or village may appoint not more than 2 alternate members for the same term as regular members of the board of appeals. The alternate members may be called on a rotating basis as specified in the zoning ordinance to sit as regular members of the board of appeals in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member called shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the board of appeals.

(3) The board of appeals shall hear and decide appeals from and review any order, requirements, decision, or determination made by an administrative official or body charged with the enforcement of an ordinance adopted under this act. The board of appeals shall also hear and decide matters referred to the board or upon which the board is required to pass under an ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the board of appeals only if provided for in the zoning ordinance.

(4) In a city or village having a population of less than 1,000,000, the concurring vote of a majority of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to effect a variation in an ordinance except that a concurring vote of 2/3 of the members of the board is necessary to grant a variance from uses of land permitted in an ordinance. In a city having a population of 1,000,000 or more, the concurring vote of 2/3 of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to grant a variance in an ordinance.

(5) An appeal may be taken by a person aggrieved, or by an officer, department, board, or bureau of the city or village. In addition, a variance in an ordinance may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and this act. A board of rules or board of building appeals of a city or village may be enlarged to consist of not less than 5 members, and these may be appointed as the board of appeals as provided in this section.

(6) An appeal under this section shall be taken, within a time prescribed by the board of appeals by general rule, by filing, with the officer or body from whom the appeal is taken and with the board of appeals, a notice of appeal specifying the grounds for the appeal. The officer or body from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(7) An appeal under this section stays all proceedings in furtherance of the action appealed from unless the officer or body from whom the appeal is taken certifies to the board of appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would in the opinion of the officer or body cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the board of appeals or by the circuit court, on application, on notice to the officer or body from whom the appeal is taken and on due cause shown.

(8) The board of appeals shall fix a reasonable time for the hearing of the appeal and give notice of the appeal to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single and 2-family dwellings within 300 feet. The notice shall be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll. If a

tenant's name is not known, the term "occupant" may be used. Upon the hearing, a party may appear in person or by agent or by attorney.

(9) The board of appeals shall decide the appeal within a reasonable time. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make an order, requirement, decision, or determination as in the board's opinion ought to be made in the premises, and to that end shall have all the powers of the officer or body from whom the appeal is taken. If there are practical difficulties or unnecessary hardship in carrying out the strict letter of the ordinance, the board of appeals may in passing upon appeals grant a variance in any of its rules or provisions relating to the construction, or structural changes in, equipment, or alteration of buildings or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

(10) The board of appeals may impose conditions upon an affirmative decision, as provided in section 4c(2). The legislative body of a city or village may authorize the remuneration of the members of the board for attendance at each meeting.

(11) The decision of the board of appeals is final. However, a person having an interest affected by the zoning ordinance may appeal to the circuit court. Upon appeal, the circuit court shall review the record and decision of the board of appeals to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of this state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the board of appeals.

(12) If the court finds the record of the board of appeals inadequate to make the review required by this section, or that additional material evidence exists that with good reason was not presented to the board of appeals, the court shall order further proceedings before the board of appeals on conditions that the court considers proper. The board of appeals may modify its findings and decision as a result of the new proceedings, or may affirm the original decision. The supplementary record and decision shall be filed with the court.

(13) As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the board of appeals.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2637;—Am. 1941, Act 306, Eff. Jan. 10, 1942;—Am. 1947, Act 272, Eff. Oct. 11, 1947;—CL 1948, 125.585;—Am. 1952, Act 97, Eff. Sept. 18, 1952;—Am. 1968, Act 202, Eff. Nov. 15, 1968;—Am. 1973, Act 204, Imd. Eff. Jan. 11, 1974;—Am. 1978, Act 638, Eff. Mar. 1, 1979;—Am. 1979, Act 180, Eff. Mar. 18, 1980;—Am. 1986, Act 191, Imd. Eff. July 8, 1986;—Am. 2000, Act 20, Imd. Eff. Mar. 8, 2000.

STILLE-DEROSSETT-HALE SINGLE STATE CONSTRUCTION CODE ACT (EXCERPT)
Act 230 of 1972

125.1514 Construction board of appeals; creation; appointment, qualifications, and terms of members; appeal to board; hearing; decision; statement of reasons for decision; appeal to commission; copy of decision; additional powers or duties; procedures; conducting business at public meeting; notice; availability of certain writings to public.

Sec. 14. (1) A construction board of appeals for each governmental subdivision enforcing the code shall be created consisting of not less than 3 nor more than 7 members, as determined by the governing body of the governmental subdivision. Unless otherwise provided by local law or ordinance, the members of the board of appeals shall be appointed for 2-year terms by the chief executive officer of a city, village, or township and the chairperson of the county board of commissioners of a county. A member of the board of appeals shall be qualified by experience or training to perform the duties of members of the board of appeals. A person may serve on the board of appeals of more than 1 governmental subdivision. If an enforcing agency refuses to grant an application for a building permit, or if the enforcing agency makes any other decision pursuant or related to this act, or the code, an interested person, or the person's authorized agent, may appeal in writing to the board of appeals. The board of appeals shall hear the appeal and render and file its decision with a statement of reasons for the decision with the enforcing agency from whom the appeal was taken not more than 30 days after submission of the appeal. Failure by the board of appeals to hear an appeal and file a decision within the time limit is a denial of the appeal for purposes of authorizing the institution of an appeal to the commission. A copy of the decision and statement of the reasons for the decision shall be delivered or mailed, before filing, to the party taking the appeal.

(2) This act does not prevent a governmental subdivision from granting its board of appeals additional powers or duties not inconsistent with this act, or from establishing procedures to be followed by its board of appeals insofar as the procedures do not conflict with this act. Except as otherwise provided by this act, or by other laws or ordinances, a board of appeals may by rules establish its own procedures.

(3) The business which the board of appeals may perform shall be conducted at a public meeting of the board of appeals held in compliance with Act No. 267 of the Public Acts of 1976. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(4) A record of decisions made by the board of appeals, properly indexed, and any other writing prepared, owned, used, in the possession of, or retained by the board of appeals in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976.

History: 1972, Act 230, Eff. Jan. 1, 1973;—Am. 1977, Act 195, Imd. Eff. Nov. 17, 1977;—Am. 1978, Act 442, Imd. Eff. Oct. 9, 1978.

Popular name: Act 230

Popular name: Uniform Construction Code



MEMORANDUM

City Clerk's Office

DATE: September 25, 2023

TO: Jana L. Ecker, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Staff Introduction – Megan Trapp, Part-Time Clerical Assistant

Join us in welcoming Megan Trapp as our new part-time clerical assistant. Megan is highly educated and motivated and is a great addition to our office.

Megan has a Master's of Science in Environment and a Bachelor's of Science in Environmental Sustainability from the University of Michigan. She has previous experience working at the University of Michigan English Language Institute as an outreach coordinator.

Megan is ready to bring her education and experience to her new role with the City Clerk's Office and provide excellent service to the residents of Birmingham.

Please extend a warm welcome to Megan and support her as she grows in this position. We are confident that her knowledge and skills will bring a positive impact to the City Clerk's Office as we strive to serve our community and our citizens.

**Birmingham City Commission
Special Meeting Minutes - Workshop
Monday, September 11, 2023
6:00 p.m.**

Vimeo Link: <https://vimeo.com/858838068>

This will be considered a workshop session of the City Commission. No formal actions will be taken. The purpose of this workshop is to participate in a discussion on Water, Sewer, and the August 24, 2023 Rain Event.

I. Call to Order

Therese Longe, Mayor

II. Roll Call

City Clerk Bingham called the roll.

Present: Mayor Longe
Mayor Pro Tem McLain
Commissioner Baller
Commissioner Boutros
Commissioner Haig
Commissioner Host
Commissioner Schafer

Absent: None

Staff: City Manager Ecker; City Clerk Bingham, City Engineer Coatta, Assistant City Manager Fairbairn, City Attorney Kucharek

III. Presentation & Discussion

CE Coatta and ACM Fairbairn presented the topic. Staff answered informational questions from the Commission.

Commissioner discussion was as follows:

- Water enters drains in Birmingham, continues through Birmingham's water and sewer infrastructure, and then enters other water and sewer infrastructure outside of Birmingham's jurisdiction;
- Birmingham was not the only municipality in the area that experienced flooding;
- Residents with homeowners' insurance should call their agents regarding flooding;
- As the City improves its water and sewer infrastructure, the stormwater capacity will be increased. In addition, the City is reviewing opportunities to add bioswales and rain gardens in order to reduce stormwater issues;
- Bioswales and rain gardens would not be able to completely mitigate stormwater issues during high-intensity storm events;

- The page regarding [Storm Water Credits](#) on the City's website lists ways of reducing the amount of stormwater runoff generated by a single family residence that enters the sewer system;
- If the City were to require that residents install backflow prevention valves, it could create liability for the City;
- The Staff presentation was very helpful and would be posted on the City website; and,
- The City would continue seeking reports regarding flooding experiences from residents.

IV. Public Comment

Scott Goodwin made a comment in favor of collecting more data about instances of flooding in order to know where issues arise more frequently.

Denise Rumsey made comments in favor of: a retention basin at S. Eton and Lincoln, procuring money from the State in order to improve infrastructure, and the preservation of pervious surfaces in the City in order to reduce stormwater runoff. She also made a comment raising concerns about the impact of having sewage flood into one's home.

Staff replied to questions from David Bloom.

Mr. Bloom made a comment in favor of reviewing the City's policies on pervious surfaces.

Anthony Long made comments in favor of lobbying the County and the State to improve the water and sewer infrastructure downstream of Birmingham and spoke in favor of adding retention basins within the City where possible.

V. Adjourn

Mayor Longe adjourned the meeting at 7:23 p.m.

Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist

Birmingham City Commission Minutes
September 11, 2023
Municipal Building, 151 Martin
7:30 p.m.
Vimeo Link: <https://vimeo.com/858838068>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Therese Longe, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

City Clerk Bingham called the roll.

Present: Mayor Longe
Mayor Pro Tem McLain
Commissioner Baller
Commissioner Boutros
Commissioner Haig
Commissioner Host
Commissioner Schafer

Absent: None

Staff: City Manager Ecker; City Clerk Bingham, Assistant Director of Engineering Borton, Assistant City Manager Clemence, City Engineer Coatta, Planning Director Dupuis, Assistant City Manager Fairbairn, Police Chief Grewe, Dispatcher Harmon, Police Captain Kearney, City Attorney Kucharek, Parks and Recreation Manager Laird, Police Officer Lease, Parking Enforcement Assistant Martin, Auxiliary Police Officer Van Acker, Police Officer Walker, Department of Public Services Director Zielinski

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS

Announcements

- Moment of silence for September 11th
- Happy Birthday Commissioner Host
- National Recovery Month Proclamation
- National Suicide Prevention Month Proclamation

Employee Recognition

- Police Department
 - Chyna Harmon – Part-Time Dispatcher, hired on July 31, 2023
 - Ashley Martin – Part-Time Parking Enforcement Assistant, hired on July 31, 2023
 - Cameron Lease – Police Officer, hired on August 14, 2023

- Matthew Walker – Police Officer, hired on September 5, 2023
- Robert Van Acker – Auxiliary Police Officer, hired on April 15, 2023

CC Bingham swore in the new officers.

State Representative Samantha Steckloff provided updates regarding State legislative matters.

IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

David Bloom made a comment in favor of adding a Commission Agenda Item that would allow Staff to offer follow up to public comment.

John Corkery made a comment about stormwater issues as experienced by residents on Bird and Smith Avenues.

Commissioner Boutros assured the resident that the Commission was taking the stormwater concerns very seriously.

Patty Pachy made a comment about her experience with stormwater issues on Bird.

The Mayor and City Manager provided information regarding stormwater issues.

V. CONSENT AGENDA

09-209-23 Consent Agenda

The following items were pulled from the Consent Agenda:

- Public: Item A – City Commission Minutes of August 28, 2023
- Commr Haig: Item E – 707 S. Worth – Air Lease Agreement

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Host:
To move the Consent Agenda excluding Items A and E.

ROLL CALL VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller

Nays, None

- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 31, 2023, in the amount of \$1,269,029.63.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 7, 2023, in the amount of \$405,946.67.

- D. Resolution to add an alternate position to the Ad Hoc Aging in Place Committee for a term consistent with all regular members of the committee ending in January 2025 and to further direct the City Clerk to notice the available alternate Ad Hoc Aging in Place Committee member position and begin the process of filling this vacancy.
- F. Resolution to approve the addendum to extend the contract for 2022-23 handwork pavement markings plus additional cost with Hart Pavement Striping Corporation in the amount of \$252,270.00 annually to May 26, 2025; further to approve the addendum to extend the contract for spring 2023 long/center lines with PK Contracting, Inc. for \$12,697.00 annually to June 1, 2025; and further to fund both contracts from account 202.0-316.000-937.0200. In addition, to authorize the Mayor and City Clerk to sign the agreements on behalf of the City.
- G. Resolution to approve the 5 Year METRO Act Permit Extension of Michigan Bell Telephone Company d/b/a AT&T Michigan, and to authorize the Mayor to sign the Extension Form on behalf of the City.

09-210-23 City Commission Minutes of August 28, 2023 (Item A)

It was noted that the minutes required an amendment.

Public Comment

David Bloom made a comment requesting increased detail in the minutes.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Schafer:
To approve the City Commission meeting minutes of August 28, 2023 as amended.

ROLL CALL VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller

Nays, None

09-211-23 707 S. Worth – Air Lease Agreement (Item E)

Mayor Longe recused herself from the item citing a business relationship between her spouse and applicant.

Mayor Longe exited the room for the duration of the item’s discussion.

MPT McLain assumed facilitation of the meeting for the duration of the item’s discussion.

CA Kucharek answered an informational question from Commissioner Haig.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Host:
To adopt a resolution to enter into a lease agreement with F.H.S Birmingham, LLC in the amount of \$200.00 per year for an encroachment of 160 sq. ft. of right-of-way for private residential balconies at 707 S. Worth. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

ROLL CALL VOTE: Ayes, MPT McLain
Commissioner Host
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller

Nays, None

VI. UNFINISHED BUSINESS

09-212-23 Leaf Blowers Resolution

PD Dupuis presented the item. Staff answered informational questions from the Commission.

Individual Commissioners commented:

- The City should consider phasing out its own use of two-stroke gas powered leaf blowers prior to considering whether other users should be mandated to do so as well; and,
- The Commission previously decided to phase out the use of two-stroke gas powered leaf blowers by anyone. Enforcement would be discussed when drafting the ordinance.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To adopt a resolution to declare the intent of the City Commission in regards to two-stroke, gas powered leaf blowers and to set goals in regard to the phasing out of such.

Public Comment

Mr. Long made a comment noting that there are four-stroke gas powered leaf blowers as well, and that the resolution did not address those.

The Mayor clarified that the Commission decided to begin with two-stroke gas powered leaf blowers since they are more polluting.

Staff answered an informational question from Commissioner Baller.

MPT McLain noted that the implementation of this process would be done with consideration of the relevant variables.

VOICE VOTE: Ayes, MPT McLain
Commissioner Host
Commissioner Haig
Commissioner Schafer

Commissioner Boutros
Commissioner Baller
Mayor Longe

Nays, None

VII. NEW BUSINESS

09-213-23 Trail Improvements Concept Plan

PRM Laird and Tiffany Smith of MCSA presented the item. Staff answered informational questions from the Commission.

Commission discussion was as follows:

- Little of the 2006 Trail Plan was implemented, and so it was nice that trail improvements were being revisited;
- The Booth Park restroom was previously going to be located within the tree line along the trail, and it was determined that would not be possible due to the number of underground utilities that would be required. The proposed location of the Booth Park restroom would still be up for further discussion;
- This proposal is a plan like the 2040 Plan, and each part of the plan would require review before implementation;
- The Booth Park plaza would likely be a very popular destination for people getting carryout from nearby food establishments. Accordingly, maximizing the size of the plaza should be considered;
- The Booth Park plans from the early 2000s contemplated an area for skating in the winter;
- It seemed contradictory that the City would install a crushed stone trail and describe it as pervious when City ordinance limits the use of stone for residential lots because it is considered impervious. It would be appropriate for the ordinance to agree with the Engineering Department;
- One Commissioner spoke in support of the structure of the proposed restroom, and one Commissioner voiced concerns about the aesthetics of the proposed restroom; and,
- Adequate signage will be necessary.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Host:
To accept the Trail Improvement Concept Plan,

AND

To direct staff to move forward with the preparation of a Request for Proposal to prepare construction drawings for the Booth Park Section of the Trail Improvements Concept Plan.

Staff answered informational questions from Commissioners Baller, Haig and the Mayor.

Commissioner Baller said he was concerned about there being sufficient funding for each phase of the plan. He noted there is no sidewalk being added to the west side of Baldwin, and recommended that a crosswalk be added to Baldwin near Maple. He recommended the unimproved trail extend through the triangle near Baldwin and Maple and then connect to the

other bridge. He said he was not supportive of the proposed new sidewalk on Maple since there was no desired path along that area.

Commissioner Boutros voiced his support for the plan. He said that since this plan represents a very broad starting point, cost and design concerns would be more appropriately discussed during future implementation discussions.

Commissioner Baller voiced concern that the Commission would not have opportunity after this discussion to provide input until the final design, at which point there would be some resistance towards making modifications. He said he would like to help interview the design professionals that will be hired for the project.

Commissioner Haig and the Mayor recommended that participating in the interview process should be brought up as a topic for future discussion.

The Mayor noted that the Commission could not participate in every aspect of the design and planning process, and that there was a difference between sitting on a board tasked with those activities and sitting on the Commission. She added that the City would be seeking donations and applying for grants in order to fund the proposed improvements.

MPT McLain noted that Commissioners are permitted to do research, collect information, and review board meetings in the process of informing themselves on the topics that will be brought before them. She noted that Commissioners should balance that with understanding the processes undertaken by other boards, and should provide their informed input when the proposals come before the Commission for review.

ROLL CALL VOTE: Ayes, MPT McLain
 Commissioner Host
 Commissioner Haig
 Commissioner Schafer
 Commissioner Boutros
 Commissioner Baller
 Mayor Longe

Nays, None

The Mayor thanked everyone who participated in the discussion and commended the presenters.

Commission Items for Future Discussion
Commission Discussion On Items From A Prior Meeting

09-214-23 Increasing Biodiversity

Commissioner Haig summarized the topic.

Commissioner discussion was as follows:

- There would be additional sustainability actions that could be achieved relatively easily;

- Informing residents about how they could make sustainability improvements to their properties would be valuable; and,
- Replacing grass with native Michigan perennials on public property wherever possible would be beneficial for biodiversity.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Baller:
To look at increasing biodiversity in public spaces as soon as possible.

Commissioner Baller said that while drainage and bioswales could be part of the future item, it was not the focus of the future item.

VOICE VOTE: Ayes, MPT McLain
Commissioner Host
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller
Mayor Longe

Nays, None

09-215-23 Closed Session Pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Host:
To meet in closed session to discuss pending litigation pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act regarding John Reinhart, et al v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG, and The New 555 Commercial, LLC, The New 555 Residential, LLC, Manorwood Properties, LLC and Associates of 555, LP v City of Birmingham, State of Michigan Department of Licensing & Regulatory Affairs, Michigan Administrative Hearing System, Michigan Tax Tribunal Docket No.: 22-000772-TT, Property Nos.: 08-19-36-210-001, 08-19-36-210-003, and 08-19-36-210-005, which was appealed to the Michigan Court of Appeals bearing Docket 364563, and currently appealed to the Michigan Supreme Court bearing Docket No.: 165973.

ROLL CALL VOTE: Ayes, MPT McLain
Commissioner Host
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller
Mayor Longe

Nays, None

It was noted that the closed session would be entered into after all other agenda items were completed, and that no action would be taken after the closed session.

The Commission went into closed session at 9:49 p.m.

The Commission returned from closed session at 10:08 p.m.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

- A. Letter regarding the YMCA Pool from Catherine Stoll

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intention to appoint to the Board of Zoning Appeals
 - 2. Notice of Intention to appoint to the Birmingham Shopping District Board
- B. Commissioner Comments

MPT McLain explained to residents how they could get their broken-out water and sewer bill amounts.

Commissioner Host noted that the tribute to Pat Andrews would be moving forward and seeking donations for funding the project.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - 1. 2022-2023 Greenwood Cemetery Advisory Board Annual Report

The Mayor commented that the GCAB report was very thorough.

- D. Legislation
- E. City Staff
 - 1. Local Regulation of Short-Term Rentals – Mary M. Kucharek

CA Kucharek summarized the report.

Commissioner Host asked that the topic be added to the next agenda.

The Mayor advised the Commissioner that he could motion at the next meeting to have the topic added to a future agenda.

INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 10:08 p.m.



Laura Eichenhorn, City Transcriptionist

Alexandria Bingham, City Clerk

DRAFT

Birmingham City Commission Minutes
September 18, 2023
Municipal Building, 151 Martin
7:30 p.m.
Vimeo Link: <https://vimeo.com/863420192>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Therese Longe, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

City Clerk Bingham called the roll.

Present: Mayor Longe
Mayor Pro Tem McLain
Commissioner Baller
Commissioner Boutros
Commissioner Haig
Commissioner Host
Commissioner Schafer

Absent: None

Staff: City Manager Ecker; City Clerk Bingham, Planning Director Dupuis, City Attorney Kucharek, Manager of Public Services Markus, Department of Public Services Director Zielinski

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS

Announcements

- Happy Birthday Mayor Pro Tem McLain
- The Friends of the Birmingham Museum will be holding their annual tour of Greenwood Cemetery on Saturday, September 23, rain or shine. Guests should meet at the east gate at 1 PM. Tours are \$10 and feature colorful characters from Birmingham's past, including pioneer founding families and Elijah Fish and George and Eliza Taylor and their connection to the Underground Railroad.

Appointments

09-216-23 Design Review Board

Keith W. Deyer was interviewed by the Commission.

MOTION: Nomination by Commissioner Host:

To appoint Keith W. Deyer as a regular member of the Design Review Board to serve a three-year term to expire September 25, 2026.

VOICE VOTE: Ayes, MPT McLain
 Commissioner Host
 Mayor Longe
 Commissioner Haig
 Commissioner Boutros
 Commissioner Schafer
 Commissioner Baller

Nays, None

09-217-23 Design Review Board

Dustin Kolo was unavailable for an interview. The Mayor noted this would be a reappointment and asked the Commission if they were willing to proceed. The Mayor noted that Mr. Kolo provided a letter expressing his interest in a reappointment.

MOTION: Nomination by Commissioner Boutros:
To appoint Dustin Kolo as a regular member of the Design Review Board to serve a three-year term to expire September 25, 2026.

VOICE VOTE: Ayes, MPT McLain
 Commissioner Host
 Mayor Longe
 Commissioner Haig
 Commissioner Boutros
 Commissioner Schafer
 Commissioner Baller

Nays, None

09-218-23 Historic District Commission

Keith W. Deyer was interviewed by the Commission.

MOTION: Nomination by Commissioner Host:
To appoint Keith W. Deyer as a regular member of the Historic District Commission to serve a three-year term to expire September 25, 2026.

VOICE VOTE: Ayes, MPT McLain
 Commissioner Host
 Mayor Longe
 Commissioner Haig
 Commissioner Boutros
 Commissioner Schafer
 Commissioner Baller

Nays, None

09-219-23 Historic District Commission

Dustin Kolo was unavailable for an interview. The Mayor noted this would be a reappointment and asked the Commission if they were willing to proceed. The Mayor noted that Mr. Kolo provided a letter expressing his interest in a reappointment.

MOTION: Nomination by Commissioner Boutros:
To appoint Keith W. Deyer as a regular member of the Historic District Commission to serve a three-year term to expire September 25, 2026.

VOICE VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Boutros
Commissioner Schafer
Commissioner Baller

Nays, None

09-220-23 Architectural Review Committee

Javier Alvarez-Isasi was interviewed by the Commission.

MOTION: Nomination by Commissioner Boutros:
To appoint Javier Alvarez-Isasi as a regular member to the Architectural Review Committee to serve a three-year term to expire April 11, 2026.

VOICE VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Boutros
Commissioner Schafer
Commissioner Baller

Nays, None

The Clerk swore in Messrs. Deyer and Alvarez-Isasi. The Mayor thanked them both.

Employee Recognition

- Department of Public Works
 - Charles Markus

IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Susan Randall made comments in favor of: limiting short term rentals, improving infrastructure to address stormwater issues, mitigation of pickleball noise, speed tables, and the City working with utility companies to increase electric and water reliability.

Wendy Leary and Donna Voorhees both made comments opposing residential rentals offered for less than 30 days. Ms. Voorhees made comments in favor of other mechanisms of regulating and limiting short term rentals.

V. CONSENT AGENDA

09-221-23 Consent Agenda

The following items were pulled from the Consent Agenda:

MPT McLain: Item C – Bus Shelter Purchase

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Host:
To move the Consent Agenda excluding Item C.

ROLL CALL VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller

Nays, None

- A. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 13, 2023, in the amount of \$44,456,834.51.
- B. Resolution to approve the deaccession and return of redundant personal family items from collection 2020.37.1 in the Birmingham Museum’s permanent collection in accordance with the Birmingham Museum Collection Policy.
- D. Resolution to approve a request from the Birmingham Shopping District to hold the 2023 Winter Markt special event on Friday, December 1 – Sunday, December 3, 2023 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- E. Resolution to approve a request by the Birmingham Shopping District to hold the 2023 Santa House special event beginning the weekend of November 25, 2023 through December 24, 2023 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

F. Resolution to approve the budget amendment of \$17,260.00 for professional engineering services for Tee No. 1. Further to charge the additional cost to account #584.1-753.001-981.0100, and further to approve the appropriations and amendment to the Lincoln Hills Golf Course Fund as follows:

Revenues:		
Appropriation from Net Position	584.1-000.000-400.0000	\$17,260
Expenses:		
Lincoln Hills Golf Course – Capital Outlay	584.1-753.001-981.0100	\$17,260

09-222-23 Bus Shelter Purchase (Item C)

PD Dupuis answered an informational question from MPT McLain.

MOTION: Motion by MPT McLain, seconded by Commissioner Boutros:
 To approve an agreement with Enseicom for the manufacturing and delivery of two complete bus shelters and parts to repair a third currently owned by the City in the amount not to exceed \$50,590.50. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City and further, to approve the appropriations and amendment to the Capital Projects budget as follows:

Revenues:		
Local Contributions – SMART	403.0-901.020-587.0000	\$50,590.50
Expenses:		
Capital Projects Fund – Capital Outlay	403.0-901.020-971.0100	\$50,590.50

ROLL CALL VOTE: Ayes, MPT McLain
 Commissioner Host
 Mayor Longe
 Commissioner Haig
 Commissioner Schafer
 Commissioner Boutros
 Commissioner Baller

Nays, None

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

09-223-23 Early Voting

CC Bingham presented the item and answered informational questions from the Commission.

Commissioner comments were as follows:

- Thanks were extended to CC Bingham;
- An FAQ page explaining the process should be available on the City's website; and,
- Early voting and the attendant FAQ should also be publicized via the City's social media channels, newsletters, and any other means of communication.

Public Comment

Anthony Long made a comment commending the Clerk's Office for their work on the item.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Haig:
To adopt a resolution to authorize the City Clerk to enter into an agreement and partnership with Oakland County, Bloomfield Township, and Southfield Township to conduct early voting to meet all legal/administrative requirements pursuant to new legislation regarding the implementation of early voting in the State of Michigan.

ROLL CALL VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller

Nays, None

The Mayor congratulated CC Bingham.

Commission Items for Future Discussion

09-224-23 Short Term Rentals

Commissioner Host summarized the topic.

MOTION: Motion by Commissioner Host, seconded by Commissioner Boutros:
To have an agenda item to discuss short term rentals.

In reply to Commissioner Baller, Commissioner Host said he wanted to have a discussion about changing the rules regarding short term rentals.

MPT McLain explained that the discussion would likely be about how the Commission would proceed regarding short term rentals.

Commissioner Haig concurred.

VOICE VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe

Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller

Nays, None

09-225-23 Flooding Abatement and Remediation

MOTION: Motion by Commissioner Host, seconded by Commissioner Baller:
To make flooding abatement and remediation an agenda item.

The Mayor noted a workshop was held on the topic on September 11, 2023, and asked what further information would be gained from making the topic an agenda item.

Commissioner Host replied that some more information might be added, and that the topic should be further discussed on behalf of the residents.

VOICE VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Schafer
Commissioner Boutros
Commissioner Baller

Nays, None

09-226-23 Rodents and Vermin Remediation Strategies

MOTION: Motion by Commissioner Haig, seconded by Commissioner Host:
To discuss rodents and vermin control within the City.

VOICE VOTE: Ayes, MPT McLain
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Boutros

Nays, Commissioner Schafer
Commissioner Baller

Commission Discussion On Items From A Prior Meeting

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

- A. David Cook – Letter Regarding Water Bill

MPT McLain noted that residents could contact the City for a breakout of their sewer and water bills.

The Mayor encouraged residents to sign up for AquaHawk if they want to monitor their water usage.

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intention to appoint to the Ad Hoc Aging in Place Committee
- B. Commissioner Comments

MPT McLain reported back from the Women Officials Network Leadership meeting.

- C. Advisory Boards, Committees, Commissions’ Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. City Manager’s Report

The Mayor thanked the City Manager for her report.

INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 8:51 p.m.

Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist

City of Birmingham

Warrant List Dated 09/21/2023

Meeting of 10/02/2023

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
294134		005430	21ST CENTURY MEDIA- MICHIGAN	768.25
294135	*	000855	48TH DISTRICT COURT	600.00
294136	*	000855	48TH DISTRICT COURT	500.00
294137	*	000855	48TH DISTRICT COURT	324,134.65
294138		009440	ALLIANCE ENTERTAINMENT, LLC	30.25
294139	*	009393	AMANDA MCBRIDE	300.00
294140		009126	AMAZON CAPITAL SERVICES INC	15.89
294141		009126	AMAZON CAPITAL SERVICES INC	127.42
294142		009126	AMAZON CAPITAL SERVICES INC	14.48
294143		MISC	ANN ARBOR DISTRICT LIBRARY	35.00
294144		BDREFUND	ANTHONY BRANHAM	100.00
294145		009688	ARTPACK SERVICES, INC	2,906.63
294146		000843	BAKER & TAYLOR BOOKS	138.17
294147		009609	BALIAN LEGAL, PLC	300.00
294148		BDREFUND	BCM HOME IMPROVEMENT	200.00
294149		BLREFUND	BIRMINGHAM LITTLE LEAGUE	637.10
294150		009535	BIRMINGHAM PAPERS	624.00
294151		005717	BSB COMMUNICATIONS, INC.	481.25
294152		003907	CADILLAC ASPHALT, LLC	942.46
294153		008082	CAMFIL USA INC	476.82
294154		007732	CAPITAL TIRE, INC.	499.56
294155		000571	CAR TRUCKING INC	7,700.00
294155	*	000571	CAR TRUCKING INC	672.25
294156		000902	CENGAGE LEARNING INC	30.39
294157	*	TAXMISC	CLAUDE & SANDRA REITELMAN	11,830.41
294158		BDREFUND	COASTAL DESIGN & BUILD	500.00
294159	*	000627	CONSUMERS ENERGY	167.39
294160		009656	CORBIN DESIGN, INC	7,201.73
294161		008582	CORE & MAIN LP	1,497.44
294162	*	TAXMISC	CORELOGIC TAX SERVICE	17,935.44
294163	*	009145	CREATIVE COLLABORATIONS	3,800.00
294164	*	000179	DTE ENERGY	897.14
294165	*	000179	DTE ENERGY	876.19
294166	*	000179	DTE ENERGY	1,185.31
294167	*	000179	DTE ENERGY	59.65
294168	*	000179	DTE ENERGY	35.64
294169	*	000179	DTE ENERGY	263.67
294170	*	000179	DTE ENERGY	1,396.62
294171	*	000179	DTE ENERGY	182.25
294172	*	000179	DTE ENERGY	1,683.05
294173	*	000179	DTE ENERGY	83.75
294174	*	000179	DTE ENERGY	18.17

City of Birmingham
Warrant List Dated 09/21/2023

Meeting of 10/02/2023

Check Number	Early Release	Vendor #	Vendor	Amount
294175	*	000179	DTE ENERGY	58.12
294176	*	000179	DTE ENERGY	695.92
294177	*	000179	DTE ENERGY	31.87
294178	*	000180	DTE ENERGY	59,871.12
294179		001495	ETNA SUPPLY	128.00
294180		007415	EZ GOLF CART CO. INC	160.00
294181		BDREFUND	FEDERAL PAVING INC	200.00
294182		000936	FEDEX	54.38
294183		006654	FLEETPRIDE INC	70.06
294184		BDREFUND	FOUNDATION SYSTEMS OF MICHIGAN INC.	100.00
294185		BDREFUND	GARDEN SCAPE	100.00
294186	*	001771	GOLF ASSOC. OF MICHIGAN	400.00
294187	*	004604	GORDON FOOD	1,309.75
294188		BDREFUND	GREAT LAKES LANDSCAPE DESIGN, INC	100.00
294189		005959	H2O COMPLIANCE SERVICE INC	115.00
294190		BDREFUND	HILLAN HOMES, INC	500.00
294191		BDREFUND	HOLSBEKE CONSTRUCTION, INC.	100.00
294192		001956	HOME DEPOT CREDIT SERVICES	42.41
294192	*	001956	HOME DEPOT CREDIT SERVICES	2,120.39
294193		BDREFUND	HRH CONSTRUCTION LLC	1,350.00
294194		BDREFUND	HUNTER COLE HOMES	1,850.00
294195		BDREFUND	HUNTER COLE HOMES, LLC C/O RIC	1,000.00
294196		BDREFUND	HUNTER ROBERTS HOMES	450.00
294197		006416	HUNTINGTON WOODS POOLS & SPAS, INC	323.88
294198		001090	INGRAM LIBRARY SERVICES	12,108.40
294200	*	009401	IRENE S WASSEL	300.00
294201		BDREFUND	JOHN MCCARTER CONSTRUCTION LLC	200.00
294202	*	009403	JUSTIN ZAYID	300.00
294203		005291	KAESER & BLAIR INC	1,999.26
294204	*	002659	CHRISTOPHER KOCH	582.99
294205	*	009386	LAW OFFICE OF BRIAN P. FENECH	2,100.00
294206	*	009388	LAW OFFICE OF PATRICK G. GAGNIUK	2,970.00
294207		000797	THE LIBRARY NETWORK	3,013.39
294208		009375	LITHIA MOTORS, INC SUPPORT SERVICES	268.64
294209		BDREFUND	LLL BUILDERS	2,500.00
294210		BDREFUND	LYNCH CUSTOM HOMES	15,500.00
294211		BDREFUND	MAINSTREET DESIGN & BUILD	500.00
294212	*	TAXMISC	MARION HARP	1,012.03
294213		BDREFUND	MARK ALAN CROREY	100.00
294214		BDREFUND	MARTINO ENTERPRISES INC	100.00
294215		009546	MASTERS TELECOM	67.97
294216	*	009729	MATTRESS FIRM INC	2,449.99
294217		BDREFUND	MAYETTE, PATRICK	350.00

