

BIRMINGHAM CITY COMMISSION AGENDA
APRIL 24, 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

- The City recommends members of the public wear a mask if they have been exposed to COVID-19 or have a respiratory illness. City staff, City Commission and all board and committee members must wear a mask if they have been exposed to COVID-19 or actively have a respiratory illness. The City continues to provide KN-95 respirators and triple-layered masks for attendees.
- Arbor Day Celebration Proclamation
- Arab American Heritage Month Proclamation
- Chaldean-American Month Proclamation
- Clerk Week Proclamation

APPOINTMENTS

A. Appointment to the Board of Building Trades Appeals

1. Dennis Mando
2. Scott H. Sirich

To appoint _____ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2026.

To appoint _____ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2026.

B. Employee Recognition

1. Promotion of Jeff Scaife to Fire Marshal

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 regular meeting minutes of March 27, 2023.
- B. Resolution to approve the City Commission workshop meeting minutes of April 3, 2023.
- C. Resolution to approve the City Commission regular meeting minutes of April 3, 2023.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated April 5, 2023 in the amount of \$402,708.23.
- E. Resolution to approve the warrant list, including Automated Clearing House payments, dated April 12, 2023 in the amount of \$633,448.28.
- F. Resolution to approve the warrant list, including Automated Clearing House payments, dated April 19, 2023 in the amount of \$1,190,459.59.
- G. Resolution to approve the purchase a Tandem-Axle Dump Truck from Wolverine Truck Group, located at 107 S. Groesbeck, Mt. Clemens, MI 48043, under the Rochester Hills Cooperative Agreement, RFP-RH-20-023, in the amount not to exceed \$313,976.00. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City. Funds for this purchase are available in the FY 2022-2023 Auto Equipment Fund account #661.0-441.006.971.0100.
- H. Resolution to approve the Fourth Amendment to the Tennis Facility Lease with the Birmingham Racquet Club authorizing a second ten (10) year extension to the lease, ending September 30, 2043, in consideration of the Lessee making long-term improvements and maintenance of the tennis facility and offering a resident discount of 20% across all memberships according to Attachment A. Further, to authorize the Mayor and Clerk to sign the agreement upon receipt of the required insurance.
- I. Resolution to approve an extension of the public services and minor home repair contract with NEXT for the purpose of expending remaining program year 2020-2021 Community Development Block Grant funds for Minor Home Repair Services administered by NEXT through June 30, 2024; and further, to authorize the Mayor and the City Clerk to sign the amendment on behalf of the City.
- J. Resolution to award the 2022-2023 Public Services contract totaling \$10,445.00 for Yard Services and Senior Outreach Services to NEXT under the Community Development Block Grant Program; and further, to authorize the Mayor to sign the contract on behalf of the City.

- K. Resolution WHEREAS, the City Treasurer, in accordance with the provisions in the City Code has reported certain special assessments and invoices, including interest and penalty, unpaid and delinquent on May 1, 2023, and

WHEREAS, the City Code provides that these delinquent special assessments and invoices shall be carried to the next annual City tax roll,

NOW THEREFORE BE IT RESOLVED, that the listing of unpaid and delinquent special assessments and invoices, including interest and penalty, be transferred and reassessed to the 2023 City tax roll with an additional 15% penalty and authorization be given to remove from the list any bills paid after commission approval.

- L. Resolution WHEREAS, The City Treasurer, in accordance with Chapter 114, Section 114-303, of the city code has reported certain water/sewage accounts, including interest and penalty, unpaid and delinquent on May 1, 2023, and

WHEREAS, Chapter 114, Section 114-303, of the city code provides that these payments shall be carried to the next annual city tax roll.

NOW, THEREFORE, BE IT RESOLVED, that the properties with unpaid and delinquent water/sewage accounts, listed in the Delinquent Water/Sewer Tax Roll, dated April 13, 2023, including interest and penalty, be transferred and reassessed to the 2023 city tax roll and authorization be given to remove from the list any bills paid or a payment plan agreement signed after commission approval.

- M. Resolution to approve the art donation and temporary art installation of a piano to be placed in Shain Park beneath the Markus Pavilion from the middle of May 2023 to the end of November 2023.

- N. Resolution to approve the project budget increase for Contract #5-21 (P), 2021 Asphalt Resurfacing Program, by \$382,510.00 to a total budget for Parking Lot No. 5 of \$485,510.00, and approving the appropriation and amendment of the 2022/2023 budget as follows:

Automobile Parking System:

Revenues:

Draw from Fund Balance	514.1-000.000-400.0000	\$382,510.00
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Expenditures:

Public Improvements	514.1-594.005-981.0100-21.ASPHALT	\$382,510.00
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- O. Resolution to set the Public Hearing of Necessity for the construction of sidewalk and streetscape improvements adjacent to all properties within the project area on Brown Street, from S. Old Woodward Ave. to Woodward Ave., on Monday, May 8, 2023, at 7:30 P.M.; and

If necessity is determined on May 8, 2023, to meet on Monday, May 22, 2023, at 7:30 P.M., for the purpose of conducting the Public Hearing to Confirm the Assessment Roll for

construction of sidewalk and streetscape improvements adjacent to all properties within the project area on Brown Street, from S. Old Woodward Ave. to Woodward Ave.

- P. Resolution to accept the resignation of George Stern from the Greenwood Cemetery Advisory Board, to thank him for his service, and to direct the City Clerk to begin the process of filling the vacancy of this regular board member position with term expiration of July 6, 2024.
- Q. Resolution to accept the resignation of Robert Ziegleman, Chris McLogan and Luke Joseph from the Housing Board of Appeals, to thank them for their service, and to direct the City Clerk to continue to accept applications to fill vacancies on the Housing Board of Appeals.

VI. UNFINISHED BUSINESS

- A. Proposed Ordinance Amending Chapter 66 – Establishing Tenants Rights for Senior Citizens
 - 1. Motion to adopt the proposed ordinance, which amends Birmingham City Code, Part II, Chapter 66 – Human Relations, Article II. Discrimination, Division 2. Fair Housing, Sec. 66-36. et al, which prohibits discrimination for persons who are 65 years of age and older, living in dwellings of four units or greater, based upon the senior citizens' source of income, and to protect their security by changing their rights to renew their leases in a way that now is a balance between the seniors' interest and those of landlords.
- B. Public Hearing - to amend Chapter 126 (Zoning), Article 3, Section 3.04, Article 3, Section 3.16, Article 4, Section 4.44 and Article 9, Section 9.02 to provide clear and enforceable outdoor dining standards AND to amend Chapter 98 (Streets, Sidewalks and Other Public Places), Article 2 and Article 3, to add language for outdoor dining facilities on public property
 - 1. Resolution to *postpone* consideration of the amendments to Chapter 126 (Zoning), Article 3, Section 3.04, Article 3, Section 3.16, Article 4, Section 4.44 and Article 9, Section 9.02 AND the amendments to Chapter 98 (Streets, Sidewalks and Other Public Places), Article 2 and Article 3, to a date certain of May 22, 2023.
- C. Proposed Ordinance Amending Chapter 26 – Establishing and Regulating Marihuana
 - 1. Motion to adopt the ordinance to Amend Part II of the City Code, Chapter 26 - Businesses, Article XII - Marihuana Establishments Prohibited to now be identified as Chapter 26 - Businesses, Article XII. Medical Facility and Adult-Use Marihuana Establishments, in order to establish and regulate marihuana businesses.

VII. NEW BUSINESS

- A. Resolution to establish the Ad Hoc Aging in Place Committee for a term of 18 months, and to direct staff to advertise for upcoming appointments to this committee; further, once established, to direct staff to facilitate the requested studies and research needed to develop an action plan to improve the health, safety and welfare of senior citizens in Birmingham.

- B. Public Hearing - 1429 Quarton Road (Parcel # 19-26-203-003) – Lot Division
 - 1. Resolution to approve the lot division of 1429 Quarton Road, parcel # 19-26-203-003.
- C. Proposed Ordinance Amending Chapter 2 – Changes to the Ethics Ordinance
 - 1. Motion to adopt the ordinance amendments as recommended by the Board of Ethics and to further direct the City Clerk to notice the two available alternate Ethics Board member positions and begin the process of filling these vacancies.
- D. 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.
- E. Commission discussion on items from a prior meeting.
 - None.
- F. Resolution to meet in closed session to discuss the potential purchase of land pursuant to MCL § 15.268 Sec. 8(d) of the Open Meetings Act and pursuant to MCL § 15.268 Sec. 8(h) to discuss a written attorney client privileged communication.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

VIII. REMOVED FROM CONSENT AGENDA
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IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intention to Appoint to the Historic District Study Committee
 - 2. Notice of Intention to Appoint to the Greenwood Cemetery Advisory Board
 - 3. Notice of Intention to Appoint to the Martha Baldwin Park Board
 - 4. Notice of Intention to Appoint to the Board of Ethics
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. City Manager's Report
 - 2. Code of Conduct

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).



*** OFFICIAL PROCLAMATION ***

WHEREAS in 1872, the Nebraska Board of Agriculture established a special day to be set aside for the planting of trees, *and*

WHEREAS this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, *and*

WHEREAS Arbor Day is now observed throughout the nation and the world, *and*

WHEREAS trees can be a solution to combating climate change by reducing the erosion of our precious topsoil by wind and water, cutting heating and cooling costs, moderating the temperature, cleaning the air, producing life-giving oxygen, and providing habitat for wildlife, *and*

WHEREAS trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products, *and*

WHEREAS trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, *and*

WHEREAS trees — wherever they are planted — are a source of joy and spiritual renewal.

NOW, THEREFORE, I, Therese Longe, Mayor of the City of Birmingham, do hereby proclaim Friday, April 28, 2023 as **ARBOR DAY** In the City of Birmingham, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, *and*

FURTHER, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

DATED THIS 28th day of April, 2023
Mayor _____





PROCLAMATION

Recognizing April 2023 As Arab American Heritage Month

- WHEREAS,** For over a century, Arab Americans have been making valuable contributions to virtually every aspect of American society including medicine, law, business, education, technology, government, military service, and culture; and,
- WHEREAS,** Since migrating to America, people of Arab descent have shared their rich culture and traditions with neighbors and friends, while also serving as model citizens and public servants; and,
- WHEREAS,** Arab Americans hold resilient family values, strong work ethic, dedication to education, and diversity in faith and creed, all of which have strengthened our republic; and,
- WHEREAS,** Arab Americans have enriched our society by embodying the entrepreneurial spirit that makes our nation free and prosperous; and,
- WHEREAS,** The history of Arab Americans in the U.S. too often has been tainted misconceptions, bigotry, and hatred; and,
- WHEREAS,** Arab American issues, such as civil rights, stereotyping, and bullying must be combated through education and awareness; and,
- WHEREAS,** We must come together as Americans to build a peaceful, prosperous diverse society, where every individual is treated equally; and,
- WHEREAS,** The Birmingham City Commission is honored to join with the Arab America Foundation to celebrate the Arab American community;
- THEREFORE,**
BE IT RESOLVED that I, Therese Longe, Mayor of the City of Birmingham, on behalf of the citizens of Birmingham, do hereby recognize April 2023 as National Arab American Heritage Month and encourages our citizens to join us in the special observance.

*On Behalf of the City Commission and the
residents of Birmingham on this 24th day of April, 2023.*

Therese Longe, Mayor



PROCLAMATION

Recognizing April 2023 as Chaldean-American Month

- WHEREAS,** Chaldeans Assyrians Syriacs, a Semitic people who speak Aramaic, are the indigenous people of Mesopotamia who have lived in the Middle East since ancient times, including in what is today Iraq, Syria, Turkey, and Iran; and,
- WHEREAS,** Collectively, there are nearly half a million Chaldeans Assyrians Syriacs in the United States, including about 160,000 in Michigan, the largest concentration in the country; and,
- WHEREAS,** The Assyrian/Babylonian new Year, Akitu, is a celebration of spring, rebirth, and renewal which often culminates in a celebration on April 1st; and,
- WHEREAS,** April 24th marks the anniversary of Seyfo, or the Genocide that claimed the lives of a million Chaldeans Assyrians Syriacs, Armenians, and Greeks; and
- WHEREAS,** The Chaldean Assyrian Syriac community enrich Michigan's cultural tapestry and prosperity through their success in the arts, business, law, politics, education, medicine, architecture, and engineering; and
- THEREFORE,
BE IT RESOLVED** that I, Therese Longe, Mayor of the City of Birmingham, on behalf of the citizens of Birmingham, do hereby recognize April 2023 as Chaldean-American Heritage Month and encourages our citizens to join us in the special observance.

*On Behalf of the City of Birmingham and the
residents of Birmingham this 24th day of April, 2023.*

Therese Longe, Mayor



PROCLAMATION

54th ANNUAL PROFESSIONAL MUNICIPAL CLERKS WEEK April 30 - May 6, 2023

- WHEREAS,** The Office of City Clerk, a time honored and vital part of local government which exists throughout the world, and
- WHEREAS,** The City Clerk is the oldest among public servants, and
- WHEREAS,** The City Clerk's Office provides another professional link between the citizens, the local governing bodies and agencies of government at other levels, and
- WHEREAS,** Professional City Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all, and
- WHEREAS,** The Professional Municipal Clerk serves as the official record keeper of the city and oversees the election process, and
- WHEREAS,** City Clerks continually strive to improve the administration of the affairs of the Office of the City Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, provincial, county and international professional organizations.
- WHEREAS,** The City Commission expresses their appreciation for the services provided by the Clerk's Office.
- THEREFORE,
BE IT RESOLVED** that I, Therese Longe, Mayor of the City of Birmingham, do recognize the week of April 30 through May 6, 2023, as Professional City Clerks Week, and further extend appreciation to our Birmingham Clerk's Office Staff, City Clerk Alexandria Bingham, Deputy Clerk Christina Woods, and clerical assistants Kelly Dolland, Ingrid Haddock and Ann Tappan, for the vital services they perform and their exemplary dedication to the Birmingham Community they represent.

*On Behalf of the City of Birmingham and the
residents of Birmingham this 24th day of April, 2023.*

Therese Longe, Mayor



NOTICE OF INTENTION TO APPOINT TO BOARD OF BUILDING TRADES APPEAL

At the regular meeting of Monday, April 24, 2023 the Birmingham City Commission intends to appoint to the Board of Building Trades Appeals two regular members to serve three-year terms to expire May 23, 2026 and two regular members to serve the remainder of three-year terms to expire May 23, 2025. Applicants shall be qualified by experience or training in fields such as architecture, engineering, mechanical engineering, building, electrical plumbing, heating or refrigeration.

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, April 19, 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 vote on appointments.

The Board of Building Trades Appeal hears and grants or denies requests for variances from strict application of the provisions of the Michigan Building, Residential, Mechanical and Plumbing Codes and the National Electrical Code. The board will decide on matters pertaining to specific code requirements related to the construction or materials to be used in the erection, alteration or repair of a building or structure.

NOTE: Attendance records are not included in this report because the Board has not met since before 2015.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Applicants shall be qualified by experience or training.
Dennis Mando	Current Board member, Mechanical Contractor
Scott H. Sirich	Current Board member, Attorney

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 _____ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2026.

To appoint _____ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2026.



BOARD OF BUILDING TRADES APPEALS

Chapter 22, Article II, 1972 PA 230, MCL 125.1514

Members shall be qualified by experience or training (such as Architect, Engineer, Mechanical Engineer, Building Contractor, Electrical Contractor, Plumbing Contractor, Heating Contractor, and Refrigeration Contractor).

Term: Three years – 6 members

The Board of Building Trades Appeal hears and grants or denies requests for variances from strict application of the provisions of the Michigan Building, Residential, Mechanical and Plumbing Codes and the National Electrical Code. The board will decide on matters pertaining to specific code requirements related to the construction or materials to be used in the erection, alteration or repair of a building or structure.

Last Name	First Name	Home Business	Appointed	Term Expires
Home Address		E-Mail		
Afrakhteh	Arya	(248) 635-9925	6/28/2021	5/23/2024
490 Lakeside Dr.			Builder/engineer	
Birmingham	48009	<i>arya26@att.net</i>		
Mando	Dennis	(248) 767-0515	1/30/2006	5/23/2023
5310 Heron Cove		(248) 669-4338	Heating contractor	
Beaverton	48612	<i>denny@dennysonline.com</i>		
Sirich	Scott H.	(248) 385-5398	8/10/2020	5/23/2023
1756 Melbourne			Construction law attorney	
Birmingham	48009	<i>ssirich@plunkettcooney.com</i>		
Vacated	5/23/2022			5/23/2025
Vacated	5/23/2022			5/23/2025

Last Name	First Name	Home Business		
Home Address		E-Mail	Appointed	Term Expires
Wiand	Rick	(248) 766-2275	6/28/2021	5/23/2024
956 Westwood Dr.			Builder	
Birmingham	48009	<i>rickw@hunterrobertshomes.com</i>		

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 Building - HVAC Mechanical

Specific Category/Vacancy on Board Board of Building Trades Appeals (see back of this form for information)

Name Dennis J. Mando

Phone 248-767-0515

Residential Address 558 geyer

Email * denny@dennysonline.com

Residential City, Zip Frankenmuth, MI 48734

Length of Residence 10

Business Address 1831 Austin Drive

Occupation Mechanical Contractor

Business City, Zip Troy, MI 48063

Business Owner

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

I previously held a position with The Birmingham Board. Actively involved with many inspectors in the metro area & have kept up with code changes & municipality requirements/changes.

List your related employment experience Business owner of an HVAC Mechanical Contracting Co for 47 years in metro area.

List your related community activities Previously served on the Birmingham City Board. Have been involved in projects in Birmingham for 45 years.

List your related educational experience Licensed Mechanical Contractor for 47 years. Attended classes at Henry Ford CC. Attended classes hosted by Metropolitan Mechanical Inspectors Association, Inc.

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? no

Dennis J. Mando
Signature of Applicant

3/24/23
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 clerksoffice@bhamgov.org or by fax to 248.530.1080. Updated 3/24/2021

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



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 Building Trades and Appeals

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

Name Scott H. Sirich

Phone 248-768-4300

Residential Address 1756 Melbourne

Email ssirich@plunkettcooney.com

Residential City, Zip Birmingham, Michigan 48009

Length of Residence Life time

Business Address 38505 Woodward Ave, Ste 100

Occupation Attorney

Business City, Zip Bl. Hills, Michigan 48304

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____
See Response to Question 1, attached.

List your related employment experience _____
See Response to Question 2, attached.

List your related community activities _____
See Response to Question 3, attached.


List your related educational experience _____
See Response to Question 4, 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

4-19-23
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email

Response to Question 1:

I have lived in Birmingham my whole life, with the exception of my college years. I attended Quarton, Covington and Seaholm (class of 1985) and view this as an opportunity to give back to the community I love so much. I am an attorney at the local law firm of Plunkett Cooney and have lead the firm's Construction Law practice area for many years. I have attached my resume for reference. I feel I am more than qualified to serve on the Board of Building Trades and Appeals given my decades of experience in the construction arena including in the areas of architecture, engineering, mechanical engineering, building, electrical plumbing, heating or refrigeration. My practice is dedicated to representing practitioners in all these disciplines.

Response to Question 2:

Please see my response to Question 1, above, and my attached resume.

Response to Question 3:

My time has been dedicated to raising my 2 girls the past 15 years. I am active in my church community and the First United Methodist Church, but this is the first time I've sought to give back my community in this fashion .

Response to Question 4:

Please see my response to Question 1, above, and my attached resume.



Scott H. Sirich

PARTNER

38505 Woodward Ave., Suite 100

Bloomfield Hills, MI 48304

T: (248) 594-8228 | F: (248) 901-4040

ssirich@plunkettcooney.com

Practice Areas

Architect & Engineer Liability

Construction Law

Construction Lien Law

Construction Site Accidents

Contractors' Legal Issues

Insurance Coverage Law

OSHA/MIOSHA Issues

Education

- Wayne State University Law School, J.D., 1992
- University of Michigan, B.A., English and Economics, 1989

Admissions

Michigan, 1992

A partner at Plunkett Cooney since 2001, Scott H. Sirich focuses his practice in the areas of construction law, architects and engineers' liability, insurance law, occupational health and safety law and general commercial litigation.

Mr. Sirich represents architectural and engineering design firms, construction managers, general contractors, subcontractors, owners, and developers in all construction matters both directly and through insurance carriers.

Mr. Sirich is a member of numerous professional organizations. He graduated from Wayne State University School of Law in 1992, and earned his undergraduate degree in English and Economics from the University of Michigan 1989.

Representative Client Work

- Defended nationally-recognized, architectural design firm in multi-million dollar litigation involving delay claims, labor disruption and inefficiency claims, and alleged professional negligence arising out of the design and construction of a \$100,000,000 forensic psychiatric facility for the State of Michigan
- Defended national MEP design firm in arbitration and federal court litigation involving design and construction of \$500,000,000, university-affiliated cardiovascular hospital
- Served as monitoring counsel for all claims involving a \$40,000,000 OCIP/PMCIP related to a \$500,000,000 public works project in Michigan

SCOTT H. SIRICH Cont.

- Defended numerous design professionals on various claims arising out of the design and construction of the new McNamara Terminal at the Detroit Metropolitan Airport
- Michigan counsel for international design firm involved in numerous federal, state, and local bridge, highway and road construction projects
- Represented and served as general counsel for large contracting firms and design professionals in all legal matters, including lien law, contract negotiation, risk management, ADR and litigation.
- Defended design firms in multi-million dollar litigation involving significant construction projects at state universities
- Construction counsel for local colleges and other public institutions in all construction matters
- National construction defect counsel for State of Michigan for large insurance carrier involved in the coordination of emergency/rapid response investigations and all manner of defense and investigation of construction defect and accident claims

Professional Affiliations

- State Bar of Michigan (Real Property Law Section - Construction Committee)
- American Bar Association (Forum on the Construction Industry member)
- ALFA International (Construction Law Practice Group)
- American Arbitration Association Advisory Board (2004-2006)
- International Association of Defense Counsel

Community Involvement

- City of Birmingham Board of Building Trades Appeals (2020-2023)

Publications and Lectures

- "Reverse Engineering Contract Clauses for Effective Risk Management of Delay Claims," Speaker, IADC 2021 Annual Meeting, Fairmont Chicago, Aug. 15 - 19, 2021
- "Minimizing Engineering Liability Exposure," seminar sponsored by Half Moon, LLC, lecturer, Dec. 13, 2011
- "AIA Contracts," seminar sponsored by Lorman Education Services, lecturer, Feb. 21, 2006
- "AIA Contracts", seminar sponsored by Lorman Education Services, lecturer, Feb. 25, 2005
- "Time Waits for No One: Statutory Time Limitations on Construction Claims, article, CAM Magazine, Vol. 25, No. 8, August 2004

SCOTT H. SIRICH Cont.

- "Architect/Engineer Liability and Practice in Michigan," seminar sponsored by Lorman Education Services, lecturer, Jan. 10, 2003
- "Solving Water Intrusion and Mold Problems in Michigan," seminar sponsored by Lorman Education Services, lecturer, Aug. 7, 2003
- "Solving Water Intrusion and Mold Problems in Michigan," seminar sponsored by Lorman Education Services, lecturer, Aug. 15, 2002
- "Construction Claims in Michigan," seminar sponsored by Lorman Education Services, lecturer, Oct. 3, 2002
- "Michigan Law for Design Professionals," seminar sponsored by Lorman Education Services, lecturer, Sept. 14, 1999
- "Construction Law for Attorneys in Michigan," seminar sponsored by Lorman Education Services, lecturer, Nov. 30, 1999
- "OSHA Issues and Answers," seminar sponsored by Lorman Education Services, lecturer, Nov. 9, 1994

Honors & Recognitions

- Best Lawyers® 2023 Construction Law "Lawyer of the Year" in Bloomfield Hills
- Best Lawyers in America® for Construction Law, 2012 - 2023
- Best Lawyers in America® for Construction Litigation, 2020 - 2023
- Leading Lawyer in Construction Law, Leading Lawyers Magazine Michigan, 2015
- Martindale-Hubbell's highest rating-AV Preeminent™ Peer Review Rated
- Michigan Super Lawyer in Construction Litigation, Michigan Super Lawyers, a Thomson Reuters publication, 2009 - 2022
- Top Lawyer in Construction Law and Litigation, dbusiness Magazine, 2015, 2023
- Top Lawyer in Construction Litigation, dbusiness Magazine, 2014, 2020
- Appointment to AAA Construction Advisory Committee

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

Fire Department

DATE: April 19, 2023

TO: Thomas M. Markus, City Manager

FROM: Paul A. Wells, Fire Chief

SUBJECT: Introduction to the City Commission and Recognition of Promotion

Jeff Scaife began his career with the Birmingham Fire Department (BFD) on November 30, 2015. Jeff brought prior experience with him from both the Auburn Hills Fire Department and the Armada Fire Department. Soon after joining the BFD, Jeff became a part of the Fire Prevention Bureau. He has served the department well in his role as Fire Inspector for many years.

Following a thorough external and internal applicant search and interview process, it was determined that Jeff Scaife was the top candidate for Fire Marshal with the Birmingham Fire Department. Jeff met all the qualifications and more, including having a Master's Degree.

Jeff began his appointed transition to Fire Marshal on April 3, 2023. Over the past few weeks he has quickly adapted to his new role and should be a great asset for the Birmingham Fire Department for several years. Jeff is working in tandem with Fire Marshal Alan Soave to ensure a smooth transition. Alan will continue his commitment to the department and the fire prevention bureau by being assigned to Fire Marshal Scaife upon his return to Battalion Chief. We greatly appreciate Alan Soave's professionalism during this transition period.

We would like to formally invite the City Commissioners to attend Jeff's official swearing in ceremony that will take place at the Fire Department Open House on Saturday, October 14, 2023 at 12:30p.m. A recently promoted Battalion Chief and two probationary firefighters will also be sworn in at this year's ceremony.

Birmingham City Commission Minutes

March 27, 2023

Municipal Building, 151 Martin

7:30 p.m.

Vimeo Link: <https://vimeo.com/807749761>

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: CM Markus; City Clerk Bingham, Planning Director Dupuis, Assistant City Manager Ecker,
City Attorney Kucharek

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

Announcements

- The City recommends members of the public wear a mask if they have been exposed to COVID-19 or have a respiratory illness. City staff, City Commission and all board and committee members must wear a mask if they have been exposed to COVID-19 or actively have a respiratory illness. The City continues to provide KN-95 respirators and triple-layered masks for attendees.
- Proclamation recognizing April 24, 2023 as Armenian Genocide Remembrance Day

Appointments

Jeremy Caverly and Veronica Rivera were interviewed for potential appointment to the Ad Hoc Environmental Sustainability Committee. They were not nominated for a position.

Patrick Hillberg rescinded his application for the Ad Hoc Environmental Sustainability Committee, citing the number of candidates and their high quality.

Lindsay Wold and Tom Fink were unavailable to be interviewed for an appointment to the Ad Hoc Environmental Sustainability Committee and were not nominated for a position.

Joel Wrobel was unavailable to be interviewed for an appointment to the Parks and Recreation Board. It was noted that he would be invited for an interview at a later date.

03-050-23 Appointment to the Planning Board

Janelle Boyce was unavailable to be interviewed for her reappointment. The Mayor noted Ms. Boyce was a long-serving member of the Board and asked if the Commission would be comfortable reappointing Ms. Boyce in her absence.

The Commission assented.

MOTION: Nomination by Commissioner Schafer:
To appoint Ms. Boyce to the Planning Board as a regular member to serve a three-year term to expire March 28, 2026.

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

Nays, None

03-051-23 Appointment to the Planning Board

Bert Koseck was unavailable to be interviewed for his reappointment. The Mayor noted Mr. Koseck was a long-serving member of the Board and asked if the Commission would be comfortable reappointing Mr. Koseck in his absence.

The Commission assented.

MOTION: Nomination by Commissioner Boutros:
To appoint Mr. Koseck as a regular member to the Planning Board as a regular member to serve a three-year term to expire March 28, 2026.

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

Nays, None

03-052-23 Appointment to the Ad Hoc Environmental Sustainability Committee

The Mayor provided introductory remarks on the Ad Hoc Environmental Sustainability Committee.

Joseph Mercurio was interviewed for the appointment.

MOTION: Nomination by Commissioner Boutros:

To appoint Mr. Mercurio to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Boutros specified that Mr. Mercurio would occupy the energy/electric vehicles position on the Committee.

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

Nays, None

03-053-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Jess Newman was interviewed for the appointment.

MOTION: Nomination by Commissioner Baller:

To appoint Ms. Newman to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Baller specified Ms. Newman would be the resident-at-large on the Committee.

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

Nays, None

03-054-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Lara Edwards was interviewed for the appointment.

MOTION: Nomination by Commissioner Schafer:

To appoint Ms. Edwards to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Schafer specified that Ms. Edwards would occupy the stormwater position on the Committee.

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

Nays, None

03-055-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Lois DeBacker was interviewed for the appointment.

MOTION: Nomination by Commissioner Haig:
To appoint Ms. DeBacker to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Haig specified that Ms. DeBacker would occupy the environmental law consulting position on the Committee.

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

Nays, None

03-056-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Albert Harvey Bell IV was interviewed for the appointment.

MOTION: Nomination by Commissioner Host:
To appoint Mr. Bell to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Host specified that Mr. Bell would occupy the building/construction position on the Committee.

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

Nays, None

03-057-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Jerome S. Amber was interviewed for the appointment.

MOTION: Nomination by Commissioner Haig:
To appoint Mr. Amber to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Haig specified that Mr. Amber would occupy the waste position on the Committee.

VOICE VOTE: Ayes, Commissioner Host
Commissioner Haig

Nays, MPT McLain
Commissioner Boutros
Mayor Longe
Commissioner Schafer
Commissioner Baller

03-058-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Rachna Gulati was interviewed for the appointment.

MOTION: Nomination by Commissioner Schafer:
To appoint Ms. Gulati to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Schafer specified that Ms. Gulati would occupy the waste position on the Committee.

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

Nays, Commissioner Host

03-059-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Danielle Todd was interviewed for the appointment.

MOTION: Nomination by Commissioner Baller:
To appoint Ms. Todd to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

Commissioner Baller specified that Ms. Todd would occupy the waste position on the Committee.

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

 Nays, TwoCommissioner Host
 Commissioner Haig

03-060-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Daniella Torcolacci was interviewed for the appointment.

MOTION: Nomination by Commissioner Host:
To appoint Ms. Torcolacci to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

The Mayor specified that Ms. Torcolacci would occupy the energy position on the Committee.

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

 Nays, None

03-061-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Debra Horner was interviewed for the appointment.

MOTION: Nomination by Commissioner Baller:
To appoint Ms. Horner to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

The Commissioner Baller specified that Ms. Horner would occupy the stormwater position on the Committee.

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

Nays, None

03-062-23 Appointment to the Ad Hoc Environmental Sustainability Committee

Kevin Bopp was interviewed for the appointment.

MOTION: Nomination by Commissioner Baller:

To appoint Mr. Bopp to the Ad Hoc Environmental Sustainability Committee as a regular member to serve an eighteen-month term to expire September 27, 2024.

The Commissioner Baller specified that Mr. Bopp would occupy the building/construction position on the Committee.

VOICE VOTE: Ayes, Commissioner Baller
Commissioner Host

Nays, MPT McLain
Commissioner Boutros
Mayor Longe
Commissioner Haig
Commissioner Schafer

03-063-23 Appointment to the Public Arts Board

Andi Harris was interviewed for the appointment.

MOTION: Nomination by Commissioner Boutros:

To appoint Ms. Harris to the Public Arts Board as an alternate member to serve the remainder of a three-year term to expire January 28, 2026.

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

Nays, None

03-064-23 Appointment to the Parks and Recreation Board

Sarah Kupczyk was interviewed for the appointment.

MOTION: Nomination by Commissioner Schafer:

To appoint Mr. Kupczyk to the Parks and Recreation Board as a regular member to serve a three-year term to expire March 13, 2026.

VOICE VOTE: Ayes, MPT McLain

Commissioner Boutros
Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Schafer
Commissioner Baller

Nays, None

03-065-23 Appointment to the Parks and Recreation Board

Steve Sweeney was interviewed for the appointment.

MOTION: Nomination by Commissioner Host:
To appoint Mr. Sweeney to the Parks and Recreation Board as a regular member to serve a three-year term to expire March 13, 2026.

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

Nays, None

Those appointees present were sworn in by CC Bingham. It was noted that those in attendance by Zoom or absent would be sworn in at a later date.

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

In reply to Commission request and in order to allow residents to comment earlier in the meeting, CM Markus presented the portion of the City Manager Report regarding the northeast corner of E. Lincoln and S. Eton.

Larry Bertollini, Denise Rumsey, Diane Smith, Ron Glaser, and Claudia Unruh spoke in favor of maintaining the northeast corner of E. Lincoln and S. Eton as greenspace.

John Rusche recommended the northeast corner of E. Lincoln and S. Eton be designated as recreational on page 275 in the plan and as public property on page 277.

In reply to Todd MacIntosh, CM Markus explained how a rezoning of the parcel in question could occur.

Commissioner Haig noted that Motion 08-225-19 did not include the northeast corner of E. Lincoln and S. Eton as part of the adjacent Economic Development Zone.

V. CONSENT AGENDA

03-066-23 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Baller: Item H – Lafontaine, Chrysler, Dodge, Jeep, Ram Vehicle Purchase

MOTION: Motion by Commissioner Baller, seconded by MPT McLain:
To approve the Consent Agenda excluding Item H.

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

Nays, None

- A. Resolution to approve the City Commission special meeting minutes of March 13, 2023.
- B. Resolution to approve the City Commission regular meeting minutes of March 13, 2023.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated March 15, 2023 in the amount of \$892,206.85.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated March 23, 2023 in the amount of \$1,658,168.44.
- E. Resolution to approve a special event permit as requested by the HDSA Michigan Chapter to hold Yoga in the Park on 06/24/23 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, or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event.
- F. Resolution to approve a special event permit as requested by Birmingham Little League to hold the Little League Minors State Tournament on July 27-August 2, 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, or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event.
- G. Resolution to approve an extension of the public services and minor home repair contract with NEXT for the purpose of expending remaining program year 2021-2022 Community Development Block Grant funds for the Yard Services, Senior Outreach Services, and Minor Home Repair Services administered by NEXT through December 31, 2023; and further, to authorize the Mayor and the City Clerk to sign the amendment on behalf of the City.
- I. Resolution to set a public hearing date of April 24, 2023 to consider amendments to Chapter 126 (Zoning), Article 3, Section 3.04, Article 3, Section 3.16, Article 4, Section 4.44, and Article 9, Section 9.02 to provide clear and enforceable outdoor dining standards.

AND

Resolution to consider amendments to Chapter 98 (Streets, Sidewalks and Other Public Places), Articles 2 and 3 on April 24, 2023 to add language for outdoor dining facilities on public property.

J. Resolution to set a public hearing date of April 24th, 2023 to consider the lot division of 1429 Quarton Road, parcel # 19-26-203-003.

K. Resolution to approve the art-on-loan agreement with Gary Kulak for the sculpture "Windswept" in Barnum Park for an additional 3 years, and to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

03-067-23 (Item H) Lafontaine, Chrysler, Dodge, Jeep, Ram Vehicle Purchase

Commissioner Baller noted that he spoke with Staff about the decision to make this vehicle purchase and was satisfied with the explanation he received. He advised members of the public that if they had further questions about this purchase they could email the City Manager.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To approve the purchase a 2023 Jeep Grand Cherokee Laredo 4x4, from Lafontaine Chrysler, Dodge, Jeep, Ram, located at 6131 S. Pennsylvania Ave., Lansing, MI 48911, under the MiDeal Cooperative Agreement #071B7700183, in the amount not to exceed \$41,723. Funds for this purchase are available in the FY 2022-2023 Auto Equipment Fund account #661.0-441.006.971.0100.

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

Nays, None

Absent, Commissioner Haig

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

03-068-23 Public Hearing for 2023 Liquor License - Casa Perno

The Mayor opened the public hearing at 9:31 p.m.

PD Dupuis presented the item.

Kelly Allen, attorney, spoke on behalf of the establishment.

Seeing no public comment, the Mayor closed the public hearing at 9:35 p.m.

Commissioner Host said it was evident the establishment made an isolated mistake and said they should not be penalized for it.

MOTION: Motion by Commissioner Boutros, seconded by MPT McLain:
To approve the renewal of liquor license for the 2023 licensing period for Casa Pernoï, who holds a Class C Liquor License and is in compliance with Chapter 10, Alcoholic Liquors of the City Code.

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

Nays, None

03-069-23 Public Hearing for 2023 Liquor License - Papa Joes/Bistro Joes

The Mayor opened the public hearing at 9:36 p.m.

PD Dupuis presented the item.

Kelly Allen, attorney, spoke on behalf of the establishment.

Seeing no public comment, the Mayor closed the public hearing at 9:38 p.m.

MPT McLain emphasized the seriousness of the issue, and said it should be an example for other establishments in Birmingham. She also noted that she had been asked for identification to purchase alcoholic beverages at Papa Joe's in the past, and said that in general they seemed to be following the laws about age verification.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Haig:
To approve the renewal of liquor license for the 2023 licensing period for Papa Joes/Bistro Joes, who holds a Class C Liquor License that is in compliance with Chapter 10, Alcoholic Liquors of the City Code.

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

Nays, None

03-070-23 Public Hearing for 2023 Liquor License - Toast

The Mayor opened the public hearing at 9:39 p.m.

PD Dupuis presented the item.

Kelly Allen, attorney, spoke on behalf of the establishment.

Seeing no public comment, the Mayor closed the public hearing at 9:48 p.m.

CA Kucharek and CM Markus explained the motion options provided by Staff.

MPT McLain noted that an overage of seats amounts to a health and safety issue.

MOTION: Motion by MPT McLain, seconded by Commissioner Boutros:
To approve the renewal of liquor license for the 2023 licensing period for Toast, who holds a Class C Liquor License that is in compliance with Chapter 10, Alcoholic Liquors of the City Code, with the following condition:

1. Toast provide the City with a written understanding of the requirements of Chapter 10, Alcoholic Liquors of the City Code and compliance with approved site plans. In addition, that failure to remain in compliance may result in the termination of the Special Land Use Permit.

Commissioner Baller said that Toast's removal of all extra seats from the restaurant would aid compliance. He said he would like a year to go by where no restaurants had excess seating according to their SLUPs.

Commissioner Haig noted that Toast had violated its SLUP in regards to this issue three times, and a fourth on an operating hours issue. He stated that this demonstrated a pattern of behavior. He then shared two lines from the resolution approving Toast's 2021 SLUP amendment which indicated that the seating would remain the same and that failure to comply with any of the above conditions 'shall result in termination of the Special Land Use Permit.' He noted the use of the word 'shall', saying he understood it to have a particular legal meaning. He raised concerns about the potential consequences of not terminating the SLUP given the repeat violations and the language used.

In reply to a request from the Mayor, the City Attorney provided guidance regarding Commissioner Haig's comments. CA Kucharek did advise that the legally binding documents were the ones signed with the establishment, which did not include 'shall' and left termination of the SLUP up to the Commission's discretion.

The Mayor said she wanted to hear from Toast's owner and staff about the violations.

CA Kucharek confirmed for the Mayor that the SLUP could be terminated at any time by the City as long as due process was followed.

Ms. Allen noted that Toast had the only SLUP in the City that had included required hours, and that the operating hours issue had arisen because of the extenuating circumstances of the Covid-19 pandemic and had been resolved.

Jean-Baptiste Cailler, Manager at Toast, said he did not know how many seats were allowed at certain tables, that adding extra seats reduces the wait for customers, and that a guide to seating allowances would be helpful.

CM Markus replied that Toast agreed to a certain number of seats as part of the restaurant's agreements with the City. He also explained the difference between a bistro and Class C license.

Mr. Cailler stated he had been unaware of that information.

Commissioner Baller said it was unacceptable that any manager of a bistro establishment in Birmingham was unaware of the rules and history governing bistro operations. He said training in those aspects should be mandatory for managers.

Anthony Minicilli, Director of Operations at Toast, apologized for the issue. He said it was not Toast's intent to violate the SLUP. He said it occurred because Toast has a small staff and because of the day-to-day of running the business.

Regan Bloom, owner of Toast, took responsibility for not conveying the importance of the seating counts to Toast staff. She said she took the matter very seriously. She emphasized that all extra seating would be removed from the restaurant in order to prevent a recurrence of the issue and stated she understood that it was Toast's last chance regarding the issue. She apologized to the Commission for the errors.

The Mayor recommended that PD Dupuis be involved in the creation of the written understanding, including the creation of a seat count with each seat mapped to be provided to Toast management.

Commissioner Haig concurred, and emphasized the importance of writing out where each seat would be located. He also noted that Toast's repeated non-compliance put the City in a difficult position vis-a-vis other establishments, and asked Toast's management to consider that impact.

Commissioner Host said he could only support the resolution if it was modified to say that 'failure to remain in compliance **shall** result in the termination of the Special Land Use Permit.'

MPT McLain said she would maintain the motion language as-is since it matched the language of Toast's other agreements with the City.

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

Nays, Commissioner Host

CA Kucharek confirmed Staff would provide the Commission with the written understanding once completed.

03-071-23 Public Hearing for 2023 Liquor License - Whole Foods

The Mayor opened the public hearing at 10:14 p.m.

PD Dupuis presented the item.

Kelly Allen, attorney, spoke on behalf of the establishment.

Seeing no public comment, the Mayor closed the public hearing at 10:16 p.m.

Ms. Allen asked that the liquor license be extended for 90 days in order to accommodate changes in the business' plans.

CM Markus recommended the item be tabled to the April 3, 2023 Commission meeting so Staff could return with updated language and recommendations.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Haig:
To postpone the public hearing for the renewal of the liquor license through a certain date to the April 3, 2023 Commission meeting.

It was reiterated that the the business ultimately intended to put its Class C license for this location into escrow while deciding next steps.

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

Nays, None

03-072-23 Employment Agreement for Jana Ecker as the City Manager

CA Kucharek presented the item. CA Kucharek and CM Markus answered informational questions from the Commission.

In regards to negotiating a salary above the advertised range, MPT McLain noted that the City was facing a more difficult hiring environment than it had in the past and that this was a public sector hiring process with other variables. She continued that the Michigan Center for Public Policy just published their research on the pressure faced by municipal governments to hire qualified candidates, with attention to equal pay for equal work and overall equity. She said that information was available online. She said that the present hiring environment was shocking versus the one she was accustomed to.

The Mayor explained that, as a participant in the negotiations, ACM Ecker's work ethic with the City was well-established. Given ACM Ecker's history, the Mayor said no one at the negotiations was concerned about issues of non-performance arising.

CA Kucharek concurred.

The Mayor noted that the five-year commitment would also assure City Staff and the public that the City would have some continuity in its leadership. She said the stability would also be more likely to attract employment candidates to the City.

Commissioner Baller recommended that the language of 12(B)(i) within the agreement be amended for clarity.

CA Kucharek said she would likely change it to "Except, if, at a public meeting, a majority of the City Commission votes to terminate the Employee because of her personal conviction of a felony **and/or** misdemeanor as defined in Paragraph 3."

Commissioner Host stated he believed five years was too long a term.

Commissioner Baller commended the City Attorney and said the recommended contract was very fair. He said any concerns about a five year term was more than offset by the lower severance. He said with regard to moving expenses he would consider offering \$50,000, given the benefit and value of having ACM Ecker live in the City once she becomes City Manager. He said that could be a consideration down the road.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Boutros:
To approve the proposed Employment Agreement with the minor, unsubstantial edits discussed, between Jana Ecker and the City of Birmingham and to direct the Mayor and City Clerk to execute same.

Commissioner Boutros agreed with Commissioner Baller regarding the benefits of offering ACM Ecker more money to relocate into the City once she becomes City Manager. He also emphasized the difficulties of the present hiring environment for both the private and public sectors. He said he was very pleased to be hiring a wonderful person who has been with the City for 21 years and said the proposed compensation was very fair. He said in his personal business presently he is often willing to pay more than average in order to get a qualified candidate. He emphasized that the City would not be overpaying.

Commissioner Baller noted the City has over 200 employees, a \$100 million annual budget, and that in the private sector compensation for a comparable position would be higher.

MPT McLain noted the extensive amount of time the position requires and said the commitment was appreciated.

Public Comment

Frank Pizzano congratulated ACM Ecker. He raised concerns about the long-term costs associated with the City's contributions to ACM Ecker's 457(b) Deferred Compensation Plan. He said it would have been most appropriate for CA Kucharek to recuse herself from the negotiation and to allow her colleague to negotiate the contract for transparency reasons.

Seeing no further public comment, conversation returned to the Commission.

CA Kucharek noted she had offered to recuse herself and that the Commission had not deemed it necessary. She noted that both the Mayor and Mayor Pro Tem were observers to the entire negotiation process.

MPT McLain noted that both she and the Mayor were also independent professionals who have participated in municipal government and private contract negotiations.

The Mayor noted that ACM Ecker was already in a defined benefit plan and that there was no option available to remove her.

Commissioner Host said he was pleased ACM Ecker would be the new City Manager but that he was not persuaded she should be receiving the proposed compensation amount. He said he would prefer a three year contract with an annual evaluation since ACM Ecker had not been a City Manager previously. He expressed concerns about meeting his fiduciary responsibilities to the City if he agreed to the proposed compensation amount.

ROLL CALL VOTE: Ayes, MPT McLain

Commissioner Boutros
Mayor Longe
Commissioner Schafer
Commissioner Baller
Commissioner Haig

Nays, Commissioner Host

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

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

A. Commissioner Reports

MPT McLain reported back from the MML's Infrastructure, Transportation, and Technology Committee and provided notice of upcoming MML events.

Commissioner Schafer reported back from SEMCOG's General Assembly meeting and provided notice of upcoming SEMCOG events.

B. Commissioner Comments

Commissioner Baller recognized and commended the work of Communications Director Marianne Gamboa and the Communications Department. He said CD Gamboa's work would likely play a large part in promoting sustainability in the community moving forward.

MPT McLain thanked everyone who attended to speak regarding the northeast corner of E. Lincoln and S. Eton. She encouraged residents to continue to formally submit their comments and questions to the City so they could be considered and addressed. She noted that doing so would allow everyone in the community to work together to take the community in a positive direction.

Commissioner Schafer expressed appreciation for the new Ad Hoc Environmental Sustainability Committee and all the residents who applied to serve. She said she was proud to serve the community's residents and was in awe of all they have to offer.

MPT McLain commended Commissioner Schafer for proposing the Ad Hoc Environmental Sustainability Committee

C. Advisory Boards, Committees, Commissions' Reports and Agendas

D. Legislation

E. City Staff

1. City Manager Report
2. Planning Division Annual Report

INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 11:23 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

**Birmingham City Commission
Special Meeting Minutes - Workshop
Monday, April 3, 2023
6:00 p.m.**

Vimeo Link: <https://vimeo.com/812277727>

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 regarding City Hall renovations.

I. Call to Order

Therese Longe, Mayor

II. Roll Call

Deputy City Clerk Woods called the roll.

Present: Mayor Longe
Mayor Pro Tem McLain
Commissioner Baller
Commissioner Boutros (arrived 6:05 p.m.)
Commissioner Haig
Commissioner Host
Commissioner Schafer

Absent: None

Staff: City Manager Markus; Assistant City Manager Ecker, Police Chief Grewe, City Attorney Kucharek, Deputy City Clerk Woods

III. Presentation & Discussion

Commissioner Baller stated:

- When the prospect of City Hall renovations were raised in 2022, the Commission was advised that 'there would be no consideration of a new building or facility', while the second portion of the present workshop's report proposed a new \$27 million building;
- Had a new building been contemplated in 2022, he would have responded differently to the initial proposal;
- The topic should have been raised with the Commission once it became clear that the plans exceeded the initial intent and scope;
- The proposed design was the most elaborate of the three design schemes offered by the architect, and the Commission should learn more about the other design schemes;
- This topic, the W. Maple Fire Station, and the N. Old Woodward development proposal indicate that the Commission should discuss how the City should engage with architectural and other firms on public

- projects in the future; and,
- The phase one assessment report provided insight into the difficulties faced by City Hall Staff, and the Commission was committed to reducing those difficulties.

In reply to Commissioner Baller, CM Markus clarified:

- In the 1990s, City Administration renovated City Hall but did not pursue a new City Hall facility off-site due to a lack of public appetite for such a project; and,
- When it was said in 2022 that 'there would be no consideration of a new building or facility', that statement only referred to the lack of public appetite for a new, off-site facility. It did not preclude an addition onto, or renovations of, City Hall.

There was some discussion of whether both reports should be discussed during the evening's workshop. Four Commissioners commented: two Commissioners said they were willing to see how the conversation unfolded, and two Commissioners said they believed the present workshop's focus should be the phase one assessment report.

CM Markus provided the introduction to the evening's workshop.

PC Grewe introduced architect Aaron Olko, who created the design schemes for the project.

Staff and Mr. Olko took the Commission on a walking tour of the building issues identified in the phase one assessment report.

Once the walking tour concluded, the Mayor noted that there had not been sufficient time for Commission discussion. Consequently, she stated that a further workshop session on the topic would be scheduled.

IV. Public Comment

There was no public comment on the topic.

V. Adjourn

Mayor Longe adjourned the meeting at 7:27 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

Birmingham City Commission Minutes

April 3, 2023

Municipal Building, 151 Martin

7:30 p.m.

Vimeo Link: <https://vimeo.com/812277727>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Deputy City Clerk Woods 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 Markus; Planning Director Dupuis, Assistant City Manager Ecker, Police Chief Grewe, City Attorney Kucharek, Deputy City Clerk Woods

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

Announcements

- The City recommends members of the public wear a mask if they have been exposed to COVID-19 or have a respiratory illness. City staff, City Commission and all board and committee members must wear a mask if they have been exposed to COVID-19 or actively have a respiratory illness. The City continues to provide KN-95 respirators and triple-layered masks for attendees.
- Happy Birthday Commissioner Schafer

Appointments

04-073-23 Parks & Recreation Appointment

Joe Wrobel was interviewed for the appointment.

MOTION: Nomination by Commissioner Baller:

To appoint Joe Wrobel to the Parks and Recreation Board as an alternate member to serve a three-year term to expire March 13, 2026.

VOICE VOTE: Ayes, MPT McLain
Commissioner Boutros

Commissioner Host
Mayor Longe
Commissioner Haig
Commissioner Schafer
Commissioner Baller

Nays, None

PC Grewe introduced and recognized the following promotees:

1. Dispatcher Jamie DeBano – Promoted to Dispatch Manager on March 18, 2023.
2. Officer Michael Manzo – Promoted to Patrol Sergeant on March 27, 2023.
3. Officer Jordan Zale – Promoted to Patrol Sergeant on January 13, 2023.
4. Sgt. Alex Linke – Promoted to Patrol Lieutenant on January 13, 2023.
5. Lt. Ryan Kearney – Promoted to Operations Captain on December 6, 2022.

The five promotees were sworn in by DCC Woods. It was noted that Mr. Wrobel would be sworn in at a later date.

The Mayor congratulated and thanked the promotees.

CM Markus stated that, with the Commission's concurrence, it would become a regular occurrence for City Departments to introduce and recognize their new employees and promotees at Commission meetings. He stated that the intent was to promote more of an esprit de corps.

A number of Commissioners expressed enthusiasm for the idea and thanked CM Markus for implementing the idea.

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

V. CONSENT AGENDA

04-074-23 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Haig: Item E – Set Public Hearing – The Birmingham Plan 2040

MOTION: Motion by Commissioner Boutros, seconded by MPT McLain:
To approve the Consent Agenda excluding Item E.

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

Nays, None

- A. Resolution to approve the warrant list, including Automated Clearing House payments, dated March 29, 2023 in the amount of \$1,988,743.60.
- B. Resolution approving an emergency water line repair expenditure and approving the appropriation and amendment of the 2022/2023 budget as follows:

Automobile Parking System:

Revenues:

Draw from Fund Balance	514.1-000.000-400.0000	\$32,040.00
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Expenditures:

Other Contractual Services	514.1-594.008-811.0000	\$32,040.00
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- C. Resolution to approve a change order to the 2022 Concrete Sidewalk Program #8-22 (SW) for the 2023 Concrete Sidewalk Program #6-23 (SW) in the amount not to exceed of \$490,120.00 once the 2023/2024 budget is approved. In addition, to authorize the City Engineer to sign the Change Order on behalf of the City. Funding for this project has been budgeted in the following accounts:

Fund Account	Fund ID Number	Budget	Change Order Amount
General Sidewalk	101-444.001-981.0100	\$340,750.00	\$340,750.00
Major Streets Fund	202-449.001-981.0100	\$86,385.00	\$86,385.00
Local Street Fund	203-449.001-981.0100	\$62,985.00	\$62,985.00

- D. Resolution to approve a change order to the 2021 Sewer Rehabilitation Program #8-21 (S) for the 2022-2023 Sewer Rehabilitation Program #8-23 (S) in the amount not to exceed of \$460,000.00. In addition, to authorize the City Engineer to sign the Change Order on behalf of the City. Funding for this project has been budgeted in the following accounts:

Fund Account	Fund ID Number	Budget	Change Order Amount
Sewer Fund	590.0-537.000-981.0200	\$460,000.00	\$460,000.00

- F. Resolution to increase the golf course fees by the following amounts:

- Memberships for Non-Residents and Businesses by \$25.
- Memberships for Residents by \$5.
- Individual fees for rounds of golf by 50 cents for both weekday and weekends for Adult Member, Sr/Jr Member, Adult Guest and Sr/Jr Guest.

- G. Resolution to approve the application to request reimbursement for the maximum allotment of \$2,705.23 for eligible mosquito control activity under Oakland County's West Nile Virus Fund Program.

04-075-23 (Item E) Set Public Hearing – The Birmingham Plan 2040

In reply to Commissioner Haig, CM Markus clarified that the motion was to set a public hearing to consider the Planning Board's recommendation, not to presently adopt and approve the Planning Board's

recommendation. He stated that he anticipated changes to the Birmingham Plan 2040 being recommended at the public hearing.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Boutros:
To set a public hearing date of May 22, 2023 to consider the recommendation of the Planning Board to adopt and approve in its entirety the Birmingham Plan 2040, inclusive of all maps, plats, charts, and other related matter, figures and the Future Land Use Map.

MPT McLain thanked CM Markus for the clarification.

In reply to Commissioner Baller, CM Markus stated that he anticipated the Commission would hold more than one public hearing on the Birmingham Plan 2040.

Public Comment

David Bloom raised concerns about some of the zoning maps in the Birmingham Plan 2040, and about whether the public hearing format would allow for adequate dialogue between the Commission, the Planning Board, and the public.

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

Nays, None

VI. UNFINISHED BUSINESS

04-076-23 Public Hearing for 2023 Liquor License - Whole Foods

The Mayor opened the public hearing at 7:50 p.m.

CA Kucharek presented the item.

Kelly Allen, attorney, spoke on behalf of the establishment.

Seeing no public comment, the Mayor closed the public hearing at 7:52 p.m.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Haig:
To accept the termination and relinquishment of the Special Land Use Permit held by Whole Foods upon the onset of construction, or a violation of the Special Land Use Permit, or a maximum of 90 days from today, or whichever event occurs first.

In reply to MPT McLain, Ms. Allen confirmed that the permitting process for the construction was underway.

ROLL CALL VOTE: Ayes, MPT McLain
Commissioner Boutros

Commissioner Host
Mayor Longe
Commissioner Schafer
Commissioner Baller
Commissioner Haig

Nays, None

VII. NEW BUSINESS

04-077-23 Public hearing for a lot combination of 34350 Woodward Avenue and 909-911 Haynes Street, Fred Lavery Porsche, Parcel #19-36-281-022 and Parcel #19-36-281-030. (Request to Table)

The Mayor opened the public hearing at 7:53 p.m.

PD Dupuis presented the request.

Seeing no public comment, the Mayor closed the public hearing at 7:54 p.m.

Commissioner Baller noted that this and other items associated with this project would require a considerable amount of review. He recommended that Staff schedule the review based on the City's scheduling needs and not the applicant's.

In reply to MPT McLain, PD Dupuis confirmed that the roads surrounding the project would be a focal point of the review.

MOTION: Motion by MPT McLain, seconded by Commissioner Schafer:

To table the public hearing and consideration of the lot combination of 34350 Woodward Ave and 909-911 Haynes Street, Fred Lavery Porsche, parcel #19-36-281-022 and parcel #19-36-281-030 per the request of the applicant in order to have the SLUP hearing and lot combination on the same date.

In reply to Commissioner Boutros, the Mayor explained the present request to table from the applicant was similar to the prior request to table, in that the applicant was not yet ready to discuss the SLUP.

CM Markus confirmed that discussions between Staff and the applicant regarding the SLUP were still ongoing.

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

Nays, None

04-078-23 Public Hearing for 34350 Woodward Ave & 909-911 Haynes Street – Fred Lavery Porsche Dealership – Special Land Use Permit, Final Site Plan & Design Review (Request to Table)

The Mayor opened the public hearing at 7:59 p.m.

PD Dupuis presented the item.

Seeing no public comment, the Mayor closed the public hearing at 7:59 p.m.

In reply to Commissioner Haig, CM Markus stated that Staff was being consistent in the proposed SLUP's language and assignment of responsibilities.

MOTION: Motion by MPT McLain, seconded by Commissioner Host:
To table the public hearing and consideration of the Special Land Use Permit, Final Site Plan and Design Review application for 34350 Woodward Ave – Fred Lavery Porsche – per the request of the applicant to allow more time to review conditions of the SLUP contract.

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

Nays, None

04-079-23 Special Event Application: Cogs & Kegs

DCC Woods and CM Markus presented the request.

Andrea Hamilton, Executive Director of the MIU Men's Health Foundation, spoke on behalf of the request and answered brief informational questions about the event.

Commissioner Baller recommended that the City help publicize the event.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Baller:
To approve a special event permit as requested by the MIU Men's Health Foundation to hold the Cogs & Kegs bicycle ride on June 12, 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, or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event.

Public Comment

Mr. Ellman thanked Ms. Hamilton for the flyer about the event.

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

Commissioner Baller
Commissioner Haig

Nays, None

04-080-23 DTE Issues

ACM Ecker presented the item. She noted that the \$3,133 membership fees were actually 0.3% of the City's total annual regulated utility costs, and not the 0.03% indicated in the report.

Valerie Brader, council for the Michigan Municipal Association for Utility Issues (MI-MAUI), and Rick Bunch, executive director of MI-MAUI spoke on behalf of the organization and answered brief informational questions from the Commission.

Commissioner Baller commended ACM Ecker for her work on the item.

In reply to Commissioner Baller, ACM Ecker said she would likely be the liaison to MI-MAUI to start, and would occasionally involve the City Attorney and Engineering Staff as well. She also confirmed that she would report back to the Commission on the value gained from association with MI-MAUI and would make recommendations about whether to continue that association after the first year.

MPT McLain said that MI-MAUI could provide the City with more effective advocacy opportunities. She thanked ACM Ecker and Staff for their work on the item.

MOTION: Motion by MPT McLain, seconded by Commissioner Host:

To join the City together with other local governments and public agencies to influence regulatory processes and utility practices through participation in the Michigan Municipal Association for Utility Issues, in the amount of \$3,133 for a one-year membership. Funding for this project is available in account #101-170.000-955.03.

Commissioner Host expressed hope that participating in the coalition would result in DTE listening to the City's concerns more attentively.

Commissioner Haig shared excerpts from an email he received from the Michigan Public Service Commission (MPSC). He said he hoped joining MI-MAUI would allow the MPSC to help regulate DTE more effectively.

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

Nays, None

The Mayor thanked MI-MAUI for their work and said the City was pleased to join in the organization's efforts.

Commission Items for Future Discussion

In reply to the Mayor, CM Markus stated that PD Dupuis would recommend that the northeast corner of S. Eton and Lincoln be zoned public property at the Commission's public hearing on the 2040 Birmingham Plan.

In reply to Commissioner Baller, there was Commission consensus to have the future Sustainability Board address concerns about leafblowers.

The Mayor said Staff could notify the Sustainability Board that leafblower concerns were of particular interest to the Commission.

Commission Discussion On Items From A Prior Meeting

04-081-23 Administering a Foundation or Charity

CA Kucharek summarized the topic.

MOTION: Motion by Commissioner Baller, seconded by MPT McLain:
To formally receive CA Kucharek's recommendations on the item and to resolve that for the foreseeable future the City has no intention of creating a foundation.

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

Nays, None

Staff advised the Commission that:

- More than three Commissioners serving on such a foundation's board would constitute a Commission quorum;
- On occasion there could be a conflict of interest between a Commissioner's service on such a foundation's board and their work on the Commission; and,
- If a Commissioner wanted to serve on the foundation's board, the City Attorney should be consulted beforehand in order to advise on any potential Ethics ordinance implications.

Discussion on Policy for Sponsoring and Administering Events

Commissioner Baller summarized the topic.

CM Markus described the funding and volunteer support that would be needed for the City to implement programming. He stated that a community foundation would likely be well-suited for these tasks.

There was Commission consensus to further discuss the proposal in a workshop setting.

04-082-23 Establishing an Ad Hoc Senior Services Committee

The Mayor summarized the topic.

MOTION: Motion by Mayor Longe, seconded by Commissioner Haig:

To move forward as a future formal agenda item the formation of an Ad Hoc Senior Services Committee and for City Staff to recommend the positions on it and how they might be filled.

The Mayor stated that this would not compete with, or supplant, NEXT. She clarified that the goal would be to ascertain trends and needs of the City's senior population.

CM Markus encouraged the Commission to invite the Executive Director of NEXT to be part of any such committee.

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

Nays, None

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

Jay Shell, Birmingham Farms Neighborhood Association, presented his communications which can be found in the evening's agenda packet.

CM Markus provided an informational response to Mr. Shell's concerns. He reviewed Items 9A3, 9A4, and 9A5 as part of his response. He said that in order to change zoning ordinances there would have to be evidence that larger homes were resulting in a larger strain on the electric grid relative to previous, smaller homes, since that was the concern being raised. He said that DTE and/or MI-MAUI, in conjunction with ACM Ecker, should be able to provide Mr. Shell with information regarding any potential increase in electric usage of Birmingham homes over a given period of time.

In reply to Commissioner Baller, Mr. Shell stated his concern was that increased residential growth, and attendant electrical demand, might be contributing to some of the City's electrical service disruptions.

Commissioners Baller and Boutros thanked Mr. Shell for raising the matter and for his engagement.

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intention to Appoint to the Parks and Recreation Board
- B. Commissioner Comments

MPT McLain thanked DCC Woods for participating in the Polar Plunge.

Commissioner Boutros thanked PC Grewe for his work on the evening's workshop.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas

- D. Legislation
- E. City Staff

INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 9:42 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

City of Birmingham

Warrant List Dated 04/05/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
291411	*	000855	48TH DISTRICT COURT	267.00
291412	*	000855	48TH DISTRICT COURT	1,500.00
291413		009346	ACCUFORM PRINTING & GRAPHICS, INC	4,380.00
291414		006638	ACTION MAT & TOWEL RENTAL, INC	70.72
291415		008106	ACUSHNET COMPANY	1,548.75
291416		BDREFUND	ADDIXION LLC	1,000.00
291417	*	009519	ADVANTAGE REPORTING	139.55
291418		BDREFUND	ALLEN MAINTENANCE	100.00
291419		009440	ALLIANCE ENTERTAINMENT, LLC	361.47
291420		BDREFUND	AMERICAN STANDARD ROOFING	200.00
291421		000500	ARTECH PRINTING INC	64.00
291422	*	006759	AT&T	3,039.44
291423		BDREFUND	B-DRY SYSTEM OF MICHIGAN INC	200.00
291424		002231	BILLINGS LAWN EQUIPMENT INC.	387.72
291425		BDREFUND	BIRMINGHAM KITCHEN (S) & BATH (S)	200.00
291426		BDREFUND	BLOOMINGDALE HOMES INC	2,500.00
291427		BDREFUND	BOJI GROUP	500.00
291428		009629	BRANDI LLUNGVALL	111.51
291429		006966	BRIDGESTONE GOLF, INC	292.52
291429	*	006966	BRIDGESTONE GOLF, INC	1,639.60
291430	*	006953	JACQUELYN BRITO	19.99
291431		005717	BSB COMMUNICATIONS, INC.	217.50
291431	*	005717	BSB COMMUNICATIONS, INC.	1,073.68
291432	*	MISC	C & L WARD BROS CO	100.00
291433		008385	CALLAWAY GOLF	245.10
291434	*	009078	CANON SOLUTIONS AMERICA INC	520.52
291435	*	003904	CAPITAL ONE BANK	8,410.39
291436		009597	CAROL BACAK-EGBO	200.00
291437		BDREFUND	CEDAR PRESERVATION SYSTEMS LLC	300.00
291438		008540	CERTIFIED LABORATORIES	239.22
291439		BDREFUND	Chris M Phillips	1,000.00
291440	*	001086	RYAN KATZ	877.89
291441		002234	CMP DISTRIBUTORS INC	806.95
291442		BDREFUND	CODY L HARTMAN	100.00
291443	*	000627	CONSUMERS ENERGY	4,514.37
291444		008512	COOL THREADS EMBROIDERY	512.93
291445	*	009145	CREATIVE COLLABORATIONS	3,800.00
291446		BDREFUND	CREGGER SERVICES INC	252.72
291447		BDREFUND	DANFORTH INDUSTRIES, INC.	100.00
291448		BDREFUND	DANGELO BROTHERS INC	766.47
291449		BDREFUND	DAVID FISHER	500.00
291450		BDREFUND	Deporre Building	200.00

City of Birmingham
Warrant List Dated 04/05/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
291451		BDREFUND	DH FIRE SUPPRESSION	350.00
291452	*	MISC	DONNA HARRIS	150.00
291453	*	000179	DTE ENERGY	210.87
291454	*	000179	DTE ENERGY	40.50
291455	*	000179	DTE ENERGY	1,661.38
291456	*	000179	DTE ENERGY	49.44
291457	*	000179	DTE ENERGY	252.73
291458	*	000179	DTE ENERGY	6,074.20
291459	*	000179	DTE ENERGY	2,011.96
291460	*	000179	DTE ENERGY	5,465.21
291461	*	000179	DTE ENERGY	6,554.80
291462	*	000179	DTE ENERGY	15.03
291463	*	000179	DTE ENERGY	2,067.37
291464	*	000179	DTE ENERGY	41.91
291465	*	000179	DTE ENERGY	15.63
291466	*	000179	DTE ENERGY	122.08
291467	*	000179	DTE ENERGY	517.33
291468	*	000179	DTE ENERGY	41.47
291469	*	000179	DTE ENERGY	142.00
291470		000179	DTE ENERGY	14.89
291471	*	000179	DTE ENERGY	64.46
291472	*	000179	DTE ENERGY	16.59
291473	*	000179	DTE ENERGY	56.57
291474	*	000274	E-Z-GO DIVISION OF TEXTRON INC	8,556.41
291475		008164	GARY EISELE	77.50
291476	*	009632	ELAINE MCLAIN	715.00
291477		001495	ETNA SUPPLY	103,000.00
291478		BDREFUND	FACILITIES MANAGEMENT GROUP	500.00
291479		000585	FARMINGTON COMM. LIBRARY	300.00
291480	*	000936	FEDEX	41.42
291481		BDREFUND	FLUTE WORLD	100.00
291482		BDREFUND	FOUNDATION SYSTEMS OF MICHIGAN INC.	300.00
291483	*	UBREFUND	GERSONDE, ERIC OR REBECCA	67.67
291484		BDREFUND	GREAT LAKES CUSTOM BUILDER LLC	1,400.00
291485	*	008007	GREAT LAKES WATER AUTHORITY	8,155.24
291486		BDREFUND	HALSETH, CRAIG	100.00
291487	*	001956	HOME DEPOT CREDIT SERVICES	395.95
291488		001090	INGRAM LIBRARY SERVICES	6,405.83
291490		BDREFUND	J COLLINS CONSTRUCTION	200.00
291491		MISC	KRIL ENTERPRISES, INC.	485.00
291492		000784	LAKESHORE LEARNING	171.35
291493		BDREFUND	LANCTOT, JAMES EDWARD	200.00
291494		BDREFUND	LAURA M DROUILLARD LIVING TRUST	700.00

City of Birmingham

Warrant List Dated 04/05/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
291495		009533	LIBRARY IDEAS, LLC	720.26
291496		001669	MACP	280.00
291497		007530	MARTINI GOLF TEES INC	406.27
291498		BDREFUND	Mengyao Zhou	500.00
291499		BDREFUND	MERRILLWOOD INVESTMENT LLC	200.00
291500	*	009200	MICHAEL MORRISON	1,075.00
291501		009628	MICHELLE HISER	106.56
291502		001660	MICHIGAN CAT	2,122.18
291503		BDREFUND	MILES BRADLEY	300.00
291504		BDREFUND	MILLS SIDING & ROOFING	100.00
291505		008319	MKSK INC	14,197.50
291505	*	008319	MKSK INC	677.60
291506	*	005634	GINA MOODY	333.75
291507		BDREFUND	MOSHER DOLAN	100.00
291508		BDREFUND	MURRAY BUILT CONSTRUCTION	100.00
291509		BDREFUND	OAKES ROOFING SIDING & WINDOWS INC	100.00
291510		002853	OAKLAND COMMUNITY COLLEGE	200.00
291511		008712	OAKLAND COUNTY HEALTH DIVISION	298.00
291512	*	009478	ODP BUSINESS SOLUTIONS, LLC	156.05
291513		BDREFUND	PCI INDUSTRIES, INC.	1,000.00
291514		BDREFUND	PHIL PITTERS CO	100.00
291515		006959	PHOENIX COMMUNICATIONS & CABLING	354.88
291516		009612	PLAYAWAY PRODUCTS LLC	1,663.21
291517		001263	POSITIVE PROMOTIONS INC	741.30
291518		BDREFUND	POTASH, BRANDON J	626.36
291519		BDREFUND	POWER HOME REMODELING GROUP	200.00
291520	*	009614	PROGRESSIVE PLUMBING SUPPLY CO	55.08
291521	*	006625	PTS COMMUNICATIONS, INC	78.00
291522		BDREFUND	RADIANT SIGN CO	200.00
291523	*	MISC	REASONABLE ROOFING REMODELING INC	100.00
291524		BDREFUND	RICHARD WEINGARTNER	200.00
291525		BDREFUND	ROOF ONE LLC	100.00
291526		BDREFUND	SEITZ, BRENT	1,000.00
291527		BDREFUND	SHIFMAN, ZACHARY N	1,000.00
291528		009009	SIGNATURE CLEANING LLC	250.00
291528	*	009009	SIGNATURE CLEANING LLC	5,070.47
291529		BDREFUND	SMOLYANOV HOME IMPROVMENT	100.00
291530	*	006895	STATE OF MICHIGAN	2,505.00
291531		BDREFUND	TEMPLETON BUILDING COMPANY	2,200.00
291532	*	004379	TURNER SANITATION, INC	340.00
291533	*	001279	US FIGURE SKATING ASSOC.	254.71
291534	*	000293	VAN DYKE GAS CO.	168.54
291535	*	000158	VERIZON WIRELESS	103.17

City of Birmingham

Warrant List Dated 04/05/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
291536	*	000158	VERIZON WIRELESS	935.97
291537	*	000158	VERIZON WIRELESS	12.66
291538		006491	VILLAGE AUTOMOTIVE INC	1,304.77
291539		BDREFUND	WALLSIDE INC	2,500.00
SUBTOTAL PAPER CHECK				\$246,205.09
<u>ACH TRANSACTION</u>				
33		009126	AMAZON CAPITAL SERVICES INC	15.70
34		009126	AMAZON CAPITAL SERVICES INC	53.40
35		009126	AMAZON CAPITAL SERVICES INC	13.99
36		009126	AMAZON CAPITAL SERVICES INC	9.99
37		009126	AMAZON CAPITAL SERVICES INC	(83.92)
38		009126	AMAZON CAPITAL SERVICES INC	39.99
7646	*	002284	ABEL ELECTRONICS INC	300.00
7647		007013	AHEAD USA LLC	786.59
7648		009126	AMAZON CAPITAL SERVICES INC	34.11
7649		009126	AMAZON CAPITAL SERVICES INC	125.89
7650		009126	AMAZON CAPITAL SERVICES INC	59.56
7651		009126	AMAZON CAPITAL SERVICES INC	17.95
7652		009126	AMAZON CAPITAL SERVICES INC	53.77
7653		009126	AMAZON CAPITAL SERVICES INC	179.98
7654		009126	AMAZON CAPITAL SERVICES INC	86.82
7655		009126	AMAZON CAPITAL SERVICES INC	17.99
7656		009126	AMAZON CAPITAL SERVICES INC	78.55
7657		009126	AMAZON CAPITAL SERVICES INC	59.39
7658		009126	AMAZON CAPITAL SERVICES INC	133.25
7659		009126	AMAZON CAPITAL SERVICES INC	64.08
7660		009126	AMAZON CAPITAL SERVICES INC	13.96
7661		009126	AMAZON CAPITAL SERVICES INC	59.88
7662		009126	AMAZON CAPITAL SERVICES INC	185.00
7663		009126	AMAZON CAPITAL SERVICES INC	62.97
7664	*	009126	AMAZON CAPITAL SERVICES INC	35.43
7665		009126	AMAZON CAPITAL SERVICES INC	12.15
7666		009126	AMAZON CAPITAL SERVICES INC	104.55
7667		009126	AMAZON CAPITAL SERVICES INC	27.98
7668		009126	AMAZON CAPITAL SERVICES INC	49.98
7669		009126	AMAZON CAPITAL SERVICES INC	32.90
7670		009126	AMAZON CAPITAL SERVICES INC	35.99
7671		009126	AMAZON CAPITAL SERVICES INC	50.04
7672		009126	AMAZON CAPITAL SERVICES INC	35.96
7673		009126	AMAZON CAPITAL SERVICES INC	55.77
7674		009126	AMAZON CAPITAL SERVICES INC	23.98
7675		009126	AMAZON CAPITAL SERVICES INC	23.98
7676		009126	AMAZON CAPITAL SERVICES INC	23.98

City of Birmingham
Warrant List Dated 04/05/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
7677		009126	AMAZON CAPITAL SERVICES INC	9.87
7678	*	009126	AMAZON CAPITAL SERVICES INC	39.86
7679		009126	AMAZON CAPITAL SERVICES INC	100.64
7680		009126	AMAZON CAPITAL SERVICES INC	7.49
7681		009126	AMAZON CAPITAL SERVICES INC	492.32
7682		009126	AMAZON CAPITAL SERVICES INC	20.00
7683		009126	AMAZON CAPITAL SERVICES INC	23.98
7684		009126	AMAZON CAPITAL SERVICES INC	51.83
7685		009126	AMAZON CAPITAL SERVICES INC	135.99
7686		009126	AMAZON CAPITAL SERVICES INC	11.96
7687		008246	ANCHOR BAY POWDER COAT, LLC	2,640.00
7688	*	000518	BELL EQUIPMENT COMPANY	613.45
7689	*	007345	BEVERLY HILLS ACE	113.19
7690	*	009283	BRENDAN MCGAUGHEY	19.65
7691		007875	CANFIELD EQUIPMENT SERVICE INC.	130.00
7692	*	009122	CLAIRE CHUNG	592.25
7693		000605	CINTAS CORPORATION	398.66
7694		000605	CINTAS CORPORATION	72.40
7695	*	000605	CINTAS CORPORATION	124.79
7696		000605	CINTAS CORPORATION	313.08
7697		009359	CITY OF BIRMINGHAM #246	364.10
7698	*	000565	DORNBOS SIGN & SAFETY INC	1,664.00
7699		001230	FIRE SYSTEMS OF MICHIGAN LLC	446.50
7700	*	007314	FLEIS AND VANDENBRINK ENG. INC	3,267.50
7701	*	000243	GRAINGER	31.34
7702	*	001672	HAYES PRECISION INC	90.00
7703		000331	HUBBELL ROTH & CLARK INC	16,840.04
7704	*	008851	INSIGHT INVESTMENT	6,233.69
7705	*	002576	JAX KAR WASH	144.00
7706		009249	JCC CREATIVE LLC	450.00
7707		009298	JCR SUPPLY INC	437.37
7708	*	003458	JOE'S AUTO PARTS, INC.	998.88
7709		005876	KROPF MECHANICAL SERVICE COMPANY	13,498.00
7710		002013	MIDWEST TAPE	1,282.56
7711	*	007856	NEXT	30,736.00
7712		001864	NOWAK & FRAUS ENGINEERS	21,148.50
7713	*	006359	NYE UNIFORM COMPANY	3,360.50
7714		006729	QUENCH USA INC	379.20
7715	*	005344	RESERVE ACCOUNT	8,000.00
7716	*	000478	ROAD COMM FOR OAKLAND CO	3,896.97
7717		006832	SAFEWARE INC.	33,871.00
7718	*	009254	THOMAS M MARKUS	570.00

5D

SUBTOTAL ACH TRANSACTION

\$156,503.14

City of Birmingham
Warrant List Dated 04/05/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$402,708.23

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 04/12/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
291540		005430	21ST CENTURY MEDIA- MICHIGAN	1,180.25
291540	*	005430	21ST CENTURY MEDIA- MICHIGAN	785.00
291541	*	005123	2400 LINCOLN, LLC	11,496.66
291542		BDREFUND	320 INVESTMENTS LLC	300.00
291543		009372	ALLIED FIRE SALES & SERVICE	395.82
291544		006686	ALLTRONICS SYSTEMS LTD	1,479.00
291545		009202	AQUARIUM DESIGN INC	240.00
291546	*	009541	AUGUST, LLC	22,278.48
291547	*	008165	B5 INVESTMENTS, LLC	666.17
291548		000408	BALDWIN PUBLIC LIBRARY	73.71
291549		BDREFUND	Ball Construction	100.00
291550		BDREFUND	BCM HOME IMPROVEMENT	100.00
291551	*	004931	BIDNET	62.25
291552		002231	BILLINGS LAWN EQUIPMENT INC.	19.78
291553		000524	BIRMINGHAM LOCKSMITH INC	9.98
291554		008355	BIRMINGHAM PUBLIC SCHOOLS	270.36
291555		BDREFUND	BLOOMINGDALE HOMES INC	300.00
291556		003526	BOUND TREE MEDICAL, LLC	528.05
291557		BDREFUND	BRANDYWINE CONSTRUCTION LLC	300.00
291558	*	MISC	BRIAN JONES	21.00
291559		MISC	BRIAN LORENZ	500.00
291560		001838	D.C. BYERS CO INC	7,775.00
291561		BDREFUND	CAMPBELL, NOAH	100.00
291562		BDREFUND	CASTILLO, BRIAN V	100.00
291563		004905	COCM	135.00
291563	*	004905	COCM	490.00
291564		009167	COL'S FAMILY RESTAURANT	31.10
291565		007774	COMCAST BUSINESS	1,266.84
291566		BDREFUND	CONSTRUCTION FLEET LLC	100.00
291567		008512	COOL THREADS EMBROIDERY	423.95
291568		004386	CYNERGY PRODUCTS	722.40
291569		BDREFUND	D & S CONTRACTORS, INC	800.00
291570		009024	THE D.M. BURR GROUP	4,819.00
291571		BDREFUND	DANGELO BROTHERS INC	2,500.00
291572		008395	DAVID BORNEMAN LLC	2,700.00
291573		BDREFUND	DAVID ROBERT MORRIS	100.00
291574		BDREFUND	DHILLON, SUNDEEP S	650.00
291575	*	000179	DTE ENERGY	154.56
291576	*	000179	DTE ENERGY	329.67
291577	*	000179	DTE ENERGY	16.01
291578	*	000179	DTE ENERGY	996.97
291579	*	000179	DTE ENERGY	217.31