City of Birmingham
Warrant List Dated 09/21/2023

Meeting of 10/02/2023

Check Number	Early Release	Vendor #	Vendor	Amount
294218		000888	MCKENNA ASSOCIATES INC	8,220.00
294219		MISC	MCKILLOP FINE ART	11,500.00
294220	*	000369	MCFI	1,366.25
294221	*	009200	MICHAEL MORRISON	4,350.00
294222		002022	MICHIGAN ASSN. OF FIRE CHIEFS	50.00
294223		002207	MICHIGAN AUTOMATIC SPRINKLER, INC.	4,190.00
294224	*	004687	MICHIGAN DEPT. OF TRANSPORATION	23,654.13
294225		006179	MICHIGAN GLASS COATINGS	150.00
294226	*	006461	MID AMERICA RINK SERVICES	1,250.00
294227		001169	MJ AWARDS	10.00
294228		007163	MOBILE HEALTH RESOURCES	2,681.70
294229		BDREFUND	MONDIAL PROPERTIES	300.00
294230	*	009704	NOAR TECHNOLOGIES	23,566.00
294231		008687	NORTH BREATHING AIR, LLC	585.00
294232		002853	OAKLAND COMMUNITY COLLEGE	1,400.00
294233	*	000477	OAKLAND COUNTY	979,532.58
294234		006785	OVERDRIVE, INC.	17,387.93
294235		009698	PCI INDUSTRIES, INC	913.00
294236		BDREFUND	PCI INDUSTRIES, INC.	1,000.00
294237		BDREFUND	PERFORMANCE ROOF SYSTEMS LLC	200.00
294238		001883	PIONEER DOOR COMPANY INC	247.50
294239		009612	PLAYAWAY PRODUCTS LLC	889.35
294240	*	000801	POSTMASTER	2,077.99
294241	*	003629	PREMIUM AIR SYSTEMS INC	379.50
294242		BDREFUND	PRM CUSTOM BUILDERS LLC	2,200.00
294243		009614	PROGRESSIVE PLUMBING SUPPLY CO	86.86
294244		004137	R & R FIRE TRUCK REPAIR INC	83.90
294245	*	TAXMISC	RAVINE PROPERTY LLC	692.73
294246		BDREFUND	ROOFING DEPOT LLC	200.00
294247	*	002806	SAM'S CLUB/SYNCHRONY BANK	463.58
294248		MISC	SENTRY AIR SYSTEMS INC	491.55
294249	*	008073	SITEONE LANDSCAPE SUPPLY, INC	280.81
294250		BDREFUND	SMITH, DAVID M	200.00
294251		BDREFUND	SMOLYANOV HOME IMPROVMENT	200.00
294252		000260	SPARTAN DISTRIBUTORS INC	729.84
294253		009718	SPECIALIZED PROFESSIONAL SERVICES	3,321.98
294254		002809	STATE OF MICHIGAN	837.46
294255		003630	SUN SHADE WINDOW TINTING INC	350.00
294256		000286	TARGET SPECIALTY PRODUCTS	10,122.42
294257		BDREFUND	TASKER, SCOTT M	10,000.00
294258	*	009384	THE EDITH BLAKNEY LAW FIRM, PLLC	300.00
294259		BDREFUND	TIMOTHY ALLEN MULROY	100.00
294260		009552	TRAFFIC & SAFETY CONTROL SYSTEMS	1,679.00

City of Birmingham
Warrant List Dated 09/21/2023

Meeting of 10/02/2023

Check Number	Early Release	Vendor #	Vendor	Amount
294261	*	004379	TURNER SANITATION, INC	1,260.00
294262		000808	UNIVERSAL CONTAINER CORP	2,086.92
294263		007226	VALLEY CITY LINEN, INC	122.80
294264	*	000293	VAN DYKE GAS CO.	150.00
294265	*	000158	VERIZON WIRELESS	89.84
294266	*	000158	VERIZON WIRELESS	308.16
294267	*	000158	VERIZON WIRELESS	98.28
294268	*	000158	VERIZON WIRELESS	151.36
294269	*	000158	VERIZON WIRELESS	365.79
294270		001490	WEST SHORE FIRE INC	1,696.78
294271		BDREFUND	WINNICK HOMES LLC	300.00
294272	*	008391	XEROX CORPORATION	143.33
SUBTOTAL PAPER CHECK				\$1,634,416.31

ACH TRANSACTION

9067		000394	AERO FILTER INC	1,250.00
9068	*	008655	ANGELO IAFRATE CONSTRUCTION	556,253.70
9069	*	001357	ART/DESIGN GROUP LTD	65.00
9070	*	003839	MATTHEW J. BARTALINO	581.71
9071	*	009383	BATTI LAW PLLC	300.00
9072	*	006683	BIRMINGHAM LAWN MAINTENANCE, INC	456.00
9073	*	009396	CECILIA QUIRINDONGO BAUNSOE	600.00
9074		000605	CINTAS CORPORATION	181.89
9075		000605	CINTAS CORPORATION	245.43
9076		000605	CINTAS CORPORATION	66.45
9077	*	000605	CINTAS CORPORATION	499.75
9078		000605	CINTAS CORPORATION	339.46
9079		001750	COMERICA BANK	1,470.58
9079		001750	COMERICA BANK	303,995.09
9080		003176	COMERICA BANK - RHC	739.83
9080		003176	COMERICA BANK - RHC	98,930.19
9081		002668	CONTRACTORS CLOTHING CO	1,334.95
9082	*	007638	MARSHALL CRAWFORD	729.00
9083	*	009195	CROWN CASTLE FIBER LLC	4,497.35
9084	*	009529	DAVEY RESOURCE GROUP, INC.	4,550.00
9085	*	000565	DORNBOS SIGN & SAFETY INC	117.77
9086	*	001230	FIRE SYSTEMS OF MICHIGAN LLC	429.50
9087	*	001663	SCOTT GREWE	85.85
9088	*	001672	HAYES PRECISION INC	90.00
9089	*	000331	HUBBELL ROTH & CLARK INC	5,896.11
9090	*	009390	IDUMESARO LAW FIRM, PLLC	900.00
9091	*	003458	JOE'S AUTO PARTS, INC.	1,027.54
9092	*	008827	KANOPY, INC	399.50
9093	*	004085	KONE IN	2,086.45

City of Birmingham
Warrant List Dated 09/21/2023

Meeting of 10/02/2023

Check Number	Early Release	Vendor #	Vendor	Amount
9094	*	005876	KROPF MECHANICAL SERVICE COMPANY	7,052.13
9095	*	009385	LAW OFFICE OF MICHAEL J. DICK	3,140.00
9096		005550	LEE & ASSOCIATES CO., INC.	839.14
9096	*	005550	LEE & ASSOCIATES CO., INC.	267.00
9097	*	009398	MARCIA C ROSS PC	600.00
9098		002013	MIDWEST TAPE	10,485.33
9099		008336	NBS COMMERCIAL INTERIORS	856.00
9100	*	001194	NELSON BROTHERS SEWER	1,604.00
9101	*	007755	NETWORK SERVICES COMPANY	940.41
9102	*	006359	NYE UNIFORM COMPANY	2,803.00
9103	*	009395	ORLANDO LAW PRACTICE PC	300.00
9104	*	001181	ROSE PEST SOLUTIONS	216.00
9105		006832	SAFEWARE INC.	1,513.47
9106		005787	SOUTHEASTERN EQUIPMENT CO. INC	7,020.45
9107		005861	UNIQUE MGMT SERVICE, INC	72.10
9108	*	009379	YELLOW DOOR LAW	5,796.00
SUBTOTAL ACH TRANSACTION				\$1,031,624.13
GRAND TOTAL				\$2,666,040.44

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
 Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

City of Birmingham
Warrant List Dated 09/28/2023

Meeting of 10/02/2023

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
294273	*	007266	AETNA BEHAVIORAL HEALTH LLC	579.09
294274		003708	AIRGAS USA, LLC	366.53
294275	*	MISC	ALEXIS ROSE GEARTY	60.00
294276	*	009117	ALL CITY DOGS INC	1,750.00
294277		006759	AT&T	214.92
294278		006759	AT&T	362.96
294279	*	003703	AT&T MOBILITY	837.80
294280		001122	BOB BARKER CO INC	129.28
294281		003526	BOUND TREE MEDICAL, LLC	1,346.99
294282	*	006520	BS&A SOFTWARE, INC	1,100.00
294283		003907	CADILLAC ASPHALT, LLC	990.96
294284	*	009078	CANON SOLUTIONS AMERICA INC	1,129.08
294285		000444	CDW GOVERNMENT INC	1,391.98
294285	*	000444	CDW GOVERNMENT INC	2,048.72
294286		008006	CLEAR RATE COMMUNICATIONS, INC	1,637.30
294287	*	000627	CONSUMERS ENERGY	718.99
294288		009744	DIGICOM GLOBAL INC	1,889.62
294289		000493	ED RINKE CHEVROLET BUICK GMC	2,310.95
294290	*	007366	FIRST ADVANTAGE OCCUPATIONAL CORP	175.95
294291	*	004604	GORDON FOOD	616.72
294292		009343	GOVPILOT, LLC	6,500.00
294293	*	006666	GRID 4 COMMUNICATIONS INC.	228.76
294294		000249	GUARDIAN ALARM	279.60
294295	*	001956	HOME DEPOT CREDIT SERVICES	1,037.90
294296		000284	LESLIE ELECTRIC COMPANY	505.80
294297		009085	MGSE SECURITY LLC	125.00
294298		000230	MIKE SAVOIE CHEVROLET INC	2,394.63
294299		MISC	MONICA SHAYOKA	14.04
294301		002853	OAKLAND COMMUNITY COLLEGE	4,550.00
294302	*	004370	OCCUPATIONAL HEALTH CENTERS	447.00
294303	*	009478	ODP BUSINESS SOLUTIONS, LLC	415.57
294304		009612	PLAYAWAY PRODUCTS LLC	418.42
294305		008974	PREMIER PET SUPPLY	122.95
294306		006625	PTS COMMUNICATIONS, INC	78.00
294307	*	002806	SAM'S CLUB/SYNCHRONY BANK	373.94
294308		008150	SITEIMPROVE, INC	2,738.60
294309	*	008073	SITEONE LANDSCAPE SUPPLY, INC	620.20
294310		007907	SP+ CORPORATION	14,218.00
294311		000260	SPARTAN DISTRIBUTORS INC	188.28
294312	*	008396	REBEKAH SPRINGER	124.60
294313		004379	TURNER SANITATION, INC	150.00
294314		007226	VALLEY CITY LINEN, INC	36.00

City of Birmingham
Warrant List Dated 09/28/2023

Meeting of 10/02/2023

Check Number	Early Release	Vendor #	Vendor	Amount
294315		009026	WELLS FARGO VENDOR FIN SERV	710.95
294316		001490	WEST SHORE FIRE INC	575.44
SUBTOTAL PAPER CHECK				\$56,511.52
<u>ACH TRANSACTION</u>				
9115	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	355.18
9116	*	000517	BEIER HOWLETT PC	18,000.00
9117	*	000517	BEIER HOWLETT PC	33,313.50
9118	*	000518	BELL EQUIPMENT COMPANY	1,720.75
9119		007345	BEVERLY HILLS ACE	42.25
9120	*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	413,618.55
9121		009183	BOB ADAMS TOWING	255.00
9122		000605	CINTAS CORPORATION	225.73
9123		002668	CONTRACTORS CLOTHING CO	558.76
9124		000234	GLENN WING POWER TOOLS	99.00
9125		000331	HUBBELL ROTH & CLARK INC	2,677.26
9126	*	002576	JAX KAR WASH	146.00
9127	*	000891	KELLER THOMA	165.00
9128		004085	KONE INC	1,838.54
9129	*	005550	LEE & ASSOCIATES CO, INC	206.75
9130		005550	LEE & ASSOCIATES CO, INC	2,657.74
9131		001194	NELSON BROTHERS SEWER	1,602.00
9132	*	006359	NYE UNIFORM COMPANY	1,013.45
9133	*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	694,539.81
9134	*	003554	RKA PETROLEUM	18,434.25
9135	*	000478	ROAD COMM FOR OAKLAND CO	15,592.43
9136		000254	SOCRRA	76,801.00
9136	*	000254	SOCRRA	50.00
9137		000298	VESCO OIL CORPORATION	107.80
9138		009687	WAGeworks INC	105.00
SUBTOTAL ACH TRANSACTION				\$1,284,125.75
GRAND TOTAL				\$1,340,637.27

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
 Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.



MEMORANDUM

City Clerk's Office

DATE: September 26, 2023

TO: Jana L. Ecker, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Appointment of Election Inspectors and Absent Voter Counting Board

INTRODUCTION:

State Election Law requires the local Election Commission to appoint election inspectors for each precinct as well as to appoint an absent voter counting board. The Birmingham City Commission also functions as the local Election Commission, and therefore must formally appoint election inspectors and approve the use of an absent voter counting board for the upcoming November 7, 2023 General Election.

BACKGROUND:

Election Inspectors are needed to provide election services to the residents of Birmingham. According to [MCL 168.674](#)¹ at least 3 election inspectors are required per precinct, with at least one inspector identifying as a Democrat and one inspector identifying as a Republican.

The City Clerk contacted past inspectors and solicited for new inspectors through www.bhamgov.org, city publications, email, news blasts, and [social media](#). The City Clerk has compiled a list of potential election inspectors who will fall into the following categories: Inspector, Electronic Poll Book Operator, Precinct Chairperson, Precinct Co-Chairperson, AV Runner, Receiving Board and a designated inspector for Oakland County absent voter counting board. The City Clerk will train inspectors on their respective roles to provide an efficient and accurate General Election.

Oakland County Elections Division offers an absent voter counting board service to all municipalities within Oakland County. Birmingham uses this service to have access to their large staff of qualified election inspectors and high-speed tabulators, which efficiently and accurately process thousands of absentee ballots on Election Day. This agreement also serves as a labor and cost saving measure for the City of Birmingham. At the [July 13, 2020](#)² Commission Meeting,

¹ <http://legislature.mi.gov/doc.aspx?mcl-168-674>

² https://cms7.revize.com/revize/birmingham/Document_Center/Agenda_&_Minutes/City_Commission/Minutes/2020/2020_07_13_Commission_Meeting.pdf

the City Commission approved an agreement for services with Oakland County which remains active until either party terminates the agreement. In addition, [MCL 168.765a](#)³ states that the local election commission must also establish and approve an absent voter counting board for each election. Because of this, the City Commission is asked to acknowledge and approve the use of the Oakland County Absent Voter Counting Board for the November 8, 2022 State General Election.

LEGAL REVIEW:

The City Attorney has reviewed the process and has no objections.

FISCAL IMPACT:

Funds for Election inspector wages and election contract services have been budgeted for in the 2023-2024 Fiscal Year.

SUSTAINABILITY:

Partnerships with Oakland County Elections Division for tabulating absent voter ballots and providing Early Voting services enhances the city's capacity to provide sustainable and efficient services to Birmingham voters.

PUBLIC COMMUNICATIONS:

The City communicated recruitment efforts for election inspectors by posting information on the [city's website](#), through the city publications, email, news blasts, and [social media](#).

SUMMARY:

The deadline to appoint election inspectors for the November 7, 2023 General Election is October 17, 2023. Attached is a list of inspectors who have been assigned to serve for the upcoming election. In the event of an insufficient number of Election Inspectors, the City Commission designated the Clerk's Office to appoint additional Election Inspectors to properly run the election.

The City of Birmingham will be utilizing the Oakland County Absent Voter Counting Board to count the absent voter ballots that arrive to the Clerk's Office before 5:00 p.m. the day before the November 7, 2023 election. According to State Election law, the Election Commission must approve the use of an absent voter counting board for each election.

ATTACHMENTS:

- List of Election Officials proposed to work at the November 7, 2023 Election
- Agreement between Oakland County and City of Birmingham for absent voting counting board

SUGGESTED COMMISSION ACTION:

To make a motion to adopt a resolution appointing election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 7, 2023 General Election pursuant to MCL 168.674, and further grant

³ <http://legislature.mi.gov/doc.aspx?mcl-168-765a>

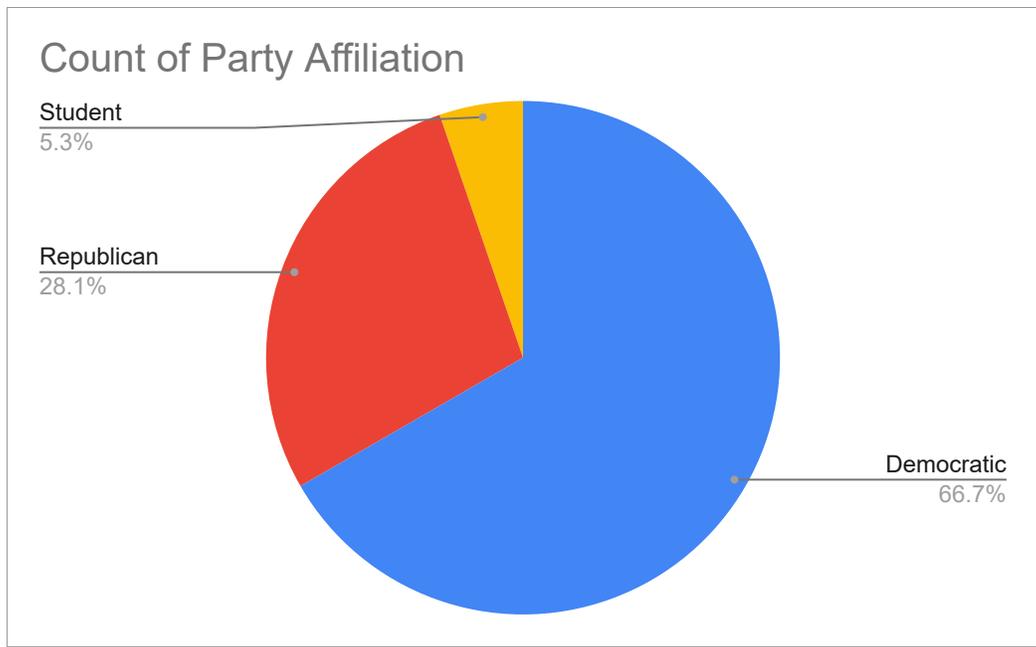
the City Clerk the authority to make emergency appointments of qualified candidates should circumstances warrant in order to maintain adequate staffing in the various precincts, counting boards and receiving boards.

And

Authorize the use of the Oakland County Absent Voter Counting Board for the purpose of processing and tabulating absent voter ballots on November 7, 2023, as prescribed in the terms and responsibilities previously agreed upon at the July 12, 2020 meeting by Commission resolution 07-120-20.

#	PCT	Role	First Name	Last Name	Party Affiliation
1	1	chair	Arban	Shala	Democratic
2	1	co-chair	Karin	Schneider	Democratic
3	1		Paul	Paskiewicz	Democratic
4	1		Beth	Brockmann	Republican
5	1		Siya	Chhabra	Student
6	1		Jessica	Finney	Student
7	2	chair	David	Proctor	Republican
8	2	co-chair	Ralph	Plumley	Democratic
9	2		Diane	Currie	Democratic
10	2		Michelle	Moody	Democratic
11	2		Sydney	Pereira	Democratic
12	3	chair	Pamela	Graham	Democratic
13	3	co-chair	Patricia	Fisher	Democratic
14	3		Linda	Buchanan	Democratic
15	3		John (Jack)	Burns	Republican
16	3		Kristin	George	Republican
17	3		Mark	Thut	Republican
18	4	chair	Marie	Meredith	Republican
19	4	co-chair	Constance	Romanelli	Democratic
20	4		Don	Peasley	Democratic
21	4		Jacquelin (Jack)	Riley	Democratic
22	4		Karen	Guenther	Republican
23	5	chair	Alicia	Chandler	Democratic
24	5	co-chair	Mary	Davison	Republican
25	5		Alice	Keller	Democratic
26	5		Mary	McDermott	Democratic
27	5		Stephen	McDermott	Democratic
28	5		Michael	Schloff	Democratic
29	6	9-close	Rackeline	Hoff	Democratic
30	6	chair	Martha	Coyne	Democratic
31	6	co-chair	Melissa	LeDuc	Democratic
32	6		Anne	Treash	Democratic
33	6		Natalia	Dukas	Republican
34	6		Angelo	Calado	Student
35	7	chair	Cynthia	Shaw	Democratic
36	7	co-chair	Maria Alejandra	Gonzalez	Democratic
37	7		Kathy	Austin	Democratic
38	7		Lawrence	Lyng	Democratic
39	7		Marikay	Pigeon	Republican
40	7		David Jewett	Underdown	Republican
41	8	chair	Bret	Gallaway	Republican
42	8	co-chair	Evan	Blum	Democratic

#	PCT	Role	First Name	Last Name	Party Affiliation
43	8		Thomas	Connery	Democratic
44	8		Harvey	Rosenberg	Republican
45	9	chair	Timothy	Wittlinger	Democratic
46	9	co-chair	Jennifer	Nickita	Republican
47	9		Jacqueline	Patt	Democratic
48	9		Elaine	Wesman	Democratic
49	AV		Kay	Reese	Democratic
50	AV		Patricia	Batey	Democratic
51	AV		Victoria	Lahar	Democratic
52	AV-RB		Kristen	Lambert	Democratic
53	AV-RB		David	Stone	Democratic
54	AV-RB		Gail	Corcoran	Republican
55	AV-RB		William	Johnson Jr.	Republican
56	RB		Eileen	Pulker	Democratic
57	OC - AVCB		Mary	Steffy	Democratic



**AGREEMENT FOR ELECTION SERVICES BETWEEN
OAKLAND COUNTY AND
THE CITY OF BIRMINGHAM**

This Agreement for Election Services Agreement (the "Agreement") is made between Oakland County, a Municipal and Constitutional Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and the CITY OF BIRMINGHAM ("Public Body") 151 Martin Street, Birmingham MI, 40012. In this Agreement, the County shall be represented by the Oakland County Clerk, in her official capacity as a Michigan Constitutional Officer. County and Public Body may be referred to individually as a "Party" and jointly as "Parties".

PURPOSE OF AGREEMENT. County and Public Body enter into this Agreement pursuant to the Michigan Election Law, 1954 Public Act 116, MCL 168.764 *et seq.*, for the purpose of County providing Ballot Counting Services for Public Body.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, shall be defined, read, and interpreted as follows:
 - 1.1. **Act** means the Michigan Election Law, 1954 Public Act 116, MCL 168.764 *et seq.*
 - 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, Exhibit and attachment to this Agreement.
 - 1.2. **Claims** mean any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against County or Public Body, or for which County or Public Body may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
 - 1.3. **Confidential Information** means all information and data that County is required or permitted by law to keep confidential, including records of County's security measures, security plans, security codes and combinations, passwords, keys, and security procedures, to the extent that the records relate to ongoing security of County as well as records or information to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs relating to ongoing security measures, capabilities and plans for responding to violations of the Michigan Anti-terrorism Act, emergency response plans, risk planning documents, threat assessments and domestic preparedness strategies.
 - 1.4. **County** means Oakland County, a Municipal and Constitutional Corporation, including, but not limited to, all of its departments, divisions, the County Board of Commissioners,

elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.

- 1.5. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 1.6. **Election Services** means the following individual Election Services provided by County's Clerk's Elections Division, if applicable:
- 1.6.1. **Absentee Ballot Counting** means processing, including, but not limited to, opening, tabulating and reporting absentee ballots and related results.
- 1.7. **Exhibits** mean the following descriptions of Election Services which are governed by this Agreement only if they are attached to this Agreement and incorporated in this Agreement under Section 2 or added at a later date by a formal amendment to this Agreement:
- Exhibit I: Absentee Ballot Counting Services
- 1.8. **Local Clerk** means the local elected or appointed Clerk for Public Body or their designee.
- 1.8. **Public Body** means the City of Birmingham which is an entity created by state or local authority or which is primarily funded by or through state or local authority, including, but not limited to, its council, Board, departments, divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors. For purposes of this Agreement, Public Body includes any Michigan court, when acting in concert with its funding unit, to obtain Election Services.
- 1.9. **Public Body Employee** means any employees, officers, directors, members, managers, trustees, volunteers, attorneys, representatives of Public Body, licensees, concessionaires, contractors, subcontractors, independent contractors, agents, and/or any such persons' successors or predecessors (whether such persons act or acted in their personal, representative or official capacities), and/or any persons acting by, through, under, or in concert with any of the above who use or have access to the Election Services provided under this Agreement. "Public Body Employee" shall also include any person who was a Public Body Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.10. **Points of Contact** mean the individuals designated by Public Body and identified to County to act as primary and secondary contacts for communication and other purposes as described herein.

2. **COUNTY RESPONSIBILITIES.**

- 2.1. County, through its County Clerk Elections Division, will provide the Election Services described in Exhibit I which is attached and incorporated into this Agreement. County is not obligated or required to provide any additional services that are not specified in this Agreement.
- 2.2. County, through its Board of Election Commissioners and authorized representatives, shall take the necessary and appropriate actions to comply with Section 764d(8) of the Act in the appointment of election inspectors to a County absent voter counting board and all other provisions under the Act governing such board.

- 2.3. County may access, use, and disclose transaction information and any content to comply with the law such as a subpoena, court order or Freedom of Information Act request. County shall first refer all such requests for information to Public Body's Points of Contact for their response within the required time frame. County shall provide assistance for the response if requested by Public Body's Points of Contact, and if able to access the requested information. County shall not distribute Public Body's data to other entities for reasons other than when it is required by law.

3. **PUBLIC BODY RESPONSIBILITIES.**

- 3.1. Public Body shall comply with all terms and conditions in this Agreement, including Exhibit I to this Agreement, and the Act.
- 3.2. Public Body shall deliver the Agreement executed by its authorized representative(s) to County within the time-frame set forth in Section 764d(5) of the Act and, upon County's execution of the Agreement, the Agreement shall be deemed to be filed by Public Body with County in compliance with Section 764d(5) of the Act.
- 3.3. For each Election Service covered by an Exhibit to this Agreement, Public Body shall designate two representatives to act as a primary and secondary Points of Contact with County. The Points of Contact responsibilities shall include:
 - 3.3.1. Direct coordination and interaction with County staff.
 - 3.3.2. Communication with the general public when appropriate.
- 3.4. Public Body shall respond to and be responsible for Freedom of Information Act requests relating to Public Body's records, data, or other information.
- 3.5. Third-party product or service providers may require County to pass through to Public Body certain terms and conditions contained in license agreements, service agreements, acceptable use policies and similar terms of service or usage, in order to provide Election Services to Public Body. Public Body agrees to comply with these terms and conditions. Public Body must follow the termination provisions of this Agreement if it determines that it cannot comply with any of the terms and conditions.

4. **DURATION OF INTERLOCAL AGREEMENT.**

- 4.1. This Agreement and any amendments shall be effective when executed by both Parties with resolutions passed by the governing bodies of each Party or other written notice evidencing such Party's governing body's approval, except as otherwise specified below. The approval and terms of this Agreement and any amendments, except as specified below, shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State. If Public Body is a court, a signature from the Chief Judge of the court shall evidence approval by Public Body, providing a resolution and minutes do not apply. If Public Body is the State of Michigan, approval and signature shall be as provided by law.
- 4.2. Notwithstanding Section 4.1, the Chairperson of the Oakland County Board of Commissioners is authorized to sign amendments to the Agreement to add Exhibits that were previously approved by the Board of Commissioners. An amendment signed by the Board Chairperson under this Section must be sent to the Elections Division in the County Clerk's Office to be filed with the Agreement once it is signed by both Parties.
- 4.3. Unless extended by an amendment, this Agreement shall remain in effect until cancelled or terminated by any of the Parties pursuant to the terms of the Agreement.

5. **PAYMENTS.**

- 5.1. Election Services shall be provided to Public Body at the rates and for the charges specified in the Exhibits, if applicable.
- 5.2. If County is legally obligated for any reason, e.g. subpoena, court order, or Freedom of Information Request, to search for, identify, produce or testify regarding Public Body's records, data, or information that is stored by County relating to Election Services that Public Body receives under this Agreement, then Public Body shall reimburse County for all reasonable costs County incurs in searching for, identifying, producing or testifying regarding such records, data, or information. County may waive this requirement in its sole discretion.
- 5.3. County shall provide Public Body with an invoice/explanation of County's costs for Election Services provided herein and/or a statement describing any amounts owed to County. Public Body shall pay the full amount shown on any such invoice within sixty (60) calendar days after the date shown on any such invoice. Payment shall be sent along with a copy of the invoice to: Oakland County Treasurer – Cash Acctg, Bldg 12 E, 1200 N. Telegraph Road, Pontiac, MI 48341.
- 5.4. If Public Body, for any reason, fails to pay County any monies when and as due under this Agreement, Public Body agrees that unless expressly prohibited by law, County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other Public Body funds that are in County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by County shall be deemed a voluntary assignment of the amount by Public Body to County. Public Body waives any Claims against County or its Officials for any acts related specifically to County's offsetting or retaining of such amounts. This paragraph shall not limit Public Body's legal right to dispute whether the underlying amount retained by County was actually due and owing under this Agreement.
- 5.5. If County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay County any amounts due and owing County under this Agreement, County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid.
- 5.6. Nothing in this Section shall operate to limit County's right to pursue or exercise any other legal rights or remedies under this Agreement or at law against Public Body to secure payment of amounts due to County under this Agreement. The remedies in this Section shall be available to County on an ongoing and successive basis if Public Body becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if County pursues any legal action in any court to secure its payment under this Agreement, Public Body agrees to pay all costs and expenses, including attorney fees and court costs, incurred by County in the collection of any amount owed by Public Body.
- 5.7. Either Party's decision to terminate and/or cancel this Agreement, or any one or more of the individual Election Services identified herein, shall not relieve Public Body of any payment obligation for any Election Services rendered prior to the effective date of any termination or cancellation of this Agreement. The provisions of this Section shall survive the termination, cancellation, and/or expiration of this Agreement.

6. ASSURANCES.

- 6.1. **Responsibility for Claims.** Each Party shall be responsible for any Claims made against that Party by a third party, and for the acts of its employees arising under or related to this Agreement.
- 6.2. **Responsibility for Attorney Fees and Costs.** Except as provided for in Section 5.6, in any Claim that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees.
- 6.3. **No Indemnification.** Except as otherwise provided for in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.
- 6.4. **Costs, Fines, and Fees for Noncompliance.** Public Body shall be solely responsible for all costs, fines and fees associated with any misuse of the Election Services and/or for noncompliance with this Agreement by Public Body Employees.
- 6.5. **Reservation of Rights.** This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.
- 6.6. **Authorization and Completion of Agreement.** The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 6.7. **Compliance with Laws.** Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

7. USE OF CONFIDENTIAL INFORMATION

- 7.1. The Parties shall not reproduce, provide, disclose, or give access to Confidential Information to County or to a Public Body Employee not having a legitimate need to know the Confidential Information, or to any third-party. County and Public Body Employees shall only use the Confidential Information for performance of this Agreement. Notwithstanding the foregoing, the Parties may disclose the Confidential Information if required by law, statute, or other legal process provided that the Party required to disclose the information: (i) provides prompt written notice of the impending disclosure to the other Party, (ii) provides reasonable assistance in opposing or limiting the disclosure, and (iii) makes only such disclosure as is compelled or required. This Agreement imposes no obligation upon the Parties with respect to any Confidential Information when it can be established by legally sufficient evidence that the Confidential Information: (i) was in possession of or was known by prior to its receipt from the other Party, without any obligation to maintain its confidentiality; or (ii) was obtained from a third party having the right to disclose it, without an obligation to keep such information confidential.
- 7.2. Within five (5) business days after receiving a written request from the other Party, or upon termination of this Agreement, the receiving Party shall return or destroy all of the disclosing Party's Confidential Information.

8. DISCLAIMER OF WARRANTIES.

- 8.1. THE ELECTION SERVICES, INCLUDING ANY GOODS, PARTS, SUPPLIES, EQUIPMENT, OR OTHER ITEMS THAT ARE PROVIDED TO PUBLIC BODY AS PART OF THE ELECTION SERVICES, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS "WITH ALL FAULTS."
 - 8.2. COUNTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT.
 - 8.3. COUNTY MAKES NO WARRANTY THAT: (I) THE ELECTION SERVICES WILL MEET PUBLIC BODY'S REQUIREMENTS; OR (II) THE ELECTION SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.
9. **LIMITATION OF LIABILITY.**
- 9.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AND/OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, REGARDLESS OF WHETHER THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.
 - 9.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF COUNTY UNDER THIS AGREEMENT (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY PUBLIC BODY TO COUNTY WITH RESPECT TO THE PARTICULAR ELECTION SERVICE GIVING RISE TO SUCH LIABILITY.
10. **DISPUTE RESOLUTION.** All disputes relating to the execution, interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties may first be submitted to County's Director of Elections and Public Body's Agreement Administrator for possible resolution. County's Clerk and Public Body's Agreement Administrator may promptly meet and confer in an effort to resolve such dispute. If they cannot resolve the dispute in five (5) business days, the dispute may be submitted to the signatories of this Agreement or their successors in office. The signatories of this Agreement may meet promptly and confer in an effort to resolve such dispute.
11. **TERMINATION OR CANCELLATION OF AGREEMENT.**
- 11.1. Either Party may terminate or cancel this entire Agreement or any one of the Election Services described in the attached Exhibit(s), upon eighty-four (84) days written notice, or such other notice period as otherwise required by the Act, to the clerk of the other Party if either Party decided, in its sole discretion, to terminate this Agreement or one of the Exhibit(s), for any reason including convenience. Each Party shall also comply with the requirements under the Act for filing the notice of termination, in which case, Public Body's timely delivery of a notice of termination to County shall be deemed to comply with its filing requirement.
 - 11.2. Early termination fees may apply to Public Body if provided for in the Exhibit(s).
 - 11.3. The effective date of termination and/or cancellation shall be clearly stated in the written notice. Either the County Executive or the Board of Commissioners is authorized to terminate this Agreement for County under this provision. A termination of one or more of the Exhibits which does not constitute a termination of the entire Agreement may be accepted on behalf of County by its County Clerk.