City of Birmingham
Warrant List Dated 04/12/2023

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Check Number	Early Release	Vendor #	Vendor	Amount
291580	*	000179	DTE ENERGY	85.91
291581	*	000179	DTE ENERGY	2,730.16
291582	*	000179	DTE ENERGY	152.62
291583	*	000179	DTE ENERGY	2,018.56
291584	*	000179	DTE ENERGY	156.32
291585	*	000179	DTE ENERGY	55.38
291586	*	000180	DTE ENERGY	3,885.47
291587		007505	EAGLE LANDSCAPING & SUPPLY	395.60
291588	*	BDREFUND	ELENA DEL VALLE	100.00
291589		001495	ETNA SUPPLY	54,075.00
291590	*	009307	FLS PROPERTIES #5, LLC	53,299.15
291591	*	009480	FUN EVENT GROUP INC.	1,198.00
291592	*	004604	GORDON FOOD	561.68
291593		BDREFUND	GRIEVES, WILLIAM A	100.00
291594		000249	GUARDIAN ALARM	263.58
291595		001531	GUNNERS METER & PARTS INC	2,188.00
291596	*	006346	HARRELL'S LLC	4,921.51
291597	*	001956	HOME DEPOT CREDIT SERVICES	888.29
291598		BDREFUND	HOOVER ELECTRIC INC	3,000.00
291599		BDREFUND	HRH CONSTRUCTION LLC	550.00
291600		000948	HYDROCORP	1,381.00
291601	*	000980	ICE SPORTS INDUSTRY	25.00
291602		001090	INGRAM LIBRARY SERVICES	2,499.68
291603	*	009412	INTEGRA REALTY RESOURCES - DETROIT	4,000.00
291604		BDREFUND	JAMES SCOTT	100.00
291605	*	009559	JENETTE MAITZ	903.00
291606	*	MISC	JERSEY BIRMINGHAM LLC	100.00
291607		BDREFUND	JONATHAN JACKSON	100.00
291608		BDREFUND	Juliana Aude	100.00
291609		BDREFUND	JUNO BUILT LLC	200.00
291610		BDREFUND	K & A SIGNS, INC	300.00
291611	*	008413	KARANA REAL ESTATE, LLC	1,079.74
291612		BDREFUND	KNOCK OUT CONSTRUCTION	200.00
291613		009524	KRAEMER DESIGN GROUP LLC	800.00
291614		BDREFUND	KURTIS KITCHEN & BATH CENTERS	200.00
291615		008553	L.G.K. BUILDING, INC	8,000.00
291616		BDREFUND	LACEY FOON	5,100.00
291617		000797	THE LIBRARY NETWORK	1,940.21
291618		009375	LITHIA MOTORS, INC SUPPORT SERVICES	581.73
291619		007910	MACALLISTER RENTALS	6,354.26
291620		009546	MASTERS TELECOM	531.84
291621		BDREFUND	MENUCK, CRAIG	2,000.00
291622		008793	MERGE MOBILE, INC.	73.00

City of Birmingham

Warrant List Dated 04/12/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
291623		009351	MERRITT CIESLAK DESIGN PLC	2,560.00
291624	*	009483	MICHAEL BERNAL	2,364.99
291625		009630	MIDWAY CLEANING CO, LLC	800.00
291626		000230	MIKE SAVOIE CHEVROLET INC	769.08
291627		BDREFUND	NC CEMENT	100.00
291628		BDREFUND	NORTHERN SIGN CO INC	100.00
291629	*	004370	OCCUPATIONAL HEALTH CENTERS	790.00
291630	*	009478	ODP BUSINESS SOLUTIONS, LLC	857.48
291631		006785	OVERDRIVE, INC.	13,421.15
291632	*	MISC	PHIL PITTERS INC	100.00
291633		009612	PLAYAWAY PRODUCTS LLC	299.96
291634	*	007797	QUADIENT LEASING USA, INC.	452.97
291635		MISC	REASONABLE CONTRACTING	100.00
291636		BDREFUND	REDI PROPERTY MANAGEMENT	500.00
291637		003447	RAFT	1,040.00
291638		BDREFUND	RENEWAL BY ANDERSEN	500.00
291639		007142	SHERWIN-WILLIAMS COMPANY	332.76
291640		BDREFUND	SIGNS & MORE	300.00
291641	*	008073	SITEONE LANDSCAPE SUPPLY, INC	2,064.96
291642		007907	SP+ CORPORATION	8.00
291643		006783	STATE OF MICHIGAN	30.00
291644		BDREFUND	SURNOW DEVELOPMENT COMPANY LLC	300.00
291645		007408	T-MOBILE	711.76
291646		BDREFUND	THE GREEN PANEL	100.00
291647		BDREFUND	THOMAS SEBOLD & ASSOCIATES, IN	100.00
291648		009552	TRAFFIC & SAFETY CONTROL SYSTEMS	67,245.00
291649	*	000293	VAN DYKE GAS CO.	112.36
291650	*	000158	VERIZON WIRELESS	149.34
291651	*	000158	VERIZON WIRELESS	857.35
291652	*	000158	VERIZON WIRELESS	76.02
291653	*	000158	VERIZON WIRELESS	1,355.54
291654		BDREFUND	WALLSIDE INC	500.00
291655		000299	WEINGARTZ SUPPLY CO.	170.96
291656		009026	WELLS FARGO VENDOR FIN SERV	677.87
291657		BDREFUND	WIETRZYNSKI, DOMINIK	100.00
291658	*	008391	XEROX CORPORATION	22.23
SUBTOTAL PAPER CHECK				\$332,698.79

ACH TRANSACTION

7723	*	008226	KATHERINE ABELA	1,552.00
7724	*	009126	AMAZON CAPITAL SERVICES INC	35.18
7725		009126	AMAZON CAPITAL SERVICES INC	159.00
7726	*	009126	AMAZON CAPITAL SERVICES INC	16.59
7727		009126	AMAZON CAPITAL SERVICES INC	37.68

City of Birmingham
Warrant List Dated 04/12/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
7728		009126	AMAZON CAPITAL SERVICES INC	103.55
7729		009126	AMAZON CAPITAL SERVICES INC	8.99
7730		009126	AMAZON CAPITAL SERVICES INC	19.98
7731		009126	AMAZON CAPITAL SERVICES INC	14.98
7732		009126	AMAZON CAPITAL SERVICES INC	12.99
7733		009126	AMAZON CAPITAL SERVICES INC	40.98
7734		009126	AMAZON CAPITAL SERVICES INC	10.42
7735		009126	AMAZON CAPITAL SERVICES INC	31.01
7736		009126	AMAZON CAPITAL SERVICES INC	43.03
7737	*	009126	AMAZON CAPITAL SERVICES INC	89.17
7738		009126	AMAZON CAPITAL SERVICES INC	55.96
7739		009126	AMAZON CAPITAL SERVICES INC	76.64
7740		009126	AMAZON CAPITAL SERVICES INC	134.27
7741		009126	AMAZON CAPITAL SERVICES INC	119.50
7742		009126	AMAZON CAPITAL SERVICES INC	35.97
7743		009126	AMAZON CAPITAL SERVICES INC	51.15
7744		009126	AMAZON CAPITAL SERVICES INC	10.86
7745		009126	AMAZON CAPITAL SERVICES INC	32.39
7746	*	000518	BELL EQUIPMENT COMPANY	2,332.02
7747	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	89.25
7748		009183	BOB ADAMS TOWING	401.60
7749	*	009122	CLAIRE CHUNG	241.50
7750		000605	CINTAS CORPORATION	211.76
7751		001367	CONTRACTORS CONNECTION INC	24.75
7752	*	009195	CROWN CASTLE FIBER LLC	4,493.05
7753	*	000565	DORNBOS SIGN & SAFETY INC	147.19
7754	*	001077	DUNCAN PARKING TECH INC	7,833.15
7755	*	001663	SCOTT GREWE	1,941.00
7756	*	001672	HAYES PRECISION INC	90.00
7757		001318	HERC RENTALS	2,058.45
7758		007927	MICHELLE HOLLO	1,627.50
7759		000261	J.H. HART URBAN FORESTRY	24,082.25
7759	*	000261	J.H. HART URBAN FORESTRY	1,878.00
7760		000186	JACK DOHENY COMPANIES INC	3,271.50
7761	*	003458	JOE'S AUTO PARTS, INC.	764.43
7762	*	008827	KANOPY, INC	444.55
7763	*	007827	HAILEY R KASPER	397.50
7764	*	005550	LEE & ASSOCIATES CO., INC.	1,880.00
7765	*	003527	LOWER HURON SUPPLY CO INC	1,026.15
7766	*	009370	MICHAEL SIMON	343.00
7767		002013	MIDWEST TAPE	8,496.13
7768		002852	QMI GROUP INC	175.00
7769	*	002852	QMI GROUP INC	25.00

City of Birmingham
Warrant List Dated 04/12/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
7770	*	001181	ROSE PEST SOLUTIONS	74.00
7771		006832	SAFEWARE INC.	2,550.00
7772		009301	SECURE-CENTRIC INC	2,782.88
7773	*	003785	SIGNS-N-DESIGNS INC	95.00
7774		000254	SOCRRA	82,545.00
7775	*	001097	SOCWA	136,158.87
7776		009266	US SIGNAL COMPANY LLC	7,284.96
7777	*	007278	WHITLOCK BUSINESS SYSTEMS, INC.	2,291.76
SUBTOTAL ACH TRANSACTION				\$300,749.49
GRAND TOTAL				\$633,448.28

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 04/19/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
291659	*	000855	48TH DISTRICT COURT	800.00
291660		009376	TAIL ACTIVEWEAR	572.48
291661		008751	ADOBE INC	5,911.68
291662		003708	AIRGAS USA, LLC	307.61
291663		003431	AIS CONSTRUCTION CO	687.52
291664		009440	ALLIANCE ENTERTAINMENT, LLC	209.46
291665	*	009393	AMANDA MCBRIDE	900.00
291666		009633	ANDERSON ORD LLC	1,118.66
291667		000500	ARTECH PRINTING INC	520.00
291667	*	000500	ARTECH PRINTING INC	49.00
291668	*	006759	AT&T	155.65
291669		000843	BAKER & TAYLOR BOOKS	48.48
291670		009609	BALIAN LEGAL, PLC	1,070.00
291671		003012	BATTERIES PLUS BULBS	159.96
291672		009215	BOONES EXPRESS LLC	3,075.00
291673		003907	CADILLAC ASPHALT, LLC	7,593.00
291674	*	009078	CANON SOLUTIONS AMERICA INC	280.71
291675	*	000444	CDW GOVERNMENT INC	2,977.34
291676		000902	CENGAGE LEARNING INC	119.94
291677	*	001086	CITY OF BIRMINGHAM	700.00
291678		000979	COMERICA BANK	19,752.58
291679	*	009145	CREATIVE COLLABORATIONS	3,800.00
291680		003923	CUMMINS BRIDGEWAY LLC	113.66
291681	*	000190	DOWNRIVER REFRIGERATION	82.90
291682	*	000179	DTE ENERGY	54.66
291683	*	000179	DTE ENERGY	27.36
291684		MISC	EDMONDO CASTILLO	25.95
291685		004493	ELITE IMAGING SYSTEMS, INC	622.70
291685	*	004493	ELITE IMAGING SYSTEMS, INC	497.43
291686	*	000936	FEDEX	57.22
291687	*	004514	FEDEX OFFICE	121.70
291688	*	004604	GORDON FOOD	1,020.69
291689		003150	H.W. WILSON	432.50
291690	*	000249	GUARDIAN ALARM	30.00
291691		001531	GUNNERS METER & PARTS INC	1,040.00
291692		003132	HASTINGS AIR-ENERGY CONTROL INC	1,402.26
291693		001836	HISTORICAL SOCIETY OF MICHIGAN	100.00
291694	*	001956	HOME DEPOT CREDIT SERVICES	1,260.32
291695		001090	INGRAM LIBRARY SERVICES	3,144.78
291696	*	009412	INTEGRA REALTY RESOURCES - DETROIT	4,450.00
291697		000344	J.T. EXPRESS, LTD.	1,141.87
291698	*	BDREFUND	JOHN THOMAS BLOOMINGDALE	300.00

City of Birmingham
Warrant List Dated 04/19/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
291699	*	009403	JUSTIN ZAYID	600.00
291700		004904	KONICA MINOLTA BUSINESS SOLUTIONS	2,654.00
291701		003620	LANGUAGE LINE SERVICES INC	94.00
291702	*	009386	LAW OFFICE OF BRIAN P. FENECH	350.00
291703	*	009388	LAW OFFICE OF PATRICK G. GAGNIUK	690.00
291704		006817	LEXISNEXIS RISK DATA MANAGEMENT INC	214.75
291705		007910	MACALLISTER RENTALS	1,664.00
291706		001669	MACP	100.00
291707		009546	MASTERS TELECOM	67.89
291708		000888	MCKENNA ASSOCIATES INC	51,912.01
291709	*	009200	MICHAEL MORRISON	750.00
291710	*	009621	MICHIGAN DEPARTMENT OF AGRICULTURE	75.00
291711		000639	MICHIGAN LIBRARY ASSN	2,088.00
291712		001950	MILLER CANFIELD PADDOCK AND	2,100.00
291713		007163	MOBILE HEALTH RESOURCES	2,312.89
291714	*	001686	OAKLAND CO CLERKS ASSOC	80.00
291715	*	000477	OAKLAND COUNTY	8,652.25
291716		000919	OAKLAND COUNTY TREASURER	495,270.52
291717		000678	OCLC, INC.	319.87
291718	*	009478	ODP BUSINESS SOLUTIONS, LLC	107.93
291719		009467	PARK PLACE TECHNOLOGIES, LLC	2,124.72
291720		009612	PLAYAWAY PRODUCTS LLC	323.95
291721		008852	REDGUARD FIRE & SECURITY INC	300.00
291722	*	006590	SECURE DOOR, LLC	509.00
291723		009548	SHARE CORPORATION	673.73
291724		008815	SHI INTERNATIONAL CORP.	883.49
291725	*	008073	SITEONE LANDSCAPE SUPPLY, INC	269.98
291726		007907	SP+ CORPORATION	164.00
291727		004544	STRYKER SALES CORPORATION	1,471.35
291728	*	001076	TAYLOR FREEZER OF MICH INC	325.00
291729	*	007115	TERMINIX PROCESSING CENTER	944.44
291730	*	009384	THE EDITH BLAKNEY LAW FIRM, PLLC	300.00
291731	*	MISC	THERESE NOVELL	10.00
291732	*	MISC	TODD BORSE	110.00
291733		008941	UPTOWN MARKET OF BIRMINGHAM	234.84
291734	*	000293	VAN DYKE GAS CO.	140.45
291735	*	000158	VERIZON WIRELESS	224.97
291736	*	000158	VERIZON WIRELESS	308.16
291737	*	000158	VERIZON WIRELESS	127.85
291738	*	008391	XEROX CORPORATION	187.05
291739	*	009463	ZOOBEAN	1,595.00
SUBTOTAL PAPER CHECK				\$648,066.16

City of Birmingham
Warrant List Dated 04/19/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
7785	*	002284	ABEL ELECTRONICS INC	550.00
7786		007622	ALLSTAR PRO GOLF	692.92
7787		009126	AMAZON CAPITAL SERVICES INC	96.16
7788		009126	AMAZON CAPITAL SERVICES INC	322.95
7789		009126	AMAZON CAPITAL SERVICES INC	32.97
7790		009126	AMAZON CAPITAL SERVICES INC	166.70
7791		009126	AMAZON CAPITAL SERVICES INC	28.99
7792		009126	AMAZON CAPITAL SERVICES INC	90.20
7793		009126	AMAZON CAPITAL SERVICES INC	149.00
7794		009126	AMAZON CAPITAL SERVICES INC	303.78
7795		009126	AMAZON CAPITAL SERVICES INC	97.95
7796		009126	AMAZON CAPITAL SERVICES INC	50.18
7797		009126	AMAZON CAPITAL SERVICES INC	79.64
7798		009126	AMAZON CAPITAL SERVICES INC	232.59
7799		009126	AMAZON CAPITAL SERVICES INC	195.17
7800	*	003243	AMERICAN PRINTING SERVICES INC	1,965.00
7801	*	009383	BATTI LAW PLLC	950.00
7802	*	000517	BEIER HOWLETT P.C.	48,720.70
7803	*	007345	BEVERLY HILLS ACE	55.92
7804		006683	BIRMINGHAM LAWN MAINTENANCE, INC	2,586.00
7805	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	57.97
7806		009183	BOB ADAMS TOWING	528.10
7807		009326	CAPFINANCIAL PARTNERS, LLC	22,500.00
7808		000605	CINTAS CORPORATION	171.06
7809	*	000605	CINTAS CORPORATION	147.68
7810		000605	CINTAS CORPORATION	36.77
7811	*	008044	CLUB PROPHET	540.00
7812		001750	COMERICA BANK	1,151.92
7812		001750	COMERICA BANK	272,619.00
7813		003176	COMERICA BANK - RHC	1,070.67
7813		003176	COMERICA BANK - RHC	120,732.91
7814		002668	CONTRACTORS CLOTHING CO	182.94
7815	*	007359	DETROIT CHEMICAL & PAPER SUPPLY	355.87
7816	*	000565	DORNBOS SIGN & SAFETY INC	542.95
7817		001063	EASTMAN FIRE PROTECTION INC	651.83
7818	*	007538	EGANIX, INC.	720.00
7819	*	000243	GRAINGER	506.36
7820		008293	GRAINGER, INC	180.54
7821		003938	HART PAVEMENT STRIPING CORP	18,000.00
7822	*	009382	HB LAW, PLLC	600.00
7823	*	009390	IDUMESARO LAW FIRM, PLLC	1,420.00
7824	*	007870	J.C. EHRLICH CO. INC.	59.89
7825		000261	J.H. HART URBAN FORESTRY	22,096.75

City of Birmingham
Warrant List Dated 04/19/2023

Meeting of 04/24/2023

Check Number	Early Release	Vendor #	Vendor	Amount
7826		009298	JCR SUPPLY INC	203.72
7827	*	003458	JOE'S AUTO PARTS, INC.	136.47
7828	*	000891	KELLER THOMA	1,394.70
7829	*	009392	LAMB LEGAL CONSULTING SERVICES	1,270.00
7830	*	009385	LAW OFFICE OF MICHAEL J. DICK	1,060.00
7831	*	005550	LEE & ASSOCIATES CO., INC.	3,463.22
7832	*	009398	MARCIA C ROSS PC	900.00
7833		002013	MIDWEST TAPE	204.67
7834	*	001035	MUNICIPAL EMERGENCY SERVICES INC	154.50
7835		001194	NELSON BROTHERS SEWER	130.00
7836	*	006359	NYE UNIFORM COMPANY	1,100.50
7837	*	009395	ORLANDO LAW PRACTICE PC	650.00
7838	*	002767	OSCAR W. LARSON CO.	225.00
7839	*	006853	PAUL C SCOTT PLUMBING INC	400.00
7840	*	001753	PEPSI COLA	1,150.50
7841	*	009397	RABAA PLLC	500.00
7842	*	003785	SIGNS-N-DESIGNS INC	150.00
7843		005861	UNIQUE MGMT SERVICE, INC	41.20
7844	*	000969	VIGILANTE SECURITY INC	96.00
7845	*	009379	YELLOW DOOR LAW	5,774.00
7846	*	006318	FRANK J ZAMBONI CO. INC	550.78
7847		009185	ZOOM VIDEO COMMUNICATIONS INC	598.14
SUBTOTAL ACH TRANSACTION				\$542,393.43
GRAND TOTAL				\$1,190,459.59

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

Department of Public Services

DATE: April 24, 2023

TO: Thomas M. Markus, City Manager

FROM: Scott D. Zielinski, DPS Director

SUBJECT: Dump Truck Purchase

INTRODUCTION:

Due to its age and condition, the Department of Public Services recommends replacing vehicle #65, a 2005 Volvo VHD64 Dump Truck with 6,266 engine hours, with a 2023 Tandem-Axle Dump Truck. The dump truck will be purchased from Wolverine Truck Group, located at 107 S. Groesbeck, Mt. Clemens, MI 48043, under the Rochester Hills Cooperative Agreement, RFP-RH-20-023 which the City has previously participated in.

BACKGROUND:

The Department of Public Service's Vehicle Operations has identified vehicle #65, a 2005 Volvo VHD64 Dump Truck with 6,266 engine hours for replacement, as illustrated below.

FACTOR	DESCRIPTION	POINTS
Age	1 point each year of age	18
Hours	1 point each 250 hours of usage	25
Type of Service	Type 1 – Standard duties	5
Reliability	Level 4 – In shop more than within one month time period, 1 or more breakdowns/road calls within same time period	4
Maintenance & Replacement Costs	Level 3 – Maintenance costs are 41-60% of replacement cost	3
Condition	Level 4 – Severe damage, rust, operating system, inoperable	4
Total points 28+, poor, needs priority replacement		59

LEGAL REVIEW:

This purchase has been reviewed and approved by the City Attorney.

FISCAL IMPACT:

The cost for the replacement dump truck is \$313,976.00. Funds are available in the Auto Equipment Fund, account #661.0-441.006-971.0100. Although there are currently no EV models of this type available for purchase at this time, the new dump truck has improved carbon emissions and fuel economy compared to the 2005 Volvo it is replacing.

PUBLIC COMMUNICATIONS:

This does not apply to this purchase.

SUMMARY:

Based on age and condition, the Department of Public Services recommends replacing vehicle #65 with a Tandem-Axle Dump Truck from Wolverine Truck Group. Upon receipt of the new vehicle and equipment, the old vehicle and equipment will be listed on the Michigan Inter-governmental Trade Network (MITN) for public auction.

ATTACHMENTS:

Agreement of (Purchase of Tandem Axle Truck),
Wolverine Truck Group Quote,
Cummins Warrenty_HD1

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the purchase a Tandem-Axle Dump Truck from Wolverine Truck Group, located at 107 S. Groesbeck, Mt. Clemens, MI 48043, under the Rochester Hills Cooperative Agreement, RFP-RH-20-023, in the amount not to exceed \$313,976.00. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City. Funds for this purchase are available in the FY 2022-2023 Auto Equipment Fund account #661.0-441.006.971.0100.

AGREEMENT OF (Purchase of Tandem Axle Truck)

THIS AGREEMENT is entered into this 18th day of April, 2023, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and Wolverine Truck Group a Michigan Corporation, whose address is 107 S. Groesbeck, Mt. Clemens, MI 48043, (hereafter referred to as Vender) and the foregoing shall collectively be referred to as the parties.

WHEREAS, the City desires to purchase, pursuant to the government cooperative purchasing agreement Rochester Hills Co-op RFP-RH-20-023, (1) Tandem Axel Dump Truck, as described in Attachment "A" ; and

WHEREAS, Vender has qualifications that meet the project requirements and has provided a response and cost proposal to perform the sale of required Tandem Axle Truck.

NOW, THEREFORE, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

1. MUTUALLY AGREE: It is mutually agreed by and between the parties that the Vendor's Quotation for the Tandem Axle 62,000 GVW Truck dated April 10, 2023, which includes a description of Chassis information and truck package details, shall be fully incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto (attached hereto as Attachment "A"). The Vendor shall deliver one tandem axle dump truck as described to the DPS located at 851 S. Eton, Birmingham, MI, when availed. Where DPS staff will inspect and receive.

2. TERM: This is an outright purchase and shall have no term.

3. TERMS OF PAYMENT: The Vendor will invoice the City for the sale. In no event shall invoices be submitted more than 45 days after completion of services. Submitted invoices shall include the following detailed information: the type of work performed, the time spent on the work, the individual who performed the work and the per hour billing rate charged. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days unless otherwise specified by the City.

4. Vendor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. CONFIDENTIAL AND OR PROPRIETARY INFORMATION: While the City acknowledges it is unlikely, the Vendor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to,

internal organization, methodology, personnel and financial information, etc.) may become involved. The Vendor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Vendor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Vendor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Vendor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

6. INDEPENDENT VENDOR: The Vendor and the City agree that the Vendor is acting as an independent contractor with respect to the Vendor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither Vendor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Vendor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Vendor shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

7. COMPLIANCE WITH LAWS: Vendor agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Vendor is subject, Vendor hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

8. INDEMNIFICATION: To the fullest extent permitted by law, Vendor and any entity or person for whom the Vendor 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 their behalf 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, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions of the Vendor including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City.

9. WRITTEN NOTICES: Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham
P.O. Box 3001
Birmingham, Michigan 48012
Attn: Scott Zielinski

Vendor:
Wolverine Truck Group
107 S. Groesbeck,
Mt. Clemens, MI 48043
Attn: Alexander Lenane

10. AMENDMENTS: No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

11. WAIVER OF BREACH: No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

12. COMPLETE AGREEMENT: The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Vendor agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Vendor shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

13. FAILURE TO PERFORM. If Vendor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

14. LEGAL PROCEEDINGS: Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs

and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in a federal or state court with jurisdiction over Oakland County, Michigan.

15. RESPONSE TO GOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT: The Vendor shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated April 10, 2023 to the City's Request for Quote (attached hereto as Attachment "A"). In the event of a conflict in any of the terms of this Agreement and the Vendor's response, the terms of this Agreement shall prevail.

16. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the parties hereto agree to be bound by the above terms and conditions, and Vendor, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

Wolverine Truck Group

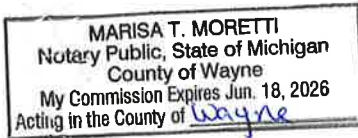
By: Kimberly J. Conners
Its: SECRETARY - TREASURER

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 18th day of April, 2023, before me personally appeared Kimberly J. Conners, who acknowledged that with authority on behalf of Wolverine to

do so he/she signed this Agreement.

Mary M. Kucharek
Notary Public
Wayne County, Michigan
Acting in Wayne County, Michigan
My commission expires: 6-18-2026



CITY OF BIRMINGHAM:

By: _____
Therese Longe, Mayor

By: _____
Alexandria D. Bingham, City Clerk

APPROVED:

Thomas M. Markus
Thomas M. Markus, City Manager
(Approved as to substance)

Scott D. Zielinski
Scott D. Zielinski, Director of Public Services
(Approved as to substance)

Mary M. Kucharek
Mary M. Kucharek, City Attorney
(Approved as to form)

Mark A. Gerber
Mark A. Gerber, Finance Director
(Approved as to Financial Obligation)



107 S. Groesbeck • Mt. Clemens, MI 48043 • (586) 783-2444 FAX (586) 469-8054

04/10/2023

City of Birmingham
RE: RH Co-Op Chassis Pricing

Attn: Mr. Scott Zielinski

The following is Freightliner chassis pricing information per your request. Pricing and conditions are per the Rochester Hills Co-op RFP-RH-20-023 contract.

Tandem Axle 62,000 GVW

Chassis Model: 108SD

Base Chassis Price:	\$97,183
2022 Model Year.....	900 Add
2023 Model Year	1,000 Add
2023 Production Surcharges.....	6,700 Add
2024 Model Year.	5,250 Add
2024 Freight Charges	675 Add
Block Heater.....	45 Add
¼" Inner Frame Reinforcement.....	600 Add
Fender Extenders.....	50 Add
Safety Package	187 Add
Power Windows/doors	219 Add
Driver's Seat 3 Chamber Upgrade	34 Add
6 Pack of Switches:.....	208 Add

CHASSIS COST: \$113,051.00

EQUIPMENT COST: \$200,925.00

COMPLETE UNIT TOTAL: \$313,976.00

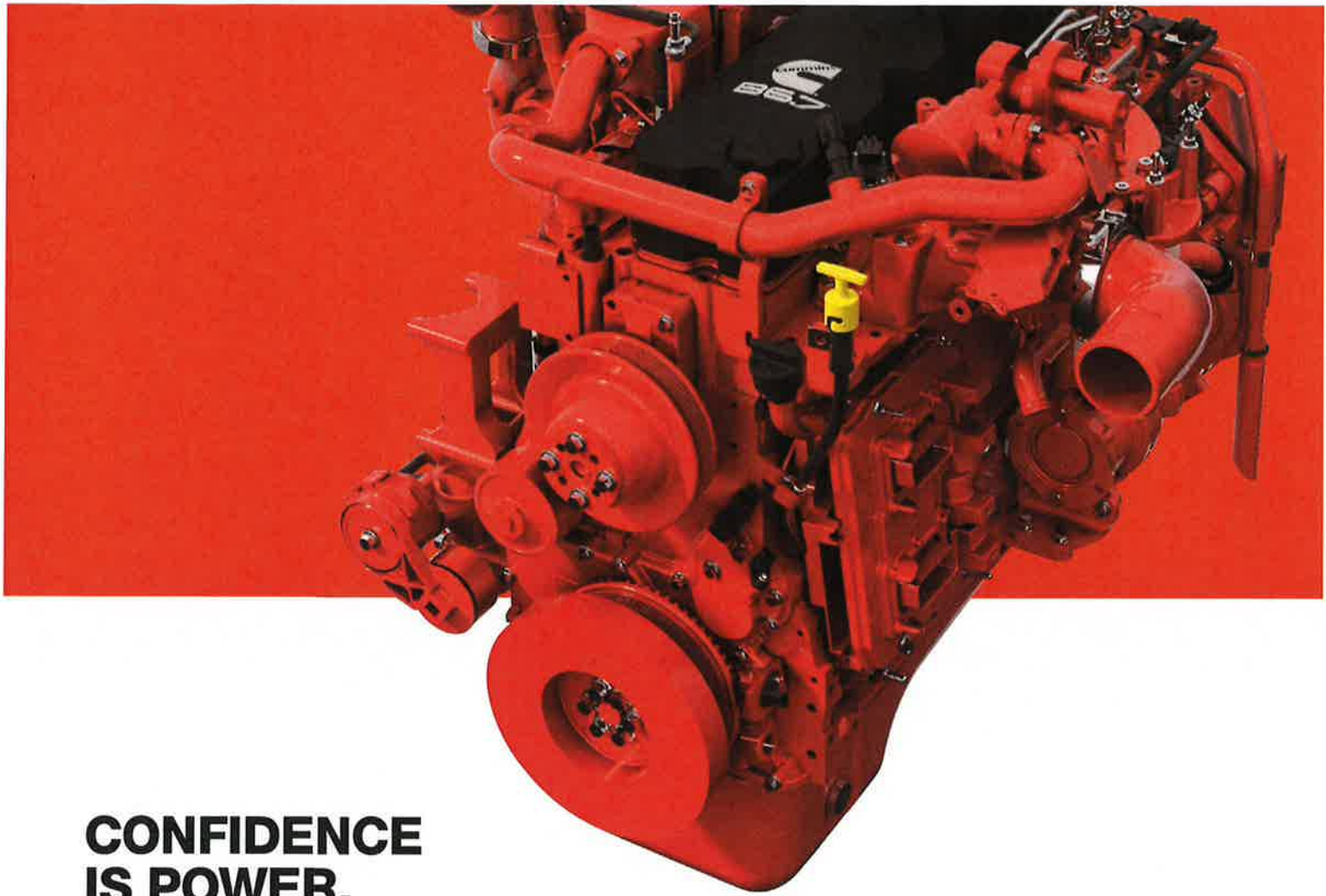
Alexander Lenane
Sales Representative
Wolverine Truck Group

CUMMINS 2021 EXTENDED WARRANTY PLANS.

ADDITIONAL COVERAGE OPTIONS FOR
MEDIUM-DUTY TRUCKS.



5G



CONFIDENCE IS POWER.

Cummins is committed to providing medium-duty truck customers with the most reliable and dependable power solutions on the road. But our commitment to our customers doesn't end on the assembly line. On top of products that are unmatched when it comes to reliability, Cummins customers also get advanced diagnostic features, superior support from the largest service network in North America and a written commitment that comes from our warranty coverage options. While these options range in duration and coverage, they all affirm not only Cummins' commitment to our customers, but also conviction in the quality of our products.

A BASELINE THAT'S ANYTHING BUT BASIC.

The base engine warranty for both the B6.7™ and L9™ Cummins diesel engines includes parts and labor on warrantable failures for the engine – with no deductible. The B6.7 base warranty coverage is good for 3 years/unlimited miles* while the L9 base warranty is good for 2 years/250,000 miles (402,336 km).**

*The B6.7 base warranty covers any failures of the engine which result, under normal use and service, from a defect in material or factory workmanship (Warrantable Failure). This Coverage begins with the sale of the engine by Cummins and ends three years after the date of delivery of the Engine to the first user.

**The L9 base warranty covers any failures of the engine which result, under normal use and service, from a defect in material or factory workmanship (Warrantable Failure). Coverage begins with the sale of the Engine by Cummins and ends after two years or 250,000 miles (402,336 kilometers) or 6,250 hours, whichever occurs first.

PROTECTION PLANS 1 AND 2.

Cummins 2021 L9 and B6.7 customers are both eligible for Protection Plan 1 and Protection Plan 2. These plans provide additional peace of mind when it comes to internal components and major engine systems including parts and labor associated with covered failures.

PROTECTION PLAN 1

- Internal components and major engine systems, including the turbocharger, water pump, air compressor, fuel pump, select engine sensors and fuel injectors (excluding the aftertreatment injector)
- Options for the B6.7 range from 4 to 6 years and 100,000 to 300,000 miles (160,934 - 482,803 km).
- Options for the L9 range from 3 to 6 years and 100,000 to 300,000 miles (160,934 - 482,803 km).

PROTECTION PLAN 2

- Internal components and major engine systems
- Options for the B6.7 range from 4 to 7 years and 100,000 to 300,000 miles (160,934 - 482,803 km.)
- Options for the L9 range from 3 to 7 years and 100,000 to 300,000 miles (160,934 - 482,803 km).



MEDIUM-DUTY EXTENDED COVERAGE OPTIONS*

Complete aftertreatment systems (DOC & DPF & SCR) Cummins-supplied aftertreatment sensors, and probes Cummins-supplied gaskets, mounting hardware, and filters	AFTERTREATMENT EXTENDED COVERAGE	
	Requires Protection Plan 1 of greater or equal duration	
Turbocharger Fuel Pump Air Compressor Select Engine Sensors Acumen Module	PROTECTION PLAN 1	
Cylinder Head Assembly Rocker Lever Assembly ECM		
Pistons, Rings and Liners Lube Oil Cooler Assembly Cylinder Block Assembly Front Gear Cover Oil Pan Connecting Rod Assembly Lube Pump Assembly Camshaft and Bushings Cam Follower Assemblies EGR Cooler, Valve, and Mixer Cam Follower Assembly Crank Shaft Assemblies		
	Up to 6 Years/ 300,000 Miles for B6.7 and L9	PROTECTION PLAN 2 Up to 7 Years/ 300,000 Miles for B6.7 and L9

*All coverages exclude non-Cummins-supplied components.

AFTERTREATMENT EXTENDED COVERAGE.

Extended coverage for your Cummins aftertreatment system is available for all Cummins-supplied components including the DPF and SCR. Options for the B6.7 range from 4 to 6 years and 100,000 to 300,000 miles (160,934 - 482,803 km). Options for the L9 range from 3 to 6 years and 100,000 to 300,000 miles (160,934 - 482,803 km).

KEEPING YOU ON THE ROAD. NOT IN THE BAY.

Cummins Care makes your workload easier by creating a seamless support experience. You can expect to get complete solutions while working with one of over 3,700 authorized parts and service locations. Visit care.cummins.com or call 1-800-CUMMINS™ (1-800-286-6467) to connect with a Cummins Care expert. The Cummins Guidanz™ mobile app and INLINE™ mini-adapter allow for key engine information to be downloaded on a smartphone or tablet. You don't even have to wait in line for a diagnostic bay to open – your vehicle's info can be downloaded while you stand right outside the cab. Cummins' suite of Connected Solutions uses wireless technology to manage your engine's health. This includes Connected Diagnostics, our Connected Advisor program and Connected Software Updates that let you update engine control module calibrations over the air, from the road or wherever your trucks are domiciled.



Cummins Inc.
Box 3005
Columbus, IN 47202-3005
U.S.A.

1-800-CUMMINS™ (1-800-286-6467)
cummins.com

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MEMORANDUM

Department of Public Services

DATE: April 24, 2023

TO: Thomas M. Markus, City Manager

APPROVED: Scott D. Zielinski, Director DPS

FROM: Carrie Laird, Parks and Recreation Manager

SUBJECT: Amendment to Tennis Facility Lease

INTRODUCTION:

Birmingham Racquet Club (BRC), located at 2100 E. Lincoln, operated by Baseline Tennis, is requesting an extension to their current Lease Agreement with the City of Birmingham that expires in September 30, 2033. The proposed extension would be for an additional 10 years through September 30, 2043 and would be the fourth amendment to the lease.

BACKGROUND:

The City of Birmingham and Birmingham Racquet Club entered into a Tennis Facility Lease beginning July 16, 1998 with amendments and extensions occurring over the years. The current amended lease (3rd amendment) is through September 30, 2033.

As part of a previous amendment to the lease in 2011, 100 percent of the financial responsibility for the facility and grounds was transferred to the BRC. The current lease extension (3rd amendment) agreed upon in 2018, and ending in 2033 was driven by the BRC commitment and interest in continuing long-term capital improvements and maintenance of the tennis facility. At the time, they anticipated improvements over the next ten years to include a new roof (occurred in 2018) for the main building, concrete repairs (occurred in 2019) around existing tennis courts, four court replacement and new asphalt (occurred in 2022) and new dome structures including mechanical equipment (not yet complete).

As described above and in the attached letter from BRC, many of the above mentioned improvements have occurred. However, with the recent pricing increases due to the pandemic and current inflation to accomplish the new dome structures and mechanical equipment (item 4 of the letter), BRC is requesting another extension to the lease agreement in order to financially justify implementing the improvements. Therefore an additional extension beginning October 1, 2033 through September 30, 2043 is proposed with the Fourth Amendment to the Tennis Facility Lease Agreement.

Birmingham Racquet Club is willing to offer a discount of 20% for Birmingham residents across all memberships which include youth, individual and family with proof of residency as part of this fourth amendment.

LEGAL REVIEW:

The City Attorney's Office prepared the proposed lease amendment which is included and signed by the Administration and the Birmingham Racquet Club.

FISCAL IMPACT:

The account #101.0-000.000-651.0004 called Tennis Club Rental is the revenue account for this budget item. Presently, the rent is adjusted annually in accordance with the U.S. city average all items consumer price index for all urban areas (CPIU) as set forth by the Department of Labor and has increased accordingly over the term. The BRC is currently paying \$6,483 per month, up from 2018 when the current amendment was approved (\$5,410 monthly).

PUBLIC COMMUNICATIONS:

The lease extension agreement does not require Public Communications however the discount offered to residents will be communicated on the City website and other forms of media as appropriate.

SUMMARY:

Based on the improvements made throughout the past years and intended plans to make capital investments to the Birmingham Racquet Club, performed by Baseline Tennis, the Administration recommends the approval of a contract extension for an additional ten (10) years ending on September 30, 2043. The extension will help spread unanticipated higher costs over the additional 10 years in order for the BRC to continue improvements to the facility without creating a hardship.

The BRC is committed to the needed capital improvements and maintaining a good relationship with the city and has agreed to including a 20% discount to residents as part of this amended lease agreement.

This amendment to the tennis facility lease will be shared with the Parks and Recreation Board at an upcoming meeting as an informational item.

ATTACHMENTS:

- Proposed Fourth Amendment to the Tennis Facility Lease
- Letter dated February 20, 2023 from the Birmingham Racquet Club
- Insurance certificate

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the Fourth Amendment to the Tennis Facility Lease with the Birmingham Racquet Club authorizing a second ten (10) year extension to the lease, ending September 30, 2043, in consideration of the Lessee making long-term improvements and maintenance of the tennis facility and offering a resident discount of 20% across all memberships according to Attachment A. Further, to authorize the Mayor and Clerk to sign the agreement upon receipt of the required insurance.

**FOURTH AMENDMENT TO TENNIS FACILITY LEASE
DATED MAY 11, 1998, AMENDED AND RESTATED
SEPTEMBER 22, 2014**

THIS AMENDMENT TO LEASE made the 11th day of May 1998, amended and restated on September 22, 2014, second amendment dated November 19, 2018, third amendment dated the April 1, 2020, and this fourth amendment made this ____ day of _____, 2023 by and between the **CITY OF BIRMINGHAM**, a Michigan municipal corporation, having its principal municipal office at 151 Martin Street, Birmingham, Michigan (hereinafter referred to as the "City"), party of the first part, and **BIRMINGHAM RACQUET CLUB**, having its principal office at 2100 E. Lincoln (hereinafter referred to as "Lessee"), party of the second party, provides as follows:

WITNESSETH:

WHEREAS, the City is desirous of continued facility improvements and maintenance of the Tennis Club site; and,

WHEREAS, the Lessee is proposing additional improvements, most particularly a new dome structure and mechanical equipment; and,

WHEREAS, the new dome structure and mechanical equipment is approximately Eight Hundred Thousand Dollars (\$800,000.00); and,

WHEREAS, the Birmingham Racquet Club is finding an expected increase of cost to the new dome structure and mechanical equipment, and as such will create a hardship if it is to only be spread over a ten (10) year period of time; and,

WHEREAS, the Birmingham Racquet Club is requesting an additional extension to spread this long-term investment over another ten (10) years; and,

WHEREAS, the City of Birmingham believes it is in the best interest of the community as a whole that such relief be given.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RESPECTIVE AGREEMENTS AND UNDERTAKINGS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. Attachment "A," a letter dated February 20, 2023 from Jeff Stassen, CEO of the Birmingham Racquet Club shall be incorporated herein by reference and made a part of this Agreement.

2. Failure of the Lessee to provide a new dome structure and mechanical equipment during the original term shall result in a default.

3. All improvements provided under this Agreement shall remain City property and run with the premises.

4. The current Lease was extended to end on September 30, 2033. The second extension for an additional ten (10) years will commence on October 1, 2033 and end September 30, 2043.

5. The Birmingham Racquet Club is offering Birmingham residents a discount of twenty percent (20%) for all memberships which include youth, individual, and family. The City of Birmingham may advertise this discount on the Birmingham website. Proof of residency shall be provided by the persons' drivers license.

6. This lease agreement shall in all circumstances, regardless of any other potential action in law, maintain the City's public property in the City's rightful and legal ownership and possession for all times and the lessor accepts, acknowledges, and agrees to the City's sole rights in its public property and agrees to always accept and never interfere with the City's rights in it's public property.

7. All other terms and conditions of the current Tennis Facility Lease, Restatement dated September 22, 2014, and amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the said parties have caused this Amendment to Tennis Facility Lease to be executed as of the date and year above written.

THIS PORTION INTENTIONALLY LEFT BLANK

LESSEE
BIRMINGHAM RACQUET CLUB ACQUISITION
CO., L.L.C. d/b/a BIRMINGHAM RACQUET CLUB

By: Jeff Stassen
Jeff Stassen, CEO

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 14 day of April, 2023, before me personally appeared Jeff Stassen, CEO, who acknowledged that with authority on behalf of Birmingham Racquet Club Acquisition Co., L.L.C. d/b/a Birmingham Racquet Club to do so he signed this Agreement.

Vance W. Hagen
Notary Public

Wayne County, Michigan
Acting in Wayne County, Michigan
My commission expires: 8-25-2025

VANCE W. HAGEN
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Aug 25, 2025
ACTING IN COUNTY OF Wayne

CITY OF BIRMINGHAM

By: _____
Therese Longe, Mayor

By: _____
Alexandria D. Bingham
City Clerk

APPROVAL:

By: Thomas M. Markus
Thomas M. Markus, City Manager
As to substance

By: Mark Gerber
Mark Gerber, Finance Director
As to financial obligation

By: Mary M. Kucharek
Mary M. Kucharek, City Attorney
As to form

ATTACHMENT A

BRC
B I R M I N G H A M
R a c q u e t C l u b

20 February 2023

Mr. Tom Markus
City Manager
151 Martin St.
Birmingham, MI 48009

Subject: Birmingham Racquet Club Extension

Hi Tom,

Per our recent conversation, I would like to discuss the possibility of increasing the length of our upcoming extension. The ten-year extension was granted in November 2018 and runs from September 2023 to September 2033. At the time of this extension, several leaseholder improvements and equipment purchases were agreed upon.

1. New roof on clubhouse - completed 2018; Cost \$43,000.
2. Concrete repairs between Courts 1 and 5 (pending).
3. Four-court replacement with new asphalt. Upon consultation with court experts, it was determined that replacement of the asphalt came with significant risk regarding additional unpredictable settling/cracking. As our current surface is considered stable, it was decided that repair of historical cracking and sanding/filling of previous crack repair was a more predictable outcome. These repairs were completed in September 2022 in addition to complete resurfacing and relining of all six courts. Cost \$65,000.
4. New dome structures and mechanical equipment. – The quote for replacement of the two domes and mechanicals at the time of the extension was a total of \$505,000. The current quote for the same equipment is approximately \$800,000.

Item 4 is the issue at hand. Through the general increase in costs due to the pandemic, current inflation, and the cost of oil, we are seeing a 60% increase for the expected cost of new domes and mechanicals. Originally expecting to spread the cost of \$505,000 over the ten-year extension, we are now looking at a cost of roughly \$800,000. This unexpected increase will create a hardship if it is to be spread over that same time span. With that in mind, we would like to ask for an additional extension in order to spread this long-term investment over another 5 to 10 years.

I believe the BRC has been a great facility for the city of Birmingham providing quality tennis to all ages and abilities. Our club takes pride in the variety of programs and services offered and we are eager to serve the community for as long as possible. Please let me know if additional information is required and next steps. Thank you for your consideration and support.

Sincerely,

Jeff Stassen
CEO
Birmingham Racquet Club/Baseline Tennis

2100 E. Lincoln • Birmingham • Michigan • 48009
Phone (248) 644-5683 • www.baselinetennis.net



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/21/2022

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 InPro Insurance Group, Inc. 2095 E. Big Beaver, Ste 100 Troy MI 48083	CONTACT NAME: InPro Insurance Group PHONE (A/C, No, Ext): 248-526-3260 E-MAIL ADDRESS: certificates@inproagent.com	FAX (A/C, No): 248-526-3261
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: West Bend Mutual Ins Co		15350
INSURER B: Accident Fund Ins Co of Amer		10166
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 546980168

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 <input checked="" type="checkbox"/> Prof. Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			A362008	10/15/2022	10/15/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			A362008	10/15/2022	10/15/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			A362008	10/15/2022	10/15/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input type="checkbox"/>	N / A	AFWCP100065352	10/15/2022	10/15/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

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

CERTIFICATE HOLDER**CANCELLATION**

Birmingham Racquet Club
2100 E. Lincoln 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

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MEMORANDUM

Finance Department

DATE: April 4, 2023

TO: Thomas M. Markus, City Manager

FROM: Mark Gerber, Director of Finance/Treasurer
Kathryn Burrick, Senior Accountant

SUBJECT: Amendment to 2020-2021 Public Service Contract

INTRODUCTION:

Staff is recommending an extension of the 2020-2021 Public Service Contract with NEXT in order to expend the remaining CDBG funds for that program year.

BACKGROUND:

The City previously entered into an agreement with NEXT for the 2020-2021 Community Development Block Grant (CDBG) program year. Under the CDBG program, the contract provides for Yard Services, Senior Outreach Services, and Minor Home Repair Services to resident homeowners administered by NEXT for the City.

Currently, there are unexpended balances in Community Development Block Grant Funds for the program year 2020-2021 (Minor Home Repair \$19,388.49). In order to provide for continued expenditures of these funds, the Department of Community and Economic Development at Oakland County has advised the City that our current 2020-2021 contract with NEXT which expired on December 31, 2022 must be extended.

LEGAL REVIEW:

Legal has reviewed and approved the contract amendment.

FISCAL IMPACT:

Extending the contract will allow the City to spend the remaining CDBG funds.

PUBLIC COMMUNICATIONS:

None needed.

SUMMARY:

It is recommended that the City Commission approve the amendment to extend the contract with NEXT through June 30, 2024.

ATTACHMENTS:

- Amendment to the 2020-2021 Public Service Contract

SUGGESTED ACTION:

To make a motion adopting a resolution to approve an extension of the public services and minor home repair contract with NEXT for the purpose of expending remaining program year 2020-2021 Community Development Block Grant funds for Minor Home Repair Services administered by NEXT through June 30, 2024; and further, to authorize the Mayor and the City Clerk to sign the amendment on behalf of the City.

ADDENDUM TO COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC SERVICE CONTRACT
FOR YARD SERVICES, SENIOR OUTREACH SERVICES,
AND MINOR HOME REPAIR SERVICES
FOR PROGRAM YEAR 2020-2021

THIS AGREEMENT, made as of this ____ day of _____, 2023, by and between the City of Birmingham and NEXT provides as follows:

WHEREAS, the City and NEXT entered into a Yard Services, Senior Outreach Services, and Minor Home Repair Services Public Service Contract on June 25, 2021 for the Community Development Block Grant program year 2020-2021 to provide for Yard Services, Senior Outreach Services, and Minor Home Repair Services to resident homeowners of the City of Birmingham;

WHEREAS, the Contract provided that NEXT would administer these services for the City until December 31, 2021 in the funding amounts as follows: \$7,327 for yard services, \$3,500 for senior services, and \$25,550 for Minor Home Repair.

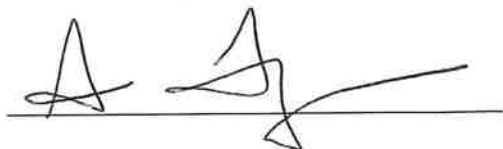
WHEREAS, the City and NEXT desire to extend this Contract through December 31, 2022 for purposes of expending remaining 2020-2021 Community Development Block Grant Funds.

WHEREAS, the City and NEXT desire to extend this Contract through June 30, 2024 for purposes of expending remaining 2020-2021 Community Development Block Grant Funds.

NOW, THEREFORE for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. The parties agree to further extend the Contract until June 30, 2024.
2. All other terms of the original and amended contract that do not conflict with this Agreement shall remain in full force and in effect throughout the term of this extension.

WITNESSES:



NEXT

By:



Christine Braun
Its: Executive Director

MEMORANDUM

Finance Department

DATE: April 12, 2023

TO: Thomas M. Markus, City Manager

FROM: Mark Gerber, Director of Finance/Treasurer
Kathryn Burrick, Senior Accountant

SUBJECT: PY 2022 Community Development Block Grant (CDBG)
Public Services Contract

INTRODUCTION:

The City has been notified by Oakland County that funding from the federal government for the program year 2022 Community Development Block Grant (CDBG) has been secured and the City may start spending these funds. The City contracts with an outside agency to administer the public services portion of the grant. The public services contract must be approved by the City and submitted to Oakland County in order for those funds to be spent.

BACKGROUND:

The City Commission approved the program year 2022 CDBG grant application on December 6, 2021 which provided estimated funding for yard services and senior outreach services in the amount of \$7,573 and \$3,500, respectively. On February 17, 2023, the City received notification from Oakland County that the City could start expending these funds as evidenced in the Approval Letter to Spend dated February 17, 2023.

In order to spend the funding for yard services and senior outreach services, the City needs to contract with an outside agency to provide these services to its residents. On March 11, 2023, a request for proposal (RFP) for yard services and senior outreach services was advertised in the Detroit Free Press Newspaper and sent to three potential agencies using a Public Service Directory provided by Oakland County.

On Tuesday, April 11, 2023, bid proposals entitled, "CDBG Bid Proposal" were opened. The City received one bid as follows:

Bid Results:

Agency	Bid
NEXT	\$7,327 Yard Services, \$3,500 Senior Services, \$25,263 Minor Home Repair Total bid: \$36,090
Oakland Livingston Human Services	No bid was received

Agency (OLHSA)	
Community Services of Oakland (CSO)	No bid was received

The bid was evaluated on a point rating system as required by Oakland County's procurement guidelines. This system allows the decision to be based on the best service provider not solely based on the lowest price. The criteria and points rating system was established before the RFP was issued and all potential bidders were informed of this process.

In evaluating the bid, NEXT received a point score of 100 based on NEXT's past experience with the City, availability of qualified personnel, capability, and familiarity with the CDBG program. Currently, NEXT is administering the City's 2021-2022 CDBG Yard Service, Senior Outreach Service, and Minor Home Repair programs.

LEGAL REVIEW:

The attached contract between NEXT and the City is based on a template provided by Oakland County CDBG requirements and was reviewed by the City's attorney. There are no legal issues pertaining to this contract.

FISCAL IMPACT:

No other amendments are necessary at this time.

PUBLIC COMMUNICATIONS:

None needed.

SUMMARY:

It is recommended that the Public Services Contract be awarded to NEXT for the 2022-2023 Program Year with an ending contract date of December 31, 2023 which is the maximum 1.5 year contract date allowable by Oakland County. This will allow NEXT until December 31, 2023 to expend their grant balance.

ATTACHMENTS:

- 1) Oakland County Letter to Spend
- 2) NEXT/City Public Services Contract
- 3) Minutes approving 2022 CDBG application
- 4) RFP advertisement

COMMISSION ACTION:

Make a motion adopting a resolution to award the 2022-2023 Public Services contract totaling \$10,445.00 for Yard Services and Senior Outreach Services to NEXT under the Community Development Block Grant Program; and further, to authorize the Mayor to sign the contract on behalf of the City.

February 17, 2023

Dear Community Development Block Grant (CDBG) Administrator:

The Neighborhood & Housing Development Division is pleased to inform you that you may now obligate and expend program year (PY) 2022 Community Development Block Grant (CDBG) funds.

The attached materials including this letter, Subrecipient Agreement, Funding Approval/Agreement, and Project Summary should be maintained in your PY 2022 application file to document the official release of funds.

The enclosed Subrecipient Agreement is required under federal regulation and specifies your record keeping, auditing, monitoring, property disposition, environmental and other responsibilities under the Oakland County CDBG program. The Subrecipient Agreement is in effect until all PY 2022 funds are expended and record keeping, record retention and audit responsibilities are satisfied as specified. Please file your signed copy of the Subrecipient Agreement with your PY 2022 application.

Review the PY 2022 Project Summary carefully. It is the official description of your community's approved 2022 CDBG activities and takes precedence over the application.

All CDBG funds must be expended in compliance with applicable federal, state and county laws and regulations, and with any restrictions listed on the project summary. The following comments and/or instructions constitute part of your project summary:

- No projects funded in whole or in part by CDBG funds may take place within wetlands areas unless an eight-step* environmental review process is followed to determine that no practicable alternative to the project exists and all necessary state permits have been obtained.
- No categorically excluded or environmentally assessed project (coded 2 or 3 respectively on the project summary) funded in whole or in part by CDBG funds, may take place within a 100 or 500-year floodplain as identified by the Federal Emergency Management Agency (FEMA) unless an eight-step* process is followed to determine that no practicable alternative to the project exists.

* Environmental reviews must be approved by Katie Tierney, Environmental Officer, at time of application.

As part of the County's environmental review record procedures, various local, state and federal agencies received a copy of the 2022 CDBG application for review. If an agency commented on activities their remarks are also enclosed as attachments. These comments constitute part of your PY 2022 Project Summary.

If you have questions regarding the enclosed information, please contact Samantha Ferguson, Grant Compliance and Program Coordinator, at cdbg@oakgov.com or (248) 858-5312. We look forward to working with you during this new program year.

Sincerely,



Shane Bies
Manager

**COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC SERVICE CONTRACT
PY 2022**

CITY OF BIRMINGHAM

Municipality

NEXT

Service Agency

Effective Date: **July 1, 2022** *Ending Date:* **December 31, 2023**

This contract shall be effective for 1.5 years from the beginning effective date or when funding has been expended, whichever comes first. Contracts should not exceed 1.5 years in duration.

CONTRACT FUNDING SOURCES:

CDBG Program Year: 2022-2023 **Account Name:** Yard Services, Senior Services

Total CDBG Dollar Amount of Contract: \$ 10,445.00

Yard Services \$6,945.00 (20% NEXT Admin \$1,389.00)

Senior Services \$3,500.00

Section I. AGREEMENT

This contract is made this day, 4 / 19 / 2023, between NEXT,
(Name of Service Agency)

hereinafter designated as the "Service Agency", having its principal office at
2121 Midvale Avenue, Birmingham, MI 48009

(Service Agency Address)

and, CITY OF BIRMINGHAM, hereinafter designated as the "Municipality",
(Name of Municipality)

having its principal office at 151 Martin Street, Birmingham, MI 48009,
(Municipality Address)

Section II. PURPOSE

A) The purpose of this contract shall be: (List a detailed description of services to be provided, for whom and at what cost. Include a specific unit of measure to document how costs are derived. Include attachments as needed) Providing Yard Services and Senior Services to low and moderate income homeowners, including senior citizens and persons with disabilities, of the City. The City of Birmingham has designated program year 2022-2023 CDBG funds in the amounts of \$6,945 for Yard

Revised 7/12/17

Services (20% Admin \$1,389.00) and Senior Services \$3,500.00. These programs will be administered for the City through NEXT and a volunteer board appointed by NEXT for the 2022-2023 program year beginning July 1, 2022 and ending December 31, 2023. Costs are derived using the number of low-moderate income persons with new access to service.

B) Federal CDBG Performance Measures are pre-determined for public service activities and include: Goal - Improve Quality of Life; Objective - Suitable Living Environment; Indicator - # of Low/Moderate Income Persons with New Access to Service as reported in the Direct Benefit Activity Report; Outcome - Improved Availability/Accessibility.

Section III. THE SERVICE AGENCY'S RESPONSIBILITIES

The Service Agency shall:

- A) Maintain records pertaining to the monies received and services provided in accordance with this agreement for a minimum of four years from the completion of this agreement. Allow the County of Oakland, the U.S. Department of Housing and Urban Development (HUD), the Comptroller General of the United States and any of their authorized representative's access to financial records pertaining to Community Development Block Grant Funds and this agreement for the purpose of audit or examination.
- B) Provide the Municipality and Oakland County Community & Home Improvement Division a specific unit(s) of measure for all services. NEXT will bill administrative costs 20% of the contract amount.
- C) Provide the Municipality invoices for services rendered based on actual costs.
- D) Submit payment requests that include required supporting documentation monthly or quarterly. Required documentation includes the "Direct Benefit Activity Report" to capture client information.
- E) Provide management and personnel to adequately perform the services prescribed by this agreement.
- F) Be solely responsible for any and all taxes (federal, state and/or local); worker's compensation insurance; disability payments; social security payments; unemployment insurance payments; insurance, and/or any similar type of payments for the Agency or any employee thereof; and shall hold the Municipality harmless from any and all such payments.
- G) Provide insurance in the kind and amount specified by the Municipality. The Municipality shall be named as an additional insured thereon and furnished with a certificate thereof when applicable.
- H) The Agency will not solicit or apply funds from any other source for the services reimbursed under this agreement.

Section IV. THE MUNICIPALITY'S RESPONSIBILITIES

The Municipality shall:

- A) In consideration for services rendered by the Service Agency, pay a total sum not to exceed the CDBG program year funded amount specified above.
- B) The municipality shall require written documentation of the client benefit qualification to be kept on site with the agency.
- C) The municipality must monitor the service agency at least once during the contract period.
- D) Recompense the Service Agency upon receipt of a payment request that includes accurate required supporting documentation from the Service Agency in amounts and time intervals as specified here.

Payment requests from the Service Agency are to be received monthly, quarterly, or annually.

Revised 7/12/17

Section V. COMPLIANCE

- A) The Service Agency shall comply with applicable laws, ordinances, codes and regulations of the Federal, State and local governments.
- B) Client Eligibility: All clients served under this agreement shall be qualified via either the HUD section 8 income verification or the HUD "presumed benefit" verification.

Section VI. DISCRIMINATION PROHIBITED

The Service Agency shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, condition or privileges of employment on a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status pursuant to the Elliot Larsen Civil Rights Act, 1976, P.A. 453. The Service Agency and the Municipality shall also comply with the provisions of the Michigan Handicappers Civil Rights Act, 1976, P.A. 220 and the Federal Rehabilitation Act of 1973, P.A. 93-112, 87 Stat. 394, which require that no employee or client or otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance. No person shall, on the grounds of race, creed, color, sex, age, national origin, height, weight, handicap, marital status, sexual orientation, or gender identity be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this contract.

Section VII. PROHIBITION OF POLITICAL AND RELIGIOUS ACTIVITY

There shall be no religious worship, instruction or proselytization as part of, or in connection with, the performance of this agreement. None of the funds, materials, property or services under this agreement shall be used in the performance of this agreement for any partisan political activity, including lobbying, as specified in Federal Circular A-122 Cost Principles for Nonprofit Organizations -- lobbying revisions, or to further the election, defeat, recall, impeachment, appointment or dismissal of any candidate for or from any public office.

Section VIII. GENERAL CONTRACT PROVISIONS

- A) Merger or Integration: This agreement constitutes the entire agreement between the Service Agency and the Municipality with respect to the subject matter hereof; there are no other further written or oral understandings or agreements with respect hereto.
- B) Modification, Assignment or Subcontracting Absent Prior Written Consent: No variation or modification of this agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of the Service Agency and the Municipality. Any alterations, additions or deletions to the terms of this agreement, which are required by the enactment of legislation, regulations and directives, are automatically incorporated into this agreement on the date designated by law, regulation or directive.

- C) Termination: Either party may, at any time during the life of this agreement, terminate this agreement by giving thirty (30) days written notice to the other party and Oakland County Community & Home Improvement Division of its intention to terminate and an opportunity for consultation prior to termination. In the event of a termination, the Municipality's obligation shall only be to reimburse the Service Agency for services rendered up to notification of termination.
- D) Addendum: A contract duration may be extended or shortened, funds may be added or subtracted via an addendum signed by a representative from the Municipality and the Service Agency indicating the exact changes. The Municipality shall provide a copy to Oakland County Community & Home Improvement.
- E) Hold Harmless: To the fullest extent permitted by law, the Service Agency agrees to indemnify, pay in behalf of, and hold harmless the Municipality, Oakland County Community & Home Improvement, their elected and appointed officials, employees, volunteers, boards, commissions and others working in behalf of the Municipality and/or County, against any and all claims, demands, suits, losses, including all costs connected therewith for any damages which may be asserted, claimed or recovered against or from the Municipality and/or County, 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 the activity authorized by this contract.
- F) Confidentiality: The use or disclosure of information by the Municipality or Service Agency concerning services, applicants or recipients obtained in connection with the performance of the agreement shall be restricted to the purposes directly connected with the administration of the services provided under this agreement. Such information shall not be used for any other purpose unless required by law, statute or other legal process and is disclosed to Oakland County Community & Home Improvement.
- G) Disputes: The Municipality shall notify the Service Agency in writing of its intent to pursue a claim against the Service Agency for breach of any terms of this agreement. No suit may be commenced by the Municipality for breach of the agreement prior to the expiration of ninety (90) days from the date of such notification. Within this ninety (90) day period, the Municipality at the request of the Service Agency must meet with an appointed representative of the Service Agency for the purpose of attempting to resolve the dispute. The Service Agency shall be given the opportunity to cure or remedy any breach within such ninety (90) day period.
- H) Notices: Whenever under this agreement a provision is made for notice of any kind, unless otherwise herein expressly provided, it shall be in writing and shall be served personally or sent by registered or certified mail with postage prepaid to the designated representatives at the addresses supplied below. A copy shall be provided to Oakland County Community & Home Improvement.
- I) Equal Employment Opportunity: The Service Agency shall comply with Executive Order 11246 of Sept. 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

Revised 7/12/17

- J) Copeland "Anti-Kickback" Act: The Service Agency shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C.874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to contracts and sub grants for construction or repair)_
- K) Reporting/Monitoring Requirements: The Municipality shall monitor the operations of vendor activities under this contract to assure compliance with applicable Federal requirements, contract provisions and that performance goals are being achieved on an annual basis.
- L) Patent Regulations: The Service Agency shall comply with the Municipality's requirements pertaining to patent rights with respect to any discovery or invention, copyrights and rights in data which arise or is developed in the course of or under such contract.
- M) Debarment, Suspension, Ineligibility and Voluntary Exclusion
The Service Agency shall comply with the provisions of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract. Additionally, the Contractor shall not use, directly or indirectly, any of the funds provided by this contract to employ, award contracts to, or otherwise engage the services of, or fund any contractor/subcontractor during any period that the contractor/subcontractor is debarred, suspended or ineligible under the provisions of 24 CFR Part 24. Using the Excluded Parties Listing System (<http://epls.arnet.gov>), Oakland County Community & Home Improvement Division has determined, as of the date of this contract that the Contractor is not excluded from Federal Procurement and Non-procurement Programs.
- N) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

IX. SERVICE AGENCY AND MUNICIPALITY CONTACT INFORMATION

SERVICE AGENCY

MUNICIPALITY

Name: NEXT

Name: CITY OF BIRMINGHAM

Representative Name: Christine Braun

Representative Name: Alexandria Bingham

Phone #: (248) 203-5270

Phone #: (248) 530-1802

Address: 2121 Midvale Avenue

Address: 151 Martin Street

Birmingham, Michigan 48009

Birmingham, Michigan 48009

E-mail Address: cbraun@birmingham.k12.mi.us

E-mail Address: abingham@bhamgov.org

IRS #: 38-2280601

IRS #: 38-6004664

X. CONTRACT ACCEPTANCE

The undersigned indicate by their signatures that they are authorized to act on behalf of their respective party in this capacity. CDBG funds may not be legally obligated until after the municipality has received the official award of funds letter for this program year.

WITNESSES:

NEXT



By: 

Christine Braun
Its: Executive Director

Revised 7/12/17

STATE OF MICHIGAN)

) ss:

COUNTY OF OAKLAND)

On this 19th day of April, 2023, before me personally appeared Christine Braun, who acknowledged that with authority on behalf of NEXT to do so he/she signed this Agreement.

Ingrid Z. Haddock

Notary Public

Oakland County, Michigan

Acting in Oakland County, Michigan

My commission expires: 8-23-2028

INGRID Z. HADDOCK
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Aug 23, 2028
ACTING IN COUNTY OF Oakland

CITY OF BIRMINGHAM

By: _____

Therese Longe

Its: Mayor

By: _____

Alexandria Bingham

Its: City Clerk

Birmingham City Commission Minutes
December 6, 2021
7:30 p.m.
Municipal Building, 151 Martin
Vimeo Link: <https://vimeo.com/648857629>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Alexandria Bingham, City Clerk, called the roll.

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

Absent: None

Administration: City Manager Markus, City Clerk Bingham, Assistant City Manager Ecker, Finance Director Gerber, City Attorney Kucharek, Department of Public Services Director Wood

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

- A moment of silence was observed in remembrance of the lives lost and altered as a result of the November 30, 2021 shooting at Oxford High School.
- COVID-19 cases locally are the highest they have been since the beginning of the pandemic. Michigan and Oakland County continue to be at a high level of community transmission. As a result, the CDC recommends vaccinated and unvaccinated individuals wear a facemask indoors while in public. The City requires masks in City Hall for all employees, board and commission members, and the public. Please visit the CDC's website on how to safely celebrate the holidays and for more COVID-19 information.
- Mayor Pro Tem Boutros' Birthday.

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

Dan Marsh, Executive Director at the Birmingham YMCA, greeted the new Commissioners, invited the Commissioners to visit, and provided an update on the YMCA's operations.

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.

12-306-21 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Host: Item A – City Commission Meeting Minutes of November 22, 2021
Commissioner Haig: Item D – Set Public Hearing for 298 S. Old Woodward – Daxton Hotel –
Special Land Use Permit Amendment
Item E – Lease Agreement – 35046 Woodward Ave. (Formerly Alban's
Bottle & Basket)
Item I – Park Street Parking Structure Elevator Repair

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Boutros:
To approve the Consent Agenda with the exception of Items A, D, E and I.

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

Nays, None

- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated November 24, 2021, in the amount of \$2,211,260.33.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated December 1, 2021, in the amount of \$167,982.15.
- F. Resolution approving Dynamic Systems, Inc. be awarded the "Power Washing Sidewalks in Downtown Birmingham 2022-2024" contract for a total project cost not to exceed \$66,300.00. Funds are available from the Birmingham Shopping District Maintenance account #247-748.000-935.0200, and the Parks Other Contractual Services account #101-751.000-811.0000 for these services. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurance coverage.
- G. Resolution to install a No Parking from 7 a.m. to 5 p.m., Permit Exempt zone for School Days on Bird Ave. from Pierce to Edgewood. Further, to direct the Chief of Police and the City Clerk to sign the traffic control order on behalf of the City.
- H. Resolution to reschedule the October 10, 2022 joint meeting of the Birmingham City Commission and Planning Board to a new date of November 21, 2022.

12-307-21 (Item A) City Commission Meeting Minutes of November 22, 2021

Commissioner Host said that on page seven, second paragraph from the bottom, it should read "Fremont Scott", not "Scott Fremont".

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Boutros:
To approve the City Commission meeting minutes of November 22, 2021.

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

Nays, None

**12-308-21 (Item D) Set Public Hearing for 298 S. Old Woodward –
Daxton Hotel –
Special Land Use Permit Amendment**

In reply to Commissioner Haig, CA Kucharek confirmed this potential liquor license transfer would only be a legal ownership change and would not alter the operations, licensing, or function of the Daxton.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Baller:
To set a public hearing date of January 10, 2022 to consider the Special Land Use Permit Amendment at 298 S. Old Woodward – Daxton Hotel – to allow the transfer of ownership of an existing liquor license.

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

Nays, None

**12-309-21 (Item E) Lease Agreement – 35046 Woodward Ave.
(Formerly Alban's
Bottle & Basket)**

Commissioner Haig recommended that the lease agreement factor in an adjustment for inflation. He explained that could be done with a year-by-year adjustment, which he cautioned might be onerous, a five-year adjustment with either an absolute number or a round-up number, or selecting a standard percentage for interest.

CA Kucharek stated that inflation was considered as part of the proposed increase in the lease rates. She said the lease rates were also factored in fairness to the lessor, to ensure that the lessor would not be paying significantly more for these parking spaces than other lessors do in the City. She noted that this

lease would not be precedential since the City leasing just parking spaces to a lessor is a relatively rare occurrence.

CM Markus noted that the lease also grants the City the right to enter the property if necessary to conduct work on the Water Tower or surrounding areas.

Commissioner Baller said the escalations proposed in the contract largely correlated with inflation. He said that while he was in favor of tying City contracts to inflation and other relevant indices, he did not think that in this case the difference between the escalations proposed in this contract and inflation was worth a renegotiation.

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Boutros:
To approve the lease agreement between the City and Water Tower Properties and authorize the Mayor and the City Clerk to sign the agreement on behalf of the City.

ROLL CALL VOTE: Ayes, Commissioner Baller
Mayor Pro Tem Boutros
Commissioner McLain
Commissioner Schafer
Commissioner Host
Mayor Longe

Nays, Commissioner Haig

12-310-21 (Item I) Park Street Parking Structure Elevator Repair

Commissioner Haig noted this repair stemmed from the need to replace obsolete equipment. He asked if the equipment in the rest of the parking structures would be evaluated for similar issues, so that work in the parking structures could be preventative.

CM Markus confirmed that the new Parking Manager would be keeping an eye on things like obsolescence of equipment, and that preventative maintenance should become much more frequent than emergency repairs.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Host:
To confirm the City Manager's authorization for the emergency expenditure related to the repair of the Park Street Structure elevator by KONE Elevator for a cost not to exceed \$22,765.00 to be charged to the Automobile Parking System Fund, Park Parking Structure Elevator Maintenance account #585-538.003-930.0200.

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

Nays, None

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

12-311-21 Public Hearing – Wall Art – Request to Continue

Mayor Longe stated the Commission received a request for this item to be postponed to the City Commission meeting of December 13, 2021.

The Mayor opened the public hearing at 7:56 p.m.

Public Comment

David Bloom spoke in favor of trying wall art in the community, noting that the rules could always be modified or rolled back if desired.

The Mayor ~~closed the public hearing at 7:59 p.m.~~ continued the public hearing to the December 13, 2021 meeting.¹

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Schafer:
To continue the public hearing to consider ordinance amendments to Article 7, Section 7.41-7.46-Processes, Permits, and Fees & Article 9, Section 9.02 Definitions of the Zoning Ordinance to create a wall art definition and review process to the City Commission meeting of December 13, 2021.

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

Nays, None

12-312-21 Public Hearing – 203 Pierce Street – Toast – Special Land Use Permit Amendment, Final Site Plan and Design Review

The Mayor opened the public hearing at 8:00 p.m.

Mayor Longe stated the Commission received a request for this item to be postponed to the City Commission meeting of December 13, 2021.

The Mayor ~~closed the public hearing at 7:59 p.m.~~ continued the public hearing to the December 13, 2021 meeting.²

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Schafer:

¹ As amended at the January 10, 2022 meeting.

² As amended at the January 10, 2022 meeting.

To continue the public hearing to consider the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 203 Pierce Street – Toast – to amend the hours of operation to the City Commission meeting of December 13, 2021.

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

Nays, None

12-313-21 Public Hearing – 2022-2023 Community Development Block Grant Application

The Mayor explained the procedures to be followed for the public hearing and opened the public hearing at 8:01 p.m.

Seeing no public comment, the Mayor closed the public hearing at 8:02 p.m.

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Boutros:
To approve the Program Year 2022 Community Development Block Grant application with the following projects and respective allocations:

	<u>APPROVED</u> <u>2022-2023**</u>
i. Public Services – Yard Services	\$7,573
ii. Public Services – Senior Services	3,500
iii. Remove Architectural Barriers – Museum Park	<u>25,839</u>
TOTAL	<u>\$36,912</u>

** (TO BE DETERMINED BY THE CITY COMMISSION AT THE DECEMBER 6, 2021 MEETING); and authorize the mayor to sign the application, conflict of interest certification, subrecipient agreement (when available), and other documents resulting from this application on behalf of the City and submit the documents to Oakland County.

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

Nays, None

Commission discussion on items from prior meeting

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.

12-314-21 Delay Entering Closed Session Pursuant Until Other Agenda Items are Complete

MOTION: Motion by Commissioner Haig, seconded by Commissioner Baller:
To delay meeting in closed session to discuss Agenda Item F until other agenda items are complete in order to avoid inconveniencing members of the public.

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

Nays, None

12-315-21 Closed Session Pursuant to the OMA at MCL §15.268(e)

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Boutros:
To meet in closed session to discuss pending litigation pursuant to MCL § 15.268(e) of the Open Meetings Act.

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

Nays, None

City Attorney Kucharek provided an explanation of the function of a closed session.

The Commission went into closed session at 8:54 p.m.

The Commission reconvened into open session at 9:58 p.m.

VIII. REMOVED FROM CONSENT AGENDA
--

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intention to Appoint to the Multi-Modal Transportation Board
 - 2. Public Arts Board
 - 3. Cablecasting Board
 - 4. Stormwater Utility Appeals Board
- B. Commissioner Comments

Mayor Pro Tem Boutros commended two Birmingham residents for winning the 3.5 age 40-and-older men's United States Tennis Association national championship.

Commissioner Host commended Chief Clemence for his letter to the Birmingham Schools community and for his approach to working with Birmingham residents.

Other Commissioners concurred with Commissioner Host.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. Plante Moran Ice Arena Update & Project Recap

DPSD Wood introduced the item.

Robert Stempien of Plante Moran Cresa presented the item.

Commissioner Baller thanked Mr. Stempien for his work on the project and said he was pleased with the results.

Commissioner Schafer said she spends three days a week at the Ice Arena with her son and said that after time spent at other municipalities' ice arenas during the construction her family was glad to be back at their home rink. She reported that the party room in the Ice Arena has also been receiving consistent bookings.

Mayor Longe said she had received positive feedback on the Ice Arena updates from a number of residents who are also members of the hockey community. She thanked Mr. Stempien, DPSD Wood, and the DPS Staff for their work on the Ice Arena project, the community members who lobbied in support of the updates to the Ice Arena, and all those who voted to fund the updates to the Ice Arena via the Park Bond.

CM Markus said there would be a family-oriented open house for the Ice Arena sometime after the first of the year. He said Birmingham was lucky to have the updated Ice Arena in the community and said the team from Plante Moran Cresa did a beautiful job.

2. Administering a Foundation or Charity

CA Kucharek said she was available to answer any questions that arose from her submitted report on this item.

CM Markus explained he had asked CA Kucharek to offer her legal opinion about Birmingham potentially administering a non-profit foundation or charity after reading in a recent news article that Royal Oak would be doing so. He said his initial impression was that it was not appropriate for Birmingham to pursue, and that CA Kucharek's findings aligned with his own impression.

In reply to Mayor Longe, CM Markus said he would clarify how the Friends of the Baldwin Public Library was structured.

3. Commissioner Attendance at Various Advisory Boards and Committees

CM Markus introduced the item and CA Kucharek presented the item.

CM Markus said he would offer policy recommendations for the Commission to consider in the near future. He said the recommendations would be based off CA Kucharek's findings.

In reply to Commissioner McClain, CM Markus said the policy recommendation would likely include a way for the Commission to make an exception to the rules as well should it be deemed appropriate.

Commissioner Baller said the Commissioners should be briefed on:

- Which meetings could be accessed via which media; and,
- The technical information the Commissioners might need to avoid running afoul of a potential policy.

INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 9:58 p.m.



Alexandria Bingham, City Clerk
/le

THE CITY OF BIRMINGHAM IS ACCEPTING BID PROPOSALS FROM QUALIFIED SERVICE PROVIDERS TO MANAGE AND ADMINISTER A PUBLIC SERVICES PROGRAM FOR YARD SERVICES AND SENIOR SERVICES FOR QUALIFIED LOW AND MODERATE-LOW INCOME RESIDENTS OF THE CITY OF BIRMINGHAM FOR THE PROGRAM YEAR JULY 1, 2022 THROUGH JUNE 30, 2023

Bid proposals must include a detailed explanation of the bidder's ability to manage and administer the Public Services Program for Yard Services and Senior Services, the capability of provider having available contractors and staff to do the work required, a detailed cost and/or fees charged to run the above program, and provide reference letters of experience. This program will be funded with Community Development Block Grant (CDBG) funds; therefore, all CDBG program requirements will apply.

All bid proposals will be evaluated by a committee on a **100-point scale** using the following criteria:

1. **CAPABILITY** – Provider's ability to have and maintain qualified contractors and staff on hand to do required CDBG Yard Services, and Senior Outreach Services work. All service work is to be completed in an efficient and well-organized manner. **(25 points)**
2. **EXPERIENCE** – Provider's past experience regarding this type of administration of service will be considered under this criterion. Please include a minimum of three (3) reference letters of experience with the bid proposal request. **(20 points)**
3. **FAMILIARITY (CDBG requirements)** – Provider's familiarity with the Community Development Block Grant (CDBG) program requirements and ability to comply with all CDBG required guidelines. **(20 points)**
4. **METHODOLOGY** – Provider's method of approach or work plan summary to meet municipality requirements for the scope of work specified. **(10 points)**
5. **REFERENCES** – Provide a list of sources. **(10 points)**
6. **COST** – Costs and/or fees charged by Provider to manage and administer the CDBG Public Services Program for Yard Services and Senior Services to the residents of the City of Birmingham. **(15 points)**

ALL BID PROPOSALS ARE DUE BY TUESDAY, APRIL 11, 2023 AT 2:00 P.M. AT THE CITY OF BIRMINGHAM CLERK OFFICE. BIDS CAN BE EITHER SUBMITTED ELECTRONICALLY TO: KBURRICK@BHAMGOV.ORG OR BIDS CAN BE IN A SEALED ENVELOPE ADDRESSED TO:

**CITY OF BIRMINGHAM
CDBG Bid Proposal
ATTN: Kathryn Burrick
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012**

The City of Birmingham is an equal opportunity employer. Businesses owned by women or minorities are strongly encouraged to apply. If you have any questions regarding this bid request, please contact Kathryn Burrick in the Finance Department at (248) 530-1815.

Publish: March 11, 2023

DF-GC11026166-01

MEMORANDUM

DATE: April 24, 2023

TO: Thomas Markus, City Manager

FROM: Ryan Katz, Deputy Treasurer
Mark Gerber, Finance Director/Treasurer

SUBJECT: Delinquent Special Assessments/Invoices to the Tax Roll

INTRODUCTION:

By City ordinance, special assessments and other invoices shall be transferred to the following year tax roll.

BACKGROUND:

As provided in the Birmingham City Code delinquent unpaid special assessments and invoices shall be transferred to the subsequent year tax roll. Attached is a listing of those special assessments and invoices that have been determined to be delinquent. This listing includes penalties and interest as of May 1, 2023 and will be placed on the 2023 City tax roll.

LEGAL REVIEW:

No legal review is required.

FISCAL IMPACT:

The unpaid accounts are detailed on the attached listing and represent a cumulative total of **\$266,946.10** including interest and penalties as of May 1, 2023.

PUBLIC COMMUNICATIONS:

During the month of May 2023, property owners with delinquent special assessments and invoices will be notified of their account status and provided with a deadline to pay the unpaid balance prior to the assessment of the penalty and transfer to the tax roll.

SUMMARY:

The City Commission is requested to direct the Treasurer to transfer the delinquent special assessments and invoices, including interest and penalties, to the 2023 tax roll and to authorize the removal from the list any bill paid after City Commission approval.

ATTACHMENTS:

- Delinquent Special Assessment/Invoice tax roll

SUGGESTED COMMISSION ACTION:

Make a motion adopting the following resolution:

WHEREAS, the City Treasurer, in accordance with the provisions in the City Code has reported certain special assessments and invoices, including interest and penalty, unpaid and delinquent on May 1, 2023, and

WHEREAS, the City Code provides that these delinquent special assessments and invoices shall be carried to the next annual City tax roll,

NOW THEREFORE BE IT RESOLVED, that the listing of unpaid and delinquent special assessments and invoices, including interest and penalty, be transferred and reassessed to the 2023 City tax roll with an additional 15% penalty and authorization be given to remove from the list any bills paid after commission approval.

Invoice #	Parcel #	Invoice Type	Amount Due Thru 5/1/2023	15% Penalty	Total
7362	08-19-25-301-009	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
7456	08-19-25-353-049	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
6921	08-19-25-433-004	GRASS/WEED CUTTING	\$ 220.00	\$ 33.00	\$ 253.00
6633	08-19-25-453-010	SNOW REMOVAL - COMMERCIAL	\$ 203.40	\$ 30.51	\$ 233.91
7435	08-19-25-454-005	SNOW REMOVAL - COMMERCIAL	\$ 123.60	\$ 18.54	\$ 142.14
7436	08-19-25-454-005	SNOW REMOVAL - COMMERCIAL	\$ 123.60	\$ 18.54	\$ 142.14
6585	08-19-25-456-001	SNOW REMOVAL - COMMERCIAL	\$ 752.40	\$ 112.86	\$ 865.26
7130	08-19-26-126-020	GRASS/WEED CUTTING	\$ 214.00	\$ 32.10	\$ 246.10
7502	08-19-26-177-013	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
7226	08-19-35-127-033	GRASS/WEED CUTTING	\$ 212.00	\$ 31.80	\$ 243.80
7088	08-19-35-229-032	GRASS/WEED CUTTING	\$ 214.00	\$ 32.10	\$ 246.10
6948	08-19-35-427-006	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
6950	08-19-35-481-015	GRASS/WEED CUTTING	\$ 220.00	\$ 33.00	\$ 253.00
7178	08-19-35-481-015	GRASS/WEED CUTTING	\$ 214.00	\$ 32.10	\$ 246.10
7294	08-19-35-481-015	GRASS/WEED CUTTING	\$ 312.00	\$ 46.80	\$ 358.80
7445	08-19-36-129-004	SNOW REMOVAL - COMMERCIAL	\$ 123.60	\$ 18.54	\$ 142.14
7449	08-19-36-138-003	SNOW REMOVAL - COMMERCIAL	\$ 185.40	\$ 27.81	\$ 213.21
7450	08-19-36-138-003	SNOW REMOVAL - COMMERCIAL	\$ 123.60	\$ 18.54	\$ 142.14
7410	08-19-36-201-012	SNOW REMOVAL - COMMERCIAL	\$ 123.60	\$ 18.54	\$ 142.14
7409	08-19-36-201-014	SNOW REMOVAL - COMMERCIAL	\$ 123.60	\$ 18.54	\$ 142.14
7415	08-19-36-201-014	SNOW REMOVAL - COMMERCIAL	\$ 185.40	\$ 27.81	\$ 213.21
6584	08-19-36-208-015	SNOW REMOVAL - COMMERCIAL	\$ 547.20	\$ 82.08	\$ 629.28
6915	08-19-36-208-207	GRASS/WEED CUTTING	\$ 220.00	\$ 33.00	\$ 253.00
7092	08-19-36-208-207	GRASS/WEED CUTTING	\$ 216.00	\$ 32.40	\$ 248.40
6999	08-19-36-255-037	GRASS/WEED CUTTING	\$ 147.15	\$ 22.07	\$ 169.22
7089	08-19-36-302-008	GRASS/WEED CUTTING	\$ 216.00	\$ 32.40	\$ 248.40
7484	08-19-36-302-008	SNOW REMOVAL - RESIDENTIAL	\$ 204.00	\$ 30.60	\$ 234.60
6671	08-19-36-332-022	SNOW REMOVAL - RESIDENTIAL	\$ 218.00	\$ 32.70	\$ 250.70
7469	08-19-36-426-050	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
6997	08-19-36-428-042	GRASS/WEED CUTTING	\$ 147.15	\$ 22.07	\$ 169.22
6919	08-19-36-455-017	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
6984	08-19-36-455-017	GRASS/WEED CUTTING	\$ 147.15	\$ 22.07	\$ 169.22
6922	08-19-36-457-001	GRASS/WEED CUTTING	\$ 220.00	\$ 33.00	\$ 253.00
6923	08-19-36-457-003	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
7134	08-19-36-457-010	GRASS/WEED CUTTING	\$ 144.45	\$ 21.67	\$ 166.12
7407	08-20-30-327-014	SNOW REMOVAL - RESIDENTIAL	\$ 204.00	\$ 30.60	\$ 234.60
7405	08-20-30-327-019	SNOW REMOVAL - RESIDENTIAL	\$ 204.00	\$ 30.60	\$ 234.60
7406	08-20-30-328-006	SNOW REMOVAL - RESIDENTIAL	\$ 202.00	\$ 30.30	\$ 232.30
7395	08-20-30-351-016	SNOW REMOVAL - RESIDENTIAL	\$ 206.00	\$ 30.90	\$ 236.90
7394	08-20-30-353-001	SNOW REMOVAL - RESIDENTIAL	\$ 206.00	\$ 30.90	\$ 236.90
7393	08-20-30-353-002	SNOW REMOVAL - RESIDENTIAL	\$ 206.00	\$ 30.90	\$ 236.90
7392	08-20-30-355-016	SNOW REMOVAL - RESIDENTIAL	\$ 206.00	\$ 30.90	\$ 236.90
6945	08-20-30-402-002	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
7379	08-20-30-402-027	SNOW REMOVAL - RESIDENTIAL	\$ 103.00	\$ 15.45	\$ 118.45
7377	08-20-30-403-016	SNOW REMOVAL - RESIDENTIAL	\$ 206.00	\$ 30.90	\$ 236.90
7378	08-20-30-405-016	SNOW REMOVAL - RESIDENTIAL	\$ 206.00	\$ 30.90	\$ 236.90
7490	08-20-30-427-002	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
6996	08-20-30-427-007	GRASS/WEED CUTTING	\$ 147.15	\$ 22.07	\$ 169.22
7401	08-20-30-452-026	SNOW REMOVAL - RESIDENTIAL	\$ 103.00	\$ 15.45	\$ 118.45
7400	08-20-30-452-031	SNOW REMOVAL - RESIDENTIAL	\$ 206.00	\$ 30.90	\$ 236.90
6925	08-20-30-477-005	GRASS/WEED CUTTING	\$ 220.00	\$ 33.00	\$ 253.00
7228	08-20-31-101-013	GRASS/WEED CUTTING	\$ 212.00	\$ 31.80	\$ 243.80

6913	08-20-31-151-038	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
6914	08-20-31-153-037	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
6928	08-20-31-155-039	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
6549	08-20-31-179-011	SNOW REMOVAL - RESIDENTIAL	\$ 109.00	\$ 16.35	\$ 125.35
6916	08-20-31-179-042	GRASS/WEED CUTTING	\$ 148.50	\$ 22.28	\$ 170.78
7093	08-20-31-179-042	GRASS/WEED CUTTING	\$ 145.80	\$ 21.87	\$ 167.67
7495	08-20-31-204-013	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
6576	08-20-31-302-005	SNOW REMOVAL - RESIDENTIAL	\$ 218.00	\$ 32.70	\$ 250.70
7293	08-20-31-304-032	GRASS/WEED CUTTING	\$ 312.00	\$ 46.80	\$ 358.80
6998	08-20-31-331-014	GRASS/WEED CUTTING	\$ 218.00	\$ 32.70	\$ 250.70
7374	08-20-31-352-027	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
7500	08-20-31-355-018	RETURNED CHECK FEE	\$ 30.00	\$ 4.50	\$ 34.50
6580	08-20-31-358-025	SNOW REMOVAL - RESIDENTIAL	\$ 102.00	\$ 15.30	\$ 117.30
7488	08-20-31-380-005	SNOW REMOVAL - RESIDENTIAL	\$ 101.00	\$ 15.15	\$ 116.15
7437	08-99-00-022-067	SNOW REMOVAL - COMMERCIAL	\$ 123.60	\$ 18.54	\$ 142.14
7428	08-99-00-022-076	SNOW REMOVAL - COMMERCIAL	\$ 121.20	\$ 18.18	\$ 139.38
			\$ 11,817.05	\$ 1,772.56	\$ 13,589.61

District	Name	Parcel #	Installment	15% Penalty	Total
SAD842	GEORGE & ANN STREETS SWR LATERALS	08-19-36-255-025	\$ 153.85	\$ 23.08	\$ 176.93
SAD855	COLE ST SEWER LATERALS	08-20-31-179-047	\$ 90.67	\$ 13.60	\$ 104.27
SAD856	EAST MAPLE GARDENS SEWER LATERALS	08-20-30-451-020	\$ 194.11	\$ 29.12	\$ 223.23
SAD856	EAST MAPLE GARDENS SEWER LATERALS	08-20-30-477-015	\$ 267.34	\$ 40.10	\$ 307.44
SAD858	MOHEGAN KENNESAW SEWER LATERALS	08-19-25-402-008	\$ 111.43	\$ 16.71	\$ 128.14
SAD858	MOHEGAN KENNESAW SEWER LATERALS	08-19-25-403-016	\$ 115.88	\$ 17.38	\$ 133.26
SAD859	N ETON SEWER LATERALS	08-20-30-381-027	\$ 5.25	\$ 0.79	\$ 6.04
SAD863	CUMMINGS ST PAVING	08-19-36-479-008	\$ 678.29	\$ 101.74	\$ 780.03
SAD864A	ALLEY PAVING-HAMILTON TO PARK ST	08-19-25-456-001	\$ 1,466.08	\$ 219.91	\$ 1,685.99
SAD864A	ALLEY PAVING-HAMILTON TO PARK ST	08-19-25-456-039	\$ 43.06	\$ 6.46	\$ 49.52
SAD864A	ALLEY PAVING-HAMILTON TO PARK ST	08-19-25-456-017	\$ 28.94	\$ 4.34	\$ 33.28
SAD864A	ALLEY PAVING-HAMILTON TO PARK ST	08-19-25-456-029	\$ 1,902.29	\$ 285.34	\$ 2,187.63
SAD864A	ALLEY PAVING-HAMILTON TO PARK ST	08-19-25-456-046	\$ 482.02	\$ 72.30	\$ 554.32
SAD864A	ALLEY PAVING-HAMILTON TO PARK ST	08-19-25-456-050	\$ 430.82	\$ 64.62	\$ 495.44
SAD865	SEWER LATERALS	08-19-36-379-017	\$ 163.42	\$ 24.51	\$ 187.93
SAD865	SEWER LATERALS	08-19-36-353-023	\$ 194.84	\$ 29.23	\$ 224.07
SAD866	OAK STREET SEWER LATERALS	08-19-26-401-016	\$ 229.52	\$ 34.43	\$ 263.95
SAD867A	HAMILTON ALLEY SEWER LATERALS	08-19-25-456-007	\$ 20.37	\$ 3.06	\$ 23.43
SAD871	CATALPA SEWER LATERALS	08-19-36-452-005	\$ 237.88	\$ 35.68	\$ 273.56
SAD872	VILLA PAVING	08-20-31-127-012	\$ 1,223.06	\$ 183.46	\$ 1,406.52
SAD872	VILLA PAVING	08-20-31-127-016	\$ 1,138.51	\$ 170.78	\$ 1,309.29
SAD872	VILLA PAVING	08-20-31-127-021	\$ 1,147.84	\$ 172.18	\$ 1,320.02
SAD872	VILLA PAVING	08-20-31-103-010	\$ 1,147.84	\$ 172.18	\$ 1,320.02
SAD872	VILLA PAVING	08-20-31-103-012	\$ 1,106.95	\$ 166.04	\$ 1,272.99
SAD873	HAMILTON AVE SEWER LATERALS	08-19-25-454-008	\$ 294.28	\$ 44.14	\$ 338.42
SAD873	HAMILTON AVE SEWER LATERALS	08-19-25-456-001	\$ 294.28	\$ 44.14	\$ 338.42
SAD874A	HAMILTON AVE SIDEWALK/STREETSCAPE	08-19-25-454-008	\$ 519.35	\$ 77.90	\$ 597.25
SAD874A	HAMILTON AVE SIDEWALK/STREETSCAPE	08-19-25-456-001	\$ 1,725.16	\$ 258.77	\$ 1,983.93
SAD874A	HAMILTON AVE SIDEWALK/STREETSCAPE	08-19-25-456-007	\$ 1,838.05	\$ 275.71	\$ 2,113.76
SAD874A	HAMILTON AVE SIDEWALK/STREETSCAPE	08-19-25-456-029	\$ 466.66	\$ 70.00	\$ 536.66
SAD875A	HAMILTON STREET LIGHTING	08-19-25-456-029	\$ 1,471.00	\$ 220.65	\$ 1,691.65
SAD876	WEBSTER STREET SEWER LATERALS	08-20-31-153-048	\$ 128.34	\$ 19.25	\$ 147.59
SAD876	WEBSTER STREET SEWER LATERALS	08-20-31-178-046	\$ 96.66	\$ 14.50	\$ 111.16
SAD876	WEBSTER STREET SEWER LATERALS	08-20-31-154-017	\$ 187.85	\$ 28.18	\$ 216.03
SAD876	WEBSTER STREET SEWER LATERALS	08-20-31-154-027	\$ 210.61	\$ 31.59	\$ 242.20
SAD877	VILLA SEWER LATERALS	08-20-31-127-016	\$ 368.79	\$ 55.32	\$ 424.11
SAD877	VILLA SEWER LATERALS	08-20-31-127-021	\$ 396.45	\$ 59.47	\$ 455.92
SAD880	OLD WOODWARD SEWER LATERALS	08-19-36-201-014	\$ 749.92	\$ 112.49	\$ 862.41
SAD880W	OLD WOODWARD WATER LATERALS	08-19-36-201-014	\$ 448.98	\$ 67.35	\$ 516.33
SAD881	OLD WOODWARD STREETSCAPE ENHANCEMNT	08-19-25-378-016	\$ 4,019.78	\$ 602.97	\$ 4,622.75
SAD881	OLD WOODWARD STREETSCAPE ENHANCEMNT	08-19-36-201-014	\$ 3,870.12	\$ 580.52	\$ 4,450.64
SAD881	OLD WOODWARD STREETSCAPE ENHANCEMNT	08-19-36-202-015	\$ 13,230.02	\$ 1,984.50	\$ 15,214.52
SAD881	OLD WOODWARD STREETSCAPE ENHANCEMNT	08-19-36-204-006	\$ 3,966.34	\$ 594.95	\$ 4,561.29
SAD881	OLD WOODWARD STREETSCAPE ENHANCEMNT	08-19-25-456-001	\$ 3,784.58	\$ 567.69	\$ 4,352.27
SAD881	OLD WOODWARD STREETSCAPE ENHANCEMNT	08-19-36-206-021	\$ 18,821.37	\$ 2,823.21	\$ 21,644.58
SAD883S	2018 SEWER LATERALS LOCAL STREETS	08-19-36-403-018	\$ 223.02	\$ 33.45	\$ 256.47
SAD883S	2018 SEWER LATERALS LOCAL STREETS	08-19-36-428-012	\$ 141.07	\$ 21.16	\$ 162.23
SAD883S	2018 SEWER LATERALS LOCAL STREETS	08-19-36-430-038	\$ 167.79	\$ 25.17	\$ 192.96
SAD883W	2018 WATER LATERALS LOCAL STREETS	08-19-36-403-018	\$ 101.31	\$ 15.20	\$ 116.51
SAD883W	2018 WATER LATERALS LOCAL STREETS	08-19-36-428-012	\$ 171.31	\$ 25.70	\$ 197.01
SAD883W	2018 WATER LATERALS LOCAL STREETS	08-19-36-430-038	\$ 80.61	\$ 12.09	\$ 92.70
SAD891	QUARTON LAKE SEWER LATERALS	08-19-26-178-006	\$ 280.93	\$ 42.14	\$ 323.07
SAD893	LAKEVIEW AVENUE PAVING	08-19-25-301-006	\$ 1,582.84	\$ 237.43	\$ 1,820.27

SAD893	LAKEVIEW AVENUE PAVING	08-19-25-304-001	\$ 1,588.14	\$ 238.22	\$ 1,826.36
SAD893	LAKEVIEW AVENUE PAVING	08-19-25-304-011	\$ 40.00	\$ 6.00	\$ 46.00
SAD893	LAKEVIEW AVENUE PAVING	08-19-26-427-030	\$ 1,579.37	\$ 236.91	\$ 1,816.28
SAD893	LAKEVIEW AVENUE PAVING	08-19-26-427-034	\$ 1,544.60	\$ 231.69	\$ 1,776.29
SAD893S	LAKEVIEW SEWER LATERAL	08-19-26-427-030	\$ 364.76	\$ 54.71	\$ 419.47
SAD893S	LAKEVIEW SEWER LATERAL	08-19-25-304-001	\$ 4.65	\$ 0.70	\$ 5.35
SAD895S	TOWNSEND ST SEWER	08-19-36-135-053	\$ 15.80	\$ 2.37	\$ 18.17
SAD895S	TOWNSEND ST SEWER	08-19-36-135-060	\$ 15.80	\$ 2.37	\$ 18.17
SAD896	MAPLE ROAD STREETSCAPE	08-19-25-378-023	\$ 24,248.10	\$ 3,637.22	\$ 27,885.32
SAD896	MAPLE ROAD STREETSCAPE	08-19-25-456-029	\$ 7,401.84	\$ 1,110.28	\$ 8,512.12
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-328-014	\$ 2,227.30	\$ 334.10	\$ 2,561.40
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-328-023	\$ 545.55	\$ 81.83	\$ 627.38
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-328-024	\$ 685.02	\$ 102.75	\$ 787.77
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-328-034	\$ 346.91	\$ 52.04	\$ 398.95
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-455-002	\$ 3,479.80	\$ 521.97	\$ 4,001.77
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-456-001	\$ 7,206.83	\$ 1,081.02	\$ 8,287.85
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-456-007	\$ 3,762.04	\$ 564.31	\$ 4,326.35
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-456-014	\$ 530.05	\$ 79.51	\$ 609.56
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-25-483-032	\$ 17,232.62	\$ 2,584.89	\$ 19,817.51
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-128-006	\$ 2,828.61	\$ 424.29	\$ 3,252.90
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-138-003	\$ 11,139.67	\$ 1,670.95	\$ 12,810.62
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-201-012	\$ 1,961.10	\$ 294.17	\$ 2,255.27
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-201-014	\$ 5,817.50	\$ 872.63	\$ 6,690.13
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-202-017	\$ 10,142.28	\$ 1,521.34	\$ 11,663.62
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-202-018	\$ 17,232.62	\$ 2,584.89	\$ 19,817.51
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-204-016	\$ 747.32	\$ 112.10	\$ 859.42
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-204-025	\$ 17,232.62	\$ 2,584.89	\$ 19,817.51
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-208-011	\$ 806.30	\$ 120.95	\$ 927.25
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-208-012	\$ 964.37	\$ 144.66	\$ 1,109.03
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-227-006	\$ 976.17	\$ 146.43	\$ 1,122.60
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-227-008	\$ 1,387.88	\$ 208.18	\$ 1,596.06
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-230-004	\$ 971.00	\$ 145.65	\$ 1,116.65
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-278-012	\$ 1,999.76	\$ 299.96	\$ 2,299.72
SAD900	PRINCIPAL SHOPPING F/Y 2022-2023	08-19-36-285-009	\$ 1,065.88	\$ 159.88	\$ 1,225.76
			\$ 220,309.99	\$ 33,046.50	\$ 253,356.49

MEMORANDUM

DATE: April 24, 2023

TO: Thomas Markus, City Manager

FROM: Ryan Katz, Deputy Treasurer
Mark Gerber, Finance Director/Treasurer

SUBJECT: Delinquent Water/Sewage Charges to Tax Roll

INTRODUCTION:

By City ordinance, water and sewer bills which are delinquent for more than 6 months on April 30th shall be transferred to the following year tax roll.

BACKGROUND:

As provided in Chapter 114, Section 114-303 of the city code, the properties on the attached listing represent delinquent and unpaid water/sewage services that have remained delinquent for a period of six months or greater as of April 30, 2023. The ordinance states that a 15% penalty is to be assessed on these delinquent balances when they are transferred to the tax roll.

LEGAL REVIEW:

No legal review is required.

FISCAL IMPACT:

The unpaid accounts are detailed on the attached listing and represent a cumulative total of **\$311,809.83** including interest and penalties as of May 1, 2023.

PUBLIC COMMUNICATIONS:

During the month of April 2023, property owners with delinquent accounts will be notified of their account status and provided with a deadline to pay the unpaid balance prior to the assessment of the penalty and transfer to the tax roll.

SUMMARY:

The City Commission is requested to direct the Treasurer to transfer the unpaid bills, including interest and penalty, to the 2023 tax roll and to authorize removal from the list any bills paid or a payment plan agreement signed after City Commission approval.

ATTACHMENTS:

- Delinquent water/sewer tax roll

SUGGESTED COMMISSION ACTION:

Make a motion adopting the following resolution:

WHEREAS, The City Treasurer, in accordance with Chapter 114, Section 114-303, of the city code has reported certain water/sewage accounts, including interest and penalty, unpaid and delinquent on May 1, 2023, and

WHEREAS, Chapter 114, Section 114-303, of the city code provides that these payments shall be carried to the next annual city tax roll.

NOW, THEREFORE, BE IT RESOLVED, that the properties with unpaid and delinquent water/sewage accounts, listed in the Delinquent Water/Sewer Tax Roll, dated April 13, 2023, including interest and penalty, be transferred and reassessed to the 2023 city tax roll and authorization be given to remove from the list any bills paid or a payment plan agreement signed after commission approval.

Parcel Number	Account #	Service Address	Delinquent Amount	Penalty	Total
08-19-25-180-004	00083-49416	144 WIMBLETON DR	\$871.19	\$130.68	\$1,001.87
08-19-25-258-001	00083-77696	520 WIMBLETON DR	\$39.06	\$5.86	\$44.92
08-19-25-277-008	00081-63768	1033 PUTNEY ST	\$755.52	\$113.33	\$868.85
08-19-25-278-001	00082-05772	600 ABBEY ST	\$1,513.54	\$227.03	\$1,740.57
08-19-25-280-001	00081-93850	770 HENLEY ST	\$1,408.64	\$211.30	\$1,619.94
08-19-25-303-017	03523-51102	622 VINEWOOD AVE	\$420.26	\$63.04	\$483.30
08-19-25-304-005	00676-11114	829 VINEWOOD AVE	\$397.07	\$59.56	\$456.63
08-19-25-304-033	02862-11170	729 VINEWOOD AVE	\$1,057.60	\$158.64	\$1,216.24
08-19-25-304-034	00660-91172	667 GREENWOOD ST	\$1,495.27	\$224.29	\$1,719.56
08-19-25-304-039	03429-71182	575 GREENWOOD ST	\$544.70	\$81.71	\$626.41
08-19-25-304-050	00684-51204	530 LAKEVIEW AVE	\$211.92	\$31.79	\$243.71
08-19-25-328-030	32361-31222	554 N OLD WOODWARD AVE	\$26.43	\$3.96	\$30.39
08-19-25-328-032	03277-31524	534 N OLD WOODWARD AVE	\$190.00	\$28.50	\$218.50
08-19-25-328-052	02240-51562	576 PARK ST	\$2,428.76	\$364.31	\$2,793.07
08-19-25-328-063	00712-91582	531 BROOKSIDE AVE	\$287.19	\$43.08	\$330.27
08-19-25-330-006	03277-91634	181 EUCLID AVE	\$444.46	\$66.67	\$511.13
08-19-25-403-016	00853-72268	775 KENNESAW ST	\$207.08	\$31.06	\$238.14
08-19-25-404-013	00778-12300	619 RIVENOAK ST	\$2,067.76	\$310.16	\$2,377.92
08-19-25-427-023	03098-72402	1067 KENNESAW ST	\$1,450.71	\$217.61	\$1,668.32
08-19-25-451-034	00000-11570	400 PARK ST VACANT	\$122.31	\$18.35	\$140.66
08-19-25-452-023	03408-52616	340 FERNDAL AVE	\$549.33	\$82.40	\$631.73
08-19-25-460-016	00799-72838	567 RIDGEDALE AVE	\$906.15	\$135.92	\$1,042.07
08-19-25-477-004	02984-72870	876 MADISON ST	\$1,017.16	\$152.57	\$1,169.73
08-19-25-480-005	00797-12914	768 OAKLAND AVE	\$1,482.85	\$222.43	\$1,705.28
08-19-25-487-006	00759-93148	165 N ADAMS RD	\$966.19	\$144.93	\$1,111.12
08-19-26-126-020	00000-11523	1573 CHESTERFIELD AVE	\$397.19	\$59.58	\$456.77
08-19-26-129-003	00295-73224	1298 N GLENHURST DR	\$667.81	\$100.17	\$767.98
08-19-26-178-006	00294-53388	1973 RAYNALE ST	\$256.47	\$38.47	\$294.94
08-19-26-205-002	00329-33638	1356 FAIRFAX ST	\$3,288.90	\$493.34	\$3,782.24
08-19-26-226-007	02826-93780	1027 QUARTON RD	\$1,046.05	\$156.91	\$1,202.96
08-19-26-226-008	00379-13782	1563 LAKESIDE DR	\$100.19	\$15.03	\$115.22
08-19-26-253-005	02886-14122	1000 SUFFIELD AVE	\$789.97	\$118.50	\$908.47
08-19-26-254-004	00350-34158	1030 PILGRIM AVE	\$3,192.82	\$478.92	\$3,671.74
08-19-26-276-003	03432-54198	1060 PURITAN AVE	\$2,347.72	\$352.16	\$2,699.88
08-19-26-279-020	00384-94328	1030 LAKESIDE DR	\$1,516.49	\$227.47	\$1,743.96
08-19-26-327-008	02626-14390	600 WESTWOOD DR	\$680.94	\$102.14	\$783.08
08-19-26-329-006	00276-14508	1793 MELBOURNE ST	\$357.57	\$53.64	\$411.21
08-19-26-330-003	00272-94540	1849 PINE ST	\$734.01	\$110.10	\$844.11
08-19-26-330-005	02310-94544	1805 PINE ST	\$1,760.26	\$264.04	\$2,024.30
08-19-26-330-019	03053-54572	1776 WINTHROP LN	\$1,470.18	\$220.53	\$1,690.71
08-19-26-378-022	00268-34598	345 KIMBERLEY ST	\$641.97	\$96.30	\$738.27
08-19-26-401-019	00253-14736	767 FAIRFAX ST	\$2,716.67	\$407.50	\$3,124.17
08-19-26-452-002	01791-15130	454 FAIRFAX ST	\$2,253.07	\$337.96	\$2,591.03
08-19-26-452-004	00247-15134	362 FAIRFAX ST	\$775.10	\$116.27	\$891.37
08-19-26-452-011	02195-95148	184 FAIRFAX ST	\$180.86	\$27.13	\$207.99
08-19-26-477-013	00608-15414	1128 W MAPLE RD	\$595.68	\$89.35	\$685.03
08-19-35-102-027	02189-95560	2435 DEVON LN	\$2,108.87	\$316.33	\$2,425.20
08-19-35-104-026	01901-55694	412 BERWYN ST	\$2,684.57	\$402.69	\$3,087.26
08-19-35-105-001	03183-15702	2368 RADNOR ST	\$903.26	\$135.49	\$1,038.75
08-19-35-126-003	00510-55826	415 ARGYLE ST	\$1,612.89	\$241.93	\$1,854.82
08-19-35-127-032	02138-55920	245 ARGYLE ST	\$817.54	\$122.63	\$940.17
08-19-35-127-033	03198-15922	270 S GLENHURST DR	\$168.29	\$25.24	\$193.53
08-19-35-128-003	03539-95928	161 S GLENHURST DR	\$1,344.09	\$201.61	\$1,545.70
08-19-35-129-004	00549-16006	181 WESTCHESTER WAY	\$4,110.80	\$616.62	\$4,727.42
08-19-35-177-010	00522-56218	899 WOODLEA ST	\$1,726.68	\$259.00	\$1,985.68
08-19-35-177-028	00520-76254	1062 S GLENHURST DR	\$1,516.88	\$227.53	\$1,744.41
08-19-35-180-010	03320-16436	883 LARCHLEA DR	\$1,327.12	\$199.07	\$1,526.19
08-19-35-201-026	00563-16504	590 MERRITT LN	\$1,128.02	\$169.20	\$1,297.22
08-19-35-201-043	00560-56538	1717 MIDVALE ST	\$518.48	\$77.77	\$596.25

08-19-35-202-026	03038-96654	1073 PLEASANT ST	\$1,099.09	\$164.86	\$1,263.95
08-19-35-202-036	00584-36674	316 ARLINGTON ST	\$5,723.42	\$858.51	\$6,581.93
08-19-35-202-039	00585-76680	414 ARLINGTON ST	\$1,125.39	\$168.81	\$1,294.20
08-19-35-202-054	02151-16710	1492 W LINCOLN ST	\$272.31	\$40.85	\$313.16
08-19-35-202-068	03510-56738	400 ARLINGTON ST	\$55,657.81	\$8,348.67	\$64,006.48
08-19-35-226-009	02127-76756	100 SHIRLEY RD	\$1,472.59	\$220.89	\$1,693.48
08-19-35-276-006	01937-16996	779 ARLINGTON ST	\$2,815.98	\$422.40	\$3,238.38
08-19-35-302-002	00458-77156	2440 FAIRWAY DR	\$528.03	\$79.20	\$607.23
08-19-35-305-009	00446-77240	2428 NORTHLAWN BLVD	\$52.84	\$7.93	\$60.77
08-19-35-326-012	00467-17312	1737 W LINCOLN ST	\$715.08	\$107.26	\$822.34
08-19-35-326-014	00467-57316	1685 W LINCOLN ST	\$1,417.08	\$212.56	\$1,629.64
08-19-35-326-029	00470-77346	1900 FAIRWAY DR	\$276.81	\$41.52	\$318.33
08-19-35-327-035	02464-57452	1768 NORTHLAWN BLVD	\$834.77	\$125.22	\$959.99
08-19-35-401-002	00481-97516	1581 W LINCOLN ST	\$203.78	\$30.57	\$234.35
08-19-35-401-014	00481-57540	1590 FAIRWAY DR	\$160.87	\$24.13	\$185.00
08-19-35-402-014	01784-77596	1570 NORTHLAWN BLVD	\$1,386.99	\$208.05	\$1,595.04
08-19-35-402-018	00437-77604	1492 NORTHLAWN BLVD	\$101.50	\$15.23	\$116.73
08-19-35-426-005	02758-57642	1155 W LINCOLN ST	\$2,237.94	\$335.69	\$2,573.63
08-19-35-427-006	00436-37684	1025 W LINCOLN ST	\$55.42	\$8.31	\$63.73
08-19-35-427-017	00437-17706	1200 SOUTHFIELD RD	\$1,027.36	\$154.10	\$1,181.46
08-19-35-430-001	03500-57804	1187 NORTHLAWN BLVD	\$554.52	\$83.18	\$637.70
08-19-35-430-009	00429-77820	955 NORTHLAWN BLVD	\$1,297.06	\$194.56	\$1,491.62
08-19-35-478-017	00420-17934	892 W SOUTHLAWN BLVD	\$150.61	\$22.59	\$173.20
08-19-36-129-002	00204-98378	175 W MAPLE RD	\$209.12	\$31.37	\$240.49
08-19-36-135-102	34851-26592	520 W BROWN ST	\$172.47	\$25.87	\$198.34
08-19-36-136-006	03357-58752	404 S BATES ST	\$1,903.96	\$285.59	\$2,189.55
08-19-36-136-012	02865-78762	350 W BROWN ST UNIT 1	\$324.10	\$48.62	\$372.72
08-19-36-136-014	00184-18766	372 W BROWN ST UNIT 3	\$606.59	\$90.99	\$697.58
08-19-36-137-003	02711-18774	211 TOWNSEND ST	\$141.37	\$21.21	\$162.58
08-19-36-156-020	00133-99150	512 WALLACE ST	\$122.31	\$18.35	\$140.66
08-19-36-156-024	00102-99158	564 WALLACE ST	\$1,430.28	\$214.54	\$1,644.82
08-19-36-157-002	03131-19164	855 WALLACE ST	\$281.73	\$42.26	\$323.99
08-19-36-177-018	03364-99358	544 S BATES ST	\$365.66	\$54.85	\$420.51
08-19-36-181-008	00156-59532	724 S BATES ST	\$327.33	\$49.10	\$376.43
08-19-36-182-007	03028-39554	875 STANLEY BLVD	\$1,545.95	\$231.89	\$1,777.84
08-19-36-184-031	00171-99732	956 HENRIETTA ST	\$554.64	\$83.20	\$637.84
08-19-36-185-005	34791-22432	771 HENRIETTA ST	\$187.41	\$28.11	\$215.52
08-19-36-185-011	33361-22430	861 HENRIETTA ST	\$130.13	\$19.52	\$149.65
08-19-36-185-023	00012-99800	764 PIERCE ST	\$1,152.09	\$172.81	\$1,324.90
08-19-36-185-033	21289-25266	990 PIERCE ST	\$1,419.51	\$212.93	\$1,632.44
08-19-36-203-007	00032-79940	653 PIERCE ST	\$523.53	\$78.53	\$602.06
08-19-36-204-027	00383-10050	300 S OLD WOODWARD AVE	\$553.00	\$82.95	\$635.95
08-19-36-227-015	31103-10346	1011 FOREST AVE	\$1,575.60	\$236.34	\$1,811.94
08-19-36-229-015	25763-10412	889 CHESTNUT ST	\$300.83	\$45.12	\$345.95
08-19-36-229-016	10009-10414	909 CHESTNUT ST	\$1,166.53	\$174.98	\$1,341.51
08-19-36-233-010	10109-10534	1020 HAZEL ST	\$679.78	\$101.97	\$781.75
08-19-36-252-001	33733-22172	707 PURDY ST	\$536.31	\$80.45	\$616.76
08-19-36-253-009	00711-10716	691 ANN ST	\$485.61	\$72.84	\$558.45
08-19-36-253-011	32443-10720	723 ANN ST	\$391.29	\$58.69	\$449.98
08-19-36-255-025	26899-10856	912 FLOYD ST	\$833.21	\$124.98	\$958.19
08-19-36-255-037	32875-10880	1026 FLOYD ST	\$375.05	\$56.26	\$431.31
08-19-36-303-013	23885-11342	1332 MARYLAND BLVD	\$739.39	\$110.91	\$850.30
08-19-36-306-022	34007-11434	1640 BIRMINGHAM BLVD	\$732.48	\$109.87	\$842.35
08-19-36-307-007	17229-11452	1563 BIRMINGHAM BLVD	\$890.08	\$133.51	\$1,023.59
08-19-36-308-001	33231-11500	1411 MARYLAND BLVD	\$325.89	\$48.88	\$374.77
08-19-36-308-034	16995-11566	1654 STANLEY BLVD	\$267.33	\$40.10	\$307.43
08-19-36-326-027	16833-11626	1322 WASHINGTON BLVD	\$45.08	\$6.76	\$51.84
08-19-36-328-003	16465-11698	1165 S BATES ST	\$1,657.57	\$248.64	\$1,906.21
08-19-36-331-009	31559-11902	1535 WASHINGTON BLVD	\$255.56	\$38.33	\$293.89
08-19-36-331-016	19667-11916	1643 WASHINGTON BLVD	\$1,421.62	\$213.24	\$1,634.86
08-19-36-332-008	16503-11978	1521 S BATES ST	\$1,134.07	\$170.11	\$1,304.18

08-19-36-332-022	26563-12006	227 NORTHLAWN BLVD	\$401.38	\$60.21	\$461.59
08-19-36-333-009	16299-12064	1537 HENRIETTA ST	\$1,570.21	\$235.53	\$1,805.74
08-19-36-351-022	33803-12162	1850 SHIPMAN BLVD	\$326.03	\$48.90	\$374.93
08-19-36-351-023	20857-12164	1862 SHIPMAN BLVD	\$1,446.24	\$216.94	\$1,663.18
08-19-36-351-044	17449-12206	1727 SOUTHFIELD RD	\$1,012.17	\$151.83	\$1,164.00
08-19-36-352-019	17855-12278	1750 BIRMINGHAM BLVD	\$818.48	\$122.77	\$941.25
08-19-36-352-020	31579-12280	1768 BIRMINGHAM BLVD	\$548.33	\$82.25	\$630.58
08-19-36-352-023	23623-12286	1838 BIRMINGHAM BLVD	\$368.08	\$55.21	\$423.29
08-19-36-377-002	33225-12504	1727 WASHINGTON BLVD	\$280.89	\$42.13	\$323.02
08-19-36-377-018	30897-12536	1995 WASHINGTON BLVD	\$260.26	\$39.04	\$299.30
08-19-36-377-028	16575-12556	1844 S BATES ST	\$1,143.59	\$171.54	\$1,315.13
08-19-36-377-037	27095-12574	1990 S BATES ST	\$939.25	\$140.89	\$1,080.14
08-19-36-378-016	16555-12606	1991 S BATES ST	\$572.46	\$85.87	\$658.33
08-19-36-379-029	31807-27986	1825 HENRIETTA ST	\$949.30	\$142.40	\$1,091.70
08-19-36-379-033	26843-27626	1760 PIERCE ST	\$1,081.19	\$162.18	\$1,243.37
08-19-36-402-014	30465-12826	1393 CEDAR DR	\$184.54	\$27.68	\$212.22
08-19-36-426-014	18073-13030	872 E LINCOLN ST	\$773.90	\$116.09	\$889.99
08-19-36-426-034	35497-13070	951 RUFFNER AVE	\$214.50	\$32.18	\$246.68
08-19-36-428-012	14855-13126	828 RUFFNER AVE	\$231.65	\$34.75	\$266.40
08-19-36-429-015	14937-13246	888 HUMPHREY AVE	\$259.96	\$38.99	\$298.95
08-19-36-429-045	31321-30720	1013 BENNAVILLE AVE	\$458.81	\$68.82	\$527.63
08-19-36-430-038	15091-13418	831 CHAPIN AVE	\$529.29	\$79.39	\$608.68
08-19-36-430-053	34733-29970	806 BENNAVILLE AVE	\$1,862.62	\$279.39	\$2,142.01
08-19-36-432-048	15243-13562	615 EMMONS AVE	\$1,431.20	\$214.68	\$1,645.88
08-19-36-451-008	34173-25208	174 CATALPA DR	\$1,569.97	\$235.50	\$1,805.47
08-19-36-455-017	16105-13790	479 BIRD AVE	\$383.26	\$57.49	\$440.75
08-19-36-456-047	29409-26758	251 E 14 MILE RD	\$428.77	\$64.32	\$493.09
08-19-36-478-004	29025-14022	664 DAVIS AVE	\$662.50	\$99.38	\$761.88
08-19-36-480-021	29641-14200	986 SMITH AVE	\$122.30	\$18.35	\$140.65
08-19-36-480-066	24789-14290	731 BIRD AVE	\$197.47	\$29.62	\$227.09
08-19-36-482-037	33947-14384	897 E 14 MILE RD	\$752.36	\$112.85	\$865.21
08-19-36-482-054	26605-14418	807 E 14 MILE RD	\$266.50	\$39.98	\$306.48
08-20-30-153-039	11937-14720	1709 DERBY RD	\$1,537.25	\$230.59	\$1,767.84
08-20-30-153-041	11933-14724	1771 DERBY RD	\$467.04	\$70.06	\$537.10
08-20-30-327-019	35087-15102	1997 PEMBROKE RD	\$1,773.50	\$266.03	\$2,039.53
08-20-30-328-044	33673-15190	1987 GRAEFIELD RD	\$72.48	\$10.87	\$83.35
08-20-30-328-067	28599-15236	1653 GRAEFIELD RD UNIT 102	\$480.45	\$72.07	\$552.52
08-20-30-328-099	33997-15300	695 GRAEFIELD CT UNIT 134	\$790.20	\$118.53	\$908.73
08-20-30-328-113	34199-15328	736 GRAEFIELD CT UNIT 148	\$241.31	\$36.20	\$277.51
08-20-30-328-121	23925-15344	720 GRAEFIELD CT UNIT 156	\$367.99	\$55.20	\$423.19
08-20-30-329-001	09357-15386	1898 GRAEFIELD RD UNIT 1	\$627.66	\$94.15	\$721.81
08-20-30-329-012	32677-15408	1822 GRAEFIELD RD UNIT 12	\$120.95	\$18.14	\$139.09
08-20-30-329-038	18143-15460	1744 GRAEFIELD RD UNIT 38	\$163.09	\$24.46	\$187.55
08-20-30-329-052	23607-15488	1702 GRAEFIELD RD UNIT 52	\$682.64	\$102.40	\$785.04
08-20-30-329-071	17945-15526	1652 GRAEFIELD RD UNIT 71	\$670.78	\$100.62	\$771.40
08-20-30-329-081	33355-15546	1626 GRAEFIELD RD UNIT 81	\$151.18	\$22.68	\$173.86
08-20-30-329-102	33859-15588	1984 GRAEFIELD RD	\$419.49	\$62.92	\$482.41
08-20-30-352-020	08821-15704	1383 YORKSHIRE RD	\$1,794.28	\$269.14	\$2,063.42
08-20-30-353-002	08903-15708	1150 YORKSHIRE RD	\$1,593.23	\$238.98	\$1,832.21
08-20-30-356-013	22765-15850	1489 E MAPLE RD	\$1,247.01	\$187.05	\$1,434.06
08-20-30-356-020	08945-15864	101 CAMBRIDGE ST	\$729.84	\$109.48	\$839.32
08-20-30-376-002	08751-15868	1731 DORCHESTER RD	\$950.13	\$142.52	\$1,092.65
08-20-30-376-005	08753-15874	1763 DORCHESTER RD	\$1,682.35	\$252.35	\$1,934.70
08-20-30-378-013	34059-15928	1849 E MAPLE RD	\$221.20	\$33.18	\$254.38
08-20-30-379-043	10839-24224	215 N ETON ST	\$407.28	\$61.09	\$468.37
08-20-30-379-043	10841-24226	217 N ETON ST	\$192.66	\$28.90	\$221.56
08-20-30-379-043	10843-24230	221 N ETON ST	\$233.31	\$35.00	\$268.31
08-20-30-401-012	11894-01123	2202 DERBY RD	\$1,045.16	\$156.77	\$1,201.93
08-20-30-402-033	26411-16314	2281 MANCHESTER RD	\$1,078.63	\$161.79	\$1,240.42
08-20-30-403-009	34307-16336	2456 PEMBROKE RD	\$568.63	\$85.29	\$653.92
08-20-30-403-011	32757-16340	2494 PEMBROKE RD	\$717.04	\$107.56	\$824.60

08-20-30-403-016	25343-16350	2590 PEMBROKE RD	\$1,051.57	\$157.74	\$1,209.31
08-20-30-404-014	24143-16410	2246 MANCHESTER RD	\$1,508.68	\$226.30	\$1,734.98
08-20-30-404-016	11467-16414	2282 MANCHESTER RD	\$1,385.17	\$207.78	\$1,592.95
08-20-30-404-017	11435-16416	2015 WINDEMERE RD	\$1,129.70	\$169.46	\$1,299.16
08-20-30-404-022	33593-16426	2107 WINDEMERE RD	\$582.50	\$87.38	\$669.88
08-20-30-406-006	28527-16522	2388 WINDEMERE RD	\$600.82	\$90.12	\$690.94
08-20-30-406-007	11285-16524	2412 WINDEMERE RD	\$1,162.04	\$174.31	\$1,336.35
08-20-30-406-031	30553-16572	2549 BUCKINGHAM AVE	\$255.46	\$38.32	\$293.78
08-20-30-427-031	11727-16764	755 COOLIDGE HWY	\$392.89	\$58.93	\$451.82
08-20-30-428-021	11359-16812	2735 WINDEMERE RD	\$1,018.84	\$152.83	\$1,171.67
08-20-30-428-031	33315-16832	657 COOLIDGE HWY	\$1,546.30	\$231.95	\$1,778.25
08-20-30-429-018	20885-16876	2663 BUCKINGHAM AVE	\$346.18	\$51.93	\$398.11
08-20-30-454-011	10943-17094	2586 DORCHESTER RD	\$167.53	\$25.13	\$192.66
08-20-30-456-008	10787-17190	2510 YORKSHIRE RD	\$2,471.37	\$370.71	\$2,842.08
08-20-30-477-005	10933-17298	2694 DORCHESTER RD	\$81.40	\$12.21	\$93.61
08-20-30-477-015	10913-17318	2896 DORCHESTER RD	\$370.10	\$55.52	\$425.62
08-20-30-477-027	10911-17342	2897 YORKSHIRE RD	\$526.74	\$79.01	\$605.75
08-20-31-101-014	08983-17512	1616 E MAPLE RD	\$298.71	\$44.81	\$343.52
08-20-31-101-024	09013-17532	1171 YOSEMITE BLVD	\$1,304.07	\$195.61	\$1,499.68
08-20-31-101-031	32853-17546	1447 YOSEMITE BLVD	\$734.59	\$110.19	\$844.78
08-20-31-102-001	18269-17574	1122 YOSEMITE BLVD	\$1,456.23	\$218.43	\$1,674.66
08-20-31-103-002	31419-17664	1136 VILLA RD	\$817.96	\$122.69	\$940.65
08-20-31-103-008	26573-17676	1250 VILLA RD	\$643.63	\$96.54	\$740.17
08-20-31-103-009	18635-17678	1272 VILLA RD	\$160.85	\$24.13	\$184.98
08-20-31-103-058	10653-17776	1673 HAZEL ST	\$853.58	\$128.04	\$981.62
08-20-31-104-027	10485-17848	1489 BOWERS ST	\$137.03	\$20.55	\$157.58
08-20-31-130-003	10569-18004	1824 HAZEL ST	\$1,151.27	\$172.69	\$1,323.96
08-20-31-130-006	10563-18010	1870 HAZEL ST	\$491.31	\$73.70	\$565.01
08-20-31-130-017	10523-18030	1831 BOWERS ST	\$301.78	\$45.27	\$347.05
08-20-31-151-016	10257-18084	1506 HAYNES ST	\$220.85	\$33.13	\$253.98
08-20-31-151-038	35095-18128	1395 HOLLAND ST	\$218.57	\$32.79	\$251.36
08-20-31-151-041	12411-18134	1445 HOLLAND ST	\$657.95	\$98.69	\$756.64
08-20-31-152-011	32499-18174	1622 BOWERS ST	\$677.88	\$101.68	\$779.56
08-20-31-152-036	19409-18224	1645 HAYNES ST	\$515.09	\$77.26	\$592.35
08-20-31-153-003	26389-18264	1164 HOLLAND ST	\$213.33	\$32.00	\$245.33
08-20-31-153-035	12631-18328	1169 WEBSTER ST	\$993.12	\$148.97	\$1,142.09
08-20-31-153-037	12635-18332	1211 WEBSTER ST	\$95.79	\$14.37	\$110.16
08-20-31-154-017	22455-18426	1408 WEBSTER ST	\$1,390.73	\$208.61	\$1,599.34
08-20-31-154-041	25739-18474	1315 COLE ST	\$1,772.53	\$265.88	\$2,038.41
08-20-31-154-051	12893-18494	1467 COLE ST	\$256.28	\$38.44	\$294.72
08-20-31-154-055	34371-18502	1539 COLE ST	\$973.01	\$145.95	\$1,118.96
08-20-31-155-030	13185-18568	1155 E LINCOLN ST	\$992.16	\$148.82	\$1,140.98
08-20-31-176-008	29489-18652	1918 BOWERS ST	\$86.18	\$12.93	\$99.11
08-20-31-176-021	17955-18676	1901 HAYNES ST	\$749.75	\$112.46	\$862.21
08-20-31-177-023	19567-18734	1960 HAYNES ST	\$711.35	\$106.70	\$818.05
08-20-31-177-040	23019-18768	1775 HOLLAND ST	\$834.35	\$125.15	\$959.50
08-20-31-178-005	12557-18812	1654 HOLLAND ST	\$327.57	\$49.14	\$376.71
08-20-31-178-068	29653-30210	1629 WEBSTER ST	\$1,152.91	\$172.94	\$1,325.85
08-20-31-179-034	31411-18992	1695 COLE ST	\$449.04	\$67.36	\$516.40
08-20-31-179-040	34751-19004	1771 COLE ST	\$983.77	\$147.57	\$1,131.34
08-20-31-179-047	24011-19018	1859 COLE ST	\$218.66	\$32.80	\$251.46
08-20-31-203-035	00000-11344	405 S ETON ST	\$270.67	\$40.60	\$311.27
08-20-31-301-011	33273-19248	1308 E LINCOLN ST	\$671.20	\$100.68	\$771.88
08-20-31-301-021	13255-19268	1474 E LINCOLN ST	\$540.07	\$81.01	\$621.08
08-20-31-301-023	25845-19272	1496 E LINCOLN ST	\$398.00	\$59.70	\$457.70
08-20-31-301-033	32109-19292	1211 RUFFNER AVE	\$1,336.08	\$200.41	\$1,536.49
08-20-31-301-038	28095-19302	1285 RUFFNER AVE	\$482.75	\$72.41	\$555.16
08-20-31-302-042	34177-19436	1351 HUMPHREY AVE	\$294.20	\$44.13	\$338.33
08-20-31-302-053	34375-19458	1523 HUMPHREY AVE	\$522.99	\$78.45	\$601.44
08-20-31-302-057	13485-19466	1591 HUMPHREY AVE	\$122.30	\$18.35	\$140.65
08-20-31-304-006	13529-19492	1244 HUMPHREY AVE	\$122.30	\$18.35	\$140.65

08-20-31-306-040	13665-19688	1537 CHAPIN AVE	\$84.40	\$12.66	\$97.06
08-20-31-306-042	18625-19692	1577 CHAPIN AVE	\$164.32	\$24.65	\$188.97
08-20-31-327-001	14351-19706	1815 E LINCOLN ST	\$86.48	\$12.97	\$99.45
08-20-31-329-009	33503-19790	1968 W MELTON RD	\$868.13	\$130.22	\$998.35
08-20-31-330-018	23901-19850	1711 BANBURY ST	\$545.87	\$81.88	\$627.75
08-20-31-331-025	13905-19910	1875 BANBURY ST	\$1,941.91	\$291.29	\$2,233.20
08-20-31-331-026	13903-19912	1887 BANBURY ST	\$1,215.76	\$182.36	\$1,398.12
08-20-31-332-001	13943-19918	1612 BANBURY ST	\$173.97	\$26.10	\$200.07
08-20-31-352-008	13697-20006	1392 CHAPIN AVE	\$717.32	\$107.60	\$824.92
08-20-31-352-014	31899-20018	1484 CHAPIN AVE	\$115.00	\$17.25	\$132.25
08-20-31-352-020	21731-20030	1590 CHAPIN AVE	\$232.97	\$34.95	\$267.92
08-20-31-352-023	32629-20036	1449 EMMONS AVE	\$380.71	\$57.11	\$437.82
08-20-31-352-032	29049-29510	1505 EMMONS AVE	\$390.92	\$58.64	\$449.56
08-20-31-353-013	24019-26406	1181 DAVIS AVE	\$196.47	\$29.47	\$225.94
08-20-31-354-047	32349-20226	1772 TAUNTON RD	\$218.50	\$32.78	\$251.28
08-20-31-354-054	20083-20240	1784 TAUNTON RD	\$83.41	\$12.51	\$95.92
08-20-31-356-004	19785-20330	1761 TAUNTON RD	\$867.75	\$130.16	\$997.91
08-20-31-356-012	18873-20346	1563 SHEFFIELD RD	\$903.62	\$135.54	\$1,039.16
08-20-31-358-008	15795-20470	1264 BIRD AVE	\$193.04	\$28.96	\$222.00
08-20-31-358-029	15863-20512	1223 E 14 MILE RD	\$287.97	\$43.20	\$331.17
08-20-31-377-008	14157-20626	1621 TORRY ST	\$572.01	\$85.80	\$657.81
08-20-31-381-009	27003-20746	1628 PENISTONE ST	\$1,366.11	\$204.92	\$1,571.03
08-20-31-405-002	26017-21078	1515 CHELTENHAM RD	\$370.65	\$55.60	\$426.25
08-20-31-452-015	14443-21180	1797 S ETON ST	\$1,158.01	\$173.70	\$1,331.71
08-20-31-452-017	25865-21184	1827 S ETON ST	\$308.49	\$46.27	\$354.76
08-20-31-452-028	34631-21206	1704 MANSFIELD RD	\$788.85	\$118.33	\$907.18
08-20-31-453-037	14565-21296	1700 E MELTON RD	\$102.01	\$15.30	\$117.31
			\$271,138.87	\$40,670.96	\$311,809.83

MEMORANDUM

DATE: April 24, 2023

TO: Thomas Markus, City Manager

FROM: Ryan Katz, Deputy Treasurer
Mark Gerber, Finance Director/Treasurer

SUBJECT: Delinquent Water/Sewage Charges to Tax Roll

INTRODUCTION:

By City ordinance, water and sewer bills which are delinquent for more than 6 months on April 30th shall be transferred to the following year tax roll.

BACKGROUND:

As provided in Chapter 114, Section 114-303 of the city code, the properties on the attached listing represent delinquent and unpaid water/sewage services that have remained delinquent for a period of six months or greater as of April 30, 2023. The ordinance states that a 15% penalty is to be assessed on these delinquent balances when they are transferred to the tax roll.

LEGAL REVIEW:

No legal review is required.

FISCAL IMPACT:

The unpaid accounts are detailed on the attached listing and represent a cumulative total of **\$311,809.83** including interest and penalties as of May 1, 2023.

PUBLIC COMMUNICATIONS:

During the month of April 2023, property owners with delinquent accounts will be notified of their account status and provided with a deadline to pay the unpaid balance prior to the assessment of the penalty and transfer to the tax roll.

SUMMARY:

The City Commission is requested to direct the Treasurer to transfer the unpaid bills, including interest and penalty, to the 2023 tax roll and to authorize removal from the list any bills paid or a payment plan agreement signed after City Commission approval.

ATTACHMENTS:

- Delinquent water/sewer tax roll

SUGGESTED COMMISSION ACTION:

Make a motion adopting the following resolution:

WHEREAS, The City Treasurer, in accordance with Chapter 114, Section 114-303, of the city code has reported certain water/sewage accounts, including interest and penalty, unpaid and delinquent on May 1, 2023, and

WHEREAS, Chapter 114, Section 114-303, of the city code provides that these payments shall be carried to the next annual city tax roll.

NOW, THEREFORE, BE IT RESOLVED, that the properties with unpaid and delinquent water/sewage accounts, listed in the Delinquent Water/Sewer Tax Roll, dated April 13, 2023, including interest and penalty, be transferred and reassessed to the 2023 city tax roll and authorization be given to remove from the list any bills paid or a payment plan agreement signed after commission approval.

Parcel Number	Account #	Service Address	Delinquent Amount	Penalty	Total
08-19-25-180-004	00083-49416	144 WIMBLETON DR	\$871.19	\$130.68	\$1,001.87
08-19-25-258-001	00083-77696	520 WIMBLETON DR	\$39.06	\$5.86	\$44.92
08-19-25-277-008	00081-63768	1033 PUTNEY ST	\$755.52	\$113.33	\$868.85
08-19-25-278-001	00082-05772	600 ABBEY ST	\$1,513.54	\$227.03	\$1,740.57
08-19-25-280-001	00081-93850	770 HENLEY ST	\$1,408.64	\$211.30	\$1,619.94
08-19-25-303-017	03523-51102	622 VINEWOOD AVE	\$420.26	\$63.04	\$483.30
08-19-25-304-005	00676-11114	829 VINEWOOD AVE	\$397.07	\$59.56	\$456.63
08-19-25-304-033	02862-11170	729 VINEWOOD AVE	\$1,057.60	\$158.64	\$1,216.24
08-19-25-304-034	00660-91172	667 GREENWOOD ST	\$1,495.27	\$224.29	\$1,719.56
08-19-25-304-039	03429-71182	575 GREENWOOD ST	\$544.70	\$81.71	\$626.41
08-19-25-304-050	00684-51204	530 LAKEVIEW AVE	\$211.92	\$31.79	\$243.71
08-19-25-328-030	32361-31222	554 N OLD WOODWARD AVE	\$26.43	\$3.96	\$30.39
08-19-25-328-032	03277-31524	534 N OLD WOODWARD AVE	\$190.00	\$28.50	\$218.50
08-19-25-328-052	02240-51562	576 PARK ST	\$2,428.76	\$364.31	\$2,793.07
08-19-25-328-063	00712-91582	531 BROOKSIDE AVE	\$287.19	\$43.08	\$330.27
08-19-25-330-006	03277-91634	181 EUCLID AVE	\$444.46	\$66.67	\$511.13
08-19-25-403-016	00853-72268	775 KENNESAW ST	\$207.08	\$31.06	\$238.14
08-19-25-404-013	00778-12300	619 RIVENOAK ST	\$2,067.76	\$310.16	\$2,377.92
08-19-25-427-023	03098-72402	1067 KENNESAW ST	\$1,450.71	\$217.61	\$1,668.32
08-19-25-451-034	00000-11570	400 PARK ST VACANT	\$122.31	\$18.35	\$140.66
08-19-25-452-023	03408-52616	340 FERNDAL AVE	\$549.33	\$82.40	\$631.73
08-19-25-460-016	00799-72838	567 RIDGEDALE AVE	\$906.15	\$135.92	\$1,042.07
08-19-25-477-004	02984-72870	876 MADISON ST	\$1,017.16	\$152.57	\$1,169.73
08-19-25-480-005	00797-12914	768 OAKLAND AVE	\$1,482.85	\$222.43	\$1,705.28
08-19-25-487-006	00759-93148	165 N ADAMS RD	\$966.19	\$144.93	\$1,111.12
08-19-26-126-020	00000-11523	1573 CHESTERFIELD AVE	\$397.19	\$59.58	\$456.77
08-19-26-129-003	00295-73224	1298 N GLENHURST DR	\$667.81	\$100.17	\$767.98
08-19-26-178-006	00294-53388	1973 RAYNALE ST	\$256.47	\$38.47	\$294.94
08-19-26-205-002	00329-33638	1356 FAIRFAX ST	\$3,288.90	\$493.34	\$3,782.24
08-19-26-226-007	02826-93780	1027 QUARTON RD	\$1,046.05	\$156.91	\$1,202.96
08-19-26-226-008	00379-13782	1563 LAKESIDE DR	\$100.19	\$15.03	\$115.22
08-19-26-253-005	02886-14122	1000 SUFFIELD AVE	\$789.97	\$118.50	\$908.47
08-19-26-254-004	00350-34158	1030 PILGRIM AVE	\$3,192.82	\$478.92	\$3,671.74
08-19-26-276-003	03432-54198	1060 PURITAN AVE	\$2,347.72	\$352.16	\$2,699.88
08-19-26-279-020	00384-94328	1030 LAKESIDE DR	\$1,516.49	\$227.47	\$1,743.96
08-19-26-327-008	02626-14390	600 WESTWOOD DR	\$680.94	\$102.14	\$783.08
08-19-26-329-006	00276-14508	1793 MELBOURNE ST	\$357.57	\$53.64	\$411.21
08-19-26-330-003	00272-94540	1849 PINE ST	\$734.01	\$110.10	\$844.11
08-19-26-330-005	02310-94544	1805 PINE ST	\$1,760.26	\$264.04	\$2,024.30
08-19-26-330-019	03053-54572	1776 WINTHROP LN	\$1,470.18	\$220.53	\$1,690.71
08-19-26-378-022	00268-34598	345 KIMBERLEY ST	\$641.97	\$96.30	\$738.27
08-19-26-401-019	00253-14736	767 FAIRFAX ST	\$2,716.67	\$407.50	\$3,124.17
08-19-26-452-002	01791-15130	454 FAIRFAX ST	\$2,253.07	\$337.96	\$2,591.03
08-19-26-452-004	00247-15134	362 FAIRFAX ST	\$775.10	\$116.27	\$891.37
08-19-26-452-011	02195-95148	184 FAIRFAX ST	\$180.86	\$27.13	\$207.99
08-19-26-477-013	00608-15414	1128 W MAPLE RD	\$595.68	\$89.35	\$685.03
08-19-35-102-027	02189-95560	2435 DEVON LN	\$2,108.87	\$316.33	\$2,425.20
08-19-35-104-026	01901-55694	412 BERWYN ST	\$2,684.57	\$402.69	\$3,087.26
08-19-35-105-001	03183-15702	2368 RADNOR ST	\$903.26	\$135.49	\$1,038.75
08-19-35-126-003	00510-55826	415 ARGYLE ST	\$1,612.89	\$241.93	\$1,854.82
08-19-35-127-032	02138-55920	245 ARGYLE ST	\$817.54	\$122.63	\$940.17
08-19-35-127-033	03198-15922	270 S GLENHURST DR	\$168.29	\$25.24	\$193.53
08-19-35-128-003	03539-95928	161 S GLENHURST DR	\$1,344.09	\$201.61	\$1,545.70
08-19-35-129-004	00549-16006	181 WESTCHESTER WAY	\$4,110.80	\$616.62	\$4,727.42
08-19-35-177-010	00522-56218	899 WOODLEA ST	\$1,726.68	\$259.00	\$1,985.68
08-19-35-177-028	00520-76254	1062 S GLENHURST DR	\$1,516.88	\$227.53	\$1,744.41
08-19-35-180-010	03320-16436	883 LARCHLEA DR	\$1,327.12	\$199.07	\$1,526.19
08-19-35-201-026	00563-16504	590 MERRITT LN	\$1,128.02	\$169.20	\$1,297.22
08-19-35-201-043	00560-56538	1717 MIDVALE ST	\$518.48	\$77.77	\$596.25

08-19-35-202-026	03038-96654	1073 PLEASANT ST	\$1,099.09	\$164.86	\$1,263.95
08-19-35-202-036	00584-36674	316 ARLINGTON ST	\$5,723.42	\$858.51	\$6,581.93
08-19-35-202-039	00585-76680	414 ARLINGTON ST	\$1,125.39	\$168.81	\$1,294.20
08-19-35-202-054	02151-16710	1492 W LINCOLN ST	\$272.31	\$40.85	\$313.16
08-19-35-202-068	03510-56738	400 ARLINGTON ST	\$55,657.81	\$8,348.67	\$64,006.48
08-19-35-226-009	02127-76756	100 SHIRLEY RD	\$1,472.59	\$220.89	\$1,693.48
08-19-35-276-006	01937-16996	779 ARLINGTON ST	\$2,815.98	\$422.40	\$3,238.38
08-19-35-302-002	00458-77156	2440 FAIRWAY DR	\$528.03	\$79.20	\$607.23
08-19-35-305-009	00446-77240	2428 NORTHLAWN BLVD	\$52.84	\$7.93	\$60.77
08-19-35-326-012	00467-17312	1737 W LINCOLN ST	\$715.08	\$107.26	\$822.34
08-19-35-326-014	00467-57316	1685 W LINCOLN ST	\$1,417.08	\$212.56	\$1,629.64
08-19-35-326-029	00470-77346	1900 FAIRWAY DR	\$276.81	\$41.52	\$318.33
08-19-35-327-035	02464-57452	1768 NORTHLAWN BLVD	\$834.77	\$125.22	\$959.99
08-19-35-401-002	00481-97516	1581 W LINCOLN ST	\$203.78	\$30.57	\$234.35
08-19-35-401-014	00481-57540	1590 FAIRWAY DR	\$160.87	\$24.13	\$185.00
08-19-35-402-014	01784-77596	1570 NORTHLAWN BLVD	\$1,386.99	\$208.05	\$1,595.04
08-19-35-402-018	00437-77604	1492 NORTHLAWN BLVD	\$101.50	\$15.23	\$116.73
08-19-35-426-005	02758-57642	1155 W LINCOLN ST	\$2,237.94	\$335.69	\$2,573.63
08-19-35-427-006	00436-37684	1025 W LINCOLN ST	\$55.42	\$8.31	\$63.73
08-19-35-427-017	00437-17706	1200 SOUTHFIELD RD	\$1,027.36	\$154.10	\$1,181.46
08-19-35-430-001	03500-57804	1187 NORTHLAWN BLVD	\$554.52	\$83.18	\$637.70
08-19-35-430-009	00429-77820	955 NORTHLAWN BLVD	\$1,297.06	\$194.56	\$1,491.62
08-19-35-478-017	00420-17934	892 W SOUTHLAWN BLVD	\$150.61	\$22.59	\$173.20
08-19-36-129-002	00204-98378	175 W MAPLE RD	\$209.12	\$31.37	\$240.49
08-19-36-135-102	34851-26592	520 W BROWN ST	\$172.47	\$25.87	\$198.34
08-19-36-136-006	03357-58752	404 S BATES ST	\$1,903.96	\$285.59	\$2,189.55
08-19-36-136-012	02865-78762	350 W BROWN ST UNIT 1	\$324.10	\$48.62	\$372.72
08-19-36-136-014	00184-18766	372 W BROWN ST UNIT 3	\$606.59	\$90.99	\$697.58
08-19-36-137-003	02711-18774	211 TOWNSEND ST	\$141.37	\$21.21	\$162.58
08-19-36-156-020	00133-99150	512 WALLACE ST	\$122.31	\$18.35	\$140.66
08-19-36-156-024	00102-99158	564 WALLACE ST	\$1,430.28	\$214.54	\$1,644.82
08-19-36-157-002	03131-19164	855 WALLACE ST	\$281.73	\$42.26	\$323.99
08-19-36-177-018	03364-99358	544 S BATES ST	\$365.66	\$54.85	\$420.51
08-19-36-181-008	00156-59532	724 S BATES ST	\$327.33	\$49.10	\$376.43
08-19-36-182-007	03028-39554	875 STANLEY BLVD	\$1,545.95	\$231.89	\$1,777.84
08-19-36-184-031	00171-99732	956 HENRIETTA ST	\$554.64	\$83.20	\$637.84
08-19-36-185-005	34791-22432	771 HENRIETTA ST	\$187.41	\$28.11	\$215.52
08-19-36-185-011	33361-22430	861 HENRIETTA ST	\$130.13	\$19.52	\$149.65
08-19-36-185-023	00012-99800	764 PIERCE ST	\$1,152.09	\$172.81	\$1,324.90
08-19-36-185-033	21289-25266	990 PIERCE ST	\$1,419.51	\$212.93	\$1,632.44
08-19-36-203-007	00032-79940	653 PIERCE ST	\$523.53	\$78.53	\$602.06
08-19-36-204-027	00383-10050	300 S OLD WOODWARD AVE	\$553.00	\$82.95	\$635.95
08-19-36-227-015	31103-10346	1011 FOREST AVE	\$1,575.60	\$236.34	\$1,811.94
08-19-36-229-015	25763-10412	889 CHESTNUT ST	\$300.83	\$45.12	\$345.95
08-19-36-229-016	10009-10414	909 CHESTNUT ST	\$1,166.53	\$174.98	\$1,341.51
08-19-36-233-010	10109-10534	1020 HAZEL ST	\$679.78	\$101.97	\$781.75
08-19-36-252-001	33733-22172	707 PURDY ST	\$536.31	\$80.45	\$616.76
08-19-36-253-009	00711-10716	691 ANN ST	\$485.61	\$72.84	\$558.45
08-19-36-253-011	32443-10720	723 ANN ST	\$391.29	\$58.69	\$449.98
08-19-36-255-025	26899-10856	912 FLOYD ST	\$833.21	\$124.98	\$958.19
08-19-36-255-037	32875-10880	1026 FLOYD ST	\$375.05	\$56.26	\$431.31
08-19-36-303-013	23885-11342	1332 MARYLAND BLVD	\$739.39	\$110.91	\$850.30
08-19-36-306-022	34007-11434	1640 BIRMINGHAM BLVD	\$732.48	\$109.87	\$842.35
08-19-36-307-007	17229-11452	1563 BIRMINGHAM BLVD	\$890.08	\$133.51	\$1,023.59
08-19-36-308-001	33231-11500	1411 MARYLAND BLVD	\$325.89	\$48.88	\$374.77
08-19-36-308-034	16995-11566	1654 STANLEY BLVD	\$267.33	\$40.10	\$307.43
08-19-36-326-027	16833-11626	1322 WASHINGTON BLVD	\$45.08	\$6.76	\$51.84
08-19-36-328-003	16465-11698	1165 S BATES ST	\$1,657.57	\$248.64	\$1,906.21
08-19-36-331-009	31559-11902	1535 WASHINGTON BLVD	\$255.56	\$38.33	\$293.89
08-19-36-331-016	19667-11916	1643 WASHINGTON BLVD	\$1,421.62	\$213.24	\$1,634.86
08-19-36-332-008	16503-11978	1521 S BATES ST	\$1,134.07	\$170.11	\$1,304.18

08-19-36-332-022	26563-12006	227 NORTHLAWN BLVD	\$401.38	\$60.21	\$461.59
08-19-36-333-009	16299-12064	1537 HENRIETTA ST	\$1,570.21	\$235.53	\$1,805.74
08-19-36-351-022	33803-12162	1850 SHIPMAN BLVD	\$326.03	\$48.90	\$374.93
08-19-36-351-023	20857-12164	1862 SHIPMAN BLVD	\$1,446.24	\$216.94	\$1,663.18
08-19-36-351-044	17449-12206	1727 SOUTHFIELD RD	\$1,012.17	\$151.83	\$1,164.00
08-19-36-352-019	17855-12278	1750 BIRMINGHAM BLVD	\$818.48	\$122.77	\$941.25
08-19-36-352-020	31579-12280	1768 BIRMINGHAM BLVD	\$548.33	\$82.25	\$630.58
08-19-36-352-023	23623-12286	1838 BIRMINGHAM BLVD	\$368.08	\$55.21	\$423.29
08-19-36-377-002	33225-12504	1727 WASHINGTON BLVD	\$280.89	\$42.13	\$323.02
08-19-36-377-018	30897-12536	1995 WASHINGTON BLVD	\$260.26	\$39.04	\$299.30
08-19-36-377-028	16575-12556	1844 S BATES ST	\$1,143.59	\$171.54	\$1,315.13
08-19-36-377-037	27095-12574	1990 S BATES ST	\$939.25	\$140.89	\$1,080.14
08-19-36-378-016	16555-12606	1991 S BATES ST	\$572.46	\$85.87	\$658.33
08-19-36-379-029	31807-27986	1825 HENRIETTA ST	\$949.30	\$142.40	\$1,091.70
08-19-36-379-033	26843-27626	1760 PIERCE ST	\$1,081.19	\$162.18	\$1,243.37
08-19-36-402-014	30465-12826	1393 CEDAR DR	\$184.54	\$27.68	\$212.22
08-19-36-426-014	18073-13030	872 E LINCOLN ST	\$773.90	\$116.09	\$889.99
08-19-36-426-034	35497-13070	951 RUFFNER AVE	\$214.50	\$32.18	\$246.68
08-19-36-428-012	14855-13126	828 RUFFNER AVE	\$231.65	\$34.75	\$266.40
08-19-36-429-015	14937-13246	888 HUMPHREY AVE	\$259.96	\$38.99	\$298.95
08-19-36-429-045	31321-30720	1013 BENNAVILLE AVE	\$458.81	\$68.82	\$527.63
08-19-36-430-038	15091-13418	831 CHAPIN AVE	\$529.29	\$79.39	\$608.68
08-19-36-430-053	34733-29970	806 BENNAVILLE AVE	\$1,862.62	\$279.39	\$2,142.01
08-19-36-432-048	15243-13562	615 EMMONS AVE	\$1,431.20	\$214.68	\$1,645.88
08-19-36-451-008	34173-25208	174 CATALPA DR	\$1,569.97	\$235.50	\$1,805.47
08-19-36-455-017	16105-13790	479 BIRD AVE	\$383.26	\$57.49	\$440.75
08-19-36-456-047	29409-26758	251 E 14 MILE RD	\$428.77	\$64.32	\$493.09
08-19-36-478-004	29025-14022	664 DAVIS AVE	\$662.50	\$99.38	\$761.88
08-19-36-480-021	29641-14200	986 SMITH AVE	\$122.30	\$18.35	\$140.65
08-19-36-480-066	24789-14290	731 BIRD AVE	\$197.47	\$29.62	\$227.09
08-19-36-482-037	33947-14384	897 E 14 MILE RD	\$752.36	\$112.85	\$865.21
08-19-36-482-054	26605-14418	807 E 14 MILE RD	\$266.50	\$39.98	\$306.48
08-20-30-153-039	11937-14720	1709 DERBY RD	\$1,537.25	\$230.59	\$1,767.84
08-20-30-153-041	11933-14724	1771 DERBY RD	\$467.04	\$70.06	\$537.10
08-20-30-327-019	35087-15102	1997 PEMBROKE RD	\$1,773.50	\$266.03	\$2,039.53
08-20-30-328-044	33673-15190	1987 GRAEFIELD RD	\$72.48	\$10.87	\$83.35
08-20-30-328-067	28599-15236	1653 GRAEFIELD RD UNIT 102	\$480.45	\$72.07	\$552.52
08-20-30-328-099	33997-15300	695 GRAEFIELD CT UNIT 134	\$790.20	\$118.53	\$908.73
08-20-30-328-113	34199-15328	736 GRAEFIELD CT UNIT 148	\$241.31	\$36.20	\$277.51
08-20-30-328-121	23925-15344	720 GRAEFIELD CT UNIT 156	\$367.99	\$55.20	\$423.19
08-20-30-329-001	09357-15386	1898 GRAEFIELD RD UNIT 1	\$627.66	\$94.15	\$721.81
08-20-30-329-012	32677-15408	1822 GRAEFIELD RD UNIT 12	\$120.95	\$18.14	\$139.09
08-20-30-329-038	18143-15460	1744 GRAEFIELD RD UNIT 38	\$163.09	\$24.46	\$187.55
08-20-30-329-052	23607-15488	1702 GRAEFIELD RD UNIT 52	\$682.64	\$102.40	\$785.04
08-20-30-329-071	17945-15526	1652 GRAEFIELD RD UNIT 71	\$670.78	\$100.62	\$771.40
08-20-30-329-081	33355-15546	1626 GRAEFIELD RD UNIT 81	\$151.18	\$22.68	\$173.86
08-20-30-329-102	33859-15588	1984 GRAEFIELD RD	\$419.49	\$62.92	\$482.41
08-20-30-352-020	08821-15704	1383 YORKSHIRE RD	\$1,794.28	\$269.14	\$2,063.42
08-20-30-353-002	08903-15708	1150 YORKSHIRE RD	\$1,593.23	\$238.98	\$1,832.21
08-20-30-356-013	22765-15850	1489 E MAPLE RD	\$1,247.01	\$187.05	\$1,434.06
08-20-30-356-020	08945-15864	101 CAMBRIDGE ST	\$729.84	\$109.48	\$839.32
08-20-30-376-002	08751-15868	1731 DORCHESTER RD	\$950.13	\$142.52	\$1,092.65
08-20-30-376-005	08753-15874	1763 DORCHESTER RD	\$1,682.35	\$252.35	\$1,934.70
08-20-30-378-013	34059-15928	1849 E MAPLE RD	\$221.20	\$33.18	\$254.38
08-20-30-379-043	10839-24224	215 N ETON ST	\$407.28	\$61.09	\$468.37
08-20-30-379-043	10841-24226	217 N ETON ST	\$192.66	\$28.90	\$221.56
08-20-30-379-043	10843-24230	221 N ETON ST	\$233.31	\$35.00	\$268.31
08-20-30-401-012	11894-01123	2202 DERBY RD	\$1,045.16	\$156.77	\$1,201.93
08-20-30-402-033	26411-16314	2281 MANCHESTER RD	\$1,078.63	\$161.79	\$1,240.42
08-20-30-403-009	34307-16336	2456 PEMBROKE RD	\$568.63	\$85.29	\$653.92
08-20-30-403-011	32757-16340	2494 PEMBROKE RD	\$717.04	\$107.56	\$824.60

08-20-30-403-016	25343-16350	2590 PEMBROKE RD	\$1,051.57	\$157.74	\$1,209.31
08-20-30-404-014	24143-16410	2246 MANCHESTER RD	\$1,508.68	\$226.30	\$1,734.98
08-20-30-404-016	11467-16414	2282 MANCHESTER RD	\$1,385.17	\$207.78	\$1,592.95
08-20-30-404-017	11435-16416	2015 WINDEMERE RD	\$1,129.70	\$169.46	\$1,299.16
08-20-30-404-022	33593-16426	2107 WINDEMERE RD	\$582.50	\$87.38	\$669.88
08-20-30-406-006	28527-16522	2388 WINDEMERE RD	\$600.82	\$90.12	\$690.94
08-20-30-406-007	11285-16524	2412 WINDEMERE RD	\$1,162.04	\$174.31	\$1,336.35
08-20-30-406-031	30553-16572	2549 BUCKINGHAM AVE	\$255.46	\$38.32	\$293.78
08-20-30-427-031	11727-16764	755 COOLIDGE HWY	\$392.89	\$58.93	\$451.82
08-20-30-428-021	11359-16812	2735 WINDEMERE RD	\$1,018.84	\$152.83	\$1,171.67
08-20-30-428-031	33315-16832	657 COOLIDGE HWY	\$1,546.30	\$231.95	\$1,778.25
08-20-30-429-018	20885-16876	2663 BUCKINGHAM AVE	\$346.18	\$51.93	\$398.11
08-20-30-454-011	10943-17094	2586 DORCHESTER RD	\$167.53	\$25.13	\$192.66
08-20-30-456-008	10787-17190	2510 YORKSHIRE RD	\$2,471.37	\$370.71	\$2,842.08
08-20-30-477-005	10933-17298	2694 DORCHESTER RD	\$81.40	\$12.21	\$93.61
08-20-30-477-015	10913-17318	2896 DORCHESTER RD	\$370.10	\$55.52	\$425.62
08-20-30-477-027	10911-17342	2897 YORKSHIRE RD	\$526.74	\$79.01	\$605.75
08-20-31-101-014	08983-17512	1616 E MAPLE RD	\$298.71	\$44.81	\$343.52
08-20-31-101-024	09013-17532	1171 YOSEMITE BLVD	\$1,304.07	\$195.61	\$1,499.68
08-20-31-101-031	32853-17546	1447 YOSEMITE BLVD	\$734.59	\$110.19	\$844.78
08-20-31-102-001	18269-17574	1122 YOSEMITE BLVD	\$1,456.23	\$218.43	\$1,674.66
08-20-31-103-002	31419-17664	1136 VILLA RD	\$817.96	\$122.69	\$940.65
08-20-31-103-008	26573-17676	1250 VILLA RD	\$643.63	\$96.54	\$740.17
08-20-31-103-009	18635-17678	1272 VILLA RD	\$160.85	\$24.13	\$184.98
08-20-31-103-058	10653-17776	1673 HAZEL ST	\$853.58	\$128.04	\$981.62
08-20-31-104-027	10485-17848	1489 BOWERS ST	\$137.03	\$20.55	\$157.58
08-20-31-130-003	10569-18004	1824 HAZEL ST	\$1,151.27	\$172.69	\$1,323.96
08-20-31-130-006	10563-18010	1870 HAZEL ST	\$491.31	\$73.70	\$565.01
08-20-31-130-017	10523-18030	1831 BOWERS ST	\$301.78	\$45.27	\$347.05
08-20-31-151-016	10257-18084	1506 HAYNES ST	\$220.85	\$33.13	\$253.98
08-20-31-151-038	35095-18128	1395 HOLLAND ST	\$218.57	\$32.79	\$251.36
08-20-31-151-041	12411-18134	1445 HOLLAND ST	\$657.95	\$98.69	\$756.64
08-20-31-152-011	32499-18174	1622 BOWERS ST	\$677.88	\$101.68	\$779.56
08-20-31-152-036	19409-18224	1645 HAYNES ST	\$515.09	\$77.26	\$592.35
08-20-31-153-003	26389-18264	1164 HOLLAND ST	\$213.33	\$32.00	\$245.33
08-20-31-153-035	12631-18328	1169 WEBSTER ST	\$993.12	\$148.97	\$1,142.09
08-20-31-153-037	12635-18332	1211 WEBSTER ST	\$95.79	\$14.37	\$110.16
08-20-31-154-017	22455-18426	1408 WEBSTER ST	\$1,390.73	\$208.61	\$1,599.34
08-20-31-154-041	25739-18474	1315 COLE ST	\$1,772.53	\$265.88	\$2,038.41
08-20-31-154-051	12893-18494	1467 COLE ST	\$256.28	\$38.44	\$294.72
08-20-31-154-055	34371-18502	1539 COLE ST	\$973.01	\$145.95	\$1,118.96
08-20-31-155-030	13185-18568	1155 E LINCOLN ST	\$992.16	\$148.82	\$1,140.98
08-20-31-176-008	29489-18652	1918 BOWERS ST	\$86.18	\$12.93	\$99.11
08-20-31-176-021	17955-18676	1901 HAYNES ST	\$749.75	\$112.46	\$862.21
08-20-31-177-023	19567-18734	1960 HAYNES ST	\$711.35	\$106.70	\$818.05
08-20-31-177-040	23019-18768	1775 HOLLAND ST	\$834.35	\$125.15	\$959.50
08-20-31-178-005	12557-18812	1654 HOLLAND ST	\$327.57	\$49.14	\$376.71
08-20-31-178-068	29653-30210	1629 WEBSTER ST	\$1,152.91	\$172.94	\$1,325.85
08-20-31-179-034	31411-18992	1695 COLE ST	\$449.04	\$67.36	\$516.40
08-20-31-179-040	34751-19004	1771 COLE ST	\$983.77	\$147.57	\$1,131.34
08-20-31-179-047	24011-19018	1859 COLE ST	\$218.66	\$32.80	\$251.46
08-20-31-203-035	00000-11344	405 S ETON ST	\$270.67	\$40.60	\$311.27
08-20-31-301-011	33273-19248	1308 E LINCOLN ST	\$671.20	\$100.68	\$771.88
08-20-31-301-021	13255-19268	1474 E LINCOLN ST	\$540.07	\$81.01	\$621.08
08-20-31-301-023	25845-19272	1496 E LINCOLN ST	\$398.00	\$59.70	\$457.70
08-20-31-301-033	32109-19292	1211 RUFFNER AVE	\$1,336.08	\$200.41	\$1,536.49
08-20-31-301-038	28095-19302	1285 RUFFNER AVE	\$482.75	\$72.41	\$555.16
08-20-31-302-042	34177-19436	1351 HUMPHREY AVE	\$294.20	\$44.13	\$338.33
08-20-31-302-053	34375-19458	1523 HUMPHREY AVE	\$522.99	\$78.45	\$601.44
08-20-31-302-057	13485-19466	1591 HUMPHREY AVE	\$122.30	\$18.35	\$140.65
08-20-31-304-006	13529-19492	1244 HUMPHREY AVE	\$122.30	\$18.35	\$140.65

08-20-31-306-040	13665-19688	1537 CHAPIN AVE	\$84.40	\$12.66	\$97.06
08-20-31-306-042	18625-19692	1577 CHAPIN AVE	\$164.32	\$24.65	\$188.97
08-20-31-327-001	14351-19706	1815 E LINCOLN ST	\$86.48	\$12.97	\$99.45
08-20-31-329-009	33503-19790	1968 W MELTON RD	\$868.13	\$130.22	\$998.35
08-20-31-330-018	23901-19850	1711 BANBURY ST	\$545.87	\$81.88	\$627.75
08-20-31-331-025	13905-19910	1875 BANBURY ST	\$1,941.91	\$291.29	\$2,233.20
08-20-31-331-026	13903-19912	1887 BANBURY ST	\$1,215.76	\$182.36	\$1,398.12
08-20-31-332-001	13943-19918	1612 BANBURY ST	\$173.97	\$26.10	\$200.07
08-20-31-352-008	13697-20006	1392 CHAPIN AVE	\$717.32	\$107.60	\$824.92
08-20-31-352-014	31899-20018	1484 CHAPIN AVE	\$115.00	\$17.25	\$132.25
08-20-31-352-020	21731-20030	1590 CHAPIN AVE	\$232.97	\$34.95	\$267.92
08-20-31-352-023	32629-20036	1449 EMMONS AVE	\$380.71	\$57.11	\$437.82
08-20-31-352-032	29049-29510	1505 EMMONS AVE	\$390.92	\$58.64	\$449.56
08-20-31-353-013	24019-26406	1181 DAVIS AVE	\$196.47	\$29.47	\$225.94
08-20-31-354-047	32349-20226	1772 TAUNTON RD	\$218.50	\$32.78	\$251.28
08-20-31-354-054	20083-20240	1784 TAUNTON RD	\$83.41	\$12.51	\$95.92
08-20-31-356-004	19785-20330	1761 TAUNTON RD	\$867.75	\$130.16	\$997.91
08-20-31-356-012	18873-20346	1563 SHEFFIELD RD	\$903.62	\$135.54	\$1,039.16
08-20-31-358-008	15795-20470	1264 BIRD AVE	\$193.04	\$28.96	\$222.00
08-20-31-358-029	15863-20512	1223 E 14 MILE RD	\$287.97	\$43.20	\$331.17
08-20-31-377-008	14157-20626	1621 TORRY ST	\$572.01	\$85.80	\$657.81
08-20-31-381-009	27003-20746	1628 PENISTONE ST	\$1,366.11	\$204.92	\$1,571.03
08-20-31-405-002	26017-21078	1515 CHELTENHAM RD	\$370.65	\$55.60	\$426.25
08-20-31-452-015	14443-21180	1797 S ETON ST	\$1,158.01	\$173.70	\$1,331.71
08-20-31-452-017	25865-21184	1827 S ETON ST	\$308.49	\$46.27	\$354.76
08-20-31-452-028	34631-21206	1704 MANSFIELD RD	\$788.85	\$118.33	\$907.18
08-20-31-453-037	14565-21296	1700 E MELTON RD	\$102.01	\$15.30	\$117.31
			\$271,138.87	\$40,670.96	\$311,809.83



MEMORANDUM

Planning Division

DATE: April 18th, 2022

TO: Thomas Markus, City Manager

FROM: Brooks Cowan, Senior Planner

APPROVED: Nicholas Dupuis, Planning Director

SUBJECT: Temporary Art Installation - Piano in the Park

INTRODUCTION:

The Public Arts Board has recommended that a piano be placed in Shain Park beneath the pavilion to continue the piano in the park program that occurred in 2019 and 2022.