12. **SUSPENSION OF SERVICES.** County, through its County Clerk, may immediately suspend Election Services for any of the following reasons: (i) requests by law enforcement or other governmental agencies; (ii) engagement by Public Body in fraudulent or illegal activities relating to the Election Services provided herein; (iii) breach of the terms and conditions of this Agreement; or (iv) unexpected technical or security issues. The right to suspend Election Services is in addition to the right to terminate or cancel this Agreement according to the provisions in Section 11. County shall not incur any penalty, expense or liability if Election Services are suspended under this Section.
13. **DELEGATION OR ASSIGNMENT.** Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
14. **NO EMPLOYEE-EMPLOYER RELATIONSHIP.** Nothing in this Agreement shall be construed as creating an employee-employer relationship between County and Public Body. At all times and for all purposes under this Agreement, the Parties' relationship to each other is that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants during the term of this Agreement. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Agreement.
15. **NO THIRD-PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right in favor of any other person or entity.
16. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.
17. **SEVERABILITY.** If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
18. **PRECEDENCE OF DOCUMENTS.** In the event of a conflict between the terms and conditions of any of the documents that comprise this Agreement, the terms in the Agreement shall prevail and take precedence over any allegedly conflicting terms and conditions in the Exhibits or other documents that comprise this Agreement.
19. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
20. **FORCE MAJEURE.** Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, national emergencies, insurrections, riots, wars, strikes, lockouts, work

stoppages, other labor difficulties, or any law, order, regulation, direction, action, or request of the United States government or of any other government. Reasonable notice shall be given to the affected Party of any such event.

21. **NOTICES.** Except as otherwise provided in the Exhibits, notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing first class or certified U.S. mail.

21.1. If Notice is sent to County, it shall be addressed and sent to: Oakland County Clerk, Election's Division, 1200 N. Telegraph Road, Bldg. 16 East, Pontiac, MI 48341, and the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, Michigan 48341.

21.2. If Notice is sent to Public Body, it shall be addressed to: 151 Martin Street, P.O. Box 3001, Birmingham MI, 48012.

21.3. Either Party may change the individual to whom Notice is sent and/or the mailing address by notifying the other Party in writing of the change.

22. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

23. **SURVIVAL OF TERMS.** The following terms and conditions shall survive and continue in full force beyond the termination, cancellation, or expiration of this Agreement (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Definitions (Section 1); Assurances (Section 6); Payments (Section 5); Use of Confidential Information (Section 7); Disclaimer of Warranties (Section 8); Limitation of Liability (Section 9); Dispute Resolution (Section 10); No Employee-Employer Relationship (Section 14); No Third-Party Beneficiaries (Section 15); No Implied Waiver (Section 16); Severability (Section 17); Precedence of Documents (Section 18); Force Majeure (Section 20); Governing Law/Consent to Jurisdiction and Venue (Section 22); Survival of Terms (Section 23); Entire Agreement (Section 24).

24. **ENTIRE AGREEMENT.**

24.1. This Agreement represents the entire agreement and understanding between the Parties regarding the specific Election Services described in the attached Exhibit(s). With regard to those Election Services, this Agreement supersedes all other oral or written agreements between the Parties.

24.2. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, Alexandria Bingham, City Clerk Designee, hereby acknowledges that he/she has been authorized by a resolution of the City of Birmingham, a certified copy of which is attached, to execute this Agreement on behalf of Public Body and hereby accepts and binds Public Body to the terms and conditions of this Agreement.

EXECUTED: Alexandra D. Bin DATE: 7-14-20
Alexandria Bingham, City Clerk Designee, City of Birmingham

WITNESSED: Cheryl Arft DATE: 7-14-2020
Cheryl Arft, Acting City Clerk, City of Birmingham

AGREEMENT
ADMINISTRATOR: _____ DATE: _____
(IF APPLICABLE)

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: David T. Woodward DATE: 7/14/2020
David T. Woodward, Chairperson
Oakland County Board of Commissioners

WITNESSED: Joeyl Foyl DATE: 7/14/20
[insert name, title]

IN WITNESS WHEREOF, Lisa Brown, in her official capacity as the Oakland County Clerk, a Michigan Constitutional Office, hereby concurs and accepts the terms and conditions of this Agreement.

EXECUTED: Lisa Brown DATE: 7-14-2020
Lisa Brown, Clerk/Register of Deeds,
County of Oakland

WITNESSED: Joeyl Foyl DATE: 7/14/20

EXHIBIT I

ABSENT VOTER BALLOT COUNTING SERVICES

1. COUNTY RESPONSIBILITIES.

- 1.1. County, through its Board of Election Commissioners, shall, subject to Public Body's performance of its duties and obligations under this Agreement and the Act, render absent voter ballot counting services in compliance with the Act for absent voter ballots received by the clerk for Public Body prior to 4:00 p.m. on the day before an election. For clarification, County is not providing Election Services for absent voter ballots received by the clerk for Public Body after 4:00 p.m. on the day before an election; pursuant to Section 764d(10) of the Act, Public Body must deliver such ballots to the voting precinct of the elector on election day to be processed and counted.
- 1.2. Unless otherwise agreed upon in writing by the Parties, County shall cause absent voter ballots, including, the ballot return envelopes, secrecy sleeves, and ballots (collectively the "Ballots"), received by the clerk for Public Body prior to 4:00 p.m. on the day before an election to be picked up from the clerk by 6:00 p.m. that day by an authorized representative of County.
- 1.3. Upon completing the process for counting the ballots, County shall place the ballots in ballot containers either provided by Public Body that comply with the requirements described below or provided by County, as determined in County's sole discretion, and seal the ballot containers in compliance with all applicable laws. County shall notify Public Body of its decision to require Public Body to provide ballot containers or to provide ballot containers at least sixty (60) days prior to each election for which County is providing Election Services to Public Body under this Agreement.
- 1.4. County shall retain the sealed ballot containers containing the Ballots for thirty (30) days after the day of the election for which the Ballots were submitted. County shall make arrangements with Public Body for an authorized representative(s) of Public Body to, after the expiration of the thirty (30) day period, pick-up from County the Ballots, mail trails, ballot envelopes, ballot boxes provided by Public Body, qualified voter list, and any other items related to the Ballots transferred by Public Body to County.

2. PUBLIC BODY RESPONSIBILITIES.

- 2.1. Public Body shall perform its duties and obligations under this Agreement and the Act and take any other action necessary or appropriate to assist, and cooperate with, County in rendering the absent voter ballot counting services under this Agreement.
- 2.2. Public Body shall, by 4:30 on the day before an election, have available for transfer to County immediately upon arrival of County's representative, the Ballots received by the clerk for Public Body prior to 4:00 p.m. on that day properly organized in mailing trays, ballot containers, unless provided by County pursuant to this Agreement, in good condition and compliant with the required and appropriate sealing procedures, and a reconciled voter list from the qualified voter file that matches the number of Ballots being transferred to County.
- 2.3. Public Body shall, during any period County is actively rendering Election Services, provide to County access to Public Body's electronic qualified voter file for the sole purpose of County reconciling such list with the number of Ballot envelopes received by County and to make any necessary corrections to the list to reflect the number of Ballot envelopes received.

2.4. Public Body shall make arrangements with County to, no later than three (3) business days after the expiration of the thirty (30) day period described in Section 1.4, cause authorized representative(s) in number necessary to pick-up from County premises the Ballots, mail trays, ballot envelopes, ballot boxes provided by Public Body, qualified voter lists, and any other items related to the Ballots transferred by Public Body to County. At such time and on County premises, if County provided ballot boxes to seal the Ballots in providing the Election Services, Public Body shall bring ballot boxes for its authorized representatives to transfer into the Ballots from the County provided ballot boxes. If Public Body does not pick-up such items as required in this Section, at County's election exercised in its sole discretion, Public Body shall, within thirty (30) days of receiving an invoice from County, pay to County \$100_____ for each day beyond the three (3) period set forth above that County remains in possession of such items and/or County may have its authorized representatives deliver such items to Public Body on such date and at such time during Public Body's clerk's regularly scheduled office hours County determines, in which case Public Body shall be deemed to have accepted possession of all such items.

2.5. Upon the earlier to occur of the expiration of the three (3) period set forth in Section 2.4 and the transfer of items to Public Body under Sections 1.4 and 2.5, above, Public Body shall be deemed to be responsible for all such items.

3. **PAYMENT; EXPENSES AND FEES.**

3.1. Except as otherwise provided in Section 5 of this Agreement, until such time as County notifies Public Body otherwise, County shall provide the Election Services to Public Body for each election at no cost to Public Body.

3.2. At such time County determines it will require the payment of a fee and/or reimbursement for costs and expenses by Public Body for County's Election Services for an upcoming election(s), County shall provide written notice to Public Body in advance of such election(s) with sufficient time for Public Body to terminate this Agreement in accordance with its terms setting forth in detail such fees, costs, and expenses and Public Body shall pay such amounts in accordance with the terms of this Agreement for Election Services rendered by County.



MEMORANDUM

City Clerk's Office

DATE: September 25, 2023

TO: Jana L. Ecker, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Special Event Application: 2023 Christmas Nativity Scene

INTRODUCTION:

Our Shepherd Lutheran Church has submitted a Special Event application to hold the 2023 Christmas Nativity Display beginning Wednesday, November 22, 2022 through Friday, December 29, 2023. Set up for the event is scheduled for Wednesday, November 22 from 9:00 a.m. - 11:00 a.m. Tear down is scheduled for Friday, December 29 from 9:00 a.m. - 11:00 a.m.

This display will be located in Shain Park and will consist of fiberglass figurines mounted on a wooden platform.

BACKGROUND:

Prior to application submission, the various departments reviewed the proposed event details for street closures and the need for safety personnel and approved the details. DPS, Planning, Building, Engineering, Police, and Fire have indicated their approval. SP+ Parking has been notified of the event for planning purposes.

Events approved by the City Commission in Shain Park in November and December include:

- | | | |
|----------------------------------|-------------------|------------|
| • Santa House and Carriage Rides | Nov. 25 – Dec. 24 | Shain Park |
| • Winter Markt | Dec. 1 – Dec. 3 | Shain Park |
| • Menorah Lighting in Shain Park | Dec. 10 – Dec. 31 | Shain Park |

LEGAL REVIEW:

The City Attorney has reviewed the application and has no concerns or objections.

FISCAL IMPACT:

The Finance Director has reviewed the application and has no concerns or objections.

SUSATAINABILITY:

There were no sustainability considerations for this event.

PUBLIC COMMUNICATIONS:

The applicant notified residents and businesses about the details of this event by letter which was mailed at least two weeks prior to the Commission meeting. The addresses that were notified were owners and occupants within 300 feet of the event space.

SUMMARY:

The City Commission is being asked to approve a special event permit for a Christmas Nativity scene to be on display from November 22 until December 29, 2023. Set up will take place in Shain Park on Wednesday, November 22, 2023 from 9:00 a.m. - 11:00 a.m. Tear down will occur on Friday, December 29, 2022 from 9:00 a.m. - 11:00 a.m.

ATTACHMENTS:

- Special Event application
- Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area. Notification addresses are on file in the Clerk's Office.
- Department Approval page with comments and estimated costs

SUGGESTED COMMISSION ACTION:

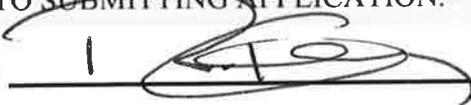
To make a motion adopting a resolution to approve a special event permit as requested by the Lutheran Church of the Redeemer to hold the 2023 Christmas Nativity Display daily, beginning on November 22, 2023 and ending December 29, 2023, contingent upon compliance with all permit and insurance requirements and payment of all fees, and further pursuant to any minor modifications or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event.

23-00012256

AUG 31 2023

**CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES**

RECEIVED IMPORTANT: EVENTS UTILIZING CITY SIDEWALKS AND/OR STREETS MUST MEET WITH POLICE DEPARTMENT SPECIAL EVENT OFFICE TO REVIEW PROPOSED EVENT DETAILS PRIOR TO SUBMITTING APPLICATION.

Police Department acknowledgement: 

I. EVENT DETAILS

- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event

FEES: **FIRST TIME EVENT:** **\$200.00**
ANNUAL APPLICATION FEE: **\$165.00**

(Please print clearly or type)

Date of Application August 27, 2023

Name of Event 2023 Christmas Nativity Display

Detailed Description of Event (attach additional sheet if necessary)
Display of Fiberglass Nativity
display/scene and wooden platform
(pictures pg. 6a, 6b)

Location Shain Park

Date(s) of Event 11/22/2023 - 12/29/23 Hours of Event all day

Date(s) of Set-up 11/22/2023 Hours of Set-up 9-11 AM

NOTE: No set-up to begin before 7:00 AM, per city ordinance.

Date(s) of Tear-down 12/29/2023 Hours of Tear-down 9-11 AM

Organization Sponsoring Event Our Shepherd Lutheran Church

Organization Address 2225 E. 14 Mile Rd., Birmingham, MI 48009

Organization Phone 248-646-6100

Contact Person David Priskorn

Contact Phone 248-705-7874

Contact Email dave@our shepherd.net

II. EVENT INFORMATION

1. Organization Type Not For profit - church
(city, non-profit, community group, etc.)

2. Additional sponsors or participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.)
Lutheran Church of the Redeemer 1800 W. Maple, Birmingham 48009^①
Ascension of Christ Lutheran Church 16835 W. 14 Mile, Beverly Hills 48025^②
① Gary Priskorn 248-644-4010 ext. 123^② Dan Grams 248-644-8890

3. The city encourages collaboration among nonprofit organizations to bring the greatest benefit to the community. Please explain your efforts to do so
Volunteers from 3 churches collaborate to facilitate this display.

4. Are there any sustainability initiatives associated with this event? Please explain.
N/A

5. Is the event a fundraiser? YES NO
List beneficiary _____
List expected income _____ Attach information about the beneficiary.

6. First time event in Birmingham? YES NO
If no, describe This display has been set up in Shain Park every year since 2006

7. Total number of people expected to attend per day unknown

8. The event will be held on the following city property: (Please list)
 Street(s) _____
 Sidewalk(s) _____
 Park(s) Shain Park

9. Will street closures be required? YES NO

(Police Department acknowledgement prior to submission of application is required) (initial here) RK

What parking arrangements will be necessary to accommodate attendance?

Describe None

10. Will staff be provided to assist with safety, security and maintenance? YES NO

If yes, please provide number of staff to be provided and any specialized training received.

Describe periodic inspections for damage and burned out bulbs

11. Will the event require safety personnel (police, fire, paramedics)? YES NO

(Police Department acknowledgement prior to submission of application is required.) (initial here) RK

Describe _____

12. Will alcoholic beverages be served? YES NO

If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

13. Will music be provided? YES NO

_____ Live _____ Amplification _____ Loudspeakers

Recorded Time music will begin _____

Time music will end _____

Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

14. Will there be signage in the area of the event? YES NO

Number of signs/banners 1

Size of signs/banners 18" x 48" on front of platform

Submit a photo/drawing of the sign(s). **A sign permit may be required.**

pgs. 6a, 6b

15. Will food/beverages/merchandise be sold? YES NO

- Peddler/vendor permits must be submitted to the Clerk's Office, **at least two weeks prior to the event.**
- You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
- There is a \$50.00 application fee for all vendors and peddlers, in addition to the \$10.00 daily fee, per location.

LIST OF VENDORS/PEDDLERS

(attach additional sheet if necessary)

VENDOR NAME	GOODS TO BE SOLD	WATER HOOK-UP REQUIRED?	ELECTRIC REQUIRED?

III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment?
(show location of each on map)

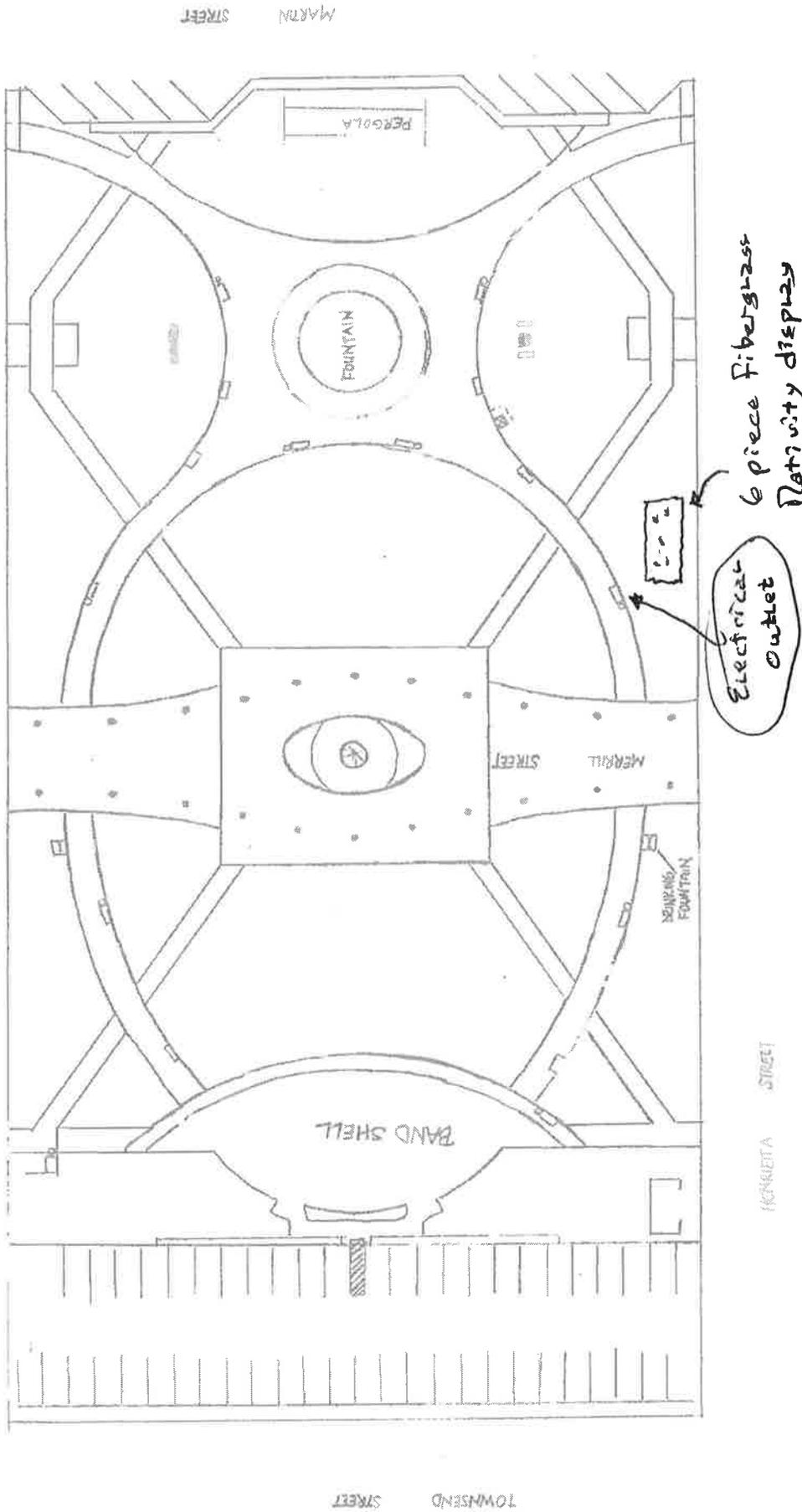
EQUIPMENT	QUANTITY	COST	NOTES
Picnic Tables		6 for \$500.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles		\$10.00 each includes 1 bag For additional bags, the cost is \$32/per case.	Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.
Dumpsters		\$350.00/per dumpster per day	Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.
Utilities (electric) (A)	# of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant		\$224.75/per hydrant Includes the use of 5,000 gallons of water. Any additional water usage will be billed.	Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.
Meter Bags / Traffic Cones / Barricades	# to be determined by the Police Department.		

2. Will the following be constructed or located in the area of the event? YES **(NO)**

(show location of each on map) NOTE: Stakes are not allowed.

TYPE	QUANTITY	SIZE
Tents/Canopies/Awnings (A permit is required for tents over 400 square feet)		
Portable Toilets		
Rides		
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		

(A) 1 electric outlet for lighting of display in evening



Shain Park Map 5G



This nativity display is lovingly shared
with the residents of Birmingham and visitors by:
Ascension of Christ Lutheran Church, Beverly Hills
Lutheran Church of the Redeemer, Birmingham
Our Shepherd Lutheran Church, Birmingham

"I bring you good news of great joy that will be for all people"
Luke 2





HOLD-HARMLESS AGREEMENT

To the fullest extent permitted by law, Our Shepherd Lutheran Church and any entity or person for whom Our Shepherd Lutheran Church is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

A handwritten signature in black ink, appearing to be "M. A.", written over a horizontal line.

A handwritten date "8/24/2023" in black ink, written over a horizontal line.

Applicant's Signature

Date



SPECIAL EVENT REQUEST NOTIFICATION LETTER

Date: 08/31/2023

To: Resident/Property Owner/Business Owner

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the city commission will consider our request so that an opportunity exists for comments prior to this approval.

Event Information

NAME OF EVENT: 2023 Christmas Nativity Display
LOCATION: Shain Park, East Side facing Henrietta
DATES OF EVENT: Nov. 22, 2023 – Dec. 29, 2023
HOURS OF EVENT: 24 Hours/day

BRIEF DESCRIPTION OF EVENT: The display includes 6 fiberglass figures (Mary, Joseph, Baby Jesus and 3 Shepherds) with a sign identifying the 3 churches that share this display with the residents and visitors to the City of Birmingham. The same display has been placed since 2005.

DATE AND HOURS OF SETUP: Nov. 22, 2023, 9-12 noon
DATE AND HOURS OF TEAR-DOWN: Dec. 29, 2023, 9-12 noon

DATE OF CITY COMMISSION MEETING: October 2, 2023, 7:30pm

The City Commission meets virtually and in person at 7:30pm. A complete copy of the application to hold this special event is available for your review at the City Clerk's office. (248-530-1880) Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: Our Shepherd Lutheran Church
ADDRESS: 2225 E. 14 Mile Road, Birmingham, MI 48009
PHONE: 248-646-6100

FOR QUESTIONS ON DAY OF EVENT, CONTACT: David Priskorn, 248-646-6100

(Jointly sponsored with Lutheran Church of the Redeemer, Birmingham and Ascension of Christ Lutheran Church, Beverly Hills.)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/23/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CTG Insurance PO Box 8 Grand Blanc MI 48480		CONTACT NAME: PHONE (A/C, No, Ext): 800-732-0096 E-MAIL ADDRESS: support@ctgins.com FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: Brotherhood Mutual Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:		NAIC # 13528
INSURED Our Shepherd Lutheran Church & School 2225 E 14 MILE RD BIRMINGHAM MI 48009-7258				

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR null null GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: null	X		21MRA0391459	05/15/2023	05/15/2024	EACH OCCURRENCE	\$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)						\$ 1,000,000	
	MED EXP (Any one person)						\$ 10,000	
	PERSONAL & ADV INJURY						\$ 1,000,000	
							GENERAL AGGREGATE	\$ 10,000,000
							PRODUCTS - COMP/OP AGG	\$ 10,000,000
							Nursery Corporal Punishr	\$ 1,000,000/10,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE	
							OTH-ER	
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

This Certificate of General Liability (ACORD 25) names the City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers as additional insured on the policy 21M391459 for the nativity scene displayed by Our Shepherd Lutheran Church from November 22, 2023 to December 29, 2023.

CERTIFICATE HOLDER**CANCELLATION**

City of Birmingham 151 Martin St Birmingham, MI 48009	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Aimee Nanney</i>
---	--

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The following language must be submitted on the applicant's letterhead and signed by an authorized representative of the organization.

HOLD-HARMLESS AGREEMENT

"To the fullest extent permitted by law, the **(applicant/organization name)** and any entity or person for whom the **(applicant/organization name)** is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham."


Applicant's signature


Date

SAMPLE NOTIFICATION LETTER

SPECIAL EVENT REQUEST NOTIFICATION LETTER

DATE: _____

TO: _____
Residential Property or Business Owner

Address

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

EVENT INFORMATION

NAME OF EVENT: 2023 Christmas Nativity Display

LOCATION: Shain Park, east side Facing Henrietta

DATE(S) OF EVENT _____ HOURS OF EVENT _____

BRIEF DESCRIPTION OF EVENT/ACTIVITY: _____

DATE(S) OF SET-UP 11/22/2023 HOURS OF SET-UP 9:00 AM - 11:00 AM

DATE(S) OF TEAR-DOWN 12/29/2023 HOURS OF TEAR-DOWN 9:00 AM - 11:00 AM

DATE OF CITY COMMISSION MEETING: _____

The City Commission meets in room 205 of the Municipal Building at 151 Martin at 7:30 p.m. You may also attend virtually through Zoom:
<https://zoom.us/j/655079760> Meeting ID: 655 079 760. **A complete copy of the application to hold this special event is available for your review at the City Clerk's Office (248/530-1880).** Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: _____

ADDRESS: _____

PHONE: _____

FOR QUESTIONS ON DAY OF EVENT, CONTACT: _____

A map showing street closures must be attached.

CITY OF BIRMINGHAM
CLERKS OFFICE
151 MARTIN ST
BIRMINGHAM, MI 48009

INVOICE



Invoice #	Post Date
00006657	08/30/2023

License #
23-00012256

Invoice Date
08/30/2023

Due Date
08/30/2023

Amount Due
\$165.00

Mail To:
OUR SHEPHERD LUTHERAN CHURCH
DAVE PRISKORN
2225 E 14 MILE
BIRMINGHAM, MI 48009

Business ID:
000009019

Business Name:
OUR SHEPHERD LUTHERAN CHURCH

Please Return This Portion with your Payment

Invoice #: 00006657	License #: 23-00012256	License Type: SPECIAL EVENT	Application Date: 08/30/2023	Expiration Date:
-------------------------------	----------------------------------	---------------------------------------	--	-------------------------

Fee Items	Units	Amount	Adjustment	Total Billed
SPECIAL EVENT APPLICATION	0.00	165.00	0.00	\$165.00

Billing/Invoice Date: 08/30/2023

Amount Adjusted: 0.00

Amount Paid: 0.00

Remaining Due: 165.00

Penalties and Late Charges will be applied after: 08/30/2023

DEPARTMENT APPROVALS

EVENT NAME: Nativity Scene

COMMISSION HEARING DATE: 10/02/2023

LICENSE NUMBER #23-00012256

DATE OF EVENT: 11/22/23

NOTE TO STAFF: Please submit approval by 9/26/23

DEPARTMENT	APPROVED	COMMENTS	PERMITS REQUIRED (Must be obtained directly from individual departments)	ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)	ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)
PLANNING 101.0-000.000-636.0005 248.530.1855	TBC	No Cost No Comment		\$0	
BUILDING 101.0-000.000.636.0005 248.530.1850	MJM	No Building Department involvement		\$0	
FIRE 101.0-000.000-636.0004 248.530.1900	Jeff Scaife			\$0.00	
POLICE 101.0-000.000.636.0003 248.530.1870	SG	On duty personnel will provide extra patrol.		\$0	\$0
PUBLIC SERVICES 101.0-000.000-636.0002 248.530.1642	Carrie Laird	NO STAKES OF ANY TYPE TO BE DRIVEN INTO THE GROUND TO HOLD DOWN NATIVITY SCENE. 2). DEPARTMENT REPRESENTATIVE WILL MEET WITH ORGANIZATION REPRESENTATIVE ON THE PLACEMENT OF THE NATIVITY SCENE, TO AVOID DAMAGE TO PROPERTY, ELECTRICAL, ETC.		\$0	
ENGINEERING 101.0-000.000.636.0002 248.530.1839	MC	No comments	None	\$0	\$0
SP+ PARKING	AF	No comments	None	0	0

INSURANCE 248.530.1807	ASA	Already submitted COI, hold harmless	None	0	
CLERK 101.0-000.000-614.0000 248.530.1803	ASA	Notification letters were mailed by applicant on 9/12/23. Notification addresses on file in the Clerk's Office.	None	\$165 paid	0
			TOTALS: Estimated and Actual Costs		

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund _____



MEMORANDUM

City Manager's Office

DATE: September 22, 2023

TO: Jana L. Ecker, City Manager

FROM: Melissa Fairbairn, Assistant City Manager

SUBJECT: Michigan Municipal League Liability and Property Pool Board of Directors Election

The City of Birmingham is a member of the Michigan Municipal League Liability and Property Pool. The Michigan Municipal League is the state's leading provider of municipal workers' compensation and risk management services.

The Michigan Municipal League Liability and Property Pool is holding an election for this year's Board of Directors. Three (3) of the Board's incumbent Directors have agreed to seek re-election. A brief biographical sketch of each of the candidates is attached for your review. They are:

George Bosanic, Manager, City of Greenville
Sue Osborn, Mayor, City of Fenton
David Post, Manager, Village of Hillman

A resolution is required to authorize the City of Birmingham's vote to be cast for the above candidates to serve as Directors of the Michigan Municipal League Liability and Property Pool Board. They are the only candidates seeking election to this Board.

SUGGESTED COMMISSION ACTION:

To authorize the City Manager to cast a vote, on the City's behalf, for the three (3) candidates for the Michigan Municipal League Liability and Property Pool Board of Directors for three-year terms, beginning January 1, 2024.

THE CANDIDATES

Three-year terms beginning January 1, 2024



George Bosanic, City Manager, City of Greenville

George has nearly 35 years of experience as a municipal official with over 30 years serving as the city manager of the City of Greenville. George has served in leadership roles on numerous local boards and commissions over the years and is a past board member of the MML Workers' Compensation Fund Board. He is a member of the Michigan Local Government Management Association and International City Management Association. George is seeking re-election to his second term.



Sue Osborn, Mayor, City of Fenton

Sue has over thirty-eight years of experience as a municipal official, serving as mayor of the City of Fenton for the last twenty-five. She was appointed to Fenton's city council in 1985 and has been a continuous member since that time. Previously, she was a member of the Planning Commission from 1978-1985. Sue is a member of the Michigan Association of Mayors, a member of the National League of Cities and serves as Vice-Chair of the FAIR (Finance, Administration and Intergovernmental Affairs) for the National League of Cities. She is also active in several local and regional civic organizations. Sue is seeking re-election to her fourth term.



David Post, Village Manager, Village of Hillman

Dave has more than twenty-eight years' experience as a municipal official, serving as the manager in the Village of Hillman. Dave is a past member of the Michigan Municipal League Board of Trustees and several MML committees. He is currently a member of the Northeast Michigan Council of Governments board and is active in several local and regional civic organizations, including the Communities First Fund (chair), the Hillman Community Radio board and the Wheels Car Club. Dave is seeking re-election to his fourth term.

Michigan Municipal League
Liability & Property Pool

OFFICIAL BALLOT - 2023

Vote for three Directors by marking the line to the left of the name for three-year terms beginning January 1, 2024.

____ George Bosanic, Incumbent
Manager, City of Greenville

____ Sue Osborn, Incumbent
Mayor, City of Fenton

____ Dave Post, Incumbent
Manger, Village of Hillman

Write-in Candidate

I hereby certify that:

(Municipality/Agency)

by action of its governing body, has authorized its vote to be cast for the above persons to serve as Director of the Michigan Municipal League Liability and Property Pool.

Official Signature

Date:

Ballot deadline:
November 10, 2023



MEMORANDUM

Police Department

DATE: September 25, 2023

TO: Jana Ecker, City Manager

FROM: Rebekah Springer, Detective Sergeant

APPROVED: Scott A. Grewe, Chief of Police

SUBJECT: Churchill’s Cigar Shop, Inc, a transfer of shares in the Class C and SDM License with Sunday Sales (PM) and Outdoor Service Area.

INTRODUCTION:

The police department received a request from the Law Offices of Mekani, Orow, Mekani, Shallal & Hindo, P.C. for a transfer of shares in Churchill’s Cigar Shop, Inc.. Churchill’s Cigar Shop is a Class C and SDM liquor licensed entity which operates with Sunday Sales (PM) and an Outdoor Service Area permit located at 116-118 S. Old Woodward Ave., Birmingham, Oakland County, MI 48009. Churchill’s Cigar Shop has paid the initial liquor license application fee of \$1,500.00 for a business that serves alcoholic beverages for consumption on the premises per section 7.33 of the Birmingham City Code. Churchill’s Cigar Shop, is comprised of two majority stockholders:

<u>Members</u>	<u>Membership</u>
Luke Samona	510 Shares
Nashwan Zaitouna	490 Shares

Chapter 10 (Alcoholic Liquors), Section 42 of the Birmingham City Code requires that “any and all transfers of a liquor license for consumption of intoxicating liquor on premises require the approval of the City Commission of any kind including, but not limited to ownership of the license; stock in a corporation that owns a license; interest in a license through any entity; or location of the licensed premises.” In this case, Churchill’s Cigar Shop, Inc, has transferred shares of Church Hills Cigars to two new members and therefore requires the City Commission’s approval for the liquor license.

BACKGROUND:

Currently Nashwan Zaitouna owns four hundred ninety (490) shares of the issued and outstanding common stock of Churchill’s Cigar Shop, Inc. and Seller (Luke Samona) owns five hundred ten (510) shares of the issued and outstanding common stock of Churchill’s Cigar Shop, Inc., which

represents fifty-one (51%) percent of all of the issued and outstanding common stock in Churchill's Cigar Shop, Inc.

On August 16, 2023, stockholder Luke Samona transferred stock by adding Mazin G. Samona Living Trust and John A. Samona Living Trust as new stockholders; and as a result, existing stockholder Luke Samona Living Trust will hold 102 Shares, new stockholders Mazin G. Samona Living Trust will hold 306 Shares, and new stockholder John A. Samona Living Trust will hold 102 Shares (10.01.2020). So now the current members are Nashwan Y. Zaitouna, Mazin G. Samona Living Trust (Mazin G. Samona Trustee), John A. Samona Living Trust (John A. Samona Trustee), and Luke Samona Living Trust (Luke Samona Trustee).

The Purchase Price for the stock shall be paid to the Seller (Luke Samona) by way of a mutually agreeable promissory note at the time of closing.

The ownership of Churchill's Cigar Shop, Inc. will be as follows:

<u>Member</u>	<u>Membership</u>
Nashwan Zaitouna	490 Shares
Luke Samona Living Trust (Luke Samona Trustee)	102 Shares
Mazin Samona Living Trust (Mazin G. Samona Trustee)	306 Shares
John Samona Living Trust (John A. Samona Trustee)	102 Shares

Churchill's Cigar Shop, Inc. continues to lease 116-118 S. Old Woodward Ave from the landlord "The Gwynn Building". Churchill's Cigar Shop is open from 10:00 a.m. to 12:00 a.m. 7 days a week.

There will be no changes to the operations of the business, the layout of the establishment, the concept, the menu, or the hours of operation. There are no changes to the capacity or layout of the business. There are no changes in the Special Land Use Permit (SLUP).

A background check was conducted on Mazin G. Samona and John A. Samona using the Law Enforcement Information Network (LEIN), the Court's Law Enforcement Management Information System (CLEMIS), and the Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLLEN) FBI N-DEX national database. Mazin G. Samona has no listed convictions. John A. Samona has two prior convictions from 1992 for Disturbing the Peace and Obstruct Officer by Disguise.

It should be noted that there have been no violations for Churchill's Cigar Shop, Inc. with The Michigan Liquor Control Commission (MLCC)

LEGAL REVIEW:

The City Attorney has reviewed the memo and has no objections to the suggested Commission action.

FISCAL IMPACT:

\$1,500.00 liquor license application fee received.

SUSTAINABILITY:

N/A

PUBLIC COMMUNICATIONS:

Non-applicable

SUMMARY:

Churchill's Cigar Shop, Inc. is requesting a transfer of its stock interest in doing business as Churchill's Cigar Shop. Churchill's Cigar Shop, Inc. holds Class C and SDM License with Sunday Sales (PM) and Outdoor Service Area located at 116-118 S. Old Woodward Ave., Birmingham, Oakland County, MI, and is requesting that stock owned by Luke Samona Living Trust be transferred and divided among Mazin Samona Living Trust and John Samona Living Trust, having successfully completed the police background check. The current SLUP in place for Churchill's Cigar Shop, Inc. is in the name of Churchill's Bistro and will not be amended.

ATTACHMENTS:

None

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to authorize the City Clerk to complete the Local Approval Notice at the request of Churchill's Cigar Shop, Inc. approving the request for a transfer of shares for a business which holds the Class C and SDM License with Sunday Sales (PM) and Outdoor Service Area located at 116-118 S. Old Woodward Ave., Birmingham, Oakland County, MI to now include Mazin Samona Living Trust, 306 Shares, and John Samona Living Trust, 102 Shares.



MEMORANDUM

Police Department

DATE: September 25, 2023

TO: Jana L. Ecker, City Manager

FROM: Scott A. Grewe, Chief of Police

SUBJECT: Memorandum of Understanding with Oakland Community Health Network for reimbursement of training costs through the American Rescue Plan Act.

INTRODUCTION:

In 2023, Oakland Community Health Network (OCHN) was awarded American Rescue Plan Act (ARPA) funding to provide Crisis Intervention Team (CIT) training and program development assistance to local law enforcement agencies throughout Oakland County.

BACKGROUND:

The Birmingham Police Department has been training officers in CIT training to increase our abilities and effectiveness in our response to those suffering a mental health or substance abuse crisis. This training consists of a 40-hour in-person training session administered by OCHN. Together, with this training and our co-response program (CoRe), the Police Department continues to enhance our response to people in crisis. This MOU aims to establish a partnership that will reimburse the City of Birmingham's cost for our officer's attendance at the OCHN CIT training utilizing ARPA funding.

LEGAL REVIEW:

This MOU was reviewed and approved by the City Attorney.

FISCAL IMPACT:

OCHN has agreed to allocate \$100,000.00 of the ARPA funds to be reimbursed to Oakland County agencies attending their training.

1. The program will pay \$1,000.00 per officer attending and completing the 40-hour CIT training program and \$2,000.00 per week for CIT Instructors per week.

OCHN also agrees to allocate \$80,000.00 of the ARPA funds to be reimbursed for:

1. CIT International – CIT Coordinators Certification (\$450) Virtual Training.

2. CIT Curriculum Train the Trainer: CIT International – CIT 40-hour Curriculum Train-the-Trainer (\$2,450).
 - a. Travel Expenses not included (responsibility of agency) – training located in Salt Lake City, Utah.
3. CIT Program Certification: \$1,000.00 for agency certification or \$1,500.00 for regional certification.

SUSTAINABILITY:

N/A

PUBLIC COMMUNICATIONS:

While there has been no public communication from the Police Department regarding this MOU, there have been numerous communications regarding our CoRe program and CIT training.

SUMMARY:

OCHN has received ARPA funding to reimburse the Police Department for officers' attendance to the CIT training program. This MOU establishes a partnership with OCHN for the CIT certification program utilizing ARPA funds to reimburse the Police Department for officers' attendance.

ATTACHMENTS:

1. MOU between Oakland Community Health Network and Participating Agencies.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the Memorandum of Understanding with Oakland Community Health Network and to authorize the Chief of Police to sign the agreement on behalf of the City.



Developmental Disabilities • Mental Health • Substance Recovery

MEMORANDUM OF UNDERSTANDING
Number 2023-0448-JUSMOU
Between
OAKLAND COMMUNITY HEALTH NETWORK
And
EACH PARTICIPATING AGENCY

This Memorandum of Understanding (“MOU”) is entered into between Oakland Community Health Network (“OCHN”), created pursuant to the Michigan Mental Health Code (P.A. 1974. No.258, MCL 330.1100, et seq., hereafter “Mental Health Code”), whose address is 5505 Corporate Drive, Troy, MI 48098-2614 and each of the following Oakland County law enforcement agencies Auburn Hills Police Department, Bloomfield Township Police Department, Clawson Police Department, Ferndale Police Department, Madison Heights Police Department; Novi Police Department, Oakland County Sheriff’s Department, Rochester Police Department, Royal Oak Police Department, Southfield Police Department, Troy Police Department, West Bloomfield Police Department, and While Lake Township Police Department hereafter referred to as “each as a Participating Agency.”

§1 BACKGROUND

In 2023, OCHN was awarded American Rescue Plan Act (“ARPA”) funding under Section 21.027 of the Compliance Supplement to provide Crisis Intervention Team (“CIT”) Training and program development assistance to local law enforcement agencies throughout Oakland County.

§2 PURPOSE

The purpose of this MOU is to establish a partnership that will reimburse the Participating Agency for its staff for attendance at the OCHN CIT Trainings and Participating Agency staff working towards CIT certification programs through OCHN:

- **OCHN agrees to allocate \$100,000.00 of the ARPA funds to be reimbursed up to:**
 - \$1,000.00 per officer/deputy attending and completing the 40-hour CIT training program through OCHN and the CIT Oakland Collaborative.
 - \$2,000.00 per week for CIT Oakland Instructors.
- **OCHN agrees to allocate \$80,000.00 of the ARPA funds to be reimbursed for:**
 - CIT International - CIT Coordinator Certification (\$450) Virtual training.

- CIT Curriculum Train the Trainer: CIT International - CIT 40-hour Curriculum Train-the-Trainer (\$2,450).
 - Travel expenses not included (responsibility of agency) – training located in Salt Lake City, Utah.
- CIT Program Certification: \$1,000.00 for agency certification or \$1,500.00 for regional certification.

§3 TERM

This MOU shall become effective July 1, 2023 through January 31, 2024, or until all funds allocated under this MOU are dispersed, whichever occurs first.

§4 RESPONSIBILITIES

4.1 Law Enforcement Agency.

- 4.1.1 Assign eligible law enforcement staff to the training
- 4.1.2 Complete and submit the necessary OCHN forms for reimbursement, including, but not limited to, the OCHN Vendor Packet.
- 4.1.3 Review and approve OCHN-generated invoices detailing the Participating Agency staff in the program activities.
- 4.1.4 Accept reimbursement funds from OCHN.
- 4.1.5 Pay all travel expenses for each officer/deputy participating in the training.

4.2 OCHN

- 4.2.1 Assist in the development, implementation, and maintenance of the CIT Oakland program.
- 4.2.2 Provide 40-hour CIT training to local law enforcement.
- 4.2.3 Communicate regularly with the Law Enforcement Agency to ensure alignment and coordination of program.
- 4.2.4 Provide invoices of reimbursement amount, detailing individuals that attended and completed the training.

§5 CONFIDENTIAL INFORMATION

5.1 If OCHN discloses confidential information to the Participating Agency’s employees, agents, and other parties pertaining to OCHN's past, present and future activities, the Participating Agency must instruct its employees to regard all information gained by each person as a result of the Services to be performed as information which is confidential and not to be disclosed to any organization or individual without the prior written consent of OCHN. The Participating Agency

shall fully protect the confidentiality of any documents or information containing medical or other personal information concerning an individual served or employee and, in that regard, the Participating Agency agrees to follow all applicable confidentiality laws including HIPAA, the HITECH revisions and the Michigan Mental Health Code. If a Business Associate Agreement is required, it has been executed and attached hereto as an Attachment.

5.2 The Participating Agency agrees to take appropriate action with respect to its employees to ensure that the obligations of nonuse and non-disclosure of confidential information concerning this MOU can be fully satisfied. This includes proper training and agreements as necessary.

§6 TERMINATION

Either Party, upon a minimum of thirty (30) days written notice to the other Party, may cancel and/or completely terminate this MOU for any reason, including convenience, without incurring any penalty, expense, or liability to the Institute beyond fees for service already rendered under this MOU. The effective date for any such termination is to be clearly stated in the notice.

§7 [RESERVED]

§8 COMMITMENT OF RESOURCES

OCHN shall provide both the training location as well as staff, and any needed materials related to the training.

§9 IN-KIND SERVICES

Unless expressly provided herein, this MOU does not authorize any in-kind services by either party.

§10 GOVERNING LAW

This MOU shall be governed by the laws of the State of Michigan and any dispute arising from or relating to this MOU shall be heard in a competent court located in Oakland County, Michigan.

§11 AMENDMENTS

This MOU may be amended only with the mutual consent of OCHN and all of the Participating Agencies.

§12 DISPUTE RESOLUTION

All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this MOU involving or affecting the Parties may first be submitted to the respective project manager (if applicable) and administrators for possible resolution.

§13 RELATIONSHIP OF PARTIES

Nothing in this MOU is intended to establish an employer-employee relationship between OCHN and the Participating Agencies. In no event, shall Participating Agency employees be deemed employees, agents, volunteers, or subcontractors of the OCHN.

§14 REPRESENTATIONS

Each Party represents and warrants as follows: (i) the individual executing this MOU on behalf of such Party is duly authorized to execute and deliver this MOU on behalf of said Party; (ii) it has the power and authority to execute, deliver and perform its obligations under this MOU; (iii) this MOU has been duly and validly authorized by all necessary corporate action on the part of such Party; and (iv) this MOU is not in violation of or inconsistent or contrary to the provisions of any other agreement to which such Party is a party.

§15 WARRANTIES AND ASSURANCES

- 15.1 The Participating Agency warrants that before submitting its Proposal and/or entering into this MOU, it had a full opportunity to review all OCHN requirements and/or expectations for this MOU. The Participating Agency is responsible for being adequately and properly prepared to execute this MOU. The Participating Agency has satisfied itself in all material respects that it will be able to perform the MOU as specified herein.
- 15.2 The Participating Agency certifies that all statements, assurances, records, and materials submitted to the OCHN in connection with seeking and obtaining this MOU have been truthful, complete, and accurate.
- 15.3 If the Parties agree to this MOU to follow any of the Participating Agency policies, such as acceptable use or privacy policies, then the Participating Agency shall retain each version of such policy with the effective dates and shall promptly provide such to the OCHN, if requested.
- 15.4 If any part of this MOU is supported or paid for with any State, federal, or other third-party funds granted to the OCHN, then the Participating Agency shall comply with all applicable grant requirements. Upon request of the Participating Agency, the OCHN shall provide the Participating Agency with a copy of the applicable grant requirements.
- 15.5 Except as otherwise expressly provided in this MOU, the Participating Agency shall be solely responsible and liable for all costs and expenses associated or needed to perform this MOU, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties. Unless any of the foregoing are levied solely due to the actions or inactions of OCHN.
- 15.6 The Participating Agency is responsible for providing all equipment and supplies to perform this MOU, which are not expressly required to be provided by the OCHN. Notwithstanding the foregoing, OCHN acknowledges that certain deliverables will require OCHN have access to certain equipment to make use of such deliverables.

The remainder of this page is blank. Signature page follows.

IN WITNESS WHEREOF, the parties have hereunto signed this Agreement in their official capacities of the day and year listed below.

For Oakland Community Health Network:

BY: _____
Adam Jenovai
Chief Operations Officer

DATE: _____

BY: _____
Patrick Franklin
Interim Chief Financial Officer

DATE: _____

For Contractor:

BY: _____
Chief Ryan Gagnon
Auburn Hills Police Department

DATE: _____

BY: _____
Chief James Gallagher
Bloomfield Township Police Dept.

DATE: _____

BY: _____
Chief Scott Grewe
Birmingham Police Department

DATE: _____

BY: _____
Clawson Police Department

DATE: _____

BY: _____
Ferndale Police Department

DATE: _____

BY: _____
Madison Heights Police Department

DATE: _____

BY: _____
Chief Erick Zinser
Novi Police Department

DATE: _____

BY: _____
David T. Woodward
Oakland Co. Board of Commissioners
Oakland County Sheriff's Office

DATE: _____

BY: _____
Lieutenant Keith Harper
Rochester Police Department

DATE: _____

BY: _____
Royal Oak Police Department

DATE: _____

BY: _____
Chief Elvin V. Barren
Southfield Police Department

DATE: _____

BY: _____

Troy Police Department

DATE: _____

BY: _____

West Bloomfield Police Department

DATE: _____

BY: _____

White Lake Police Department

DATE: _____



MEMORANDUM

Parking

DATE: October 2, 2023

TO: Jana L. Ecker, City Manager

FROM: Aaron Ford, Parking Systems Manager

SUBJECT: Reduction of Advisory Parking Committee

INTRODUCTION:

The Advisory Parking Committee (APC) was established in 1984 and originally consisted of seven total members. Over time, the committee expanded from seven to nine members, and the addition of two alternate positions, bringing the total to eleven members, as it exists today.

The APC is one of the largest committees with eleven (11) total members (9 regular, 2 alternate). Reducing the size of the committee by two positions should make it more likely to make a quorum.

BACKGROUND:

The Advisory Parking Committee was established in 1984 and consisted of seven (7) members (2 retail, 1 professional firm, 1 building owner, 1 downtown employee, and 2 residential). Since then, the committee has expanded to eleven committee members (1 large retail, 1 small retail, 1 professional firm, 1 BSD member, 1 restaurant owner, 1 downtown employee, 2 residential, 1 residential shopper, and two alternates).

Over the past several months, the APC has had four (4) positions vacated due to expiring terms and committee members choosing not to renew. These vacancies, along with absences, have made it hard for the committee to conduct business and to have enough attendees to make a quorum.

Staff recommends reducing the size of the APC by two members to include 2 retail, 1 professional firm, 1 BSD member, 1 residential shopper, 2 residential, and two alternate positions. Reducing the committee will improve the likelihood of quorums since only four members will need to be present.

Current	Suggested
1 Large Retail	2 Retail
1 Small Retail	1 Professional Firm
1 Professional Firm	1 BSD Member
1 BSD Member	1 Residential Shopper
1 Restaurant Owner	2 Residents
1 Downtown Employee	2 Alternatives
2 Residential Employees	
1 Residential Shopper	
2 Alternatives	

LEGAL REVIEW:

The City's attorney has reviewed the memo and past resolutions and approves the recommendation.

FISCAL IMPACT:

None

SUSTAINABILITY:

None

PUBLIC COMMUNICATIONS:

None

SUMMARY:

The Advisory Parking Committee was established in 1984 and consisted of seven (7) members (2 retail, 1 professional firm, 1 building owner, 1 downtown employee, and 2 residential). Since then, the committee has expanded to eleven (11) committee members (1 large retail, 1 small retail, 1 professional firm, 1 BSD member, 1 restaurant owner, 1 downtown employee, 2 residential, 1 residential shopper, and two alternates).

Staff recommends reducing the size of the APC by two members (2 retail, 1 professional firm, 1 BSD member, 1 residential shopper, 2 residential, and two alternates). Reducing the committee will likely improve the ability to have a quorum.

ATTACHMENTS:

- A. APC Resolution from 1984
- B. Current APC Roster

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve reducing the Advisory Parking Committee from eleven (11) members to nine (9) members by removing one downtown employee position and one restaurant owner position.

Referred to the Traffic and Safety Board for review of meters in the following locations to determine if they are still appropriate in view of the change in the entrance to the Baldwin Library: twelve 30-minute meters on Martin between Bates and Chester; five 15-minute meters on Bates between Maple and Martin; three 15-minute meters on Bates near the former entrance on Martin Street to the library.

8:07

08-881-84: CITY COMMISSIONER REPORTS

Commissioner Miller reported that the Otsu Children's Choir will sing at the Community House at 2:00 P.M., Saturday, August 11, 1984. She also commented that AAA will provide transportation for the children to Bob-Lo.

Mayor Appleford reported that he attended a reception in Ann Arbor last week for the Governor of Shiga Province.

8.08

08-882-84: ADVISORY PARKING COMMITTEE ESTABLISHED

MOTION: Motion by Miller, supported by Hockman:

To receive the report of the City Manager re: Advisory Parking Committee; to establish an Advisory Parking Committee as follows:

PURPOSE: There is hereby established an Advisory Parking Committee to provide guidance to the Birmingham City Commission in the management of the Birmingham Auto Parking System that will: recognize parking requirements of the various interests in the Central Business District (CBD); fairly assess the costs of the parking system to users of the facility; create the least possible traffic impact on the CBD and the immediately abutting residential areas; provide for attractive, well-maintained, safe facilities; include plans for an orderly and responsive answer to future parking needs.

MEMBERS: The Birmingham City Commission shall appoint the Advisory Parking Committee, consisting of seven (7) members, each to be appointed for a term of three (3) years, but in the first instance, two (2) members shall be appointed for terms expiring on the first Monday in September, 1985, two (2) members shall be appointed for terms expiring on the first Monday in September, 1986, and three (3) members shall be appointed for terms expiring on the first Monday in September, 1987.

The majority of the members shall be residents and there shall be one member representing each of the following:

- I. Downtown Commercial Representatives -
 - A. Retail - Two (2) members
 - B. Professional Firm - One (1) member
 - C. Building Owner - One (1) member
- II. Downtown Employee Representative - One (1) member
- III. Residential - Two (2) members who do not qualify under any of the above categories.

Members of the Committee can be removed for cause determined at a public hearing at any time by the City Commission. Vacancies occurring shall be filled for the unexpired term by the City Commission.

ORGANIZATION: The Committee shall elect a Chairperson from its membership annually at its first meeting after the first Monday of September. The City Engineer shall be a non-voting, ex-officio member of the Committee and shall serve as the coordinating link between the Committee and various City Departments. A secretary shall be furnished by the City for the purpose of keeping Minutes of Committee meetings.

MEETINGS: The Committee shall hold at least one (1) regular public meeting in each quarter on such date and at such time and place as may be established by resolution of the Committee. Special meetings may be called by the Chairperson of the Committee or by request of any three (3) members of the Committee. There shall be at least a two (2) day notice for any special meeting. The Committee shall adopt such rules for the conduct of its business as it may from time to time adopt by resolution. The Committee shall keep a written or printed record of its proceedings which shall be a public record and property of the City.

EXPENDITURES: The Committee shall have the power to expend such funds as may from time to time be appropriated to it by the City Commission for the purpose of carrying out the powers and duties of the Committee. Funds expended by the Committee shall be processed through regular City channels and be accounted for in the Auto Parking Fund budget.

POWERS AND DUTIES: The Committee shall recommend:

1. A proper rate relationship between the charges for street meters, parking lot fees (short term and long term), and permit fees.
2. Parking fees that, while maintaining the financial integrity of the system, are still attractive to users.
3. The proper ratio between the number of short term, long term, and permit parkers in the attendant-operated lots and structures.
4. The area in each structure that should be assigned for short term, long term, and permit parking.
5. An equitable method of assigning permit parking spaces.
6. Financial objectives that reflect the requirements of ordinances and the need for information on the revenue received from specific users of the system.
7. A public relations program that will educate the public to the location of parking facilities, their ease of use, their close proximity to many fine stores offering a great variety of merchandise and the benefits of validated parking.
8. Corrective steps if the level of either maintenance or policing of the system facilities is inadequate.
9. Specific ordinance changes that will encourage private off-street parking in the CBD and/or help to improve the system operation as a whole.

REPORTS: The Committee shall make and submit to the City Commission an annual report in January regarding the general activities, operations and accomplishments of the Committee for the preceding year. The Committee shall, from time to time as occasion requires, advise the City Commission in writing on recommendations for the improvement of the Auto Parking System.

BUDGET: Not later than the first day of February of each year, the Committee shall present to the City Commission a request for funds which the Committee believes necessary to carry out its function as an advisory committee.

VOTE: Yeas, 6 Nays, None Absent, Sights

MOTION: Motion by Kain, supported by Jeske:
That the Ad Hoc Parking Committee be dissolved.

VOTE: Yeas, 6 Nays, None Absent, Sights

Resumes for membership on the Committee are to be submitted by August 27, 1984, and Commissioners are to submit names to the Mayor by the first meeting in September. They are also to advise the Mayor if they have a particular area in which they are interested.

MOTION: Motion by Hockman, supported by Miller:
That resumes for appointment to the Advisory Parking Committee be submitted by August 27, 1984, for consideration by the City Commission at its September 4 meeting.

VOTE: Yeas, 6 Nays, None Absent, Sights

8:50

08-883-84: BORDERLINE TREES

MOTION: Motion by Jeske, supported by Jensen:
To receive the report of the City Engineer and the City Manager re: Borderline Trees; to direct the Administration to draft an ordinance whereby sidewalks damaged by trees which are entirely or partly in the public right-of-way will be City responsibility.

MOTION: Motion by Kain, supported by Hockman:
To amend the previous Motion by directing that the proposed ordinance state that the cost of sidewalk replacement resulting from damage caused by borderline trees be borne equally by the City and the property owner.

VOTE ON AMENDMENT: Yeas 3 (Hockman, Kain, Miller)
Nays, 3
Absent, Sights

AMENDING MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 3 (Appleford, Jensen, Jeske)
Nays, 3
Absent, Sights

MOTION FAILED

9:28

09-987-84: ORDINANCE AMENDMENT - B-4 PARKING
REQUIREMENTS

MOTION: Motion by Jeske, supported by Sights:
To receive the report of the City Planner and the City
Manager re: Amendment to B-4 Parking Requirements; to
refer to the Planning Board for public hearing and
recommendation to the City Commission.

VOTE: Yeas, 7 Nays, None

9:29

09-988-84: INVOICE RE: BUTZEL, LONG, GUST,
KLEIN AND VAN ZILE

Report received from the Director of Finance and the City
Manager re: Invoice from Butzel, Long, Gust, Klein and
Van Zile.

9:30

09-989-84: ADVISORY PARKING COMMITTEE APPOINTMENTS

MOTION: Motion by Hockman, supported by Sights:
To receive the report of the City Clerk re: Appointments
to Advisory Parking Committee; to direct that street
parking meters be included in the charge to the Advisory
Parking Committee.

MOTION: Motion by Kain, supported by Jensen:
To amend the previous Motion to include only those street
parking meters in the Parking Assessment District.

VOTE ON AMENDMENT: Yeas, 3 (Jensen, Kain, Sights)
Nays, 4

MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 7 Nays, None

MOTION: Motion by Jeske:
To appoint Dante Lanzetta as a Resident Member to the
Advisory Parking Committee.

MOTION: Motion by Kain:
To appoint Anne Honhart to a one-year term as Resident
Member of the Advisory Parking Committee.

MOTION: Motion by Jensen:
To appoint Keith Ege as the Small Retail Member of the
Advisory Parking Committee.

MOTION: Motion by Appleford:
To appoint Katharine Beebe as the Professional Member of
the Advisory Parking Committee.

MOTION: Motion by Miller:
To appoint Samuel Walker to a one-year term as the Building
Owner Member of the Advisory Parking Committee.

MOTION: Motion by Hockman:
To appoint Katharine Thibodeau as the Downtown Employee
Representative Member of the Advisory Parking Committee.

MOTION: Motion by Sights:
To appoint James Peabody as the Large Retail Member of the
Advisory Parking Committee.

Discussion was held on whether or not Mr. Peabody met the qualifications for the Large Retail Member and Mr. Walker for the Building Owner Member.

MOTION: Motion by Kain, supported by Sights:
That the Commission recess for five minutes.

VOTE: Yeas, 7 Nays, None

10:05 P.M. - Meeting recessed.

10:22 P.M. - Meeting reconvened.

MOTION: Motion by Jeske, supported by Miller:
That the Advisory Parking Committee be expanded to nine members to include a Restaurant Owner Member and a Resident Shopper Member.

MOTION: Motion by Kain, supported by Sights:
To amend the previous Motion by adding an ex officio member for a three-year term to the Advisory Parking Committee, the number of committee members to remain at seven.

VOTE ON AMENDMENT: Yeas, 2 (Kain, Sights) Nays, 5

MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 4 Nays, 3 (Jensen, Kain, Sights)

MOTION: Motion by Sights, supported by Kain:
To vote for the nominations on the floor, and to appoint the Large Retailer Member and Resident Shopper Member at the Commission Meeting of September 10, 1984.

In response to a question from Commissioner Jeske, Commissioner Sights stated that he is changing his nomination of Mr. Peabody from the Large Retail Member to that of Restaurant Owner Member.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Kain, supported by Hockman:
That the term of office for the nine-member Advisory Parking Committee shall be three years, but, in the first instance, three members shall be appointed for terms expiring on the first Monday in September, 1985, three members shall be appointed for terms expiring on the first Monday in September, 1986, and three members shall be appointed for terms expiring on the first Monday in September, 1987.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Jeske, supported by Jensen:
That the terms of the seven remaining members be decided by draw.

VOTE: Yeas, 7 Nays, None



ADVISORY PARKING COMMITTEE

Resolution No. 8-882-84 - August 6, 1984. Amended by Resolution No. 9-989-84
 September 4, 1984. Amended by Resolution No. 05-152-00 May 22, 2000.
 Amended by Resolution No. 05-139-17 May 22, 2017.
 Amended by Resolution No. 10-258-19, October 28, 2019.

Terms: Three years

Appointment requirements for regular members: The majority of the members shall be residents and membership shall be as follows:

Downtown commercial representatives - large retail - 1 member; small retail - 1 member; professional firm - 1 member; Birmingham Shopping District - 1 member; restaurant owner - 1 member; downtown employee representative - 1 member; residential - two members who do not qualify under any of the previous categories, and one resident shopper.

2 alternate members may be appointed who own property, own a business or work in the parking assessment district.

The Advisory Parking Committee shall provide guidance to the City Commission in the management of Birmingham's Auto Parking System. The committee shall recognize parking requirements of the CBD and fairly assess the costs to users. It will provide for attractive, maintained and safe facilities.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Arpin 410 Southfield Road Birmingham	James J. 48009	313-949-0252 <i>jjarpin@gmail.com</i>	5/9/2022 Resident/engineer/consultant	9/4/2024
Astrein 13125 Ludlow Huntington Woods	Richard 48070	(248) 415-4036 <i>richard@astreins.com</i>	12/9/2019 BSD member	9/4/2024
Kozlowski 421 Madison St Birmingham	Kevin 48009	248-930-7485 <i>kevin.kozlowski@gmail.com</i>	8/29/2022 Resident shopper	9/1/2025

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Moody 957 Pleasant Birmingham	Michelle 48009	313-850-8072 <i>mmoody1@yahoo.com</i>	5/22/2023 Resident member	9/1/2025
Petcoff 463 Henley Birmingham	Mary-Claire 48009	(410)-991-1460 <i>mcp@wwrplaw.com</i>	8/28/2023 Alternate	9/4/2026
Silverman 1200 Latham Birmingham	Lisa 48009	248-642-3337 <i>lisas229@aol.com</i>	10/7/2019 Downtown professional firm representative	9/1/2025
Vacated	2/7/2023			9/4/2023 Large retail
Vacated	9/4/2023			9/4/2023 Restaurant owner
Vacated	9/4/2023			9/4/2023 Downtown employee member
Vacated	9/4/2023			9/4/2023 Alternate (downtown employee)
Vaitas 2633 Endsleigh Drive Bloomfield Village	Algirdas 48301	(248) 593-3177 <i>alvortho@aol.com</i>	11/13/2006 Small retail	9/4/2024



MEMORANDUM

Planning Division

DATE: September 27, 2023

TO: Jana Ecker, City Manager

FROM: Brooks Cowan, Senior Planner

APPROVED: Nicholas Dupuis, Planning Director

SUBJECT: Set a Public Hearing to amend Chapter 126 (Zoning), Article 2, Section 2.37 and Article 5, Section 5.12 to allow health club/studio uses in the B4 Business Residential District in the basement levels and floors two and above.

INTRODUCTION:

Health club/studio uses such as yoga, barre, pilates, and personal training are not currently permitted in the downtown B4 zone. City staff has received a number of inquiries for fitness studio and personal training tenants in the B4 zone downtown. Upon studying the feasibility of such uses, City staff and the Planning Board have recommended that the City consider allowing health club/studios in the downtown B4 zone in basement levels and floors two and above.

BACKGROUND:

Chapter 9 of the Zoning Ordinance defines health club/studios as “a place designated and equipped for the conduct of sports, exercise and physical fitness activities.” The use is permitted in the B3, MX, and TZ3 zone districts, as well as the Triangle District. Concerns about the health club/studio use are that it allows big box gyms and may lead to classes with higher hourly parking demands. There are currently two legal non-conforming health club/studio uses in Birmingham’s B4 zone downtown which include Power House Gym and Blue Yoga.

On June 14, 2023 ([Agenda – Minutes](#)), the Planning Board discussed allowing health club/studio uses in the downtown. General consensus was that the board is comfortable permitting the use in the basement levels as well as the 2nd floor and above in the Downtown. However there was mixed reviews on allowing the use on the first floor. The Planning Board wished to maintain the ethos of the first floor retail requirement and was concerned about blinds closing off the space or workout equipment occupying the window frontage.

The Planning Division met with the Birmingham Shopping District’s (BSD) Business Development Committee on June 27, 2023 and then with the Birmingham Shopping District Executive Committee on July 6, 2023. Members of the BSD commented that they support the additional use of health/club studios to the downtown’s B4 District in the basements as well as the second floor

and above. However, there was concern about allowing the use on the first floor where the City's goal has been to promote active retail and restaurants. The BSD would prefer if the fitness studios did not interfere with the vision for first floor retail. The BSD has provided a letter of support which summarizes their recommendations which can be found in the attachments below.

On July 12, 2023 ([Agenda - Minutes](#)) the Planning Board reviewed input from the BSD, local brokers, and draft ordinance language. The general consensus was that everyone supported allowing the use in the B4 district, however there was some disagreement on whether to allow the use on the first floor. The majority of Planning Board members appeared to support limiting the use to basements and second floor and above. They felt the first floor should be reserved for more retail and restaurant style uses.

On August 9, 2023 ([Agenda – Minutes](#)), The Planning Board reviewed a draft of the proposed language allowing health club/studio uses in the basement levels and second floor and above in the B4 zoning district. There was no opposition to the language and the Planning Board approved a motion to set a public hearing date of September 13, 2023 for the proposed zoning amendment.

On September 13, 2023 ([Agenda](#)), the Planning Board held a public hearing to review the proposed ordinance amendments. Board members discussed seeing how this works over the next few years and potentially considering allowing the use on the first floor in years to come. The Planning Board moved to recommend approval to the City Commission of the proposed amendments.

LEGAL REVIEW:

The City Attorney has reviewed the proposed ordinance amendments and has no objections.

FISCAL IMPACT:

There are no direct fiscal impacts for this agenda item.

PUBLIC COMMUNICATIONS:

As required for the proposed Zoning Ordinance amendments, a legal ad was placed in a newspaper of local circulation to advertise the public hearing at the Planning Board on September 13, 2023. A similar ad will be prepared in advance of the public hearing at the City Commission meeting on November 13, 2023.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing date of October 23, 2023 to consider the proposed ordinance amendments to Chapter 126 (Zoning), Article 2, Section 2.37 and Article 5, Section 5.12 to allow health club/studio uses in the B4 Business Residential District in the basement levels and floors two and above.

ATTACHMENTS:

Please see the following attached documents:

- Proposed Amendments to Chapter 126 – Zoning
- Final Planning Board Report
- Maps of B4 zone compared to zones where use allowed
- Letter from BSD regarding health club/studio uses downtown

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to set a public hearing date of November 13, 2023 to consider the proposed ordinance amendments to Chapter 126 (Zoning), Article 2, Section 2.37 and Article 5, Section 5.12 to allow health club/studio uses in the B4 Business Residential District in the basement levels and floors two and above.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 2, SECTION 2.37, B4 (BUSINESS RESIDENTIAL), PERMITTED USES TO ADD HEALTH CLUB / STUDIO TO COMMERCIAL PERMITTED USES.

ARTICLE 2: ZONING DISTRICTS AND REGULATIONS

2.37 B4 (Business-Residential) District Intent, Permitted Uses, and Special Uses 

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

1. Residential Permitted Uses
 - a. dwelling - multiple-family
 - b. dwelling - one-family*
 - c. dwelling - two-family*
 - d. live/work unit
2. Institutional Permitted Uses
 - a. community center
 - b. garage - public
 - c. government office
 - d. government use
 - e. loading facility - off-street
 - f. parking facility - off-street
 - g. religious institution
 - h. school - private
 - i. school - public
 - j. social club
3. Recreational Permitted Uses
 - a. bowling alley
 - b. outdoor amusement*
 - c. recreational club
 - d. swimming pool - public & semiprivate
4. Commercial Permitted Uses
 - a. auto sales agency
 - b. bakery
 - c. bank
 - d. barber shop/beauty salon
 - e. catering
 - f. child care center
 - g. clothing store
 - h. delicatessen
 - i. department store
 - j. drugstore

- k. dry cleaning
- l. flower/gift shop
- m. food or drink establishment*
- n. furniture
- o. greenhouse
- p. grocery store
- q. hardware store
- r. health club/studio***
- s. hotel
- t. jewelry store
- u. motel
- v. neighborhood convenience store
- w. office
- x. paint
- y. party store
- z. retail photocopying
- aa. school-business
- bb. shoe store/shoe repair
- cc. showroom of electricians/plumbers
- dd. tailor
- ee. theater*

- 5. Other Permitted Uses
 - a. utility substation

C. Other Use Regulations

- 1. Accessory Permitted Uses

- a. alcoholic beverage sales (off-premise consumption)*
- b. laboratory - medical/dental*
- c. loading facility - off-street
- d. outdoor cafe*
- e. outdoor display*
- f. parking facility - off-street
- g. retail fur sales cold storage facility
- h. sign

- 2. Uses Requiring a Special Land Use Permit

- a. alcoholic beverage sales (on-premise consumption)
- b. assisted living
- c. continued care retirement community
- d. establishments operated with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 5, Licenses for Theaters and Hotels
- e. independent hospice facility
- f. independent senior living
- g. skilled nursing facility

- 3. Uses Requiring City Commission Approval

- a. regulated uses*

* = Use Specific Standards in Section 5.12 Apply

ORDAINED this _____ day of _____, 2023 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 5, SECTION 5.12, B4 BUSINESS RESIDENTIAL DISTRICT USE SPECIFIC STANDARDS TO ALLOW HEALTH CLUB/STUDIO USES TO OCCUPY THE BASEMENT LEVELS AND FLOORS TWO AND ABOVE.