BACKGROUND:

Staff has coordinated with the Public Arts Boards members and the Detroit School of Rock and Pop to obtain a piano and a piano dolly with industrial grade lockable wheels. Professional Movers are also lined up to assist in delivering the piano in the spring and picking it up in the fall.

The piano will be painted at the children's art activity tent of Art Birmingham, an event put on by the Birmingham Bloomfield Art Fair. Staff and members of the Public Arts Board will host the painting event on May 13th, 2023 from 11am to 3pm during the same time as Art Birmingham where visitors may stop by and paint the piano.

Once the paint dries, the piano is wheeled into the pavilion of Shain Park for everyone to play. The piano may be wheeled to the side to make room for the concerts. The piano dolly is equipped with industrial grade, lockable wheels that do not scuff the park surface.

LEGAL REVIEW:

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

FISCAL IMPACT:

In 2019 and 2022, expenses related to moving, tuning, painting, and covering the piano were between \$300 to \$500. Expenses will be related to primer, paint, paint brushes, and painting equipment for volunteers. The largest expense is paying the moving company to deliver and then remove the piano.

PUBLIC NOTIFICATION:

No public notification is required for a temporary art installation.

SUMMARY:

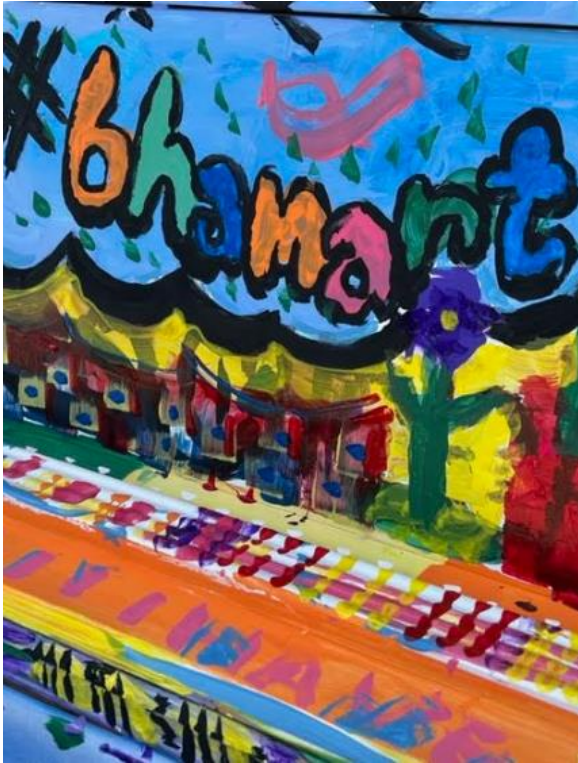
City staff recommends that the City Commission consider approval of a piano being placed in Shain Park beneath the pavilion for anyone to play from the middle of May 2023 to the end of November 2023.

ATTACHMENTS:

- Photos of 2022 piano painting event
- Application
- Location

SUGGESTED ACTION:

Make a motion adopting a resolution to approve the art donation and temporary art installation of a piano to be placed in Shain Park beneath the pavilion from the middle of May 2023 to the end of November 2023.





Cultural Council of Birmingham Bloomfield
P.O. Box 465 Birmingham, MI. 48012

APPLICATION FOR ART IN PUBLIC SPACES

Public Arts Board - Brooks Cowan
APPLICANT NAME

(248) 530-1846 BCowan@Bhamgov.org
DAYTIME PHONE EMAIL

(Donated Piano)
DONOR, OWNER, OR AGENT (DEALER)

(Donated Piano)
ARTIST (first and last) or PROJECT NAME

Piano in the Parks
TITLE

May 15th 2023 to late fall 2023
DATE OF ARTWORK MEDIUM/TECHNIQUE

PROPOSED ☒ DONATION ☐ LOAN
Box Piano

DESCRIPTION OF ARTWORK
Piano will be painted by the Public and then placed in the Shain Parks Pavilion for everyone to play.

HEIGHT x WIDTH x LENGTH/DEPTH WEIGHT

OBJECT TYPE(S)/MATERIAL (i.e., metal, glass, stone, etc.)

DESIGN LOADS (i.e., wind, and dead loads)

INSCRIPTION/FOUNDRY MARKS (if multiple, please include edition number)

PRESENT LOCATION OF ARTWORK (where is the work of art?)

CONDITION
Initial tuning and then scrapped at end of year
MAINTENANCE REQUIRED (long term care/annual)

VALUE ☐ APPRAISED ☐ OWNER'S STATED VALUE

FOOTING/FOUNDATION REQUIREMENTS

NARRATIVE/RATIONALE FOR GIFT/LOAN/TEMPORARY INSTALLATION


SIGNATURE

4-17-23
DATE

***Submit application together with **prints or digital images of artwork, foundation plans, completed Outdoor Sculpture Agreement (if temporary sculpture), and a vitae or resume of the artist** to:

City of Birmingham
Attn: City Clerk – c/o Public Arts Board
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

PAB Action (Office use only)

Date Received: _____

Presented for Public Arts Board discussion: _____

Board Action: ☐ Recommended for approval ☐ Not recommended for approval

Insurance: ☐ Provided by CCBB ☐ Provided by City ☐ Other _____

Recommendation(s)/Action Taken _____

Routing and dates approved (Office use only):

Y N

☐ ☐ Planning _____

☐ ☐ Engineering _____

☐ ☐ Public Safety (Police/Fire) _____

☐ ☐ Parks and Recreation _____

☐ Approved by CCBB _____

☐ Approved by City Commission _____

Y N

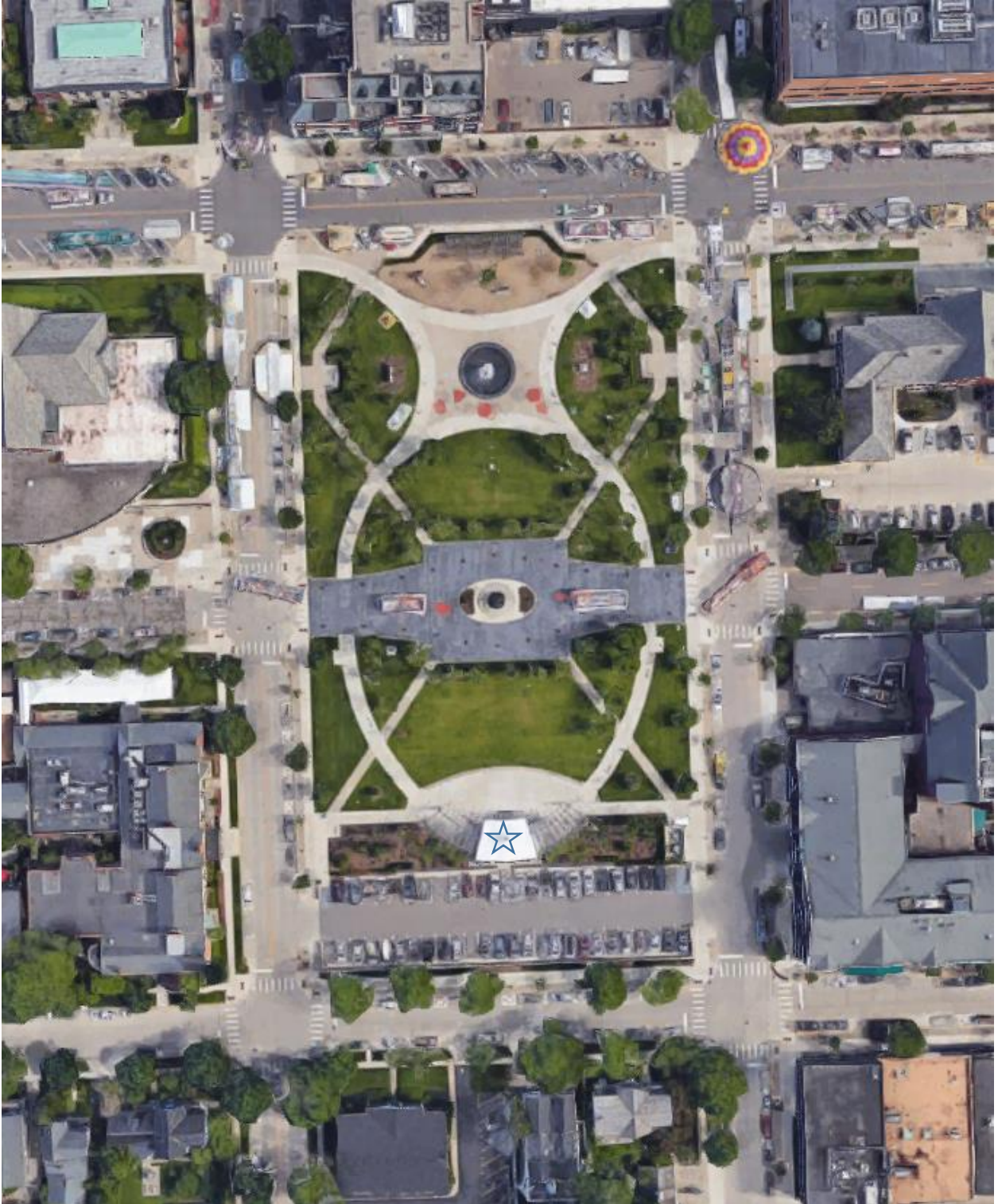
☐ ☐ Building _____

☐ ☐ Other _____

☐ ☐ Other _____

Site Location _____

(If artwork is to be permanently donated, the City of Birmingham may provide required insurance.
If artwork is to be on temporary loan, the CCBB may provide required insurance.)



5M



5M



MEMORANDUM

Engineering Department

DATE: April 24, 2023

TO: Thomas M. Markus, City Manager

FROM: Melissa A. Coatta, City Engineer

SUBJECT: Project Budget Amendment 2021 Asphalt Resurfacing Program
Contract # 5-21 (P)

INTRODUCTION:

At the [September 13, 2021](#) City Commission Meeting, the City awarded the 2021 Asphalt Resurfacing Program, Contract #5-21(P), to Pamar Enterprises, Inc. A surfacing treatment of Parking Lot No. 5, located north of N. Bates Street and west of N. Old Woodward, was included in this project. At that time, Parking Lot No. 5 was planned for a surface treatment toward the north portion of the parking lot since future reconstruction was planned on the entire parking lot. Due to the current pavement conditions of the parking lot, the Engineering Department is requesting Commission approval of a budget amendment for the project to cover a mill and 3.5-inch asphalt overlay for the entire parking lot and the access drive aisle from N. Old Woodward.

BACKGROUND:

When the 2021 Resurfacing Program was planned and designed, it included a surface treatment on just the north portion of Parking Lot 5. At that time, a future reconstruction for the parking lot was planned but surface deterioration of the lot was significant enough to require a temporary 1.5-inch cap of asphalt on the north portion of the lot to extend the pavement life of the lot until it could be reconstructed.

The Engineering Department and the Parking Systems Manager met with the contractor in late Summer of 2022 to review the existing conditions of the parking lot. There were concerns about the 1.5-inch asphalt cap since portions of the parking lot had cracks and holes deeper than 1.5 inches. Also, the contractor was concerned the cap would not adhere correctly in certain locations of the parking lot due to the surface condition, and the overlay could crack, crumble, or deteriorate soon after installation.

Also during this time frame, structural studies were completed on the City's existing parking structures and a five-year plan was developed for their maintenance and repair. The estimated

cost for maintenance repairs at the parking structures came in higher than anticipated. Due to this, the reconstruction for Parking Lot No. 5 has been moved to at least 7 years out.

The Engineering Department recommends milling the existing pavement and providing a 3.5-inch asphalt overlay on the entire parking lot. This would provide a pavement service life of approximately 7-10 years, which falls in line with the new schedule for reconstructing Parking Lot No. 5. While reviewing this scope, it was recommended to include the south portion of the parking lot and the access drive aisle from N. Old Woodward since the pavement condition is similar. Expanding this project to include the entire parking lot and the drive aisle from N. Old Woodward means only one impact on the users of the parking system, instead of phasing this over two or three fiscal years.

This project will also include re-striping the parking lot to include pedestrian access from the drive aisle from N. Old Woodward to N. Bates Street.

LEGAL REVIEW:

Legal review is not required. The contractor is continuing to work under the current project at current rates; this is a budget adjustment only.

FISCAL IMPACT:

A budget amendment is required in the following funds for the milling of the existing pavement and placing a 3.5-inch of asphalt overlay:

Fund Account	Fund ID Number	Budget	Requested Amendment	New Budget Amount
Automobile Parking System	514.1-594.005-981.0100-21.ASPHALT	\$76,000.00	\$382,510.00	\$458,510.00

PUBLIC COMMUNICATIONS:

Communication with the property owners in the project area will include the project announcement, project start date, and regular updates. Property owners will be encouraged to sign up for the City's Constant Contact project group to receive additional information during the project.

SUMMARY:

The Engineering Department recommends that the City Commission authorize the project budget addendum of Contract #5-21 (P), 2021 Asphalt Resurfacing Program, to a revised project budget of \$458,510.00 (an increase of \$382,510.00 to the existing planned budget).

ATTACHMENTS:

- Existing project limits of Parking Lot No. 5 (1 page)
- Proposed project limits of Parking Lot No. 5 (1 page)
- Proposed Pavement Striping Parking Lot No. 5 (1 page)

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the project budget increase for Contract #5-21 (P), 2021 Asphalt Resurfacing Program, by \$382,510.00 to a total budget for Parking Lot No. 5

of \$485,510.00, and approving the appropriation and amended of the 2022/2023 budget as follows:

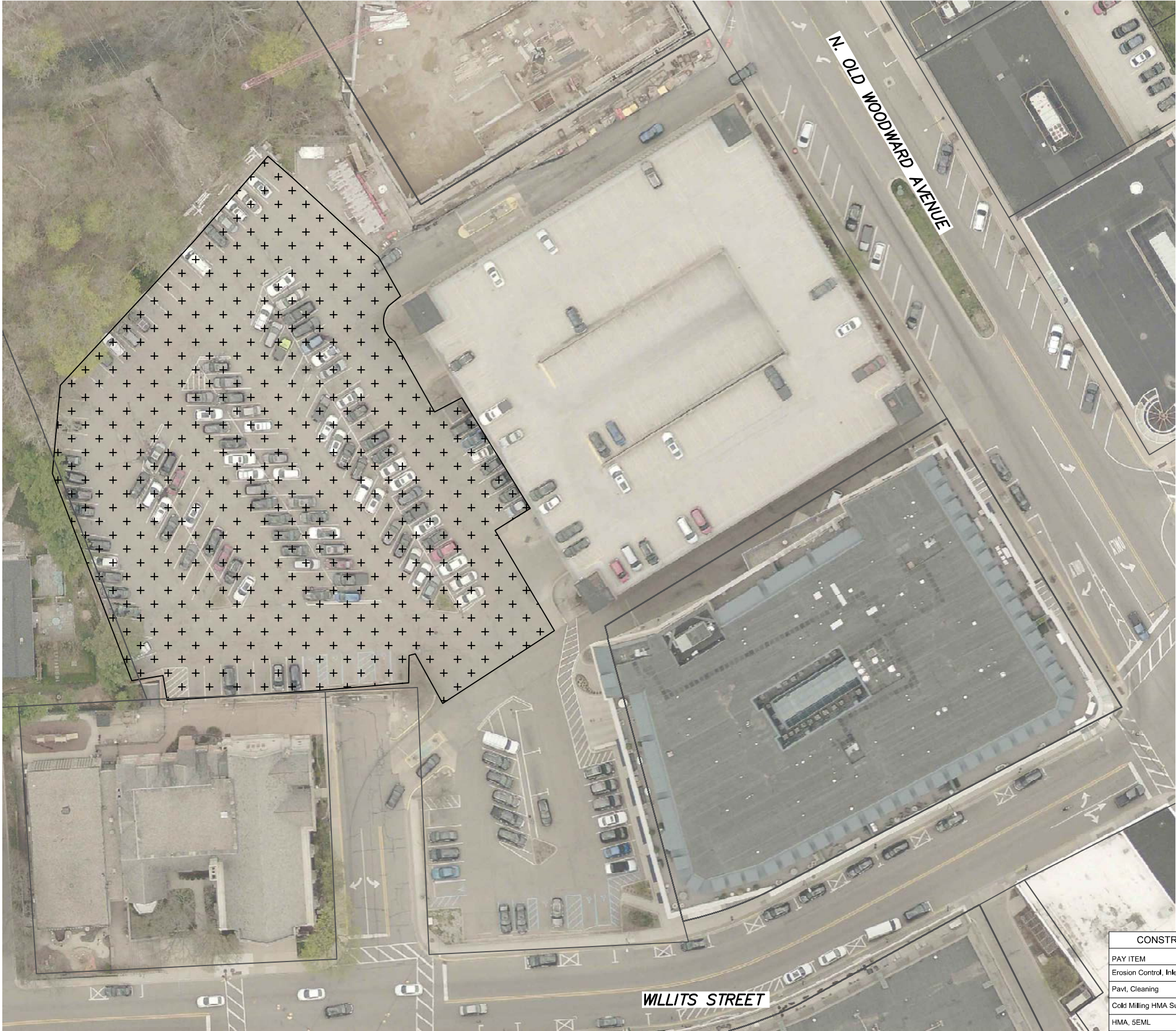
Automobile Parking System:

Revenues:

Draw from Fund Balance	514.1-000.000-400.0000	\$382,510.00
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Expenditures:

Public Improvements	514.1-594.005-981.0100-21.ASPHALT	\$382,510.00
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WILLITS STREET

N. OLD WOODWARD AVENUE

5N

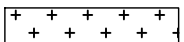


NOTES:

1. SEE PAVEMENT MARKING PLAN FOR PROPOSED STRIPING


CONSTRUCTION QUANTITIES - THIS SHEET		
PAY ITEM	QTY	UNIT
Erosion Control, Inlet Protection, Fabric Drop	2	Ea
Pavt. Cleaning	1	Lsum
Cold Milling HMA Surface	114	Syd
HMA, 5EML	519	Ton


LEGEND



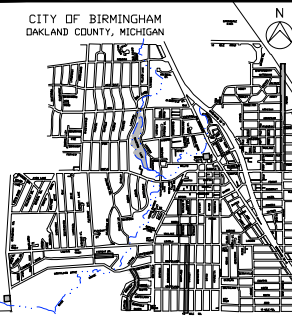
Pavement Cleaning and Overlay



**HRC**
HUBBELL, ROTH & CLARK, INC
CONSULTING ENGINEERS SINCE 1915
555 HULET DRIVE
BLOOMFIELD HILLS, MICH.
P.O. BOX 824
48303 - 0824
PHONE: (248) 454-6300
FAX (1st. Floor): (248) 454-6312
FAX (2nd. Floor): (248) 454-6359
WEB SITE: [http:// www.hrcengr.com](http://www.hrcengr.com)



7/30/2021	ISSUED FOR BID PLANS
6/18/2021	PRELIMINARY PLANS TO CITY
DATE	ADDITIONS AND/OR REVISIONS
DESIGNED	MAR
DRAWN	MAR
CHECKED	ALP
APPROVED	CEH

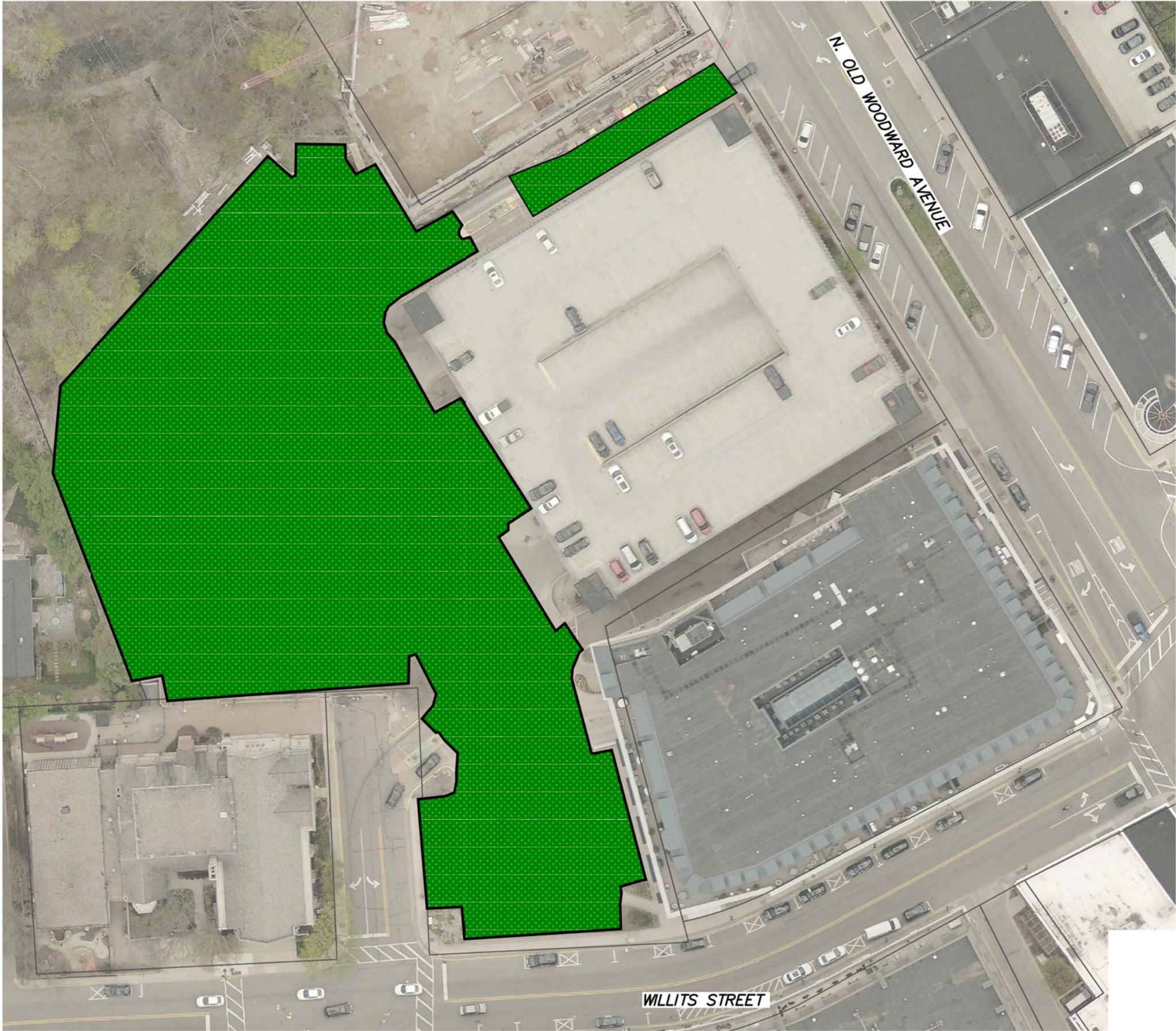


CITY OF BIRMINGHAM

**2021 ASPHALT
RESURFACING PROJECT**

PARKING LOT #5
LOG PLAN SHEET 10
PAVING PLAN

HRC JOB NO. 20210458	SCALE 1" : 30'
DATE July 2021	SHEET NO. 19 OF 33



5N

LEGEND

Mill and 3.5-inch Overall



HRC
HUBBELL, ROTH & CLARK, INC
CONSULTING ENGINEERS SINCE 1915
555 HULET DRIVE
BLOOMFIELD HILLS, MICH. P.O. BOX 824
48303 - 0824
PHONE: (248) 454-6300
FAX (1st Floor): (248) 454-6312
FAX (2nd Floor): (248) 454-6359
WEB SITE: [http:// www.hrcengr.com](http://www.hrcengr.com)

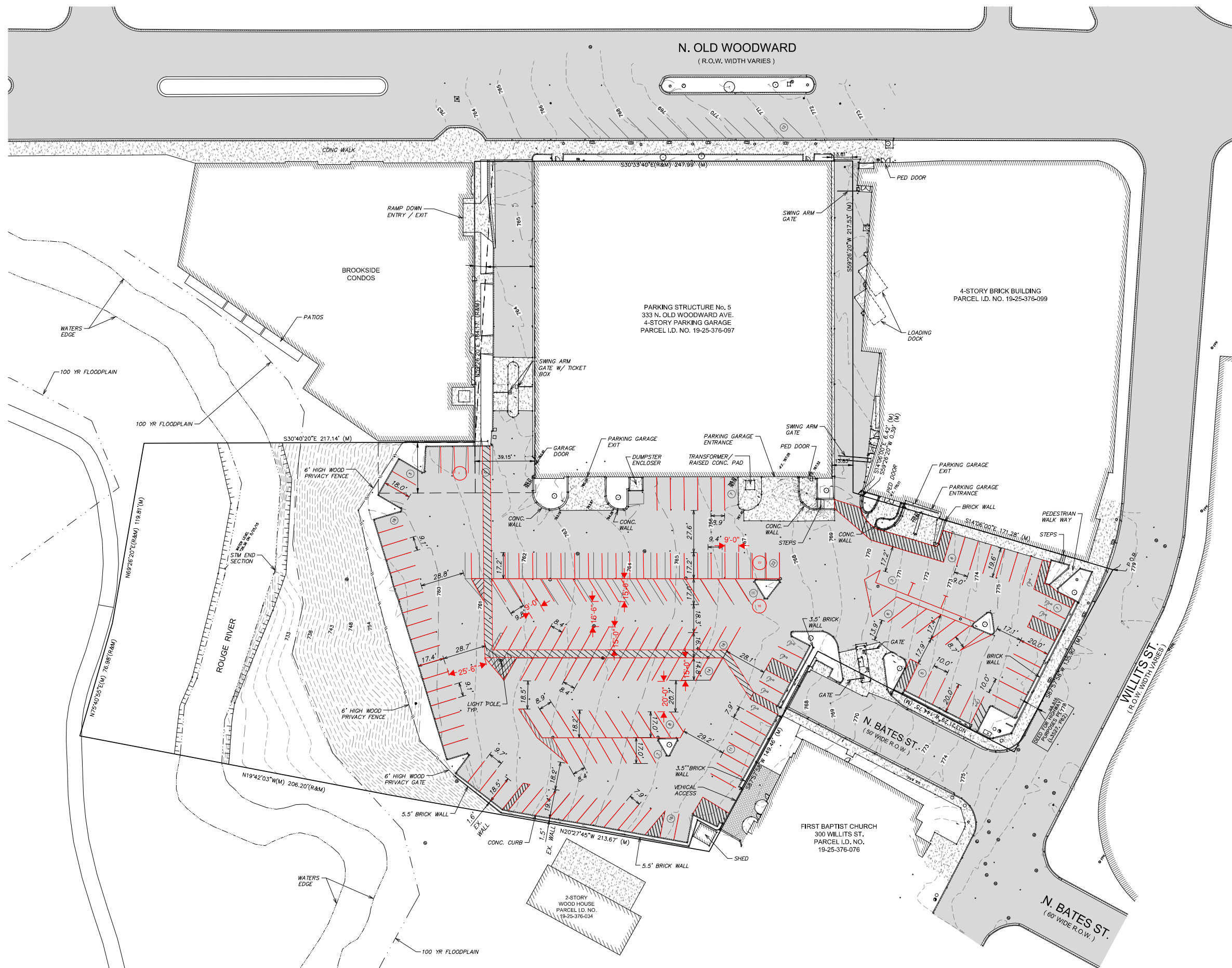
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CITY OF BIRMINGHAM
2021 ASPHALT RESURFACING PROJECT

PARKING LOT #5
LOG PLAN SHEET 10
PAVING PLAN

HRC JOB NO. 20210458	SCALE 1" : 30'
DATE July 2021	SHEET NO. 19 OF 33



5N

NOTE:
TOPOGRAPHIC SURVEY SHOWN WAS
PROVIDED BY CITY OF BIRMINGHAM
AND WAS TAKEN BY NOWAK & FRAUS
ENGINEERS 10/29/2018

NOTICE:
ALL EXISTING UTILITIES SHOWN ON THIS TOPOGRAPHIC SURVEY HAVE BEEN TAKEN FROM VISUAL OBSERVATION AND RECORD MAPPING WHERE AVAILABLE. NO GUARANTEE IS MADE, OR SHOULD BE ASSUMED, AS TO THE COMPLETENESS OR ACCURACY OF THE UTILITIES SHOWN ON THIS DRAWING. PARTIES UTILIZING THIS INFORMATION SHALL FIELD VERIFY THE ACCURACY AND COMPLETENESS PRIOR TO CONSTRUCTION.



CALL MISS DIG
72 HOURS
(3 WORKING DAYS)
BEFORE YOU DIG
1-800-482-7171
or **811**
(TOLL FREE)

ORIGINAL PLOT SIZE: ARCH D (24.00 X 36.00 INCHES)

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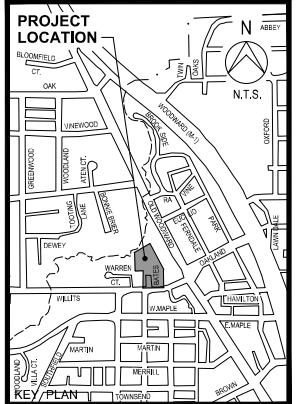
HRC
HUBBELL, ROTH & CLARK, INC.
CONSULTING ENGINEERS SINCE 1913

555 HULET DRIVE
BLOOMFIELD HILLS, MICH.

P.O. BOX 824
48303 - 0824

PHONE: (248) 454-6300
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WEB SITE: [http:// www.hrcengr.com](http://www.hrcengr.com)

[illegible]

CITY OF BIRMINGHAM

MUNICIPAL
PARKING LOT No. 5

SECTION 25, T2N, R10E
OAKLAND COUNTY MICHIGAN

Proposed Pavement Markings

HRC JOB NO. 20210099	SCALE HOR. 1" = 30'
DATE JUNE 2021	SHEET NO.



MEMORANDUM

Engineering Department

DATE: April 24, 2023

TO: Thomas M. Markus, City Manager

FROM: Melissa A. Coatta, City Engineer

SUBJECT: Brown Street Paving Project
Set Public Hearing Dates for Notice of Necessity and Confirmation of Roll
for Sidewalk and Street Scape Special Assessment District

INTRODUCTION:

As part of the improved pedestrian crossing by the Michigan Department of Transportation (MDOT) at Woodward Ave and Brown/Forest intersections, the Engineering Department will reconstruct the pavement along Brown Street from S. Old Woodward to Woodward Ave. The proposed work includes new sidewalk and streetscape features, which are similar to Phases 1-3 on Old Woodward and Maple Road, from the new back of the curb to the right of way.

BACKGROUND:

At the [October 24, 2022](#) meeting, the City Commission approved the reconfiguration of E. Brown Street from S. Old Woodward to Woodward Ave to include reducing to one lane eastbound at Woodward Ave with an extended sidewalk, a midblock pedestrian crossing, and additional median island west of Peabody Street.

The new streetscape will consist of an enhanced version of the downtown standard sawcut concrete sidewalk with an exposed aggregate sidewalk between the main pedestrian path and the street curb. Elements of the new streetscape design to be included in this project include:

- All new concrete and exposed aggregate sidewalks from the building face to the back of the curbs.
- Enlarged, raised planter beds around each new street tree, framed by a 6-inch high exposed aggregate curb, with irrigation, and professionally designed landscaping.

On previous projects of this nature, it has been the City's policy to assess 75% of the streetscape improvements to the properties that share frontage with the improvements. The cost per property will be assessed as an average cost per linear foot of frontage for the improvements. The properties with multiple owners will share the cost of the frontage, and the amount will be based

on the square footage of the building area owned. The City will bill one-tenth of the assessment, as would be done on other special assessment districts, plus interest, on an annual basis, to make the cost more manageable for the property owners.

The attached map highlights those property frontages that would be subject to a sidewalk streetscape assessment. The Engineering Department plans to provide a detailed spreadsheet with estimated assessment values based on the low bidder's unit pricing at the Hearing of Necessity.

LEGAL REVIEW:

Chapter 94 – Special Assessments of the Birmingham City Code outlines the process by which a special assessment is conducted in the City of Birmingham. This project will follow the prescribed City Code procedures.

FISCAL IMPACT:

Revenue generated from the Sidewalk and Streetscape Special Assessment District for the Brown Street Paving project will defray the costs incurred by the City for the construction of these improvements.

PUBLIC COMMUNICATIONS:

Notice for the Hearing of Necessity and Confirmation of Roll is to be distributed by the Clerk's Office. The Engineering Department held a property owners meeting on Thursday, March 23, 2023, to discuss the project, traffic access during construction, and special assessment. The department will send all property owners a letter explaining the associated work and an explanation of assessment costs based on the engineer's estimate.

SUMMARY:

The Engineering Department recommends that a Public Hearing of Necessity to form a Special Assessment District for the improvement of sidewalk and streetscape as part of the Brown Street Paving Project be scheduled at the regularly scheduled City Commission meeting on May 8, 2023, followed by a Public Hearing for Confirmation of the Roll on May 22, 2023.

ATTACHMENTS:

- Map of Proposal Special Assessment District (1 page)









SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to set the Public Hearing of Necessity for the construction of sidewalk and streetscape improvements adjacent to all properties within the project area on Brown Street, from S. Old Woodward Ave. to Woodward Ave., on Monday, May 8, 2023, at 7:30 P.M.; and

If necessity is determined on May 8, 2023, to meet on Monday, May 22, 2023, at 7:30 P.M., for the purpose of conducting the Public Hearing to Confirm the Assessment Roll for construction of sidewalk and streetscape improvements adjacent to all properties within the project area on Brown Street, from S. Old Woodward Ave. to Woodward Ave.


Brown Street Sidewalk and Streetscape SAD



-  2 Foot Contours
-  5 Foot Contours
-  FEMA Base Flood Elevations
-  FEMA Cross Sections
-  100 yr - FEMA Floodplain
-  100 yr (detailed) - FEMA Floodplain
-  500 yr - FEMA Floodplain
-  FLOODWAY - FEMA Floodplain

Disclaimer: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys and other public records. It is not a legally recorded map or survey and is not intended to be used as one. Users should consult the information sources mentioned above when questions arise. FEMA Floodplain data may not always be present on the map.


David Coulter
 Oakland County Executive

Date Created: 4/18/2023

 NORTH
 1 inch = 100 feet



MEMORANDUM

Clerk's Office

DATE: April 17, 2023

TO: Thomas M. Markus, City Manager

FROM: Christina Woods, Deputy City Clerk

SUBJECT: Greenwood Cemetery Advisory Board Member Resignation

INTRODUCTION/BACKGROUND:

The Greenwood Cemetery Board Regular Member George Stern announced at the Friday, April 14, 2023 Greenwood Cemetery Advisory Board Meeting that he will be unable to remain a board member because he will be moving out of Birmingham. The board thanked him for his service as one of the original board members from the formation of the board in 2014.

This resignation creates a regular member vacancy on the Greenwood Cemetery Advisory board for the remainder of a three-year term to expire July 6, 2024.

LEGAL REVIEW:

None

FISCAL IMPACT:

None

PUBLIC COMMUNICATIONS:

The City Clerk's office will publish a notice of intention to appoint to this position, post the vacancy on the "board and commission opportunities" portion of the city's website and include it in the city's digital news vehicles as publication schedules permit.

SUMMARY:

The City Commission is being asked to accept the resignation of George Stern from the Greenwood Cemetery Advisory Board, thank him for his service, and to direct the City Clerk to begin the process of filling the vacancy.

ATTACHMENTS:

SUGGESTED COMMISSION ACTION:

To make a motion to accept the resignation of George Stern from the Greenwood Cemetery Advisory Board, to thank him for his service, and to direct the City Clerk to begin the process of filling the vacancy of this regular board member position with term expiration of July 6, 2024.



NOTICE OF INTENTION TO APPOINT TO THE HOUSING BOARD OF APPEALS

At the meeting of Monday, April 24, 2023, the Birmingham City Commission intends to appoint 3 regular members to the Housing Board of Appeals to serve three-year terms to expire May 4, 2026. Members shall be educated or experienced in building, construction administration, social services, real estate or other responsible positions.

The Housing Board of Appeals was established in order to provide an appeal process from regulation derived from the housing and maintenance requirements found in Chapter 22 of the city code. The purpose of the housing and maintenance regulations is to protect, preserve and promote the physical and social wellbeing of the people, to regulate privately and publicly owned dwellings for the purpose of maintaining adequate sanitation and public health.

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, April 19, 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 vote on appointments.

Applicant(s) Presented for City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Applicants shall be educated or experienced in building construction administration, social services, real estate or other responsible positions.
No applicants as of April 19, 2023, 12:00 p.m.	

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.

The following board members will not be continuing on the board. We thank them for their service to the community:

- Robert Ziegelman, Appointed 1984- 2018, 2020
- Chris McLogan, Appointed 2020
- Luke Joseph, Appointed 2020

SUGGESTED ACTION:

Make a motion to accept the resignation of Robert Ziegelman, Chris McLogan and Luke Joseph from the Housing Board of Appeals, to thank them for their service, and to direct the City Clerk to continue to accept applications to fill vacancies on the Housing Board of Appeals.



HOUSING BOARD OF APPEALS

Chapter 22 - Sections 22-312 – 22-314

Seven Members

Requirements: Qualified by education or experience in building, construction administration, social services, real estate, or other responsible positions.

Terms: Three year - expire the first Monday in May

Meetings held as needed.

Appointed by the City Commission

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Bradford	Wadette	256-509-7193	6/3/2019	5/4/2025
1221 Bowers St 2714			Investments	
Birmingham	48012	<i>Wadettebradford@yahoo.com</i>		
Claussen	Karson	(248) 688-4517	4/26/2021	5/4/2024
1627 Maryland Blvd			Building Inspector	
Birmingham	48009	<i>karson.claussen@gmail.com</i>		
Joseph	Luke	(248)657-0665	6/8/2020	5/4/2023
1478 Webster			Real estate	
Birmingham	48009	<i>luajom@yahoo.com</i>		
McLogan	Chris	(248) 321-5883	6/8/2020	5/4/2023
612 N. Glenhurst Dr			Real Estate	
Birmingham	48009	<i>chrismclogan@gmail.com</i>		
Taylor	Robert	248-892-3316	5/10/2010	5/4/2025
3693 W. Bradford			Realtor	
Bloomfield Twp	48301	<i>bobtaylr@gmail.com</i>		

Last Name	First Name	Home Business		
Home Address		E-Mail	Appointed	Term Expires
Vincenti	Philip	(248) 722-4747	4/9/2018	5/4/2024
938 Lakeside			building/contractor	
Birmingham	48009	<i>pvincenti@tcwall.com</i>		
Ziegelman	Robert	(248)644-0600	6/8/2020	5/4/2023
968 Stratford			architect	
Bloomfield Hills	48304	<i>rziegelman@lzarch.com</i>		

Re: Birmingham Housing Board of Appeals term expires 5/4/23

1 message

rziegelman248@gmail.com <rziegelman@lzarch.com>

Mon, Apr 17, 2023 at 1:27 PM

To: clerksoffice@bhamgov.org

Cc: Bruce Johnson <Bjohnson@bhamgov.org>

To Ann Tappan,

I will not be re applying for the above Board for the coming term.

I have served more than 28 years on this Board and have appreciated and enjoyed serving (especially when we had meetings !)

Sincerely,

Robert L. Ziegelman

On 04/12/2023 4:37 PM EDT Ann Tappan <clerksoffice@bhamgov.org> wrote:

Dear Robert -

Thank you for your continued service on the City of Birmingham Housing Board of Appeals. Your term will expire May 4, 2023. If you would like to continue serving on this board, please complete the attached application form and return it to our office no later than noon on Wednesday, April 19, 2023.

The interview for this appointment will be held at the Birmingham City Commission meeting on Monday, April 24, 2023, at 7:30 pm in room 205 of city hall. You may attend in person or via Zoom (<https://zoom.us/j/655079760> Meeting ID: 655 079 760). Please confirm your availability for the meeting and indicate whether you will participate in person or virtually by emailing clerksoffice@bhamgov.org or calling 248.530.1880.

NOTE: All members of city boards and commissions will be subject to the provisions of City of Birmingham City Code Chapter 2, Section IX - [Code of Ethics](#) and the filing of the Affidavit and Disclosure Statement. Questions regarding this may be directed to the City Clerk.

DIVISION 3. APPEALS

Sec. 22-311. Authorized.

- (a) Any owner or person who is aggrieved with the ruling or decision of the building official in any matter relative to the interpretation or enforcement of any of the provisions of this article, may appeal the decision or interpretation.
- (b) The appeal shall be made to the housing board of appeals.

(Ord. No. 2070, 10-24-11)

Sec. 22-312. Board created; purpose.

In order that the provisions of this article may be reasonably applied and substantial justice done in instances where practical difficulties are apparent or undue hardship would result from carrying out the strict letter of this article, a housing board of appeals is hereby created. The duty of the board shall be to consider appeals from the decision of the officials charged with the enforcement of this article, and to determine in particular cases whether any deviation from the strict enforcement of this article will violate the intent of this article and jeopardize public health and safety.

(Ord. No. 2070, 10-24-11)

Sec. 22-313. Membership and appointment.

The housing board of appeals shall consist of seven members, who shall be appointed by the city commission. The city commission shall appoint to the board, members qualified by education or experience in building construction, administration, social services, real estate or other responsible positions. The building official, the fire chief and the health officer or their representatives shall be ex officio members.

(Ord. No. 2070, 10-24-11)

Sec. 22-314. Term of office.

The term of office of members of the housing board of appeals shall be for three years, but in the first instance after the passage of this Code, two members shall be appointed for one year, two members for two years and three members for three years. These terms shall then expire the first Monday in May.

(Ord. No. 2070, 10-24-11)

Sec. 22-315. Meetings, rules of procedure, quorum.

The housing board of appeals shall meet once a month, provided there are pending appeals. There shall be a fixed place of meeting and all meetings shall be open to the public. The board shall adopt its own rules of

procedure and keep a record of its proceedings, showing the action of the board, and the vote of each member upon each question considered. The presence of five members shall be necessary to constitute a quorum.

(Ord. No. 2070, 10-24-11)

Sec. 22-316. Officers, records.

The housing board of appeals shall elect from its membership a chairman and vice-chairman. A secretary, who shall be an employee of the city, shall be appointed whose duty it shall be to maintain a permanent official record of all of its transactions; such records shall be public records.

(Ord. No. 2070, 10-24-11)

Sec. 22-317. Appeals procedure.

Appeals from the rulings of the building official may be made to the housing board of appeals within 20 days of the issuance of an order by the official. Such appeal may be taken by any person aggrieved by any ruling or determination of any officer, department, board or commission of the city. The appellant shall file with the building official and with the board a notice of appeal specifying the grounds therefor. With each notice of appeal filed, there shall be paid a fee in the amount set forth in the schedule of fees, charges, bonds and insurance to cover the city's cost of handling such appeal, provided that such fees may be returned or retained after hearing at the discretion of the board. The building official shall forthwith transmit to the board a summary report of all previous action taken. The board may at its discretion call upon the building official to explain his action. The final disposition of such appeal shall be in the form of a resolution, either reversing, modifying or affirming, wholly or partly, the decision of the determination appealed from. In order to find for the appellant, four members of the board must concur. In order to overturn a previous decision of the board, five members of the board must concur.

(Ord. No. 2070, 10-24-11)

Sec. 22-318. Hearings.

The housing board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to interested parties and decide the same within a reasonable time. Within the limits of its jurisdiction, the board of appeals may reverse or affirm, in whole or in part, or may make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the power of the building official from whom such appeal is taken.

(Ord. No. 2070, 10-24-11)

Sec. 22-319. Decisions.

The decision of the housing board of appeals shall be final unless an appeal therefrom to Oakland County Circuit Court is taken within 20 days from the date of the board's decision.

(Ord. No. 2070, 10-24-11)

Sec. 22-320. Notices.

The housing board of appeals may prescribe such notice to any interested person and the neighbors surrounding the structure or premises in connection with which the appeal is taken, as shall be deemed reasonable by the board.

(Ord. No. 2070, 10-24-11)

Secs. 22-321—22-330. Reserved.



MEMORANDUM

Legal Department

DATE: April 19, 2023

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek, City Attorney

SUBJECT: Tenants' Rights

INTRODUCTION:

At the City Commission's direction, the City Attorney's Office drafted an amendment to the City Code Part II, Chapter 66 – Human Relations, Article II. Discrimination, Division 2. Fair Housing, Sec. 66-36. et al, to provide for additional rights for tenants besides those which are statutorily provided by state and federal law, and in addition to the current protections offered to tenants in our local ordinance. On January 23, 2023, the City Attorney presented a proposed ordinance which offered additional protections by way of source of income and termination of a lease only for good cause. There was a very spirited debate amongst parties who work for or on behalf of landlords that believe the proposed ordinance created an undue burden and hardship for landlords and asked the City Commission to table the issue for further discussion. The City Attorney agreed to speak with parties in opposition to the proposed ordinance to understand their perspective.

BACKGROUND:

In 2022, one of our citizens was being told that suddenly their lease would not be renewed, and as a result created a situation wherein a senior citizen found themselves in a position of having nowhere to go, distressed and filled with uncertainty as to what their living conditions would be. As a result, the City Attorney's office was tasked with researching what the City could do to enhance people's rights when they are tenants. The City Attorney's Office prepared a memorandum that was provided to the City Commission on December 12, 2022 and as a result, the City Commission directed the City Attorney's office to draft amendments to the City's Code, Chapter 66 - Human Relations, to provide additional rights for tenants. At the January 23, 2023 City Commission meeting, the proposed amendments were offered, which included protections for a tenant's source of income, and a tenant's right to renew their lease, and if a termination of a lease were to occur, it had to be done with demonstration of "good cause." Representatives attended the Commission meeting that worked for or are spokespersons for landlords, and

pointed out how the new proposed language, which is very unique in the State of Michigan, would negatively affect landlords. The City Attorney agreed to listen to and meet with the advocates for landlords to further appreciate and understand the effect of the proposed language. Attached to this memorandum, the City Commission will find numerous emails that the City Attorney received from persons in opposition of the proposed ordinance. There was an opportunity for a number of the attorneys that appeared at the City Commission meeting on January 23, 2023 to meet with the City Attorney and Assistant City Manager Ecker. There were further ongoing communications, emails and opportunities for the attorneys to review the proposed ordinance and to propose changes that they believe would address the tenants' interests that the City is trying to achieve with a balance of not over burdening and having unattended consequences for landlords. Upon further discussion it became apparent that the City's greatest interest is in protecting senior citizens from finding themselves in the position that one of our citizens found themselves in 2022.

During the last months, the City Attorney's office has become aware of policies and bills that are now being drafted and proposed by both the federal and State of Michigan governments. Attached to this memorandum you will find the White House Blueprint for a Renter's Bill of Rights, as well as efforts of the Michigan House of Representatives that will add extra layers of protections for tenants' rights when renting dwellings.

As a result of all of the communications received, work with attorneys for landlords, and an appreciation for what the state and federal governments are trying to achieve, the City Attorney's office has now redrafted a proposed ordinance that will focus on protecting the rights of senior citizens, that being persons 65 years of age and older, living in apartments or dwellings that are larger than four units. You will find attached the newly drafted proposed ordinance, with both redline and clean copies. Please note that the new changes are now highlighted in yellow to allow tracking to show the differences between the ordinance proposed on January 23, 2023 and the ordinance being presented today.

LEGAL REVIEW:

Chapter 66 - Human Relations, has been amended to offer new protections for senior citizens, those persons being 65 years of age and older, from being discriminated against because of their source of income and to offer them a greater sense of security in the rights to renew their leases. The City Attorney's office believes that protecting this particular class of citizen more narrowly addresses the City Commissions concerns and is balanced with the interests of landlords.

FISCAL IMPACT:

None.

PUBLIC COMMUNICATIONS:

This issue has been advertised in the City's agenda packet.

SUMMARY:

Before the City Commission are amendments to Chapter 66 of the Birmingham City Code, Human Relations, addressing the protection needed for senior citizens. We are requesting that the City Commission approve and adopt these amendments.

ATTACHMENTS:

- The redline copy of the current proposed amended ordinance.
- A clean copy of the newly proposed amended ordinance.
- The White House Blueprint for Renter's Bill of Rights.
- The House of Representatives proposed Bill.
- The communications the City Attorney's office received from interested parties regarding tenant rights issues.

SUGGESTED COMMISSION ACTION:

Make a motion adopting the proposed ordinance which amends Birmingham City Code, Part II, Chapter 66 – Human Relations, Article II. Discrimination, Division 2. Fair Housing, Sec. 66-36. et al, which prohibits discrimination for persons who are 65 years of age and older, living in dwellings of four units or greater, based upon the senior citizens' source of income, and to protect their security by changing their rights to renew their leases in a way that now is a balance between the seniors' interest and those of landlords.

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 66 – HUMAN RELATIONS, ARTICLE II. DISCRIMINATION, DIVISION 2. FAIR HOUSING

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 66. – Human Relations, Article II. Discrimination, Division 2. Fair Housing, shall read as follows:

DIVISION 2. FAIR HOUSING

Sec. 66-36. Purpose.

It is the intent of the City of Birmingham that no person engaging in a real estate transaction for housing for senior citizens, that being 65 years of age or older, shall engage in discriminatory practices by denying housing due to one's a senior citizen's source of income, and every personsenior citizen 65 years of age or older shall be given rights in the lease renewal process.

Sec. 66-37. Definitions.

The following words, terms and phrases, when used in this ~~division~~Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Discriminate in this section means to make a decision, offer to make a decision or refrain from making a decision based in whole or in part on ~~person's or his or her relatives' or associates'~~ the source of income for rental to a senior citizen 65 years of age or older. Discrimination includes the use of facially neutral practices that have an adverse impact based on source of income related to housing for a senior citizen.

Handicap means a determinable physical or mental characteristic of an individual or a history of the characteristic which may result from disease, injury, congenital condition of birth, or functional disorder which characteristic is unrelated to the individual's ability to acquire, rent or maintain property.

Housing accommodations means improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence of one or more persons. Housing accommodations shall include unimproved real property located in any residentially zoned area of the ~~city~~City.

Housing facility for purposes of this ordinance, related to senior citizens 65 years of age or older means any dwelling unit or facility in which it is intended persons regularly sleep and keep personal belongings including, but not limited to, a house, apartments, or rooming house, housing cooperatives, hotel, motel, tourist home, retirement home or nursing homethat have four or more units for lease.

Owner means possessor of any interest in real property including the lessee, lessor, sublessee, sublessor, assignee, assignor, managing agent or other person having the right of

ownership or possession or the right to sell, rent, transfer or lease any real property, housing accommodations or any interest therein.

Person includes one or more persons, corporations, partnerships, limited liability companies, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries.

Real estate broker or salesperson means a person, whether licensed or not, who, for or with the expectation of receiving consideration:

- (1) Lists, sells, purchases, exchanges, rents or leases real property, housing accommodations, or an interest therein;
- (2) Negotiates or attempts to negotiate any listing, sale, purchase, exchange, rental or lease of real property, housing accommodations, or an interest therein;
- (3) Holds himself out as listing, selling, purchasing, exchanging, renting or leasing real property, housing accommodations, or an interest therein;
- (4) Negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance on real property, housing accommodations, or an interest therein; or
- (5) Engages in the business of listing real property, housing accommodations, or an interest therein in publications.

Real estate broker or salesperson includes a person employed, acting as an independent contractor, or otherwise acting on behalf of a real estate broker or salesperson.

Real estate transaction means the sale, purchase, exchange, rental, lease, transfer, assignment or sublease of real property, housing accommodations, or an interest therein or the listing thereof for such purpose.

Real property means property used or zoned for residential purposes including a building, structure, mobile home, unimproved real estate, land, leasehold or an interest in a real estate cooperative or condominium.

Sexual orientation means male or female homosexuality, heterosexuality or bisexuality, by preference or practice.

Source of income, as used in this Chapter, refers to any lawful source of money paid directly to a person or family senior citizen 65 years of age or older or indirectly on behalf of a person or family, including, but not limited to senior citizen, and that is not a one-time lump sum payment or lump sum, including:

- (1) Money derived from any lawful profession or occupation;
- (2) Money derived from any contract, agreement, loan, or settlement; from any court order, such as court-ordered child support or alimony; from any gift or bequest; or from any annuity or life insurance policy; and
- (3) Money derived from any benefit or subsidy program, including, but not limited to, any housing assistance, such as Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) Vouchers, or any other form of housing assistance payment or credit

whether or not paid or attributed directly to a landlord; public assistance; emergency rental assistance; veterans benefit; Social Security or other retirement program; supplemental security income; VA and FHA loans, and any other program administered by any federal, state, or local agency or nonprofit entity.

Sec. 66-~~37~~38. Enforcement.

Any person claiming a violation of this ~~division~~Chapter shall make a written complaint to the ~~city manager~~City Manager or his designee, setting forth therein the details, including location of property, names, dates, witnesses and other factual matter. All such complaints shall be verified by the claimant. Such complaints shall be filed with the ~~city manager~~City Manager's office within 120 days after the alleged commission of the offense.

Sec. 66-~~38~~39. Investigation of complaints; efforts at conciliation.

- (a) Within 30 days after a complaint is reduced to writing, ~~and verified pursuant to section 66-37,~~ the ~~city manager~~City Manager or his designee shall make a full investigation of the alleged violation.
- (b) After such investigation, or at the end of such 30-day period, whichever occurs first, the ~~city manager~~City Manager or his designee shall give written notice to the person accused of the violation and ~~he they~~ shall have 30 days during which the ~~city manager~~City Manager or his designee shall attempt to resolve the matter by conciliation ~~and persuasion~~.
- (c) If the claimed violation cannot be resolved by the end of the 30-day conciliation period, the complaint ~~shall can~~ be referred immediately to the ~~city~~City attorney-Attorney for prosecution if the City Manager or his/her designee believes there is enough cause that a violation has occurred.

Sec. 66-~~39~~40. Exemption.

With respect to the age provision only, this ~~division~~Chapter shall not apply to the sale, rental or lease of housing accommodations meeting the requirements of federal, state or local housing programs for senior citizens or otherwise intended, advertised, designed or operated for the purpose of providing housing accommodations to persons 50 years or older.

Sec. 66-~~41~~10. Discrimination prohibited generally.

Except as otherwise provided in this ~~division~~Chapter, no person engaging in a real estate transaction concerning housing accommodations, and no real estate broker or salesperson, shall, wholly or partly for reasons of source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law:

- (1) Refuse to engage in a real estate transaction with a person;

- (2) Discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) Refuse to receive from a person or to transmit to a person a bona fide offer to engage in a real estate transaction;
- (4) Refuse to negotiate for a real estate transaction with a person;
- (5) Represent to a person that real property or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or knowingly fail to bring a listing of real property to a person's attention, or refuse to permit a person to inspect real property;
- (6) Print, post, circulate, mail or otherwise cause to be published a statement, advertisement, notice or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification or discrimination with respect to source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law;
- (7) Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
- (8) Deny a person access to or membership or participation in multiple listing services, real estate broker's organizations or other real estate services.

Sec. 66-42. Discriminatory housing practices.

No person shall discriminate based on source of income for senior citizens 65 years of age or older in the following:

- (1) Leasing, selling or otherwise making available any housing facility with four or more units.
- (2) The terms, conditions, maintenance, or repair in providing any housing facility.
- (3) Make, print, or publish, or cause to be made, printed, or published any written or oral notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on source of income for senior citizens 65 years of age or older or expressing any intent to make any such preference, limitation, or discrimination.
- (4) Refusing to lend money for the purchase or repair of any real property or insure any real property solely because the location in the City of such real property.
- (5) Promoting real estate transactions by representing that changes are occurring or will occur in any area with respect to any protected classification.
- (6) Coerce, threaten, or retaliate against a person for making a complaint or assisting in the investigation regarding a violation or alleged violation of this ~~division~~ section, nor

require, conspire with, assist or coerce another person to retaliate against a person for making a complaint or assisting in an investigation.

Sec. 66-~~41~~43. Discrimination by financial or insurance institutions.

- (a) Except as otherwise provided in this ~~division~~Chapter, a person to whom application is made for financial assistance or financing in connection with a real estate transaction or in connection with the insurance, construction, rehabilitation, repair, maintenance or improvement of real property, or an interest therein, which is utilized for housing accommodations, or a representative of such person shall not:
- (1) Discriminate against the applicant because of source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law; or
 - (2) Use a form of application for insurance or financial assistance or financing, or make or keep a record or inquiry in connection with an application for financial assistance or financing, which indicates, directly or indirectly, a preference, limitation, specification or discrimination based on source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law.
- (b) Subsection (a)(2) of this section shall not apply to a form of application for financial assistance prescribed for the use of a lender regulated as a mortgagee under the National Housing Act, as amended, being 12 U.S.C. 1701 to 1750(g), as amended, or by a regulation board or officer acting under the statutory authority of the state or the United States.
- (c) Nothing in this ~~division~~Chapter shall be deemed to prohibit an owner or lender, or his agent, from requiring that an applicant who seeks to buy, rent, lease or obtain financial assistance for housing accommodations supply information concerning the applicant's financial, business or employment status or other information designed solely to determine the applicant's credit worthiness, but not ~~concerning handicaps~~ for reasons contrary to the provisions or purposes of this ~~division~~Chapter.

Sec. 66-~~42~~44. Unlawful representations to induce transaction.

It shall be unlawful for a person, for the purpose of inducing a real estate transaction from which he may benefit financially, to represent that a change has occurred or will or may occur in the composition of an area with respect to the source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law, of the owners or occupants in the block, neighborhood or area in which the real property is located, or to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools in the block, neighborhood or area in which the real property is located.

Sec. 66-~~43~~45. Property offered to public.

Nothing in this ~~division~~Chapter shall require an owner to offer property to the public at large before selling or renting it, nor shall this ~~division~~Chapter be deemed to prohibit owners from giving preference to prospective tenants or buyers for any reason other than source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law.

Sec. 66-~~44~~46. Related prohibitions.

- (a) No person shall provide false or substantially misleading information to any authorized person investigating a complaint regarding a violation of this ~~division~~Chapter, or sign a complaint for a violation of this ~~division~~Chapter based upon false or substantially misleading information.
- (b) No person shall coerce, threaten or retaliate against any individual or organization for making a complaint or assisting in an investigation regarding a violation or alleged violation of this ~~division~~Chapter or require, request, conspire with, assist or coerce another person to retaliate against any individual or organization for making a complaint or assisting in any investigation pursuant to this ~~division~~Chapter.
- (c) No person shall conspire with, aid, assist, compel, coerce or request another person to discriminate in any manner prohibited by this ~~division~~Chapter.
- (d) No person shall attempt directly or indirectly to commit an act prohibited by this ~~division~~Chapter.

Sec. 66-47. Exceptions.

Notwithstanding anything contained in this Chapter, the following practices shall not be violations of this chapter:

- (1) For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to persons and clergy of the denomination involved.
- (2) To refuse to enter a contract with a minor that is not emancipated.
- (3) To provide discounts to students, minors, veterans, and senior citizens.

Sec. 66-48. Penalties.

- (a) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00, plus all costs of the action. The 48th District Court may issue and enforce any judgment, writ, or order necessary to enforce this chapter.

- (b) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the prevention or correction of discrimination.

Sec. 66-49. Private actions for damages or injunctive relief.

- (a) To the extent allowed by law, a senior citizens 65 years of age or older person who is the victim of discriminatory action in violation of this Chapter may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this Chapter.
- (b) As used in subsection (a), "damages" means damages for injury or loss caused by each violation of this Chapter, including reasonable attorney fees, as the law allows.
- (c) Private actions and remedies under this section may be in addition to any actions for violations which the City may take.

Sec. 66-50. Right to Renew and Relocation Assistance

(1) Applicability

This Section shall apply to all housing accommodations for senior citizens 65 years of age or older otherwise subject to regulation of rents or evictions pursuant to state or federal law, to the extent that such state or federal law requires "good cause" for termination or non-renewal of such tenancies, including state laws protecting senior rights, EXCEPT: premises subject to federal, state, county, or city government restrictions regarding income, age, or rent (or the practical application of these restrictions) that are in conflict with this Section.

This Section shall only apply to leases entered into, renewed, or renegotiated after the effective date of this Section.

(2) Renewal of Lease

- (a) Within 90 days, a landlord must notify each tenant who is a senior citizen 65 years of age or older, in writing, whether the lease will be renewed, and must do one of the following:
- (i) If the landlord offers to renew the lease, such offer must be in writing and include the parties, term, address of premises, and the rent. The landlord must present a written lease renewal to the tenants who are senior citizens 65 years of age or older for signature within 30 days of acceptance of the offer.
 - (ii) If the landlord claims good cause not to renew, the landlord shall notify each tenant who is a senior citizen 65 years of age or older in writing of the grounds for the good cause as defined in state law.
- (b) If a landlord does not make a good-faith offer to renew a written lease for each tenant before the time period specified in subsection (a) of the current lease period, the

landlord will be in violation of this Chapter, unless the landlord has "good cause" as defined in state law to not offer renewal.

(c) Nothing prevents a landlord from increasing rental amounts at the time of renewal.

(3) Good Cause

A landlord is exempted from non-renewal of a lease for senior citizens 65 years of age or older and for any of the following circumstances:

(a) The tenant is a senior citizen 65 years of age or older and has not accepted the renewal offer in writing within the time specified in subsection (a) 30 days of landlord tendering the renewal offer.

(b) The tenants who accepted the renewal offer have not returned a signed lease to the landlord within ten days of receipt.

(c) The landlord can demonstrate a justification for not offering renewal that is in existence within the time renewal is to be offered, that would permit a termination of tenancy under the Summary Proceedings Act, MCL 600.5714 or PA 348 of 1972, MCL 554.601 et seq. Landlord and Tenant Relationship.

(d) The owner seeks possession so that the owner or a member of the owner's immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building. "Immediate family" includes the owner's domestic partner or spouse, parents, grandparents, children, siblings, as well as the siblings or parents of the owner's domestic partner or spouse.

(e) The owner will not rent the premises for the succeeding term six months after lease termination or if the owner is selling the property.

(f) The owner determines that the unit is no longer habitable.

(4) Remedies

(a) Civil Infractions. A violation of Subsection (2)(b) constitutes a civil infraction punishable by a fine of not less than \$500.00.

(b) Private Actions. To the extent allowed by law, a tenant who has been aggrieved by a violation of Subsection (2)(b) of this Section may bring a civil action for damages against the landlord. Private actions and remedies under this Section shall be in addition to any actions for violations which the City may take.

(c) The 48th District Court may issue, enforce any judgment, writ, or order necessary to enforce this Section.

(5) No Waiver

~~The provisions of this ordinance may not be waived by the parties to a rental agreement.~~

All other Sections of Chapter 66. – HUMAN RELATIONS, shall remain unaffected.

Ordained this _____ day of _____, 2023. Effective upon publication.

Therese Longe, Mayor

Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2023 and that a summary was published _____, 2023.

Alexandria D. Bingham, City Clerk

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 66 – HUMAN RELATIONS, ARTICLE II. DISCRIMINATION, DIVISION 2. FAIR HOUSING

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 66. – Human Relations, Article II. Discrimination, Division 2. Fair Housing, shall read as follows:

DIVISION 2. FAIR HOUSING

Sec. 66-36. Purpose.

It is the intent of the City of Birmingham that no person engaging in a real estate transaction for housing for senior citizens, that being 65 years of age or older, shall engage in discriminatory practices by denying housing due to a senior citizen's source of income, and every senior citizen 65 years of age or older shall be given rights in the lease renewal process.

Sec. 66-37. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Discriminate in this section means to make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the source of income for rental to a senior citizen 65 years of age or older. Discrimination includes the use of facially neutral practices that have an adverse impact based on source of income related to housing for a senior citizen.

Handicap means a determinable physical or mental characteristic of an individual or a history of the characteristic which may result from disease, injury, congenital condition of birth, or functional disorder which characteristic is unrelated to the individual's ability to acquire, rent or maintain property.

Housing accommodations means improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence of one or more persons. Housing accommodations shall include unimproved real property located in any residentially zoned area of the City.

Housing facility for purposes of this ordinance, related to senior citizens 65 years of age or older means any dwelling unit or facility in which it is intended persons regularly sleep and keep personal belongings including, apartments or housing cooperatives that have four or more units for lease.

Owner means possessor of any interest in real property including the lessee, lessor, sublessee, sublessor, assignee, assignor, managing agent or other person having the right of ownership or possession or the right to sell, rent, transfer or lease any real property, housing accommodations or any interest therein.

Real estate broker or *salesperson* means a person, whether licensed or not, who, for or with the expectation of receiving consideration:

- (1) Lists, sells, purchases, exchanges, rents or leases real property, housing accommodations, or an interest therein;
- (2) Negotiates or attempts to negotiate any listing, sale, purchase, exchange, rental or lease of real property, housing accommodations, or an interest therein;
- (3) Holds himself out as listing, selling, purchasing, exchanging, renting or leasing real property, housing accommodations, or an interest therein;
- (4) Negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance on real property, housing accommodations, or an interest therein; or
- (5) Engages in the business of listing real property, housing accommodations, or an interest therein in publications.

Real estate broker or *salesperson* includes a person employed, acting as an independent contractor, or otherwise acting on behalf of a real estate broker or salesperson.

Real estate transaction means the sale, purchase, exchange, rental, lease, transfer, assignment or sublease of real property, housing accommodations, or an interest therein or the listing thereof for such purpose.

Real property means property used or zoned for residential purposes including a building, structure, mobile home, unimproved real estate, land, leasehold or an interest in a real estate cooperative or condominium.

Sexual orientation means male or female homosexuality, heterosexuality or bisexuality, by preference or practice.

Source of income, as used in this Chapter, refers to any lawful source of money paid directly to a senior citizen 65 years of age or older or indirectly on behalf of a senior citizen, and that is not a one-time lump sum payment or lump sum, including:

- (1) Money derived from any lawful profession or occupation;
- (2) Money derived from any annuity or life insurance policy; and
- (3) Money derived from any benefit or subsidy program, including, but not limited to, any housing assistance, such as Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) Vouchers, or any other form of housing assistance payment or credit whether or not paid or attributed directly to a landlord; public assistance; veterans benefit; Social Security or other retirement program; supplemental security income; VA and FHA loans, and any other program administered by any federal, state, or local agency or nonprofit entity.

Sec. 66-38. Enforcement.

Any person claiming a violation of this Chapter shall make a written complaint to the City Manager or his designee, setting forth therein the details, including location of property, names, dates, witnesses and other factual matter. All such complaints shall be verified by the claimant. Such complaints shall be filed with the City Manager's office within 120 days after the alleged commission of the offense.

Sec. 66-39. Investigation of complaints; efforts at conciliation.

- (a) Within 30 days after a complaint is reduced to writing, the City Manager or his designee shall make a full investigation of the alleged violation.
- (b) After such investigation, or at the end of such 30-day period, whichever occurs first, the City Manager or his designee shall give written notice to the person accused of the violation and they shall have 30 days during which the City Manager or his designee shall attempt to resolve the matter by conciliation.
- (c) If the claimed violation cannot be resolved by the end of the 30-day conciliation period, the complaint can be referred immediately to the City Attorney for prosecution if the City Manager or his/her designee believes there is enough cause that a violation has occurred.

Sec. 66-40. Exemption.

With respect to the age provision only, this Chapter shall not apply to the sale, rental or lease of housing accommodations meeting the requirements of federal, state or local housing programs for senior citizens or otherwise intended, advertised, designed or operated for the purpose of providing housing accommodations to persons 50 years or older.

Sec. 66-41. Discrimination prohibited generally.

Except as otherwise provided in this Chapter, no person engaging in a real estate transaction concerning housing accommodations, and no real estate broker or salesperson, shall, wholly or partly for reasons of source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law:

- (1) Refuse to engage in a real estate transaction with a person;
- (2) Discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) Refuse to receive from a person or to transmit to a person a bona fide offer to engage in a real estate transaction;
- (4) Refuse to negotiate for a real estate transaction with a person;
- (5) Represent to a person that real property or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or knowingly fail to bring a listing of real property to a person's attention, or refuse to permit a person to inspect real property;
- (6) Print, post, circulate, mail or otherwise cause to be published a statement, advertisement, notice or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification or discrimination with respect to source of income for senior citizens 65

years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law;

- (7) Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
- (8) Deny a person access to or membership or participation in multiple listing services, real estate broker's organizations or other real estate services.

Sec. 66-42. Discriminatory housing practices.

No person shall discriminate based on source of income for senior citizens 65 years of age or older in the following:

- (1) Leasing, selling or otherwise making available any housing facility with four or more units.
- (2) The terms, conditions, maintenance, or repair in providing any housing facility.
- (3) Make, print, or publish, or cause to be made, printed, or published any written or oral notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on source of income for senior citizens 65 years of age or older or expressing any intent to make any such preference, limitation, or discrimination.
- (4) Refusing to lend money for the purchase or repair of any real property or insure any real property solely because the location in the City of such real property.
- (5) Promoting real estate transactions by representing that changes are occurring or will occur in any area with respect to any protected classification.
- (6) Coerce, threaten, or retaliate against a person for making a complaint or assisting in the investigation regarding a violation or alleged violation of this section, nor require, conspire with, assist or coerce another person to retaliate against a person for making a complaint or assisting in an investigation.

Sec. 66-43. Discrimination by financial or insurance institutions.

- (a) Except as otherwise provided in this Chapter, a person to whom application is made for financial assistance or financing in connection with a real estate transaction or in connection with the insurance, construction, rehabilitation, repair, maintenance or improvement of real property, or an interest therein, which is utilized for housing accommodations, or a representative of such person shall not:
 - (1) Discriminate against the applicant because of source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law; or

- (2) Use a form of application for insurance or financial assistance or financing, or make or keep a record or inquiry in connection with an application for financial assistance or financing, which indicates, directly or indirectly, a preference, limitation, specification or discrimination based on source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law.
- (b) Subsection (a)(2) of this section shall not apply to a form of application for financial assistance prescribed for the use of a lender regulated as a mortgagee under the National Housing Act, as amended, being 12 U.S.C. 1701 to 1750(g), as amended, or by a regulation board or officer acting under the statutory authority of the state or the United States.
- (c) Nothing in this Chapter shall be deemed to prohibit an owner or lender, or his agent, from requiring that an applicant who seeks to buy, rent, lease or obtain financial assistance for housing accommodations supply information concerning the applicant's financial, business or employment status or other information designed solely to determine the applicant's credit worthiness, but not for reasons contrary to the provisions or purposes of this Chapter.

Sec. 66-44. Unlawful representations to induce transaction.

It shall be unlawful for a person, for the purpose of inducing a real estate transaction from which he may benefit financially, to represent that a change has occurred or will or may occur in the composition of an area with respect to the source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law, of the owners or occupants in the block, neighborhood or area in which the real property is located, or to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools in the block, neighborhood or area in which the real property is located.

Sec. 66-45. Property offered to public.

Nothing in this Chapter shall require an owner to offer property to the public at large before selling or renting it, nor shall this Chapter be deemed to prohibit owners from giving preference to prospective tenants or buyers for any reason other than source of income for senior citizens 65 years of age or older, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law.

Sec. 66-46. Related prohibitions.

- (a) No person shall provide false or substantially misleading information to any authorized person investigating a complaint regarding a violation of this Chapter, or sign a complaint for a violation of this Chapter based upon false or substantially misleading information.
- (b) No person shall coerce, threaten or retaliate against any individual or organization for making a complaint or assisting in an investigation regarding a violation or alleged violation of this Chapter or require, request, conspire with, assist or coerce another person to retaliate

against any individual or organization for making a complaint or assisting in any investigation pursuant to this Chapter.

- (c) No person shall conspire with, aid, assist, compel, coerce or request another person to discriminate in any manner prohibited by this Chapter.
- (d) No person shall attempt directly or indirectly to commit an act prohibited by this Chapter.

Sec. 66-48. Penalties.

- (a) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00, plus all costs of the action. The 48th District Court may issue and enforce any judgment, writ, or order necessary to enforce this chapter.
- (b) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the prevention or correction of discrimination.

Sec. 66-49. Private actions for damages or injunctive relief.

- (a) To the extent allowed by law, senior citizens 65 years of age or older who is the victim of discriminatory action in violation of this Chapter may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this Chapter.
- (b) As used in subsection (a), "damages" means damages for injury or loss caused by each violation of this Chapter, including reasonable attorney fees, as the law allows.
- (c) Private actions and remedies under this section may be in addition to any actions for violations which the City may take.

Sec. 66-50. Right to Renew

(1) Applicability

This Section shall apply to all housing accommodations for senior citizens 65 years of age or older otherwise subject to regulation of rents or evictions pursuant to state or federal law, to the extent that such state or federal law requires "good cause" for termination or non-renewal of such tenancies, including state laws protecting senior rights, EXCEPT: premises subject to federal, state, county, or city government restrictions regarding income, age, or rent (or the practical application of these restrictions) that are in conflict with this Section.

This Section shall only apply to leases entered into, renewed, or renegotiated after the effective date of this Section.

(2) Renewal of Lease

- (a) Within 90 days, a landlord must notify each tenant who is a senior citizen 65 years of age or older, in writing, whether the lease will be renewed, and must do one of the following:
 - (i) If the landlord offers to renew the lease, such offer must be in writing and include the parties, term, address of premises, and the rent. The landlord must present a written lease renewal to the tenants who are senior citizens 65 years of age or older for signature within 30 days of acceptance of the offer.
 - (ii) If the landlord claims good cause not to renew, the landlord shall notify each tenant who is a senior citizen 65 years of age or older in writing of the grounds for the good cause as defined in state law.
- (b) If a landlord does not make a good-faith offer to renew a written lease for each tenant before the time period specified in subsection (a) of the current lease period, the landlord will be in violation of this Chapter, unless the landlord has "good cause" as defined in state law to not offer renewal.
- (c) Nothing prevents a landlord from increasing rental amounts at the time of renewal.

(3) Good Cause

A landlord is exempted from non-renewal of a lease for senior citizens 65 years of age or older for any of the following circumstances:

- (a) The tenant is a senior citizen 65 years of age or older and has not accepted the renewal offer in writing within 30 days of landlord tendering the renewal offer.
- (b) The tenants who accepted the renewal offer have not returned a signed lease to the landlord within ten days of receipt.
- (c) The landlord can demonstrate a justification for not offering renewal that is in existence at the time renewal is to be offered.
- (d) The owner seeks possession so that the owner or a member of the owner's immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building. "Immediate family" includes the owner's domestic partner or spouse, parents, grandparents, children, siblings, as well as the siblings or parents of the owner's domestic partner or spouse.
- (e) The owner will not rent the premises for six months after lease termination or if the owner is selling the property.
- (f) The owner determines that the unit is no longer habitable.

(4) Remedies

(a) Civil Infractions. A violation of Subsection (2)(b) constitutes a civil infraction punishable by a fine of not less than \$500.00.

(b) All other Sections of Chapter 66. – HUMAN RELATIONS, shall remain unaffected.

Ordained this _____ day of _____, 2023. Effective upon publication.

Therese Longe, Mayor

Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2023 and that a summary was published _____, 2023.

Alexandria D. Bingham, City Clerk



THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS

PREPARED BY THE DOMESTIC POLICY COUNCIL AND
NATIONAL ECONOMIC COUNCIL

JANUARY 2023

Legal Disclaimer

The *Blueprint for a Renter Bill of Rights* is a white paper published by the White House Domestic Policy Council and National Economic Council. It is intended to support the development of policies and practices that promote fairness for Americans living in rental housing.