G. Health Club/Studio: Health club/studio uses are permitted in the B4 District in the basement level and the second floor and above. Health club/studio uses are not permitted on the first floor of a building in the B4 District.

ORDAINED this _____ day of _____, 2023 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk



MEMORANDUM

Planning Division

DATE: September 8th, 2023

TO: Planning Board Members

FROM: Brooks Cowan, Senior Planner

APPROVED: Nicholas Dupuis, Planning Director

SUBJECT: Public Hearing – Health Club/Studio Use in the B4 (Business Residential) District

Health club/studio uses such as yoga, barre, pilates, spinning, and personal training are not currently permitted in the downtown B4 zone. The use is permitted in the B3, MX, and TZ3 zone districts, as well as the Triangle District. Chapter 9 of the Zoning Ordinance defines health club / studios as “a place designated and equipped for the conduct of sports, exercise and physical fitness activities.”

Concerns about the health club/studio use is that it promotes big box gyms and can lead to classes with higher hourly parking demands. In order to accommodate for smaller studio classes such as yoga and pilates while preventing larger big box gyms, cities have regulated the size and square footage of the use to an appropriate size that fits in with the fabric of the downtown shops.

City staff has encountered a number of inquiries to place a small health club/studio use in the downtown, however staff has continually denied such inquiries and applications over the years due to the current zoning.

City staff recommends that the Planning Board consider including health club/studio use in the B4 zoning district. Such a proposal was presented to the City Commission during long range planning in 2020 and the City Commission was amenable to such a consideration.

The Planning Division recommends that the health club/studio use be included within the B4 zone because it is within the former parking assessment district and nearest to the city’s five public parking structures. Such a use typically promotes weekly visits and can have a multiplier effect on surrounding businesses. The use typically operates with peak hours in the morning and after 5pm which could assist in activating downtown Birmingham during non-work hours. Health club/studio uses have grown as “experience based retail” and could increase the supply of uses

in the Downtown B4 zone to provide an alternative to current retail blend while increasing the daily and/or weekly visitations.

On June 14th, 2023 ([Agenda – Minutes](#)), the Planning Board discussed allowing health club/studio uses in the downtown. General consensus was that the board is comfortable permitting the use in the basement levels as well as the 2nd floor and above in the downtown. However there was mixed reviews on allowing the use on the first floor. The Planning Board wished to maintain the ethos of the first floor retail requirement and were concerned about blinds closing off the space or workout equipment occupying the window frontage. There was suggestion that the use be considered for a SLUP on the first floor.

The Planning Board requested feedback from the Birmingham Shopping District (BSD) and local brokers. The Planning Division met with the BSD's Business Development Committee on June 27th, 2023 and then with the Birmingham Shopping District Executive Committee on July 6th, 2023. Members of the BSD commented that they support the additional use of health/club studios to the downtown's B4 District in downtown in the basements as well as the second floor and above. However, there was concern about allowing the use on the first floor where the City's goal has been to promote active retail and restaurants. The BSD would prefer if the fitness studios did not interfere with the vision for first floor retail. The BSD has provided a letter of support which summarizes their recommendations which can be found in the attachments below.

City staff also spoke with local commercial brokers involved in Birmingham's downtown. Angela Thomas of Aeres Real Estate commented that she gets calls about fitness studios in Birmingham's downtown on a weekly basis. Inquiries for high end boutique yoga and pilates studios have been turned down given the current ordinance regulations. Ms. Thomas' input was that 1,500 to 2,500 square feet would be ideal for the boutique fitness studios she receives inquiries about.

Cindy Ciura of CC Consulting also commented that she has received a number of inquiries from potential tenants looking to have a high end fitness studio in Birmingham. The retail consultant stated that there is a demand for such a use, though one thing the City should consider is the noise levels coming from music and weights.

Robert Hibbert of Friedman Real Estate commented that the use would help increase foot traffic on a weekly basis, particularly after work hours. The increase in foot traffic could have a spillover effect on surrounding businesses and lead to additional purchases. Mr. Hibbert supported allowing the use on all floors as well, stating that having more use options will enable stronger businesses with longer occupancies.

On July 12th, 2023 ([Agenda - Minutes](#)) the Planning Board reviewed input from the BSD, local brokers, and draft ordinance language. The general consensus was that everyone supported allowing the use in the B4 district, however there was some disagreement on whether to allow the use on the first floor. The majority of Planning Board members appeared to support limiting the use to basements and second floor and above. They felt the first floor should be reserved for more retail and restaurant style uses.

The Planning Board also discussed whether or not to limit the square footage. Board members referenced other cities where they have seen treadmills and other workout equipment facing the upper floor windows looking out into the city. Fitness studios in urban environments can range in

size from Powerhouse Fitness to Blue yoga in Birmingham and Boll Family YMCA to Citizens Yoga in Detroit. While searching fitness studios in nearby cities with downtowns, Royal Oak and Northville appear to have most of their fitness studios located on the periphery of downtown, while Ann Arbor is scattered throughout the core. Nearby cities do not appear to regulate the floor which fitness studios are permitted.

On August 9th, 2023 ([Agenda](#)), The Planning Board reviewed a draft of the proposed language allowing health club/studio uses in the basement levels and second floor and above in the B4 zoning district. There was no opposition to the language and the Planning Board approved a motion to set a public hearing date of September 13th, 2023 for the proposed zoning amendment.

SAMPLE MOTION LANGUAGE

Move to recommend to the City Commission APPROVAL of the proposed amendments to Article 2, Section 2.37 and Article 5, Section 5.12 to allow health club/studio uses in the B4 Business Residential District in the basement levels and floors two and above.

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 - g. religious institution
 - h. school - private
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3. Recreational Permitted Uses
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 - b. outdoor amusement*
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4. Commercial Permitted Uses
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 - b. bakery
 - c. bank
 - d. barber shop/beauty salon
 - e. catering
 - f. child care center
 - g. clothing store
 - h. delicatessen
 - i. department store

- j. drugstore
- k. dry cleaning
- l. flower/gift shop
- m. food or drink establishment*
- n. furniture
- o. greenhouse
- p. grocery store
- q. hardware store
- r. health club/studio***
- s. hotel
- t. jewelry store
- u. motel
- v. neighborhood convenience store
- w. office
- x. paint
- y. party store
- z. retail photocopying
- aa. school-business
- bb. shoe store/shoe repair
- cc. showroom of electricians/plumbers
- dd. tailor
- ee. theater*

- 5. Other Permitted Uses
 - a. utility substation

C. Other Use Regulations

- 1. Accessory Permitted Uses
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 - b. laboratory - medical/dental*
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- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (on-premise consumption)
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 - f. independent senior living
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ORDAINED this _____ day of _____, 2023 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk

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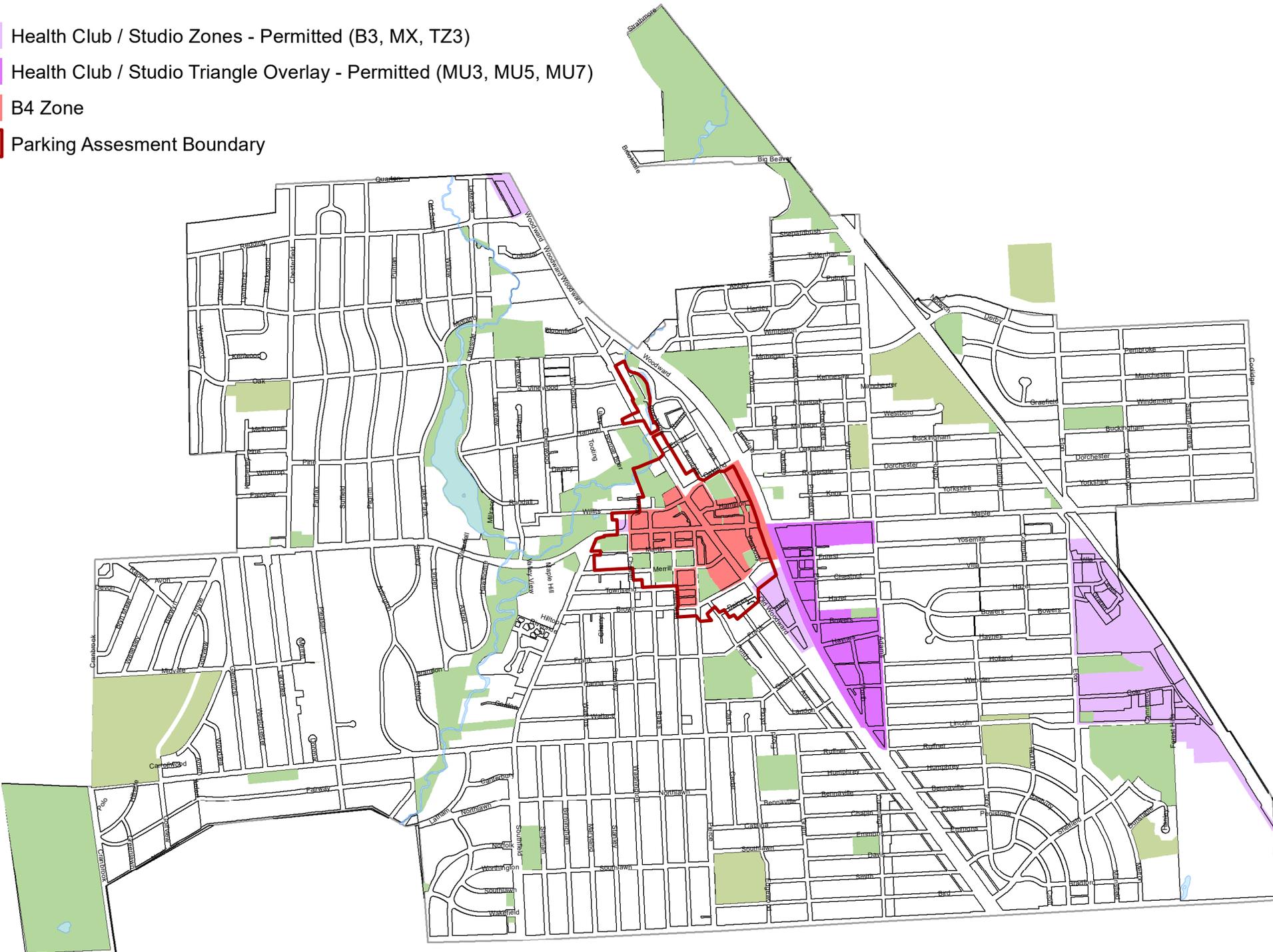
ORDAINED this _____ day of _____, 2023 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk

Health Club/Studio Use

-  Health Club / Studio Zones - Permitted (B3, MX, TZ3)
-  Health Club / Studio Triangle Overlay - Permitted (MU3, MU5, MU7)
-  B4 Zone
-  Parking Assesment Boundary



MEMORANDUM

DATE: July 6, 2023
TO: City of Birmingham Planning Commission
Brooks Cowan, Planning Department
FROM: BSD Executive Director Cristina Sheppard-Decius, CMSM
SUBJECT: Health Club Zoning Change for B4



The Birmingham Shopping District (BSD) Board of Directors met on July 6, 2023, to review and discuss the potential zoning change to B4 to include health clubs and fitness studios.

The BSD Business Development Committee recommended to the BSD Board that the health and fitness clubs not be allowed on main floors in the B4 area, but to allow them on second floors and basements/sub-levels. This would open up opportunities for property owners to fill second floor vacant spaces. The committee felt that there is such a high occupancy rate of main floors in the B4 area that property owners are not in need of expanding use groups for main floors in this area. It was also important to the Business Development Committee that the BSD focus on specific uses for recruitment on the main floors identified in the business mix analysis and recommendations presented to the BSD Board in May 2023, including apparel, books/media/toys, specialty gifts and fast casual dining.

The BSD Board unanimously agreed with the BSD Business Development Committee's recommendation, and felt that the flexibility for upper floors and basement/sub-levels would provide the BSD a great opportunity to market upper floor occupancy.

The BSD Board hopes this insight is helpful in making your decision on this subject. If you have any further questions, please do not hesitate to contact me at csdecius@bhamgov.org.



MEMORANDUM

Engineering Department

DATE: September 27, 2023
TO: Jana L. Ecker, City Manager
FROM: Melissa A. Coatta, City Engineer
SUBJECT: Michigan Hazard Mitigation Grant Agreement – Parking Lot #6 Floodwall

INTRODUCTION:

The City applied for a FEMA Hazard Mitigation Grant for a floodwall at Parking Lot No. 6 in June 2022 and received notification in August 2023 that \$1,295,670.60 had been awarded. A grant agreement is required for the grant award and a budget amendment.

BACKGROUND:

At the May 23, 2022, City Commission Meeting, the City Commission authorized the City Consultant Engineer to submit for a FEMA Hazard Mitigation Grant for floodwall at Parking Lot No. 6. This FEMA grant runs through the Michigan Department of State Police (MSP), Emergency Management and Homeland Security Division (EMHSD). The City received notification of this grant award in August 2023, and a grant agreement is required between MSP EMHSD and the City of Birmingham.

The project consists of two phases. The first phase is for a Hydrologic and Hydraulic (H&H) Study and plans, and the second phase is for the construction of the project. Phase 2 is contingent upon favorable results from the Phase 1 study. The total estimated project costs, which include the H&H study, design engineer, estimate construction of the floodwall project, construction engineer and inspection, and project administration is \$1,439,634.00. The grant will cover \$1,295,670.60 and the City's portion is \$215,963.40. The estimated costs by phase are:

	Grant Project Cost	City Project Cost	City Management Cost	Total
Phase 1	\$264,116.70	\$29,346.30	\$14,673.15	\$308,136.15
Phase 2	\$1,031,553.90	\$114,617.10	\$57,308.55	\$1,203,479.55
Total	\$1,295,670.60	\$143,963.40	\$71,981.70	\$1,511,615.70

LEGAL REVIEW:

The City Attorney has reviewed the agreement and has no concerns or objections.

FISCAL IMPACT:

A budget amendment is needed for the City's costs of the first phase of \$44,019.45 and the federal grant of \$264,116.70. This cost will be charged to Capital Project Funds – Streambank Improvements account 403.0-901.018-981.0100.

SUSTAINABILITY:

The City will review ways to include sustainability during the design of the project

PUBLIC COMMUNICATIONS:

No public communication is necessary for the grant agreement. Discussions will occur with adjacent property owners to Parking Lot No. 6 during the design of the project.

SUMMARY:

It is recommended the City accept the \$ 1,295,670.60 grant by entering into an agreement with the Michigan Department of State Police, Emergency Management, and Homeland Security Division.

ATTACHMENTS:

- May 23, 2023, City Commission Report FEMA Hazard Mitigation Grant Application – Parking Lot #6 Floodwall (12 pages)
- State of Michigan Hazard Mitigation Assistance Grant Agreement for DR-4607-MI Hazard Mitigation Grant Program

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the State of Michigan Hazard Mitigation Assistance Grant Agreement for DR-4607-MI Hazard Mitigation Grant Program between the Michigan Department of State Police, Emergency Management and Homeland Security Division, and the City of Birmingham. In addition, authorize the Mayor to sign the agreement on behalf of the City.

AND make a motion adopting a resolution to charge the cost of this project to account #403.0-901.018-981.0100, and further to approve the appropriations and amendment to the Capital Project Funds – Streambank Improvement as follows:

Revenues:

Appropriation from Fund Balance	403.0-000.000-400.0000	\$ 44,020
Federal Grants	403.0-901.018-503.0000	<u>264,120</u>
Total Revenues		\$308,140

Expenses:

Capital Projects Fund – Capital Outlay	403.0-901.018-981.0100	\$308,140
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MEMORANDUM

ENGINEERING DEPARTMENT

DATE: May 19, 2022

TO: Thomas M. Markus, City Manager

FROM: James J. Surhigh, Consulting City Engineer

SUBJECT: FEMA Hazard Mitigation Grant Application – Parking Lot #6 Floodwall

INTRODUCTION:

The extreme rain event and subsequent widespread flooding on June 25, 2021 resulted in the State of Michigan declaring a natural disaster for Oakland County. This declaration provides an opportunity for the City to apply for grants through FEMA's Hazard Mitigation Grant Program (HMGP) to construct flood protection measures. City Parking Lot #6 located off N. Old Woodward Avenue, as well as the buildings that adjoin the parking lot, experience frequent threats of flooding from the nearby Rouge River. For many years, the City has attempted to respond to flood events with emergency DPS and Fire Department personnel to deploy temporary flood protection measures. The Engineering Department has prepared an application to the FEMA HMGP for a permanent floodwall project to better protect this area in the future. The due date for the application is June 17, 2022 to be considered for FY2023 funding award cycle. If awarded, funding would be available beginning on October 1, 2022. Part of the application is providing a resolution from the City Commission to state that the local, non-Federal matching funds are dedicated to this project. This report provides some background information on the proposed project, and a suggested resolution for the City Commission to consider for approval to submit the application to FEMA.

BACKGROUND:

The extreme rain event that occurred on June 25, 2021 resulted in reports of widespread damages due to flooding across the City, and especially for properties along the Rouge River, which flooded above its riverbanks and into the adjoining floodplain areas. The City's Parking Lot #6, located off of N. Old Woodward Avenue, between Ravine and Oak, is situated immediately adjacent to the river and within the floodplain, and has historically been subject to periodic flooding. A group of commercial buildings along N. Old Woodward have lower-level entrances to Parking Lot #6, and are also at risk of flooding. For many years, when potential flood events occurred that could impact these buildings, the City responded with emergency personnel (Department of Public Services and Fire Department) to deploy temporary flood protection measures to protect the buildings. When these events occur, City emergency response forces have other issues to respond to across the City resulting from the storm event, and being concerned about deploying the flood protection measures at this location is an additional stress on these forces.

On the eve of June 25, 2021, the flood levels rose rapidly, and despite monitoring during the night, the City was not able to respond in time to deploy the measures that would protect those buildings. Because this storm event was declared a natural disaster by the State of Michigan, an opportunity was given to apply for a grant through FEMA's Hazard Mitigation Grant Program (HMGP) to construct flood protection measures. The Engineering Department has prepared an application for a floodwall project to protect the group of buildings in this area through the FEMA HMGP, and is ready to submit by the application deadline of June 17, 2022.

The scope-of-work for the proposed project is based on plans that were developed in 2002 for construction of a floodwall at this location for the same purpose. When bids were received in 2002, the cost significantly exceeded the project budget and the City elected to reject the bids and cancel the project. With the opportunity to receive grant funding for 75% of eligible costs through the FEMA HMGP, the economic situation may be such that the City would consider pursuing construction of the project. If the grant were awarded, the project design would have to be re-visited to ensure the proposed wall provides the required level of protection and that walkways and entrances to the buildings are ADA compliant. Using FEMA's Benefit-Cost calculator for evaluating the project, the benefit-to-cost ratio was found to be 2.02. Projects being considered under the HGMP must have a benefit to cost ratio of at least 1.0 to be eligible for potential funding. The HGMP is competitive, and there is no guarantee that FEMA will offer a grant for every project submitted.

The proposed project would be implemented in two phases: Phase 1 being a Hydrologic and Hydraulic (H&H) Study; and Phase 2 being construction of the project. Phase 2 is contingent upon favorable results from the Phase 1 study. By its nature, the floodwall will eliminate potential flood water storage volume in the floodplain. As the Rouge River is considered "waters of the State", construction within the floodplain must be permitted through the U.S. Army Corps of Engineers, as administered by the State of Michigan Department of Environment, Great Lakes and Energy (EGLE). To be considered permissible, the project cannot have a significant impact on the base flood elevation. If the results of the H&H study are not favorable and construction of the project is determined not to be feasible, Phase 2 of the project can be cancelled without any further financial obligation under the FEMA HMGP grant.

The total estimated project cost is approximately \$1,439,700, which includes the H&H study, design engineering, estimated construction cost of the floodwall project, construction engineering & inspection, and project administration. Grants through the FEMA HMGP are for 75% of the eligible costs, with the remaining 25% match being covered by non-Federal sources. Based on this, the grant award amount would be approximately \$1,079,700, with a resulting match of \$360,000.

LEGAL REVIEW:

As submittal of the grant application does not commit the City to pursue the project, no legal review is required at this point in the process.

FISCAL IMPACT:

This project was not included in the preliminary FY22/23 budget reviewed by the City Commission. If supported by the Commission, the project will be added to the FY22/23 budget by including a budget item in the Capital Projects Fund - Streambank Improvements account 401-901.018-981.0100 for the amount of the proposed local match of \$65,000 to cover Phase 1 of the proposed

project. A budget item will be included for FY23/24 budget planning in the Capital Projects Fund - Streambank Improvements account 401-901.018-981.0100 for the amount of the proposed local match of \$295,000 to cover Phase 2 of the proposed contract.

PUBLIC COMMUNICATIONS:

Public communications regarding this project have not commenced at this time. As the project design progresses, we anticipate public engagement at not only the City Commission meetings, but also other public boards and committees, such as the Planning Board, Advisory Parking Committee, and potentially others. Public notices for any meetings will follow applicable City ordinances and policies.

SUMMARY:

A FEMA Hazard Mitigation Grant Program application has been prepared for a proposed floodwall project located at the City Parking Lot #6. The floodwall project would provide improved protection against periodic flooding from the Rouge River damaging the lower-level, rear entrances to buildings located adjacent to the parking lot, as compared to current conditions where City forces attempt to deploy temporary flood protection measures before damages occur. The project would be implemented in two phases, with the first phase consisting of a study to determine if the floodwall project can be considered feasible with respect to permitting by USACOE-EGLE for construction in the Rouge River floodplain. If the project is deemed feasible, then final design and construction would proceed (phase 2). The total estimated project cost is estimated to be \$1,439,700. The grant award amount would be approximately \$1,079,700 (75%), with a resulting match of \$360,000 (25%). Phase 1 would commence after October 1, 2022. Phase 2 would commence after October 1, 2023 and continue through the 2024 construction season.

ATTACHMENTS:

- Project Location Map
- FEMA National Flood Hazard Layer FIRMette Map of Project Area
- Hazard Mitigation Grant Program Informational Bulletin (from Michigan State Police)
- 2002 Floodwall Project Plans (not constructed)

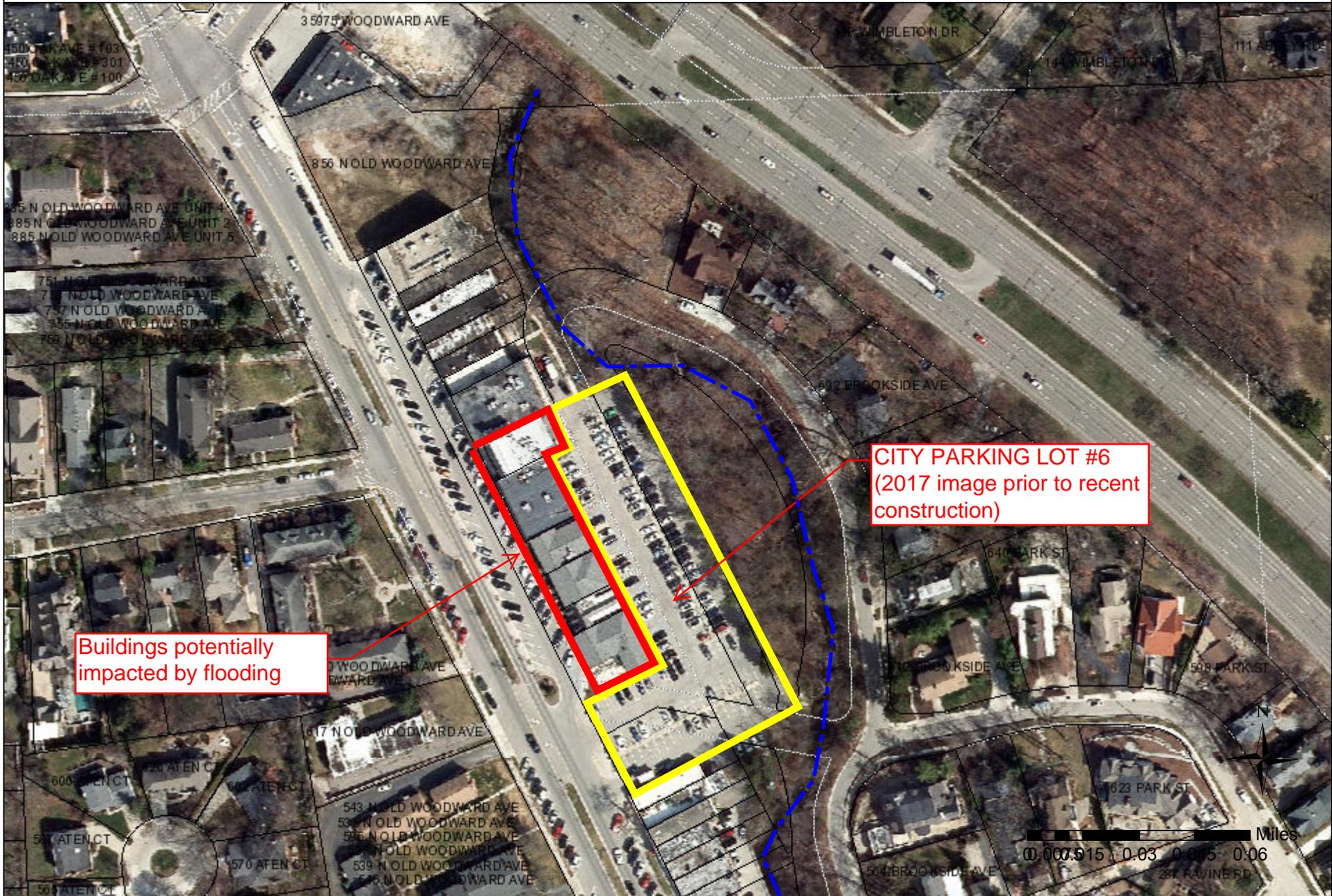
SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to authorize James J. Surhigh, Consulting City Engineer to submit the grant application to FEMA under their Hazard Mitigation Grant Program for the Parking Lot #6 Floodwall project (HMGP #4494);

And to certify that non-Federal matching funds are secured, available, and committed for use in constructing the Parking Lot #6 Floodwall project (HMGP #4494) by approving the project budget as follows:

FISCAL YEAR	BUDGET FUND	FUND ID NUMBER	BUDGET AMOUNT
2022-2023	Capital Projects Fund – Streambank Imp	401-901.018-981.0100	\$ 65,000
2023-2024	Capital Projects Fund – Streambank Imp	401-901.018-981.0100	\$ 295,000
		TOTAL PROJECT BUDGET	\$ 360,000

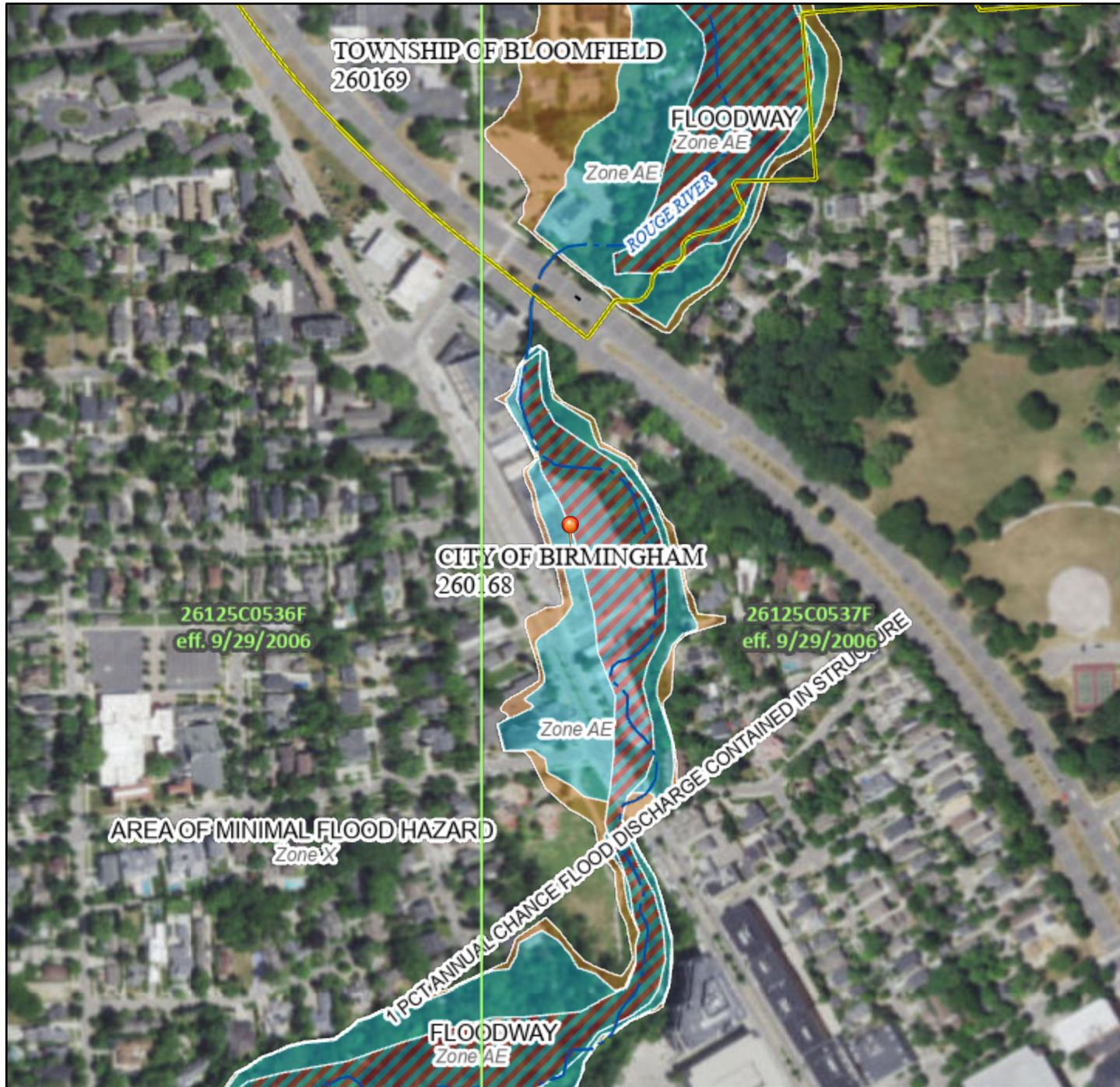
Parking Lot #6 Area



National Flood Hazard Layer FIRMMette



83°13'23"W 42°33'21"N



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS	Without Base Flood Elevation (BFE) <i>Zone A, V, A99</i>	With BFE or Depth <i>Zone AE, AO, AH, VE, AR</i>
	Regulatory Floodway	

OTHER AREAS OF FLOOD HAZARD	0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile <i>Zone X</i>
	Future Conditions 1% Annual Chance Flood Hazard <i>Zone X</i>
	Area with Reduced Flood Risk due to Levee. See Notes. <i>Zone X</i>
	Area with Flood Risk due to Levee <i>Zone D</i>

OTHER AREAS	NO SCREEN Area of Minimal Flood Hazard <i>Zone X</i>
	Effective LOMRs
	Area of Undetermined Flood Hazard <i>Zone D</i>

GENERAL STRUCTURES	Channel, Culvert, or Storm Sewer
	Levee, Dike, or Floodwall

OTHER FEATURES	Cross Sections with 1% Annual Chance Water Surface Elevation
	20.2
	17.5
	Coastal Transect
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary
	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature

MAP PANELS	Digital Data Available
	No Digital Data Available
	Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on **3/18/2022 at 4:21 PM** and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



Michigan State Police Emergency Management and Homeland Security Division *Informational Bulletin*

Issue: 21-03

September 03, 2021

Hazard Mitigation Grant Program Funds Available for Infrastructure Flood Mitigation in Southeast Michigan Time Sensitive - Respond as soon as Possible Notices of Intent (NOI) Due No Later than November 01, 2021

As a result of the DR-4494-MI federal disaster, hazard mitigation funding has been made available in the state of Michigan. This funding will be available for the following: hazard mitigation projects in the Southeast region of Michigan, state-wide eligible hazard mitigation projects, hazard mitigation plan development and updates, and purchasing of warning sirens.

At this time, the Michigan State Police, Emergency Management and Homeland Security Division (MSP/EMHSD) is seeking Notice of Intent (NOI) forms—project proposals—for eligible Hazard Mitigation Grant Program (HMGP) flood mitigation activities in the Southeast region of Michigan. This region includes the following counties: Oakland, Macomb, Wayne, and Washtenaw. Approximately \$28 million in federal funds will be available for eligible infrastructure solutions to mitigate flooding in this region.

For more information and details on HMGP and qualifying projects, reference the Federal Emergency Management Agency's (FEMA) "[Hazard Mitigation Assistance Grants](#)" website and FEMA's [Hazard Mitigation Assistance Unified Guidance](#) document (although this document is labeled "Fiscal Year 2015" guidance, it is the current version of the program guidance).

Purpose

Hazard mitigation activities are intended to reduce or eliminate future property damages and/or loss of life from natural hazards, such as floods, tornadoes, and storms. The Federal Emergency Management Agency's (FEMA) HMGP provides funds for hazard mitigation planning activities and implementation of mitigation projects. Grants are funded with a 75% federal share and a 25% local match (which may include cash, third-party in-kind services, materials, or any combination thereof).

Some examples of eligible flood mitigation project activities include: Voluntary acquisition or elevation of flood-prone residential and non-residential structures; localized flood control; floodwater storage and diversion; floodplain and stream restoration; stormwater management; and wetland restoration/creation. Projects must be cost beneficial for eligibility, meaning the anticipated cost savings from avoided future damages must outweigh the cost of implementing the project.

Also eligible are project scoping/advanced assistance projects to fund activities to obtain data and services required to identify and design appropriate application-ready mitigation projects and/or development of high-quality project subapplications. Specific activities may include but are not limited to conducting meetings, outreach and coordination with sub-applicants and community residents, develop or conduct engineering, environmental, feasibility and/or benefit cost analysis, development of applications, evaluating facilities to identify mitigation activities and staffing and/or resources to develop cost-share strategies.

Commonly requested activities that are **not eligible** for this funding include: Training, preparedness actions, and generators (except for cost-effective generators that serve hospitals, police stations, fire stations, water, and wastewater treatment plants). Examples of completed hazard mitigation projects can be found in [FEMA's HMA Mitigation Action Portfolio](#).