The *Blueprint for a Renter Bill of Rights* is a statement of principles; it is not binding and does not itself constitute U.S. government policy. It does not supersede, modify, or direct an interpretation of any existing Federal, state, or local statute, regulation, or policy. Any federal agency actions referenced in this document will be implemented separately by the relevant federal agencies pursuant to their legal authorities. It does not constitute binding guidance for the public, states, localities, or Federal agencies and therefore does not require compliance with the principles described herein. Adoption of these principles may not meet the requirements of existing statutes, regulations, policies, or the requirements of the Federal, state, or local agencies that enforce them. These principles are not intended to, and do not, prohibit or limit any lawful activity of a government agency.

The appropriate application of the principles set forth in the *Blueprint for a Renter Bill of Rights* depends significantly on the context in which the principles are being applied. In some circumstances, application of these principles in whole or in part may not be appropriate. Even in contexts where these principles may not apply in whole or in part, Federal departments and agencies remain subject to existing laws, regulations, and policies that govern rental housing.

The *Blueprint for a Renter Bill of Rights* is not intended to, and does not, create any legal right, benefit, or defense, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, nor does it constitute a waiver of sovereign immunity.

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Over 44 million households, or roughly 35 percent of the U.S. population, live in rental housing. And while federal laws such as the Fair Housing Act, the American with Disabilities Act, the Violence Against Women Act, and Fair Credit Reporting Act offer renters certain focused protections, there is no comprehensive set of federal laws protecting renters. Instead, our nation's rental market is defined by a patchwork of state and local laws and legal processes that renters and rental housing providers must navigate.ⁱ

That patchwork of renters rights, a shortfall of affordable housing, and a longstanding challenge of rents rising faster than incomes contribute to housing insecurity that millions of American renters experience every year. This is particularly true when there are dramatic rent increases, like the 17.2 percent increase in average rents that occurred in just one year between February 2021 and 2022.ⁱⁱ Many rental housing providers act responsibly and provide tenant protections beyond what is required by federal, state and local laws. However, research and reporting have documented ways that some renters are exploited by housing providers—who do not abide by the law or the lease agreement—with little recourse that results in the loss of their housing.ⁱⁱⁱ

Providing principles and best practices for tenant protections is important for a well-functioning housing market but also for the larger society—and is the key goal of this Blueprint for a Renters Bill of Rights (Blueprint). The federal actions announced at the same time as this Blueprint will promote those principles. This Blueprint sets out five common-sense principles that create a shared baseline for fairness for renters in the housing market, which include the need for renters to have access to:

- Safe, Quality, Accessible and Affordable Housing;
- Clear and Fair Leases;
- Education, Enforcement, and Enhancement of Renter Rights;
- The Right to Organize; and
- Eviction Prevention, Diversion, and Relief.

This Blueprint and the federal actions that promote these principles were developed as part of a six-month process to seek and distill input from people across the country—from tenants to housing providers, legal associations, and advocates. By engaging in dialogues, listening sessions, roundtable discussions, and stakeholder meetings, people from across the United States spoke up about the importance of tenant protections, rental affordability, and resident-centered property management practices. In doing so, they played a central role in shaping this Blueprint for a Renters Bill of Rights and the new commitments by federal agencies to advance a stronger, more equitable rental market.

In addition to underpinning the policy actions that the Administration is announcing today, these principles will, where possible, guide future federal policies and programs and updates to rulemaking, guidance, and notices governing existing policies and programs.



First Principle: Access to Safe, Quality, Accessible and Affordable Housing

Renters should have access to housing that is safe, decent and affordable and should pay no more than 30 percent of household income on housing costs. Owners of rental housing and state and local governments should ensure that homes for rent meet habitability standards and are free of health and safety hazards, such as lead or mold. In addition, owners should provide services and amenities as advertised or included in the lease (such as utility costs and functional appliances) and ensure that the residential housing unit is well maintained (including common areas). Renters should face minimal barriers when applying for housing and receiving housing assistance, which includes minimally burdensome application and documentation requirements and fair and equal tenant screening. Increases in rents should be reasonable, with the acknowledgement that rents may need to increase to cover operating costs. These increases should be transparent and fair to protect against gouging.

Why this Principle is Important

Even before the pandemic, rents were rising much faster than wages. In 2019, almost one quarter of the 44 million renter households spent at least half their earnings on rent.^{iv} In the last three years, rental affordability has worsened, with rents rising nearly 26 percent nationally during the pandemic,^v forcing many Americans to make difficult trade-offs in their household budgets between food, healthcare, and education because “the rent eats first.”^{vi} Housing is essential to a broad set of outcomes. Housing affordability, quality, safety, stability, and location affect people’s health.^{vii} A clear example of this is the negative impact of lead exposure on children’s development.^{viii} Higher out-of-pocket rent burdens are associated with increased likelihood of postponing medical services and negative health outcomes, particularly for households with the highest cost burdens.^{ix}

The recent pandemic highlighted the longstanding reality that renters often face significant burdens when trying to access the housing assistance they need.^x This is why the Biden-Harris Administration made significant efforts to reduce application and administration burdens in its emergency rental assistance programs, which resulted in an equitable distribution of resources to renters in need.^{xi}

Limited housing supply has created more competition for fewer available units, which gives owners even more leverage in deciding to whom to rent to, what lease terms to offer, and whether and how much to raise rents. At the same time, the housing stock in America is aging, and more rental housing is facing obsolescence or poor housing conditions.

From Principle to Practice

The Biden-Harris Administration is committed to advancing housing affordability and quality, and providing financial support to renters and housing providers. The American Rescue Plan provided over \$33 billion to assist renters and housing providers with emergency rental



assistance, emergency housing vouchers, subsidies for new housing supply, and resources for fair housing and legal counsel. Earlier this year, to reduce housing costs, the Administration released a [Housing Supply Action Plan](#) highlighting a broad set of legislative and administrative actions that would help to close the housing supply gap in five years. In fiscal year 2022 and fiscal year 2023, the President's Budget proposed the largest expansion of the Housing Choice Voucher program in decades as a down payment toward ensuring every extremely low-income household can access affordable housing.

The Administration is announcing the following new actions:

Increasing Housing Affordability and Access:

- The Federal Trade Commission (FTC), an independent agency, has announced it will explore ways to expand the use of its authority under the FTC Act to take action against acts and practices that unfairly prevent consumers from obtaining and retaining housing. The FTC has indicated it will issue a Request for Information along with the Consumer Financial Protection Bureau (CFPB), an independent agency, to obtain data to assist in identifying these practices and the harms they cause to housing applicants and those renting for use in enforcement and policy actions.
- The Department of Justice (DOJ) will host a workshop with law, technology, and other subject matter experts on the impact of modern methods of information-sharing in consumer-facing markets. This workshop may inform potential guidance updates around anticompetitive information sharing.
- As announced in November, the Federal Housing Finance Agency (FHFA), an independent agency, will increase affordability in the multifamily rental market by classifying multifamily loans with loan agreements that restrict rents at levels affordable to households with incomes between 80 and 120 percent of Area Median Income as “mission driven.” In 2023, FHFA required that at least 50 percent of all Freddie Mac and Fannie Mae purchases of multifamily loans be mission-driven. In 2022, Freddie Mac and Fannie Mae purchased a combined \$142 billion in multifamily loans supporting over one million units. If the same activity holds in 2023, this would mean an investment in approximately 700,000 affordable units.
- FHFA and the Enterprises, Fannie Mae and Freddie Mac, has announced it will launch a process to conduct stakeholder outreach and engagement to identify the opportunities and challenges of adopting and enforcing tenant protections including policies that limit egregious rent increases at properties with Enterprise-backed mortgages going forward. These efforts will ensure future initiatives by the Enterprises will continue to be informed by data analysis, diverse viewpoints, and best practices in the multifamily market. FHFA will maintain transparency throughout the process and provide periodic updates, including one within six months, to interested stakeholders on any developments.
- The Department of Defense (DoD) will ensure that military members can receive housing assistance from their installation Military Housing Office regardless of whether they live on- or off-base, to include assistance finding suitable, affordable housing; inspecting housing units prior to leasing; negotiating rents; reviewing leases; resolving landlord



disputes; and addressing accessible housing issues and potential housing discrimination complaints.

- The Department of Housing and Urban Development (HUD) will seek public comment on ways it can improve its Section 504 regulations and the accessibility standards for HUD-assisted facilities to ensure that individuals with disabilities have equal access to all HUD-assisted programs, activities, and facilities, such as public housing, affordable housing, homeownership programs, homeless shelters, and disaster recovery.
- Building from existing stakeholder engagement, the White House, Department of Agriculture (USDA), the Department of the Treasury (Treasury), and HUD will meet with a broad, diverse, and varying group of tenants and tenant advocates on a quarterly basis to hear their perspectives on dynamics in the rental markets and opportunities to strengthen tenant protections. These meetings will enable multiple agencies and their staff to learn from the lived experience and expertise of tenants and their advocates and will inform agencies' policymaking and enforcement efforts.

Improving Housing Quality

- USDA will pilot a program in 2023 that will institute a uniform and independent inspection protocol across its housing portfolio, using trained inspectors and ensuring equitable treatment of tenants.
- HUD will launch the National Standards for the Physical Inspection of Real Estate (NSPIRE) nationwide in fiscal year 2024. NSPIRE is the new physical inspection model designed to promote HUD's goal of reducing health and safety hazards in the home and identifying concerns important to tenants that live there. NSPIRE aligns multiple HUD programs to a single set of inspection standards so that the same expectations of housing quality can be achieved across HUD programs. NSPIRE is the product of a years-long collaboration with a diverse group of stakeholders, including resident groups, property owners and managers, public housing agencies, and public health and public safety professionals, who have provided critical input to the standards, processes, and protocols.
- FHFA, Freddie Mac, and Fannie Mae are updating the Enterprises' radon testing due diligence standards for multifamily housing to ensure they are comprehensive, data informed, fully understood by property owners, and properly implemented and enforced.



Second Principle: Clear and Fair Leases

Renters should have a clear and fair lease that has defined rental terms, rights, and responsibilities. Leases should not include mandatory arbitration clauses, unauthorized terms, hidden or illegal fees, false representations, or other unfair or deceptive practices. A lease should provide a transparent policy regarding security deposits, with those deposits being appropriately sized and placed in an interest-bearing account for the duration of the lease. The lease should also provide reasonable advance notice of actions related to the unit, including notice of entry for inspection by the housing provider and significant changes to the unit. Finally, the lease terms should be written in simple and clear language accessible to the renter, and the leasing process should ensure tenants understand the terms of the lease through a plain-language briefing.

Why this Principle is Important

A lease establishes the foundation for the housing provider and tenant relationship, highlighting the rights, responsibilities and recourse that exists for both parties. A lease covers the terms for what is likely the largest single expense a household makes each month and over the course of a year. A 2022 study of leases in Philadelphia found that over time, leases have increasingly used unenforceable terms, meaning a provision that would not hold up if contested in court, such as a disclaimer of liability of negligence.^{xii} Similarly, a 2017 study of leases in the Greater Boston Area found a prevalence of unenforceable provisions in leases, and the systemic lack of disclosure of what rights tenants do have.^{xiii} The trend of more leases with problematic provisions could be partially attributed to increased use of shared forms, which are easily accessible through the internet and may include terms that are not legally enforceable in the state or locality in which the property is located.^{xiv} These lease terms likely affect tenant decisions and behavior, because tenants often believe the terms are enforceable^{xv} and renters must pursue legal recourse if the landlord tries to enforce such terms.

Research also suggests that consumers often do not read contracts.^{xvi} In the case of residential leases, some renters may not read their lease at all because they see it as a “take it or leave it” document. Others may not read it because they believe it is written in legal language they will not understand. Few renters who read the lease and find concerning provisions mention their concern to landlords or leasing agents or contest the lease.^{xvii}

From Principle to Practice

A key exemplar of the clear and fair lease principle in federal policy is the Department of Defense Tenant Bill of Rights, which informs the model lease it implemented for the Department’s privatized housing program.^{xviii} To ensure prospective and existing military housing tenants understand the terms of the lease with the private sector housing provider, DoD provides a supplemental plain language briefing. To resolve any issues that are not being addressed by their housing provider, military members have access to a Military Tenant Advocate employed by the installation.

Separately, in 2022, HUD released new [guidance](#) to include costs such as security deposits as an eligible use of administrative fees that public housing agencies receive to operate the housing



voucher program. Such policies are important because security deposits are a standard part of most housing lease agreements but often a barrier for low-income tenants to securing housing.

The Administration is announcing the following new actions:

- USDA will institute a broad set of actions that will advance clear leases and ensure tenants can seek compliance with lease terms without facing retaliation across its portfolio of 400,000 units of multifamily rental housing. Specifically, USDA is developing a clear and fair lease that is similar to the model lease used in HUD Section 8 properties. USDA will also create a tenant grievance FAQ outlining clear steps for tenants appealing a management decision, and will distribute it to owners and management agents, ask for distribution to tenants and tenant advocacy groups. Further, USDA Rural Development is working to create a Tenant Rights and Responsibilities brochure modeled after HUD Multifamily's [brochure for assisted housing residents](#), increasing consistency between the two agencies and clarifying Rural Development tenants' rights and responsibilities. USDA will explore updating its regulations to require borrowers with federal credit from the department's Rural Housing Service to utilize the brochure.



Third Principle: Education, Enforcement, and Enhancement of Rights

Federal, state, and local governments should do all they can to ensure renters know their existing legal rights, and to protect renters from unlawful discrimination and exclusion that can take many different forms. Government bodies at all levels should ensure that rights and protections provided under the Fair Housing Act and other federal laws and regulations, as well as state and local fair housing laws and regulations, are known and enforced.

The Fair Housing Act bans discrimination based on race, color, religion, sex (including sexual orientation and gender identity), disability, familial status, and national origin, including practices that have an unjustified disparate impact on a protected class. The Fair Housing Act and state and local laws should be expanded to expressly prohibit discrimination based on source of income. All renters should also be safeguarded against sexual harassment by housing providers and their staff. And survivors of domestic and dating violence, stalking, and sexual assault should not be penalized because of the acts of abusers.

It is important to note that exclusion in rental markets manifests in different ways, such as through inaccurate information appearing in tenant background checks. It is essential that tenant background checks are legal, fair, and non-discriminatory to ensure renters can access housing and have neighborhood choice. Housing providers are required by law to inform applicants for rental housing why they were denied or charged more.

Why this Principle is Important

Discrimination and exclusion have long been significant factors shaping the housing market.^{xix} While the Fair Housing Act is an important cornerstone of ensuring that the housing market is equal and fair,^{xx} there is a continuing need to bolster existing laws and enforcement efforts and to pass new laws to address the nation's fair housing needs.^{xxi} To this day, millions of renters experience discrimination in the housing market annually, although a large share never report it.^{xxii}

Discrimination in housing takes many forms, many of which can be difficult to identify.^{xxiii} For example, research finds that in many markets property managers are less likely to respond to prospective Black and Latino tenants when they inquire about open rental listings, thus driving disparate housing options and outcomes.^{xxiv} People with disabilities face unequal treatment, access barriers, harassment, retaliation, discriminatory statements, and failure to provide reasonable accommodations for policies and allowance for reasonable modifications to unit design at disproportionate levels.^{xxv} Likewise, survivors of domestic violence, dating violence, sexual assault, and stalking are at greater risk of homelessness and housing discrimination because of the violence committed against them. Congress recently addressed this through strengthened protections in the 2022 reauthorization of the Violence Against Women Act.^{xxvi}



Housing discrimination also results from algorithms and credit reports used routinely in background checks and screening reports on tenant applicants, which can have negative effects on housing options,^{xxvii} particularly for Black, Latino, and Asian households who are at greater risk of error in these reports.^{xxviii} Although housing providers are legally required to provide adverse action notices (i.e., notice that information in a credit report was used to deny or alter the terms of the offer for credit, housing, employment, insurance, or other benefits), many applicants for rental housing do not receive any notice of the reason they are denied housing. Receiving notice of the reason for the denial would enable them to correct errors in a tenant screening report or address other reasons that might affect future housing access.

Source of income discrimination is the practice of not renting to a household or withholding property services, facilities, or privileges based on the source of income of the individual, which can include a Housing Choice Voucher, other forms of housing subsidy, or non-wage income sources, such as alimony or child support.^{xxix} Source of income discrimination can be used as a proxy for other forms of discrimination. Laws that ban discrimination based on source of income can both increase a household's ability to find housing with the Housing Choice Voucher and broaden the neighborhoods they can access.^{xxx} Further efforts to partner with housing providers and reduce administrative burdens associated with accepting rental assistance serve as important complements to such mandates.^{xxxi}

From Principle to Practice

HUD's Office of Fair Housing and Equal Opportunity (FHEO) has issued several guides and materials to inform landlords and tenants about important fair housing obligations. If tenants or persons seeking housing believe they have been discriminated against, they can [reach out to FHEO](#), which enforces the Fair Housing Act for HUD. HUD is finalizing a rule to clarify that the Fair Housing Act continues to bar practices with unjustified discriminatory effects notwithstanding efforts to weaken its reach. In addition, HUD has published a proposed Affirmatively Furthering Fair Housing rule to strengthen and better align grantee planning efforts to advance fair housing goals.

The Housing and Civil Enforcement Section of the Civil Rights Division at the DOJ has taken several recent enforcement actions under the Fair Housing Act to ensure that providers do not unlawfully discriminate against renters, including with respect to sexual harassment in [United States v. Centanni](#) (D.N.J.) and race discrimination in [United States v. Crimson Management, L.L.C. et al.](#) (N.D. Ga.). DOJ has also taken several recent enforcement actions aimed at rectifying disability discrimination in rental housing, including in [United States v. Heritage Senior Living, LLC et al.](#) (E.D. Pa.), [United States v. Miyamoto](#) (D. Wy.), and [United States v. Melinda S. Moore Housing, Inc., et al.](#) (W.D. Va.).

The federal government has advanced other rights beyond those protected by the Fair Housing Act. For example, discrimination against a holder of a Housing Choice Voucher is banned in the federal Low Income Housing Tax Credit (LIHTC) program, which is the largest affordable housing production program in the country. The CFPB has released [advisory opinions](#)^{xxxii} affirming that background check companies that use poor matching procedures, such as name-only matching can violate the Fair Credit Reporting Act's accuracy and permissible purpose



provisions due to the high risk of including information on the wrong tenant in screening reports for rental properties. In addition, the CFPB issued a bulletin affirming the responsibility of background check companies to use adequate procedures when reporting eviction information.^{xxxiii} In November, the CFPB issued two companion reports describing the tenant background check market and difficulties faced by prospective renters due to these reports.

The Administration is announcing the following new actions:

Tenant Background Checks:

- The CFPB has said it will identify guidance or rules that it can issue to ensure that the background screening industry adheres to the law, and coordinate law enforcement efforts with the FTC to hold tenant background check companies accountable for having reasonable procedures to ensure accurate information in the credit reporting system. The CFPB has also stated that it will continue to coordinate with federal and local government agencies to ensure that tenant screening companies do not illegally disseminate false and misleading information about tenants and that tenants can challenge erroneous information. People experiencing problems with a tenant background check can submit a complaint to the CFPB at www.consumerfinance.gov/complaint.
- HUD, FHFA, FTC and USDA have said they will work with CFPB to release best practices on the use of tenant screening reports, including the importance of communicating clearly to tenants the use of tenant background checks in denying rental applications or increasing fees and providing tenants the opportunity to address inaccurate information contained within background screening reports. HUD, FHFA and USDA have said they will strongly encourage property owners in their respective portfolios to align with these best practices and inform them of any additional relevant legal requirements in their respective portfolios. HUD will also release guidance addressing the use of tenant screening algorithms in ways that may violate the Fair Housing Act.

Source of Income Discrimination:

- Discrimination based on a person's source of income is not expressly prohibited under the Fair Housing Act. There are several ongoing agency actions that will be enhanced, consistent with agency authorities, to reduce such discrimination going forward. Consistent with existing LIHTC rules, the Treasury Department reiterates that LIHTC building owners should lease units in a manner consistent with HUD's nondiscrimination rules and are prohibited from refusing to lease units to prospective tenants due to their status as holders of Housing Choice Vouchers or certificates of eligibility. The Treasury Department will meet with tenants, advocates, housing providers, and researchers to discuss ways to further the goals of tenant protections, including those around source of income, as well as broader issues of affordability and eviction prevention with respect to the LIHTC incentive.
- HUD will explore opportunities to address source of income discrimination through guidance.



- Fannie Mae launched the Expanded Housing Choice pilot program to offer a pricing incentive to property owners who agree not to discriminate against voucher holders. Such efforts present a critical opportunity to increase the share of owners who participate in the Housing Choice Voucher program.

Protecting Survivors of Domestic Violence, Dating Violence, Sexual Assault, and Stalking:

- The Violence Against Women Act, which was reauthorized on March 15, 2022 (“VAWA 2022”), provides critical housing protections for survivors of domestic violence, dating violence, sexual assault, and stalking (“survivors”) accessing and maintaining federal housing programs. HUD will implement, via rulemaking, guidance, and other means, VAWA 2022’s new housing protections for survivors and HUD’s new enforcement authorities. In addition, HUD’s upcoming Community Compass NOFO will include up to \$5 million for a Technical Assistance Provider(s) to provide ongoing training and technical assistance to HUD grantees and other stakeholders on VAWA’s housing protections and remedies for survivors.



Fourth Principle: The Right to Organize

Renters should have the freedom to organize without obstruction or harassment from their housing provider or property manager and should not risk losing their housing because of organizing. Moreover, tenant associations should be recognized by their housing providers or management companies. A renter should be able to identify the owner of their building and how to contact them to engage in important conversations about their property. Such engagement should be a feature of a healthy and productive tenant-landlord relationship.

Why this Principle is Important

Organizing is an essential means for renters to advocate for resources and policy reform to meet community housing quality, accessibility, and affordability needs.^{xxxiv, xxxv} Organizing often highlights structural issues in housing markets, and tenants frequently offer innovative solutions that question status quo responses, because the status quo solution sometimes does not work for them.^{xxxvi} Moreover, tenant organizing serves as an important platform for renters to engage in a broad set of community and political processes at the federal, state, and local levels, from which they may otherwise be marginalized.^{xxxvii}

There is abundant research that shows organizing has been met with retaliation from housing providers or property managers, such as prohibiting the use of public spaces, threatening eviction, or actually filing an eviction action.^{xxxviii} For these reasons, some tenants fear that organizing to improve their current housing situation and advocating for community investment and resources will result in losing their housing rather than seeing much needed improvements.

From Principle to Practice

Tenants in different types of HUD programs have *recognized rights to organize*. The tenants of multifamily HUD-assisted housing and public housing projects have the right to establish and operate a tenant organization for the purpose of creating a positive living environment and addressing issues related to their living environment. HUD's Multifamily Brochure on Resident Rights and Responsibilities is an important resource for tenants of assisted housing seeking to understand their rights related to habitability, repairs, and the right to organize. The brochure states that residents should be able to: organize without retaliation from housing providers; provide leaflets and post materials in common areas; be recognized as having a voice in residential community affairs; use appropriate common space or meeting facilities to organize; and meet without representatives or employees of the housing provider present.^{xxxix} HUD recently published a [Resident Organizing and Participation Toolkit for residents of public housing](#), which provides comprehensive guidance on creating or supporting resident organizations: guides for organizing and running an effective resident council; sample documents to help formally establish and run the resident council; tools for effective use of tenant participation funds; and case studies and profiles of resident councils and public housing agencies that support resident organizing and participation across the country.^{xl} HUD is currently working on webinar training to complement the existing toolkit.



The Administration is announcing the following new actions:

- The DoD commits to ensuring that military members living in DoD's government-owned, government-controlled, or privatized housing have the right to organize and affirms their right to report housing issues to their chain of command and/or Military Housing Office without fear of retribution or retaliation.
- HUD's Office of Multifamily Housing is developing a NOFO to distribute appropriated funds to support tenant capacity building activities, including tenant education and outreach.
- HUD's Office of Multifamily Housing will build on existing training and technical assistance strategies to promote engagement with residents and implementation of the Rental Assistance Demonstration (RAD) resident protections, including grievance procedures, by owners of RAD-converted properties. This will include fact sheets and similar public resources, targeted outreach to owners of recently converted properties, and measures to refresh awareness of program expectations following completion of the conversion process.



Fifth Principle: Eviction Prevention, Diversion, and Relief

Renters should be able to access resources that help them avoid eviction, ensure the legal process during an eviction proceeding is fair, and avoid future housing instability. To prevent evictions, renters should have access to just- or good-cause eviction protections that require a justified cause to evict a tenant, and tenants need to receive adequate notice if their lease is not being renewed. Renters should be able to avoid an eviction filing through alternatives to the eviction system, such as eviction diversion and grievance procedures that prevent formal legal proceedings through negotiation, mediation, or arbitration. Resolutions from these processes could include: a grace period for late rent; the ability to preserve tenancy through curing the lease violation by paying rent or correcting the violation; access to a standardized, formal dispute resolution process prior to litigation; and opportunities to meaningfully participate in a pre-eviction diversion program.

If an eviction is filed, tenants should be given 30 days' notice of an eviction action and the right to counsel during an eviction proceeding. The eviction proceedings should be fair and provide: protection from extrajudicial evictions and lockouts; a hearing in a language the tenant understands or with qualified interpreters; a trained, competent, and independent hearing officer; due process protections, including a written record and the ability to present evidence, cross examine, and conduct discovery; and the ability for a tenant to appeal an eviction judgment without bond requirements.

Eviction case filings should immediately be sealed, including in cases of nonpayment of rent, thereby reducing the chance for people to be locked out of future housing opportunities without a chance to defend themselves. Eviction records—both filings and executed judgements—should remain sealed for any minors, for tenants who prevail in their eviction cases, and for tenants who reinstate their tenancy after the entry of judgment. Courts should only unseal eviction records after a judge decides against the tenant, though records listing minors as well as default judgements should remain sealed. Provisions for sealing tenant records should be tailored to state law and procedures.

And for those renters carrying rental debt, fair debt collection practices should include: the ability to enforce payment of rental debt only if there is clear, unambiguous evidence that the debt is owed; and freedom from unfair, deceptive, or abusive attempts to collect.

Why this Principle is Important

Before the pandemic, roughly 900,000 evictions were completed against tenants every single year.^{xli} An eviction order increases homelessness and reduces earnings, durable consumption, and access to credit.^{xlii} Evictions themselves are associated with a broad set of negative outcomes, including short- and long-term negative impacts on health.^{xliii}



Research demonstrates that the process leading up to and during an eviction is full of inequities that negatively impact low-income households' ability to remain housed.^{xliv} Such findings indicate that not only does excessive debt accumulate during the eviction process due to late fees, but that the accumulated debt is then sometimes maintained and leveraged by housing providers who use it to threaten a tenant with eviction.^{xlv}

Tenants know that the impact of an eviction extends well beyond the eviction itself. For example, eviction records are often included in background checks even when a case is dismissed on the merits or dismissed because the tenant pays overdue rent. An eviction filing often continues to appear on a tenant's screening report and impedes a renter's future ability to find housing.^{xlvi} Although many states have passed laws to seal eviction records, when eviction records are not sealed immediately, they can still haunt families. This is because background check companies may fail to remove records from their databases after they are sealed.

Prior to the pandemic, few federal or local efforts supported eviction prevention or a fair eviction process and only a few of these have been evaluated. Research shows that significant procedural differences in the eviction process across jurisdictions can affect outcomes.^{xlvii} Preliminary evidence on the role of legal representation suggests that it may reduce the odds of an eviction filing resulting in a warrant to evict.^{xlviii} One study found that the expiration of pandemic eviction moratoria was associated with a doubling of instances of COVID-19 and a five-fold increase in COVID-19 mortality,^{xlix} suggesting these moratoria reduced COVID-19 transmission and mortality.

From Principle to Practice

The Emergency Rental Assistance program (ERA) has made over 8 million payments to renters and their housing providers to prevent evictions, and over \$769 million has been expended on housing stability services. The American Rescue Plan's State and Local Fiscal Recovery funds are also being used to support eviction prevention and diversion efforts. As part of a whole-of-government response, DOJ led an effort to encourage states and localities to develop and deploy eviction diversion programs. Over the past couple of years, HUD [awarded](#) \$40 million in eviction protection grants.

The FHFA requires that tenants of multifamily properties with mortgages backed by Fannie Mae or Freddie Mac, who are subject to eviction for nonpayment of rent, must be given 30 days' notice to vacate before the tenant can be required to leave the unit. This requirement applies to all Enterprise-backed multifamily properties, regardless of whether the loan is in forbearance.

The Administration is announcing the following new actions:

- HUD will issue a notice of proposed rulemaking, to build upon the previously [issued Interim Final Rule](#), that will propose to require that PHAs administering a public housing program and owners of project-based rental assistance properties provide no less than 30 days advanced notification of lease termination due to nonpayment of rent.



- HUD will award \$20 million for the Eviction Protection Grant Program in fiscal year 2023, which will fund non-profits and governmental entities to provide legal assistance to low-income tenants at risk of or subject to eviction.
- FHFA, Freddie Mac, and Fannie Mae have indicated their commitment to publishing information about the Enterprise Look-Up Tools, which allow tenants to determine if their property is backed by Fannie Mae or Freddie Mac financing and requires the 30-day notice to vacate for non-payment of rent. The Enterprises will continue to publish this information and assess how the individual tools might be enhanced to improve utility.
- Freddie Mac is conducting research on marketable baseline tenant protections and plans to publish a paper as part of FHFA's Equitable Housing Finance Plan initiative. The forthcoming paper will be a survey of each state's landlord-tenant acts across a series of topics that span the rental experience, including tenant screening, habitability, and notice requirements. It also will provide a consolidated source of information on current state landlord-tenant laws, which differ state to state, for the public and industry stakeholders. Mac intends to utilize its research to develop potential incentives for enhanced tenant protections in 2024.

ⁱ One example of this variation can be found here: <https://www.avail.co/education/laws>.

ⁱⁱ <https://www.zillow.com/research/zillow-rent-report-october-2022-31676/>

ⁱⁱⁱ Desmond, Matthew. *Evicted: Poverty and profit in the American city*. Crown, 2016.

^{iv} [The State of the Nation's Housing 2021 \(harvard.edu\)](https://www.harvard.edu/sites/default/files/research/files/harvard_jchs_rent_eats_first_airgood-obrycki_hermann_wedeen_2021.pdf)

^v This number was calculated using data from Zillow.

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HOUSE BILL NO. 4063

- The Michigan House of Representatives introduced HB 4063 which adds source of income to the now existing housing discrimination prohibitions.
- On February 1, 2023, HB 4063 was read for the first time and referred to the House Judiciary Committee.



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Sponsors

Jason Morgan (district 23)
Jennifer Conlin, Jason Hoskins, Reggie Miller, Jimmie Wilson Jr., Jasper Martus, Jaime Churches, Betsy Coffia, Sharon MacDonell, Jenn Hill, Joey Andrews, Carrie Rheingans, Dylan Wegela, Rachel Hood, Mike McFall, Denise Mentzer, Julie Rogers, Kara Hope, Felicia Brabec, Stephanie A. Young, Veronica Paiz, Erin Byrnes, Emily Dievendorf
(click name to see bills sponsored by that person)

Categories

Civil rights: [housing discrimination](#); Housing: [landlord and tenants](#);

Civil rights: [housing discrimination](#); [housing discrimination based on source of income](#); prohibit. Amends title & sec. 502 of 1976 PA 453 (MCL 37.2502).

Bill Documents

[Bill Document Formatting Information](#)

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Documents



House Introduced Bill

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As Passed by the House is the bill, as introduced, that includes any adopted House amendments.



As Passed by the Senate

As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.



House Enrolled Bill

Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)

NOTE: a page number of 1 indicates that the page number is soon to come.

Date	Journal	Action
2/1/2023 HJ 10	Pg. 134	introduced by Representative Jason Morgan
2/1/2023 HJ 10	Pg. 6A	read a first time

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HOUSE BILL NO. 4063

February 01, 2023, Introduced by Reps. Morgan, Conlin, Hoskins, Miller, Wilson, Martus, Churches, Coffia, MacDonell, Hill, Andrews, Rheingans, Wegela, Hood, McFall, Mentzer, Rogers, Hope, Brabec, Young, Paiz, Byrnes and Dievendorf and referred to the Committee on Judiciary.

A bill to amend 1976 PA 453, entitled
"Elliott-Larsen civil rights act,"
by amending the title and section 502 (MCL 37.2502), the title as
amended by 1992 PA 258 and section 502 as amended by 1992 PA 124.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 TITLE
- 2 An act to define civil rights; to prohibit discriminatory
- 3 practices, policies, and customs in the exercise of those rights
- 4 based upon religion, race, color, national origin, age, sex,

1 height, weight, familial status, ~~or marital status~~, **or source of**
 2 **income**; to preserve the confidentiality of records regarding
 3 arrest, detention, or other disposition in which a conviction does
 4 not result; to prescribe the powers and duties of the civil rights
 5 commission and the department of civil rights; to provide remedies
 6 and penalties; to provide for fees; and to repeal ~~certain acts and~~
 7 parts of acts.

8 Sec. 502. (1) A person engaging in a real estate transaction,
 9 or a real estate broker or ~~salesman~~, **salesperson**, shall not on the
 10 basis of religion, race, color, national origin, age, sex, familial
 11 status, ~~or marital status~~, **or source of income** of ~~a person~~ **an**
 12 **individual** or ~~a person~~ **anyone** residing with that ~~person~~ **individual**
 13 **do any of the following:**

14 (a) Refuse to engage in a real estate transaction with a
 15 person.

16 (b) Discriminate against a person in the terms, conditions, or
 17 privileges of a real estate transaction or in the furnishing of
 18 facilities or services in connection with a real estate
 19 transaction.

20 (c) Refuse to receive from a person or transmit to a person a
 21 bona fide offer to engage in a real estate transaction.

22 (d) Refuse to negotiate for a real estate transaction with a
 23 person.

24 (e) Represent to a person that real property is not available
 25 for inspection, sale, rental, or lease when in fact it is so
 26 available, or knowingly fail to bring a property listing to a
 27 person's attention, or refuse to permit a person to inspect real
 28 property, or otherwise make unavailable or deny real property to a
 29 person.

1 (f) Make, print, circulate, post, mail, or otherwise cause to
 2 be made or published a statement, advertisement, notice, or sign,
 3 or use a form of application for a real estate transaction, or make
 4 a record of inquiry in connection with a prospective real estate
 5 transaction, ~~which~~**that** indicates, directly or indirectly, an
 6 intent to make a preference, limitation, specification, or
 7 discrimination with respect to the real estate transaction.

8 (g) Offer, solicit, accept, use, or retain a listing of real
 9 property with the understanding that a person may be discriminated
 10 against in a real estate transaction or in the furnishing of
 11 facilities or services in connection ~~therewith~~**with that**
 12 **transaction.**

13 (h) Discriminate against a person in the brokering or
 14 appraising of real property.

15 (2) A person shall not deny a person access to, or membership
 16 or participation in, a multiple listing service, real estate
 17 brokers' organization or other service, organization, or facility
 18 relating to the business of selling or renting real property or to
 19 discriminate against ~~him or her~~**the person** in the terms or
 20 conditions of that access, membership, or participation because of
 21 religion, race, color, national origin, age, sex, familial status,
 22 ~~or~~ marital status, **or source of income.**

23 (3) This section is subject to section 503.

24 (4) **As used in this section, "source of income" includes**
 25 **benefits or subsidy programs including housing assistance, public**
 26 **assistance, emergency rental assistance, veterans benefits, Social**
 27 **Security, supplemental security income or other retirement**
 28 **programs, and other programs administered by any federal, state,**
 29 **local, or nonprofit entity. The term does not include income**

1 derived in an illegal manner.

HOUSE BILL NO. 6565

- The Michigan House of Representatives introduced HB 6565 which adds a right to renew lease provision to every rental agreement.
- On December 7, 2022, HB 6565 was read for the first time and referred to the House Regulatory Reform Committee.



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Sponsor

[Yousef Rabhi](#) (district 53)

(click name to see bills sponsored by that person)

Categories

Housing: landlord and tenants;

Housing: landlord and tenants; **right to renew provision in every rental agreement**; provide for. Amends [1972 PA 348](#) (MCL [554.601](#) - [554.616](#)) by adding sec. 6a.

Bill Documents

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Documents



House Introduced Bill

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As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.



House Enrolled Bill

Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)

NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
12/7/2022 HJ 86	Pg. 2017	introduced by Representative Yousef Rabhi
12/7/2022 HJ 86	Pg. 2017	read a first time
12/7/2022 HJ 86	Pg. 2017	referred to Committee on Regulatory Reform
12/7/2022 HJ 87	Pg. 2067	bill electronically reproduced 12/07/2022

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HOUSE BILL NO. 6565

December 07, 2022, Introduced by Rep. Rabhi and referred to the Committee on Regulatory Reform.

A bill to amend 1972 PA 348, entitled

"An act to regulate relationships between landlords and tenants relative to rental agreements for rental units; to regulate the payment, repayment, use and investment of security deposits; to provide for commencement and termination inventories of rental units; to provide for termination arrangements relative to rental units; to provide for legal remedies; and to provide penalties,"

(MCL 554.601 to 554.616) by adding section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 6a. (1) A rental agreement must contain a right to renew
- 2 provision. A right to renew provision incorporated into a rental
- 3 agreement pursuant to this section must do both of the following:

1 (a) State as follows, "You, _____ [name of tenant], have
2 statutory rights to receive a lease renewal notice from me,
3 _____ [name of landlord], before the end of this lease that
4 gives you, _____ [name of tenant], the option to renew your
5 lease. I, _____ [name of landlord], certify that this right
6 to renew provision complies with MCL 554.606a.".

7 (b) Incorporate the requirements of subsection (2).

8 (2) A landlord of a rental premises shall send a lease renewal
9 notice to a tenant within a reasonable time before the end of the
10 tenant's lease. A landlord must send the lease renewal notice to
11 the tenant and receive the tenant's response as described under
12 subsection (4) before advertising an opening for the rental unit,
13 showing the rental unit to a prospective tenant, or offering the
14 rental unit for lease to any person. A lease renewal notice must do
15 both of the following:

16 (a) Give the tenant the option to renew the rental unit on the
17 same, or substantially the same, terms and conditions as the
18 expiring lease. This subdivision does not apply to rental payments.

19 (b) Include a rental payment that complies with any of the
20 following:

21 (i) Is the same as the expiring lease.

22 (ii) Is an increase to the rental payment in the expiring
23 lease. A rental payment included under this subparagraph must not
24 be an increase that is more than 5% of the expiring lease's rental
25 payment.

26 (3) A landlord of a rental premises must comply with
27 subsections (1) and (2).

28 (4) A tenant who receives a lease renewal notice under this
29 section shall send a written response to the landlord that either

1 accepts or rejects the landlord lease renewal offer. The written
2 response required under this subsection must be sent to the
3 landlord not more than the following days after receipt of the
4 landlord's lease renewal notice and in accordance with the type of
5 tenancy:

6 (a) For a fixed tenancy, 30 days.

7 (b) For a periodic tenancy or tenancy at will, 14 days.

8 (5) This section applies only to leases entered into, renewed,
9 or renegotiated after the effective date of the amendatory act that
10 added this section, in accordance with the constitutional
11 prohibition against impairment of contracts provided by section 10
12 of article I of the state constitution of 1963.

Communications The City Attorney's Office
Received From Interested Parties Regarding
Tenant Rights Issues

Cortni Matthews

From: Mary Kucharek
Sent: Wednesday, January 25, 2023 1:17 PM
To: Cortni Matthews
Subject: FW: Right To Renew

From: I Matthew Miller [mailto:matt@immillerlaw.com]
Sent: Wednesday, January 25, 2023 1:07 PM
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: james@gbplc.net; Phillip.Neuman@Couzens.com
Subject: Right To Renew

Ms. Kucharek, I apologize for not having been at the Birmingham City Commission meeting on Monday in person so that I would have had the opportunity to introduce myself and speak with you. Unfortunately, I had other work to which I had to attend that evening after just learning about the hearing that morning.

I know Phil Neuman, who is the legislative committee chair of the Detroit Metropolitan Apartment Association, also wanted to attend on Monday, and I have copied him on this email.

I am hopeful that we can discuss the Right to Renew proposal to address the concerns that Jim Gromer, other speakers, and I raised at the meeting.

Do you want to circulate some dates and times that would work for you so we can move this process along?

Thanks.

I. Matthew Miller

Law Offices of I. Matthew Miller, PLLC

29566 Northwestern Highway, Suite 110

Southfield, MI 48034

(248) 285-9303

matt@immillerlaw.com



Mary Kucharek

From: Tyler D. Tennent <ttennent@dmms.com>
Sent: Wednesday, February 8, 2023 4:03 PM
To: Mary Kucharek
Cc: Ed Dawda
Subject: City of Birmingham

Hi Mary:

This follows my voice mail message in which sated that I was calling about the status of the City of Birmingham's proposed ordinance (source of income/lease renewal) and our client's proposed project in the City.

I know you're super busy but let me know when you can chat for a few minutes about these items.

Thanks.

Tyler D. Tennent | Member
Dawda Mann | 39533 Woodward Avenue, Suite 200
Bloomfield Hills, MI 48304-5103
direct: 248.642.4248 | main: 248.642.3700 | mobile: 248.882.8463
www.dawdamann.com



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Janine Cochran

From: Mary Kucharek
Sent: Friday, February 17, 2023 3:28 PM
To: Janine Cochran
Subject: FW: tenants' rights
Attachments: Birmingham Ordinance with IMMBSTJRG2.17.22.docx

In color please

From: James Gromer [mailto:james@gbplc.net]
Sent: Friday, February 17, 2023 3:18 PM
To: Mary Kucharek <Mkucharek@bhlaw.us.com>; I Matthew Miller <matt@immillerlaw.com>; stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com
Subject: RE: tenants' rights

Hi Mary:

I hope all is well. As discussed, we made recommended changes to the ordinance. None of the changes eliminate source of income from being a protected class or eliminate the investigation of a complaint of discrimination for a non-renewal. In addition, we also made comments in the margins in an effort to explain the logic or reason for the change. Our changes do not alter the purpose of the ordinance and we know that is what was most important to the City.

Please let us know if you have any questions or clarifications to the suggested changes. We appreciate the opportunity to be heard. Thank you and have a great weekend. jim

James R. Gromer, Esq.
32500 Telegraph Rd., Ste. 100
Bingham Farms, MI 48025
248.833.0564 Direct
248-760-5142 Mobile

Gromer  Butchart
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From: Mary Kucharek <Mkucharek@bhlaw.us.com>
Sent: Friday, February 10, 2023 9:30 AM
To: James Gromer <james@gbplc.net>; I Matthew Miller <matt@immillerlaw.com>;

stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com

Subject: FW: tenants' rights

I have attached the ordinance in word for your convenience.

From: James Gromer [<mailto:james@gbplc.net>]

Sent: Thursday, February 9, 2023 4:23 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>

Subject: RE: tenants rights

Hi Mary:

Happy Thursday. Thanks for the time spent with us on Tuesday. I appreciated the opportunity to discuss it all. Any chance you have the draft in word format you can send me? If not, that's okay but I thought I would ask. Have a great weekend. jim

James R. Gromer, Esq.
32500 Telegraph Rd., Ste. 100
Bingham Farms, MI 48025
248.833.0564 Direct
248-760-5142 Mobile

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PLC

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From: Mary Kucharek <Mkucharek@bhlaw.us.com>

Sent: Tuesday, January 31, 2023 2:50 PM

To: I Matthew Miller <matt@immillerlaw.com>; phillip.neuman@couzens.com; stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org; tmarkus@bhamgov.org; James Gromer <james@gbplc.net>; bstobin@groupfivemgt.com

Subject: RE: tenants rights

Thanks!

From: I Matthew Miller [<mailto:matt@immillerlaw.com>]

Sent: Tuesday, January 31, 2023 2:09 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>; phillip.neuman@couzens.com; stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org; tmarkus@bhamgov.org; james@gbplc.net; bstobin@groupfivemgt.com

Subject: RE: tenants rights

Mary, I copied Jim Gromer on my initial email to you. I have included Ben Tobin on this email as well, as he was the other person who spoke in the commission room. Both are copied on this email.

Thanks. I look forward to meeting you next Tuesday.

I. Matthew Miller

Law Offices of I. Matthew Miller, PLLC

29566 Northwestern Highway, Suite 110

Southfield, MI 48034

(248) 285-9303

matt@immillerlaw.com



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-----Original message-----

From: "Mary Kucharek" [Mkucharek@bhlaw.us.com]

Sent: Tuesday, Jan 31 2023 2:03 PM

To: phillip.neuman@couzens.com, stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org, tmarkus@bhamgov.org

Subject: tenants rights

Gentlemen,

We cannot find the email addresses of the two attorneys that spoke at the Birmingham City commission meeting re Tenant's Rights. The two that spoke in person. Apparently their cards have been misplaced. So, if any of you know them, please forward this email and please cc me.

I am looking to set up a meeting at City Hall, next Tuesday , February 7, at 4:00 p.m. to allow you the opportunity to discuss our proposed ordinance. This is the opportunity to make constructive suggestions for language in the ordinance addressing your perspectives. We are holding this meeting by invitation only, meaning those of you and the other two I refereed to, are those we are inviting to meet and discuss the ordinance . Please confirm your attendance.

Thank you.

Mary M. Kucharek

Attorney-at-Law

Beier Howlett, P.C.

Direct Dial (248)282-1075

(248) 645-9400 Ext. 211

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Troy, MI 48084

fax 248-645-9344

<http://bhlaw.us.com>

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 66 – HUMAN RELATIONS, ARTICLE II. DISCRIMINATION, DIVISION 2. FAIR HOUSING

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 66. – Human Relations, Article II. Discrimination, Division 2. Fair Housing, shall read as follows:

DIVISION 2. FAIR HOUSING

Sec. 66-36. Purpose.

It is the intent of the City of Birmingham that no person engaging in a real estate transaction for housing shall engage in discriminatory practices by denying housing due to one's source of income, and every person shall be given rights in the lease renewal process.

Sec. 66-37. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Discriminate in this section means to make a decision, offer to make a decision or refrain from making a decision based in whole or in part on person's or his or her relatives' or associates' source of income for rental. Discrimination includes the use of facially neutral practices that have an adverse impact based on source of income related to housing.

Handicap means a determinable physical or mental characteristic of an individual or a history of the characteristic which may result from disease, injury, congenital condition of birth, or functional disorder which characteristic is unrelated to the individual's ability to acquire, rent or maintain property.

Housing accommodations means improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence of one or more persons. Housing accommodations shall include unimproved real property located in any residentially zoned area of the City.

Housing facility means any dwelling unit or facility in which it is intended persons regularly sleep and keep personal belongings including, but not limited to, a house, apartment, rooming house, housing cooperative, hotel, motel, tourist home, retirement home or nursing home.

Owner means possessor of any interest in real property including the lessee, lessor, sublessee, sublessor, assignee, assignor, managing agent or other person having the right of ownership or possession or the right to sell, rent, transfer or lease any real property, housing accommodations or any interest therein.

Person includes one or more persons, corporations, partnerships, limited liability companies, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries.

Real estate broker or salesperson means a person, whether licensed or not, who, for or with the expectation of receiving consideration:

- (1) Lists, sells, purchases, exchanges, rents or leases real property, housing accommodations, or an interest therein;
- (2) Negotiates or attempts to negotiate any listing, sale, purchase, exchange, rental or lease of real property, housing accommodations, or an interest therein;
- (3) Holds himself out as listing, selling, purchasing, exchanging, renting or leasing real property, housing accommodations, or an interest therein;
- (4) Negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance on real property, housing accommodations, or an interest therein; or
- (5) Engages in the business of listing real property, housing accommodations, or an interest therein in publications.

Real estate broker or salesperson includes a person employed, acting as an independent contractor, or otherwise acting on behalf of a real estate broker or salesperson.

Real estate transaction means the sale, purchase, exchange, rental, lease, transfer, assignment or sublease of real property, housing accommodations, or an interest therein or the listing thereof for such purpose.

Real property means property used or zoned for residential purposes including a building, structure, mobile home, unimproved real estate, land, leasehold or an interest in a real estate cooperative or condominium.

Sexual orientation means male or female homosexuality, heterosexuality or bisexuality, by preference or practice.

Source of income, as used in this Chapter, refers to any lawful source of money paid directly to a person or family or indirectly on behalf of a person or family, including, and that is not a one time payment or lump sum, but not limited to:

- (1) Money derived from any lawful profession or occupation;
- (2) Money derived from any contract, agreement, loan, or settlement; from any court order, such as court-ordered child support or alimony; from any gift or bequest; or from any annuity or life insurance policy; and
- (3) Money derived from any benefit or subsidy program, including, but not limited to, any housing assistance, such as Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) Vouchers, or any other form of housing assistance payment or credit whether or not paid or attributed directly to a landlord; public assistance; emergency rental assistance; veterans benefit; Social Security or other retirement program; supplemental security income; VA and FHA loans, and any other program administered by any federal, state, or local agency or nonprofit entity.

Commented [MM1]: The problem with these alleged "sources of income" is that they are not guaranteed, nor are they guaranteed to continue. Someone may have a "loan" from a friend who, after they move into an apartment, may terminate the "loan," for example.

Commented [MM2]: Similarly, "emergency rental assistance" is generally a one-time thing. It does not continue. How can you rent to someone based upon "emergency rental assistance" with no idea whether there is any money to pay the rent after the assistance ends?

Sec. 66-38. Enforcement.

Any person claiming a violation of this Chapter shall make a written complaint to the City Manager or his designee, setting forth therein the details, including location of property, names, dates, witnesses and other factual matter. All such complaints shall be verified by the claimant. Such complaints shall be filed with the City Manager's office within 120 days after the alleged commission of the offense.

Sec. 66-39. Investigation of complaints; efforts at conciliation.

- (a) Within 30 days after a complaint is reduced to writing, the City Manager or his designee shall make a full investigation of the alleged violation.
- (b) After such investigation, or at the end of such 30-day period, whichever occurs first, the City Manager or his designee shall give written notice to the person accused of the violation and they shall have 30 days during which the City Manager or his designee shall attempt to resolve the matter by conciliation.
- (c) If the claimed violation cannot be resolved by the end of the 30-day conciliation period, the complaint ~~can~~ shall be referred immediately to the City Attorney for prosecution if the City Manager or his designee believes there is enough cause that a violation occurred.

Commented [JG3]: I don't believe the intent of the section was to have it prosecuted if the landlord and don't agree to a settlement. What if the City manager and landlord think the claim is bogus? The City Manager either gets to decide or change it to read that it is sent to the City Attorney who then decides if there is enough to prosecute.

Sec. 66-40. Exemption.

With respect to the age provision only, this Chapter shall not apply to the sale, rental or lease of housing accommodations meeting the requirements of federal, state or local housing programs for senior citizens or otherwise intended, advertised, designed or operated for the purpose of providing housing accommodations to persons 50 years or older.

Sec. 66-41. Discrimination prohibited generally.

Except as otherwise provided in this Chapter, no person engaging in a real estate transaction concerning housing accommodations, and no real estate broker or salesperson, shall, wholly or partly for reasons of source of income, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law:

- (1) Refuse to engage in a real estate transaction with a person;
- (2) Discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) Refuse to receive from a person or to transmit to a person a bona fide offer to engage in a real estate transaction;
- (4) Refuse to negotiate for a real estate transaction with a person;

- (5) Represent to a person that real property or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or knowingly fail to bring a listing of real property to a person's attention, or refuse to permit a person to inspect real property;
- (6) Print, post, circulate, mail or otherwise cause to be published a statement, advertisement, notice or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification or discrimination with respect to source of income, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law;
- (7) Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
- (8) Deny a person access to or membership or participation in multiple listing services, real estate broker's organizations or other real estate services.

Sec. 66-42. Discriminatory housing practices.

No person shall discriminate based on source of income in the following:

- (1) Leasing, selling or otherwise making available any housing facility.
- (2) The terms, conditions, maintenance, or repair in providing any housing facility.
- (3) Make, print, or publish, or cause to be made, printed, or published any written or oral notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on source of income or expressing any intent to make any such preference, limitation, or discrimination.
- (4) Refusing to lend money for the purchase or repair of any real property or insure any real property solely because the location in the City of such real property.
- (5) Promoting real estate transactions by representing that changes are occurring or will occur in any area with respect to any protected classification.
- (6) Coerce, threaten, or retaliate against a person for making a complaint or assisting in the investigation regarding a violation or alleged violation of this section, nor require, conspire with, assist or coerce another person to retaliate against a person for making a complaint or assisting in an investigation.

Sec. 66-43. Discrimination by financial or insurance institutions.

- (a) Except as otherwise provided in this Chapter, a person to whom application is made for financial assistance or financing in connection with a real estate transaction or in connection with the insurance, construction, rehabilitation, repair, maintenance or improvement of real property, or an interest therein, which is utilized for housing accommodations, or a representative of such person shall not:

- (1) Discriminate against the applicant because of source of income, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law; or
 - (2) Use a form of application for insurance or financial assistance or financing, or make or keep a record or inquiry in connection with an application for financial assistance or financing, which indicates, directly or indirectly, a preference, limitation, specification or discrimination based on source of income, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law.
- (b) Subsection (a)(2) of this section shall not apply to a form of application for financial assistance prescribed for the use of a lender regulated as a mortgagee under the National Housing Act, as amended, being 12 U.S.C. 1701 to 1750(g), as amended, or by a regulation board or officer acting under the statutory authority of the state or the United States.
- (c) Nothing in this Chapter shall be deemed to prohibit an owner or lender, or his agent, from requiring that an applicant who seeks to buy, rent, lease or obtain financial assistance for housing accommodations supply information concerning the applicant's financial, business or employment status or other information designed solely to determine the applicant's credit worthiness, but not for reasons contrary to the provisions or purposes of this Chapter.

Sec. 66-44. Unlawful representations to induce transaction.

It shall be unlawful for a person, for the purpose of inducing a real estate transaction from which he may benefit financially, to represent that a change has occurred or will or may occur in the composition of an area with respect to the source of income, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law, of the owners or occupants in the block, neighborhood or area in which the real property is located, or to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools in the block, neighborhood or area in which the real property is located.

Sec. 66-45. Property offered to public.

Nothing in this Chapter shall require an owner to offer property to the public at large before selling or renting it, nor shall this Chapter be deemed to prohibit owners from giving preference to prospective tenants or buyers for any reason other than source of income, religion, race, color, sex, marital status, age, national origin, handicap, sexual orientation or any other protected classification specified by state or federal law.

Sec. 66-46. Related prohibitions.

- (a) No person shall provide false or substantially misleading information to any authorized person investigating a complaint regarding a violation of this Chapter, or sign a complaint for a violation of this Chapter based upon false or substantially misleading information.

- (b) No person shall coerce, threaten or retaliate against any individual or organization for making a complaint or assisting in an investigation regarding a violation or alleged violation of this Chapter or require, request, conspire with, assist or coerce another person to retaliate against any individual or organization for making a complaint or assisting in any investigation pursuant to this Chapter.
- (c) No person shall conspire with, aid, assist, compel, coerce or request another person to discriminate in any manner prohibited by this Chapter.
- (d) No person shall attempt directly or indirectly to commit an act prohibited by this Chapter.

Sec. 66-47. Exceptions.

Notwithstanding anything contained in this Chapter, the following practices shall not be violations of this chapter.

- (1) For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to persons and clergy of the denomination involved.
- (2) To refuse to enter a contract with a minor that is not emancipated.
- (3) To provide discounts to students, minors, veterans, and senior citizens.
- (4) To refuse to rent or sell any real property to a prospective resident based upon the prospective resident's source of income if such source is not approved within fifteen (15) days of the prospective resident's submission of the request for tenancy or sale approval.

Commented [MM4]: This comes right out of Virginia's law, VA Code Ann Sec. 36-96-2 (j). The reason is that it is unfair for the landlord or seller to have to hold an apartment vacant while an applicant is trying to get approval for payment or a voucher. This provision requires the payor and the resident to act quickly.

Sec. 66-48. Penalties.

- (a) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00, plus all costs of the action. The 48th District Court may issue and enforce any judgment, writ, or order necessary to enforce this chapter.
- (b) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the prevention or correction of discrimination.

Sec. 66-49. Private actions for damages or injunctive relief.

- (a) To the extent allowed by law, a person who is the victim of discriminatory action in violation of this Chapter may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this Chapter.
- (b) As used in subsection (a), "damages" means damages for injury or loss caused by each violation of this Chapter, including reasonable attorney fees, as the law allows.
- (c) Private actions and remedies under this section may be in addition to any actions for violations which the City may take.

Sec. 66-50. Right to Renew and Relocation Assistance

(1) Applicability

This Section shall apply to all housing accommodations otherwise subject to regulation of rents or evictions pursuant to state or federal law, to the extent that such state or federal law requires "good cause" for termination or non-renewal of such tenancies, including state laws protecting senior rights, EXCEPT: premises subject to federal, state, county, or city government restrictions regarding income, age, or rent (or the practical application of these restrictions) that are in conflict with this Section.

This Section shall only apply to leases entered into, renewed, or renegotiated after the effective date of this Section.

(2) Renewal of Lease

(a) Within 90 days, a landlord must notify each tenant, in writing, whether the lease will be renewed, and must do one of the following:

(i) If the landlord offers to renew the lease, such offer must be in writing and include the parties, term, address of premises, and the rent. The landlord must present a written lease renewal to the tenants for signature within 30 days of acceptance of the offer.

(ii) If the landlord claims good cause not to renew, the landlord shall notify each tenant in writing of the grounds for the good cause.

(b) If a landlord does not make a good-faith offer to renew a written lease for each tenant before the time period specified in subsection (a) of the current lease period, the landlord will be in violation of this Chapter, unless the landlord has "good cause" to not offer renewal.

(c) Nothing prevents a landlord from increasing rental amounts at the time of renewal.

(3) Good Cause

A landlord is exempted from non-renewal of a lease for any of the following circumstances:

(a) The tenant has not accepted the renewal offer in writing within ~~the time specified in subsection (a);~~ 30 days of Landlord tendering the renewal offer;

(b) The tenants who accepted the renewal offer have not returned a signed lease to the landlord within ten days of receipt;

(c) The landlord can demonstrate a justification for not offering renewal that is in existence ~~within~~ at the time renewal is to be offered; ~~that would permit a termination of tenancy~~

~~under the Summary Proceedings Act, MCL 600.5714 or PA 348 of 1972, MCL 554.601 et seq. Landlord and Tenant Relationship.~~

Commented [MM5]: As we discussed, this standard is way too high. There may be many reasons for non-renewal which do not rise to the level of the basis to terminate a tenancy during the term of a lease.

(d) The owner seeks possession so that the owner or a member of the owner's immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building. "Immediate family" includes the owner's domestic partner or spouse, parents, grandparents, children, siblings, as well as the siblings or parents of the owner's domestic partner or spouse.; and/or

(e) The owner will not rent the premises for ~~the succeeding term~~ 6 months after lease termination or if the owner is selling the property.

(f) The owner determines that the unit is no longer habitable.

(4) Remedies

(a) Civil Infractions. A violation of Subsection (2)(b) constitutes a civil infraction punishable by a fine of not less than \$500.00.

~~(b) Private Actions. To the extent allowed by law, a tenant who has been aggrieved by a violation of Subsection (2)(b) of this Section may bring a civil action for damages against the landlord. Private actions and remedies under this Section shall be in addition to any actions for violations which the City may take. (c) The 48th District Court may issue, enforce any judgment, writ, or order necessary to enforce this Sect~~This Ordinance shall not be the basis of any legal action, nor the basis of a defense to any legal action, or to be used to require good cause in a termination of tenancy action, in the 48th District Court or in any other court.

Formatted: Superscript

(5) No Waiver

The provisions of this ordinance may not be waived by the parties to a rental agreement.

All other Sections of Chapter 66. – HUMAN RELATIONS, shall remain unaffected.

Ordained this ____ day of _____, 2023. Effective upon publication.

Therese Longe, Mayor

Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2023 and that a summary was published _____, 2023.

Alexandria D. Bingham, City Clerk

Mary Kucharek

From: Therese Longe <tlonge@bhamgov.org>
Sent: Wednesday, February 22, 2023 2:21 PM
To: Tom Markus; Jana Ecker; Mary Kucharek
Subject: Fwd: Changes to the Landlord rights and responsibilities proposals
Attachments: image001.png

----- Forwarded message -----

From: **Rex Smith - Beach** <rex.smith@beachcom.net>
Date: Wed, Feb 22, 2023, 2:11 PM
Subject: Changes to the Landlord rights and responsibilities proposals
To: tlonge@bhamgov.org <tlonge@bhamgov.org>, emclain@bhamgov.org <emclain@bhamgov.org>, cballer@bhamgov.org <cballer@bhamgov.org>, pboutros@bhamgov.org <pboutros@bhamgov.org>, ahaig@bhamgov.org <ahaig@bhamgov.org>, bhost@bhamgov.org <bhost@bhamgov.org>, kschafer@bhamgov.org <kschafer@bhamgov.org>
Cc: Rex Smith - Beach <rex.smith@beachcom.net>

To: Birmingham City Commissioners

From: Rex Smith

Re: Changes to the Landlord rights and responsibilities proposals

My name is Rex Smith and my family and I have enjoyed being Birmingham residents for over 30 years. One of the things we do is own and manage residential and commercial rentals (located outside of Birmingham.)

In the near future, the City commissioners will be considering 3 proposals that directly affect rental housing within the City of Birmingham. These are pertaining to making the "right to renew" mandatory on leases, requiring the landlord to provided "proof" of Just Cause, and making Source of Income a protected class. While these

proposals are being promoted with well intent, the reality of these changes will in many ways inhibit the landlord's ability to advocate for residents who may be directly impacted by these changes. While the ruling on these proposals will not directly affect our business as we operate outside of Birmingham, we believe that the direction will not benefit the majority of tenants and residents in our city, and we should not react to a singular issue with legislation that will affect all tenants and landlords.

- **RIGHT TO RENEW:** Is essentially removing the ability to rent an apartment on a month-to-month bases and requiring all tenants to be tied into longer term leases.
 - Currently the law requires a 30-day written notice period.
 - Adding a 90-renewal window could mean a landlord would need to wait upwards of 120 days to ask a rule breaking tenant to leave. Making it even more difficult to remove a tenant who breaks the rules, **forcing the majority rule following residents to live in negative or even hostile environments longer than necessary. It is in the financial interest to keep tenants in their space for as long as possible so if a lease is not renewed it is not done without some cause...in almost all cases. The problem is in documenting those causes.**
- **JUST CAUSE:** to provide "just cause" is difficult to define and vague enough that it will make it difficult to comply. Forcing landlords to provide evidence if they are asking a resident to leave, much of the time the rules being broken are difficult to "capture on camera" such as smoking in the privacy of your unit or verbally harassing other residents. **In one of our situations, we had one tenant harassing three other tenants and they were reluctant to press charges as they did not want to exacerbate the situation. We were able to simply deal with the issue by not renewing his lease at the end of the term.**

- **SOURCE OF INCOME:** Forces landlords to join historically optional subsidized housing programs. These programs often require contracts, mandatory inspections, extended waiting periods for occupancy, expensive administrative and legal representation to navigate to nuances of working with the government and much more. **This should be an optional program, as it was intended to be, for landlords that can expend the necessary resources to deal with the compliance issues.**

We believe there are enough rules, regulations, and economic factors to effectively control the relationship between the landlord and tenant and we should not, as a community, respond to a particular event. The vast majority of situations are handled well, expeditiously, and successfully between the landlord and tenant.

We would recommend voting no on these proposals as it will have a negative impact on the large number of tenants that might be forced to deal with situations that the landlord should be able to mitigate.

Rex Smith

office: 248.336.7812

rex.smith@beachcom.net

Cortni Matthews

From: Mary Kucharek
Sent: Tuesday, February 28, 2023 11:46 AM
To: Cortni Matthews
Subject: FW: tenants' rights
Attachments: Fair Housing - Comments & Recommended Revisions - Birmingham Fair Housing Ordinance.pdf; Fair Housing - Comments & Recommended Revisions - Birmingham Fair Housing Ordinance.docx

From: stomkowiak@fairhousingdetroit.org [mailto:stomkowiak@fairhousingdetroit.org]
Sent: Monday, February 27, 2023 6:57 PM
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: 'James Gromer' <james@gbplc.net>; 'I Matthew Miller' <matt@immillerlaw.com>; bstobin@groupfivemgt.com
Subject: RE: tenants' rights

Good evening Ms. Kucharek,

Thank you for providing in word format the draft ordinance. It is on track to be becoming a model ordinance not only for Southeastern Michigan but statewide.

Attached are our comments and proposed revisions to the draft ordinance. Notably, one of our proposed revisions would grant landlords the full range of good cause grounds for non-renewal that are available in the Section 8 addendums:

(c) The landlord can demonstrate a justification for not offering renewal that is in existence within the time renewal is to be offered that would permit a termination of tenancy under (i) the Summary Proceedings Act, MCL 600.5714, with the exception of subsection (1)(c); and/or (ii) 24 C.F.R. 247.3. For non-renewal under section 247.3, the grounds under section 247.3 for non-renewal must have been previously listed in a written lease agreement between the landlord and tenant. Additionally, for non-renewal under section 247.3, the landlord must comply with the notice provisions of 24 C.F.R. 247.4(a)-(c).

I believe the attachments address the comments that other have raised. If any items have been missed, please let me know.

I am available to attend any City Commission meetings, to the extent you believe that would be helpful.

Thanks everyone for all of your time and effort on this project.

STEVE TOMKOWIAK
Executive Director
Fair Housing Center of Metropolitan Detroit
5555 Conner St. | Suite 2244
Detroit | MI 48213-3487
313-579-FAIR (3247) x6 | Fax 313-963-4817
stomkowiak@fairhousingdetroit.org
www.fairhousingdetroit.org



Fair housing opens doors, leading to welcoming, inclusive and diverse communities.

From: James Gromer <james@gbplc.net>
Sent: Thursday, February 23, 2023 2:19 PM
To: Mary Kucharek <Mkucharek@bhlaw.us.com>; I Matthew Miller <matt@immillerlaw.com>;
stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com
Subject: RE: tenants' rights

Hi Mary:

Happy Thursday. I spoke to a landlord in who has a lot of properties in Birmingham and RO. Most of their tenants are long term tenants who choose to go month to month after the first year. He allows this without an increase (most landlords charge more for moth to month) so that the tenant can terminate at their choosing with 30 days' notice. They have a significant number of residents that are month to month for years. When we made suggested changes to the ordinance, I didn't take this scenario into account. It may make sense to have some provision that allows the parties to not renew the lease if they both so choose. Thank you in advance for your attention to this matter.

Thanks- Jim

James R. Gromer, Esq.
32500 Telegraph Rd., Ste. 100
Bingham Farms, MI 48025
248.833.0564 Direct
248-760-5142 Mobile

Gromer  Butchart
PLC

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From: James Gromer
Sent: Friday, February 17, 2023 3:18 PM
To: Mary Kucharek <Mkucharek@bhlaw.us.com>; I Matthew Miller <matt@immillerlaw.com>;
stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com
Subject: RE: tenants' rights

Hi Mary:

I hope all is well. As discussed, we made recommended changes to the ordinance. None of the changes eliminate source of income from being a protected class or eliminate the investigation of a complaint of discrimination for a non-renewal. In addition, we also made comments in the margins in an effort to explain the logic or reason for the change. Our changes do not alter the purpose of the ordinance and we know that is what was most important to the City.

Please let us know if you have any questions or clarifications to the suggested changes. We appreciate the opportunity to be heard. Thank you and have a great weekend. jim

James R. Gromer, Esq.
32500 Telegraph Rd., Ste. 100
Bingham Farms, MI 48025
248.833.0564 Direct
248-760-5142 Mobile

Gromer  Butchart
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From: Mary Kucharek <Mkucharek@bhlaw.us.com>
Sent: Friday, February 10, 2023 9:30 AM
To: James Gromer <james@gbplc.net>; I Matthew Miller <matt@immillerlaw.com>;
stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com
Subject: FW: tenants' rights


I have attached the ordinance in word for your convenience.

From: James Gromer [<mailto:james@gbplc.net>]
Sent: Thursday, February 9, 2023 4:23 PM
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: RE: tenants rights

Hi Mary:

Happy Thursday. Thanks for the time spent with us on Tuesday. I appreciated the opportunity to discuss it all. Any chance you have the draft in word format you can send me? If not, that's okay but I thought I would ask. Have a great weekend. jim

James R. Gromer, Esq.
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From: Mary Kucharek <Mkucharek@bhlaw.us.com>

Sent: Tuesday, January 31, 2023 2:50 PM

To: I Matthew Miller <matt@immillerlaw.com>; phillip.neuman@couzens.com; stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org; tmarkus@bhamgov.org; James Gromer <james@gbplc.net>; bstobin@groupfivemgt.com

Subject: RE: tenants rights

Thanks!

From: I Matthew Miller [<mailto:matt@immillerlaw.com>]

Sent: Tuesday, January 31, 2023 2:09 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>; phillip.neuman@couzens.com; stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org; tmarkus@bhamgov.org; james@gbplc.net; bstobin@groupfivemgt.com

Subject: RE: tenants rights

Mary, I copied Jim Gromer on my initial email to you. I have included Ben Tobin on this email as well, as he was the other person who spoke in the commission room. Both are copied on this email.

Thanks. I look forward to meeting you next Tuesday.

I. Matthew Miller

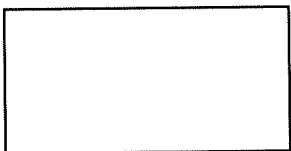
Law Offices of I. Matthew Miller, PLLC

29566 Northwestern Highway, Suite 110

Southfield, MI 48034

(248) 285-9303

matt@immillerlaw.com



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-----Original message-----

From: "Mary Kucharek" [Mkucharek@bhlaw.us.com]

Sent: Tuesday, Jan 31 2023 2:03 PM

To: phillip.neuman@couzens.com, stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org, tmarkus@bhamgov.org

Subject: tenants rights

Gentlemen,

We cannot find the email addresses of the two attorneys that spoke at the Birmingham City commission meeting re Tenant's Rights. The two that spoke in person. Apparently their cards have been misplaced. So, if any of you know them, please forward this email and please cc me.

I am looking to set up a meeting at City Hall, next Tuesday , February 7, at 4:00 p.m. to allow you the opportunity to discuss our proposed ordinance. This is the opportunity to make constructive suggestions for language in the ordinance addressing your perspectives. We are holding this meeting by invitation only, meaning those of you and the other two I refereed to, are those we are inviting to meet and discuss the ordinance . Please confirm your attendance.

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

3001 W. Big Beaver, Ste. 600

Troy, MI 48084

fax 248-645-9344

<http://bhlaw.us.com>



Good Cause Eviction/Security of Tenure Legislation

Compiled by Kate Brantley, MSW and Alexa Eisenberg, PhD, MPH

What are good cause eviction laws?

Just cause – aka “good cause” – eviction laws limit the causes for which a landlord can evict a tenant or refuse to renew a tenant’s lease when the tenant is not at fault or in violation of their lease or any law ([NLIHC](#)).

Good Cause legislation can include three core components:

- 1) Define legal causes for eviction (substantial lease violations; e.g., nonpayment, property destruction)
 - 2) Place limits on rent increases
 - 3) Expand notice provisions and/or lengthen notice periods.
- ▶ Good cause protections exist in federally subsidized housing (e.g., Section 8, LIHTC; [HUD](#) & [IRS](#) policies).
 - ▶ [MCL 600.5775](#) requires a just cause for termination of tenancy in mobile home parks.

Why do we need good cause protections?

The end of a lease term is especially precarious for low-income tenants. Landlords are not required to provide a reason for evicting a tenant at the end of a lease or those with informal leases (i.e., month-to-month tenancies, [MCL 600.5714\(1\)\(c\)\(ii\)](#) and [\(iii\)](#)). Landlords who are unable to evict a tenant during their lease term may choose not to renew the tenant’s lease and use the lease holdover as grounds for eviction. A tenant at the end of their lease is also at risk for unreasonable rental increases.

In Detroit, no-cause evictions are on the rise and provide a legal loophole that weakens tenant protections.

- ▶ The share of evictions filed for termination of tenancy increased 70% after the CERA program began, leaving 1 in 3 tenants who faced eviction in 2022 without protection. Termination cases were 2x more likely than nonpayment cases to end in a judgment ([UM Poverty Solutions](#)).
- ▶ Termination cases are not covered under the eviction protection clause of Detroit’s rental ordinance; the court does not enforce code compliance in termination cases ([Bridge Detroit](#)).
- ▶ No right to counsel and the high rate of default judgments mean that instances of retaliatory termination of tenancy ([MCL 600.5720](#)) against tenants and organizers go unchecked ([Outlier](#), [Michigan Radio](#)).

What are the benefits of good cause?

Good cause laws stabilize housing by preventing arbitrary and retaliatory no-fault evictions; tenants may also be less likely to “self-evict” when facing a baseless eviction notice. The strongest policies protect tenants against unreasonable rent hikes (i.e., de facto eviction) and preserve affordability. By stabilizing renters and reducing the fear of landlord retaliation, good cause can empower tenants experiencing poor conditions, discrimination, or harassment to assert and advocate for their rights. Because eviction disproportionately harms low-income tenants and people of color, good cause laws are a tool for preserving social and economic diversity and addressing systemic racism in housing ([CCSNY](#), [Pratt Center](#)).

What evidence exists on good cause?

Evidence on the effectiveness of good cause is limited, due to the small number of jurisdictions with such laws. One recent study examined the effects of good cause eviction laws on in four California cities where such laws were implemented, finding a “statistically significant, large, and negative” difference between eviction and eviction filing rates before and after the passage of just cause eviction ordinances in the four treatment cities, compared to matched control cities ([Cueller, 2019](#)). A robust body of literature documents eviction’s many harmful effects and disparate impact on renters of color ([Hepburn et al., 2020](#)), showing that eviction disrupts children’s education, precipitates job loss and homelessness, leads to overcrowded, poorer quality housing, and harms health ([Desmond et al., 2015, 2016](#); [Health Affairs](#)).

Opponents argue that good cause laws reduce new construction or lead to landlord disinvestment, though we know of no clear evidence to support these claims. Market-oriented rationales can obscure the many social and

economic benefits of good cause that have been documented in case studies of jurisdictions where such laws exist ([Urban Habitat](#), [Pratt Center](#)). Advocates contend that good cause policies adjust to account for the cost of new housing and rising operating costs, and that tenant protections help prevent—not cause—landlord neglect.

Some studies find that risk for eviction is lower in federally subsidized multifamily housing compared to similar unsubsidized housing, but this varies by subsidy program; in particular, eviction rates in LIHTC properties are on par with those in comparable market-rate properties ([Harrison et al., 2021](#); [Preston & Reina, 2021](#)). LIHTC properties are more likely to file termination evictions, and some projects (particularly those owned by for-profit firms) account for a disproportionate share of evictions ([Teresa & Howell, 2021](#)). The IRS good cause requirement for LIHTC is not as clearly stated in statute as HUD's policy, and states differ in how meaningfully they communicate and enforce federal good cause requirements in subsidized properties ([NHLHP](#)). This implies that the legal and implementation context of good cause matters, and that such protections, even when paired with property-based subsidies like LIHTC, are insufficient for stabilizing housing for low income households.

What are the potential limitations and loopholes?

- ▶ Strong policies limit the number of “good” causes identified; with too many acceptable reasons to evict, good cause can be abused and will fail to adequately prevent displacement.
 - ▶ Policies often permit eviction for “owner move-in” or “personal use”; this has proven to be a significant loophole in cities with good cause ([East Bay Express](#)).
 - ▶ Some policies permit eviction for unit repairs and renovations ([NLIHC](#)); without oversight to ensure that landlords are making these repairs, this cause might be exploited without improving housing quality.
 - ▶ “Illegal drug activity” as a good cause for eviction can incentivize police involvement ([Shriver Center](#)).
- ▶ Universal policies protect the most tenants and are easiest to communicate and implement, but policies frequently contain exceptions (e.g., income and tenure restrictions, exclusions for properties with few units).
- ▶ Non-renewal of tenancy is sometimes excluded from good cause ordinances. Strong policies include non-renewal and protect tenants with informal (i.e., month-to-month) lease agreements.
- ▶ Some laws allow eviction without cause if landlords pay tenants’ relocation fees (or otherwise compensate them) (e.g., [Portland, OR](#)). Others require compensation for specific good causes (e.g., CA requires compensation for evictions due to personal use, substantial renovations, or condo conversion) ([NLIHC](#)).

What companion policies strengthen good cause?

- ▶ The strongest good cause protections exist in conjunction with rent controls ([Urban Habitat](#)).
- ▶ Right to counsel laws strengthen good cause adherence and enforcement (challenge violations in court).
- ▶ Right to organize protections; amending the retaliatory defense [MCL 600.5720](#) to cover expired leases.
- ▶ Longer pre-filing notice requirements.
- ▶ Funding for eviction diversion programs and mediation services to keep disputes out of court.
- ▶ Permanent funding for deeply affordable low-income rental housing with lengthy affordable use restrictions.

Good cause legislation at the state level

Five US states have implemented good cause legislation:

- ▶ New Jersey, 1974 ([N.J. Stat. § 2A:18-61.1](#)): Applies to lease non-renewal; although the state is home to many local [rent control policies](#), these are separate from good cause.
- ▶ New Hampshire, 2010 ([NH Rev Stat § 540:2](#)): Applies to lease non-renewal; good cause includes “economic or business reasons”; state law preempts rent control.
- ▶ Oregon, 2019 ([SB608](#)): Applies to lease non-renewal; only covers tenants after 12 months of tenure; exempts landlords with few units; limits annual rent increases.
- ▶ California, 2019 ([AB1482](#)): Applies to lease non-renewal; only covers rental units older than 15 years and tenants after 12 months of tenure; law differentiates between “at-fault” and “no-fault” reasons, requiring relocation assistance for “no-fault” evictions; limits annual rent increases.

- ▶ Washington State, 2021 (HB1236): Applies to lease non-renewal; coverage is dependent on lease term; some month-to-month tenants are covered; rent control is preempted by state law.

Birmingham City Code, Part II, Chapter 66
Human Relations, Article II. Discrimination, Division 2. Fair Housing

Proposed Birmingham City Code, Part II, Chapter 66 Human Relations, Article II. Discrimination, Division 2. Fair Housing	IMMBSTJRG2 Proposed Revisions	Fair Housing Center's Position	Notes/Comments
Sec. 66-37. Definitions ... Source of income, as used in this Chapter, refers to any lawful source of money paid directly to a person or family or indirectly on behalf of a person or family, including, but not limited to: (1) Money derived from any lawful profession or occupation; (2) Money derived from any contract, agreement, loan, or settlement; from any court order, such as court-ordered child support or alimony; from any gift or bequest; or from any annuity or life insurance policy; and (3) Money derived from any benefit or subsidy program, including, but not limited to, any housing assistance, such as Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) Vouchers, or any other form of housing assistance payment or credit whether or not paid or attributed directly to a landlord; public assistance; emergency rental assistance; veterans benefit;	Sec. 66-37. Definitions ... Source of income, as used in this Chapter, refers to any lawful source of money paid directly to a person or family or indirectly on behalf of a person or family, including, and that is not a one time payment or lump sum, but not limited to: Money derived from any lawful profession or occupation; Money derived from any court order, such as court-ordered child support or alimony; or from any annuity or life insurance policy; and Money derived from any benefit or subsidy program, including, but not limited to, any housing assistance, such as Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) Vouchers, or any other form of housing assistance payment or credit whether or not paid or attributed directly to a landlord; public assistance; veterans benefit; Social Security or other	No change is needed to the definition of "Source of income," with the exception of the additional sentence: Any monthly housing assistance administered by any federal, state, or local agency or nonprofit entity shall be treated as income in the amount of 3x the value of that monthly rental assistance.	If an applicant receives one-time rental assistance (job loss, temporary disability, etc.), the housing provider can evaluate the application in the same way that other applications would be evaluated. As to existing tenants receiving emergency rental assistance, the tenancy should continue. Should the tenant, following emergency rental assistance fail to make required rent payments, the landlord may simply file a demand for possession for nonpayment of rent. There is no reason to exclude lawful income from any contract, agreement, loan, settlement, gift or bequest. For example, persons with disabilities may need financial assistance or a co-signer to obtain or retain rental housing. <i>Giebel v M & B Associates, Ltd.</i> , 343 F.3d 1143 (9th Cir. 2003).