HMGP Funds Available for Infrastructure Flood Mitigation in Southeast Michigan

Page 2

Eligibility

The MSP/EMHSD is the applicant for the state of Michigan. Eligible sub-applicants for HMGP include state agencies; Indian tribal governments; and local governments/communities; and certain private non-profit organizations. Sub-applicants must have a valid, FEMA-approved hazard mitigation plan that identifies and prioritizes the proposed project at the time of grant award. Please refer to the Hazard Mitigation Assistance Unified Guidance document for specific eligibility requirements.

Application Process

To be considered for funding, an applicant must submit a NOI form to the MSP/EMHSD. A completed NOI form will provide basic details about the proposed mitigation activity. To receive the NOI form, please contact the Hazard Mitigation Team (contact information below). The MSP/EMHSD team will review the NOI forms to determine if the activities described are potentially eligible for grant funding. If so, the applicant will be invited to complete a grant application.

Deadlines

- NOI forms must be submitted to the MSP/EMHSD by no later than November 1, 2021.
- Applications are due to the MSP/EMHSD for review by February 4, 2022.

Do Not Delay

Potential sub-applicants should not wait until the deadline to submit NOI forms. The sooner the completed NOI form is submitted, the more time there will be to develop a subapplication.

Hazard Mitigation Team Contact Information

Ms. Audrey Gilbert – 517-243-7873, Hazard Mitigation Analyst
Mr. Scott Stockert – 517-512-9589, Hazard Mitigation Analyst

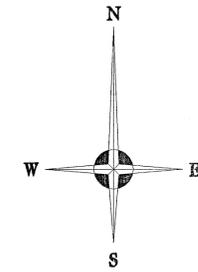
Email: MSP-EMHSD-Hazard-Mitigation-Grants@Michigan.gov

LEGEND

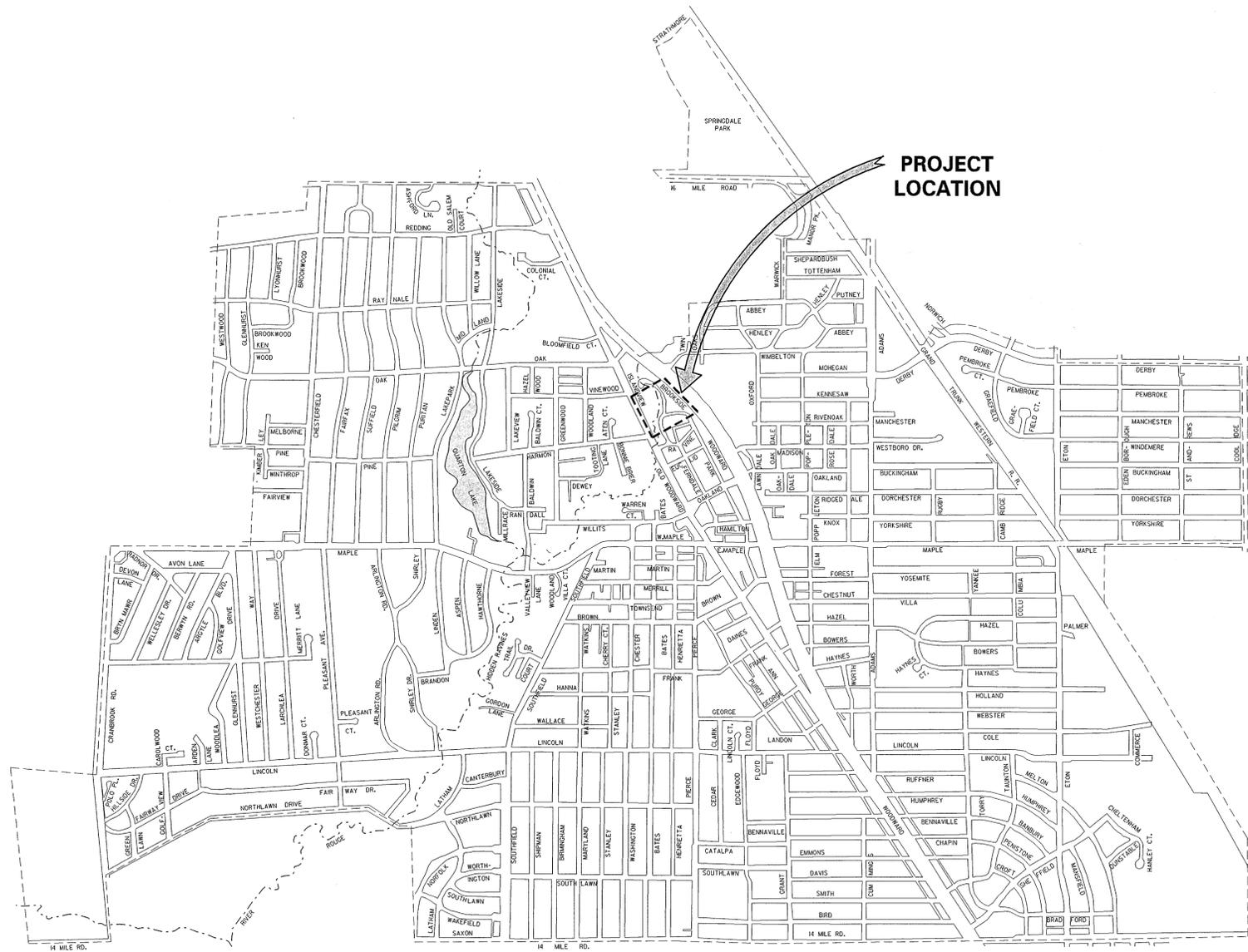
PROPOSED SEWER	
PROPOSED WATER MAIN	
BUILDING	
ASPHALT	
CONCRETE	
GRAVEL	
STORM	
SANITARY	
WATERMAIN	
GAS	
UND. TELEPHONE	
UND. ELECTRICAL	
TRAVERSE LINE & TRAVERSE POINT	
BENCH MARK SYMBOL	
DEAD TREE	
DECIDUOUS TREE	
DECIDUOUS SHRUB	
CONIFEROUS TREE	
CONIFEROUS SHRUB	
STUMP	
SO & R.O. CATCH BASINS & INLETS IN PAVEMENT	
STORM MANHOLE & PIPE END	
UNSPECIFIED MH	
RISER & DOWN SPOUT	
PUMP STATION	
FIRE HYDRANT	
GATE & VALVE & WELL	
CISTERN & WELL	
WATER STOP BOX & SPRINKLER HEAD	
WATER TOWER BASE & METER PIT	
UTILITY POLE	
LIGHT POLE	
GUY WIRE ANCHOR	
UNDERGROUND MARKER	
RISER	
GAS BOX & BLOW OFF	
BUILD. CORNER & 1st FLOOR ELEV.	
TOP OF DITCH & TOE OF SLOPE	
TOP OF BANK & RIDGE	
TOP OF BERM	
STORE OF BERM	
EDGE OF WATER & WATER SURFACE	
HEADWALL & RETAINING WALL	
SIGNS & SIGN POST	
LOCAL LOW POINT & LOCAL HIGH POINT	
EXISTING WATER SERVICE	
EXISTING SEWER SERVICE	
SOIL BORING LOCATION	
PAVEMENT CORE LOCATION	

CITY OF BIRMINGHAM ENGINEERING DEPARTMENT

PARKING LOT #6 FLOOD WALL - CONTRACT #6-02(M)



CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN
SCALE:



LIST OF DRAWINGS

COVER SHEET	PROJECT LOCATION AND BENCH MARK DESCRIPTIONS
S-1	SOUTH AREA FLOOD PLATE DETAILS
S-2	NORTH AREA FLOOD WALL PLAN AND SECTIONS
S-3	NORTH AREA FLOOD WALL SECTIONS AND DETAILS
S-4	NORTH AREA FLOOD WALL SECTIONS AND DETAILS
	OAKLAND COUNTY SOIL EROSION AND SEDIMENTATION CONTROL DETAILS

**NOT FOR
CONSTRUCTION**

APPROVED _____ DATE _____

HRC
HUBBELL, ROTH & CLARK, INC.
CONSULTING ENGINEERS

M-558

ACCOUNT NO. 1071
STROKE TIME - 12-AUG-2002 11:06
PLOT NAME - N/A
DESIGN FILE - F:\1998\1998072\work\stuck\cover_sht.dgn
USER NAME - krl/jws/kl

**State of Michigan
Hazard Mitigation Assistance
Grant Agreement for DR-4607-MI
Hazard Mitigation Grant Program**

Period of Performance Expires: January 11, 2026

CFDA Number: 97.039 Project Number: HMGP 4607.01

This DR-4607-MI Hazard Mitigation Grant Program (HMGP) grant agreement is hereby entered into between the Michigan Department of State Police (MSP, Emergency Management and Homeland Security Division (EMHSD) (hereinafter called the Recipient), and

CITY OF BIRMINGHAM
(hereinafter called the Subrecipient)

I. Purpose

The purpose of this grant agreement is to assist the Subrecipient in the implementation of HMGP 4607.01 (hereinafter called the Project) -- a project to provide supplementary financial assistance for the implementation of cost-effective hazard mitigation measures that will permanently reduce or eliminate the long-term risk to human life and property from natural, technological, or human-caused disasters and their effects. The HMGP Grant program funding is awarded by the Federal Emergency Management Agency (FEMA) and is administered by the Recipient.

II. Objective

The principal objective of this Grant Agreement is to provide financial assistance to the Subrecipient. The Subrecipient must complete the approved measures detailed in the attached HMGP formal application submitted by the Subrecipient and summarized as follows:

Project number 4607.01 is the first phase of a two-phase project for the City of Birmingham that will involve all non-construction work including a H&H study, potential permits, and completed engineering designs. This agreement pertains only to Phase 1 funding and activities. Phase 1 will result in a grant application for Phase 2. Phase 1 will involve the City of Birmingham undertaking a request for proposals process to hire a consulting team that will complete the engineering design and construction plans and will produce necessary Phase 2 FEMA HMGP grant application supporting documentation.

The request for proposals for Phase 1 will include the following work tasks for the consultant team to perform:

- o Engineering Design;
- o H&H Study with Executive Summary;
- o Water Permits;
- o Public Notice (Please use FEMA standard template).

A city engineer will oversee the Phase 1 design, easement acquisition, and permitting process. The City Stormwater and Floodplain Programs Coordinator will assist the City Engineer and oversee the Phase 1 and 2 FEMA HMGP Grant process. The City Attorney's Office will assist with access, drainage, and construction easement acquisitions or easement agreements, and any contracts.

Phase 1 deliverables from the consultant team will include:

- o Full construction plans and documentation;
- o All necessary easement documentation;
- o Environmental permit applications and supporting documentation;
- o Phase 2 FEMA HMGP grant application supporting documentation.

City staff will utilize the Phase 1 deliverables to apply for the Phase 2 FEMA HMGP grant, and to hire a contractor to construct the project. This agreement does not allow for the undertaking of any Phase 2 project implementation activities.

No modifications to the approved scope of work can be implemented without prior FEMA approval.

Requests for modifications to the scope of work must be made to FEMA through the Subgrantor and supported by adequate justification in order to be processed. All expenses, including local match, must be appropriately documented and reasonable to be eligible for reimbursement. Expenses that are not related to the approved scope of work and budget are not eligible for reimbursement under the provisions of this grant agreement. Line items in the approved cost estimate (from the attached 4195 HMGP formal application submitted by the Subgrantee) may not fluctuate by more than 10% without prior approval from FEMA.

III. Statutory Authority

This grant agreement is made pursuant to the HMGP, Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 United States Code [U.S.C.] § 5170c).

The Subrecipient agrees to comply with all HMGP requirements in accordance with the Hazard Mitigation Assistance (HMA) Fiscal Year (FY) 2015 Guidance, located at: <http://www.fema.gov>. The Subrecipient also agrees to comply with regulations, including but not limited to the following, as applicable:

A. Administrative Requirements

1. 2 CFR, Part 200 of the Code of Federal Regulations (CFR), *Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards* located at <http://www.ecfr.gov>.
2. 44 CFR, Part 10, *Environmental Considerations*.

[The above referenced CFR documents are online at <http://www.ecfr.gov>].

B. Audit Requirements and Other Assessments

1. Public Law 112-248, Improper Payments Elimination and Recovery Improvement Act of 2012.

IV. Hazard Mitigation Grant Program (HMGP) Award Amount and Restrictions

Summary of costs from FEMA application:

Phase I Non-Federal Share Amount:	\$	29,346.30
<u>Phase I HMGP Federal Share Amount:</u>	<u>\$</u>	<u>264,116.70</u>
Phase I Total Approved Project Amount:	\$	293,463.00
Phase I Subrecipient Management Cost (SRMC):	\$	14,673.15
Committed funding for Phase 2 if approved		
Phase 2 Non-Federal Share Amount:	\$	114,617.10
<u>Phase 2 HMGP Federal Share Amount:</u>	<u>\$</u>	<u>1,031,553.90</u>
Phase 2 Total Approved Project Amount:	\$	1,146,171.00
Phase 2 Subrecipient Management Cost (SRMC):	\$	57,308.55

This project was determined eligible for Strategic Funds Management under the Budget Control Act of 2011. Therefore, project funds and Subrecipient management cost funds will be obligated in increments throughout the period of performance. Increments will be obligated by FEMA upon request from the Subrecipient and as supported by implementation progresses documented in quarterly reports. Tentative increment schedules are as follows:

Project Funding Increments

Federal Share Increment	Federal Share Amount	Projected Date of Obligation
Increment 1	\$264,116.70	Current award
Increment 2	\$781,501.50	May 1, 2024
Increment 3	\$250,052.40	May 1, 2025
Total	\$1,295,670.60	

SRMC Funding Increments

SRMC Increment	Amount	Projected Date of Obligation
Increment 1	\$14,673.15	Current award
Increment 2	\$43,416.75	May 1, 2024
Increment 3	\$13,891.80	May 1, 2025
Total	\$71,981.70	

Federal assistance is made available within the limits of funds available from Congressional appropriations for such purposes in accordance with the Stafford Act, Executive Orders 12148 and 12673, appropriate regulations found in Title 44 of the CFR, as amended and currently applicable handbooks. Federal funds provided under the Stafford Act for the HMGP are limited to a maximum of 75% of the total eligible costs. If there is a cost under-run for the project, final reimbursement for the federal share of the project costs will be adjusted based on actual costs of the project. **The Subgrantee shall provide the required nonfederal matching funding.**

Adjustments may be made among cost line items in the approved budget (from the 4607 HMGP formal application submitted by the Subgrantee) up to a cumulative threshold of 10% of the total budget without seeking formal approval from FEMA. Adjustments exceeding this threshold must be approved in advance by FEMA. Requests for a budget revision must be made to FEMA through the Subgrantor and supported by adequate justification in order to be processed. The federal share will not be increased.

V. Responsibilities of the Subrecipient

The HMGP funds must supplement, not supplant, state or local funds. Federal funds will be used to supplement existing funds and will not replace (supplant) funds that have been appropriated for the same purpose. Potential supplanting will be carefully reviewed in the application review, in subsequent monitoring, and in the audit. The Subrecipient may be required to supply documentation certifying that it did not reduce non-federal funds because of receiving federal funds. Federal funds cannot be used to replace a reduction in non-federal funds or solve budget shortfalls in general fund programs.

The Subrecipient agrees to comply with all applicable federal and state regulations including, but not limited to, the following:

- A. In addition to this grant agreement, the Subrecipient shall complete, sign, and submit to the Recipient the following documents, which are incorporated by reference into this grant agreement:
 - 1. Standard Assurances;
 - 2. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirement;
 - 3. Audit Certification (EMHSD-053);
 - 4. Request for Taxpayer Identification Number and Certification (W-9);
 - 5. Other documents that may be required by federal or state officials.

- B. The HMGP Grant covers eligible costs incurred only during the period of performance (see section XII). Allowable costs are only those specifically detailed in the attached HMGP formal application submitted by the Subrecipient. For costs incurred during the pre-award period, only those that are specifically identified in the grant application as “**pre-award**” costs are eligible for reimbursement.
- C. Make all purchases and/or procure services in accordance with 2 CFR, Part 200 of the CFR, grant guidance and local purchasing/procurement policies.
- D. The Subrecipient shall comply with all applicable codes, standards, and permitting requirements that pertain to this project and shall provide maintenance, as appropriate and required, for the life of the Project.
- E. The Subrecipient agrees to prepare the Request for Reimbursement of Mitigation Project Expenses [form](#) and [all required attached documentation](#), including all required authorized signatures, and submit these to the Recipient.
- F. Submit quarterly progress reports to the Recipient on the status of all approved projects. The due dates for quarterly progress reports are detailed in Section VII of this agreement.
- G. Comply with applicable financial and administrative requirements set forth in the current edition of 2 CFR, Part 200 of the CFR, *Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards* located at <http://www.ecfr.gov>.
- H. Environmental and Historic Preservation Compliance: The federal government is required to consider the potential impacts to the human and natural environment of projects proposed for federal funding. The Environmental and Historic Preservation (EHP) Program engages in a review process to ensure that federally funded activities comply with various federal laws. The goal of these compliance requirements is to protect our nation’s water, air, coastal, wildlife, agricultural, historical, and cultural resources. The Subrecipient shall not undertake any project having the potential to impact EHP resources without prior approval. Any activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for federal funding. All necessary permits must be obtained for the project and are the responsibility of the Subrecipient. The project must be implemented in conformance with 44 CFR, Part 9, Floodplain Management and Protection of Wetlands, 44 CFR, Part 10 Environmental Considerations, and the environmental conditions that have been identified through the National Environmental Policy Act review. These conditions can be found in one or more of the following FEMA documents:
 - Record of Environmental Consideration (REC);
 - Categorical Exclusion (“CATEX”) Letter/Memo;
 - Environmental Assessment;
 - Finding of No Significant Impact.

VI. Responsibilities of Recipient

The Recipient, in accordance with the general purposes and objectives of this grant agreement, will:

- A. Administer the HMGP grant in accordance with all applicable federal and state regulations and guidelines and provide quarterly reports documenting this administration.
- B. Provide direction and technical assistance to the Subrecipient.
- C. Provide to the Subrecipient any special report forms and reporting formats (templates) required for operation of the program.
- D. Reimburse the Subrecipient, in accordance with this grant agreement, based on appropriate documentation submitted by the Subrecipient.
- E. At its discretion, independently or in conjunction with FEMA, may conduct random on-site reviews with Subrecipient.

VII. Subrecipients Reporting Procedures

Submit quarterly progress reports to the Recipient on the status of all funding using the Hazard Mitigation Assistance Quarterly Progress Report Microsoft Form link, which will be sent via email by EMHSD on a quarterly basis. Quarterly progress reports are required whether or not expenditures are incurred.

Failure by the Subrecipient to fulfill quarterly reporting requirements as required by the grant may result in the suspension of grant activities until reports are received.

Reporting periods and due dates for each year are as follows:

1st Quarter:	October 1 st through December 31 st	Due January 15 th
2nd Quarter:	January 1 st through March 31 st	Due April 15 th
3rd Quarter:	April 1 st through June 30 th	Due July 15 th
4th Quarter:	July 1 st through September 30 th	Due October 15 th

Quarterly progress reports are to be submitted by the 15th of the month following the end of each quarter. Quarterly progress reports should be submitted via the provided Microsoft Form link unless the Subrecipient is otherwise notified by the Recipient. Reimbursement requests are not required to be submitted with quarterly progress reports.

VIII. Payment Procedures

The Subrecipient agrees to prepare the *Request for Reimbursement of Mitigation Project Expenses* form and all required attached documentation, including all required authorized signatures, and submit these to the Recipient. Completed reimbursement requests should be submitted via email (to: MSP-EMHSD-Hazard-Mitigation-Grants@Michigan.gov). Reimbursement request forms can be found under "HMA Forms" at this link <https://www.michigan.gov/msp/divisions/emhsd/grant-programs/forms-accordion>.

Recipient's timely receipt and verification of all required documentation is a condition of payment. Recipient's may pursue all available remedies for the recoupment of any advance payments that have been inadequately documented or determined by the Recipient to have been improperly made or expended for any reason.

Subject to the exercise of Recipients sole discretion, three types of payments may be made to the Subrecipient for this Project:

- A. If the Subrecipient provides Recipient with a letter indicating the amount of reimbursement requested along with completed reimbursement request forms, as well as supporting documentation demonstrating the total expenditures to date for eligible Project activities, the Subrecipient may, at Recipient's sole discretion, receive reimbursement of eligible expenditures of up to 90% of the **federal share** of the grant. Recipient will review the expenditures and make payment of no more than 90% of total eligible expenditures to date. **Prior to project completion, Recipient will pay to the Subrecipient no more than a total (including all advance and reimbursement payments) of 90% of the federal share of the grant.**
- B. Upon the Subrecipient's completion of the Project, Recipient will inspect the Project and review all expenditures for eligibility prior to making final payment to the Subrecipient. To receive final payment, the Subrecipient shall provide the Recipient with a letter indicating the project is complete. Along with the letter, provide completed reimbursement request forms that include the total expenditures for the project, and separate documentation supporting each total expenditure.
- C. In rare circumstances only, if the Subrecipient provides the Recipient with a letter outlining the immediate need for an advance payment and the amount of the requested advance, the Subrecipient may (at the Recipient's sole discretion) receive an initial advance payment of up to 50% of the Subrecipient's federal share of the grant. Pursuant to federal regulations, the Subrecipient shall minimize the time between the receipt of advance funds and disbursement of those funds for eligible expenditures. Any interest is earned over \$500 must promptly, but at least quarterly, be remitted to:

Michigan State Police,
Emergency Management and Homeland Security Division,
Risk Reduction and Recovery Section
P.O. Box 30634
Lansing, Michigan 48909

The Subrecipient may keep interest amounts up to \$500 per year for administrative expenses.

- D. **No payment will be made unless all quarterly reports have been submitted and are up to date.**

IX. Employment Matters

Subrecipient shall comply with Title VI of the *Civil Rights Act of 1964*, as amended; Title VIII of the *Civil Rights Act of 1968*; Title IX of the *Education Amendments of 1972 (Equal Opportunity in Education Act)*; the Age Discrimination Act of 1975; Titles I, II and III of the *Americans with Disabilities Act of 1990*; the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*; the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state and local fair employment practices and equal opportunity laws and covenants. The Subrecipient shall not discriminate against any employee or applicant for employment, to be employed in the performance of this grant agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment; or any matter directly or indirectly related to employment because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, limited English proficiency, or

handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The Subrecipient agrees to include in every subcontract entered into for the performance of this grant agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of the grant agreement. The Subrecipient shall ensure that no subcontractor, manufacturer, or supplier of the Subrecipient for projects related to this grant agreement appears on the Federal Excluded Parties List System located at <https://www.sam.gov>.

X. Limitation of Liability

The Recipient and Subrecipient to this grant agreement agree that each must seek its own legal representative and bear its own costs, including judgments, in any litigation that may arise from performance of this contract. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

This is not to be construed as a waiver of governmental immunity for either party.

XI. Third Parties

This grant agreement is not intended to make any person or entity, not a party to this grant agreement, a third-party beneficiary hereof or to confer on a third party any rights or obligations enforceable in their favor.

XII. Grant Agreement Period

This grant agreement is in full force and effect from July 15, 2021, (date of disaster declaration) to January 11, 2026. No costs eligible under this grant agreement shall be incurred before the starting date of this grant agreement, except for those costs specifically identified in the grant application as eligible "pre-award" costs. This grant agreement consists of two identical sets, simultaneously executed; each is considered an original having identical legal effect. This grant agreement may be terminated by either party by giving thirty (30) days written notice to the other party stating reasons for termination and the effective date, or upon the failure of either party to carry out the terms of the grant agreement. Upon any such termination, the Subrecipient agrees to return to the Recipient any funds not authorized for use, and the Recipient shall have no further obligation to reimburse the Subrecipient.

Effective Dates:

- Period of Performance: July 15, 2021, to January 11, 2026.
- Eligibility period for pre-award costs: No pre-award costs approved.
- Eligibility period for regular grant costs: April 21, 2023, to January 11, 2026.
- End of Period of Performance: January 11, 2026.

XIII. Entire Grant Agreement

This grant agreement is governed by the laws of the State of Michigan and supersedes all prior agreements, documents, and representations between Recipient and Subrecipient, whether expressed, implied, or oral. This grant agreement constitutes the entire agreement between the parties and may not be amended except by written instrument executed by both parties prior to the termination date set forth in Section XII above. No party to this grant agreement may assign this grant agreement or any of his/her/its rights, interest, or obligations hereunder without the prior consent of the other party. Subrecipient agrees to inform Recipient in writing immediately of any proposed changes of dates, budget, or services indicated in this grant agreement, as well as changes of address or personnel affecting this grant agreement. Changes in dates, budget, or services are subject to prior written approval of Recipient. If any provision of this grant agreement shall be deemed void or unenforceable, the remainder of the grant agreement shall remain valid.

The Recipient may suspend or terminate subrecipient funding, in whole or in part, or other measures may be imposed for any of the following reasons:

- Failure to expend funds in a timely manner consistent with the grant milestones, guidance, and assurances.
- Failure to comply with the requirements or statutory objectives of federal or state law.

- Failure to make satisfactory progress toward the goals or objectives set forth in the Subrecipient application.
- Failure to follow grant agreement requirements or special conditions.
- Proposal or implementation of substantial plan changes to the extent that, if originally submitted, the project would not have been approved for funding.
- Failure to submit required reports.
- Filing of a false certification in the application or other report or document.
- Failure to adequately manage, monitor or direct the grant funding activities of their Subrecipients.

Before acting, the Recipient will provide the Subrecipient reasonable notice of intent to impose corrective measures and will make every effort to resolve the problem informally.

XIV. Business Integrity Clause

The Recipient may immediately cancel the grant without further liability to the Recipient or its employees if the Subrecipient, an officer of the Subrecipient, or an owner of a 25% or greater share of the Subrecipient is convicted of a criminal offense incident to the application for or performance of a state, public, or private grant or subcontract; or convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under state or federal antitrust statutes; or convicted of any other criminal offense which, in the sole discretion of the Recipient, reflects on the Subrecipient's business integrity.

XV. Freedom of Information Act (FOIA)

Much of the information submitted in the course of applying for funding under this program, or provided in the course of grant management activities, may be considered law enforcement-sensitive or otherwise critical to national security interests. This may include threat, risk, and needs assessment information, and discussions of demographics, transportation, public works, and industrial and public health infrastructures. Therefore, each Subrecipient agency Freedom of Information Officer will need to determine what information is to be withheld on a case-by-case basis. The Subrecipient should be familiar with the regulations governing Protected Critical Infrastructure Information (6 CFR Part 29) and Sensitive Security Information (49 CFR Part 1520), as these designations may provide additional protection to certain classes of homeland security information.

XVI. Official Certification

For the Subrecipient

The individual or officer signing this grant agreement certifies by his or her signature that he or she is authorized to sign this grant agreement on behalf of the organization he or she represents. The Subrecipient agrees to complete all requirements specified in this grant agreement.

City of Birmingham

Name of Subrecipient

Printed Name

Title

Signature

Date

For the Recipient

Michigan State Police, Emergency Management and Homeland Security Division

Insp. Michele Sosinski

Assistant Division Commander, Emergency Management and Homeland Security Division

Printed Name

Title

Insp. Michele A Sosinski

Signature

08-16-2023

Date



**NOTICE OF INTENTION TO APPOINT TO THE
AD HOC AGING IN PLACE COMMITTEE**

At the regular meeting of Monday, October 16, 2023, the Birmingham City Commission intends to appoint one alternate member to a term consistent with all regular members expiring January 31, 2025.

The Ad Hoc Aging in Place Committee consists of seven regular members and one alternate member appointed by the City Commission. A majority of the members shall be residents of Birmingham and qualified voters. When available, preferred qualifications/areas of professional expertise and experience include: gerontologist, senior health or nutrition, adult education, elder law, representative of Birmingham NEXT, and intergenerational specialist. Staff from the Managers Office will serve as ex-officio member(s) of the committee.

The function of the Ad Hoc Aging in Place Committee (AIP) is to study current demographic trends, evaluate the needs of the City’s aging population, and to prepare a City-wide action plan outlining the vision and goals to improve the health, safety and welfare of senior citizens and encourage residents to age comfortably in Birmingham.

Interested citizens may submit an application available at the City Clerk’s Office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk’s Office on or before noon on June 21, 2023. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and voter on appointments.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
The majority of members must be Birmingham Residents and Electorates. Preferred qualifications / areas of professional expertise and experience include: gerontologist, senior health or nutrition, adult education, elder law, representative of Birmingham NEXT, and intergenerational specialist.	10/11/2023	10/16/2023

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



**NOTICE OF INTENTION TO APPOINT TO
BIRMINGHAM TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY**

At the regular meeting of Monday, November 27, 2023 the Birmingham City Commission intends to appoint members to the Birmingham Triangle District Corridor Improvement Authority who have an ownership or business interest in property located in the District to the Birmingham Triangle District Corridor Improvement Authority:

Two (2) members to serve the remainder of four-year terms expiring December 15, 2027.

Members shall be appointed by the Mayor, subject to approval by the City Commission.

Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area.

The authority shall operate to correct and prevent deterioration in business districts, to redevelop the City’s commercial corridors and promote economic growth, pursuant to Act 280 of the Public Acts of Michigan, 2005, as amended.

Interested citizens may submit an application available at the City Clerk’s Office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, November 22, 2023. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Criteria/Qualifications of Open Positions	Date Applications Due (by noon)	Date of Interview
One member having an ownership or business interest in property located in the Development Area. One member who is a resident of the development area.	11/22/2023	11/27/2023

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

BIRMINGHAM BOARD OF ETHICS

ADVISORY OPINION

2023-02

INTRODUCTION

Birmingham Commissioner Clinton Baller made request of the Birmingham Board of Ethics for an advisory opinion as to whether certain conduct or anticipated conduct of a Birmingham city official would conform to the Birmingham Code of Ethics (hereinafter “Request”). Commissioner Baller appeared in person at a Board hearing on June 23, 2023. The Ethics Board provides its advisory opinion to the questions presented as follows.

SUMMARY OF DECISION

Commissioner Baller’s concerns relate to the potential establishment and management of a private, non-profit community foundation¹ in Birmingham. The foundation would, among other things, seek donations for the sponsorship and administration of cultural events, and for improvements to the city’s park system. It is anticipated that events and improvements would be administered by third parties, including partner organizations such as Next, the Birmingham Bloomfield Art Center, Baldwin Public Library, the Music Hall Center for the Performing Arts, the Birmingham Shopping District, the City of Birmingham and other local and regional organizations involved in the arts and, in part, design and administration.

Commissioner Baller stated three specific questions to the Board, which are as follows:

1. What are the ethical considerations if an elected official, appointed official or city employee is involved in the establishment and administration of the foundation?
2. Is there any ethical concern if Commissioner Baller donates or loans the money (less than \$5,000) to establish the foundation?
3. Are there any other ethical considerations or advice from the Board of Ethics regarding the establishment and administration of a community foundation by persons involved (elected, appointed, employed) in the City of Birmingham?

DECISION

The Board of Ethics advises that on the facts presented the Code of Ethics does not bar an elected official, appointed official or city employee from involvement in the establishment and administration (e.g. officer, member of board/council/committee) of a foundation; however, a

¹ A community foundation is a public charity that typically supports local charities in a specific geographical area, primarily by facilitating and pooling donations used to address community needs.

Birmingham City Official or employee² has a fiduciary duty to the city and may not participate in consideration of any matter potentially adverse to the city, especially a request for funding or any other special consideration from the city, and the City Official would be further disqualified from participating in any official business of the city on any matter involving such a community foundation. On matters that may present a conflict of interest or may give the appearance of impropriety, the official will likely have to abstain from discussion, debate and vote. Also, a City Official donating or raising funds or performing outreach with a third party on behalf of such a community foundation must use care to insure his or her efforts do not result in a conflict with regard to any business the third party may have before the city. Also, a City Official's or employee's involvement may have some negative aspects. For example, the City Official or employee may be disqualified from acting on matters before the city that concern the foundation, contrary to the job the person was elected, appointed or employed to do. A City Official and employee must always remain vigilant about the potential for a conflict.³

This board's Advisory Opinion 2016-03 provides some further guidance, in stating:

“If on the other hand the city merely needs or wants to exchange information with the organization or monitor its activities, a lesser role such as non-voting membership or liaison might be more appropriate but just as beneficial to the city as would be a board membership. Whether such a role is acceptable to the community organization is a matter for its own judgment.”

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“The safest, cleanest way to avoid conflicts is for city commissioners to have no formal role with any organization that comes before the city. That is a policy question for the city to address.”

FINDINGS OF FACT

Clinton Baller is a Commissioner in the City of Birmingham. He is among the group of community leaders who share an interest in expanding the range of cultural events in Birmingham. Group participants have included an appointee to a City Advisory Board and several employees of the City of Birmingham, among others. The idea of a community foundation has existed in Birmingham for many years. The 2040 Master Plan recommends establishment of a community foundation. The Birmingham City Commission recently followed the advice of City Attorney Mary Kucharek and resolved that for the foreseeable future, the city (unlike some other municipalities, including the City of Royal Oak, Michigan) would not establish a community foundation, and instead would leave it to the private sector to do so. According to Commissioner Baller, Ms. Kucharek advised against the city establishing a foundation but that nothing precludes involvement by City Officials or employees in a private foundation. She also cautioned that more

² “City Official or employee” is defined in §2-322 of City’s Code of Ethics to include all officials and employees of the city, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions.

³ Discussion of potential conflicts of interest is later addressed herein.

than three commissioners involved in such an organization might constitute a quorum under the Open Meetings Act. City Manager (former) Tom Markus expressed that the involvement of a City Official or employee in the foundation might give rise to potential conflicts of interest and advised that an Ethics Board Opinion be sought.

Commissioner Baller stated that the foundation would not be an entity of the City, and in fact would be separate and distinct from the city, but would interact with the city and other community organizations. He further commented that the city itself would not be a fiscal agent of the foundation. There would be no fiduciary duty on behalf of the city in association with the operation of the foundation in any respect. This would eliminate to an extent potential concerns with respect to oversight, the city's obligations for transparency, and/or insurance and indemnity concerns beyond any other community organization.

Commissioner Baller asserted that the foundation would not be asking for priority over any other community organization that holds events in Birmingham. There would be no formal or legal partnership between the city and the foundation. The city would not create, operate, or manage the foundation. However, a commissioner serving on a foundation board would likely be tasked with fundraising for the foundation.

The city's Code of Ethics primarily addresses actual or potential conflicts of interest. It emphasizes that public office and employment are public trusts, which is necessary for government to operate properly; and that each city official, employee, or adviser must earn and honor the public trust by integrity and conduct. Fundamental to the ordinance, and the subject Request, is that City Officials and employees must avoid conflicts between their private interests and the public interest. Therefore, these officials and employees in relation to the subject inquiry must "be independent, impartial and responsible to the people" as well as "not use public office for personal gain." §2-320. The ordinance sets "minimum standards of ethical conduct" and "directs disclosure of private financial or other interests in matters affecting the city." *Id.*⁴

For purposes of the subject Request, the Board wishes to reference §2-323(2) of the Code which states that it is the intention of §2-324 that City Officials and employees avoid any action, whether or not specifically prohibited by §2-324, which might result in, or create the appearance of giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person.