Deleted: any contract, agreement, loan, or settlement; from

Deleted: from any gift or bequest

Deleted: ; emergency rental assistance

Social Security or other retirement program; supplemental security income; VA and FHA loans, and any other program administered by any federal, state, or local agency or nonprofit entity.	retirement program; supplemental security income; VA and FHA loans, and any other program administered by any federal, state, or local agency or nonprofit entity.	From a policy standpoint, the proposed revision exempts the low income and disabled persons the ordinance revision is intended to protect.
<p>Sec. 66-38. Enforcement.</p> <p>Any person claiming a violation of this Chapter shall make a written complaint to the City Manager or his designee, setting forth the details, including location of property, witnesses and other factual matter. All such complaints shall be verified by the claimant. Such complaints shall be filed with the City Manager's office within 120 days after the alleged commission of the offense.</p>	<p>Sec. 66-38. Enforcement.</p> <p>(a) Any person claiming a violation of this Chapter shall make a written complaint to the City Manager or his designee, setting forth the details, including location of property, names, dates, witnesses and other factual matter. All such complaints shall be verified by the claimant. The complaint shall be filed within 180 days from the date of the occurrence of the alleged discrimination, or within 180 days of the date when the occurrence of the alleged discrimination was or should have been discovered. If the alleged discrimination is of a continuing nature, the date of the occurrence of the discrimination shall be deemed to be any date subsequent to the commencement of the discrimination up to and including the date upon which the discrimination shall have ceased.").</p> <p>(b) The City Manager or designee may also initiate complaints upon a suspected violation of this Article.</p>	<p>Consistent with Michigan Civil Rights Commission Admin. Rule 37.4(6)(*)The complaint shall be filed within 180 days from the date of the occurrence of the alleged discrimination, or within 180 days of the date when the occurrence of the alleged discrimination was or should have been discovered. If the alleged discrimination is of a continuing nature, the date of the occurrence of the discrimination shall be deemed to be any date subsequent to the commencement of the discrimination up to and including the date upon which the discrimination shall have ceased.").</p> <p>This is similar to fair housing provision, which grant an agency the right to initiate a complaint and</p>

<p>conduct its own investigation. 42 U.S.C. 3602(i) ("Complainant" means the person (including the Secretary) who files a complainant under section 810."); MCL 37.2602(c).</p>		
<p>This is model language from the <u>Fair Housing Center's website</u>.</p>	<p>(c) Upon receipt, the City Manager or designee will review the complaint, provide a copy of the complaint to the City Attorney, communicate with the complainant, and take appropriate action with respect to the matter, including, but not limited to:</p>	
	<p>A. Referring the complainant to other local, state or federal entities for investigation and remedy.</p>	
	<p>B. Informally conciliating the matter between the involved parties, with the conciliation agreement set forth in writing. The City Attorney may review all such agreement prior to execution.</p>	
	<p>C. Referring the complaint to the City Attorney for further investigation and action pursuant to this Article.</p>	
	<p>D. Informing the complainant of the availability of a private action, pursuant to Section Sec. 66-50(c) and of the remedies and deadline for commencing a private action.</p>	

D. Dismissing the complaint, after review with the City Attorney, if the allegations do not constitute a violation of this Article.

(d) The City Manager or designee will take action on the complaint within 90 days of receipt of the complaint. If additional time is necessary, the City Manager or designee will notify the complainant of the need for additional time. All communications with the complainant regarding actions taken or additional time necessary will be in writing, with a copy to the City Attorney.

(e) The City Manager or designee will notify the City Attorney in writing of actions taken by the City Manager or designee on complaints.

(f) All complaints received by the City Manager or designee and responses will be retained by the City Manager or designee for at least 3 years.

(g) The City Manager or designee will provide an annual report to City Commissioners regarding the complaints received and actions taken.

(h) No person shall provide false information to any authorized person investigating a complaint regarding a violation of this chapter.

(i) For an investigation, the City Manager or designee may request a

		person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this chapter. If said person does not comply with such request, the City Attorney may apply to the Oakland County Circuit Court for an order requiring production of said materials.	
Sec. 66-47. Exceptions. Notwithstanding anything contained in this Chapter, the following practices shall not be violations of this chapter. (1) For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to persons and clergy of the denomination involved. (2) To refuse to enter a contract with a minor that is not emancipated. (3) To provide discounts to students, minors, veterans, and senior citizens.	Sec. 66-47. Exceptions. Notwithstanding anything contained in this Chapter, the following practices shall not be violations of this chapter. (1) For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to persons and clergy of the denomination involved. (2) To refuse to enter a contract with a minor that is not emancipated. (3) To provide discounts to students, minors, veterans, and senior citizens.		
	(4) To refuse to rent or sell any real property to a prospective resident based upon the prospective resident's source of income if such source is not approved within fifteen (15) days of the	Oppose the addition of subparagraph (4) and propose that this provision be left in its current form.	Do not add subparagraph (4). The delay in providing proof of income needed for rental warranting the denial of a rental application can be

	prospective resident's submission of the request for tenancy or sale approval.		addressed on a case-by-case basis, depending upon the particular facts. Further, approval of FHA or VA financing requests will typically take longer than 15 days. Such requirements are typically included in the purchase agreements between buyers and sellers.
Sec. 66-50. Right to Renew and Relocation Assistance	Sec. 66-50. Right to Renew and Relocation Assistance		
(2) Renewal of Lease	(2) Renewal of Lease		
(a) Within 90 days, a landlord must notify each tenant, in writing, whether the lease will be renewed, and must do one of the following:	(a) Within 90 days, a landlord must notify each tenant, in writing, whether the lease will be renewed, and must do one of the following:		
(i) If the landlord offers to renew the lease, such offer must be in writing and include the parties, term, address of premises, and the rent. The landlord must present a written lease renewal to the tenants for signature within 30 days of acceptance of the offer.	(i) If the landlord offers to renew the lease, such offer must be in writing and include the parties, term, address of premises, and the rent. The landlord must present a written lease renewal to the tenants for signature within 30 days of acceptance of the offer.		
(ii) If the landlord claims good cause not to renew, the landlord shall notify each tenant in writing of the grounds for the good cause.	(ii) If the landlord claims good cause not to renew, the landlord shall notify each tenant in writing of the grounds for the good cause.		
(b) If a landlord does not make a good-faith offer to renew a written lease for each tenant before the time period specified in subsection (a) of the current	(b) If a landlord does not make a good-faith offer to renew a written lease for each tenant before the time period specified in subsection (a) of the current		

lease period, the landlord will be in violation of this Chapter, unless the landlord has "good cause" to not offer renewal.	lease period, the landlord will be in violation of this Chapter, unless the landlord has "good cause" to not offer renewal.	<p>Oppose the addition of subparagraph (2)(c) and leave this section in its current form.</p> <p>If (2)(c) were to be added, for the reasons set forth in the Michigan Residential Landlord-Tenant Benchmark (and cited statutes), we proposed the following language:</p> <p>(c) Nothing prevents a landlord from increasing rental amounts at the time of renewal, provided that the landlord does not charge a rent which is grossly in excess of rents for similar houses or apartments.</p>	<p>The Michigan Residential Landlord-Tenant Benchmark, p. 1-29 (2022), states:</p> <p>1.6 RentIncreases</p> <p>As a general rule, there is no limitation upon the amount of rent that a landlord may charge, except that a landlord may not charge a rent "which is grossly in excess of" rents for similar houses or apartments. MCL 445.903(1)(z) (Consumer Protection Act). See also MCL 554.633(1)(m); MCL 554.633(3) (Truth in Renting Act's prohibition against violating the Consumer Protection Act). However, all local governments in Michigan are prohibited from enacting, maintaining, or enforcing local rent control ordinances or resolutions regarding private residential property, unless the local government has an interest in the property. MCL 123.411(2)-(3).</p>
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Sec. 66-50. Right to Renew and Relocation Assistance.	Sec. 66-50. Right to Renew and Relocation Assistance.	
...	...	
(3) Good Cause	(3) Good Cause	
A landlord is exempted from non-renewal of a lease for any of the following circumstances:	A landlord is exempted from non-renewal of a lease for any of the following circumstances:	
(a) The tenant has not accepted the renewal offer in writing within the time specified in subsection (a).	(a) The tenant has not accepted the renewal offer in writing within 30 days of <u>landlord tendering the renewal offer.</u>	No objection to (a) as revised.
(b) The tenants who accepted the renewal offer have not returned a signed lease to the landlord within ten days of receipt.	(b) The tenants who accepted the renewal offer have not returned a signed lease to the landlord within ten days of receipt.	

Deleted: the time specified in subsection (a).

Deleted: .

<p>(c) The landlord can demonstrate a justification for not offering renewal that is in existence within the time renewal is to be offered, that would permit a termination of tenancy under the Summary Proceedings Act, MCL 600.5714 or PA 348 of 1972, MCL 554.601 et seq. Landlord and Tenant Relationship.</p>	<p>(c) The landlord can demonstrate a justification for not offering renewal that is in existence at the time renewal is to be offered.</p>	<p>Object to proposed revision to (c). We suggest the following revision to (c):</p>	<p>Citation to the Michigan Landlord and Tenants Relationships, MCL 554.601 - 554.616, should be removed. It sets forth grounds by which a tenant may terminate a tenancy; it does not set forth grounds for non-renewal of a tenancy.</p> <p>MCL 600.5714(1)(c) should be excluded as it provides for termination of tenancy without cause.</p> <p>24 C.F.R. 247.3 lists the good cause for termination in the HUD addendum to Section 8 lease agreements. Notice provisions are set forth in 24 C.F.R. 247.4.</p>	<p>Deleted: within</p> <p>Deleted: that would permit a termination of tenancy under the Summary Proceedings Act, MCL 600.5714 or PA 348 of 1972, MCL 554.601 et seq. Landlord and Tenant Relationship.</p>
<p>(d) The owner seeks possession so that the owner or a member of the owner's immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building. "Immediate family" includes the owner's domestic partner or spouse, parents, grandparents, children, siblings, as well as the siblings or parents of the owner's domestic partner or spouse.</p>	<p>(d) The owner seeks possession so that the owner or a member of the owner's immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building. "Immediate family" includes the owner's domestic partner or spouse, parents, grandparents, children, siblings, as well as the siblings or parents of the owner's domestic partner or spouse; and/or</p> <p>(e) The owner will not rent the premises for 6 months after lease termination or if the owner is selling the property.</p>	<p>No objection.</p>		<p>Deleted: the succeeding term.</p> <p>Deleted:</p>

<p>(e) The owner will not rent the premises for the succeeding term.</p>	<p>(f) The owner determines that the unit is no longer habitable.</p>	<p>(e) The owner will not rent the premises for 6 months after lease termination or if the owner is selling the property. Evidence that the landlord within 6 months has rented the premises or has not proceeded within 6 months in selling the property shall result in a presumption of the landlord's violation of this Article.</p> <p>Oppose the addition of subsection(f).</p>	<p>Suggest alternative language as to (e).</p> <p>Proposed subsection (f) conflicts with the landlord's statutory habitability requirement under MCL 554.139. See also Michigan Residential Landlord-Tenant Benchmark, pp. 2-20 to 2-26; MCL 600.5741; MCL 125.534(5); <i>Anchor Inn of Mich, Inc v Kropman</i>, 71 Mich App 64, 67 (1976).</p>
<p>Sec. 66-50. Right to Renew and Relocation Assistance.</p> <p>...</p> <p>(4) Remedies</p> <p>(a) Civil Infractions. A violation of Subsection (2)(b) constitutes a civil infraction punishable by a fine of not less than \$500.00.</p>	<p>Sec. 66-50. Right to Renew and Relocation Assistance.</p> <p>...</p> <p>(4) Remedies</p> <p>(a) Civil Infractions. A violation of Subsection (2)(b) constitutes a civil infraction punishable by a fine of not less than \$500.00. The 48th District Court has jurisdiction over a civil infraction action.</p>	<p>Sec. 66-50. Right to Renew and Relocation Assistance.</p> <p>...</p> <p>(4) Remedies</p> <p>(a) Civil Infractions. A violation of Subsection (2)(b) constitutes a civil infraction punishable by a fine of not less than \$500.00. The 48th District Court has jurisdiction over civil infraction actions.</p>	

(b) Private Actions. To the extent allowed by law, a tenant who has been aggrieved by a violation of Subsection (2)(b) of this Section may bring a civil action for damages against the landlord. Private actions and remedies under this Section shall be in addition to any actions for violations which the City may take.

(b) This Ordinance shall not be the basis of any legal action, nor the basis of a defense to any legal action, or to be used to require good cause in a termination of tenancy action, in the 48th District Court or in any other court.

(c) Private actions for damages or injunctive relief.
 (1) To the extent allowed by law, person who is the victim of discriminatory action in violation of this Article may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this chapter.
 (2) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this chapter, including actual damages and compensatory, emotional distress damages, and reasonable attorney fees.
 (3) Private actions and remedies under this section shall be in addition to any actions for violations which the City Manager or designee or City Attorney may take.
 (4) The Oakland County Circuit Court shall have jurisdiction over all private actions under this Article for injunctive relief, damages, or both.

(b) Breach of a Conciliation Agreement. The Oakland County Circuit Court shall have jurisdiction in any action filed by the City to enforce a conciliation agreement entered into under this Article.

Grants enforcement authority to the City Attorney, similar to fair housing proceedings. 42 USC 3610(c) & 3614(b)(2).

The draft language in this section is recommended by the Poverty & Race Research Action Council. See Crafting a Strong and Effective Source of Income Discrimination Law (PRRAC, March 2020)

Deleted: Private Actions. To the extent allowed by law, a tenant who has been aggrieved by a violation of Subsection (2)(b) of this Section may bring a civil action for damages against the landlord. Private actions and remedies under this Section shall be in addition to any actions for violations which the City may take. (c) The 48th District Court may issue, enforce any judgment, writ, or order necessary to enforce this Sect

Claims or counterclaims of discrimination under the Persons with Disabilities Civil Rights Act or the Elliott-Larsen Civil Rights Act must be removed from district court to circuit court because circuit courts

	<p>(5) A private action must be brought within 1 year from the date of the occurrence of the alleged discrimination or within 180 days of the date when the occurrence of the alleged discrimination was or should have been discovered, whichever is later. Any private action to enforce a conciliation agreement must be filed within 180 days of the violation or breach of the conciliation agreement.</p>	<p>have exclusive jurisdiction over such claims. MCL 37.1606(2); MCL 37.2801(2). See also Reynolds v Robert Hasbany MD PLLC, 323 Mich App 426, 433-434 (2018) (holding that MCL 37.2801(2) "takes precedence over the general jurisdictional grant set forth in MCL 600.8301[of the Revised Judicature Act]," and "provides for exclusive circuit court jurisdiction, regardless of the amount in controversy". Residential Landlord-Tenant Law Benchmark, at pp. 4-35 to 4-36 (Mich. Judicial Inst. 2000).</p> <p>The Oakland County Circuit Court likewise should have jurisdiction over private actions under this Article.</p>
<p>(c) The 48th District Court may issue, enforce any judgment, writ, or order necessary to enforce this Section.</p>	<p>(e) The 48th District Court may issue, enforce any judgment, writ, or order necessary to enforce this Section.</p>	<p>Deleted as it is addressed above.</p>

Mary Kucharek

From: Therese Longe <tlonge@bhamgov.org>
Sent: Wednesday, March 1, 2023 8:44 AM
To: Mary Kucharek
Cc: Tom Markus
Subject: Fwd: Proposed Right-To-Renew ordinance
Attachments: Letter to Mayor Longe.docx

Have you engaged with this group yet?

----- Forwarded message -----

From: Jack Beneicke <Jack@bgcommunities.com>
Date: Wed, Mar 1, 2023, 8:33 AM
Subject: Proposed Right-To-Renew ordinance
To: tlonge@bhamgov.org <tlonge@bhamgov.org>

Dear Mayor Longe,

I am part of a family business called the Beneicke Group who has provided rental housing in the City of Birmingham for the last 75 years. We built and developed three different apartment communities in Birmingham which we have continuously owned and managed since their inception. All three are well maintained desirable residences with 70 responsible citizens of the City of Birmingham. We also own rental communities in several other suburban communities. I have recently had the opportunity to review changes proposed for Chapter 66 – Human Relations, Sec. 66-50 Right to Renew and Relocation Assistance. It appears the proposed changes that will be require landlords to offer every tenant a new lease within 90 days of their lease expiring or if the landlord chooses to not renew the tenant must be notified within the same time period of the “Good Cause” reason for non-renewing. This is a dramatic departure from the long-standing legal right of a landlord to choose not to renew a lease granted by the Michigan Legislature and upheld in courts. After reviewing the exemptions for non-renewal, it appears that the city is contemplating adopting the definition of “Good Cause” to be the standard a landlord would have to reach to pursue a summary proceeding for eviction. This standard is usually only applied when a landlord wishes to recover possession of a rental prior to the expiration of the current lease and is a very high standard to meet. While the standard is easier to meet for simple non-payment of rent, it is incredibly difficult to meet for other transgressions. Due to the difficulty in meeting this standard, from time to time we exercise our rights to recover a rental property at the end of a lease without going through summary proceedings. It is not something we take lightly and is a last resort for us for as it is our goal to keep all apartments fully occupied. Turnover is very expensive for landlords, in addition to lost rent the turnover expenses of painting, cleaning, new flooring and so on are substantial.

The following are a few examples of instances for which we have exercised this right in the last few years.

We had a tenant in another local that was openly using heroin in the common areas of a complex. They were also aggressive towards other tenants and physically intimidated their neighbors. Although we received numerous complaints, neighbors were unwilling to provide a written statement or testify in court due

to fears of retaliation. The local law enforcement has/had a policy to not cite for drug use and refused to respond. Without a police report and testimony from neighbors we had insufficient evidence to seek an eviction.

One of our tenants, again in another local was soliciting prostitutes, taking them back to his rental, not paying them, and forcibly removing them from his rental. The prostitutes would proceed to bang on his door as well as those of his neighbors in the middle of the night, yelling profanities, and generally causing a disturbance. Some would linger around the property the next day and confront other residents to tell them what their neighbor had done. This happened more than once. Despite numerous complaints from his neighbors, all the complaining neighbors refused to issue a written statement or provide testimony leaving us with little tangible evidence to pursue an eviction.

We currently have a tenant here in Birmingham who is under a lease and over the last nine months has not paid rent until we have started eviction proceedings. We are currently in the process of our third eviction proceeding since May 2022. Each time the tenant does not pay rent until the last day before the writ of restitution (the final order from court to commence with the physical eviction) is issued. It usually takes two to three months to get to that point. Every eviction cost \$1375 in legal fees but we are statutorily allowed to only collect \$75 from the tenant. In the last 9 months we have collected \$8,120.00 in rent but had to pay \$4,125.00 in attorney's fees. As long as the tenant keeps paying on the last day before the writ of restitution is issued we fail to meet the standard you are contemplating. We hope you can see the plight of a landlord stuck in this situation, particularly a small landlord with only one or two rentals would be greatly harmed without any recourse to choose not to renew and recover possession.

We had a resident that started to accost new residents moving in and question their racial makeup, and make negative comments to them about "neighbors to watch out for" based on their race. Although the affected tenants called us to complain, again they were unwilling to testify against the offending tenant. Without first hand testimony it is incredibly hard to prevail in court in a situation like this. Seeking to recover the rental at the end of the lease is the best and safest course of action, particularly for the victimized tenants.

Upon reading the draft ordinance it appears that we would fall short of meeting the standard needed to prevail in a summary proceeding for eviction for each of these examples, but I believe that we are entirely justified in seeking to recover possession of the rental property. This is a last resort we reserve to protect our property and the other residents in our community who are entitled to quiet and safe enjoyment of their property. It is not a step we take lightly as explained before. I hope you can see from our experiences as a landlord how important it is for a landlord to be able to exercise their rights and how onerous this proposed ordinance would be.

I have more experiences I can share with you if you have any questions and I greatly encourage you to engage with me and my fellow Birmingham landlords to better understand how this ordinance would negatively affect us, the upstanding residents living in our rental communities, and other residents of Birmingham living nearby. I urge you to either vote no on this amendment or reduce the standard that a landlord must meet to comply.

Sincerely,

John J. Beneicke

Beneicke Group Inc

33477 Woodward Ave Suite 700.

Birmingham MI 48009

O. 248-642-8686

C. 517-204-8618

Mary Kucharek

From: Benjamin Tobin <bstobin@groupfivemgt.com>
Sent: Thursday, March 2, 2023 11:27 AM
To: Mary Kucharek
Subject: Re: tenants' rights

Mary,

Another great resource, if you're looking for one, is Jenni Scheid at Swistak & Levine. She worked for Fair Housing (and I believe MDCR) for many years and is now a Landlord attorney. She typically has a unique perspective and the ability to view Fair Housing and other discriminatory issues through both lenses. If you would like to speak with her, I would be happy to make the introduction.

Best,



GROUP FIVE
MANAGEMENT

Benjamin Tobin
Corporate Counsel
Phone: (248) 474-9500
Email: bstobin@groupfivemgt.com
31151 West 10 Mile Rd. Farmington Hills, MI 48336

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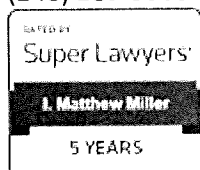
From: Mary Kucharek <Mkucharek@bhlaw.us.com>
Date: Thursday, March 2, 2023 at 11:08 AM
To: I. Matthew Miller <matt@immillerlaw.com>
Cc: James Gromer <james@gbplc.net>, Benjamin Tobin <bstobin@groupfivemgt.com>
Subject: RE: tenants' rights

You don't often get email from mkucharek@bhlaw.us.com. [Learn why this is important](#)
I understand your position.

From: I. Matthew Miller [mailto:matt@immillerlaw.com]
Sent: Thursday, March 2, 2023 10:00 AM
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: James Gromer <james@gbplc.net>; bstobin@groupfivemgt.com
Subject: RE: tenants' rights

Ms. Kucharek, Mr. Tomkowiak represents residents who rent apartments. I would suggest taking with a grain of salt anything that he proposes which he suggests would be beneficial in any way to landlords, as they are not.

I. Matthew Miller
Law Offices of I. Matthew Miller, PLLC
29566 Northwestern Highway, Suite 110
Southfield, MI 48034
matt@immillerlaw.com
(248) 285-9303



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From: stomkowiak@fairhousingdetroit.org
Sent: Monday, February 27, 2023 6:57 PM
To: Mary Kucharek
Cc: James Gromer; I Matthew Miller; bstobin@groupfivemgt.com
Subject: RE: tenants' rights

Good evening Ms. Kucharek,

Thank you for providing in word format the draft ordinance. It is on track to be becoming a model ordinance not only for Southeastern Michigan but statewide.

Attached are our comments and proposed revisions to the draft ordinance. Notably, one of our proposed revisions would grant landlords the full range of good cause grounds for non-renewal that are available in the Section 8 addendums:

(c) The landlord can demonstrate a justification for not offering renewal that is in existence within the time renewal is to be offered that would permit a termination of tenancy under (i) the Summary Proceedings Act, MCL 600.5714, with the exception of subsection (1)(c); and/or (ii) 24 C.F.R. 247.3. For non-renewal under section 247.3, the grounds under section 247.3 for non-renewal must have been previously listed in a written lease agreement between the landlord and tenant. Additionally, for non-renewal under section 247.3, the landlord must comply with the notice provisions of 24 C.F.R. 247.4(a)-(c).

I believe the attachments address the comments that other have raised. If any items have been missed, please let me know.

I am available to attend any City Commission meetings, to the extent you believe that would be helpful.

Thanks everyone for all of your time and effort on this project.

STEVE TOMKOWIAK

Executive Director

Fair Housing Center of Metropolitan Detroit

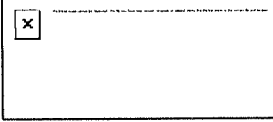
5555 Conner St. | Suite 2244

Detroit | MI 48213-3487

313-579-FAIR (3247) x6 | Fax 313-963-4817

stomkowiak@fairhousingdetroit.org

www.fairhousingdetroit.org



Fair housing opens doors, leading to welcoming, inclusive and diverse communities.

From: James Gromer <james@gbplc.net>

Sent: Thursday, February 23, 2023 2:19 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>; I Matthew Miller <matt@immillerlaw.com>;
stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com

Subject: RE: tenants' rights

Hi Mary:

Happy Thursday. I spoke to a landlord in who has a lot of properties in Birmingham and RO. Most of their tenants are long term tenants who choose to go month to month after the first year. He allows this without an increase (most landlords charge more for moth to month) so that the tenant can terminate at their choosing with 30 days' notice. They have a significant number of residents that are month to month for years. When we made suggested changes to the ordinance, I didn't take this scenario into account. It may make sense to have some provision that allows the parties to not renew the lease if they both so choose. Thank you in advance for your attention to this matter.

Thanks- Jim

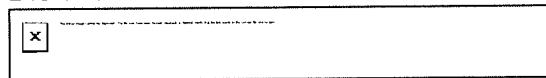
James R. Gromer, Esq.

32500 Telegraph Rd., Ste. 100

Bingham Farms, MI 48025

248.833.0564 Direct

248-760-5142 Mobile



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From: James Gromer

Sent: Friday, February 17, 2023 3:18 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>; I Matthew Miller <matt@immillerlaw.com>; stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com

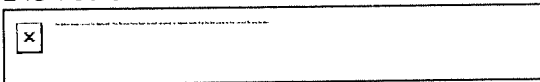
Subject: RE: tenants' rights

Hi Mary:

I hope all is well. As discussed, we made recommended changes to the ordinance. None of the changes eliminate source of income from being a protected class or eliminate the investigation of a complaint of discrimination for a non-renewal. In addition, we also made comments in the margins in an effort to explain the logic or reason for the change. Our changes do not alter the purpose of the ordinance and we know that is what was most important to the City.

Please let us know if you have any questions or clarifications to the suggested changes. We appreciate the opportunity to be heard. Thank you and have a great weekend. jim

James R. Gromer, Esq.
32500 Telegraph Rd., Ste. 100
Bingham Farms, MI 48025
248.833.0564 Direct
248-760-5142 Mobile



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From: Mary Kucharek <Mkucharek@bhlaw.us.com>

Sent: Friday, February 10, 2023 9:30 AM

To: James Gromer <james@gbplc.net>; I Matthew Miller <matt@immillerlaw.com>; stomkowiak@fairhousingdetroit.org; bstobin@groupfivemgt.com

Subject: FW: tenants' rights

I have attached the ordinance in word for your convenience.

From: James Gromer [<mailto:james@gbplc.net>]

Sent: Thursday, February 9, 2023 4:23 PM

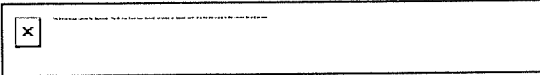
To: Mary Kucharek <Mkucharek@bhlaw.us.com>

Subject: RE: tenants rights

Hi Mary:

Happy Thursday. Thanks for the time spent with us on Tuesday. I appreciated the opportunity to discuss it all. Any chance you have the draft in word format you can send me? If not, that's okay but I thought I would ask. Have a great weekend. jim

James R. Gromer, Esq.
32500 Telegraph Rd., Ste. 100
Bingham Farms, MI 48025
248.833.0564 Direct
248-760-5142 Mobile



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From: Mary Kucharek <Mkucharek@bhlaw.us.com>

Sent: Tuesday, January 31, 2023 2:50 PM

To: I Matthew Miller <matt@immillerlaw.com>; phillip.neuman@couzens.com; stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org; tmarkus@bhamgov.org; James Gromer <james@gbplc.net>; bstobin@groupfivemgt.com

Subject: RE: tenants rights

Thanks!

From: I Matthew Miller [mailto:matt@immillerlaw.com]

Sent: Tuesday, January 31, 2023 2:09 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>; phillip.neuman@couzens.com; stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org; tmarkus@bhamgov.org; james@gbplc.net; bstobin@groupfivemgt.com

Subject: RE: tenants rights

Mary, I copied Jim Gromer on my initial email to you. I have included Ben Tobin on this email as well, as he was the other person who spoke in the commission room. Both are copied on this email.

Thanks. I look forward to meeting you next Tuesday.

I. Matthew Miller

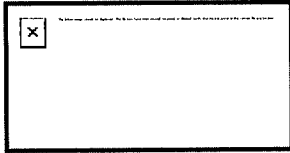
Law Offices of I. Matthew Miller, PLLC

29566 Northwestern Highway, Suite 110

Southfield, MI 48034

(248) 285-9303

matt@immillerlaw.com



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-----Original message-----

From: "Mary Kucharek" [Mkucharek@bhlaw.us.com]

Sent: Tuesday, Jan 31 2023 2:03 PM

To: phillip.neuman@couzens.com, stomkowiak@fairhousingdetroit.org

Cc: Jecker@bhamgov.org, tnarkus@bhamgov.org

Subject: tenants rights

Gentlemen,

We cannot find the email addresses of the two attorneys that spoke at the Birmingham City commission meeting re Tenant's Rights. The two that spoke in person. Apparently their cards have been misplaced. So, if any of you know them, please forward this email and please cc me.

I am looking to set up a meeting at City Hall, next Tuesday, February 7, at 4:00 p.m. to allow you the opportunity to discuss our proposed ordinance. This is the opportunity to make constructive suggestions for language in the ordinance addressing your perspectives. We are holding this meeting by invitation only, meaning those of you and the other two I referred to, are those we are inviting to meet and discuss the ordinance. Please confirm your attendance.

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

3001 W. Big Beaver, Ste. 600

Troy, MI 48084
fax 248-645-9344

<http://bhlaw.us.com>

Mary Kucharek

From: Caitlin Rosso <caitlin@rossomgt.com>
Sent: Friday, March 3, 2023 10:28 AM
To: Mary Kucharek
Subject: Time to speak?

Hello Mary,

My Father, John Rosso and I are residents and Landlords in Birmingham, we have been referred to speak with you by the City Manager and the Mayor about the recent landlord/tenant proposals. We are wondering if you would have some time speak with us?

Thank you,

Caitlin & John Rosso

Rosso Management Co.

Caitlin@RossoMgt.com

Phone: (248) 229-4227

Human Relations proposal

like Racey <mikelracey@gmail.com>

Tue, Mar 7, 2023 at 10:38 AM

o: city-commission@bhamgov.org

c: tlonge@bhamgov.org, emclain@bhamgov.org, cballer@bhamgov.org, pboutros@bhamgov.org, ahaig@bhamgov.org,

host@bhamgov.org, kschafer@bhamgov.org

I encourage you to vote no on the Human Relations proposal.. "right to renew", "just cause" and "source of income". While it may be well intentioned, I don't think it would help many and may even encourage some to take advantage. At the very least, it would likely add to administrative and maintenance costs and contribute to the inflationary spiral we are in.

Thank you for your consideration,

Mike Racey

670 Ann, Apt 302

--

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To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CABbjMK8Mp7hQOhKpiA3ZUA8gc7QJCG8DnrNcAET9RB9vOXNryg%40mail.gmail.com>.

Tenant rights

message

Mary Currie <mcurrie@currieinc.com>

Thu, Mar 9, 2023 at 11:02 AM

to: "city-commission@bhamgov.org" <city-commission@bhamgov.org>

City Commissioners:

This is the first time I have ever written the city. I ask you to be very careful with the Right to Renew language in a proposed ordinance. We have state laws that protect both the Landlord and the Tenant and to the best of my knowledge those laws have worked. Do we really have a problem in Birmingham with Landlords? I would say no. As an owner of a 4 unit rental property, who has luckily not had a troublesome tenant, I want my rights protected to protect my investment. It is unclear to me why this is suddenly an issue and I think before you change anything you need to clearly define and give examples of where the state laws have not worked. Too much government is not always a good thing!

Mary Currie

mcurrie@currieinc.com

--

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Alex Bingham <abingham@bhamgov.org>

City of Birmingham Human Relations Fair Housing regulation changes

Jim and Marilyn Maddox <jmaddox1@gmail.com>

Fri, Mar 10, 2023 at 12:27 PM

To: city-commission@bhamgov.org

To:

Mayor Therese Longe
 Mayor Pro-Tem Elaine McLain
 Commissioner Clinton Baller
 Commissioner Pierre Boutros
 Commissioner Brad Host
 Commissioner Andrew Haig
 Commissioner Katie Schafer

Re: City of Birmingham Human Relations Fair Housing regulation changes

I am a current resident of Birmingham and have been for nearly 60 years. I have known several landlords in Birmingham, including friends and family members. I know and have known many tenants or renters in the city during this time. I have concerns about passing the proposed amendments.

I think this is an overreaction to an issue with our past mayor Dorothy Conrad. What happened to Dorothy was unconscionable and embarrassing to the city. The incident with Dorothy was unfortunate, but I think was adequately addressed with existing laws and regulations.

Regarding the "Source of income" changes to the charter, I believe there is very little disagreement here, but I do question the need for a change in the city charter when it's clear that the State is addressing this issue in due time.

Regarding the "Right to renew" and "Just Cause" changes to the charter, I believe this is dangerous territory to wade into. The fact that Ann Arbor is the only city in Michigan to enact these types of requirements tells you a lot about this. There is very little in common with the inflated rental market of a college town like Ann Arbor versus Birmingham. The fact that Ann Arbor is the only city in Michigan to enact such changes tells me that there must not be much of a need for this type of change, otherwise it would probably be part of our existing state regulations.

Another big problem with this regulation is that it does not clearly state or address what happens when a tenant goes "Month-to-Month" on their rental property. The majority of rental agreements I have encountered is a "1 year lease", which turns into a month-to-month arrangement after the 1 year lease expires. This is usually in the best interest of both the tenant and landlord, as it offers flexibility for both the tenant and landlord. The new policy appears to do away with that option and to force both tenant and landlord into a new 1 year lease.

Having talked to many landlords and many tenants about some of their biggest issues, one of the most common is dealing with troublesome tenants. I think this is even a bigger issue with tenants than with the landlords. Nobody likes living in an unsafe or dangerous environment. Landlords I talk to claim that one of the most common complaints they hear from their tenants are about issues with a problem tenant in their building. Landlords will tell you that it is extremely difficult, expensive and time consuming to deal with and even evict a problem tenant, typically taking 6-9 months and even longer. The easiest and best way to deal with these problems is to not offer to renew their lease to these troublesome tenants.

6A

Do not let one rogue incident with a truly terrible property manager at the Senior housing building be the cause for over-regulation. I did not hear anyone at the council meeting state that there has been a rash of complaints about these issues in Birmingham, other than the one unfortunate incident. If additional incidents are encountered in the city, then yes, the city may need to consider new regulations. I think the regulations of the city and state have worked well for many decades and see no reason to change them at this time.

Sincerely,

Jim Maddox
360 Larchlea
Birmingham, MI 48009
(248) 770-4795

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Alex Bingham <abingham@bhamgov.org>

New Rental Rules Meeting

Troy Kraemer <troykraemer@gmail.com>
To: city-commission@bhamgov.org

Fri, Mar 10, 2023 at 1:41 PM

Greetings,

I am a rental tenant in Birmingham, and have been for nearly 9 years. My location is surrounded by rental homes in the city of Birmingham. Thus, in 9 years I have witnessed several incidents relating to tenant / landlord issues. In my time at my rental unit, I have witnessed first hand the struggle rental property owners face when dealing with tenants that have faulted on their rent, resulting in evictions. On one occasion, my wife and I were subpoenaed in a court case where a landlord of a rental (not related to ours) was in court trying to recoup lost money due to a tenant that not only was evicted, but took every fixture in the home including light bulbs, water faucets, and light fixtures upon eviction. The cause of the eviction was non payment of rent. This occurred even though the tenant was employed, drove new lease cars, and traveled to exotic locales frequently. Obviously the tenant had funds of some sort, but not enough to pay rent on top of an exotic lifestyle. When notice was given, it still took a court order to remove the tenant, at which time it was done late at night in a secret manner in order to evade the property owners supervision. This was the basis for the lawsuit we were witness to.

Additionally, we have witnessed many issues with rental tenants relating to behaviors that were disturbing and against rental property rules, of which the property owners were able to effectively correct the situation as there was protection against the landlord in the rules regarding rental property owners. If the current proposed rules were in effect, and the landlord was unable to correct said issues, it would certainly have resulted in my family moving from our unit due to the disturbances from our the surrounding rental homes.

The proposals before the council today look to extend the protection of the tenants to a level that makes the landlord, and local rental tenants subject to rental offenders that will be protected by the proposed rules. Protected in a fashion that will affect the surrounding rentals in a negative manner. Good, rule abiding tenants such as my family will certainly move if the proposed rules protect surrounding tenants poor behavior, and rental rule offense. My sentiments are shared by my surrounding rental neighbors, whom are all concerned for our future, particularly if the issues with problem renters continues.

If Birmingham is happy to have rule abiding rental tenants leave their properties in place of rule breaking, unqualified (financially and behaviorally) protected tenants, then I warn you that soon your rental properties will be filled with tenants that will extend the full protection you wish to provide them, causing landlords to use court and city expenses to protect themselves, their properties, and their finances, at a costly fashion to the city, taxpayers, and landlords.

Allowing landlords to use income as a check is but a mere small allowance as to a future tenants capability to pay rent. Removing this capability leaves the landlord to only "hope" that a prospective tenant will pay rent in a timely fashion. If credit card companies, financial lending institutions, auto insurance, and many other services use income as a means to determine if a person is applicable for a certain financial responsibility, wouldn't the city of Birmingham also think it prudent to exercise the same best practice as successful financial institutions? Would you rent your home to someone that had no requirement to show financial capability, or required "just cause" to evict if they were selling drugs in your home? I think not. I understand the purpose of the rules is to protect tenants, but the reach is too far in this instance. Requiring no financial history, and "just cause" for eviction, and extended eviction notice times just opens the door for tenants to take advantage of a weak system that the city is proposing to weaken completely. What will a future rental application look like? Just a name? No past history? No financial records? Why even have an application? What's the point of an application if there are no qualifications?

I hope my fellow rental neighbors do NOT support this proposal. Having spoken to them about this, I know that they share my sentiments. I also know that my neighbors would no longer be here had some of the problem tenants not been dealt with by landlords in a timely fashion. If the protected rules are passed, it will only be a matter of time before Birmingham rental units are filled with tenants taking full advantage of the weak rental rules you are proposing. This is exactly how fine cities are slowly changed into the mediocre cities surrounding them, by allowing complacency among the people that reside there. These proposed new rules from the council pave the future for this. I love Birmingham, and hope to see its rental properties filled with admiring people looking to stay and enjoy our wonderful community, not to move from it due to disturbing neighbors that are protected in their behavior that your proposed laws would allow.

Kind regards,

6A

3/13/23, 9:40 AM

City of Birmingham MI Mail - New Rental Rules Meeting

Troy Kraemer

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Alex Bingham <abingham@bhamgov.org>

Human Relations Proposal Regarding Landlords

2 messages

'Sam Ragnone' via City Commission <city-commission@bhamgov.org>

Mon, Mar 13, 2023 at 5:08 PM

Reply-To: Sam Ragnone <samragnone@aol.com>

To: city-commission@bhamgov.org

Hello,

My name is Sam Ragnone and I have reviewed the City of Birmingham Human Relations Proposal, which would add restrictions, to Landlords, in renting their properties. Having been in the Landlord Tenant business, for most of my adult life, I was very surprised, that the City of Birmingham, would consider such devastating restrictions. The restrictions, would give the tenant control, over the Landlords property. It would put the City, who passed these restrictions, in business to defend the tenant, as well as the District and Circuit Court. There are always problem tenants. Please do not succumb to the angry antics of a few.

I believe, that these restrictions, should not be passed. Thank you.

All The Best,

Sam

Samuel A. Ragnone
Attorney At Law
650 Ann St. Apartment 301
Birmingham, Michigan 48009
424-74407029 Mobile
310-861-1112 Fax
SamRagnone@aol.com

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Tom Markus <tmarkus@bhamgov.org>

Mon, Mar 13, 2023 at 9:36 PM

To: Alex Bingham <abingham@bhamgov.org>

----- Forwarded message -----

From: **Therese Longe** <tlonge@bhamgov.org>

Date: Mon, Mar 13, 2023 at 7:11 PM

Subject: Fwd: Human Relations Proposal Regarding Landlords

To: Tom Markus <tmarkus@bhamgov.org>, Mary Kucharek <mukucharek@bhlaw.us.com>

6A



Alex Bingham <abingham@bhamgov.org>

Fwd: Right to Renew

1 message

Tom Markus <tmarkus@bhamgov.org>
 To: Alex Bingham <abingham@bhamgov.org>

Tue, Mar 14, 2023 at 11:31 AM

----- Forwarded message -----

From: **Clinton Baller** <clinton@baller4bham.com>

Date: Tue, Mar 14, 2023 at 10:30 AM

Subject: Right to Renew

To: Tom Markus <tmarkus@bhamgov.org>, Jana Ecker <Jecker@bhamgov.org>, Therese <tmquattro@gmail.com>

<https://www.michiganradio.org/economy/2023-01-10/right-to-renew-could-be-a-line-of-defense-against-detroit-evictions-how-does-it-work>

It appears Ann Arbor's ordinance was prompted by a problem similar to the one my son faced in Lexington and Blacksburg, college towns where landlords are permitted to try to lock students into the next year's lease only a couple months into their current lease.

Richa Mukerjee, chair of the GEO Housing Caucus, said the interest in Right to Renew started during the pandemic when members were facing "acute housing insecurity," including threats of evictions and landlord not renewing their leases.

When trying to focus on this problem, Mukerjee said GEO members saw that Ann Arbor's city code allowed landlords to ask for a renewal 70 days into a lease. Mukerjee said this forced people to make long-term decisions too quickly. 70 days into a lease was not enough time for a tenant to see if living in the unit was working out and if a tenant would even have the income to continue a lease, since grad students could be waiting to hear back about grants and applications.

For a lease that started in September, "by mid-November, my landlord could ask me whether or not I wanted to renew my lease for the next leasing cycle. And if I didn't know, they could kind of lease my apartment under me to someone else," she said.

Right to Renew helped extend the timeline for tenants and gave them better protection against losing a place they wanted to stay in, she said. Landlords who don't comply are subject to fines between \$500 and \$1000.

Janine Cochran

From: Mary Kucharek
Sent: Friday, March 10, 2023 2:33 PM
To: Janine Cochran
Subject: Fwd: City of Birmingham Human Relations Fair Housing regulation changes

Sent from my iPhone

Begin forwarded message:

From: Therese Longe <tlonge@bhamgov.org>
Date: March 10, 2023 at 1:51:19 PM EST
To: Tom Markus <tmarkus@bhamgov.org>, Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: Fwd: City of Birmingham Human Relations Fair Housing regulation changes

----- Forwarded message -----

From: Jim and Marilyn Maddox <jmaddox1@gmail.com>
Date: Fri, Mar 10, 2023 at 12:28 PM
Subject: City of Birmingham Human Relations Fair Housing regulation changes
To: <city-commission@bhamgov.org>

To:
Mayor Therese Longe
Mayor Pro-Tem Elaine McLain
Commissioner Clinton Baller
Commissioner Pierre Boutros
Commissioner Brad Host
Commissioner Andrew Haig
Commissioner Katie Schafer

Re: City of Birmingham Human Relations Fair Housing regulation changes

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Regarding the "Source of income" changes to the charter, I believe there is very little disagreement here, but I do question the need for a change in the city charter when it's clear that the State is addressing this issue in due time.

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Having talked to many landlords and many tenants about some of their biggest issues, one of the most common is dealing with troublesome tenants. I think this is even a bigger issue with tenants than with the landlords. Nobody likes living in an unsafe or dangerous environment. Landlords I talk to claim that one of the most common complaints they hear from their tenants are about issues with a problem tenant in their building. Landlords will tell you that it is extremely difficult, expensive and time consuming to deal with and even evict a problem tenant, typically taking 6-9 months and even longer. The easiest and best way to deal with these problems is to not offer to renew their lease to these troublesome tenants.

Do not let one rogue incident with a truly terrible property manager at the Senior housing building be the cause for over-regulation. I did not hear anyone at the council meeting state that there has been a rash of complaints about these issues in Birmingham, other than the one unfortunate incident. If additional incidents are encountered in the city, then yes, the city may need to consider new regulations. I think the regulations of the city and state have worked well for many decades and see no reason to change them at this time.

Sincerely,
Jim Maddox
360 Larchlea

Birmingham, MI 48009
(248) 770-4795

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Alex Bingham <abingham@bhamgov.org>

Rental housing measures

1 message

Steve <steve@stevet.co>

Sat, Mar 11, 2023 at 11:44 AM

To: city-commission@bhamgov.org

Cc: tlonge@bhamgov.org, emclain@bhamgov.org, cballer@bhamgov.org, pboutros@bhamgov.org, ahaig@bhamgov.org, bhost@bhamgov.org, kschafer@bhamgov.org

Commissioners,

It has come to my attention that the Board is considering several changes to renter-related ordinances in Birmingham. Despite what may be the best of intentions from the Board, such changes may seriously reduce the ability of individuals such as myself to find positive rental arrangements in the city.

A few points:

- 1) A mandatory "right to renew" shields problem tenants who disregard lease obligations, creating a situation where tenants who abide by the lease obligations suffer for however long it takes the situation to resolve ... which could take many, many months. Onerous situations may also spur tenants to leave, adding a financial burden to them (moving supplies, moving van, etc.).
- 2) A "just cause" requirement practically guarantees that problem tenants must simply evade audio, video, and photographic evidence. This is easy to do for issues that occur behind closed doors (smoking, for example). Once the problem tenants' doors are closed, the only potential recourse that a Birmingham renter *might* have is calling the police or fire marshall to gather some sort of legally substantive evidence. Regardless, as a long-time city resident, I want our police and fire departments to focus on other matters. I'm sure you'll agree.
- 3) Barring intervention from a landlord or public servant, policing tenant policies comes down to the tenants themselves. This creates a number of potential safety and/or legal issues for the tenants, as even the most pleasant request made to a problem tenant could result in verbal or physical violence in today's fractious society.

City Attorney Mary Kucharek appropriately pointed out that going one step further and offering "right to counsel" in this effort would end up costing the city financially since Birmingham would have to pay for such counsel. Along those same lines, **the city must avoid ordinances that shift the hardships of problematic behavior from the perpetrator(s) to the injured parties**, resulting in troubling situations where renters who abide by the legal obligations of their lease agreements are the ones who end up paying in various ways -- financially, mentally, physically, etc.

Thank you, sincerely, for your continued support of the city.

Steve Tschirhart

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Alex Bingham <abingham@bhamgov.org>

Human Relations Proposal

1 message

'Debi Tutor' via City Commission <city-commission@bhamgov.org>

Sun, Mar 12, 2023 at 6:01 PM

Reply-To: Debi Tutor <debi52t@aol.com>

To: city-commission@bhamgov.org

I have been a renter in Birmingham for 16 years and when I heard about this proposal I was very upset! I do not approve of what you are trying to pass.. After talking to other renters and owners of houses nobody agrees with this

Please reconsider NOT passing!!

TY Debi

Sent from my iPhone

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Mary Kucharek

From: 'Sam Ragnone' via City Commission <city-commission@bhamgov.org>
Sent: Monday, March 13, 2023 5:09 PM
To: city-commission@bhamgov.org
Subject: Human Relations Proposal Regarding Landlords

Hello,

My name is Sam Ragnone and I have reviewed the City of Birmingham Human Relations Proposal, which would add restrictions, to Landlords, in renting their properties. Having been in the Landlord Tenant business, for most of my adult life, I was very surprised, that the City of Birmingham, would consider such devastating restrictions. The restrictions, would give the tenant control, over the Landlords property. It would put the City, who passed these restrictions, in business to defend the tenant, as well as the District and Circuit Court. There are always problem tenants. Please do not succumb to the angry antics of a few.

I believe, that these restrictions, should not be passed. Thank you.

All The Best,

Sam

Samuel A. Ragnone
Attorney At Law
650 Ann St. Apartment 301
Birmingham, Michigan 48009
424-74407029 Mobile
310-861-1112 Fax
SamRagnone@aol.com

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Alex Bingham <abingham@bhamgov.org>

Fwd: New proposals

1 message

Tom Markus <tmarkus@bhamgov.org>

Thu, Mar 23, 2023 at 5:15 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>, Jana Ecker <Jecker@bhamgov.org>, Melissa Fairbairn <mfairbairn@bhamgov.org>, Alex Bingham <abingham@bhamgov.org>

----- Forwarded message -----

From: **Therese Longe** <tlonge@bhamgov.org>

Date: Thu, Mar 23, 2023 at 5:10 PM

Subject: Fwd: New proposals

To: Tom Markus <tmarkus@bhamgov.org>, Mary Kucharek <mkucharek@bhlaw.us.com>

----- Forwarded message -----

From: **David Aquilina** <davidandnita@me.com>

Date: Thu, Mar 23, 2023, 10:17 AM

Subject: New proposals

To: <tlonge@bhamgov.org>

It's been brought to my attention there are proposals in relation to the rental housing within our city. These proposals include "the right to renew" with an extended notice period, "just cause" requiring proof to ask a resident to leave and making the "source of income" a protected class. While sounding good on the surface, it is a misdirected policy. Implementing these proposals will hurt property owners and their property values. I'm a firm believer that good policies facilitates strong economic growth which flows through to all of us and makes our community better. Please do NOT implement these changes. Thank you for hearing me out and reading this email.

Thank you,
David Aquilina
1881 Kenwood Court



Alex Bingham <abingham@bhamgov.org>

RE Human Relations Proposals

2 messages

john@rossomgt.com <john@rossomgt.com>

Thu, Mar 23, 2023 at 1:45 PM

To: John Rosso <John@rossomgt.com>

Cc: city-commission@bhamgov.org

As a lifelong resident and with more than 40 years' experience as a property management professional in the City of Birmingham, I am reaching out to you regarding the recent landlord/tenant proposals that have been brought forth to the City of Birmingham Commission.

While the Human Relations proposal, that includes the "Source of Income, Right to Renew and Just Cause may have been presented with good intentions, I feel these proposals in realty will negatively impact the City of Birmingham, my business and most importantly my current and future residents.

A Landlord asking a resident to leave is not a common occurrence or an easy process. It happens only when there is an issue. It is expensive to turn over a rental unit and landlords want to keep their buildings full. Landlords want to collect rent for every day, one vacant day is a day they will never be able to collect rent for. There are laws in effect that protect resident's rights and provide a remedy for a wrongful or retaliatory eviction. We believe that situations are resolved well and fairly under the current laws.

The proposed Human Relations ordinance will change how a landlord may structure their business. Our business operates on a one-year lease that holds over into a month-to-month agreement. The Human Relations proposals do not appear to accommodate this business structure. Over 80% of my residents are on and want to continue to be on a month-to-month basis, many of whom have been on this agreement for 10-20 years. They do not want to be committed for an extended period of time and do not want to deal with the paper hassle of an offer, acceptance and to sign a new lease every year. They like the simplicity this allows so they can leave with a months' notice as their life situation changes. We feel that our system works great for our residents. I have spoken with many residents about our system, and they love it. We actually use it as a sales feature and benefit of living with us.

The Right to Renew and Just Cause aspects of the proposals were designed to protect a resident from a wrongful termination of tenancy. In reality, it will be used to protect problem residents from an eviction. There are already laws in place that protect a resident from a wrongful eviction. By extending the notice period from 30 days to 90 days it could take upwards of 5-6 months to remove a problem resident while the good residents will be left dealing with the bad behavior during that period.

The requirement to have "just cause" seems reasonable but is problematic as it may make it difficult, to nearly impossible, and costly to remove a problem resident. A problematic resident may be harassing staff, residents or disturbing the quiet enjoyment in subtle but annoying ways like intentionally stomping up a staircase or smoking in a non-smoking building. Those are some examples of problems that can be virtually impossible to have concrete evidence that an attorney will take to the 48th district court that proves "just cause". Landlords and residents in the building typically know who is smoking cigars or marijuana but cannot come up with definitive evidence to be used in court. Residents are reluctant to identify themselves in a letter of complaint or testify in court for fear of retribution. For this reason, requiring "just cause" may result in a landlord not being able to remove a bad actor. Meanwhile the good residents get frustrated both with the Landlord and the bad actor. The situation in the building can become hostile. Ultimately, the good resident gets fed up and moves out because they do not want or need to put up with the bad behavior.

I believe that source of income protection is well intentioned but it is not good policy. It may force a landlord to approve an application based on an unenforceable or unsubstantiated source of income, such as in a promise to pay from a family member, friend, or organization. It forces a landlord to enter contracts to join what are voluntary subsidized housing programs against their will. These programs require costly legal and administrative services to work their way through the process. They are restrictive and often require extended waiting periods for occupancy (lost rent). These types of policies drive up costs and reduce profitability. These programs should remain voluntary as they are designed to be.

The housing industry is a complicated business that requires well thought out and informed legislation. I believe that there are appropriate laws already on the books that address our industry. The laws are in effect to protect a resident from a wrongful or retaliatory eviction and give every resident the right to present their case if they feel like they are being mistreated. We realize the proposals before the commission are well intended and are a reaction to events that have happened in our community but those events are the exception and not the norm. There are laws in effect to address those rare occurrences. These proposals feel a bit like a solution looking for a problem. In our opinion the proposals are not in our residents, our business or in Birmingham's best interest, no matter how well intentioned. We recommend voting no on these proposals to help us continue to provide great places for our residents to call home in Birmingham.

Thank you,

John Rosso

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Tom Markus <tmarkus@bhamgov.org>

Thu, Mar 23, 2023 at 5:14 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>, Alex Bingham <abingham@bhamgov.org>, Jana Ecker <Jecker@bhamgov.org>, Melissa Fairbairn <mfairbairn@bhamgov.org>

----- Forwarded message -----

From: **Therese Longe** <tlonge@bhamgov.org>

Date: Thu, Mar 23, 2023 at 5:09 PM

Subject: Fwd: RE Human Relations Proposals

To: Tom Markus <tmarkus@bhamgov.org>, Mary Kucharek <mkucharek@bhlaw.us.com>

[Quoted text hidden]



MEMORANDUM

Planning Division

DATE: April 24, 2023

TO: Thomas M. Markus, City Manager

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Public Hearing to amend Chapter 126 (Zoning), Article 3, Section 3.04, Article 3, Section 3.16, Article 4, Section 4.44 and Article 9, Section 9.02 to provide clear and enforceable outdoor dining standards **AND** to amend Chapter 98 (Streets, Sidewalks and Other Public Places), Article 2 and Article 3, to add language for outdoor dining facilities on public property. **(REQUEST TO POSTPONE)**

INTRODUCTION:

As a result of the temporary COVID-19 outdoor dining expansion resolution and continuing issues with outdoor dining patios encroaching into required clear paths and the addition of unapproved equipment/fixtures, heaters, and structures, the City Commission directed a review of outdoor dining requirements to evaluate potential changes that may clarify and/or enhance the outdoor dining environment within the City. At this time, the Planning Board has drafted revised regulations that are consistent, enforceable, and offer more clarity to outdoor dining establishments.

BACKGROUND:

On December 14, 2022 ([Agenda](#) – [Minutes](#)), the Planning Board held a public hearing to review the proposed ordinance amendments and moved to recommend approval to the City Commission amendments to Article 4, Section 4.44, Article 3, Section 3.04, Article 3, Section 3.16, and Article 9, Section 9.02 to provide clear and enforceable outdoor dining standards.

On February 13, 2023 ([Agenda](#) – [Minutes](#)), the City Commission discussed the proposed ordinance at a public hearing and moved to postpone the public hearing to February 27, 2023 to afford time for staff to make the changes directed by the City Commission. The changes requested included:

1. The addition of language to phase out preexisting legal-nonconforming outdoor dining facilities from the public right of way.
2. Striking the provision requiring that outdoor dining fixtures and furnishings be brought in each night in the winter (but also adding language to ensure that the facilities are set up to be used and not being stored).
3. Adding utilities to the section outlining elements to be considered during outdoor dining reviews.

On February 27, 2023 ([Agenda](#) – [Minutes](#)), City Staff requested that the City Commission table the proposed ordinance amendments to provide staff with time to adjust the proposed language and address the concerns of the City Commission.

On March 27, 2023 ([Agenda](#)), the City Commission set a new public hearing date of April 24, 2023 to review revised language and review the information requested from the February 13, 2023 public hearing.

At this time, City Staff is again requesting that the City Commission postpone the public hearing to a date certain of May 22, 2023 to allow more time to address the concerns of the City Commission in the proposed language, as well as put together complete and detailed background information related to outdoor dining to aid in the discussion.

LEGAL REVIEW:

The City Attorney has reviewed the suggested resolution 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 City Commission meeting on April 24, 2023. As for the amendments to the general ordinance, no public hearing notices are required when enacting general ordinances.

SUMMARY:

The Planning Division requests that the City Commission consider postponing the public hearing to a date certain of May 22, 2023 to allow City Staff more time to address the concerns of the City Commission in the proposed language, as well as put together complete and detailed background information related to outdoor dining to aid in the discussion.

ATTACHMENTS:

None.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to postpone consideration of the amendments to Chapter 126 (Zoning), Article 3, Section 3.04, Article 3, Section 3.16, Article 4, Section 4.44 and Article 9, Section 9.02 **AND** the amendments to Chapter 98 (Streets, Sidewalks and Other Public Places), Article 2 and Article 3, to a date certain of May 22, 2023.



MEMORANDUM

Legal Department

DATE: April 24, 2023

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek, City Attorney

SUBJECT: Proposed Marihuana Ordinance

INTRODUCTION:

On February 13, 2023, the City Attorney's office presented a workshop regarding marihuana and the possible results of opting in or opting out of allowing the sale of medical and/or recreational marihuana in the City of Birmingham. At the conclusion of the workshop, the City Attorney's office was directed to bring back to the City Commission a proposed marihuana ordinance. For your review is the proposed ordinance that has been drafted and recommended.

BACKGROUND:

Medical marihuana is now legal in 39 states and recreational marihuana is legal in 21 states. Marihuana remains completely prohibited in only two states, Nebraska and Idaho. The use of medical and recreational marihuana is legal in Michigan. The Michigan Medical Marihuana Act of 2008 provided for patients with certain medical conditions to legally have and grow medical marihuana. The Michigan Medical Marihuana Licensee Act of 2016 allowed for more laws and greater ease in obtaining medical marihuana. The Michigan Medical Marihuana Act ("MMMA") allows qualifying patients with the State Registry Identification Card to possess up to 2.5 ounces of marihuana plus up to 12 plants if the patient does not have a caregiver. A "registered caregiver" can possess up to 12 plants for each patient and may have 6 patients total. In 2018 the Michigan Regulation and Taxation of Marihuana Act ("MRTMA") created the law that allowed the legal use and possession of marihuana for persons over 21 years old.

The Medical Marihuana Facilities Licensing Act (MMFLA) passed in 2016. The purpose of the Act was to fill perceived "gaps" in the MMMA and to allow for the commercial sale of medical marihuana. It requires that a marihuana facility be licensed by the State of Michigan.

The Michigan Regulation and Taxation of Marihuana Act ("MRTMA") passed in 2018. The Act permits anyone age 21 or older to possess up to 2.5 ounces of marihuana and to grow as many as 12 plants at home for recreational adult-use.

Section 6 of MRTMA states that a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries. Establishments can only operate in municipalities that have adopted an ordinance authorizing that type of establishment. The marihuana establishment is defined as one of six license types: 1) grower; 2) processor; 3) secure transporter; 4) retailer; 5) safety compliance facility; and, 6) microbusiness.

Through MRTMA, municipalities can choose the opt-out approach, wherein a municipality prohibits marihuana establishments, OR citizens may petition to initiate an ordinance to completely prohibit marihuana establishments within a municipality.

Through MRTMA, municipalities can choose the opt-in approach, wherein a municipality may pass an ordinance that allows certain marihuana establishments, or citizens may petition to initiate an ordinance that allows marihuana establishments. With the opt-in ballot initiative, the citizens can control the language and may draft an ordinance proposal and place it on the ballot. The ballot proposal may then be passed by the voters.

If the City opts-in by passing an ordinance, it may regulate both marihuana facilities and marihuana establishments through a regulatory ordinance alone or through a regulatory ordinance and a zoning ordinance amendment. A regulatory ordinance can regulate the number of establishments permitted, the type of establishments permitted, where establishments are permitted, and the process for allocating limited numbers of licenses. With the allocation of medical marihuana facility licenses, the statute does not define the licensing process. For medical marihuana facilities it can be first come first served, lottery, or a scoring system. With adult-use recreational marihuana establishments, the City MUST use a competitive process (i.e. a scoring system) if the ordinance provides a numerical limitation on licenses. The benefits to a city opting-in is that the city will have reasonable control over the ordinance language and any amendments, as well as control over marihuana regulations within its borders. It gives the municipality time to process and adjust to changes on its own terms and conditions.

If Birmingham decides to opt-in, it will open its boundaries to marihuana facilities and establishments, but such exposure will be under the City's control. In 2018, Birmingham voters favored the proposal to legalize marihuana 7,296 to 4,721, according to unofficial results posted on the Oakland County Clerk's website.

It is our recommendation that the City take control of this issue and opt-in with a regulatory ordinance which will permit certain types of facilities and establishments, the number of establishments permitted, and further determine the process for allocating limited numbers of licenses.

LEGAL REVIEW:

The City Attorney's office has prepared and is proposing the attached ordinance for the City Commission's adoption.

FISCAL IMPACT:

The City of Birmingham will receive \$5,000.00 per application which is allowed under the state law, license renewal fees, taxes that will be captured by the City of Birmingham, as well as other state dollars that will come to the City of Birmingham for licensed facilities.

PUBLIC COMMUNICATIONS:

The public received the notice of the workshop on February 13, 2023, and is available for viewing. The Agenda was posted for this meeting which included the proposed ordinance.

SUMMARY:

The City Commission directed the City Attorney's Office to draft the proposed attached ordinance for review and adoption to the Birmingham City Code.

ATTACHMENTS:

- Marihuana Workshop PowerPoint presentation from February 13, 2023.
- Proposed draft marihuana ordinance.

SUGGESTED COMMISSION ACTION:

Make a motion adopting the ordinance to Amend Part II of the City Code, Chapter 26 – Businesses, Article XII – Marihuana Establishments Prohibited to now be identified as Chapter 26 – Businesses, **Article XII. Medical Facility and Adult-Use Marihuana Establishments**, in order to establish and regulate marihuana businesses.



Marijuana Workshop



6C

Beier Howlett, P.C.

Presented by: Mary M. Kucharek

Date: 02/13/2023

Marijuana Across the United States

- Medical marijuana is legal in 39 states.
- Recreational marijuana is legal in 21 states.
- Marijuana remains **completely** prohibited in only two states.
 - Nebraska
 - Idaho

The use of medical and recreational marijuana is legal in Michigan.

Michigan Marijuana Laws

- State Statutes
 - Michigan Medical Marijuana Act
 - (Initiated Law 1 of 2008), MCL 333.2642 *et seq.*
 - Michigan Medical Marijuana Facilities Licensing Act
 - (Public Law 281 of 2016), MCL 333.2701 *et seq.*
 - Michigan Regulation and Taxation of Marijuana Act
 - (Initiated Law 1 of 2018), MCL 333.2751 *et seq.*

Michigan Medical Marijuana Act (MMMA)

- Passed in 2008.
- Permits people to grow marijuana for their own use, or for the use of one of their five patients.
- Standards:
 - A “qualifying patient” with a state registry identification card can possess up to 2.5 ounces of marijuana plus up to 12 plants if the patient does not have a caregiver.
 - A “registered caregiver” can possess up to 12 plants for each patient and may have 6 patients total.

Medical Marijuana Facilities Licensing Act (MMFLA)

- Passed in 2016.
- Purpose: To fill perceived “gaps” in the MMMA and to allow for the commercial sale of medical marijuana.
- Requires that marijuana establishment be licensed by the State of Michigan.

Marijuana Establishments

A marijuana establishment is defined as one of six license types:

- Grower
- Processor
- Secure transporter
- Retailer
- Safety compliance facility
- Microbusiness

Michigan Regulation and Taxation of Marijuana Act (MRTMA)

- Passed in 2018.
- Permits anyone age 21 or older to possess up to 2.5 ounces of marijuana and to grow as many as 12 plants at home.
- Allows for both medical *and* adult-use marijuana.

What does this mean for municipalities?

Section 6 of MRTMA

- A municipality may completely prohibit or limit the number of marijuana establishments within its boundaries.
- Facilities can only operate in municipalities that have adopted an ordinance authorizing that type of facility.
- Authorizes initiated ordinances in cities, villages and townships.

What does this mean for municipalities?

Opt-Out Approach

- A municipality prohibits marijuana establishments, OR
- Citizens may petition to initiate an ordinance to completely prohibit marijuana establishments within a municipality.

Opt-In Approach

- A municipality may pass an ordinance that allows certain marijuana establishments, OR
- Citizens may petition to initiate an ordinance that allows marijuana establishments.

Opted-In Municipalities

Adrian, MI - Lenawee County

Albion, MI - Calhoun County

Ann Arbor, MI - Washtenaw County

Arlington Township, MI - Van Buren County

Au Gres Township, MI - Arenac County

Baldwin Township, MI - Iosco County

Bangor Township, MI - Bay County

Bangor, MI - Van Buren County

Battle Creek, MI - Calhoun County

Bay City, MI - Bay County

Bedford Charter Township, MI - Calhoun County

Benton Harbor, MI - Berrien County

Big Rapids, MI - Mecosta County

Big Rapids, MI - Mecosta County

Buena Vista Township, MI - Saginaw County

Burton, MI - Genesee County

Cambridge Township, MI - Lenawee County

Cheboygan, MI - Cheboygan County

Detroit, MI - Wayne County

East Lansing, MI - Ingham County

Easton Township, MI - Ionia County

Emmett Charter Township, MI - Calhoun County

Ferndale, MI - Oakland County

Flint, MI - Genesee County

Grand Rapids, MI - Kent County

Harrisville, MI - Alcona County

Hazel Park, MI - Oakland County

Jackson, MI - Jackson County

Kalamazoo, MI - Kalamazoo County

Lansing, MI - Ingham County

Lawrence Township, MI - Van Buren County

Leavitt Township, MI - Oceana County

Leoni Township, MI - Jackson County

Mancelona Township, MI - Antrim County

Manistee, MI - Manistee County

Monroe Charter Township, MI - Monroe County

Mount Morris, MI - Genesee County

Mount Pleasant, MI - Isabella County

Mueller Township, MI - Schoolcraft County

Muskegon Heights, MI - Muskegon County

Muskegon, MI - Muskegon County

Newfield Township, MI - Oceana County

Omer, MI - Arenac County

Owosso, MI - Shiawassee County

Paw Paw Township, MI - Van Buren County

Peacock Township, MI - Lake County

Penn Township, MI - Cass County

Pinconning Township, MI - Bay County

Reading, MI - Hillsdale County

Saginaw, MI - Saginaw County

Sands Township, MI - Marquette County

Saugatuck Township, MI - Allegan County

Sturgis, MI - St. Joseph County

Thelford Township, MI - Genesee County

Trenton, MI - Wayne County

Vassar Township, MI - Tuscola County

Vassar, MI - Tuscola County

Village of Camden, MI - Hillsdale County

Village of Constantine, MI - St. Joseph County

Village of Decatur, MI - Van Buren County

Village of Douglas, MI - Allegan County

Village of Edwardsburg, MI - Cass County

Warren, MI - Macomb County

Webber Township, MI - Lake County

White Cloud, MI - Newaygo County

Windsor Charter Township, MI - Eaton County

Wise Township, MI - Isabella County

Opt-In: Ballot Initiative

Citizens Control the Language

- Citizens may draft an ordinance proposal and place it on the ballot.
- The ballot proposal may be passed by the voters.

Opt-In: City Passes Ordinance(s)

- A municipality may regulate marijuana establishments through a regulatory ordinance alone or through a regulatory ordinance and a zoning ordinance amendment.

Opt-In: Regulatory Ordinance

- A regulatory ordinance can regulate the number of establishments permitted, the type of establishments permitted, where establishments are permitted, and the process for allocating limited numbers of licenses.
- Allocation of licenses:
 - Statute does not define the licensing process for medical marijuana facilities
 - Can be first-come first served, lottery, or scoring system.
 - Adult-Use marijuana establishments: municipality **MUST** use a competitive process (i.e. a scoring system) if the ordinance provides a numerical limitation on licenses.

Opt-In: Regulatory Ordinance

- An ordinance amendment can regulate where those establishments are permitted and how they are operated.
- Regulations regarding the purity or pricing of marijuana or regulations interfering or conflicting with state statutory regulations for licensing marijuana facilities cannot be imposed.

Benefits to a City Opting-In

- Control over ordinance language.
- Control marijuana regulation within its borders.
- Gives municipality time to process and adjust to changes on its own terms and conditions.
- Ordinances passed by a city may be amended.

Possible Outcomes for Birmingham

- Birmingham remains opted-out
 - Birmingham prohibits all marijuana establishments within its borders.
 - City may see a citizen ballot initiative allowing marijuana facilities and such a proposal may or may not pass.
- Birmingham decides to opt-in
 - Birmingham will open its boundaries to marijuana facilities but such exposure will be under the City's control.
- In 2018, Birmingham voters favored the proposal to legalize marijuana 7,296 to 4,721, according to unofficial results posted on the Oakland County Clerk's website.

List of Citizen Initiative Petitions in Michigan

- Allen Park, Auburn Hills, Belleville City, Brandon Township, Brighton City, Buel Township, Chesterfield Township, Clement Township, Clio City, Crystal Lake, Highland Park, Lake Orion, Lincoln Park, Pontiac, Royal Oak Township, Vanderbilt, and the Village of Pinckney.
- *This list is not exhaustive*

Recommendation

- Take control of the issue;
- Marijuana is a popular topic;
- Opt-in with a regulatory ordinance;
- Permit certain types of establishments;
- Select the number of establishments permitted;
- Determine the process for allocating limited numbers of licenses.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 26 – BUSINESSES,
ARTICLE XII – MARIHUANA ESTABLISHMENTS PROHIBITED**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 26. Businesses, Article XII. – Marihuana Establishments Prohibited, shall be amended to establish and regulate marihuana businesses, and shall read as follows:

ARTICLE XII. MARIHUANA ESTABLISHMENTS PROHIBITED

~~Sec. 26-500. Marihuana establishments prohibited.~~

~~Marihuana establishments as defined in Section 3 of the Michigan Regulation and Taxation of Marihuana Act, and as it may hereafter be amended from time to time, are completely prohibited within the city limits of the City of Birmingham, as provided for in Section 6 of the Act.~~

ARTICLE XII. MEDICAL FACILITY AND ADULT-USE MARIHUANA ESTABLISHMENTS

Sec. 26-500. Marihuana Regulations.

This Chapter is created to regulate the sale of marihuana in the City of Birmingham; to allow certain medical marihuana facilities and marihuana establishments to operate in the City pursuant to the Medical Marihuana Facilities Licensing Act and Michigan Regulation and Taxation of Marihuana Act; to provide for standards and procedures to license and regulate such facilities and establishments; to provide for the imposition of license application fees; to provide penalties; and to impose conditions for the operation of such facilities and establishments.

Sec. 26-501. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

***Applicant.* A person who applies for a license to operate a medical marihuana provisioning center or marihuana retailer under this Chapter.**

City. The City of Birmingham.

Clerk. The Clerk of the City of Birmingham.

Commission. The City Commission of the City of Birmingham.

Cultivate means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

Department means the Michigan Department of Licensing and Regulatory Affairs.

Licensee means a person holding a state license and/ or a person who receives a license to operate a medical marihuana facility or marihuana establishment under this Chapter.

Marihuana. As defined in the Medical Marihuana Facilities Licensing Act ("MMFLA") and the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

Marihuana Accessories. Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

Marihuana Establishment. A marihuana retailer as defined under the MRTMA and this Chapter.

Marihuana Grower. A person licensed under the MRTMA to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Marihuana Retailer. A person licensed under the MRTMA to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

Medical Marihuana Facility. A medical marihuana provisioning center as defined under the Medical Marihuana Facilities Licensing Act ("MMFLA") and this Chapter.

MMFLA. The Medical Marihuana Facilities Licensing Act, Act 281 of 2016, M.C.L.A. §§ 333.27101 et seq.

MRTMA. The Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, M.C.L.A. §§ 333.27951 et seq.

Park. An area of land dedicated for public use and accepted by the City, with or without facilities for rest and recreation.

Person means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

Process or processing means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

Provisioning center means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a registered primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan Medical Marihuana Act is not a provisioning center for purposes of this act.

Religious institution means a building housing an organization founded on an established religion, such as a church, synagogue, mosque, temple, or other house of worship.

School. A public or private school offering education to students enrolled in kindergarten, or one or more grades of one through 12.

Special Land Use Permit. A permit that can be issued by the City Commission which can approve with conditions all requests for permission to carry on special land uses where such uses are permitted in the Birmingham City Zoning Ordinance at Chapter 126.

Stakeholder. The officers, directors, and managerial employees of an applicant and any persons who hold any direct or indirect ownership interest in the applicant.

State license means a license issued by the department that allows a person to operate a marihuana establishment.

Unreasonably impracticable means that the measures necessary to comply with the rules or ordinances adopted pursuant to this Article subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

Sec. 26-502. Prohibitions.

(A) Notwithstanding anything in this Chapter, no person shall operate a medical marihuana facility and/or marihuana establishment within a 1,000 foot radius of any parcel upon which is located any existing school, religious institution, park or playground, City-owned recreational facility, nor in any other area except for those parcels identified on Exhibit 1.

(B) No person shall operate a medical marihuana facility or a marihuana establishment in the City without first obtaining any relevant Michigan state license required by the MMFLA or MRTMA and a license from the City in accordance with the provisions of this Chapter. A separate state and city license is required for each medical marihuana facility or marihuana establishment.

(C) No person shall consume or use in any fashion marihuana in a public place within the boundaries of the City of Birmingham, nor in any violation of state law of the MRTMA and MMFLA.

Sec. 26-503. Medical Marihuana Provisioning Centers and Marihuana Retailers.

(A) Pursuant to section 205(1) of the MMFLA and section 6 of the MRTMA, the City authorizes one license for a medical marihuana provisioning center and one license for a marihuana retailer.

(B) Except as otherwise provided in this Article, the City shall not permit or authorize the operation of any other type of marihuana establishment or medical marihuana facility.

(C) This Article shall not be interpreted to allow the operation of marihuana establishments and medical marihuana facilities at more than two locations in the City at the same time in the areas identified on Exhibit 1.

Sec. 26-504. License Applications.

(A) Any person seeking to operate a medical marihuana provisioning center or marihuana retailer shall file a license application with the City Clerk upon a form provided by the City. The application shall include the following information:

- (1) The full name, date of birth, physical address, email address, and telephone number of the applicant in the case of an individual, or, in the case of an entity, all stakeholders thereof;**
- (2) If the applicant is an entity, the entity's articles of incorporation or organizational documents;**
- (3) If the applicant is an entity, the entity's employer identification number;**
- (4) If the applicant is an entity, the entity's operating agreement or bylaws;**
- (5) A proposed marketing, advertising, and business promotion plan for the proposed medical marihuana provisioning center or marihuana retailer;**
- (6) A description of planned tangible capital investment in the City;**
- (7) An explanation of the economic benefits to the City and job creation to be achieved, including the number and type of jobs the medical marihuana provisioning center or marihuana retailer is expected to create, the amount and type of compensation expected to be paid for**

such jobs, and the projected annual budget and revenue of the medical marihuana provisioning center or marihuana retailer;

- (8) A description of the financial structure and financing for the proposed medical marihuana provisioning center or marihuana retailer;
- (9) Short-term and long-term business goals and objectives for the proposed medical marihuana provisioning center or marihuana retailer;
- (10) A criminal background report of the applicant's criminal history. This includes all individuals, and for a commercial entity, its resident agent, and all officers. Such reports shall be obtained by the applicant through the Internet Criminal History Access Tool (ICHAT) for applicants residing in Michigan and/or through another state sponsored or authorized criminal history access source for applicants who reside in other states or have resided in other states within five years prior to the date of the application. The applicant is responsible for all charges incurred in requesting and receiving the criminal history report and the report must be dated within 30 days of the date of the application;
- (11) A description of proposed community outreach and education strategies for the knowledge of substances use and substances abuse;
- (12) A description of proposed charitable plans to enhance the City whether through financial donations or volunteer work;
- (13) A description of the security plan for the proposed medical marihuana provisioning center or marihuana retailer that is consistent with the requirements of the Michigan Department of Licensing;
- (14) A floor plan of the proposed medical marihuana provisioning center or marihuana retailer and a site plan of the proposed medical marihuana provisioning center or medical marihuana retailer that complies with the site plan review process of the Zoning Ordinance at Chapter 126 and incorporates sustainable elements in their plan;
- (15) A scale diagram illustrating the property upon which the proposed medical marihuana provisioning center or marihuana retailer is to be operated, including all available onsite parking spaces, and specifying which parking spaces are handicapped-accessible;
- (16) A depiction of any proposed text, graphic materials and all signage to be shown on the exterior of the proposed medical marihuana provisioning center or marihuana retailer;

- (17) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the City for any fees or taxes;**
- (18) Proof of premises liability and casualty insurance consistent with the requirements of the Department; and,**
- (19) A location area map that identifies the relative locations of, and distances from, the nearest schools, religious institutions, parks or playgrounds and City-owned recreational facilities, computed by measuring a straight line from the nearest property line of the parcel used for the purposes stated in this subsection to the nearest property line of the parcel to be used as a medical marihuana provisioning center or marihuana retailer.**

Sec. 26-505. Application Fee.

An application for a license shall be accompanied by an application fee to help defray administrative and enforcement costs to the City associated with the operation of the medical marihuana provisioning center or marihuana retailer, which shall be set by resolution from time to time of the Commission, but shall not exceed \$5,000 per application.

Sec. 26. 506. Application Review.

(A) After the effective date of this Article, the City Clerk shall begin accepting applications for a medical marihuana provisioning center and a marihuana retailer after 45 days. The City Clerk will set a 30-day application period during which applicants may apply for one license to operate a medical marihuana provisioning center or one marihuana retailer and advertise the 30 day period on the City website.

(B) The City Clerk shall review each application to ensure that it is complete, that the information required by this Chapter has been submitted, and that the application fee has been paid. The City Clerk may reject any application that is not complete and may deny an application for failure to pay the application fee.

(C) Upon receipt of a completed application meeting the requirements of this Chapter and the appropriate license application fee, the City Clerk shall refer a copy of the application to each of the following for their approval: the City Police Department, the City Fire Department, the City Building Department, the City Planner, and the City Treasurer.

(D) No application shall be approved unless:

- (1) The City Police Department, the City Fire Department, and the City Building Department have inspected the proposed location for compliance with all laws for which they are**

charged with enforcement and for compliance with the requirements of this Chapter;

- (2) The City Planner has confirmed that the proposed location complies with the Birmingham Zoning Ordinance and this Chapter;
- (3) The City Treasurer has confirmed that the applicant and each stakeholder of the applicant are not in default to the City.
- (4) That the requirements for site plan approval and potential approval of a Special Land Use Permit comports with Chapter 126 of the Zoning Ordinance Section 7.33 thru 7.37.

(E) The City Manager, or his/her designee, shall assess, evaluate, score and rank all applications for licenses to operate a medical marihuana provisioning center or marihuana retailer submitted during the 30 day application period set forth in this Chapter.

(F) In its application assessment, evaluation, scoring, ranking, and deliberations related to licenses to operate a medical marihuana provisioning center or a marihuana retailer, the City Manager, or his/her designee, shall assess, evaluate, score, and rank each application based upon a scoring and ranking procedure developed by the City staff consistent with the requirements, conditions, and provisions of this Chapter in each of the following categories:

- (1) Whether the proposed medical marihuana provisioning center or marihuana retailer will be consistent with land use for the required zoning in the surrounding neighborhood and not have a detrimental effect on traffic patterns and resident safety. The maximum number of scoring points in this category shall be ten (10) points;
- (2) Planned community outreach and education strategies for the knowledge of and abuse of substances on behalf of the proposed medical marihuana provisioning center or marihuana retailer shall be ten (10) points;
- (3) Whether the applicant or its stakeholders have made, or plan to make, significant physical improvements with an effort to incorporate sustainable elements into the building housing the medical marihuana provisioning center or marihuana retailer, including plans to eliminate or minimize traffic, noise, and odor effects on the surrounding neighborhood. The maximum number of scoring points in this category shall be ten (10) points;
- (4) Whether the applicant has reasonably and tangibly demonstrated it possesses sufficient financial resources to fund, and the requisite business experience to execute, the submitted business plan and other plans required by this Chapter. The maximum number of scoring points in this category shall be ten (10) points;
- (5) Whether the applicant has applied for and proposes to co-locate a medical marihuana provisioning center and marihuana retailer. The

maximum number of scoring points in this category shall be ten (10) points;

- (6) Whether adequate off-street parking is provided by the applicant consistent with zoning ordinance requirements. The maximum number of scoring points in this category shall be ten (10) points;
- (7) Whether the proposed facility will have a detrimental impact on children and areas where children congregate in the City or surrounding region, as judged by the proximity of the proposed medical marijuana provisioning center or marijuana retailer to other structures or properties, including any parcel upon which is located an existing school, religious institution, park, playground, or City-owned recreational facility. The maximum number of scoring points in this category shall be fifteen (15) points, with the maximum points being awarded if the proposed medical marijuana provisioning center or marijuana retailer will be located more than 50% further than the applicable distances provided in Sec. 26-502(A);
- (8) Whether the applicant has demonstrated an economic commitment to the City by a proposal to create no less than five full-time jobs and proposes a living wage to all employees. The maximum number of scoring points in this category shall be fifteen (15) points and shall be awarded based upon the number of jobs proposed and the pay structure proposed by the applicant;
- (9) A description of proposed charitable plans to enhance the City, whether through financial donations or volunteer work. The maximum number of scoring points in this category shall be ten (10) points.