As the Code of Ethics is essentially a conflict of interest ordinance, §2-324 is most relevant in this situation. The Board of Ethics views various of the subparagraphs of subsection A thereof, pertaining to conflicts of interest, as having application. This conflict of interest section prohibits certain specific conduct, which is potentially at risk in regard to the subject request, most particularly as follows:

⁴ The definitions of "financial interests", "official duties or official action", "personal interests", and "private gain" are all defined in §2-322 of the Birmingham Code of Ethics.

- (1) No official or employee of the city shall divulge to any unauthorized person, confidential information acquired in the course of employment or service as a city official in advance of the time prescribed for its authorized release to the public.
- (4) No official or employee of the city shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, other than the city, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.
- (6) No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.
- (8) No official or employee of the city shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.
- (10) Determination of conflict of interest. A conflict of interest exists if:
 - a. The city official or employee has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of a matter currently before that city official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;
 - b. The city official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;
 - c. The public official has any other prohibited interest as defined by state statutes relating to conflicts of interest.

See §2-324.

§2-324(b) pertains to full disclosure. The Board in relation to this Request, wishes to bring to the attention of Commissioner Baller the following subsections thereof:

- (1) Responsibility to disclose. It shall be the responsibility of the official or employee to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No official or employee of the city shall participate, as an agent or representative of the city, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The official or employee shall, in such circumstances, recuse himself or herself from the matter before him or her.

- (2) Disclosure of conflict of interest and disqualification.
- a. Any city official or employee who has a conflict of interest, as defined herein, in any matter before the city shall disclose such fact on the appropriate record of the city prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:
 1. A city commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the city commission;
 2. A member of any city board, commission or committee shall disclose any conflict of interest and the nature and extent of such interest on the records of said board, commission or committee;
 3. A city employee who has a financial or other interest in a matter before the city commission or any city board, commission or committee and who participates in discussion with, or gives an official opinion to the city commission, or to such other city board, commission or committee relating to such matter, shall disclose on the records of the city commission or such other city board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.

For initial guidance as to when a conflict of interest may or may not require recusal, the reader should review also §2-324(b)(2)b of the ordinance. For further guidance relative to disclosure and/or recusal, see this Board's Advisory Opinions 2003-03, 2015-06, and 2018-02.⁵ Also, for further discussion of conflicts between private interests and public duties of City Officials and employees, see this Board's Advisory Opinion 2018-02.

DISCUSSION OF POTENTIAL CONFLICTS OF INTEREST

As previously stated, this Board's prior Advisory Opinion 2016-03 is informative as to the Request herein. In that matter, the question pertained to whether or not it was a violation of the City of Birmingham's Code of Ethics for a member of the Birmingham City Commission to serve as a member of a board of directors of, or an advisory committee to, a community-based organization that solicits or receives funding from the city when the particular seat on that board

⁵ Mr. Baller is a "City Official" pursuant to §2-322 of the Code, in that he is a person who has been elected and serving in a capacity with the City established by City Charter or by City Ordinance which involves the exercise of a public power, trust or duty. He serves as a City Commissioner. Accordingly, pursuant to §2-325(b), this Board has the authority to issue the requested advisory opinion.

or committee is reserved for a city commissioner and the City Commission by resolution appoints a particular commissioner to that seat. The Board of Ethics answered that question in three parts, as follows:

(1) The Board of Ethics holds that a city commissioner's membership on the board of directors of a community-based organization at the request of that organization and upon the approval of the City Commission does not per se violate the code of ethics. But the Board also holds that:

- the commissioner is barred by the code of ethics from participating in that organization's consideration of a request to the city for funding, license, or other substantial support from the city,
- the commissioner is disqualified from participating in the city's consideration of any such request from that organization, and
- the commissioner's participation in fund-raising activity for the organization could result in a conflict of interest if the party from whom the gift is sought has business before the city.

(2) The Board of Ethics holds that a city commissioner's participation on an advisory committee of a community-based organization at the request of that organization and upon the approval of the City Commission does not per se violate the code of ethics. But the commissioner's participation in fund-raising activity for the organization could result in a conflict of interest if the party from whom the gift is sought has business before the city.

(3) The Board of Ethics finds that, even where no conflict of interest arises, the commissioner's participation on such a board of directors or advisory committee could be deemed imprudent or politically undesirable.

As in Advisory Opinion 2016-03, there is no showing on this record that the commissioner has reason to believe that he will derive a monetary gain or suffer a monetary loss by reason of his official activity. §2-324(a)(10)(b). The Board of Ethics is not aware of any other legal prohibition generally for certain involvement in a foundation. §2-324(10)(c). It is not necessarily adverse to the public interest in the proper performance of said official's or employee's governmental duties. §2-324(a)(10)(a). Accordingly, by virtue of some limited involvement in a foundation, a conflict of interest situation pursuant to the Code of Ethics does not exist. It is what the commissioner does in that role that matters.

However, a City Official's and/or employee's involvement in the establishment and/or administration of a foundation, or the loaning of money to same, may present a potential conflict of interest. A City Official or employee has to be careful that he/she not "engage in or accept employment or render services that are "incompatible or in conflict with the discharge of

his...official duties” or in “employment (that) may tend to impair his...independence of judgment or action in the performance of his or her official duties.” §2-324(a)(6).

Additionally pointed out in this Board’s Advisory Opinion 2016-03, a city commissioner’s service on a board of directors creates a potential conflict of interest because the board is that entity’s corporate governing body. The directors of such an organization owe that entity a fiduciary duty. As stated on page 8 in said Advisory Opinion: “Directors must act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, in the manner they reasonably believe to be in the best interests of the corporation. MCL §450.2541.” This cited Advisory Opinion further provides that:

Of course, a city commissioner’s services as a member of the NEXT board of directors or the BYA committee would include tasks and duties unrelated to business with the city, which thus would not necessarily result in a conflict of interest. Accordingly, membership on that board or committee is not a conflict of interest per se, and our holding is distinguishable from our earlier decision involving Ralph L. Seger, Complaint No. 2004-02 (June 8, 2004). In the *Seger* case, the respondent, then a member of the city’s general investment committee and Barnum steering committee, was also a fiduciary in an organization – a fund to prosecute litigation against the city – whose sole purpose was adverse to the city.

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That said, the Board of Ethics holds that a city commissioner may not consistent with the code of ethics participate in consideration of any matter before the NEXT board of directors related to a matter that could come before the city of Birmingham or that could “result in or create the appearance of” using public employment or office for private gain, giving or accepting preferential treatment, or affecting adversely the confidence of the public or the integrity of the city government. Specifically, the code bars a commissioner from participating in NEXT’s consideration of a request for funding, license, special services, or benefits from the city. The commissioner is likewise disqualified from participating in the city’s consideration of any request from NEXT.

As noted above, the code of ethics does not prohibit a city commissioner from serving as a member of a community organization’s advisory committee such as the BYA GCC. But a commissioner serving in that role must remain mindful of the potential for a conflict. He or she must be vigilant if any of the organization’s business comes before the city and must make the judgment as to whether to disclose or refuse himself or herself in the matter before the city. Even if the risk of that conflict is less than the one facing a member of the

NEXT board, that risk is real and depends on a variety of circumstances. An important one concerns fund raising.

§2-320 of the ethics ordinance discusses public policy, and makes it clear that the guiding principle for City Officials' and/or employees' decision(s) is what best serves the overall public interest in Birmingham. The public's interest is paramount. From an ethical perspective the inquiry is whether the decision or conduct will be in the public's best interest as a whole. Each case in which that principle is evaluated is unique, and must be analyzed on a case by case basis. Therefore, this Board cannot provide a wholesale thumbs-up or thumbs-down to the specific questions presented to it in this Request, nor can the Board identify all potential scenarios that must be considered in such a matter. Nevertheless, it can be said that a significant ethical issue that a City Official or employee may face in such circumstance is whether one's loyalty to one's non-profit's interests conflicts with one's duty of loyalty to the public's interest. A City Official and employee must put the public's interests ahead of those of the non-profit with which one is affiliated. Furthermore, as set forth in §2-321 of the ordinance, all City Officials and employees shall safeguard the public confidence. §2-323 further makes it clear that City Officials and employees must avoid any action, whether or not specifically prohibited by §2-324 which might result in or create the appearance of a conflict. The public must be convinced that City Officials and employees are putting the city's interest ahead of all others.

To maintain fiduciary obligations and public trust, a foundation itself would need unambiguous conflict of interest policies. These policies should require absolute transparency about the existence of potential conflicts and how they are dealt with. There is no guarantee of ethical conduct by a non-profit, but it is more likely if: (1) it ensures effective codes of conduct and compliance programs, (2) it promotes effective financial management, and (3) it institutionalizes an ethical culture.

This Board believes that it is beneficial for us all to have participation in non-profit organizations and the good work that they do, however, a City Official or employee's first duty and oath of office is to the city. It is generally not beneficial to the city to have a City Official or employee participate in a non-profit board that has business before the city. In such instance, the City Official or employee must appropriately disclose the relationship and likely abstain from actions involving the non-profit. Furthermore, there is the possibility that non-profits that do not receive some benefit from the city, while others do that have a City Official or employee involved therewith, may feel slighted.

Public perception is paramount. As stated, the ordinance begins by emphasizing "the public trust by integrity and conduct." §2-320. City Officials and employees are stewards of the public trust. If the public does not trust the city and/or the City Official, it diminishes the public trust and may even result in the removal of the City Official or employee. The public does not always understand or appreciate a City Official's or employee's good intentions or motivations. A City Official or employee cannot always be loyal to the city's interest and the interest of the non-profit.

Therefore, a City Official or employee in such instances wherein there are competing interests can only serve the public's best interests.

A conflict of interest occurs any time organizational resources are directed to the private interests of a person or persons who have an influence over the decision. A conflict of interest can occur when the person (or persons) making a decision expects something in exchange from the person in whose favor the decision is made.

Further potential conflicts of interest for City Officials/employees and/or the potential for violation of state and/or federal laws, includes such things as: (a) a City Official's or employee's involvement in fundraising for a non-profit or charitable cause, (b) the implications of payment to a City Official or employee for expenses for meals, travel, gift and/or expense reimbursement as being gifts or income, and (c) city financial transactions with the non-profit. This can also trigger questions relating to legal requirements, which by its very nature will place an added burden and expense in association with the city's attorney.

Finally, public service is a public trust requiring one to place loyalty to the Constitution, the laws and ethical principles above private gain. Ethical principles allow the officials and employees within the city to have the ability to make the right decisions and policies that will positively affect them and the people associated therewith. This Board again, as in its Advisory Opinion 2016-03, refers the reader to the appended article thereto for guidance, published by the Institute of Local Government entitled "Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder."

Approved:



James D. Robb
Chairperson



John J. Schrot, Jr.



MEMORANDUM

Engineering Department

DATE: September 27, 2023
TO: Jana L. Ecker, City Manager
FROM: Melissa A. Coatta, City Engineer
SUBJECT: Water Violation Notice

This report shall provide to the City Commission information regarding an ELGE Water Violation Notice that was issued by the City.

On August 21, 2023, the City received a letter from the Department of Environmental, Great Lakes, and Energy (EGLE) for a Violation Notice of Treat Technique Violation for Failure to Maintain Corrosion Control Treatment with Required Ranges. One of ten water samples collected by Southeastern Oakland County Water Authority (SOCWA) in June 2023 resulted in an orthophosphate level slightly below the required EGLE Water Quality Parameters (WQP).

SOCWA provides routine water testing, including WQP monitoring, as a service to Birmingham and other member communities. For WQP monitoring in Birmingham, SOCWA tests water samples from 10 locations every quarter. One of the 10 locations used for WQP monitoring is the Whole Foods store located at 2100 E. Maple Road. Unbeknownst to SOCWA, Whole Foods reconfigured their store and had discontinued use of the food court area. When SOCWA collected the June 2023 WQP monitoring sample, they collected water from a sink in the former food court area, which had been sitting stagnant for an extended period of time awaiting demolition. A subsequent sample collected at the same site from an active sink in July of 2023 was found to meet all EGLE requirements.

The City submitted additional information describing what occurred for EGLE's review and consideration on September 18, 2023. EGLE responded on September 20, 2023, that the water violation still stands.

Per the Michigan State Drinking Water Act, 1976 PA 399, as amended (Act 399), the City needed to provide public notice by mail or direct delivery and by any other means reasonably calculated to reach other persons regularly served by the system by 30 days, or September 21, 2023. The City sent a mass mailing to all water customers on September 21, 2023. The City also posted

the notification in the Oakland Press, at City Hall, Baldwin Library, NEXT, on the City's website, and shared via social media.

Orthophosphate is added to water to prevent pipe corrosion. All tests show no indication of pipe corrosion. Residents do not need to boil water or take other corrective actions. All water being delivered to Birmingham residents and tenants complies with the Safe Water Drinking Act. The City will increase water sampling over the next year per EGLE requirements.

Attachments:

- 8/21/2023 EGLE Violation Notice Letter
- 9/18/2023 City Response Letter to EGLE
- 9/20/2023 EGLE Response via Email
- 9/21/2023 Notice Publications



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



PHILLIP D. ROOS
DIRECTOR

August 21, 2023

VIA EMAIL AND U.S. MAIL

James Surhigh
City of Birmingham
P.O. Box 3001
Birmingham, Michigan 48012

WSSN: 00730
County: Oakland
Supply: City of Birmingham

Dear James Surhigh:

SUBJECT: VIOLATION NOTICE – Treatment Technique Violation for Failure to Maintain Corrosion Control Treatment within Required Ranges

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), Drinking Water and Environmental Health Division (DWEHD), records show that the city of Birmingham (Birmingham) is in violation of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399); R 325.10604f, *Treatment techniques for lead and copper*, of the 1979 Administrative Code.

In accordance with the above rule, a water system shall continue to operate and maintain corrosion control treatment, including maintaining Water Quality Parameters (WQPs) at or above minimum values or within ranges designated by EGLE. Birmingham was informed of these minimum values in the WQP designation letter dated June 15, 2022. A supply is out of compliance if it has more than nine excursion days during a six-month period for a specified WQP. An excursion occurs when the daily value for one or more WQPs measured at a sampling location is below the designated minimum or outside the designated range. During the January 1 to June 30, 2023, and July 1 to December 31, 2023, monitoring periods, Birmingham had more than nine excursion days in both six-month periods.

EGLE's investigation consisted of a review of Birmingham's WQP data and discussions with the operator in charge. EGLE's investigation is considered complete.

For the January 1 to June 30, 2023, monitoring period, the excursions began on June 7, 2023, when an orthophosphate result in the distribution system was less than the minimum required value of 0.9 mg/L as PO₄. The excursion days continued to accrue until the next orthophosphate sample was collected on July 18, 2023, with a result that was back above the minimum required value. Because follow-up samples were not collected between June 7 and July 18, 2023, the sum of excursion days exceeded nine days in both the January to June and the July to December monitoring periods.

James Surhigh
Page 2
August 21, 2023

Birmingham was out of compliance on June 16, 2023, which was the tenth excursion day, for the January 1 through June 30, 2023, monitoring period. Birmingham was also out of compliance on July 10, 2023, which was the tenth excursion day, for the July 1 through December 31, 2023, monitoring period. To return to compliance, Birmingham must complete a six-month round of WQP monitoring and have nine or less excursion days.

Additionally, lead and copper monitoring and WQP monitoring will be changed to standard monitoring for two consecutive six-month monitoring periods as a result of the treatment technique violation. Enclosed in this letter is a revised 2023 Monitoring schedule that details the changes to the lead and copper sampling and WQP sampling.

Administrative Rule 325.10403, *Tier 2 public notice; form, manner, and frequency of notice*, of Act 399, requires that, not later than **30 days** after learning of the violation, suppliers provide public notice by mail or direct delivery and by any other means reasonably calculated to reach other persons regularly served by the system. Enclosed is a sample public notice. **Please notify your consumers no later than September 21, 2023, and send EGLE the signed and dated Public Notice Certification of Distribution form, along with a copy of the issued notice within ten days of distribution.** This violation **must** be included in your 2023 Consumer Confidence Report, which is due by July 1, 2024.

EGLE is authorized under Section 7 of Act 399, MCL 325.1007, to issue fines for public water supply monitoring and reporting violations. Failure to issue a public notice for this violation will result in a fine of at least \$1000. Additional violations are subject to fines of increasing amounts. If you would like more information on the DWEHD administrative fines policy, please contact me at the phone number or e-mail listed below.

If you have any factual information you would like EGLE to consider regarding the violation identified in this Violation Notice, please provide it in a written response by September 21, 2023.

James Surhigh
Page 3
August 21, 2023

EGLE anticipates and appreciates your cooperation in resolving this matter. If you have any questions regarding this Violation Notice, please contact me at SylvesterM1@Michigan.gov; Lead and Copper Unit, Community Water Supply Section, DWEHD, EGLE, P.O. Box 30817, Lansing, Michigan 48909-8311; or at the phone number provided below.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Sylvester', written in a cursive style.

Matthew Sylvester, PE
Corrosion Control Specialist
Lead and Copper Unit
Community Water Supply Section
Drinking Water and Environmental Health Division
989-395-8567

Enclosures

cc/enc: Scott Zielinski, City of Birmingham
Bob Jackovich, Southeastern Oakland County Water Authority
Patrick Williford, Great Lakes Water Authority
Jeni Bolt, EGLE
Abuzoha Islam, EGLE
Becca Brennan, EGLE
Steve Pennington, EGLE

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

City of Birmingham Did Not Meet Treatment Requirements

Our water system recently violated a drinking water standard. Although this situation does not require that you take immediate action, as our customers, you have a right to know what happened, what you should do, and what we are doing to correct this situation.

We purchase water from the Great Lakes Water Authority (GLWA) that is treated to control corrosion and minimize lead and copper in the pipes from dissolving into the water. To ensure we are maintaining optimal corrosion control, we routinely sample the water in the distribution system for water quality parameters such as pH and orthophosphate. We are required to maintain these parameters above the state-designated minimums. We did not maintain these parameters within the set ranges for more than nine days during both the January to June and July to December 2023 monitoring periods.

What should I do?

You do not need to boil your water or take other corrective actions. However, if you have specific health concerns, consult your doctor.

What does this mean?

This situation does not require that you take immediate action. If it had, you would have been notified immediately. This is a treatment violation, but it does not mean there is lead or copper in your drinking water. The most recent monitoring indicates that lead and copper levels were below the action levels at least 90 percent of residential drinking water taps sampled. However, it is important that everyone takes measures to control lead and copper levels in the water because ingesting lead or copper can cause serious health consequences.

Lead: Infants and children who drink water containing lead could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

Copper: Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's disease should consult their personal doctor.

What happened? What is being done?

The Michigan Department of Environment, Great Lakes, and Energy set ranges for our water quality parameters on June 16, 2022. After these ranges were designated, we collected samples in the distribution system on June 7, 2023, that were below the required minimum value for orthophosphate. Ten excursion days were accumulated in the distribution between the dates of June 7th and July 18th, 2023 for both the January to June and the July to December monitoring periods. We are working on operational techniques and on following up with all water quality parameter results timely to prevent this from happening again. For more information, please contact Bob Jackovich, bobj@socwa.org, 248-288-5150, or 3910 West Webster Road, Royal Oak, Michigan 48073.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

This notice is being sent to you by the City of Birmingham.

2023 Monitoring Schedule

BIRMINGHAM

WSSN: 00730

PWSID: MI0000730

County: OAKLAND

Distribution System: RTCR and Chlorine Residual Monitoring Schedule

Sample Type	# of Samples/ Frequency	Collection Period	Collect according to your	Unit Number	Test Code
Routine Total Coliform	20/Month	Monthly	RTCR Sample Plan	30	BPTC
Chlorine Residual	If serving chlorinated water, measure the residual disinfectant level at the same point and the same time as the bacteriological sample and report the results and average to EGLE.				

Location (Facility Name): DISTRIBUTION SYSTEM

Sample Type	# of Samples/ Frequency*	Collection Period	Collect according to your	Unit Number	Test Code
Total Trihalomethanes- Haloacetic Acids	1/Quarter	February, May, August and November 2023	DBP Monitoring Plan	36VO/HA	CXTM, CXHA
Lead and Copper	60/6 Months	Between 7/1-12/31/2023 and 1/1-6/30/2024	Lead and Copper Sampling Plan	Contact EGLE Lab	
WQP (pH, alkalinity, sulfate, chloride, orthophosphate)	10/Quarter	Quarterly	Representative Sites	Various	Various

*For Lead and Copper and WQP, this is # sites/frequency.



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Drinking Water and Environmental Health Division

PUBLIC NOTICE CERTIFICATION OF DISTRIBUTION

Authorized under authority of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), MCL 325.1001 et seq., and its administrative rules.

Within 10 days of notifying customers, community water supplies are required to complete and submit to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) a certificate of distribution and a copy of the Public Notice that was distributed. Tier 2 and Tier 3 Public Notice distribution requirements are outlined in Act 399, R 325.10403 and R 325.10404. The following instructions will aid in accomplishing the Public Notice distribution.

Instructions:

- A. Use the Public Notice template that was provided with the Violation Notice. The Public Notice template contains all 10 required elements under Act 399, R 325.10405.
- B. Deliver the Public Notice by using **both** forms of delivery:
 - a. Mail or other direct delivery to each customer receiving a bill, and to other service connections to which water is delivered.
 - b. Other methods reasonably calculated to reach other persons regularly served by the water supply, including:
 - i. Publication in a local newspaper
 - ii. Delivery to customers that provide their drinking water to others, such as apartment building owners, etc.
 - iii. Posting in public places
 - iv. Delivery to community organizations

A mailed notification statement to customers **does not** fulfill the Public Notice distribution requirements stated above. For example, a statement provided on a customer's water bill would not fulfill the requirements of the Public Notice distribution.

- C. If using the Consumer Confidence Report (CCR) as the vehicle to distribute the Public Notice, the supply must directly deliver the CCR to every bill-paying customer (i.e., CCR delivery waivers that allowed small systems to post their CCR in one location or publish it in the newspaper are no longer available).
- D. Return the Public Notice Certification of Distribution on page 2, along with a copy of the Public Notice that was distributed, to EGLE via your Michigan Environmental Health and Drinking Water Information System (MiEHDWIS) account, or via email to your EGLE district office email address within 10 days of notifying customers.
- E. Supplies that sell or provide drinking water to other public water supplies, such as to consecutive supplies, shall give the Public Notice to the consecutive supply. The consecutive supply is then responsible for providing the Public Notice to their customers.



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Drinking Water and Environmental Health Division

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- E. Supplies that sell or provide drinking water to other public water supplies, such as to consecutive supplies, shall give the Public Notice to the consecutive supply. The consecutive supply is then responsible for providing the Public Notice to their customers.

Public Notice Certification of Distribution:

Within 10 days of notifying your customers, submit completed document(s) to EGLE via your Michigan Environmental Health and Drinking Water Information System (MiEHDWIS) account, or via email to your EGLE district office email address.

Deliver the Public Notice by using **both** forms of delivery. **Initial all that apply**, verifying that each requirement was completed.

_____ Mail or direct delivery to each bill-paying customer and to other service connections to which water is delivered by the community water supply.

Date of delivery: _____

_____ Other methods reasonably calculated to reach other customers served by the community water supply if they would not normally be reached via mail or direct delivery. Others may include those who do not pay water bills or do not have a service connection address. Other methods include: (Put delivery date next to all that apply – MM/DD/YYYY)

_____ Publication in a local newspaper/newsletter/circulatory

_____ Delivery of public notice for distribution to customers that provide their drinking water to others, such as apartment buildings, nursing homes, universities, etc.

_____ Posting in public places served by the system

_____ Delivery to community organizations

_____ Not applicable – all customers can be reached via mail or direct delivery

_____ Distributed to consecutive supplies (if applicable)

_____ A copy of the Public Notice sent to customers **is attached** with this form.

I certify that this water supply has fully complied with the public notification requirements in the Michigan Safe Drinking Water Act, 1976 PA 399, as amended, and the administrative rules.

Signature _____ Title _____

Water Supply _____ WSSN _____ Date _____

If you need this information in an alternate format, contact EGLE-Accessibility@Michigan.gov or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at EGLE-NondiscriminationCC@Michigan.gov or call 517-249-0906.

This form and its contents are subject to the Freedom of Information Act and may be released to the public.

September 18, 2023

****Via: Email: Sylvester@Michigan.gov****

Matthew Sylvester, PE, Corrosion Control Specialist
Lead and Copper Unit /Community Water Supply Section
DWEHD, EGLE
P.O. Box 30817
Lansing, MI 48909-8311

Re: WSSN: - 00730
County: Oakland
Supply: City of Birmingham

Dear Mr. Sylvester:

I am responding to the violation notice received by the City of Birmingham August 21, 2023. You are aware of our protest with this violation based upon the Zoom meeting that we had wherein we described to you the particular circumstances and facts of our case. I am asking you for an exemption to a violation pursuant to R 325.10306(b) and (c), which states as follows:

“R 325.10306 Exemption from MCL or treatment technique; required finding.
Rule 306. Exemptions from an MCL or treatment technique other than those prohibited in R 325.10303 may be granted by the director only upon his or her specific finding that all of the following conditions exist:

- (a) Due to compelling factors, including economic factors, a public water supply is not able to comply with an MCL or treatment technique.
- (b) A public water supply for which an exemption is requested was in operation on the effective date of the state drinking water standard.
- (c) The supplier of water demonstrates that the granting of an exemption will not result in an unreasonable risk to the health of persons using the public water supply.”

Whole Foods is a grocery store that has been operating in the City of Birmingham since testing designation and minimal values represented in the WQP designation letter dated June 14, 2022. Prior to COVID, the Whole Foods Market located at 2100 E. Maple Rd., Birmingham, MI, 48009, not only ran a grocery store, but also had a small area that was used as a café and bar. During COVID, this café ceased to exist, and based upon the Special Land Use Permit issued by the City of Birmingham to Whole Foods, Whole Foods needed to continue this café until Whole Foods petitioned the City and requested a change to the usage of this part of the grocery store. Through 2022 and the early months of 2023, Whole Foods created a new plan and submitted it to the City of Birmingham, wherein the café would be shut down, and the area previously used as a bar and food preparation was changed to an Amazon return site. The City of Birmingham became aware of the change of plans from Whole Foods in the spring and finally issued a plumbing permit on July 7, 2023 which is attached to this letter as Exhibit A.

Beier Howlett

Matthew Sylvester, PE
September 18, 2023
Page 2

It is important to note that Whole Foods has reported that May 4, 2023 was the last day that the area, previously a café turned bar, was open to the public and ceased operation as such. From May 5, 2023 through July 8, 2023, Whole Foods only used that space for team members to have seating for breaks. No food or drink was kept in this area during this time. No public access was given at this time. Most notably, neither of the two sinks in this area were used or utilized as it awaited demolition. On July 9, 2023 construction began removing all the equipment in this space including any sinks or water sources in this space. On July 19, 2023, construction was completed and it was turned into an Amazon reception area. Please also find enclosed as Exhibit B a letter documenting these facts from Whole Foods. A final plumbing inspection was completed on July 24, 2023 by the City of Birmingham, noting that all floor sinks in the northwest corner of the building were removed and terminated. Please see Exhibit C.

As EGLE is aware, SOCWA provides water services to eleven (11) communities in Oakland County, Michigan including the City of Birmingham. SOCWA purchases treated water from the Great Lakes Water Authority (GLWA) including the addition of phosphate for corrosion control. GLWA closely monitors the treated water to ensure compliance with all regulations. SOCWA provides routine water testing as a service to its eleven (11) community members including the water quality parameter monitoring at issue in this case. Serving Birmingham, SOCWA tested water samples from ten (10) locations every quarter. The locations are the same for every quarter with locations being changed only when required by external factors. This is one such external factor because when SOCWA went to Whole Foods using the sink in the café area that has been discussed thus far in this letter, SOCWA was unaware that this sink on June 7, 2023 was not in operation and not being utilized and, therefore, had sat stagnant. Had SOCWA inform the Whole Foods Manager that they were present, the Manager would have told them that the sink had not been in operation since May 4, 2023. Certainly the SOCWA representatives would have let the water run assuring that the sampling they were about to take was reliable and a true representation of the WQP levels for the site. As a result, the test came back below ever so slightly the EGLE required level. Please also find as Exhibit D, the letter from SOCWA which verifies this information, but to further complicate this issue, SOCWA calculated the phosphate level and the percentages and averages erroneously for this sample. It is important to note that when SOCWA conducted the third quarter testing on July 18, 2023, they learned that the sink had been taken out of service. A sample was taken from another source and, of course, as it had been historically and has been ever since, was found to meet all EGLE requirements.

The entire purpose of the Safe Water Drinking Act is to have in place regulatory programs with the sole purpose of assuring safe drinking water for the residents of Michigan and the residents of Birmingham. The sampling that was taken is an incorrect anomaly and the reporting of it also an incorrect anomaly as the technician from SOCWA calculated the averages erroneously. The low WQP for the sample of June 7, 2023 is falsely low based upon miscalculation and is further exacerbated by the fact that a sample was taken from a water source that was not in operation and was removed within a day or two of the sampling.

Beier Howlett

Matthew Sylvester, PE
September 18, 2023
Page 3

Based upon the letter written from EGLE, the City of Birmingham is now being told it must issue a public notice for something that is not a violation. The City is requesting that EGLE take into account that the average that was calculated was erroneous and the sample that was taken was unreliable and not an accurate and true representation or depiction of the safe water that is being given to the residents of the City of Birmingham. I am asking that you find that we have not had a violation or that there is an exception pursuant to R. 325.10306(b)(c) and, therefore, allowing the City to follow any additional requirements by EGLE as EGLE sees fit, and to advise the City of Birmingham that there is no violation and, therefore, no notice has to be sent to our residents. Sending out a notice such as this would not be an equitable response for the City, and more importantly would cause fear, concern, and potential panic to the residents for something that we don't believe to be a violation. We appreciate that the Act is in place to protect our residents, we too protect our residents and place their health and safety as the most important and paramount issue of the government's interest, but calling this a violation and requiring a notice would absolutely be against the whole point of the Act and all of the regulatory requirements in place for the protection of safe drinking water.

I am asking that you review this and react with urgency. According to your letter, we have until September 21, 2023 to send this letter to you, and yet at the same time we have until September 21, 2023 to put out the notice to the residents. As you can see, time is of the essence. I urge you and implore you to find that based upon the evidence being presented that no violation occurred and that no notice needs to be sent to the residents.

I look forward to hearing from you as soon as possible.

Very truly yours,



Mary M. Kucharek
Birmingham City Attorney

Melissa A. Coatta, P.E.
Birmingham City Engineer

MMK/jc

cc: Bob Davis, Attorney for SOCWA
Scott Zielinski, City of Birmingham
Bob Jackovich, SOCWA
Patrick Williford, Great Lakes Authority
Jeni Bolt, EGLE
Abuzoha Islam, EGLE
Becca Brennan, EGLE
Steve Pennington, EGLE
Jana L. Ecker, Birmingham City Manager

EXHIBIT A



Community Development Department
 151 Martin Street
 Birmingham, MI 48012-3001
 (248) 530-1850

Inspection Requests: www.bsaonline.com

Applicant:

CJS MECHANICAL INC
 4388 ROLLING ACRES
 HARTLAND MI 48353

COMM - PLUMBING

ALL INCLUSIVE

Permit Number:

PP23-0326
 JRIC22-0046

Applied: 07/07/2023

Issued: 07/07/2023

Expires: 01/03/2024

Finalized:

Status: ISSUED

LOCATION	OWNER	CONTRACTOR
0 2100 E MAPLE RD 08-20-31-202-001 Zoning District: Special District:	WALNUT SUB PROPERTIES LLC 550 BOWIE ST AUSTIN TX 78703-4644 Phone: Email	CJS MECHANICAL INC 4388 ROLLING ACRES HARTLAND MI 48353 Phone: (248) 594 5888 Email:

Work Description: Interior renovation & finishes w/ minor demolition

Stipulations:

Primary Constructions Type:

Primary Zoning District:

Primary Use Group:

Project: JRIC22-0046

Permit Item	Work Type	Fee Basis	Item Total
Base Fee	Plumbing Permits	1.00	\$55.00
Floor Drain	Plumbing Permits	3.00	\$45.00
Lavatory	Plumbing Permits	1.00	\$15.00
Sink	Plumbing Permits	4.00	\$32.00
Urinal	Plumbing Permits	1.00	\$15.00
Water Closet	Plumbing Permits	1.00	\$15.00
Water Dist 1"	Plumbing Permits	1.00	\$30.00
PLUMBING CONTRACTOR REGISTRATION	REGISTRATION FEE	1.00	\$15.00



Fee Total: 222.00

Amount Paid: 222.00

Balance Due: 0.00

Issued By: 

Date: 07/07/2023



CITY OF BIRMINGHAM

Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850

J

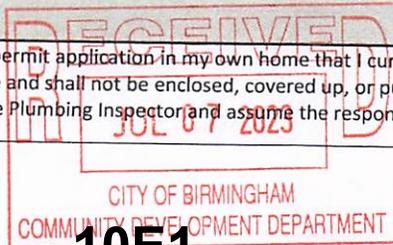
Project #

PP23-0326
Permit #

INSPECTION REQUEST & ONLINE APPLICATION SITE: www.bsaonline.com
Fax: 248-530-1290 / www.bhamgov.org

PLUMBING PERMIT APPLICATION

I. JOB LOCATION
Name of Owner/Agent: WHOLE FOODS
Street Address/Job Location: 2100 E. MAPLE RD
Has a building permit been obtained for this project? Yes PB22-1065
II. CONTRACTOR/HOMEOWNER INFORMATION
Contractor License Number: 8002446
Expiration Date: 4/30/25
Name: CHRISTOPHER J. SHELTERS
Address: 4388 ROLLING ACRES DR.
City: HARTLAND State: MI Zip code: 48353
Master License Number: 8109516
Expiration Date: 4/30/25
Cell: 2485630709
Federal Employer ID Number: 352210575
Email*: CJSMECHANICAL@aol.com
MESC Employer Number: 1459058
III. TYPE OF JOB
Alteration
IV. PLAN REVIEW INFORMATION
Plans are not required for the following:
1. One or two-family dwellings containing not more than 3,500 square feet of building area.
2. Alterations and repair work determined by the plumbing official to be of a minor nature.
3. Buildings with a required plumbing fixture count less than 12.
4. Work completed by a governmental subdivision or state agency costing less than \$15,000.00.
V. APPLICANT SIGNATURE
Signature of Licensee or Homeowner: [Signature] Date: 7/8/2023
VI. HOMEOWNER AFFIDAVIT
I hereby certify I will install the plumbing work described on this permit application in my own home that I currently occupy or am about to occupy.