(G) Overall scoring and ranking shall be conducted and applied by the City Manager, or his/her designee, on the basis of assigned points from zero points to One Hundred (100) points with the lowest overall total score as zero (0) points and the highest possible total score being One Hundred (100) points.

(H) The City Manager, or his/her designee, shall award licenses to the highest scoring applicants for one (1) medical marijuana provisioning center and/or one (1) medical marijuana retailer. In the event of an evaluation scoring tie that causes there to be more than two applicants who achieve scores sufficient to qualify for a license, the scoring-tied applicants will be entered into a random draw. Those applications randomly selected shall be eligible to receive a license to operate a medical marijuana provisioning center or a marijuana retailer, as applicable. In the event that the number of medical marijuana provisioning center and/or marijuana retailer licenses initially awarded is less than one of each of the two licenses authorized under this Chapter or subsequently falls below licenses authorized under this Chapter, the City Manager, or his/her designee, shall not be required to score applicants. Instead, the City Manager, or his/her designee, shall evaluate applications in the order that they are submitted and shall award licenses for medical marijuana provisioning centers and/or marijuana retailers to an applicant who submits a complete application, receives the approvals required in this Chapter, and otherwise meets the

requirements of this Chapter. However, in no event shall the number of medical marihuana provisioning centers or marihuana retailer licenses exceed one (1) per type under this Chapter.

(I) Nothing in this Chapter is intended to confer a property or other right, duty, privilege or interest in a license of any kind or nature whatsoever including, but not limited to, any claim of entitlement.

Sec. 26-507. License Requirements.

A medical marihuana provisioning center or marihuana retailer license issued under this Chapter shall be subject to the following conditions:

(A) Compliance with the requirements of this Chapter, other applicable City ordinances and codes, and applicable state laws;

(B) For a medical marihuana provisioning center, compliance with the provisions of the MMFLA and any rules promulgated thereunder;

(C) For a marihuana retailer, compliance with the provisions of the MRTMA and any rules promulgated thereunder;

(D) Medical marihuana provisioning centers and marihuana retailers shall not operate and be open to the public before 9:00 a.m. or after 9:00 p.m. daily;

(E) Signs displayed on the exterior and interior of any medical marihuana provisioning center or marihuana retailer shall conform to City ordinance requirements. No signs shall contain the words "marihuana," "marijuana," or "cannabis," nor shall any sign contain marihuana leaves, or green crosses;

(F) Operation of a marihuana facility or marihuana establishment shall not cause or create, directly or indirectly, any noise, dust, vibration, glare, fumes, or odors constituting a nuisance and which are detectable to normal human senses beyond the boundaries of the property on which the marihuana facility or marihuana establishment is operated.

(G) A license that is issued under this Chapter shall be posted at all times inside the medical marihuana provisioning center or marihuana retailer in a conspicuous location near the entrance.

(H) All medical marihuana or marihuana operations, or any type of license must apply for and receive a Special Land Use Permit, and must comply with all regulations set forth in this ordinance and the requirements for site plan approval and potential approval of a Special Land Use Permit which comports with Chapter 126 of the Zoning Ordinance Section 7.33 thru 7.37.

Sec. 26-508. Transfer of Licenses.

Licensees may transfer a license issued under this Chapter to a different location in the marihuana zoning area upon receiving written approval from the City Manager, or his/her designee, and the Department pursuant to the MMFLA or MRTMA and rules promulgated by the Department. In order to request municipal approval to transfer a license location, the licensee must make a written request to the City Manager, or his/her designee, indicating the current location of the medical marihuana provisioning center or marihuana retailer and the proposed new location. Upon receiving the written request, the City Manager, or his/her designee, shall refer a copy of the written request to the City Police Department, the City Fire Department, the Building Official, and the City Planner. No license transfer shall be approved unless each such department or entity gives written approval that the proposed license location meets the standards identified in this Chapter and the City Commission approves the transfer by a majority vote.

Sec. 26-509. Annual License Renewal.

Once a license is issued under this division, the license holder must go through the license renewal process set forth in this section and is subject to the renewal standards set forth in Sec. 26-510. A review of compliance with the contract and Special Land Use Permit shall also be included.

(A) Application for an annual license renewal shall be made in writing to the City Clerk at least sixty (60) days prior to the expiration of an existing license.

(B) An application for a license renewal required by this Chapter shall be made under oath on forms provided by the City Clerk, and shall contain all of the information required in an initial application.

(C) An application for a license renewal shall be accompanied by a renewal fee to help defray administrative and enforcement costs associated with the operation of the medical marihuana provisioning center or marihuana retailer, which shall be set by resolution of the Commission, but shall not exceed \$5,000.

(D) Upon receipt of a completed application for a license renewal meeting the requirements of this Chapter and the license renewal fee, the City Clerk shall refer a copy of the renewal application to the City Police Department, the City Fire Department, the Building Official, and the City Planner.

(E) No application for a license renewal shall be approved unless:

- (1) The City Police Department, the City Fire Department and the City Building Department or another relevant department have, within the past calendar year, inspected the location for compliance with all state and local building, electrical, fire, mechanical and plumbing requirements;
- (2) The City Planner or another relevant department has confirmed that the location complied with the Birmingham Zoning Ordinance at the time the license was granted;

- (3) The licensee possesses the necessary state licenses or approvals, including those issued pursuant to the MMFLA or MRTMA;**
- (4) The licensee has operated the medical marihuana provisioning center or marihuana retailer in accordance with the conditions and requirements of this Chapter; and**
- (5) The licensee is operating the medical marihuana provisioning center or marihuana retailer in accordance with MMFLA or MRTMA.**

(F) If written approval of the renewal is given by each department or entity identified in this Article, the City Commission may approve the annual license renewal.

Sec. 26-510. Standards.

(A) The City Commission may object to renewal of a license for medical marihuana provisioning centers or medical retailers for one or more of the following reasons:

- (1) Licensee's failure to comply with all applicable City and state laws concerning health, safety, moral conduct or public welfare.**
- (2) Licensee's repeated violations of state marihuana laws.**
- (3) Licensee's maintenance of a nuisance upon or in connection with the licensed premises, including but not limited to any of the following:**
 - (i) Existing violations of building, electrical, mechanical, plumbing, zoning, health, fire or other applicable regulatory codes;**
 - (ii) A pattern of patron conduct in the neighborhood of the licensed premises which is in violation of the law and/or disturbs the peace, order, and tranquility of the neighborhood;**
 - (iii) Failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining premises;**
 - (iv) Entertainment on the licensed premises without a license and/or entertainment which disturbs the peace, order and tranquility in the neighborhood of the licensed premises;**
 - (v) Any advertising, promotion or activity in connection with the licensed premises which by its nature causes, creates or contributes to disorder, disobedience to rules, ordinances or laws, or contributes to the disruption of normal activity of those in the neighborhood of the licensed premises;**

- (vi) Numerous police contacts with the licensed premises or the patrons of the premises;
 - (vii) Failure to adequately staff and control the premises; and,
 - (viii) The conditions or practices of the business present immediate health and safety issues.
- (4) Licensee's failure to permit the inspection of the licensed premises by the City's agents or employees in connection with the enforcement of the City Code.
 - (5) Licensee's failure to comply with the terms of its marihuana retailer license or any conditions imposed by the City Commission at the time of issuance or transfer of the license.
 - (6) Licensee's failure to comply with all standards and plans established and approved by the City Commission at the time of original approval or transfer of the license.
 - (7) Licensee's failure to timely pay its taxes or other monies due the City.

(B) In addition to any other reasons set forth in this Chapter, the City may refuse to issue a license or grant renewal of the license or suspend or revoke the license for any of the following reasons:

- (1) A material violation of any provision of this Chapter, Chapter 126, Zoning, or the licensee's SLUP and contract.
- (2) Any conviction of a disqualifying felony by the licensee or any stakeholder of the licensee that would disqualify that person from obtaining a state license under the MMFLA or MRTMA.
- (3) Failure of the licensee to obtain or maintain a license from the state pursuant to section 14 of the MMFLA or MRTMA.

(C) Following its review of this material, the City Commission may adopt a resolution to establish a public hearing date to consider objecting to the renewal of a license for the operation of a medical marihuana provisioning center or a marihuana retailer. If such action is taken by the City Commission, its resolution shall:

- (1) State the reasons why the City Commission is considering action which would result in the City objecting to the license of the MMFLA or MRTMA.
- (2) State the date, time and place for the public hearing when the City Commission will consider taking action to object to the renewal of the license.

- (3) Direct the City staff to inform the licensee in writing that they may submit any written material for consideration by the City Commission prior to the public hearing or at the hearing.
- (4) That the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.
- (5) The licensee shall be served notice by First Class U.S. Mail at least ten (10) days prior to the hearing with a written notice of the hearing.
- (6) The City Commission shall hold a hearing scheduled with the licensee present. The City Commission may consider the investigation and other materials prepared by the administration pursuant to Sec. 26-509.
- (7) The City Commission may also hear from members of the staff, other governmental agencies or the public, and licensee shall be afforded an opportunity to question those present or give information to the City Commission.
- (8) The public shall be afforded a reasonable opportunity to comment upon the issues before the City Commission.
- (9) Following the hearing, the City Commission shall make a written resolution as to its findings and determinations, and shall, by First Class U.S. mail forward a copy of the same to the licensee and the State Department of Licensing and Regulatory Affairs.

(D) If the City Commission determines that a recommendation of non-renewal or a request for revocation is to be filed with the State, it shall forward the following documents to the Department:

- (1) A certified copy of the Notice of Hearing sent to the licensee.
- (2) A certified copy of the resolution adopted by the City Commission objecting to the renewal of the license or requesting that the license be revoked, and if there is a separate Statement of Findings, a certified copy of the Statement of Findings shall be included.
- (3) A copy of this Chapter, including the date of the adoption of the ordinance from which this Chapter was derived and the state of publication of such ordinance.
- (4) Proof of Service demonstrating that the notice was sent to the licensee.

Sec. 26-511. Penalty.

Any person who violates this Chapter shall be responsible for a municipal civil infraction as defined in Chapter 1, Sec. 1-9. – General Penalty, and the maximum fine of Five Hundred Dollars (\$500.00).

All other Articles of Chapter 26. –BUSINESSES, shall remain unaffected.

Ordained this _____ day of _____, 2023. Effective upon publication.

Therese Longe, Mayor

Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____ and that a summary was published _____, 2023.

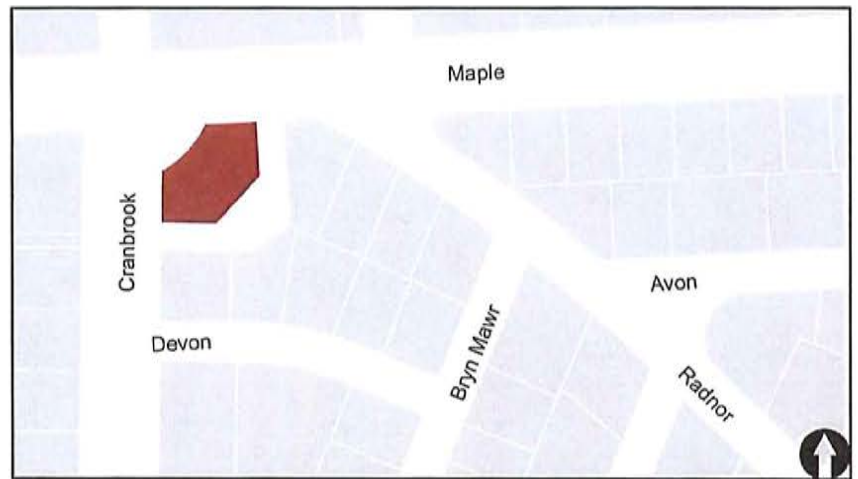
Alexandria D. Bingham, City Clerk

DRAFT

EXHIBIT 1

City of Birmingham Marihuana Licensing

 Marihuana





MEMORANDUM

Planning Division

DATE: April 17, 2023

TO: Thomas M. Markus, City Manager

FROM: Jana Ecker, Assistant City Manager

SUBJECT: Establishment of an Ad Hoc Aging in Place Committee

INTRODUCTION:

The City of Birmingham, like the rest of the country, is watching its population age. By 2040, approximately one in five Americans will be age 65 or older, up from approximately one in eight in 2000. Research is needed to determine the specific demographic trends occurring and forecast to occur within the City, and to determine the type of services needed to support these demographic changes.

BACKGROUND:

The City Commission adopted strategic goals in November of 2022, which included supporting an engaged and connected community by offering City services and amenities that enrich the lives of residents of all ages as a main goal. This strategic goal includes a recommendation to “create a task force to facilitate an aging in place plan, develop a plan for a permanent senior/community center to house NEXT senior services and to offer space for multigenerational programs, engage with youth in the community with a teen board or committee”.

Based on one of the goals identified in the Strategic Plan, the City Commission at their meeting on April 3, 2023, unanimously passed a motion to direct the formation of an ad hoc committee. The ad hoc committee should study demographics and trends in our population and conduct resident surveys to determine the services needed to support our aging population.

There was an Ad Hoc Joint Senior Services Committee established in 2012 that included representatives from Beverly Hills, Bingham Farms, Franklin and Southfield Township. This former committee was created to study how the communities could work together to fund a joint senior center. The former committee submitted a report in June 2013. The committee’s duration was extended to March 30, 2019. The committee was unable to finalize an interlocal agreement. However, after the committee ceased to exist, the municipalities were able to reach an agreement to provide funding for NEXT. Ultimately, an Interlocal Agreement was approved by the City Commission at their meeting on September 13, 2021, and was approved by the other communities

by November 2021.

In addition, in 2021, the Oakland County Board of Commissioners formed the Oakland County Healthy Aging Ad Hoc Committee. This committee was charged with creating a strategic blueprint for an aging-friendly Oakland County. In 2021, this committee prepared the Oakland County Blueprint for Successful Aging that developed strategies for creating age-friendly communities, and identified unmet needs and gaps in senior services across the entire county.

City staff now recommends creating a new ad hoc committee with a distinct name and a scope of work that clearly distinguishes the new committee from the former Ad Hoc Joint Senior Services Committee.

The creation of an Ad Hoc Aging in Place Committee ("AIPC") composed of seven members with a broad range of experience in providing senior services, experience in senior health, nutrition, elder law, and educational outreach is preferred. One member that can offer an experience in providing intergenerational connections/programming is also recommended based on the strategic goals recently adopted by the City Commission in 2022. An initial 18 month term is suggested.

The scope of work of the AIPC could include the following:

- A detailed demographic study of trends and patterns in our population;
- A review of existing senior services and identification of unmet needs;
- Development of a City-wide action plan outlining the vision and goals to encourage senior residents to age comfortably in Birmingham.

LEGAL REVIEW:

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

FISCAL IMPACT:

There are no fiscal impacts associated with this agenda item at this time.

PUBLIC COMMUNICATIONS:

There are no public communications required for this agenda item.

SUMMARY:

The City Commission may wish to adopt a resolution to establish the Ad Hoc Aging in Place Committee, to be composed of seven members with experience in senior services, senior health, nutrition, elder law, educational outreach and intergenerational connections/programming, with an initial 18 month term.

ATTACHMENTS:

- Exhibit A – Ad Hoc Aging in Place Committee

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to establish the Ad Hoc Aging in Place Committee for a term of 18 months, and to direct staff to advertise for upcoming appointments to this committee; further, once established, to direct staff to facilitate the requested studies and research needed to develop an action plan to improve the health, safety and welfare of senior citizens in Birmingham.

EXHIBIT A – AD HOC AGING IN PLACE COMMITTEE ROSTER



AD HOC AGING IN PLACE COMMITTEE

Terms: 2 years

Members: Seven members are 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.

Duties: 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.

Sample roster:

Committee Member	Preferred Expertise/Role	Term Expires
Regular Member	Representative of NEXT Senior Services	January 2025
Regular Member	Senior Health / Nutrition	January 2025
Regular Member	Elder Law / Estate Planning	January 2025
Regular Member	Gerontologist / Aging Specialist	January 2025
Regular Member	Intergenerational Connection	January 2025
Regular Member	Baldwin Library Staff Member from Adult Services/Outreach	January 2025
Regular Member	Representative of Birmingham Museum	January 2025



MEMORANDUM

Planning Division

DATE: April 17th, 2023

TO: Thomas M. Markus, City Manager

FROM: Brooks Cowan, Senior Planner

APPROVED: Nicholas Dupuis, Planning Director

SUBJECT: Public Hearing for 1429 Quarton Road (Parcel # 19-26-203-003) – Lot Division

INTRODUCTION:

The owner of the property known as 1429 Quarton Road is seeking a lot division to break off the southern portion of their lot to create a new property that would face Pilgrim Ave.

BACKGROUND:

The subject property located at the corner of Quarton Road and Pilgrim Ave is 48,744 square feet and located in the R1 Single Family Residential zone. The owners of the property intend to remain in their current household at 1429 Quarton Road. The applicant has indicated that they would like to divide their lot to enable an additional family to live in Birmingham and experience the wonderful environment, neighborhood, and city that they have been so fortunate to live in for most of their lives.

The Subdivision Regulation Ordinance (Chapter 102, Section 102-53) requires that the following standards be met for approval of a lot division.

- (1) *All lots formed or changed by the division shall conform to the minimum requirements of chapter 126 of this Code for the zone district in which the property is located.*

The subject property (Parcel A) is zoned R1 Single Family Residential with frontage on Quarton Road. The front setback is 73.4', the rear setback is 200.1', and the side setbacks are 24.3' and 39'. Only the rear setback will be modified, which is proposed to be reduced to 113.6', well beyond the minimum 30' requirement. The remaining lot size will be 35,084 square feet in size, also well beyond the 9,000 sq. ft. minimum. No non-conformities will be created with the proposed lot division.

The proposed lot for Pilgrim Street (Parcel B) is 13,660 square feet with a lot width of 86.5' and a depth of 160', therefore satisfying the minimum lot area for the R1 Single Family zone of 9,000 square feet. Any new residential dwelling proposed for the new lot will be subject to review from the Building Department and all requirements of the Zoning Ordinance's R1 (Single Family Residential) zoning district.

Accordingly, no non-conformities would be created on either of the resulting parcels as a result of the proposed lot division.

- (2) *All residential lots formed or changed by the division shall have a lot width, as defined in chapter 126, of not less than the average lot width of all lots on the same street within 300 feet of the lots formed or changed and within the same zone district.*

The average lot width on Pilgrim Street within 300 feet of the the proposed property in the same zone is 86.3 feet. The properites across the street on Pilgrim from the subject parcel are zoned R1-A and therefore are not included in the calculation. The applicant is proposing a new lot on Pilgrim Street that is 86.5 feet. **Accordingly, the applicant satisfies this requirement.**

- (3) *The division will not adversely affect the interest of the public and of the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:*
- a. *The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use of appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.*
 - b. *The effect of the proposed division upon any flood plain areas, wetlands or other natural features and the ability of the applicant to develop buildable sites on each resultant parcel without unreasonable disturbance of such natural features.*
 - c. *The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.*

The new proposed lot facing Pilgrim has a similar width and area as the surrounding properties. It does not appear that the location of proposed buildings or structures nor the location and nature of vehicular ingress or egress will hinder the development of adjacent land nor impair the value of said land.

The subject property is not located within the floodplain or soil erosion limit of a recognized stream, river, lake or other water body. The site does not appear to exhibit evidence of regulated wetlands or endangered species of flora and fauna. The proposed lot division does not appear to unreasonably disturb the natural features of the site.

The proposed lot split will not negatively affect the supply of light and air to adjacent properties. It will not negatively affect the capacity of essential public facilities. City departments have no objections to the proposed lot split.

Accordingly, the applicant satisfies this requirement.

LEGAL REVIEW:

The City Attorney has reviewed the application and has no concerns as to the form or content.

FISCAL IMPACT:

An additional lot with a new residential unit would create additional assessed and taxable value for the City of Birmingham.

PUBLIC COMMUNICATIONS:

For this public hearing, notices were sent to all property owners and tenants within 300 feet of the subject property.

SUMMARY:

The Planning Division requests that the City Commission consider the lot division of 1429 Quarton Road, parcel # 19-26-203-003.

ATTACHMENTS:

- Surveys
- Application & Attachments

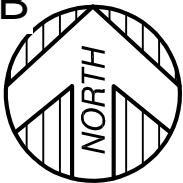
SUGGESTED ACTION:

Make a motion adopting a resolution to APPROVE the lot division of 1429 Quarton Road, parcel # 19-26-203-003.

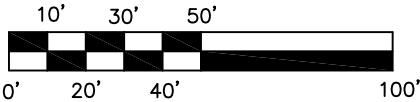
EXISTING PROPERTY SURVEY - REV B

PROPERTY DESCRIPTION:

LOT 165 EXCEPT THE SOUTH 25 FT, CASPAR J. LINGEMAN'S QUARTON ROAD UNIT NO.1 OF QUARTON LAKE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN LIBER 1788, PAGE 179 OF PLATS, OAKLAND COUNTY RECORDS.

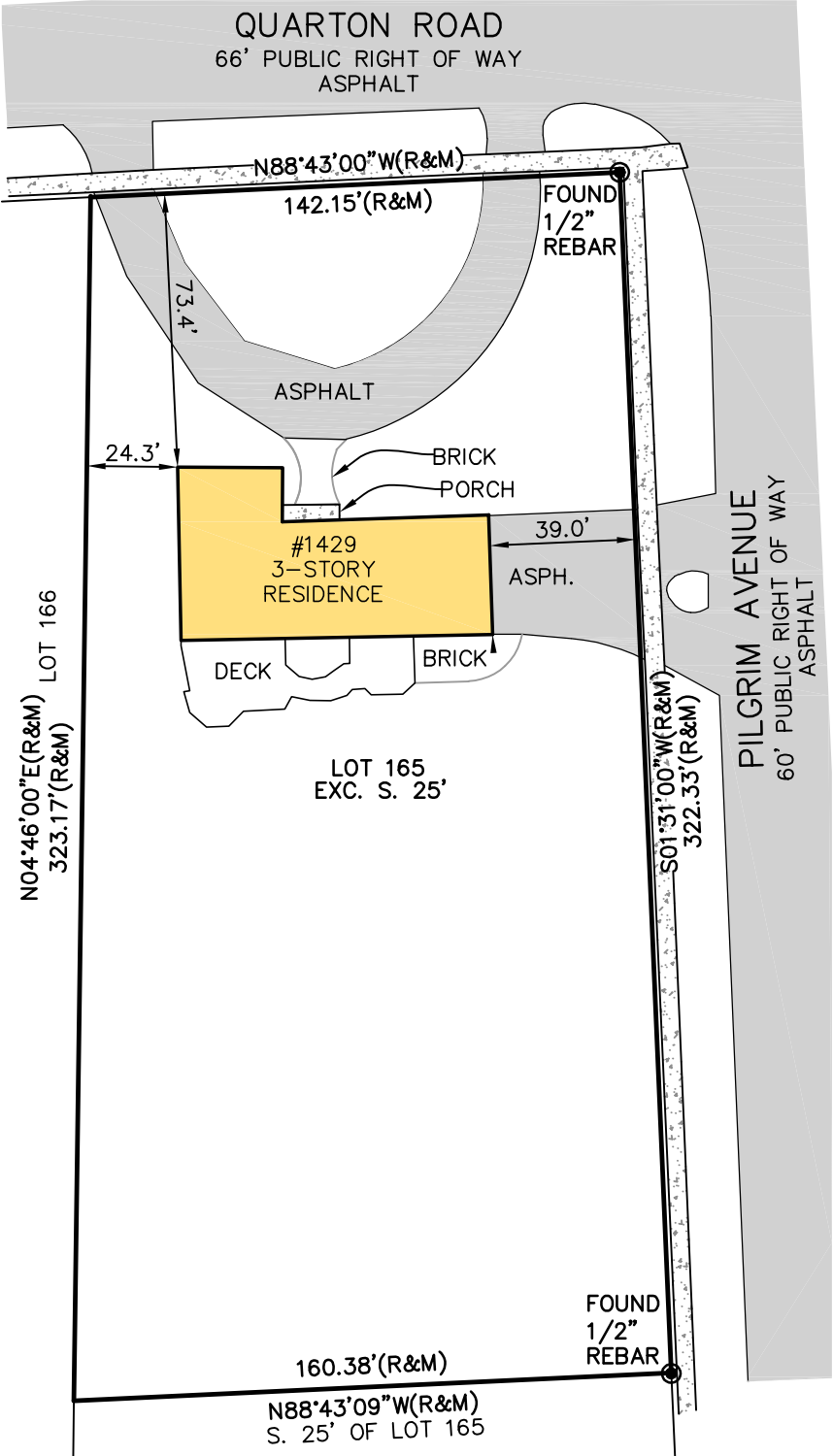


SCALE: 1"=50'



NOTE:

A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.



LEGEND

- SET 1/2" REBAR WITH CAP, #47976
- ⊙ FOUND MONUMENT (AS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORD DIMENSION



Handwritten signature of Anthony T. Sycko, Jr.



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CERTIFIED TO: JON ELEVKROG

FIELD SURVEY: JS AW

DATE: MARCH 24, 2023

DRAWN BY: NPH JDM

SHEET: 1 OF 4

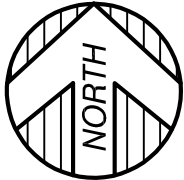
SCALE: 1" = 50'

JOB NO.: 22-02547

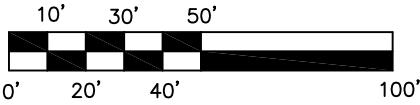
PROPOSED PROPERTY SURVEY

PROPERTY DESCRIPTION:

LOT 165 EXCEPT THE SOUTH 25 FT, CASPAR J. LINGEMAN’S QUARTON ROAD UNIT NO.1 OF QUARTON LAKE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN LIBER 1788, PAGE 179 OF PLATS, OAKLAND COUNTY RECORDS.

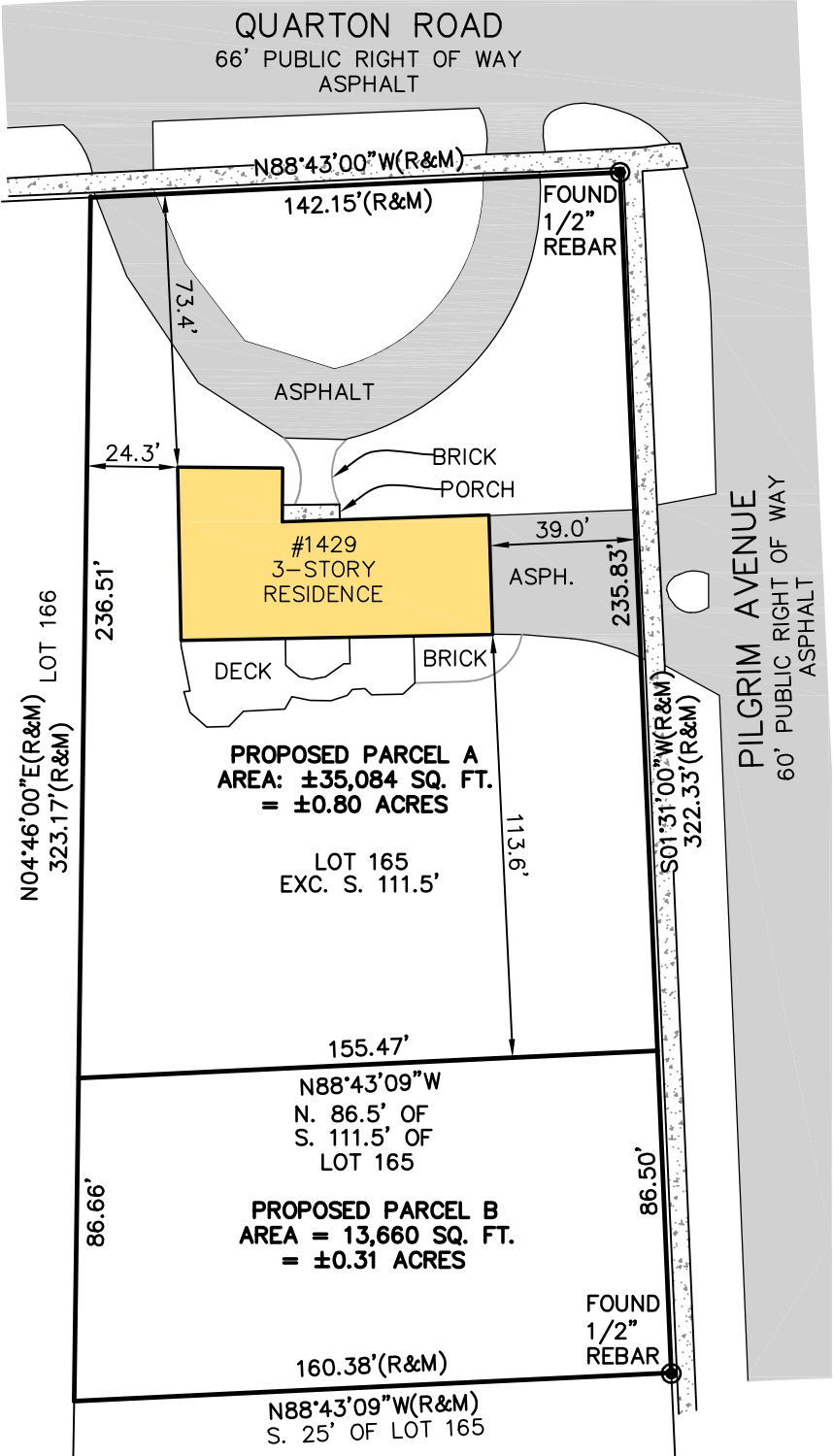


SCALE: 1"=50'



NOTES:

- 1. A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.
- 2. ALL PROPERTY SPLITS REQUIRE PRIOR CITY, TOWNSHIP, COUNTY, AND/OR STATE APPROVAL.



LEGEND

- SET 1/2" REBAR WITH CAP, #47976
- ⊙ FOUND MONUMENT (AS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORD DIMENSION



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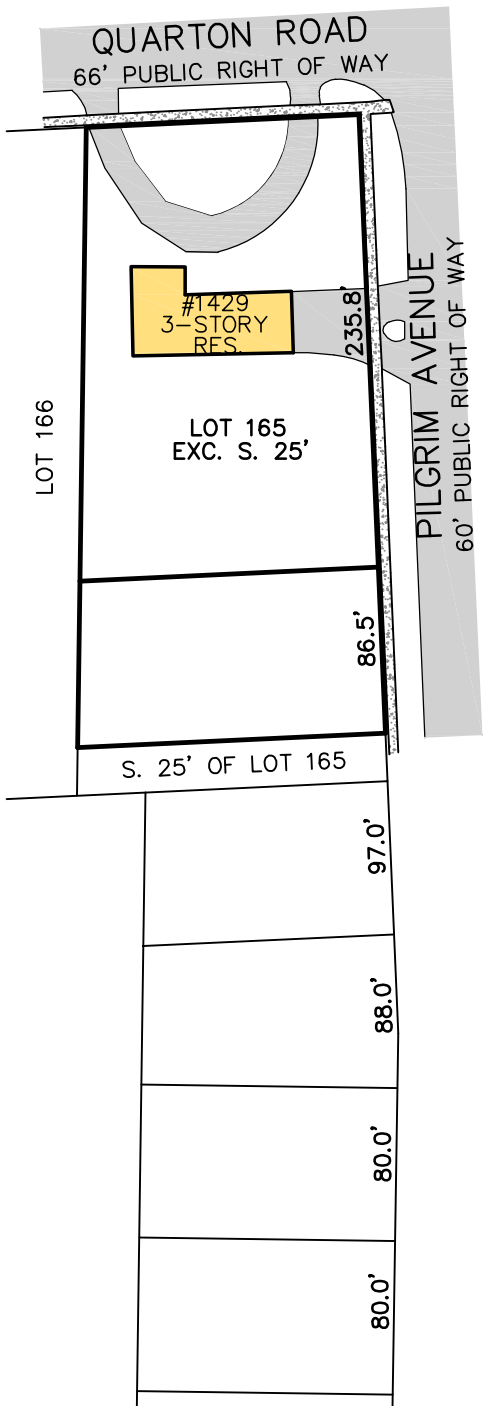
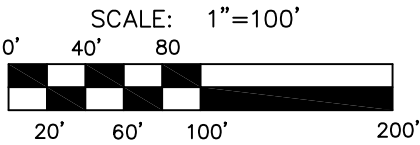
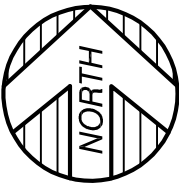
DRAWN BY: NPH JDM

SHEET: 2 OF 4

SCALE: 1" = 50'

JOB NO.: 22-02547

STREET FRONTAGE MAP



PILGRIM AVE PARCEL FRONTAGE	
PARCEL ID	FRONTAGE (FT)
19-26-203-008	97.0
19-26-203-009	88.0
19-26-203-010	80.0
19-26-203-011	80.0
AVERAGE	86.3



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CERTIFIED TO: JON ELEVKROG

FIELD SURVEY: JS AW

DATE: MARCH 24, 2023

DRAWN BY: JDM

SHEET: 3 OF 4

SCALE: 1" = 100'

JOB NO.: 22-02547

LEGAL DESCRIPTIONS

PROPERTY DESCRIPTION:

PARENT PARCEL:


LOT 165 EXCEPT THE SOUTH 25 FT, CASPAR J. LINGEMAN’S QUARTON ROAD UNIT NO.1 OF QUARTON LAKE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN LIBER 1788, PAGE 179 OF PLATS, OAKLAND COUNTY RECORDS.

PARCEL A:

LOT 165 EXCEPT THE SOUTH 111.5 FT, CASPAR J. LINGEMAN’S QUARTON ROAD UNIT NO.1 OF QUARTON LAKE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN LIBER 1788, PAGE 179 OF PLATS, OAKLAND COUNTY RECORDS.

PARCEL B:

NORTH 86.5 FT OF SOUTH 111.5 FEET OF LOT 165, CASPAR J. LINGEMAN’S QUARTON ROAD UNIT NO.1 OF QUARTON LAKE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN LIBER 1788, PAGE 179 OF PLATS, OAKLAND COUNTY RECORDS.

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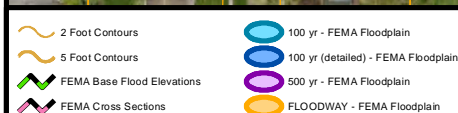
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CERTIFIED TO: JON ELEVKROG	
FIELD SURVEY: N/A	DATE: MARCH 24, 2023
DRAWN BY: JDM	SHEET: 4 OF 4
SCALE: N/A	JOB NO.: 22-02547

1429 Quarton Rd



Disclaimer: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys and other public records. It is not a legally recorded map or survey and is not intended to be used as one. Users should consult the information sources mentioned above when questions arise. FEMA Floodplain data may not always be present on the map.

OAKLAND COUNTY
Economic Development & Community Affairs
David Coulter
Oakland County Executive

Date Created: 3/16/2023
NORTH
1 inch = 200 feet



Division of Platted Lots Application
Planning Division

1. Applicant

Name: _____

Address: _____

Phone Number: _____

Email: _____

2. Property Owner (☐ *same as applicant*)

Name: _____

Address: _____

Phone Number: _____

Email: _____

3. Project Contact Person (☐ *same as applicant*)

Name: _____

Address: _____

Phone Number: _____

Email: _____

4. Project Designer/Developer

Name: _____

Address: _____

Phone Number: _____

Email: _____

5. Required Attachments

- One (1) copy or a registered land survey showing:
 - All existing and proposed platted lot lines;
 - Legal descriptions of proposed lots;
 - Locations of existing lots and structures within a 300 ft. radius;
 - Footprints of proposed development(s) including proposed building envelope with front, side and rear setbacks clearly labeled;
- One (1) digital copy of plans;
- Proof of ownership;
- Written statement of reasons for request;
- A letter of authority or power of attorney in the event that the application is made by a person other than the owner;
- Sketches of proposed development (*optional*);
- Other data having a direct bearing on the request;
- Any other information requested by the City Commission, Planning or other Departments.

6. Project Information

Address: _____

Parcel ID#: _____

Current Use: _____

Current Zoning: _____

Legal Description: _____

Lot 165 except the south 25 ft, Caspar J. Lingeman's Quarton Road unit No. 1 of Quarton Lake Estates, according to the plat thereof, as recorded in liber 1788, page 179 of plats, Oakland County Records.

7. Details of the Proposed Lot Division (attach separate sheet if necessary)

No development of the new lot is currently proposed. The plan is to sell the lot to someone who would like to build on it.

My parents, Jan and Maury, have lived at 1429 Quarton Road for over five decades and they would like to divide their lot to enable an additional family to live in Birmingham and experience the wonderful environment, neighborhood, and city that they have been so fortunate to live in for most of their lives.

Signature of Property Owner: _____ **Date:** _____

Signature of Applicant: _____ Date: _____

Date of Approval: _____ Date of Denial: _____ Reviewed By: _____



MEMORANDUM

City Clerk's Office

DATE: April 19, 2023

TO: Thomas M. Markus, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Recommended Amendments to the Ethics Ordinance

INTRODUCTION:

The Board of Ethics unanimously voted on April 18, 2023 to recommend amendments to the Ethics Ordinance for consideration by the City Commission. The purpose of these amendments are to:

1. Clean up language such as capitalization of proper nouns
2. Include persons serving as a City official in Sec. 2-324(a)(1)
3. Correct an outdated citation of code section "5-B" to the current citation "2-326" in Sec. 2-324(a)(6)
4. Add provisions for the City Commission to appoint no more than two alternate members

BACKGROUND:

In September of 2022, the Board of Ethics came to the consensus that it would be helpful to set some time aside at a future Ethics Board meeting to review the current city code pertaining to ethics and the procedural rules in place for the ethics board.

At the November 21, 2022 meeting of the Board of Ethics began the discussion to review and consider recommending amendments to the Ethics Ordinance.

At the January 30, 2023 meeting of the Board of Ethics finalized their suggested revisions. City Attorney Mary Kucharek then drafted the ordinance amendments as discussed and provided a redlined and clean version of the ordinance for the Ethics Board to review on the March 7, 2023 meeting.

The Board of Ethics unanimously voted on April 18, 2023 to recommend the proposed amendments to the Ethics Ordinance for consideration by the City Commission.

LEGAL REVIEW:

City Attorney Mary Kucharek concurs with the recommendation of the Ethics Board to adopt the proposed revisions and has no concerns about the proposed language.

FISCAL IMPACT:

None.

PUBLIC COMMUNICATIONS:

All Ethics Board and City Commission meetings where this topic has been discussed have been properly noticed and the public has been invited to make comments.

SUMMARY:

The City Commission is being asked to consider and adopt the proposed amendments to the Ethics Ordinance as recommended by the Board of Ethics.

The proposed amendments would:

1. Clean up language such as capitalization of proper nouns
2. Include persons serving as a City official in Sec. 2-324(a)(1)
3. Correct an outdated citation of code section "5-B" to the current citation "2-326" in Sec. 2-324(a)(6)
4. Add provisions for the City Commission to appoint no more than two alternate members

ATTACHMENTS:

1. Redlined - ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. – ADMINISTRATION, ARTICLE IX. – ETHICS
2. Clean - ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. – ADMINISTRATION, ARTICLE IX. – ETHICS
3. Links to Ethics Board Meeting Minutes and Video
 - a. April 18, 2023 – [Video](#) – Vote to recommend the ordinance revisions at 23:04
 - b. March 7, 2023 – [Minutes](#)
 - c. January 30, 2023 – [Minutes](#)
 - d. November 21, 2022 – [Minutes](#)

SUGGESTED COMMISSION ACTION:

Make a motion adopting the ordinance amendments as recommended by the Board of Ethics and to further direct the City Clerk to notice the two available alternate Ethics Board member positions and begin the process of filling these vacancies.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. –
ADMINISTRATION, ARTICLE IX. - ETHICS**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 2.- Administration, Article IX. – Ethics, shall be amended to read as follows:

ARTICLE IX. ETHICS

Sec. 2-320. Public policy.

Public office and employment are public trusts. For government to operate properly, each cityCity official, employee, or advisor must earn and honor the public trust by integrity and conduct.

The city-City hereby declares that all city-City officials and employees must avoid conflicts between their private interests and the public interest. Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain.

To enhance public trust, the city-City must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standards of ethical conduct for all city-City officials and employees, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the cityCity.

Sec. 2-321. Responsibilities of public office.

City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the nation, state, and the cityCity. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be *above reproach*.

All city-City officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-

partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for cityCity officials and employees and for the cityCity as an institution.

Sec. 2-322. Definitions.

City official or *employee* means a person elected, appointed or otherwise serving in any capacity with the cityCity in any position established by the City Charter or by cityCity ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the cityCity, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions. The term does not include election inspectors and student representatives appointed to cityCity boards or commissions.

Consultant means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

Compensation means any money, property, thing of value or benefit conferred upon or received by any person in return for services rendered or to be rendered to himself or herself or any other party.

Financial interest means any interest in money, property or thing of value or benefit.

Immediate family means a cityCity official or employee, his or her spouse, parents or children.

Official duties or *official action* means a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority.

Personal interest means an interest arising from blood or marriage relationships or any business association.

Private gain means any interest or benefit, in any form, received by a cityCity employee or official.

Substantial shall mean considerable in quantity or significantly great.

Sec. 2-323. Intention of code.

It is the intention of section 2-324 below that cityCity officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of cityCity property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a cityCity decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the cityCity government.

The eCode of eEthics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the eityCity ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

Sec. 2-324. Promulgation.

(a) *Conflict of interest—General.*

- (1) No official or employee of the eityCity 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.
- (2) No official or employee of the eityCity shall represent his or her personal opinion as that of the eityCity.
- (3) Every official or employee of the eityCity shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- (4) No official or employee of the eityCity 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 eityCity, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.

Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith reimbursement for expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the eityCity, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.

- (5) No official or employee of the eityCity shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
- (6) No official or employee of the eityCity 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.

This section shall not prohibit a part-time elected or appointed eityCity official from engaging in private employment or business on his or her own time as a private citizen and where eityCity business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5-B2-326

below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (7) No official or employee of the cityCity shall participate, as an agent or representative of the cityCity, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
- (8) No official or employee of the cityCity 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.
- (9) It is recognized that various boards and committees are part of the plan of government for the cityCity. As such, it is further recognized that by virtue of the various requirements for membership of the board, a member may be placed in the position of participating in a decision that may directly or indirectly affect his or her financial or personal interests. Therefore, those members of the various boards and committees in the cityCity, as they may be established from time to time, may participate in such decisions provided that they act:
 - a. In furtherance of the public good;
 - b. In compliance with the duties of their respective boards; and,
 - c. In a manner consistent with subsection (8) of this section.
- (10) Determination of conflict of interest. A conflict of interest exists if:
 - a. The cityCity 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 cityCity 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 cityCity 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.
- (11) Subsequent conflict of interest. No official or employee of the cityCity shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the cityCity or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.

(b) *Full disclosure.*

- (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 cityCity shall participate, as an agent or representative of the cityCity, 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 cityCity official or employee who has a conflict of interest, as defined herein, in any matter before the cityCity shall disclose such fact on the appropriate record of the cityCity 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 cityCity Commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the cityCity eCommission;
2. A member of any cityCity 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 cityCity employee who has a financial or other interest in a matter before the cityCity eCommission or any cityCity board, commission or committee and who participates in discussion with, or gives an official opinion to the cityCity eCommission, or to such other cityCity board, commission or committee relating to such matter, shall disclose on the records of the cityCity eCommission or such other cityCity board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.
4. Otherwise, any appointed cityCity official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected cityCity official shall address such a disclosure to the general public.

- b. If a cityCity official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the cityCity, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the ~~b~~Board of eEthics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.

- c. Within 20 days after election, employment, appointment, or the effective date of this ordinance, or any change in the facts set forth in the cityCity official's or employee's previously filed disclosure statement, each cityCity official and employee shall file with the cityCity eClerk an affidavit and disclosure statement. The cityCity eClerk shall provide each cityCity official or employee with the required affidavit and disclosure statement form immediately upon his or her election, employment or appointment. The affidavit and disclosure statement does not apply

to part-time and temporary employees of the ~~city~~City. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the ~~city~~City ~~m~~Manager.

- d. The effective date for this ordinance shall be July 21, 2003.

Sec. 2-325. Violation, enforcement and ~~A~~advisory ~~e~~Opinions.

(a) Board of ~~e~~Ethics.

- (1) The ~~city~~City ~~e~~Commission shall appoint a ~~b~~Board of ~~e~~Ethics, consisting of three members, as an advisory body for the purpose of interpreting this ~~e~~Code of ~~e~~Ethics.
- (2) The initial three members of the ~~b~~Board of ~~e~~Ethics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2003. If appointed prior to July 1st, they shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The ~~city~~City ~~e~~Commission shall fill a vacancy by an appointment for the unexpired term only.

(3) The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Ethics. An alternate member may be called on a rotating basis to sit as a regular member of the Board of Ethics in the absence of a regular member, and shall have the same voting rights as a regular member of the Board of Ethics. 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 or recused for reasons of conflict of interest. An alternate member having been appointed shall serve in the case until a final decision has been made.

- ~~(34)~~ The ~~b~~Board of ~~e~~Ethics shall be made up of residents of the ~~city~~City who have legal, administrative or other desirable qualifications.

- a. The members of the ~~b~~Board of ~~e~~Ethics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or ~~city~~City employees, nor shall they be currently serving on any other ~~city~~City board or commission.
- b. The board shall select its own presiding officer from among its members.
- c. The board shall establish such procedures it deems necessary or appropriate to perform its functions as set forth in this article.

- (b) *Functions of the ~~b~~Board of ~~ethics~~Ethics.* When there is a question or a complaint as to the applicability of any provision of this code to a particular situation, that question or complaint shall be directed to the ~~b~~Board of ~~e~~Ethics. It shall then be the function of the ~~b~~Board of ~~e~~Ethics to conduct hearings and/or issue an ~~a~~Advisory ~~e~~Opinion, as applicable.

- (1) Hearings. The **b**Board of **e**Ethics shall follow the following hearing procedure:
 - a. The board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
 - b. The board shall, at least 28 days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this **e**Code of **e**Ethics, to any person requested to appear before them, by certified mail, return receipt requested, to addressee only.
 - c. Any person requested to appear before a **b**Board of **e**Ethics hearing may request one extension for a period not to exceed 28 days. Extensions thereafter will be granted only under extreme circumstances.
 - d. Any person requested to appear before a **b**Board of **e**Ethics hearing may be accompanied by his or her attorney.
 - e. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
 - f. All findings of board hearings shall be published in permanent form and communicated to the **e**ityCity **e**Commission and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory **e**Opinions. All **a**Advisory **e**Opinions so issued shall also be published in permanent form and communicated to the **e**ityCity **e**Commission and the public, subject to the requirements of the Open Meetings Act.
- (3) After the **b**Board of **e**Ethics' **a**Advisory **e**Opinions and/or hearing findings have been published:
 - a. The **e**ityCity **e**Commission shall be responsible for imposing any sanction for a violation of this Code on one of its members or any person appointed by the commission to any **e**ityCity board.
 - b. If it becomes necessary to seek the removal of a **e**ityCity official after the **b**oard **B**oard of **e**Ethics' **a**Advisory **e**Opinion and/or hearing findings, the **e**ityCity shall follow the requirements for removal of a public official in accordance with the laws of the state.
 - c. The **e**ityCity **m**Manager shall be responsible for imposing any discipline for a violation of this Code on any employee of the **e**ityCity.

Sec. 2-326. Affidavit and disclosure statement.

Immediately following an election, employment or appointment of a **e**ityCity official or employee, the **e**ityCity **e**Clerk shall provide the individual with an affidavit and disclosure statement form. Within 20 days after election, appointment, employment or any change in the facts set forth in the **e**ityCity official's or employee's previously filed affidavit and disclosure statement, all **e**ityCity officials or employees shall file with the **e**ityCity **e**Clerk an affidavit and disclosure statement including the following:

- A. A disclosure statement responding in detail to the following questions:

1. To the best of your knowledge, do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area covered by a 425 Agreement to which the City of Birmingham is party?
 2. If your answer to question 1. is affirmative, to the best of your knowledge state the following information for each such interest owned:
 - (a) The nature of your interest in the real property;
 - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets), and;
 - (c) The property's permanent real estate tax identification number.
 3. To the best of your knowledge, do you or members of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham?
 4. If your answer to question 3. is in the affirmative, state the following, to the best of your knowledge:
 - (a) The name of the entity;
 - (b) The address of the entity;
 - (c) The nature of your relationship to the entity, and;
 - (d) The date relationship commenced.
 5. To the best of your knowledge, do you or any members 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 that is not reported in the prior answers.
 6. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.
- B. An affidavit in which the City official or employee states: "I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

_____ County, Michigan

My Commission Expires: _____

All other Articles of Chapter 2. – Administration, shall remain unaffected.

Ordained this _____ day of _____, 2023. Effective upon publication.

Therese Longe, Mayor

Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____ and that a summary was published _____, 2023.

Alexandria D. Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. –
ADMINISTRATION, ARTICLE IX. - ETHICS**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 2.- Administration, Article IX. – Ethics, shall be amended to read as follows:

ARTICLE IX. ETHICS

Sec. 2-320. Public policy.

Public office and employment are public trusts. For government to operate properly, each City official, employee, or advisor must earn and honor the public trust by integrity and conduct.

The City hereby declares that all City officials and employees must avoid conflicts between their private interests and the public interest. Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain.

To enhance public trust, the City must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standards of ethical conduct for all City officials and employees, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the City.

Sec. 2-321. Responsibilities of public office.

City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the nation, state, and the City. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be *above reproach*.

All City officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-

partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for City officials and employees and for the City as an institution.

Sec. 2-322. Definitions.

City official or employee means a person elected, appointed or otherwise serving in any capacity with the City in any position established by the City Charter or by City ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the City, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions. The term does not include election inspectors and student representatives appointed to City boards or commissions.

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Financial interest means any interest in money, property or thing of value or benefit.

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Official duties or official action means a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority.

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Private gain means any interest or benefit, in any form, received by a City employee or official.

Substantial shall mean considerable in quantity or significantly great.

Sec. 2-323. Intention of code.

It is the intention of section 2-324 below that City officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of City property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a City decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the City government.

The Code of Ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City

Charter, the City ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

Sec. 2-324. Promulgation.

(a) *Conflict of interest—General.*

- (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.
- (2) No official or employee of the City shall represent his or her personal opinion as that of the City.
- (3) Every official or employee of the City shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- (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.

Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith reimbursement for expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the City, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.

- (5) No official or employee of the City shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
- (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.

This section shall not prohibit a part-time elected or appointed City official from engaging in private employment or business on his or her own time as a private citizen and where City business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 2-326 below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (7) No official or employee of the City shall participate, as an agent or representative of the City, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
 - (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.
 - (9) It is recognized that various boards and committees are part of the plan of government for the City. As such, it is further recognized that by virtue of the various requirements for membership of the board, a member may be placed in the position of participating in a decision that may directly or indirectly affect his or her financial or personal interests. Therefore, those members of the various boards and committees in the City, as they may be established from time to time, may participate in such decisions provided that they act:
 - a. In furtherance of the public good;
 - b. In compliance with the duties of their respective boards; and,
 - c. In a manner consistent with subsection (8) of this section.
 - (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.
 - (11) Subsequent conflict of interest. No official or employee of the City shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the City or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.
- (b) *Full disclosure.*
- (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.
 4. Otherwise, any appointed City official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected City official shall address such a disclosure to the general public.
- b. If a City official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the City, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the Board of Ethics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.
- c. Within 20 days after election, employment, appointment, or the effective date of this ordinance, or any change in the facts set forth in the City official's or employee's previously filed disclosure statement, each City official and employee shall file with the City Clerk an affidavit and disclosure statement. The City Clerk shall provide each City official or employee with the required affidavit and disclosure statement form immediately upon his or her election, employment or appointment. The affidavit and disclosure statement does not apply to part-time and temporary employees of the City. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the City Manager.
- d. The effective date for this ordinance shall be July 21, 2003.

Sec. 2-325. Violation, enforcement and Advisory Opinions.

(a) *Board of Ethics.*

- (1) The City Commission shall appoint a Board of Ethics, consisting of three members, as an advisory body for the purpose of interpreting this Code of Ethics.
- (2) The initial three members of the Board of Ethics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2003. If appointed prior to July 1st, they shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The City Commission shall fill a vacancy by an appointment for the unexpired term only.

- (3) The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Ethics. An alternate member may be called on a rotating basis to sit as a regular member of the Board of Ethics in the absence of a regular member, and shall have the same voting rights as a regular member of the Board of Ethics. 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 or recused for reasons of conflict of interest. An alternate member having been appointed shall serve in the case until a final decision has been made.
- (4) The Board of Ethics shall be made up of residents of the City who have legal, administrative or other desirable qualifications.
 - a. The members of the Board of Ethics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or City employees, nor shall they be currently serving on any other City board or commission.
 - b. The board shall select its own presiding officer from among its members.
 - c. The board shall establish such procedures it deems necessary or appropriate to perform its functions as set forth in this article.

(b) *Functions of the Board of Ethics.* When there is a question or a complaint as to the applicability of any provision of this code to a particular situation, that question or complaint shall be directed to the Board of Ethics. It shall then be the function of the Board of Ethics to conduct hearings and/or issue an Advisory Opinion, as applicable.

- (1) Hearings. The Board of Ethics shall follow the following hearing procedure:
 - a. The board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
 - b. The board shall, at least 28 days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this Code

of Ethics, to any person requested to appear before them, by certified mail, return receipt requested, to addressee only.

- c. Any person requested to appear before a Board of Ethics hearing may request one extension for a period not to exceed 28 days. Extensions thereafter will be granted only under extreme circumstances.
 - d. Any person requested to appear before a Board of Ethics hearing may be accompanied by his or her attorney.
 - e. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
 - f. All findings of board hearings shall be published in permanent form and communicated to the City Commission and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory Opinions. All Advisory Opinions so issued shall also be published in permanent form and communicated to the City Commission and the public, subject to the requirements of the Open Meetings Act.
- (3) After the Board of Ethics' Advisory Opinions and/or hearing findings have been published:
- a. The City Commission shall be responsible for imposing any sanction for a violation of this Code on one of its members or any person appointed by the commission to any City board.
 - b. If it becomes necessary to seek the removal of a City official after the Board of Ethics' Advisory Opinion and/or hearing findings, the City shall follow the requirements for removal of a public official in accordance with the laws of the state.
 - c. The City Manager shall be responsible for imposing any discipline for a violation of this Code on any employee of the City.

Sec. 2-326. Affidavit and disclosure statement.

Immediately following an election, employment or appointment of a City official or employee, the City Clerk shall provide the individual with an affidavit and disclosure statement form. Within 20 days after election, appointment, employment or any change in the facts set forth in the City official's or employee's previously filed affidavit and disclosure statement, all City officials or employees shall file with the City Clerk an affidavit and disclosure statement including the following:

- A. A disclosure statement responding in detail to the following questions:
 - 1. To the best of your knowledge, do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area covered by a 425 Agreement to which the City of Birmingham is party?
 - 2. If your answer to question 1. is affirmative, to the best of your knowledge state the following information for each such interest owned:

- (a) The nature of your interest in the real property;
 - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets), and;
 - (c) The property's permanent real estate tax identification number.
- 3. To the best of your knowledge, do you or members of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham?
- 4. If your answer to question 3. is in the affirmative, state the following, to the best of your knowledge:
 - (a) The name of the entity;
 - (b) The address of the entity;
 - (c) The nature of your relationship to the entity, and;
 - (d) The date relationship commenced.
- 5. To the best of your knowledge, do you or any members 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 that is not reported in the prior answers.
- 6. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.
- B. An affidavit in which the City official or employee states: "I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

_____ County, Michigan

My Commission Expires: _____

All other Articles of Chapter 2. – Administration, shall remain unaffected.

Ordained this ____ day of _____, 2023. Effective upon publication.

Therese Longe, Mayor

Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____ and that a summary was published _____, 2023.

Alexandria D. Bingham, City Clerk



MEMORANDUM

Legal Department

DATE: April 19, 2023

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek

SUBJECT: Request for Closed Session Under MCL § 15.268 Sec. 8(d) of the Open Meetings Act and MCL § 15.268 Sec. 8(h)

INTRODUCTION:

- This matter concerns the potential purchase of land, which can be discussed in closed session and a written attorney client privileged communication.

LEGAL REVIEW:

- We are requesting closed session on April 24, 2023 pursuant to MCL § 15.268 Sec. 8(d) and MCL § 15.268 Sec. 8(h).

FISCAL IMPACT:

- To be discussed in closed session.

PUBLIC COMMUNICATIONS:

- None.

ATTACHMENTS:

- Open Meetings Act (Excerpt) Act 267 of 1976, MCL § 15.268 Closed sessions; permissible purposes, Sec. 8(d) and Sec. 8(h).

SUGGESTED COMMISSION ACTION:

- To make a motion adopting a resolution to meet in closed session to discuss the potential purchase of land pursuant to MCL § 15.268 Sec. 8(d) of the Open Meetings Act and pursuant to MCL § 15.268 Sec. 8(h) to discuss a written attorney client privileged communication.

OPEN MEETINGS ACT (EXCERPT)
Act 267 of 1976

15.268 Closed sessions; permissible purposes; applicability to independent citizens redistricting commission.

Sec. 8. (1) Except as otherwise provided in subsection (2), a public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing. An individual requesting a closed hearing may rescind the request at any time, in which case the matter at issue must be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office must be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted under section 16231 of the public health code, 1978 PA 368, MCL 333.16231, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number does not constitute a quorum of the governing board. However, the search committee must not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

(k) For a school board to consider security planning to address existing threats or prevent potential threats to the safety of the students and staff. As used in this subdivision, "school board" means any of the following:

(i) That term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(ii) An intermediate school board as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(iii) A board of directors of a public school academy as described in section 502 of the revised school code, 1976 PA 451, MCL 380.502.

(iv) The local governing board of a public community or junior college as described in section 7 of article VIII of the state constitution of 1963.

(l) For a county veteran services committee to interview a veteran or a veteran's spouse or dependent regarding that individual's application for benefits or financial assistance and discuss that individual's

application for benefits or financial assistance, if the applicant requests a closed hearing. This subdivision does not apply to a county veteran services committee voting on whether to grant or deny an individual's application for benefits or financial assistance. As used in this subdivision, "county veteran services committee" means a committee created by a county board of commissioners under section 1 of 1953 PA 192, MCL 35.621, or a soldiers' relief commission created under section 2 of 1899 PA 214, MCL 35.22.

(2) This act does not permit the independent citizens redistricting commission to meet in closed session for any purpose. As used in this subsection, "independent citizens redistricting commission" means the independent citizens redistricting commission for state legislative and congressional districts created in section 6 of article IV of the state constitution of 1963.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996;—Am. 2018, Act 467, Eff. Mar. 27, 2019;—Am. 2021, Act 31, Imd. Eff. June 24, 2021;—Am. 2021, Act 166, Imd. Eff. Dec. 27, 2021.

Compiler's note: Enacting section 1 of Act 166 of 2021 provides:

"Enacting section 1. This amendatory act is intended to clarify that the independent citizens redistricting commission for state legislative and congressional districts, since its establishment under section 6 of article IV of the state constitution of 1963, has been required to conduct all of its business at open meetings, without exception and in a manner that invites wide public participation throughout this state, as provided in section 6(10) of article IV of the state constitution of 1963, and that the commission continues to be subject to this unqualified open meetings requirement."



NOTICE OF INTENTION TO APPOINT TO HISTORIC DISTRICT STUDY COMMITTEE

At the regular meeting of Monday, June 5, 2023 the Birmingham City Commission intends to appoint two regular members to the Historic District Study Committee to serve a three-year term to expire June 25, 2026.

The goal of the Historic District Study Committee is to conduct historical research regarding the proposed designation of historic landmarks or districts in the City of Birmingham.

A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although city residency is not required if an expert on the potential historic district topic is not available among city residents. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations. The meetings are held by resolution of the City Commission.

Interested parties may submit an application available at the City Clerk's Office on or before noon on Wednesday, May 31, 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 Position	Date Applications Due (by noon)	Date of Interview
Members shall have a clearly demonstrated interest in or knowledge of historic preservation.	5/31/2023	06/05/2023

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 THE GREENWOOD CEMETERY ADVISORY BOARD

At the regular meeting of Monday, June 5, 2023 the Birmingham City Commission intends to appoint one regular member to the Greenwood Cemetery Advisory Board to serve the remainder of a three-year term to expire July 6, 2024.

Members must be chosen from among the citizens of Birmingham and, insofar as possible, represent diverse interests, such as persons with family members interred in Greenwood Cemetery; owners of burial sites within Greenwood Cemetery intending to be interred in Greenwood Cemetery; persons familiar with and interested in the history of Birmingham; persons with familiarity and experience in landscape architecture, horticulture, law or cemetery or funeral professionals.

Interested citizens may submit a form available at the City Clerk's Office on or before noon on Wednesday, May 31, 2023. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

Committee Duties

In general, it shall be the duty of the Greenwood Cemetery Advisory Board to provide recommendations to the City Commission on:

1. Modifications. As to modifications of the rules and regulations governing Greenwood Cemetery.
2. Capital Improvements. As to what capital improvements should be made to the cemetery. Future Demands. As to how to respond to future demands for cemetery services.
3. Day to Day Administration. The day to day administration of the cemetery shall be under the direction and control of the City, through the City Manager or his/her designee.
4. Reports. The Greenwood Cemetery Advisory Board shall make and submit to the City Commission an annual report of the general activities, operation, and condition of the Greenwood Cemetery for the preceding 12 months. The Greenwood Cemetery Advisory Board shall, from time to time, as occasion requires, either in the annual report, or at any time deemed necessary by the Greenwood Cemetery Advisory Board, advise the City Commission in writing on all matters necessary and proper for and pertaining to the proper operation of Greenwood Cemetery and any of its activities or properties.

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.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Must be a resident of Birmingham and, insofar as possible, represent diverse interests, such as persons with family members interred in Greenwood Cemetery; owners of burial sites within Greenwood Cemetery intending to be interred in Greenwood Cemetery; persons familiar with and interested in the history of Birmingham; persons with familiarity and experience in landscape architecture, horticulture, law or cemetery or funeral professionals.	05/31/2023	06/05/2023



NOTICE OF INTENTION TO APPOINT TO THE MARTHA BALDWIN PARK BOARD

At the regular meeting of Monday, June 5, 2023 the Birmingham City Commission intends to appoint two regular members to the Martha Baldwin Park Board to serve four-year terms to expire May 1, 2027, and regular member to serve the remainder of a four-year term to expire May 1, 2024. Members must be electors of the City of 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 Wednesday, May 31, 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 vote on appointments.

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.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members must be electors in the City of Birmingham.	5/31/2023	6/5/2023



NOTICE OF INTENTION TO APPOINT TO THE BOARD OF ETHICS

At the regular meeting of Monday, May 22, 2023 the Birmingham City Commission intends to appoint two alternate members to the Board of Ethics to serve a three-year term to expire June 30, 2026.*

Board members are to serve as an advisory body for the purposes of interpreting the Code of Ethics. The board consists of three regular members and two alternates* who serve without compensation. The members shall be residents and have legal, administrative or other desirable qualifications.

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, May 17, 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 vote on appointment.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall be residents and have legal, administrative or other desirable qualifications.	5/17/2023	5/22/2023

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.

*Contingent on passing of Ethics ordinance amendment at the April 24, 2023 meeting



BOARD OF ETHICS

Ordinance 1805 (Birmingham Code of Ordinances Sec. 2-320 through 2-326)

Ordinance TBD (contingent on passing of proposed ordinance ammendments at the April 24, 2023 City Commission Meeting)

The board shall serve as an advisory body for purposes of interpreting the Code of Ethics. The board consists of three **regular** members and **two alternate members** who serve without compensation. The members shall be residents and have legal, administrative, or other desirable qualifications.

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Fierro-Share 1040 Gordon Lane	Sophie	(248) 642-7340 <i>Sfierro-share1@comcast.net</i>	7/14/2003	6/30/2023
Robb 1533 Pleasant Court	James	(517)712-3469 <i>jamesdrobb55@gmail.com</i>	8/11/2003	6/30/2025
Schrot 1878 Fairway	John	(248) 646-6513 <i>jschrot@berrymoorman.com</i>	7/14/2003	6/30/2024
Vacant*		Alternate Member		6/30/2026
Vacant*		Alternate Member		6/30/2026

*Contingent on passing of ordinance amendment at the April 24, 2023 Commission Meeting



CITY MANAGER'S REPORT

April 2023

Baldwin Public Library

Library Board

The Library Board met on April 17, 2023 for its regular meeting. After receiving the bids for the Phase 3 construction project, the Library Board voted to set a not to exceed price for the project of \$3,688,000. The project cost came in slightly over budget and the library plans to supplement the budget with funds from the Trust. More details will be shared at the April 29 budget hearing.

Library Tour

If you'd like to learn even more about the library, join Library Director Rebekah Craft for a Behind the Scenes Tour. You'll visit staff areas, learn how items are added to the collection, and hear about new programs and services. The next tour will meet in the Library's vestibule on Wednesday, May 17 at 4:00 p.m.

Kanopy Streaming

With your Baldwin Library card, you can stream award winning documentaries and independent films online with Kanopy Streaming. Each cardholder receives 10 play credits per month. You can stream these films on your computer, tablet, mobile device, or Smart TV. Visit baldwinlib.org/movies to get started.

Used Book Sale

The Friends of the Baldwin Public Library are hosting a used book sale from May 6-8. A special preview night for Friends members will be held on Friday, May 5 from 6-8pm. All proceeds benefit programs and services at the library and most items are priced at \$2 or less. This sale will be held in the lower level of the library.

Register for these upcoming programs and more at baldwinlib.org/calendar.

Free Comic Book Day!

Saturday, May 6 — All Day

It's Free Comic Book Day at BPL and local comic shops. Swing by the library, pick up a comic and vote for your favorite comic book character. We'll have comics for kids, teens, and adults on a first come, first served basis. One comic book per person, please.

Genealogy Series: Studying the Census

Thursday, May 11 — 7:00 p.m. to 8:00 p.m.

The release of the 1950 U.S. Census has been a gamechanger for many genealogists. This session will take an in-depth look at census records and why they are such a valuable tool in building your family tree.

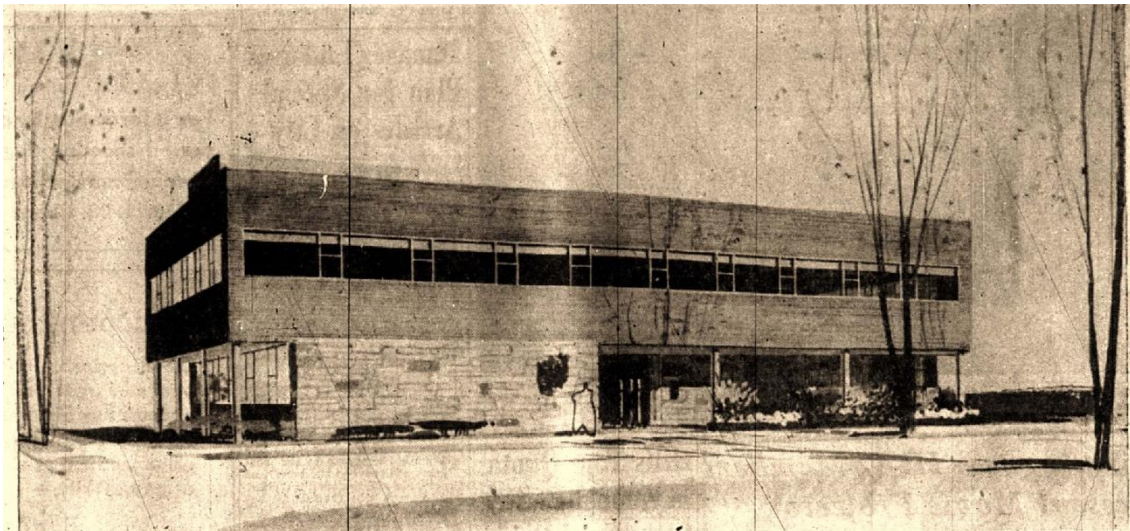
The Birmingham Museum

Allen House Temporary Closure for Construction

The Allen House at the Birmingham Museum will close to the public May 1 due to lead abatement for the planned restoration of the building's historic windows. The Hunter House will remain open and staff will be available to conduct guided tours there and to assist with questions and research. We anticipate reopening the Allen House to the public on June 15.

Famous Roots of Birmingham's AT&T Building

In 1948, AT&T (then Michigan Bell) commissioned the up-and-coming Japanese American architect, Minoru Yamasaki (later architect of New York's Twin Towers) to design its new building in Birmingham. Yamasaki's design for the structure had a simple but elegant approach to the functional utility needs of the building, located across from the Municipal Building. The original building design also included a substantial foundation to support a future third floor and heavy equipment that AT&T anticipated needing to add. Unfortunately, when this completely utilitarian third floor was built, it significantly altered the appearance of Yamasaki's Mid-century Modern design. With the original rendering at hand, however, one can still see the architect's stamp on the existing AT&T Building, which is the only known Yamasaki design in Birmingham.



Minoru Yamasaki's original design for Birmingham's Michigan Bell Building, (1948)
Birmingham Eccentric, 1 Apr 1948, 1 (*Birmingham Museum collection*).



The Michigan Bell/AT&T Building, c2010 (*Birmingham Museum collection*).

Birmingham Shopping District (BSD)

Strategic Planning

The BSD Board held a second work session on April 4 for its Strategic Plan and a final draft plan will be presented to the Board at its April 19, 2023, Board meeting for approval.

April Board Meeting Rescheduled Due to Holiday Observance & Action Items

The BSD Board meeting for April has been rescheduled for April 19, 2023, at 8 a.m. due to the observance of Passover. At this meeting, the BSD will be approving its 2024-26 budget, its strategic plan, holiday lighting plan for 2023/24 and new BSD bylaws. The Board will also recognize two significant business anniversaries at its meeting, including Tiffany Florist for 50 years and Birmingham Village Players for 100 years.

Holiday Impact Report

A significant part of the BSD's annual promotional efforts are concentrated on the holidays. To show the return on investment, [attached is a holiday impact report](#) indicating the programming provided, number of visitors throughout the season and impressions made through the BSD's marketing efforts. This report will be provided to partners, supporters and businesses within the district to help showcase the value of the BSD and their involvement in the programming offered.

Spring Stroll

Spring Stroll was held this past Saturday and was very well attended with over 800 visitors enjoying specials and incentives at 29 participating businesses.

Farmers Market Opening Day

The Birmingham Farmers Market opens May 7, 2023, and will run through October 29, 2023, every Sunday from 9 a.m. - 2 p.m. in Lot 6 located along North Old Woodward. Twenty-five children in grades K-8 participated in an art contest for the Farmers Market tote bag, with one design picked for the bag

which will be handed out on opening day and as supplies last through the season. The top 10 other art submissions will be on display as well. Over 46 vendors are confirmed for the market thus far, and an average of 40 vendors weekly will be at the market this season.

Michigan Retail Interface Conference

The BSD Executive Director served on a panel discussion regarding the current economy and future of retail and restaurants at the Michigan Retail Interface Conference held at the Townsend Hotel this week with over 150 realtors and developers in attendance. The BSD was a sponsor of the event and provided an opportunity to build relationships with potential new business concepts, as well as the real estate development community. General recruitment materials have now been updated and are available through the BSD office.

New Businesses

The most recent new business to welcome to downtown Birmingham this month is:

- Massage Rain, 640 N. Old Woodward, Suite 101 - health & fitness

2023 Dashboard Metrics

Retail Occupancy Rate - 96% (out of 1.5 million sq.ft.)

Office Occupancy - 89% (out of 2 million sq.ft.)

9 New Business Openings in 2023 (7 more in process)

Commercial, Mixed-Use & Residential Development Projects In Construction/Planning - 12 projects totaling 827,727 sq. ft.

Building Department

Office Update

The Building Department and 2nd floor recently reopened to the public. We still offer several options for accessing our services such as the drop box and our online portal, and continue to encourage the public to call in advance to schedule an appointment for anything that requires in-person assistance.

Board of Zoning Appeals

Effective April 1, all Board of Zoning Appeals submissions are through our online permitting portal, BS&A Online. All member packets are now delivered electronically and we have discontinued the distribution of hard copy paper meeting packets.

Monthly Report

The [Building Department's monthly report](#) provides an update on the following construction activity: building permits issued, building inspections conducted, trades permits issued and trades inspections conducted. In March, we processed 372 online permit applications for a total of 893 in 2023.

City Clerk's Office

Celebrate Birmingham Parade and Party in Shain Park

Sunday, May 21, 2023 parade at 1:00 p.m. and party to follow in Shain Park, ending at 4:00 p.m.

Mark your calendars for the annual Celebrate Birmingham Parade and Party in Shain Park! The parade will kick off at 1 p.m., and it will be a vibrant display of hometown pride. The parade route will begin on Old Woodward Avenue by Booth Park and will proceed through the downtown area before ending at

Shain Park. Attendees can expect to see various community groups, businesses and organizations showcasing their creativity and spirit in the parade.

At the end of the parade, the fun begins at the party in Shain Park with activities for all ages. This community celebration offers a great opportunity to connect with friends, family and neighbors and enjoy beautiful Shain Park. For kids, there will be a bounce house, games, face painting and crafts. Food trucks will be on site offering a range of delicious treats, including sweet and savory options, and a photo booth available to capture memories of the event with friends and family. Don't miss this beloved Birmingham tradition! For the latest information, go to www.bhamgov.org/parade. We look forward to seeing you there!

Open Call: Parade and Party Participants, Groups, Sponsors & Food Vendors

Sunday, May 21, 2023 parade at 1:00 p.m. and party to follow in Shain Park, ending at 4:00 p.m.

Community groups, local businesses, dance teams, scout troops, children and adults of all ages are encouraged to march in this year's parade. It's a great opportunity to spotlight your group! Visit www.bhamgov.org/parade to register before May 12, 2023.

Sponsors are invited to join in the 2023 festivities! Being a sponsor is another way for a business, group, organization or individual to be recognized as part of this family-friendly event which reflects the hometown feel of Birmingham. The Hometown Parade is televised by Bloomfield Community Television and covered by traditional print and social media, giving sponsors a fantastic PR opportunity. Visit www.bhamgov.org/parade for registration forms and sponsorship packages. Register before April 28, 2023.

Interested in being a food vendor or join in the celebration? Contact Christina Woods at cwoods@bhamgov.org or (248) 530-1803.

Special thanks to our sponsors:

- Parade Presenting Sponsor: [Bank of Ann Arbor - Birmingham](#)
- Party in Shain Park Presenting Sponsor: [Bloom Pediatrics](#)

General Election on November 7, 2023

Birmingham will hold a general election on Tuesday, November 7, 2023. At this time, the ballot will include four Birmingham Commissioner seats and three Birmingham Library Board positions, all for four-year terms. Filing deadline for petitions and candidates is 4:00 p.m. on July 25, 2023.

City Commission and Library Board Candidate and Petition Information

City Commission and Library Board candidates must be registered voters and residents for at least one year before the November 7, 2023 election. Petition packets containing all the information needed to run for these positions are available at the City Clerk's Office during regular business hours. Candidates must complete the required paperwork in the petition packet and collect more than 25 but not more than 50 signatures from Birmingham registered voters. Signers must print their names with their current address and date. A signer may only sign one petition for each available seat; in this election that means a single voter can sign no more than four City Commission petitions and three Library Board petitions. The Clerk's Office must receive all candidates' paperwork no later than July 25, 2023 at 4:00 p.m., after which the Clerk's Office will review to ensure all petition requirements are met. The clerk cannot extend the filing deadline for any reason. For more information regarding petition and candidate filing please visit www.bhamgov.org/elections.

Ethics Board

The Board of Ethics met on Tuesday, April 18, 2023, at 1 p.m. to continue reviewing the city's current Ethics Ordinance and to review a draft ethics opinion regarding Commissioner Brad Host requested by City Manager Tom Markus.

Board Appointments

The following City of Birmingham boards and commissions have vacant positions or members with terms expiring soon. Applications are due before noon the Wednesday prior to the commission interview/ appointment date:

Board	Openings	Application Due by Noon	Interview/ Appointment at City Commission meeting 7:30 pm
Advisory Parking Committee	1 resident shopper term ending 9/1/2025 1 large retail member term ending 9/1/2025	Until Filled	
Architectural Review Committee	1 regular member term ending 4/11/2026 1 regular member term ending 4/11/2025	Until Filled	
Birmingham Shopping District	1 business representative term ending 11/16/2026	Until Filled	
Birmingham Area Cable Board	1 regular members terms ending 3/30/2026 1 regular member term ending 3/30/2024 1 alternate member term ending 3/30/2025	Until Filled	
Board of Building Trades Appeals	2 regular member term ending 5/23/25 2 regular members term ending 5/23/2026	4/19/23	4/24/23
Board of Review	2 alternate members term ending 12/31/2025	Until Filled	

Board of Zoning Appeals	1 alternate members term ending 2/18/2026	Until Filled	
Brownfield Redevelopment Authority	2 regular members term ending 5/23/2026 1 regular member term ending 5/23/2024	5/3/23	5/8/23
Housing Board of Appeals	3 regular members terms ending 5/4/2026	4/29/23	4/24/23
Martha Baldwin Park Board	1 regular member term ending 5/1/24 2 regular members terms ending 5/1/2027	5/31/23	6/5/23
Parks & Rec Board	1 alternate member term ending 3/13/2025	5/3/23	5/8/23
Public Arts Board	1 alternate member term ending 1/28/2025	Until Filled	
Stormwater Utility Appeals Board	3 regular member term ending 1/31/2026 2 alternate members term ending 1/31/2025	Until Filled	
Triangle District Corridor Improvement Authority	1 regular business owner term ending 12/15/2026	Until Filled	

City Manager's Office

Community Foundation Objection: Asked and Answered

On Monday, April 3, 2023, the City Commission discussed whether the City should consider creating and administering a community foundation or charity to fundraise and manage special events, physical improvements to City property or other community improvement programs. At this meeting, the City Commission voted unanimously to resolve that for the foreseeable future the City has no intention of creating a community foundation. City staff went on to advise that the involvement of one or more City Commissioners with such a foundation could be a potential conflict of interest between the foundation and their work as a City Commissioner, and advice should be sought to identify any potential Ethics Ordinance violations as well.

On Tuesday, April 4, 2023, the day after this very issue was discussed, [Commissioner Baller sent an email](#) requesting that the City become "a first-string partner who helps lead the effort" to form a foundation. Commissioner Baller stated that he was cognizant of management's desire "that the city not produce more events, but rather facilitate them". His email went on to state that he has formed a group of community minded citizens to create a foundation to raise money for cultural events and parks, and to suggest events and parks improvements. However, the email further suggests that the contributing organizations "and possibly the city, would run the events, and the city would be responsible for parks improvements". Further, Commissioner Baller goes on to suggest that the City consider hiring an events coordinator to join City staff.

In addition, Commissioner Baller posed the following questions:

1. Other cities do this. Traverse City and others come to mind. Can they provide some insight?

There is a non-profit community foundation based in Traverse City that covers a four county area that is separate and distinct from the City. Local businesspeople and community minded residents started the foundation and serve on the Board of Directors. Individuals or groups can apply for funding through the foundation for events, programming and other related activities or purchases that will improve the lives of people living within the four county areas. All events, activities or improvements are managed by the grant applicants, often local non-profit or charitable organizations, and are not managed by the City.

Troy also has a community foundation that is run as a non-profit, also started by local businesspeople and community minded residents, that is separate and distinct from the City. Individuals or groups can apply for funding through the foundation for events, programming and other related activities or purchases that will improve the lives of people living within the City of Troy. All events, activities or improvements are managed by the grant applicant, often local non-profit or charitable organizations, and are not managed by the City.