10E1

VII. FEE CHART

	Fee	# Items	Total		Fee	# Items	Total
1. Base Fee (non-refundable)	\$55.00	1	\$55.00	23. Roof Sump	\$15.00		
2. Auto Washer	\$15.00			24. Safe Waste	\$15.00		
3. Backflow Preventer	\$25.00			25. Sewers to 6"	\$50.00		
4 Backwater Valves	\$10.00			26. Sewers to 8"	\$60.00		
5. Bathtub	\$15.00			27. Sewers to 10"	\$75.00		
6. Catch Basin	\$50.00			28. Sewers to 12"	\$100.00		
7. Dental Chair	\$15.00			29. Sewers Over 12"	\$100.00		
8. Dishwasher	\$20.00			30. Shower Trap	\$15.00		
9. Drains up to 6"	\$25.00			31. Sink	\$8.00	4	32
10. Drains Over 6"	\$40.00			32. Stacks/Conductors	\$15.00		
11. Drinking Fountain	\$15.00			33. Stand Pipe	\$15.00		
12. Floor Drain	\$15.00	3	45	34. Sump with Pump	\$30.00		
13. Garbage Disposal	\$15.00			35. Urinal	\$15.00	1	15
14. Grease Trap	\$30.00			36. Water Closet	\$15.00	1	15
15. Hose Bibs	\$15.00			37. Water Distribution 3/4"	\$30.00		
16. Humidifier	\$15.00			38. Water Distribution 1"	\$30.00	1	30
17. Inside Drain (Weep)	\$15.00			39. Water Distribution 1-1/4"	\$35.00		
18. Laundry Tray	\$15.00			40. Water Distribution 1-1/2"	\$35.00		
19. Lavatory	\$15.00	1	15	41. Water Distribution 2"	\$45.00		
20. Lawn Sprinklers – Including Backflow Device	\$50.00			42. Water Distribution 3"	\$60.00		
21. Miscellaneous Equipment	\$15.00			43. Water Distribution 4"	\$75.00		
22. Re-inspection Fee	\$50.00			44. Water Distribution Over 4"	\$75.00		
45. Water Heater	\$30.00			48. Water Service 2"	\$65.00		
46. Water Service 1"	\$65.00			49. Water Service Over 2"	\$125.00		
47. Water Service 1-1/2"	\$65.00			SUBTOTAL:			
				REGISTRATION FEE: \$15.00			
						\$15	
				TOTAL FEES:			222-

NOTES: Plumbing Demo on a small bathroom barsinks, coffee BAR I will be cutting the water distribution lines to the main for the above mentioned areas. As well as cutting the drainage either below finish floor or capping APPROX 1/2" in the wall.

An administrative fee equal to the permit fee may be charged in addition to the permit fee when work is started without first obtaining the permit.

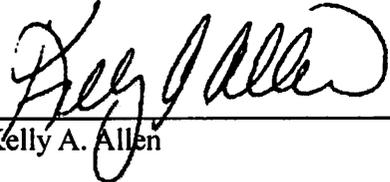
Make checks payable to the City of Birmingham

EXHIBIT B

STATEMENT

I, Kelly A. Allen, state as follows:

1. I am local counsel for Whole Foods Market Group, Inc., which owns and operates Whole Foods Market located at 2100 E. Maple Rd., Birmingham, Michigan 48009.
2. I am giving this statement after consultation with the General Manager of Whole Foods Market regarding the facts and dates set forth herein.
3. A portion of the Whole Foods Market space formerly operated as a small restaurant area.
4. On or about May 4, 2022, the restaurant ceased operation to make way for a different use for the area which use did not include any sinks or water usage.
5. Since May 4, 2023, the only activity in the restaurant space was construction for e-commerce space. There was no food, drink, or use of the sink in this area since this date.
6. The construction for the e-commerce space began on or about June 9, 2023. Whole Foods Market believes that the sink in the restaurant area was removed on or about this day.
7. The construction was completed on July 19, 2023.



Kelly A. Allen

EXHIBIT C

RENOVATION INTERIOR - COMM Permit | JRIC22-0046

Property Information

08-20-31-202-001 2100 E MAPLE RD Subdivision:
Birmingham MI, 480096513 Lot: Block:

Name Information

Owner: WALNUT SUB PROPERTIES LLC Phone:
Occupant: WHOLE FOODS Phone:
Applicant: Phone:
Architect: Phone:

Project Information

Date Started: 10/26/2022 Date Finished: Status: 8 Item(s) Pending

Description:
RENOVATION INTERIOR - COMM

FINAL BUILDING Inspection | Mike Morad

Status: Completed Result: Partially Approved
Scheduled: 08/14/2023 12:00 AM Completed: 08/14/2023 11:55 AM

Comments:

Scheduling Comment Contractor requests AM appt if possible.
Need planning approval.

FINAL PLUMBING Inspection | JIM RICHARDS

Status: Completed Result: Approved
Scheduled: 07/24/2023 12:00 AM Completed: 07/24/2023 11:51 AM

Comments:

terminated toilet room, floor drains and floor sinks in northeast corner of building.

FINAL ELECTRICAL Inspection | Edward Rosett

Status: Completed Result: Approved
Scheduled: 07/20/2023 12:00 AM Completed: 07/21/2023 12:00 AM

Comments:

Scheduling Comment Requesting a morning inspection please. If possible, please contact Jonathan when you have an idea what time you will be arriving. 810-449-1915 Thank you!

EXHIBIT D



* Berkley * Beverly Hills * Bingham Farms * Birmingham
* Clawson * Huntington Woods * Lathrup Village * Pleasant Ridge
* Royal Oak * Southfield * Southfield Township

To Whom it May Concern:

The City of Birmingham is a member of the Southeastern Oakland County Water Authority (SOCWA) along with 10 other neighboring communities. SOCWA provides water service to these 11 communities by purchasing treated water from the Great Lakes Water Authority and using the SOCWA water storage and transmission system to deliver metered water to each of the SOCWA member communities. SOCWA does not provide any treatment to the water purchased from GLWA. GLWA treats water, including the addition of phosphate for corrosion control, at its five water treatment plants. GLWA closely monitors the treated water to ensure compliance with all regulations. The water quality parameter (WQP) testing performed by GLWA has demonstrated that GLWA treated water always meets all EGLE requirements.

In addition to supplying treated GLWA water to the member communities, SOCWA also provides routine water testing as a service to its member communities. This routine water testing includes bacteriological, disinfection byproducts, unregulated contaminant and water quality parameter (WQP) monitoring. SOCWA has been performing these water testing services for its member communities for over a decade.

For WQP monitoring for Birmingham, SOCWA tests water samples from 10 locations in Birmingham every quarter. The 10 locations are the same for every quarter with locations being changed only when required by external factors. One of the 10 locations used for WQP monitoring is the Whole Food store located at 2100 E. Maple Road. There are multiple water use locations at the Whole Foods location. SOCWA used a sink in the food court area of the Whole Foods location as the testing location because it has always been readily accessible. The quarterly WQP monitoring results at the Whole Foods location and at all Birmingham locations showed acceptable pH and phosphate levels in previous WQP sampling periods.

Whole Foods reconfigured their store sometime during 2023 and discontinued using the food court area. This change was not known to SOCWA and SOCWA did not receive any notice about the changes. It appears that when SOCWA collected the June 2023 WQP monitoring sample, the sink in the food court area had not been used for an extended period of time. Based on information and belief, this sink has subsequently been removed by Whole Foods. SOCWA now uses a restroom in Whole Foods for the quarterly WQP testing.

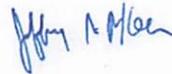
The SOCWA lab technician received the WQP test results from the lab and recognized that the phosphate level for the Whole Foods sample was below the EGLE required level. The technician then used the other nine samples from Birmingham to calculate an average phosphate level. That calculated average, which was above the EGLE required level. The technician now realizes that this was a misinterpretation of the EGLE rule regarding the calculation of an average phosphate level. The rule

requires average phosphate levels to be calculated for each location, not for the community as a whole.

SOCWA conducted the third quarter WQP testing on July 18, 2023. The sink at the Whole Foods location in Birmingham has been taken out of service between the June 7, 2023 and the July 18, 2023 testing. The July 18, 2023 sample was taken from a restroom at the Whole Foods location and was found to meet all EGLE requirements.

The goals and objectives of the governing regulatory program are met. The sample at issue from the Whole Foods food court sink should be disregarded because that source was not in active service and the results are not representative of the site. Using this type of information to cause unjustified and unsupported notices of concern to the residents of Birmingham is contrary to the intent of this regulatory program especially when the sole sample triggering the process is from a source that was not in active service. We trust the regulatory oversight here is able to analyze this issue based on the facts presented herein.

Sincerely yours,



Jeffrey A. McKeen, P.E.
General Manager



Melissa Coatta <mcoatta@bhamgov.org>

RE: Birmingham follow up

1 message

Anderson, Lisa (EGLE) <AndersonL24@michigan.gov>

Wed, Sep 20, 2023 at 5:27 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>

Cc: "Sylvester, Matthew (EGLE)" <SylvesterM1@michigan.gov>, "Bolt, Jennifer (EGLE)" <BOLTJ@michigan.gov>, "Philip, Kris (EGLE)" <PHILIPK@michigan.gov>, "Jecker@bhamgov.org" <Jecker@bhamgov.org>, "rdavis@dbsattorneys.com" <rdavis@dbsattorneys.com>, "szielinski@bhamgov.org" <szielinski@bhamgov.org>, "mcoatta@bhamgov.org" <mcoatta@bhamgov.org>, "Islam, Abuzoha (EGLE)" <ISLAMA@michigan.gov>

Mary,

Thank you for providing additional documentation regarding the Treatment Technique Violation Notice, sent August 21, 2023. Please know this email will be followed up with an official correspondence at a later date.

In reading through the documentation, while the chain of events is unfortunate regarding the Whole Foods sample location and phosphate calculation error, no additional data was presented to EGLE that reduces the excursion days that led to the Optimal Water Quality Parameter (OWQP) Treatment Technique Violation. The sample was collected and analyzed, the result was below the minimum set by EGLE in the OWQP designation letter dated June 15, 2022, and no additional monitoring was completed. Therefore, the excursion days are valid and the Treatment Technique Violation and subsequent Public Notice requirements stand.

As the public notification deadline is tomorrow (9/21), EGLE expedited this decision in order for the city to have time to fulfill the requirement. Please feel free to call me or schedule a check in meeting as needed.

Lisa

Lisa Anderson, PhD (she/her/hers)
Lead and Copper Unit, Supervisor
Drinking Water and Environmental Health Division
Michigan Department of Environment, Great Lakes, and Energy
517 282-1712 :: andersonl24@michigan.gov

-----Original Message-----

From: Mary Kucharek <Mkucharek@bhlaw.us.com>

Sent: Wednesday, September 20, 2023 10:11 AM

To: Anderson, Lisa (EGLE) <AndersonL24@michigan.gov>

Cc: Sylvester, Matthew (EGLE) <SylvesterM1@michigan.gov>; Bolt, Jennifer (EGLE) <BOLTJ@michigan.gov>

Subject: RE: Birmingham follow up

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Thank you, Lisa. I just tried calling you. I am available to discuss this with you anytime today. I am open to a teams or zoom meeting, calls etc. I believe Matt (get well fast) really understood our position and I really pray you do as well. Please find my letter persuasive and the evidence compelling to find a violation did not occur. Especially considering the letter from SOCWA which outlines their misstep in the math computations. Please consider our position and again, I am happy to discuss and walk through anything you need. Thank you!

-----Original Message-----

From: Anderson, Lisa (EGLE) <AndersonL24@michigan.gov>

Sent: Wednesday, September 20, 2023 10:01 AM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>

Cc: Sylvester, Matthew (EGLE) <SylvesterM1@michigan.gov>; Bolt, Jennifer (EGLE) <BOLTJ@michigan.gov>

Subject: Birmingham follow up

10E1

Good morning Mary. Matt Sylvester is out of the office unexpectedly. Jeni and I will be discussing your submission today and will follow up with you as soon as possible. Thank you.

Lisa

Lisa Anderson, PhD (she/her/hers)

Lead and Copper Unit, Supervisor

Drinking Water and Environmental Health Division Michigan Department of Environment, Great Lakes, and Energy

517 282-1712 :: andersonl24@michigan.gov

-----Original Message-----

From: Mary Kucharek <Mkucharek@bhlaw.us.com>

Sent: Monday, September 18, 2023 1:51 PM

To: Sylvester, Matthew (EGLE) <SylvesterM1@michigan.gov>

Cc: Jana Ecker <Jecker@bhamgov.org>; rdavis@dbsattorneys.com <rdavis@dbsattorneys.com>; Scott Zielinski <szielinski@bhamgov.org>; Melissa Coatta <mcoatta@bhamgov.org>

Subject:

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Good Afternoon Matthew,

Please review the attached packet we discussed at our Zoom meeting re the City of Birmingham. Please review and I am happy to discuss.

Thank you.

Mary M. Kucharek

Attorney-at-Law

Beier Howlett, P.C.

Direct Dial (248)282-1075

(248) 645-9400 Ext. 211

mkucharek@bhlaw.us.com

NOTICE TO BIRMINGHAM RESIDENTS

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

City of Birmingham Did Not Meet Treatment Requirements

Our water system recently violated a drinking water standard. Although this situation does not require that you take immediate action, as our customers, you have a right to know what happened, what you should do, and what we are doing to correct this situation.

We purchase water from the Great Lakes Water Authority (GLWA) that is treated to control corrosion and minimize lead and copper in the pipes from dissolving into the water. To ensure we are maintaining optimal corrosion control, we routinely sample the water in the distribution system for water quality parameters such as pH and orthophosphate. We are required to maintain these parameters above the state-designated minimums. We did not maintain these parameters within the set ranges for more than nine days during both the January to June and July to December 2023 monitoring periods.

What should I do?

You do not need to boil your water or take other corrective actions. However, if you have specific health concerns, consult your doctor.

What does this mean?

This situation does not require that you take immediate action. If it had, you would have been notified immediately. **This is a treatment violation, but it does not mean there is lead or copper in your drinking water.** The most recent monitoring indicates that lead and copper levels were below the action levels at least 90 percent of residential drinking water taps sampled. However, it is important that everyone takes measures to control lead and copper levels in the water because ingesting lead or copper can cause serious health consequences.

Lead: Infants and children who drink water containing lead could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

Copper: Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's disease should consult their personal doctor.

What happened? What is being done?

The Michigan Department of Environment, Great Lakes, and Energy set ranges for our water quality parameters on June 16, 2022. After these ranges were designated, we collected samples in the distribution system on June 7, 2023, that were below the required minimum value for orthophosphate. Ten excursion days were accumulated in the distribution between the dates of June 7th and July 18th, 2023 for both the January to June and the July to December monitoring periods. We are working on operational techniques and on following up with all water quality parameter results timely to prevent this from happening again. For more information, please contact Bob Jackovich, boj@socwa.org, 248-288-5150, or 3910 West Webster Road, Royal Oak, Michigan 48073.

This notice is being sent to you by the City of Birmingham.



STATEMENT FROM THE CITY OF BIRMINGHAM RE: WATER NOTICE

The City of Birmingham mailed a notice to all Birmingham residents as required by State law, advising one of ten water samples collected in June of 2023 resulted in an orthophosphate level slightly below the required Michigan Department of Environment, Great Lakes, and Energy (EGLE) Water Quality Parameters (WQP). The City and Southeastern Oakland County Water Authority (SOCWA) believe the non-compliant sample produced a false low WQP due to it being inadvertently collected from a utility sink that was no longer in use and had been sitting stagnant awaiting demolition. Standing water should not be used for water sampling. A subsequent sample collected at the same site from an active sink in July of 2023 was found to meet all EGLE requirements.

“We consider the health, safety and welfare of our residents and water consumers in the City of Birmingham to be of paramount importance,” said Birmingham City Manager Jana Ecker. “It is important for residents to know this is a potential treatment issue, and the sample in question and all water delivered to residents is safe to consume.”

SOCWA provides routine water testing, including WQP monitoring, as a service to Birmingham and other member communities. For WQP monitoring in Birmingham, SOCWA tests water samples from 10 locations every quarter. One of the 10 locations used for WQP monitoring is the Whole Foods store located at 2100 E. Maple Road. Unbeknownst to SOCWA, Whole Foods reconfigured their store and had discontinued use of the food court area. When SOCWA collected the June 2023 WQP monitoring sample, they collected water from a sink in the former food court area, which had been sitting stagnant for an extended period of time awaiting demolition.

“The sample at issue from the Whole Foods food court sink should be disregarded because that source was not in active service and the results are not representative of the site,” said SOCWA General Manager Jeffrey McKeen.

Orthophosphate is added to water to prevent pipe corrosion. All tests show no indication of pipe corrosion. **Residents do not need to boil water or take other corrective actions.** All water being delivered to Birmingham residents and tenants is in compliance with the Safe Water Drinking Act. The City will increase water sampling over the next year per EGLE requirements.

Residents may view detailed information, including the mailed notice, documentation and a Q&A at www.bhamgov.org/waternotice.



September 21, 2023

Dear Birmingham residents, property owners and customers receiving a water bill:

Enclosed please find a Notice regarding your drinking water that we are required to send pursuant to Administrative Rule 325.10403 in accordance with the Michigan Department of Environment, Great Lakes and Energy regarding set ranges for water quality that fell below the parameters for one of the 10 samples taken throughout the City in June of 2023. One sample out of the 10 taken was determined to be non-compliant. However, the non-compliant sample was taken from a water source that was not in active service.

All information that is required to be sent in the attached Notice is included, satisfying the requirements of the Michigan Safe Drinking Water Act, 1976, P.A. 399, as amended. Also included with this Notice is a letter dated September 18, 2023 that was sent by the City Attorney to the Michigan Department of Environment, Great Lakes and Energy demonstrating that the City believes that no violation occurred, for all of the reasons stated therein. Due to the violation however, the City is increasing our water sampling from 30 samples taken every 12 months to 60 samples taken every 6 months. Additional information, including all attachments referenced in the September 18, 2023 letter and Frequently Asked Questions, can be found at www.bhamgov.org/waternotice. The City believes it is important for every resident and water consumer in the City of Birmingham to understand all the facts as they occurred.

We consider the health, safety and welfare of our residents and water consumers in the City of Birmingham to be of paramount importance. We feel confident that the water being delivered to our residents and tenants is in compliance with the Safe Water Drinking Act, and we are confident that we will continue to provide healthy and safe water to the City of Birmingham. If you have any questions after reading all of the attached information, please contact Bob Jackovich, bobj@socwa.org at 248-288-5150, or 3910 West Webster Road, Royal Oak, MI 48073.

Sincerely,

Jana L. Ecker
City Manager

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

City of Birmingham Did Not Meet Treatment Requirements

Our water system recently violated a drinking water standard. Although this situation does not require that you take immediate action, as our customers, you have a right to know what happened, what you should do, and what we are doing to correct this situation.

We purchase water from the Great Lakes Water Authority (GLWA) that is treated to control corrosion and minimize lead and copper in the pipes from dissolving into the water. To ensure we are maintaining optimal corrosion control, we routinely sample the water in the distribution system for water quality parameters such as pH and orthophosphate. We are required to maintain these parameters above the state-designated minimums. We did not maintain these parameters within the set ranges for more than nine days during both the January to June and July to December 2023 monitoring periods.

What should I do?

You do not need to boil your water or take other corrective actions. However, if you have specific health concerns, consult your doctor.

What does this mean?

This situation does not require that you take immediate action. If it had, you would have been notified immediately. This is a treatment violation, but it does not mean there is lead or copper in your drinking water. The most recent monitoring indicates that lead and copper levels were below the action levels at least 90 percent of residential drinking water taps sampled. However, it is important that everyone takes measures to control lead and copper levels in the water because ingesting lead or copper can cause serious health consequences.

Lead: Infants and children who drink water containing lead could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

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What happened? What is being done?

The Michigan Department of Environment, Great Lakes, and Energy set ranges for our water quality parameters on June 16, 2022. After these ranges were designated, we collected samples in the distribution system on June 7, 2023, that were below the required minimum value for orthophosphate. Ten excursion days were accumulated in the distribution between the dates of June 7th and July 18th, 2023 for both the January to June and the July to December monitoring periods. We are working on operational techniques and on following up with all water quality parameter results timely to prevent this from happening again. For more information, please contact Bob Jackovich, bobj@socwa.org, 248-288-5150, or 3910 West Webster Road, Royal Oak, Michigan 48073.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

This notice is being sent to you by the City of Birmingham.



* Berkley * Beverly Hills * Bingham Farms * Birmingham
* Clawson * Huntington Woods * Lathrup Village * Pleasant Ridge
* Royal Oak * Southfield * Southfield Township

To Whom it May Concern:

The City of Birmingham is a member of the Southeastern Oakland County Water Authority (SOCWA) along with 10 other neighboring communities. SOCWA provides water service to these 11 communities by purchasing treated water from the Great Lakes Water Authority and using the SOCWA water storage and transmission system to deliver metered water to each of the SOCWA member communities. SOCWA does not provide any treatment to the water purchased from GLWA. GLWA treats water, including the addition of phosphate for corrosion control, at its five water treatment plants. GLWA closely monitors the treated water to ensure compliance with all regulations. The water quality parameter (WQP) testing performed by GLWA has demonstrated that GLWA treated water always meets all EGLE requirements.

In addition to supplying treated GLWA water to the member communities, SOCWA also provides routine water testing as a service to its member communities. This routine water testing includes bacteriological, disinfection byproducts, unregulated contaminant and water quality parameter (WQP) monitoring. SOCWA has been performing these water testing services for its member communities for over a decade.

For WQP monitoring for Birmingham, SOCWA tests water samples from 10 locations in Birmingham every quarter. The 10 locations are the same for every quarter with locations being changed only when required by external factors. One of the 10 locations used for WQP monitoring is the Whole Food store located at 2100 E. Maple Road. There are multiple water use locations at the Whole Foods location. SOCWA used a sink in the food court area of the Whole Foods location as the testing location because it has always been readily accessible. The quarterly WQP monitoring results at the Whole Foods location and at all Birmingham locations showed acceptable pH and phosphate levels in previous WQP sampling periods.

Whole Foods reconfigured their store sometime during 2023 and discontinued using the food court area. This change was not known to SOCWA and SOCWA did not receive any notice about the changes. It appears that when SOCWA collected the June 2023 WQP monitoring sample, the sink in the food court area had not been used for an extended period of time. Based on information and belief, this sink has subsequently been removed by Whole Foods. SOCWA now uses a restroom in Whole Foods for the quarterly WQP testing.

The SOCWA lab technician received the WQP test results from the lab and recognized that the phosphate level for the Whole Foods sample was below the EGLE required level. The technician then used the other nine samples from Birmingham to calculate an average phosphate level. That calculated average, which was above the EGLE required level. The technician now realizes that this was a misinterpretation of the EGLE rule regarding the calculation of an average phosphate level. The rule

SOCWA • 3910 W. Webster Road • Royal Oak • Michigan • 48073 • Phone 248.288.5150 • Fax 248.435.0310 • Email socwa@socwa.org

www.socwa.org

Printed on Post Consumer Recycled Content Paper

requires average phosphate levels to be calculated for each location, not for the community as a whole.

SOCWA conducted the third quarter WQP testing on July 18, 2023. The sink at the Whole Foods location in Birmingham has been taken out of service between the June 7, 2023 and the July 18, 2023 testing. The July 18, 2023 sample was taken from a restroom at the Whole Foods location and was found to meet all EGLE requirements.

The goals and objectives of the governing regulatory program are met. The sample at issue from the Whole Foods food court sink should be disregarded because that source was not in active service and the results are not representative of the site. Using this type of information to cause unjustified and unsupported notices of concern to the residents of Birmingham is contrary to the intent of this regulatory program especially when the sole sample triggering the process is from a source that was not in active service. We trust the regulatory oversight here is able to analyze this issue based on the facts presented herein.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jeffrey A. McKeen".

Jeffrey A. McKeen, P.E.
General Manager

September 18, 2023

****Via: Email: Sylvester@Michigan.gov****

Matthew Sylvester, PE, Corrosion Control Specialist
Lead and Copper Unit /Community Water Supply Section
DWEHD, EGLE
P.O. Box 30817
Lansing, MI 48909-8311

Re: WSSN: - 00730
County: Oakland
Supply: City of Birmingham

Dear Mr. Sylvester:

I am responding to the violation notice received by the City of Birmingham August 21, 2023. You are aware of our protest with this violation based upon the Zoom meeting that we had wherein we described to you the particular circumstances and facts of our case. I am asking you for an exemption to a violation pursuant to R 325.10306(b) and (c), which states as follows:

“R 325.10306 Exemption from MCL or treatment technique; required finding.

Rule 306. Exemptions from an MCL or treatment technique other than those prohibited in R 325.10303 may be granted by the director only upon his or her specific finding that all of the following conditions exist:

(a) Due to compelling factors, including economic factors, a public water supply is not able to comply with an MCL or treatment technique.

(b) A public water supply for which an exemption is requested was in operation on the effective date of the state drinking water standard.

(c) The supplier of water demonstrates that the granting of an exemption will not result in an unreasonable risk to the health of persons using the public water supply.”

Whole Foods is a grocery store that has been operating in the City of Birmingham since testing designation and minimal values represented in the WQP designation letter dated June 14, 2022. Prior to COVID, the Whole Foods Market located at 2100 E. Maple Rd., Birmingham, MI, 48009, not only ran a grocery store, but also had a small area that was used as a café and bar. During COVID, this café ceased to exist, and based upon the Special Land Use Permit issued by the City of Birmingham to Whole Foods, Whole Foods needed to continue this café until Whole Foods petitioned the City and requested a change to the usage of this part of the grocery store. Through 2022 and the early months of 2023, Whole Foods created a new plan and submitted it to the City of Birmingham, wherein the café would be shut down, and the area previously used as a bar and food preparation was changed to an Amazon return site. The City of Birmingham became aware of the change of plans from Whole Foods in the spring and finally issued a plumbing permit on July 7, 2023 which is attached to this letter as Exhibit A.

It is important to note that Whole Foods has reported that May 4, 2023 was the last day that the area, previously a café turned bar, was open to the public and ceased operation as such. From May 5, 2023 through July 8, 2023, Whole Foods only used that space for team members to have seating for breaks. No food or drink was kept in this area during this time. No public access was given at this time. Most notably, neither of the two sinks in this area were used or utilized as it awaited demolition. On July 9, 2023 construction began removing all the equipment in this space including any sinks or water sources in this space. On July 19, 2023, construction was completed and it was turned into an Amazon reception area. Please also find enclosed as Exhibit B a letter documenting these facts from Whole Foods. A final plumbing inspection was completed on July 24, 2023 by the City of Birmingham, noting that all floor sinks in the northwest corner of the building were removed and terminated. Please see Exhibit C.

As EGLE is aware, SOCWA provides water services to eleven (11) communities in Oakland County, Michigan including the City of Birmingham. SOCWA purchases treated water from the Great Lakes Water Authority (GLWA) including the addition of phosphate for corrosion control. GLWA closely monitors the treated water to ensure compliance with all regulations. SOCWA provides routine water testing as a service to its eleven (11) community members including the water quality parameter monitoring at issue in this case. Serving Birmingham, SOCWA tested water samples from ten (10) locations every quarter. The locations are the same for every quarter with locations being changed only when required by external factors. This is one such external factor because when SOCWA went to Whole Foods using the sink in the café area that has been discussed thus far in this letter, SOCWA was unaware that this sink on June 7, 2023 was not in operation and not being utilized and, therefore, had sat stagnant. Had SOCWA inform the Whole Foods Manager that they were present, the Manager would have told them that the sink had not been in operation since May 4, 2023. Certainly the SOCWA representatives would have let the water run assuring that the sampling they were about to take was reliable and a true representation of the WQP levels for the site. As a result, the test came back below ever so slightly the EGLE required level. Please also find as Exhibit D, the letter from SOCWA which verifies this information, but to further complicate this issue, SOCWA calculated the phosphate level and the percentages and averages erroneously for this sample. It is important to note that when SOCWA conducted the third quarter testing on July 18, 2023, they learned that the sink had been taken out of service. A sample was taken from another source and, of course, as it had been historically and has been ever since, was found to meet all EGLE requirements.

The entire purpose of the Safe Water Drinking Act is to have in place regulatory programs with the sole purpose of assuring safe drinking water for the residents of Michigan and the residents of Birmingham. The sampling that was taken is an incorrect anomaly and the reporting of it also an incorrect anomaly as the technician from SOCWA calculated the averages erroneously. The low WQP for the sample of June 7, 2023 is falsely low based upon miscalculation and is further exacerbated by the fact that a sample was taken from a water source that was not in operation and was removed within a day or two of the sampling.

Beier Howlett

Matthew Sylvester, PE
September 18, 2023
Page 3

Based upon the letter written from EGLE, the City of Birmingham is now being told it must issue a public notice for something that is not a violation. The City is requesting that EGLE take into account that the average that was calculated was erroneous and the sample that was taken was unreliable and not an accurate and true representation or depiction of the safe water that is being given to the residents of the City of Birmingham. I am asking that you find that we have not had a violation or that there is an exception pursuant to R. 325.10306(b)(c) and, therefore, allowing the City to follow any additional requirements by EGLE as EGLE sees fit, and to advise the City of Birmingham that there is no violation and, therefore, no notice has to be sent to our residents. Sending out a notice such as this would not be an equitable response for the City, and more importantly would cause fear, concern, and potential panic to the residents for something that we don't believe to be a violation. We appreciate that the Act is in place to protect our residents, we too protect our residents and place their health and safety as the most important and paramount issue of the government's interest, but calling this a violation and requiring a notice would absolutely be against the whole point of the Act and all of the regulatory requirements in place for the protection of safe drinking water.

I am asking that you review this and react with urgency. According to your letter, we have until September 21, 2023 to send this letter to you, and yet at the same time we have until September 21, 2023 to put out the notice to the residents. As you can see, time is of the essence. I urge you and implore you to find that based upon the evidence being presented that no violation occurred and that no notice needs to be sent to the residents.

I look forward to hearing from you as soon as possible.

Very truly yours,



Mary M. Kucharek
Birmingham City Attorney



Melissa A. Coatta, P.E.
Birmingham City Engineer

MMK/jc



MEMORANDUM

City Clerk's Office

DATE: September 27, 2023
TO: Jana L. Ecker, City Manager
FROM: Alexandria Bingham, City Clerk
SUBJECT: City Policy Regarding Email Distribution Lists

The City Clerk's Office received an inquiry earlier this month from a resident who was concerned that the City may have provided her personal email address to a City Commissioner who sent her unwanted campaign emails. The Clerk's Office confirmed that the City had not provided the resident's email address to the Commissioner.

The City has a policy of not giving out the contact information of anyone who is subscribed to any of our mailing lists.

Communications Director Marianne Gamboa, Assistant City Manager Melissa Fairbairn, and City Attorney Mary Kucharek have affirmed this policy and practice.

Alleged water treatment violation reported

BY ANNE RUNKLE

ARUNKLE@MEDIANEWSGROUP.COM

Birmingham residents recently received a notice from the city advising them that one in 10 water samples collected last June resulted in an orthophosphate level slightly below that which the state requires.

Orthophosphate is added to water to prevent pipe corrosion; tests show no indication of corrosion. Residents do not need to boil water or take any other action, according to a release from the city.

Water delivered to residents is safe to consume, the release said.

The Michigan Department of Environment, Great Lakes and Energy and the Southeastern Oakland County Water Authority believe the non-compliant sample produced a false result due to it being inadvertently collected from a utility sink that was no longer in use and had been sitting stagnant awaiting demolition, the release said.

Standing water should not be used for water sampling, the release said.. A subsequent sample collected at the same site from an active sink in July 2023 met all EGLE requirements. SOCWA provides routine water testing, which includes monitoring EGLE's water quality parameters, as a service to Birmingham and other member communities.

SOCWA tests water samples from 10 locations in Birmingham every quarter.

The Whole Foods store at 2100 E. Maple Road is one of the locations. The store was reconfigured and discontinued use of a food court area.

When SOCWA officials collected the June 2023 monitoring sample, they collected water from a sink in the former food court area, which had been sitting stagnant.

The city will increase water sampling over the next year per EGLE requirements.

For more information, residents may contact SOCWA Operations Manager Bob Jackovich at bobj@socwa.org, 248-288-5150 or 3910 W. Webster Road, Royal Oak, Michigan 48073.

Residents may view detailed information, including the mailed notice, documentation and a Q&A at www.bhamgov.org/waternote.

INFORMATION ONLY



September 22, 2023

The Honorable Pete Buttigieg
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg:

On behalf of the City of Birmingham, we are writing to express support for the Advancing Corridors for Transit (ACT) project, which has been developed as a co-application from the Regional Transit Authority of Southeast Michigan (RTA), Michigan Department of Transportation (MDOT), and the Southeast Michigan Council of Governments (SEMCOG) for the Regional Partnerships Challenge category of the Reconnecting Neighborhoods and Communities (RCN) grant program.

Some communities are disconnected by the location of an interstate or a railroad track. In metro Detroit, the biggest obstacle to connecting our citizens to one another, and to opportunity, is the need to enhance our regional transit network. The ACT project proposes critical catalytic investments needed to jumpstart this effort to make tangible improvements to unite our region and remove regional barriers to employment and opportunity.

Specifically, the ACT project will include capital and project development investments targeting the largest regional transit service corridors in Southeast Michigan. Three of these corridors, Gratiot, Michigan, and Woodward connect the City of Detroit to Macomb, Oakland, and Wayne Counties. One of these corridors, Washtenaw, connects Ann Arbor to Ypsilanti. Collectively, these corridors connect over 465,000 or 10% of people and around 415,000 or 25% of jobs in the region, and they are home to major educational institutions, hospitals, and cultural centers. Improvements to these corridors will boost ridership, increase reliability, improve amenities, and address persistent issues with pedestrian safety at transit stop locations.

Our municipality, located in Oakland County in metro Detroit, is home to over 21,000 residents, with over 2 million square feet of office space, and 1.5 million square feet of retail. Improving regional transit will connect the local and regional workforce to our businesses. A more functional, reliable, and frequent transit system will also advance equitable economic development, improve access to opportunities for underserved communities, build community wealth, support climate resiliency, and support the State of Michigan's goal to retain and attract talented workers. Our region has the political will, technical expertise, and determination to take historic steps to reconnect our communities and improve people's lives.

Sincerely,

Therese Longe
Mayor

Jana L. Ecker
City Manager

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