2. To what extent does an events coordinator and the events produced foster greater community? What is the qualitative value, if any?

City staff has not conducted any research to determine the qualitative or quantifiable value of local festivals or events.

3. Is there anyone on staff that can fill the role?

There is no one on staff that has the available time and expertise to plan, organize and implement special events or cultural activities. There are two part time BSD employees that assist with the special events run by the BSD.

4. How much would an FTE cost?

One full time employee would likely cost \$100,000 - \$120,000, including salary and benefits. In addition, if an events coordinator was hired to plan, manage and implement special events, the City would also have to assume the costs of liability insurance for all events, pay both police and fire staff to assist and monitor the event area, pay DPS staff to set up and clean up after events, and the City would be responsible for purchasing all supplies, equipment, and entertainment, and to solicit and supervise volunteers. Currently, private groups running special events bear the burden of these costs. Should the City start organizing special events, the costs would certainly include all of these just listed in addition to the salary of an events coordinator.

5. How are Concerts in the Park managed and by whom?

Concerts in the Park were managed for many years by a volunteer sub-committee of the Parks and Recreation Board, lead by volunteer June MacGregor, and since 2017 have been managed by Connie Folk in the Parks Department, who is responsible for the daily operation and maintenance of the Birmingham Ice Arena, including learn to skate programs, ice and room rentals, ice shows, and the issuance of recreation and dog park passes. Ms. Folk estimates that she spends approximately 32 hours to research and schedule bands for the 13 summer concerts, as well as additional time to prepare contracts and send these out for execution by all parties. On each concert date, Ms. Folk estimates that she spends 2 hours of her regular day and 4 hours of overtime, and that 2 DPS staff members each spend approximately 4 hours for set up prior to the concert, and clean up after the concerts. DPS staff also work overtime if large equipment is needed to block off streets during the concert. Police staff bag off parking meters as needed and walk through the park during concerts. While the City does budget for in the park concerts, the City also solicits sponsorships for each concert, which generally cover only 25% of costs.

6. Is there an opportunity to share resources with the BSD?

As noted above, there are two part time BSD employees that assist with special events that run throughout the year that are sponsored by the BSD. These two part time positions struggle to keep up with the existing BSD event organization and implementation.

7. Could some events be ticketed? How could that be accomplished in Birmingham? What other revenue sources are possible?

If a non profit or charitable organization wished to organize and manage a ticketed special event, this would be subject to the approval of the City Commission. Significant investment in physical barriers and security would be required, if the City Commission even wished to limit the use of public property for paid guests only. As stated above, the City solicits sponsors as revenue sources for the existing concerts in the park, and despite best efforts, only manages to cover approximately 25% of costs.

8. Does it make sense to set something up on a trial, or part-time basis?

The unanimous motion of the City Commission on April 3, 2023 clearly shows that the City Commission has no interest at this time in establishing a community foundation to fund events or park improvements, even on a trial or part time basis.

9. How much is the commission willing to budget for a coordinator and for event expenses? What is it worth to enhance our cultural offerings?

The City Commission has not discussed this specific budgetary request, nor has an event coordinator position been proposed in the upcoming budget.

As noted above, the City Commission's direction on April 3, 2023 was very clear: the City has no interest or intention to establish a community foundation to fundraise and manage special events, physical improvements to City property or other community improvement programs for the foreseeable future.

Despite voting with the entire Commission not to move forward with establishing a community foundation, Commissioner Baller's email the morning after the April 3, 2023 City Commission meeting stated that he has "been pursuing the idea of creating a foundation with two arms", and is willing to personally fund the cost of establishing such a foundation. Not only did the City Commission expressly vote not to establish a community foundation at the April 3, 2023 meeting, the City Attorney and myself clearly stated that the involvement of one or more City Commissioners with a community foundation was likely a conflict of interest between the foundation and their work as a City Commissioner. Commissioner Baller's April 4, 2023 email has now clarified his intention to be one of the founders of such a foundation and to provide financial support for the foundation, thus signally the potential for an elected official to serve on the foundation board. **This is clearly a conflict, and Commissioner Baller should seek an advisory opinion from the Ethics Board prior to any such involvement in a community foundation to identify potential Ethics Ordinance violations that may occur as a result.**

Finally, Commissioner Baller's April 4, 2023 email includes a request that the City become "a first string partner who helps lead the effort" to form a foundation, and join with other organizations to run cultural events in the City, despite the fact that he is cognizant of management's desire "that the City not produce more events, but rather facilitate them".

Allow me to state once again that the City is not interested in being a first string partner, nor leading or funding the effort to establish a foundation or to organize numerous cultural and special events. City staff is currently stretched very thin with their existing workload, and continues to have difficulty recruiting and maintaining qualified personnel due to a tough labor market, and now the City Commission has directed the creation and addition of two new citizen committees. Both the Environmental Sustainability Committee and the Ad Hoc Aging in Place Committee will require staff liaisons to prepare agendas, reports, research, presentations and attend each of these new committee meetings. The scope of work proposed for both new committees is very broad and will significantly increase the workload of an already strained workforce. Further, the City Commission recently completed a Strategic Plan, and while a sustainability board and sustainability goals were prioritized in the Strategic Plan, along with the creation of a task force to address the needs of our aging population, the organizing and management of cultural or civic events were not included within the listed priorities identified in the Strategic Plan. To take on cultural or special events that could be run by other groups would jeopardize the quantity and quality of City services currently provided that Birmingham residents have come to expect.

Communications

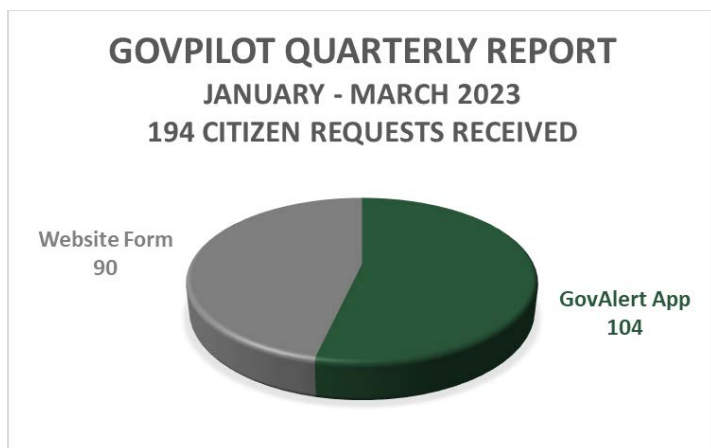
Around Town e-Newsletter

The communications team is working on the May edition of the Around Town e-Newsletter, which will include information about the Department of Public Services Open House event, Memorial Day Ceremony, new businesses and more. Follow [this link to view the April edition](#) of the Around Town e-Newsletter.



GovPilot Quarterly Report

The city continues to receive positive feedback regarding GovPilot. During the first quarter of 2023, we received a total of 194 citizen requests via the GovPilot system, 104 of which were received via the GovAlert app, and 90 via our website form at www.bhamgov.org/citizenrequests. Learn how to use the app by watching a short video at www.bhamgov.org/govalert.



Human Resources

Assistant City Manager Melissa Fairbairn continues to oversee Human Resources, and Mark Clemence has returned from retirement to assist in HR. The city is recruiting for the Human Resources Manager and Human Resources Generalist positions, and will fill both roles as soon as possible.

BIRMINGHAM CITY COMMISSION - UPCOMING AGENDA ITEMS

Topics brought up by the Commission

Meeting	Topic	Commissioner	Staff Follow Up	Dates Addressed	Status (resolved/ongoing)
In Progress					
2/27	Bench and Little Library for Pat Andrews	Host	DPS & Staff	3/13 - Commission to discuss further. Staff members are working on this.	In progress
1/9/23	Ad Hoc Senior Services Committee	M: Baller S: Longe	CM	2/13 Commission to discuss further - no action at this time, 3/13 Commission gave direction via resolution to discuss establishing an AHSSC 4/3 - Vote to formulate ad hoc board specs and bring back at next reasonable meeting	In progress

12/5/22	Becoming Mayor	McLain	McLain	12/19 - Motion to make a workshop Workshop to be held May 8, 2023	In progress
11/14/22	Renters Rights	M: Host	Mary	11/28 CC Discussion Scheduled - Voted to make a formal agenda item at the next available meeting 1/23/23 Tabled, will be brought back 4/24/23.	In progress
1/10/22	Commissioner Conduct	No vote	Mary Kucharek	2/14/22 - Workshop 2/28/22 Directed CM to prepare Code of Conduct for future agenda 7/11/22 - Initial presentation to Commission by CA 2/13/23 - City Commission reviewed draft Code and will provide feedback to CM for future workshop.	In progress
Resolved					
4/11/22	BBCC - Mental Health Workshop - More time to talk	M: Baller S: Haig	Marianne Gamboa	4/25/22 - clarify commissioners intent 5/9/22 - added time on the agenda to discuss Tom directed staff to add mental health info in city publications	Resolved
5/9/22	Pickleball	Baller, no vote	DPS	Agenda item 5/23/22	Installed on 6-3-22
1/24/22	Social Districts	M: Schafer S: Boutros	Nick Dupuis/Jana Ecker	2/14/22 - make formal item 3/9/22 - Workshop 3/14/22 - Informally brought up by Host 6/20/22 Commission and Planning Board Discussed	No formal action taken by the Commission

5/23/22	Commission Meeting Start Time	Baller	Mary Kucharek	On agenda for 6/27/22 - Mary to draft generic ordinance language and discuss in july On agenda for 7/11/22 - Commission decided not to proceed	No changes for now
8/15/22	Birmingham Country Club	M: Host S: Haig	Fairbairn, Dupuis, Clerk's Office	8/29 - CC Discussion Possibly plan to write a letter, invite bham cc and twp to meeting to collaborate *Draft a letter	Resolved, letter sent
8/15/22	Speed Bumps	M: Haig S: Host	Grewe/Brooks	8/29 - Staff report *Further study by MMTB *Report/Resolved in March Mgr Report 2023	Resolved
9/12/22	Banner	M: Baller S: Host	TBD	11/14 CC discussion scheduled	Completed
12/5/22	Lighting to sustainability board	Haig	Nick Dupuis	12/19 - Direction for staff to prepare list for Sustainability Board	To be explored by Sustainability Board
6/13/22	Sustainability Board	M: Schafer S: Host	Nick Dupuis	On agenda for 6/27/22 - direction for staff to draft requirements to establish board, coming back at next available meeting 10/3/22 Workshop - staff given direction to return with recommendation 1/23/23 - ad hoc board established	Resolved
1/10/22	Leaf Blowers	M: Baller S: Host	Nick Dupuis	1/24/22 - make formal item 10/3/22 Workshop - staff given direction to return with recommendation 4/3 Baller brought up issue again, commission consensus that it is a topic for sustainability board	Item sent to sustainability board

1/10/22	Food Trucks	M: Host S: Schafer	Nick Dupuis/Jana Ecker	1/24/22 - CC req. more info 3/9/22 - Workshop 3/14/22 - Informally brought up by Host 6/20/22 Commission and Planning Board Discussed 6/27/22 - City Manager Directed to encourage food trucks at all city sponsored events, BSD events, and direct the BSD to organize a rotation of food truck events	Staff monitoring
4/25/22	Improvements in Information Provision and Methodology	M: Haig S: Baller	TBD	1/9/23 M: Haig, S: Host To continue discussion -Addressed in Jan 2023 CM report	Resolved
3/13	Community foundation (review former letter from Kucharek)	Baller	CM/Atty	4/3 - See prior advice from Attorney. Commission voted not to pursue.	Resolved
3/28/22	City Manager Selection Process	M: Host S: Boutros	Managers Office & HR	4/25/22 - direct to formal agenda item 5/9/22 - New Business Item 5/23/22 CM report 10/3/22 - motion for CM to conduct formal recruitment 10/25/22 - CM recruitment portfolio posted 1/9/23 - Scheduling Interviews 2/8&2/9 First round interviews 2/15 Meet & Greet March - Final Interviews & Direction from CC, contract negotiation March 13 - Ecker Appointed March 27 - Commission approved Ecker's contract.	Resolved

Topics Failed

4/25/22	On Street Parking Study	M:Haig S: Host
4/11/22	Downtown Parking	M: Host S: Haig
3/28/22	Parking Matters	M: Host S: Haig
6/13/22	479 SOW (Doraid) PAD	M: Boutros

Topics With No Vote - Resolved

1/10/22	Unimproved Streets	Discussed during the Long Range Planning meeting.
2/28/22	Solidarity with Ukraine	City Manager arranged for exterior lighting at City Hall.

Topics With No Vote

5/9/22	-PAD ordinance/cleanup	Baller, no vote	No vote
5/9/22	-Policy for granting public space ODD/Valet	Baller, no vote	No vote

Department of Public Services

Arbor Day Celebration

Please join us for our annual Arbor Day Celebration this month on Arbor Day, Friday, April 28th at 1:30 PM at the Derby Water Tank property, just east of Derby Middle school. We will celebrate our 45th year as a Tree City USA and Derby Middle School students will participate in a short program and plant a new tree, a Swamp White Oak, native to Michigan. All are welcome to attend. Parking is available at Derby Middle School for this event only.

Spring Tree Purchase and Plant Project

The DPS is currently requesting proposals from qualified contractors to plant 144 trees along various street right of ways and in parks. We anticipate this project to be awarded in early May.

Parks and Recreation Master Plan Update

We are currently requesting proposals from qualified consultants to prepare an update to the City's five (5) year Parks and Recreation Master Plan. The update will include dynamic public engagement as part of this planning process. Bids are due April 27, 2023. The top candidates will be invited to interview and present their proposal to the Parks and Recreation Board at their May 9th meeting.

Engineering Department

Construction Update

The following construction projects are currently underway:

- Westwood, Oak, and Raynale Project
- Parking Lot No. 5 Slope Repair
- Lincoln Hills Golf Course Tee No. 1 Tee-Box and cart Path Improvements
- 2022-2023 Cape Seal Program
- 2022-2023 Trip Hazard Elimination Program
- Water Tower Maintenance and Coating

The following construction projects are tentatively scheduled to start in May:

- Cranbrook Road Non-Motorized Pathway Improvement Program
- 2021 Asphalt Resurfacing Program – Parking Lot No. 5
- Punchlist items for S. Old Woodward Project

Affected property owners will receive information about these projects. For more information regarding these projects, please contact the Engineering Department at 248-530-1840.

Water Service Verification Program

As a reminder, the “In-Home/Business” water service line material needs to be determined as part of this program and included in the City’s reporting for the State of Michigan. Property owners can schedule an inspection by an authorized City Representative at 248-303-2292 or determine the in-home/business material themselves with the steps provided in the property owner letter.

Fire Department

Emergency-Plugs

The Fire Department recently purchased two (2) Emergency-Plugs. These devices get plugged into any electrical vehicle (EV) charging port to automatically place the vehicle into park rendering the vehicle safer for the occupants and emergency responders.

During an accident, vehicles are often still in drive when first responders arrive on scene. This makes for a dangerous situation for both the occupant, pedestrians, and first responders.

Commissioner Haig had previously shared this one-of-a-kind product with the department after hearing about its use in Europe. The units have been placed on Squad 1 and Engine 2. The department will continue to learn and adapt to new technologies to make sure emergency response is appropriate.



Planning Department

Master Plan 2040

On March 8, 2023, the Planning Board completed its review of the Birmingham Plan 2040 (“2040 Plan”) and provided a recommendation to the City Commission at a public hearing to adopt and approve in its entirety the Birmingham Plan 2040, inclusive of all maps, plans, charts, and other related matter, figures and the Future Land Use Map. On April 3, 2023, the City Commission moved to set a public hearing date of May 22, 2023 for final review and approval of the 2040 Plan per the requirements of the Michigan Planning Enabling Act. The remaining schedule of review should closely resemble the following:

Date	Meeting Type	Action Needed
May 22, 2023	City Commission	<ul style="list-style-type: none">• Present the final Plan and hold a public hearing.• When prepared to do so, the City Commission may adopt the Plan by resolution.

All of the documents related to the 2040 Plan remain available on www.thebirminghamplan.com. You can also watch a recording of past meetings on the City of Birmingham website. As a reminder, you can still submit comments directly to the consultant team through the aforementioned 2040 Plan website, and can submit comments directly to the Planning Division to be placed in the packet for the public hearing at the City Commission.

Planning Board

A tentative Planning Board list of scheduled items is provided below:

1. 34952 Woodward & 690 E. Maple – Community Impact Study & Preliminary Site Plan Review (5/10/23 – Postponed from 4/17/23)
2. 221 Hamilton Row – Greek Islands – Final Site Plan & Design Review (5/10/23)
3. B1 Zoning District Commercial Permitted Uses – Study Session (5/10/23)
4. 380 S. Bates- Community House – Community Impact Study & Preliminary Site Plan Review (5/24/23)

Multi-Modal Transportation Board

The second open house for the S. Eton Road resurfacing project was held on Tuesday, April 18, 2023 from 6pm to 8pm at the DPS conference room. The public reviewed and commented on various concepts being considered for the S. Eton Road resurfacing design. The Multi-Modal Transportation Board will review comments from the public and begin to finalize a recommendation for S. Eton Road at their May 4th, 2023 meeting.

Public Arts Board

The Public Arts Board is beginning to consider concepts for a mural on the N. Old Woodward Parking Deck. The Board is also in the process of planning for a piano in the park and a downtown art walk in the fall.

Sustainability

The Planning Division has provided the newly seated Environmental Sustainability Committee (ESC) with welcome packets and has begun the process of scheduling the first meeting. At the first meeting, the Planning Division will be focusing heavily on setting expectations and defining the role of the ESC, as well as meeting each member to better understand their experience and goals. In the meantime, the Planning Division continues to take opportunities to get connected and stay involved in the robust sustainability community in Michigan. Most recently, the Planning Division attended the MI Healthy Climate Conference, which featured panel discussions and a high-caliber speaker lineup that included Governor Gretchen Whitmer. The Planning Division also took the opportunity to join its peers in the Catalyst Leadership Circle (supported through EGLE's Michigan Green Communities program) at a preconference workshop that focused on the influx of Inflation Reduction Act funding that will be hitting Michigan within the next 2 years.



Police Department

Regional Youth Academy

This year we have decided to collaborate with the Auburn Hills Police Department to help out with a Regional Youth Academy. The City of Rochester and Bloomfield Township Police Departments are also co-sponsoring with a majority of the training being hosted at Bloomfield Township. Residents of our four jurisdictions or students who attend schools in our cities are able to apply if they are ages 14 to 18 years old. There is an application process that includes a very brief background check in order to be accepted into our program. Students will learn about many aspects of law enforcement including police tactics, investigations, criminal law and procedure, basic first aid and CPR certification, firearms safety and scenario based training. The academy will take place from June 26-June 30, 2023 and space is limited. Download the [Regional Youth Academy flyer](#) for more information.

Message from Police Chief Scott Grewe: Police Department Efforts to Address Woodward Cruise Activity and Vehicle Noise

Similar to previous years, we have assigned additional officers to target Woodward cruise traffic. Now that we are entering the warmer months, we have been monitoring the weather to determine the assignment of extra patrols for the weekends as the higher volumes are observed on Friday and Saturday evenings. You may recall, in the fall of 2022, the police department with the assistance of the City Attorney provided a suggested change in state law to our state representatives giving the police an enforcement tool to address the issue of noise from vehicle exhaust. On March 14, 2023, I had a meeting with Emily Collins, the new Chief of Staff for Sen. McMorrow, regarding the status of this request. During this meeting, I asked for the senator's support in attempting to make changes to the state law and provided her with a copy of the previously submitted request. The Chief of Royal Oak and the Chief of Ferndale were also present and supported my request and expressed their desire for legislative action to help address this matter. Additionally, on Monday, February 13, 2023, I met with Sheriff Bouchard and requested additional patrols along the Woodward corridor and elicited the support of his Director of Government Affairs in supporting our request for changes in the State Law. In addition, Capt. Kearney is scheduled to meet with surrounding police agencies; Bloomfield

Twp, Bloomfield Hills, Auburn Hills, Oakland County Sheriff's Office, and Oakland County commissioners on April 19, 2023, regarding reckless driving along the Woodward corridor. We have also applied for grant funding through the Office of Highway Safety Planning (OHSP) to provide additional funding for Woodward enforcement patrols.

We have been planning ahead to address these continued issues within state law. We will continue to monitor the traffic volumes and deploy additional officers to provide strict enforcement of all state and local laws. Just this past weekend—Friday and Saturday alone (4/15 –4/16), officers wrote 67 tickets and arrested an intoxicated driver. The additional Woodward traffic detail officers worked from 5 PM - 11 PM and 12 AM respectively.

Parking Systems Update

Equipment:

Installation of the new TIBA parking equipment is complete! The last location to have the new equipment installed at was completed on March 24th.

City staff is now exploring a "scan to pay" option that allows guests to scan a QR code that takes them to a check out screen to pay for their parking. This will give guests another way to pay for parking before getting in line to exit the garage, helping to prevent backups.

Construction:

Repairs are expected to resume at the N. Old Woodard Garage starting in May. Included in the repairs will be continued concrete restoration, repairs to the handrails, painting of ceilings, walls, and stairwell walls, and the installation of LED lights.

The entrance lane, exit lane, and island to the Woodward side of the N. Old Woodward Garage is scheduled to be removed and replaced. The current concrete has deteriorated, causing issues with safety and resulting in significant pot holes. The new island will improve the customer experience significantly along with the installation of an overhead LED to make the alley area much brighter.

The Engineering Department plans to repave all of Parking Lot 5 once the current slope repair project concludes. When all updates are complete, Lot 5 will look and feel like a new lot.

Occupancy:

MARCH AVG CAPACITY	
Chester Garage (880)	60.69%
Old Woodward (745)	46.21%
Park Garage (811)	33.86%
Peabody Garage (437)	86.41%
Pierce Garage (706)	75.90%

Future Agenda Items

Download a summary of [future agenda items](#).

Future Workshop Items

Download a summary of [future workshop items](#).



REPORT

City Manager's Office

DATE: April 18, 2023
TO: City Commission
FROM: Tom Markus
SUBJECT: Code of Conduct

INTRODUCTION:

Presented to the City Commission this evening is the latest edits and dissertations by the City Commissioners regarding the Code of Conduct and the future of the Code of Conduct.

BACKGROUND:

Please view <https://vimeo.com/656423258#t=3h32m>, which reflects the City Commission meeting of January 10, 2022 wherein the Code of Conduct was discussed and encouraged, most particularly by Commissioner Host, for items to be discussed for a future agenda. City Commissioner Host believed that we should have rules for how Commissioners ought to conduct themselves. To this end, the staff, based upon the City Commission's recommendation, looked at a number of other communities' Code of Conduct for their commissions, councils and boards. The City Commission was then presented with a very comprehensive presentation by Assistant City Manager, Jana Ecker at a workshop on February 14, 2022. The City Commission was presented with a first draft of a proposed Code of Conduct on February 28, 2022, to which the City Commission required changes. Changes were made and a new Code of Conduct was presented to the City Commission again on July 11, 2022.

With many other pressing matters before the Commission, the Code of Conduct was tabled and then brought back to the City Commission on February 13, 2023. At that time, the City Commission was concerned that many of the items were duplicative and then directed the City Attorney to prepare a study to demonstrate what parts of the proposed Code of Conduct were duplicative in either state law, state policies, Charter provisions, ordinances, or Rules of Procedure. The comparison was completed and discovered that most areas of the Code of Conduct were not as duplicative as believed it would be. The City Commission agreed to allow 14 days for the City Commissioners to make comments on how they think the document should be rewritten. Each City Commissioner's edits are attached for review.

It has been the staff's position since the outset of this endeavor that the Code of Conduct needs to be drafted, written, adopted and embraced by the City Commission in order for it to be a document that is self-governing by the City Commission, to the City Commission, and for the City Commission. It is evident from various Commissioner's comments that strong opposition remains to parts of the Code of Conduct.

Therefore, as City Manager I will now suggest that the staff has provided a framework for the City Commission, but it is up to the City Commission itself to take this Code of Conduct to the finish line, if that is their desire. The first question I would pose to the City Commission is: Does the City Commission want a Code of Conduct at all? If so, I would suggest that you schedule a workshop wherein all seven Commissioners work together to finalize language and verbiage that all Commissioners can agree upon.

ATTACHMENTS:

- February 7, 2022 Memo to City Manager from Assistant City Manager with attachments.
- February 14, 2022 Special Meeting Agenda Workshop.
- February 21, 2022 Memorandum to City Manager from Assistant City Manager with PowerPoint of the February 14, 2022 Code of Conduct Workshop.
- July 11, 2022 Memorandum from City Attorney to City Manager with draft Code of Conduct.
- February 13, 2023 Memorandum from City Attorney to City Manager with draft Code of Conduct Resolution.
- March 8, 2023 email from City Manager to City Clerk with draft Code of Conduct Resolution.
- Current proposed edits of City Commissioners.

SUGGESTED COMMISSION ACTIONS:

1. Set the Code of Conduct as a future agenda item to be determined if the City Commission desires a Code of Conduct at all.

AND

2. Set a schedule for the City Commission to collaboratively work to finalize the language and verbiage and adoption of a Code of Conduct.

OR

3. Agree to sideline the project entirely.



MEMORANDUM

City Manager's Office

DATE: February 7, 2022
TO: Thomas Markus, City Manager
FROM: Jana Ecker, Assistant City Manager
SUBJECT: Code of Conduct

At a recent City Commission meeting, there was discussion about creating guidelines and/or rules to ensure respectful and civil communication and public engagement between elected officials and members of the public, and the City Commission expressed interest in considering adopting a code of conduct.

Accordingly, the City Manager's Office has conducted research to identify other communities that have established rules or protocols to guide the communication and conduct of local government elected officials, appointed officials and members of the public. Many jurisdictions have created formal codes of conduct adopted by the governing body. Samples of ordinances and resolutions adopted in approximately 20 different jurisdictions across the U.S. and Canada were reviewed. Most contained very similar provisions designed to outline the following:

- The roles and responsibilities of elected officials, appointed officials, City staff and members of the public;
- The standards of conduct required of elected officials during public meetings of the body to which they were elected and other public meetings;
- The standards of conduct required of elected officials at ceremonial, public and private events;
- The standards of conduct required of elected officials in all communications with each other, with advisory board and commission members, City staff, the media and with the public;
- The standards of conduct required of other officials, City staff and the public while engaged in local government activities;
- Possible sanctions for violation of a code of conduct; and
- A process for reporting, investigating and enforcing the code of conduct.

The Code of Conduct for Elected Officials adopted in Rifle, CO provides a good example overall of the type of ordinance the Birmingham City Commission may wish to consider. Similar ordinances to Rifle, CO are also in place in communities such as Harrisburg, NC, Alexandria, MN, Sunnyvale, CA, and many other jurisdictions. While similar in content, the ordinances listed below have specific provisions that may be beneficial to consider in Birmingham:

- Edina, MN Edina City Council – Code of Conduct contains specific provisions outlining the roles and responsibilities between the governing body, advisory boards and commissions and staff similar to Birmingham’s current policies;
- Evans, CO Code of Conduct for Elected Officials contains specific provisions on conduct between elected officials that ensure issue-oriented discussion and not personal attacks;
- Mountain View, CA City Council Code of Conduct contains specific provisions regarding ex parte communications to avoid conflict with the Open Meetings Act;
- Brea, CA Code of Conduct for City Council contains clear direction for communications with both City staff and professional consultants; and
- Berthoud, CO Code of Conduct for Elected Officials, Boards and Commissions contains clear definitions for several terms to assist with enforcement and clarify the potential repercussions of violation.

Attachments:

- Rifle, CO - Code of Conduct for Elected Officials
- Edina, MN - Edina City Council – Code of Conduct
- Evans, CO – Code of Conduct for Elected Officials
- Mountain View, CA – City Council Code of Conduct
- Brea, CA – Code of Conduct for City Council
- Berthoud, CO – Code of Conduct for Elected Officials
- MMLs Ethics Handbook for Michigan Municipalities.



**CODE OF CONDUCT FOR
ELECTED OFFICIALS**

Adopted by City Council

Resolution No. 11, Series of 2016

August 3, 2016

City of Rifle Code of Conduct for Elected Officials

The Three R's of Rifle Government Leadership: Roles, Responsibilities and Respect

The City Charter provides detailed information on the roles and responsibilities of Council members, the Mayor Pro-Tem, and the Mayor. The City's Code of Ethics provides guidance on ethical issues and questions of right and wrong. Until now, what has not been clearly written down is a Code of Conduct for Rifles' elected officials.

This Code of Conduct is designed to describe the manner in which Council members should treat one another, city staff, constituents, and others they come into contact with in representing the City of Rifle. It reflects the work of the City Council while defining more clearly the behavior, manners, and courtesies that are suitable for various occasions.

The constant and consistent theme through all of the conduct guidelines is "respect." Council members experience stress in making decisions that impact the lives of the citizens. At times, the impacts of the entire community must be weighed against the impact of only a few. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Council members to do the right thing in even the most difficult situations.

Overview of Roles & Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the Rifle City Charter, Rifle Municipal Code and in the Handbook for Municipal Elected Officials, published by the Colorado Municipal League.

Mayor

- Elected from the members of the Council at its organizational meeting, by a majority vote, after each general municipal election (City Charter, Article III, Section 3.3).
- Recognized as head of the City Government for all ceremonial and legal purposes, and executes and authenticates legal instruments requiring the Mayor's signature as such official. (City Charter, Article III, Section 3.3).
- Preside over meetings of the City Council (City Charter, Article III, Section 3.3).
- Has same speaking and voting rights as any other member (City Charter, Article III, Section 3.3) Shall appoint a Councilor as Mayor Pro Tem at the organization meeting where the Mayor is elected (City Charter, Article III, Section 3.3)
- Leads the Council into an effective, cohesive working team.

Mayor Pro-Tem

- Acts as Mayor during the absence of the Mayor with all powers granted to the Mayor by Charter (City Charter, Article III, Section 3.3)

All Council Members

All members of the City Council, including the Mayor and Mayor Pro-Tem, have equal votes. No Council member has more power than any other Council member, and all should be treated with equal respect.

All Council members should:

- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others. Prepare in advance of meetings and be familiar with issues on the agenda.
- Represent the City at ceremonial functions at the request of the Mayor.
- Be respectful of other people's time. Stay focused and act efficiently during public meetings.
- Serve as a model of leadership and civility to the community.
- Inspire public confidence in Rifle government.
- Provide contact information with the City Clerk in case of an emergency or an urgent situation arises while the Council member is out of town.

- Demonstrate honesty and integrity in every action and statement.
- Participate in scheduled activities.

POLICIES & PROTOCOL RELATED TO CONDUCT

Ceremonial Events

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor Pro-Tem will be recommended to serve as the substitute. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to Council members at their homes are presumed to be for unofficial, personal consideration.

Correspondence Signatures

Council members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor or the appropriate City staff. If correspondence is addressed only to one Council member, that correspondence will be shared with the rest of the Council.

Endorsement of Candidates

Council members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings or other official City meetings or functions.

Intergovernmental Relations

The Council values intergovernmental relations with neighboring communities and other entities. As a result, Council members should make a concerted effort to attend scheduled meetings with other entities to further promote intergovernmental relations.

Legislative Process

The City loosely follows Roberts Rule of Order for meeting management.

Public Meeting Hearing Protocol

The Mayor will open the public hearing. The applicant or appellant shall have the right to speak first. The Mayor will determine the length of time allowed for this presentation. Staff will make initial comments and/or presentation. Speakers representing pro points of view will be allowed to follow. Speakers representing opposing points of view will then follow. The Mayor will determine how much time will be allowed for each speaker, with 3 to 5 minutes the standard time granted. The Mayor will then ask the Council if any issues need clarification before the public hearing is closed.

The Mayor has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly. Council members will not express opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council members are not appropriate until after the close of the public hearing. Council members should

refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view. The Mayor shall direct public testimony and discussion to the City Council instead of staff, when appropriate.

Main motions may be followed by amendments, followed by substitute motions. Any Council member can call for a point of order. Only Council members who voted on the prevailing side may make motions to reconsider.

Travel Expenses

The purpose of this regulation is to establish the policies and procedures for Council members who travel on official City business either in-state or out-of-state. Such travel shall include attendance at conferences, seminars, and training sessions on behalf of the City. The City shall pay reasonable expenses for registration fees, lodging, meals, transportation, and all allowable miscellaneous expenses for the Council member only. All travel expenses will be handled in the same manner and consistent with the provisions within the City's Employee Handbook.

COUNCIL CONDUCT WITH ONE ANOTHER

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

In Public Meetings

- Practice civility, professionalism and decorum in discussions and debate difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Council members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. Council members should conduct themselves in a professional manner at all times, including dress.
- Honor the role of the Mayor in maintaining order it is the responsibility of the Mayor to keep the comments of Council members on track during public meetings. Council members should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- Avoid personal comments that could offend other Council members. If a Council-member is personally offended by the remarks of another Council member, the offended Council member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Council member to justify or apologize for the language used. The Mayor will maintain control of this discussion.
- Demonstrate effective problem-solving approaches. Council members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.
- Be punctual and keep comments relative to topics discussed, Council members have made a commitment to attend meetings and partake in discussions. Therefore, it is important that Council members be punctual and that meetings start on time. It is equally important that discussions on issues be relative to the topic at hand to allow adequate time to fully discussed scheduled issues.

In Private Encounters

- Continue respectful behavior in private. The same level of respect and consideration of differing points of view that is deemed appropriate for public

discussions should be maintained in private conversations.

- Be aware of the insecurity of written notes, voicemail messages, and e-mail. Technology allows words written or said without much forethought to be distributed wide and far. How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this e-mail message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.
- Even private conversations can have a public presence. Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

COUNCIL CONDUCT WITH CITY STAFF

Governance of a City relies on the cooperative efforts of elected officials who set policy and staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- Treat all staff as professionals. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.
- Limit contact to specific City staff. Questions of City staff and/or requests for additional background information should be directed to the City Manager, City Attorney, or Department Heads. The City Manager should be copied on or informed of any request.

Requests for follow-up or directions to staff shall be made through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, Council members should ask the City Manager for direction. Materials supplied to a Council member in response to a request will be made available to all members of the Council so that all have equal access to information.

- Do not disrupt City staff from their jobs. Council members should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met.
- Never publicly criticize an individual employee. Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation.
- Do not get involved in administrative functions. Council members must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. The City Charter, Article III, Section 3.10, also contains information about the prohibition of Council interference in administrative functions.
- Check with City staff on correspondence before taking action. Before sending correspondence, Council members should check with City staff to see if an official City response has already been sent or is in progress.
- Do not attend meetings with City staff unless requested by staff. Even if the Council member does not say anything, the Council member's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

Requests for additional staff support – even in high priority or emergency situations -- should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

COUNCIL CONDUCT WITH THE PUBLIC

In Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- *Be welcoming to speakers.* Speaking in front of Council can be a difficult experience for some people. Some issues the Council undertakes may affect people's daily lives and homes. Some decisions are emotional. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity.
- *Be fair and equitable in allocating public hearing time to individual speakers.* The Mayor will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated three-minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Mayor reopens the public hearing for a limited and specific purpose.

- *Give the appearance of active listening.* It is disconcerting to speakers to have Council members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.
- *Ask for clarification, but avoid debate and argument with the public.* Only the Mayor -- not individual Council members -- can interrupt a speaker during a presentation. However, a Council member can ask the Mayor for a point of order if the speaker is off the topic or exhibiting behavior or language the Council member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council members to members of the public testifying

should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

- *No personal attacks of any kind, under any circumstance.* Council members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.
- *Follow parliamentary procedure in conducting public meetings.* The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Mayor, subject to the appeal of the full Council.

In Unofficial Settings

- *Make no promises on behalf of the Council.* Council members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).
- *Make no personal comments about other Council members.* It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council members, their opinions and actions.
- *Remember that despite its population figures, Rifle is a small community at heart.* Council members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper behavior in the City of Rifle. It is a serious and continuous responsibility.

COUNCIL CONDUCT WITH OTHER PUBLIC AGENCIES

- *Be clear about representing the City or personal interests.* If a Council member appears before another governmental agency or organization to give a statement on an issue, the Council member must clearly state: If his or her statement reflects personal opinion or is the official stance of the City; whether this is the majority or minority opinion of the Council. Even if the Council member is representing his or her own personal opinions, remember that this still may reflect upon the City as an organization.

If the Council member is representing the City, the Council member must support and advocate the official City position on an issue, not a personal viewpoint.

If the Council member is representing another organization whose position is different from the City, the Council member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- *Correspondence also should be equally clear about representation.* City letterhead may be used when the Council member is representing the City and the City's official position. A copy of official correspondence should be given to the City Clerk to be filed as part of the permanent public record.

It is best that City letterhead not be used for correspondence of Council members representing a personal point of view, or a dissenting point of view from an official Council position.

COUNCIL CONDUCT WITH CITY BOARDS AND COMMISSIONS

The City has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

When attending a Board or Commission meeting, only express personal opinions. Council members may attend any Board or Commission meeting, which are always open to any member of the public. However, if the Board or Commission is conducting a public hearing, the Council member shall remove themselves from the proceedings. Council members should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Council member at a Board or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council. Also, a Council member's presence may affect the conduct of the Board or Commission and limit their role and function.

- *Limit contact with Board and Commission members.* It is inappropriate for a Council member to contact a Board or Commission member to lobby on behalf of an individual, business, or developer. Council members should contact staff in order to clarify a position taken by the Board or Commission.
- *Remember that Boards and Commissions serve the community, not individual Council members.* The City Council appoints individuals to serve on Boards and Commissions, and it is the responsibility of Boards and Commissions to follow policy established by the Council. But Board and Commission members do not report to individual Council members, nor should Council members feel they have the power or right to threaten Board and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board or Commission appointment should not be used as a political "reward."
- *Be respectful of diverse opinions.* A primary role of Boards and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council members must be fair and respectful of all citizens serving on Boards and Commissions.
- *Keep political support away from public forums.* Board and Commission members may offer political support to a Council member, but not in a public forum while conducting official duties. Conversely, Council members may support Board and Commission members who are running for office, but not in an official forum in their capacity as a Council member.

COUNCIL CONDUCT WITH THE MEDIA

Council members may be contacted by the media for background and quotes.

- *The best advice for dealing with the media is to never go "off the record".* Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.
- *The Mayor is the official spokesperson.* The Mayor is the designated representative of the Council to present and speak on the official City position. If an individual Council member is contacted by the media, the Council member should be clear about whether their comments represent the official City position or a personal viewpoint.
- *Choose words carefully and cautiously.* Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

SANCTIONS

- *Public Disruption.* Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.
- *Inappropriate Staff Behavior.* Council members should refer to the City Manager any City staff that fail to follow proper conduct in their dealings with Council members, other City staff, or the public. These employees may be disciplined in accordance with standard City procedures for such actions.
- *Council members Behavior and Conduct.* City Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Council members should point out to the offending Council member infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro-Tem.

It is the responsibility of the Mayor to initiate action if a Council member's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violations; recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration.

PRINCIPLES OF PROPER CONDUCT

Proper conduct IS ...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT ...

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

It all comes down to respect

Respect for one another...respect for the validity of different opinions...respect for the process... respect for the community that we serve.

CHECKLIST FOR MONITORING CONDUCT

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

HOW GOVERNING BODY MEMBERS CAN GOVERN BETTER

The following is taken from the Colorado Municipal League, Handbook for Municipal Elected Officials, and is reprinted from the League of Kansas Municipalities' brochure, "Suggestions for Successful Public Service"

Governing is clearly more of an art than a science. There are no ultimate answers on how to govern; different approaches are to be expected, and probably desired. However, there do seem to be some fundamentals. The suggestions that follow range from practical, common sense fundamentals to those more philosophic and theoretical. These tips for successful and effective public service are intended to assist mayors, council members, and board trustees. While most suggestions relate to individual officers others apply to the governing body as a whole. These two applications, however, are interdependent - the capacity of a governing body to govern effectively depends on the collective capacities of at least a majority of its membership. These suggestions are not in any particular order, and not all are universally accepted. All of them, however, are worth consideration by anyone who would serve the public through an elective local office.

1. Learn all you can about your city, its history, its operation, its financing. Do your homework. Know your city ordinances. Dust off your comprehensive plan.
2. Devote sufficient time to your office and to studying the present and future problems of your community.
3. Don't burn yourself out on the little things but recognize that they are often important to the public. Save some energy - and time - for the important matters.
4. Don't act as a committee of one; governing a city requires team effort - practically and legally.
5. Don't let honest differences of opinion within the governing body degenerate into personality conflicts.
6. Remember that you represent all the people of your community, not just neighbors and friends. Be wary of personal experiences coloring your public decisions.
7. Take budget preparation seriously, for it determines what your city does or does not do for the coming year and will also influence what happens in future years.
8. Establish policy statements. Written policy statements let the public, and the city staff, know where they stand. They help the governing body govern, and writing them provides a process to develop consensus.
9. Make decisions on the basis of public policy, and be consistent. Treat similar

situations similarly, and avoid favoritism.

10. Focus your attention on ways to prevent problems, rather than just trying to solve them as they occur. Filling potholes is one approach to governing; developing plans to prevent them is more important.
11. Don't be misled by the strong demands of special interest groups who want it done now, their way. Your job is to find the long-term public interest of the community as a whole, and you may be hearing from the wrong people.
12. Don't rush to judgment. Few final actions have to be taken at the first meeting at which they are considered. Avoid "crisis management."
13. Don't be afraid of change. Don't be content to just follow the routine of your predecessors. Charge your appointed officers and employees with being responsible for new ideas and better ways. Listen to what they have to say.
14. Don't give quick answers when you are not sure of the real answer. It may be embarrassing to appear ignorant, but it can be more embarrassing and damaging to tell a person something which is wrong.
15. As an individual, even if you are the mayor, don't make promises you can't deliver! Most decisions and actions require approval of the governing body, and this takes a majority vote.
16. Remember that you have legal authority as a governing body member only when the governing body is in legal session.
17. Don't spring surprises on your fellow governing body members or city staff, especially at formal meetings. If a matter is worth bringing up for discussion, it's worth being on the agenda. Surprises may get you some publicity, at the embarrassment of others, but they tend to erode the "team" approach to governance.
18. Participate in official meetings with the dignity and decorum fitting those who hold a position of public trust. Personal dress and courteous behavior at meetings help create an environment for making sound public decisions.
19. Conduct your official public meetings with some formality, and follow rules of procedure. Have an agenda, and follow it. Most governing body members agree that formal meetings expedite the process and promote better decision making.
20. Don't be afraid to ask questions, it is one of the ways we learn. But do your homework by studying agenda material before meetings.

21. Vote yes or no on motions. Don't cop out by abstaining except when you have a conflict of interest. A pass does not relieve you of responsibility when some decision must be made.
22. Once a majority decision of the governing body has been made, respect that official position and defend it if needed, even if you personally disagreed.
23. Respect the letter and intent of the open meetings law, but also keep private and confidential matters to yourself. Don't gossip.
24. Retain competent, key employees, pay them well, trust their professional judgment, and recognize their authority and responsibilities.
25. Don't bypass the system! Stick to policy making and avoid personal involvement in the day-to-day operations of the municipality.
26. Don't let others bypass the system. Insist that people such as equipment or service suppliers work with your city staff. If direct contact with governing body members is necessary, it should be with the governing body as a whole, or a committee, and not on a one-on-one basis.
27. Don't pass the buck to the staff or employees when they are following your policies or decisions.
28. Don't always take no for an answer. The right question may be "How can we do this?" instead of "May we do this?" Be positive!
29. Learn to evaluate recommendations and alternative courses of action. Request that your staff provide options. Encourage imaginative solutions.
30. Avoid taking short-term gains at the expense of long-term losses. Be concerned with the long-term future of the city.
31. In determining the public interest, balance personal rights and property interests, the possible harm to a few versus the good of the many. Recognize that in some situations, everyone can't be a winner.
32. Remember that cities are for people! Be concerned with the total development - physical, economic, and social - of your community.
33. Don't act as if the city operates in a vacuum. Cities must work within the intergovernmental system to be effective. Keep in contact and cooperate with your federal, state, county, and school officials.

34. Know your neighbors. Get to know the officials of neighboring and similar size cities. Visit other cities, particularly those with a reputation of being well run.
35. Learn to listen- really listen- to your fellow governing body members and the public. Hear what they are trying to say, not just the words spoken.
36. Keep your constituents informed, and encourage citizen participation.
37. Be friendly and deal effectively with the news media. Make sure what you say is what you mean. Lack of good communication, with the media and the public, can be a major problem for municipal officials.
38. Remember that what you say, privately and publicly, will often be news. You live in a glass house. Avoid over-publicizing minor problems.
39. Expect, and respect, citizen complaints. Make sure that your governing body members and your city have a way to deal effectively with them. Have a follow-up system.
40. Be careful about rumors. Check them out. Help squelch them when you know they are false.
41. Appoint citizen advisory committees and task forces when you need them, but be prepared to follow their advice if you use them.
42. Take care in your appointments to boards and commissions. Make sure they are willing and capable as well as representative of the whole community.
43. Seek help. Use manuals, guides, and other technical assistance and information available from the Colorado Municipal League and other agencies. Attend workshops and conferences put on for the benefit of you and your city.
44. Pace yourself. Limit the number of meetings you attend. Set some priorities, including the need to spend time with your family. Recognize that life- and the city - is dependent on a lot of things you have little control over.
45. Establish some personal goals and objectives. What do you want to help accomplish this year? Next year?
46. Help develop some short-term and long-term goals and objectives for your city, and check your progress at least every six months.
47. Similarly, help your city develop a vision of the future.

48. Focus on the future, and try to leave your city better than that which you inherited as a city officer.
49. Be a leader, as well as part of the team of elected and appointed officials who were selected to make your city an even better place to live.
50. At least once a year, schedule a governing body discussion about how you are governing. Review the processes and procedures. Sit back and ask, "How are we doing and can we do things better?"
51. Be enthusiastic about your public service and the privilege you have, and let the public know it. But maintain your sense of humor. Don't take yourself or the business of government so seriously that you don't enjoy it. Governing should be fun as well as a rewarding experience.
52. Celebrate! Always focusing on problems and issues may lead you, the governing body, and the public, to believe that nothing positive ever happens. Good things do happen. Let the public share your successes.



Edina City Council – Code of Conduct

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Introductory Pledge

Edina residents and businesses deserve a fair, ethical and accountable local government which earns the public's full confidence for integrity. Recognizing these goals, the Code of Conduct is established for all elected officials of the City of Edina. As a member of the Edina City Council I agree to uphold the Introductory Pledge for elected officials adopted by the City Council and conduct myself by the following model of behavior. I will:

- Comply with the law, including
 - Staying within the City Council's authority
 - Following the open meeting, gift, and conflict of interest laws
- Respect City Council roles and responsibilities when working with staff, Boards and Commissions
- Be consistent in policy and respect process
- Fulfill the Council's fiduciary responsibility to act in the best interest of the City, and all of its residents, both financially and legally by:
 - keeping the common good as the highest purpose to focus on achieving constructive solutions for the public benefit
 - not disclosing private or confidential information of the City, or using that information to advance personal interests
 - protecting City interests and liability by following advice of legal counsel

Compliance and Enforcement

The Code of Conduct expresses standards of ethical conduct expected for members of the Edina City Council. Members themselves have the primary responsibility to assure the public that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

We will hold ourselves and each other accountable and when there is a suspected violation of the law, we will discuss with the City Manager.

Comply with the Law

Members shall comply with the applicable federal laws, state laws, and city ordinances in the performance of their public duties.

Authority

In statutory cities, powers are granted to the Council as a whole, and not to individual members.

Mayoral Role

According to **MN Statute 412.191** the Mayor is a full member of the council in addition to:

- Act as presiding officer of meetings (**Subd. 2**)
- Represent the City ceremoniously
- Execute official documents (**Subd. 4**)

Open Meeting Law (OML)

Public deliberations and processes shall be conducted openly and in a transparent manner. The Minnesota Open Meeting Law (**Chapter 13D**) requires that meetings of governmental bodies generally be open to the public in order to:

- Prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed about a public board's decisions or to detect improper influences
- Assure the public's right to be informed and observe public meetings

The Minnesota Supreme Court has noted that meetings of less than a quorum of a public body held serially to avoid a public meeting or to fashion agreement on an issue of public business may violate the open meeting law.

Gift/Donations

Gifts from Interested Persons: Under ***MN Statute 471.895***, Council Members may not receive gifts from any "interested person" in conjunction with their City Council duties.

- A "gift" is defined as money, real or personal property, a service, loan, a forbearance or forgiveness of debt, or a promise of future employment, that is given and received without the giver receiving something of equal or greater value in return
- "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make
 - Virtually every resident or person doing business in the City could have a direct financial interest in a decision
- See statute for exemptions

Gifts to the City: Council Members can recommend acceptance of general gifts through the City's donation policy. All gifts to the city must be accepted by City Council resolution.

Logo

Members shall not use the City's name or logo for the purpose of endorsing any political candidate or business.

Conflict of Interest

Conflict of interest is when any member who has a "financial interest" in, or who may receive a financial benefit as a result of, any action or if there is potential for the appearance of conflict of interest. Questions about a potential conflict of interest shall be discussed with the City Manager.

Contractual Conflict of interest: (***MN Statute 471.87, with exceptions in MN Statutes 123B.195 and 471.88***) A public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.

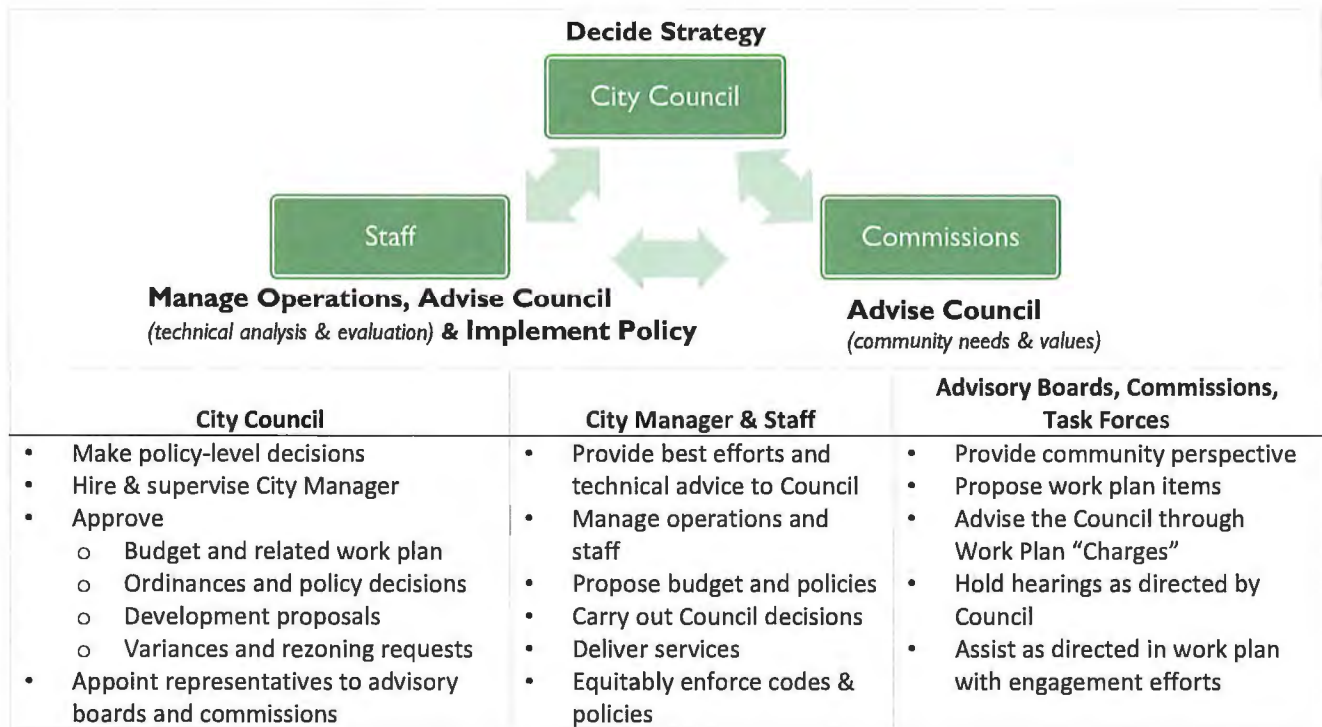
Non-contractual Conflict of interest: Non-contractual matters may include such things as Council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested Council Member most likely should abstain from participating in the council discussion and from voting on these issues.

Members who have a potential conflict of interest shall:

- Disclose the conflict of interest to the group, and
- Abstain from the Council discussion debate and vote

Roles of Council, Staff and Commissions

We are all part of a team committed to the residents of Edina both today and in the future. To be effective we must come to meetings with an open mind, think strategically about City issues and delegate details of implementations to staff. We will strive to maintain a culture of trust, respect and candor as a Council and when working with staff and Boards/Commissions.



Respectful Behavior

Members should **STRIVE TO**:

- Treat people with courtesy, politeness, and kindness
- Encourage others to express their opinions and ideas
- Listen to what others have to say
- Use the ideas of others to improve decisions and outcomes
- Recognize and respect differences
- Prepare for the issues at hand
- Focus on the business of the body
- Consider only legally germane information in decisions
- Act as a decision maker, not an advocate

Members should **AVOID**:

- Speaking over or cutting off another individual's comments
- Insulting, disparaging, or putting down people or their ideas
- Bullying other members by displaying a pattern of belittling, demeaning, judging or patronizing comments
- Violence or the threat of violence will not be tolerated

Working with Staff

Members shall respect and adhere to the Council-Manager (Plan B) structure of Edina city government as outlined in **MN Statute 412**. This means:

City Council does...

- Hire, fire, and supervise City Manager
- Set the strategic direction for the City
- Consider and approve budget and related work plan, and monitor performance relative to those items
- Consider and approve policy decisions
- Consider and approve development proposals
- Consider and approve variances and rezoning requests
- Appoint citizens to citizen advisory boards and commissions
- Approve and amend work plans and bylaws

City Council does not...

- Hire and fire staff
- Direct the activities of staff, other than the City Manager
- Individually direct the activities of boards, commissions or other resident groups
- Individually approve policies, projects etc.
- Individually commit City resources or staff to specific causes
- Individually enforce policies, City Code, etc.
- Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Council.

City Council Members promise City Staff they will:

- Respect staff as valued resources and members of our team
- Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential
- Provide direction to the City Manager as a body and not direct the work of individual staff
- Encourage staff to focus on the big picture in reports
- When possible, notify the City Manager in advance of a Council Meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed
- Agree that information they ask of the City Manager will be shared equally with all Council Members
- Copy the City Manager on all communications with staff, including questions

Working with Boards/Commissions

As set forth in the *Edina City Code Chapter 2 Article III*, Edina's Boards and Commissions are established by the City Council and serve as advisory to the council. Specific Board and Commission roles are:

- Investigate matters within the scope of the Commission or as specifically directed by the council
- Advise the Council by communicating the viewpoint or advice of the Commission
- At the direction of the Council, hold hearings, receive evidence, conduct investigations, and, based on such hearings, evidence and investigations, make decisions and recommendations to the council

City Council Members promise Boards and Commissions they will:

- View Boards and Commissions as vitally important resources to support our decision-making
- Communicate effectively with Boards and Commissions to ensure they have the tools to do their work
- Give clear direction as a body and take adequate time to review the result of their deliberations
- Because of the value of the independent advice of boards, commissions, and task forces to the public decision-making process, members of Council shall refrain from using their position to influence the deliberations or outcomes of board, commission, and task force proceedings
- The expectation is that Council Members will not typically attend Board, Commission, Committee, Working Group or Task Force meetings. However, under special circumstances, if we attend a meeting:
 - We will do so only as an observer and prior to attending we will notify the appropriate staff liaison
 - Strive for good communication by reporting out to other Council Members

Working with The Community

Residents: City staff is the first call for help for residents. We will refer residents who have concerns to the City Manager. If a resident has contacted the City Manager but is still not satisfied, we will discuss with the City Manager. We acknowledge if a resident receives conflicting information from different City Council Members or staff that is difficult for the resident and could increase liability for the City.

Businesses or other interests: The purpose of a City Council meeting is to discuss information needed to decide, review that information, and decide. It is not feasible to conduct all business in a public meeting. Particularly around development, business interests might ask a member to meet outside of the City Council meeting to facilitate idea generation about proposals.

The City Council's overarching principles for working the community are:

- Never grant any special consideration, treatment, or advantage
- Respect sensitivity of personal information

- Honor our rules regarding public testimony and clearly communicate the rules
- Make ourselves available to all parties on an equal basis and not advocate for a certain point of view
- Be cautious about how we participate in meetings or events and not prejudge the issue before the Council has had a chance to deliberate

Meetings requested by residents or businesses:

1. AFTER DECISION: If we are invited to a meeting about an issue the Council has decided upon, we will explain how the Council arrived at the decision.
2. DURING DECISION: If we are invited to a meeting about an issue that will be before the Council in the future, we will uphold the above principles for working with the community, and:
 - a. We will not make our decision about an issue before the city council until the process allows.
 - b. We will be sensitive to the fact that we are not hearing everyone, and we will give equal consideration to all feedback regardless of the way it is received.
3. DURING SPECIFIED ENGAGEMENT PROCESS: If we meet with a resident during a planned engagement process, we will notify the resident that we are there to listen and encourage them to participate through the established process to engage. We will ensure that staff received the feedback provided to us.

Intergovernmental Relations

Members shall represent positions approved by the City Council to the best of their ability when working with:

- Legislative bodies
- Federal or state agencies
- Other local governments, such as School Boards or Counties

If an individual Council Member's opinion differs from the City position, or a matter agreed upon by the full Council, Members shall explicitly state they do not represent their City Council or the City of Edina, nor will they allow the inference that they do.



CODE OF CONDUCT FOR ELECTED OFFICIALS

Adopted by City Council

Resolution No. 15-2004

March 2, 2004

City of Evans Code of Conduct for Elected Officials

The Three Rs of Evans Government Leadership: Roles, Responsibilities and Respect

The City Charter provides detailed information on the roles and responsibilities of Council members, the Mayor Pro-Tem, and the Mayor. The City's Code of Ethics provides guidance on ethical issues and questions of right and wrong. Until now, what has not been clearly written down is a Code of Conduct for Evans' elected officials.

This Code of Conduct is designed to describe the manner in which Council members should treat one another, city staff, constituents, and others they come into contact with in representing the City of Evans. It reflects the work of the City Council with defining more clearly the behavior, manners, and courtesies that are suitable for various occasions. The City Council also considered a wide variety of policy changes and clarifications designed to make public meetings and the process of governance run more smoothly.

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The constant and consistent theme through all of the conduct guidelines is "respect." Council members experience stress in making decisions that impact the lives of the citizens. At times, the impacts of the entire community must be weighed against the impact of only a few. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Council members to do the right thing in even the most difficult situations.

Overview of Roles & Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the Evans City Charter, Evans Municipal Code and in the Handbook for Municipal Elected Officials, published by the Colorado Municipal League.

MAYOR

- Elected “at-large” for a two year term (Evans City Charter, Section 3.4)
- Recognized as head of the City Government for all ceremonial purposes (Evans City Charter, Section 3.9)
- Preside over meetings of the City Council (Evans City Charter, Section 3.9)
- Has same speaking and voting rights as any other member (Evans City Charter, Section 3.9)
- Shall in no case have the power to veto (Evans City Charter, Section 3.9)
- Executes and authenticates legal instruments requiring signature (Evans City Charter, Section 3.9)
- Shall be the conservator of peace, and in emergencies may exercise within the City the powers conferred by the Governor of the State of Colorado for purposes of military law, and shall have the authority to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the City and to suppress riot and disorder (Evans City Charter, Section 3.9)
- Leads the Council into an effective, cohesive working team.

MAYOR PRO-TEM

- Elected by the City Council at the first meeting following their election (Evans City Charter, Section 3.9)
- Performs the duties of the Mayor if the Mayor is absent or disabled (Evans City Charter, Section 3.9)

ALL COUNCILMEMBERS

All members of the City Council, including the Mayor and Mayor Pro-Tem, have equal votes. No Councilmember has more power than any other Councilmember, and all should be treated with equal respect.

All Council members should:

- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others
- Prepare in advance of meetings and be familiar with issues on the agenda
- Represent the City at ceremonial functions at the request of the Mayor
- Be respectful of other people’s time. Stay focused and act efficiently during public meetings.

- Serve as a model of leadership and civility to the community
- Inspire public confidence in Evans government
- Provide contact information with the City Clerk in case of an emergency or an urgent situation arises while the Councilmember is out of town
- Demonstrate honesty and integrity in every action and statement
- Participate in scheduled activities

Policies & Protocol Related To Conduct

Ceremonial Events

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor Pro-Tem will be recommended to serve as the substitute. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to Council members at their homes are presumed to be for unofficial, personal consideration.

Correspondence Signatures

Council members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor or the appropriate City staff. If correspondence is addressed only to one Councilmember, that correspondence will be shared with the rest of the Council.

Endorsement of Candidates

Council members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings or other official City meetings or functions.

Intergovernmental Relations

The Council values intergovernmental relations with neighboring communities and other entities. As a result, Council members should make a concerted effort to attend scheduled meetings with other entities to further promote intergovernmental relations.

Legislative Process

The City generally follows Roberts Rule of Order for meeting management.

Public Meeting Hearing Protocol

The Mayor will open the public hearing. Staff will make the initial presentation. The applicant or appellant shall have the right to speak first. The Mayor will determine the length of time allowed for this presentation. Speakers representing pro points of view will be allowed to follow. Speakers representing opposing points of view will then follow. The Mayor will determine how much time will be allowed for each speaker, with 3 to 5 minutes the standard time granted. The Mayor will then ask the Council if any issues need clarification before the public hearing is

closed. The Mayor has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly. Council members will not express opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council members are not appropriate until after the close of the public hearing. Council members should refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view.

Main motions may be followed by amendments, followed by substitute motions. Any Councilmember can call for a point of order. Only Council members who voted on the prevailing side may make motions to reconsider.

Travel Expenses

The purpose of this regulation is to establish the policies and procedures for Council members who travel on official City business either in-state or out-of-state. Such travel shall include attendance at conferences, seminars, and training sessions on behalf of the City. The City shall pay reasonable expenses for registration fees, lodging, meals, transportation, and all allowable miscellaneous expenses for the Council member only. All travel expenses will be handled in the same manner and consistent with the provisions within the City's Employee Handbook.

Council Conduct with One Another

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS

- **Practice civility, professionalism and decorum in discussions and debate**

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Council members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. Council members should conduct themselves in a professional manner at all times, including dress.

- **Honor the role of the Mayor in maintaining order**

It is the responsibility of the Mayor to keep the comments of Council members on track during public meetings. Council members should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

- **Avoid personal comments that could offend other Council members**

If a Councilmember is personally offended by the remarks of another Councilmember, the offended Councilmember should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Councilmember to justify or apologize for the language used. The Mayor will maintain control of this discussion.

- **Demonstrate effective problem-solving approaches**

Council members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

- **Be punctual and keep comments relative to topics discussed**

Council members have made a commitment to attend meetings and partake in discussions. Therefore, it is important that Council members be punctual and that meetings start on time. It is equally important that discussions on issues be relative to the topic at hand to allow adequate time to fully discussed scheduled issues.

IN PRIVATE ENCOUNTERS

- **Continue respectful behavior in private**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

- **Be aware of the insecurity of written notes, voicemail messages, and e-mail**

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this e-mail message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

- **Even private conversations can have a public presence**

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

Council Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- **Treat all staff as professionals**

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

- **Limit contact to specific City staff**

Questions of City staff and/or requests for additional background information should be directed to the City Manager, City Attorney, or Department Heads. The City Manager should be copied on or informed of any request.

Requests for follow-up or directions to staff should be made only through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, Council members should ask the City Manager for direction. Materials supplied to a Councilmember in response to a request will be made available to all members of the Council so that all have equal access to information.

- **Do not disrupt City staff from their jobs**

Council members should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met.

- **Never publicly criticize an individual employee**

Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation.

- **Do not get involved in administrative functions**

Council members must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. The Evans City Charter, Section 4.6, also contains information about the prohibition of Council interference in administrative functions.

- **Check with City staff on correspondence before taking action**

Before sending correspondence, Council members should check with City staff to see if an official City response has already been sent or is in progress.

- **Do not attend meetings with City staff unless requested by staff.**

Even if the Councilmember does not say anything, the Councilmember's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

- **Limit requests for staff support**

All mail for Council members is opened by the City Clerk. Mail addressed to the Mayor is reviewed first by the City Manager who notes suggested action and/or follow-up items.

Requests for additional staff support – even in high priority or emergency situations -- should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

- **Do not solicit political support from staff**

Council members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

Council Conduct with the Public

IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- **Be welcoming to speakers and treat them with care and gentleness**

Speaking in front of Council can be a difficult experience for some people. Some issues the Council undertakes may affect people's daily lives and homes. Some decisions are emotional. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity.

- **Be fair and equitable in allocating public hearing time to individual speakers**

The Mayor will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated three-minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Mayor reopens the public hearing for a limited and specific purpose.

- **Give the appearance of active listening**

It is disconcerting to speakers to have Council members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

- **Ask for clarification, but avoid debate and argument with the public**

Only the Mayor -- not individual Council members -- can interrupt a speaker during a presentation. However, a Councilmember can ask the Mayor for a point of order if the speaker is off the topic or exhibiting behavior or language the Councilmember finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

- **No personal attacks of any kind, under any circumstance**

Council members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

- **Follow parliamentary procedure in conducting public meetings**

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Mayor, subject to the appeal of the full Council.

IN UNOFFICIAL SETTINGS

- **Make no promises on behalf of the Council**

Council members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

- **Make no personal comments about other Council members**

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council members, their opinions and actions.

- **Remember that despite its impressive population figures, Evans is a small community at heart**

Council members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Evans. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Council members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

Council Conduct with Other Public Agencies

- **Be clear about representing the City or personal interests**

If a Councilmember appears before another governmental agency or organization to give a statement on an issue, the Councilmember must clearly state:

- 1) if his or her statement reflects personal opinion or is the official stance of the City;
- 2) whether this is the majority or minority opinion of the Council. Even if the Councilmember is representing his or her own personal opinions, remember that this still may reflect upon the City as an organization.

If the Councilmember is representing the City, the Councilmember must support and advocate the official City position on an issue, not a personal viewpoint.

If the Councilmember is representing another organization whose position is different from the City, the Councilmember should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- **Correspondence also should be equally clear about representation**

City letterhead may be used when the Councilmember is representing the City and the City's official position. A copy of official correspondence should be given to the City Clerk to be filed as part of the permanent public record.

It is best that City letterhead not be used for correspondence of Council members representing a personal point of view, or a dissenting point of view from an official Council position.

Council Conduct With Boards and Commissions

The City has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- **If attending a Board or Commission meeting, be careful to only express personal opinions**

Council members may attend any Board or Commission meeting, which are always open to any member of the public. However, if the Board or Commission is conducting a public hearing, the Councilmember shall remove themselves from the proceedings. Council members should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer -- could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Board or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council. Also, a Councilmember's presence may affect the conduct of the Board or Commission and limit their role and function.

- **Limit contact with Board and Commission members**

It is inappropriate for a Councilmember to contact a Board or Commission member to lobby on behalf of an individual, business, or developer. Council members should contact staff in order to clarify a position taken by the Board or Commission.

- **Remember that Boards and Commissions serve the community, not individual Council members**

The City Council appoints individuals to serve on Boards and Commissions, and it is the responsibility of Boards and Commissions to follow policy established by the Council. But Board and Commission members do not report to individual Council members, nor should Council members feel they have the power or right to threaten Board and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board or Commission appointment should not be used as a political "reward."

- **Be respectful of diverse opinions**

A primary role of Boards and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers must be fair and respectful of all citizens serving on Boards and Commissions.

- **Keep political support away from public forums**

Board and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Council members may support Board and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

- **Inappropriate behavior can lead to removal**

Inappropriate behavior by a Board or Commission member should be noted to the Mayor, and the Mayor should counsel the offending member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Council and the individual is subject to removal from the Board or Commission.

Council Conduct with The Media

Council members may be contacted by the media for background and quotes.

- **The best advice for dealing with the media is to never go "off the record"**

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

- **The Mayor is the official spokesperson for the representative on City position.**

The Mayor is the designated representative of the Council to present and speak on the official City position. If an individual Councilmember is contacted by the media, the Councilmember should be clear about whether their comments represent the official City position or a personal viewpoint.

- **Choose words carefully and cautiously**

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

Sanctions

- **Public Disruption**

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.

- **Inappropriate Staff Behavior**

Council members should refer to the City Manager any City staff who do not follow proper conduct in their dealings with Council members, other City staff, or the public. These employees may be disciplined in accordance with standard City procedures for such actions.

• Council members Behavior and Conduct

City Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Council members should point out to the offending Councilmember infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro-Tem.

It is the responsibility of the Mayor to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violations; recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration.

Principles of Proper Conduct

Proper conduct IS ...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT ...

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

It all comes down to respect

Respect for one another as individuals . . . respect for the validity of different opinions . . .
respect for the democratic process . . . respect for the community that we serve.

Checklist for Monitoring Conduct

- Will my decision/statement/action violate the trust, rights or good will of others?
 - What are my interior motives and the spirit behind my actions?
 - If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
 - How would my conduct be evaluated by people whose integrity and character I respect?
 - Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
 - Is my conduct fair? Just? Morally right?
 - If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
 - Does my conduct give others reason to trust or distrust me?
 - Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
 - Do I exhibit the same conduct in my private life as I do in my public life?
 - Can I take legitimate pride in the way I conduct myself and the example I set?
 - Do I listen and understand the views of others?
 - Do I question and confront different points of view in a constructive manner?
 - Do I work to resolve differences and come to mutual agreement?
 - Do I support others and show respect for their ideas?
 - Will my conduct cause public embarrassment to someone else?
-

How Governing Body Members Can Govern Better

The following items are taken from the Colorado Municipal League, Handbook for Municipal Elected Officials, and is reprinted from the League of Kansas Municipalities' brochure, "Suggestions for Successful Public Service"

Governing is clearly more of an art than a science. There are no ultimate answers on how to govern; different approaches are to be expected, and probably desired. However, there do seem to be some fundamentals. The suggestions that follow range from practical, common sense fundamentals to those more philosophic and theoretical. These tips for successful and effective public service are intended to assist mayors, council members, and board trustees. While most suggestions relate to individual officers others apply to the governing body as a whole. These two applications, however, are interdependent - the capacity of a governing body to govern effectively is dependent on the collective capacities of at least a majority of its membership. These suggestions are not in any priority order, and not all are universally accepted. All of them, however, are worth consideration by anyone who would serve the public through an elective local office.

1. Learn all you can about your city, its history, its operation, its financing. Do your homework. Know your city ordinances. Dust off your comprehensive plan.
2. Devote sufficient time to your office and to studying the present and future problems of your community.
3. Don't bum yourself out on the little things but recognize that they are often important to the public. Save some energy - and time - for the important matters.
4. Don't act as a committee of one; governing a city requires team effort - practically and legally.
5. Don't let honest differences of opinion within the governing body degenerate into personality conflicts.
6. Remember that you represent all the people of your community, not just neighbors and friends. Be wary of personal experiences coloring your public decisions.
7. Take your budget preparation job seriously, for it determines what your city does or does not do for the coming year and will also influence what happens in future years.
8. Establish policy statements. Written policy statements let the public, and the city staff, know where they stand. They help the governing body govern, and writing them provides a process to develop consensus.
9. Make decisions on the basis of public policy, and be consistent. Treat similar situations similarly, and avoid favoritism.
10. Focus your attention on ways to prevent problems, rather than just trying to solve them as they occur. Filling potholes is one approach to governing; developing plans to prevent them is more important.

11. Don't be misled by the strong demands of special interest groups who want it done now, their way. Your job is to find the long-term public interest of the community as a whole, and you may be hearing from the wrong people.
12. Don't rush to judgment. Few final actions have to be taken at the first meeting at which they are considered. Avoid "crisis management."
13. Don't be afraid of change. Don't be content to just follow the routine of your predecessors. Charge your appointed officers and employees with being responsible for new ideas and better ways. Listen to what they have to say.
14. Don't give quick answers when you are not sure of the real answer. It may be embarrassing to appear ignorant, but it can be more embarrassing, and damaging, to tell a person something which is wrong.
15. As an individual, even if you are the mayor, don't make promises you can't deliver! Most decisions and actions require approval of the governing body, and this takes a majority vote.
16. Remember that you have legal authority as a governing body member only when the governing body is in legal session.
17. Don't spring surprises on your fellow governing body members or your city staff, especially at formal meetings. If a matter is worth bringing up for discussion, it's worth being on the agenda. Surprises may get you some publicity, at the embarrassment of others, but they tend to erode the "team" approach to governance.
18. Participate in official meetings with the dignity and decorum fitting those who hold a position of public trust. Personal dress and courteous behavior at meetings help create an environment for making sound public decisions.
19. Conduct your official public meetings with some formality, and follow rules of procedure. Have an agenda, and follow it. Most governing body members agree that formal meetings expedite the process and promote better decision making.
20. Don't be afraid to ask questions. It is one of the ways we learn. But do your homework by studying agenda material before meetings.
21. Vote yes or no on motions. Don't cop out by abstaining except when you have a conflict of interest. A pass does not relieve you of responsibility when some decision must be made.
22. Once a majority decision of the governing body has been made, respect that official position and defend it if needed, even if you personally disagreed.
23. Respect the letter and intent of the open meetings law, but also keep private and confidential matters to yourself. Don't gossip.
24. Retain competent, key employees, pay them well, trust their professional judgment, and recognize their authority and responsibilities.
25. Don't bypass the system! If you have a manager or other chief administrative officer, stick to policy making and avoid personal involvement in the day-to-day operations of the municipality. If you do not have an administrative officer, make

sure you have some management system that officers, employees, and the public understand.

26. Don't let others bypass the system. Insist that people such as equipment or service suppliers work with your city staff. If direct contact with governing body members is necessary, it should be with the governing body as a whole, or a committee, and not on a one-on-one basis.
27. Don't pass the buck to the staff or employees when they are only following your policies or decisions.
28. Don't always take no for an answer. The right question may be "How can we do this?" instead of "May we do this?" Be positive!
29. Learn to evaluate recommendations and alternative courses of action. Request that your staff provide options. Encourage imaginative solutions.
30. Avoid taking short-term gains at the expense of long-term losses. Be concerned with the long-term future of the city.
31. In determining the public interest, balance personal rights and property interests, the possible harm to a few versus the good of the many. Recognize that in some situations, everyone can't be a winner.
32. Remember that cities are for people! Be concerned with the total development - physical, economic, and social - of your community.
33. Don't act as if the city operates in a vacuum. Cities must work within the intergovernmental system to be effective. Keep in contact and cooperate with your federal, state, county, and school officials.
34. Know your neighbors. Get to know the officials of neighboring and similar size cities. Visit other cities, particularly those with a reputation of being well run.
35. Learn to listen - really listen - to your fellow governing body members and the public. Hear what they are trying to say, not just the words spoken.
36. Keep your constituents informed, and encourage citizen participation.
37. Be friendly and deal effectively with the news media. Make sure what you say is what you mean. Lack of good communication, with the media and the public, can be a major problem for municipal officials.
38. Remember that what you say, privately and publicly, will often be news. You live in a glass house. Avoid over-publicizing minor problems.
39. Expect, and respect, citizen complaints. Make sure that your governing body members and your city, have a way to deal effectively with them. Have a follow-up system.
40. Be careful about rumors. Check them out. Help squelch them when you know they are false.
41. Appoint citizen advisory committees and task forces when you need them, but be prepared to follow their advice if you use them.
42. Take care in your appointments to boards and commissions. Make sure they are willing and capable as well as representative of the whole community.

43. Never allow a conflict of interest to arise between your public duties and your private interests. Be sensitive to actions you take that might even give the appearance of impropriety.
44. Seek help. Use manuals, guides, and other technical assistance and information available from the Colorado Municipal League and other agencies. Attend workshops and conferences put on for the benefit of you and your city.
45. Pace yourself. Limit the number of meetings you attend. Set some priorities, including the need to spend time with your family. Recognize that life - and the city - is dependent on a lot of things you have little control over.
46. Establish some personal goals and objectives. What do you want to help accomplish this year? Next year?
47. Help develop some short-term and long-term goals and objectives for your city, and check your progress at least every six months,
48. Similarly, help your city develop a vision of the future. Plan from the future to the present - no vision, no plan. One of the important purposes of a governing body is to establish a vision for the future.
49. Focus on the future, and try to leave your city better than that which you inherited as a city officer.
50. Be a leader, as well as part of the team of elected and appointed officials who were selected to make your city an even better place to live.
51. At least once a year, schedule a governing body discussion about how you are governing. Review the processes and procedures. Sit back and ask, "How are we doing? How can we do things better?"
52. Be enthusiastic about your public service and the privilege you have, and let the public know it. But maintain your sense of humor. Don't take yourself or the business of government so seriously that you don't enjoy it. It should be fun as well as a rewarding experience.
53. Celebrate! Always focusing on problems and issues may lead you, the governing body, and the public, to believe that nothing positive ever happens. Good things do happen. Let the public share your successes.

Glossary of Terms

attitude	The manner in which one shows one's dispositions, opinions, and feelings
behavior	External appearance or action; manner of behaving; carriage of oneself
civility	Politeness, consideration, courtesy
conduct	The way one acts; personal behavior
courtesy	Politeness connected with kindness
decorum	Suitable; proper; good taste in behavior
manners	A way of acting; a style, method, or form; the way in which things are done
point of order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
point of personal privilege	A challenge to a speaker to defend or apologize for comments that a fellow Councilmember considers offensive
propriety	Conforming to acceptable standards of behavior
protocol	The courtesies that are established as proper and correct
respect	The act of noticing with attention; holding in esteem; courteous regard

**CITY OF MOUNTAIN VIEW
CITY COUNCIL
CODE OF CONDUCT**

**ADOPTED
NOVEMBER 19, 2002**

**REVISED
JANUARY 14, 2014**

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CHAPTER 1 FORM OF GOVERNMENT

1.1 Form of Government

- 1.1.1 The City of Mountain View municipal government operates under a council-manager form of government as established by the City Charter.
- 1.1.2 Under this form of government, the Council provides legislative direction, sets City policy and monitors its execution by City staff. The City Manager serves as the City's chief administrative officer and is responsible for directing the day-to-day operations of the City.
- 1.1.3 The key provisions that outline Mountain View's council-manager form of government are found in Section 607 of the City Charter.

"Neither the Council nor any of its members shall interfere with the execution by the City Manager of the City Manager's powers and duties, or order, directly or indirectly, the appointment by the City Manager or by any of the department heads in the administrative service of the City, of any person to any office or employment, or that person's removal therefrom. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately."

Specifically, Section 607 of the City Charter includes the following provisions:

- 1.1.3.1 Prohibits interference by either the City Council or any of its members with the City Manager's execution of his or her powers or duties.
- 1.1.3.2 Neither the Council nor a member shall interfere with the appointment by the City Manager of any of the department heads or any person to any office or employment.
- 1.1.3.3 Neither the Council nor any of its members shall interfere with the City Manager's power to remove any of those persons.

- 1.1.3.4 Except for purposes of inquiry (asking questions), the Council and its members shall deal only with the City Manager with respect to the administrative service of the City.

NOTE: See Chapter 4, Communications, for additional information regarding communications with staff.

- 1.1.3.5 Neither the Council nor any of its members shall give orders to any subordinate of the City Manager, either publicly or privately.

- 1.1.4 Neither the City Council nor any of its members shall interfere with the administration of the City Attorney's or City Clerk's duties or give orders to the subordinates of the City Attorney or City Clerk.

CHAPTER 2

COUNCIL POWERS AND RESPONSIBILITIES

2.1 City Council Generally

- 2.1.1 The City Council has the power, in the name of the City, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants, which are not specifically prohibited by the constitution, the City Charter, or State or Federal laws.
- 2.1.2 The Council acts as a body. Policy is established by majority vote. A decision of the majority binds the Council to a course of action. The Council majority may be a majority of the quorum of the Council.
- 2.1.3 No Councilmember has extraordinary powers beyond those of other members (except as may otherwise be provided in State law). All members, including the Mayor, have equal powers.
- 2.1.4 No member of the Council is permitted to hold any other City office or City employment (except as may otherwise be provided in the City Charter).
- 2.1.5 Councilmembers also serve as members of the Mountain View Capital Improvements Financing Authority, Successor Agency of the Mountain View Revitalization Authority, City of Mountain View Downtown Parking, Maintenance and Operations Assessment District, and Mountain View Shoreline Regional Park Community.

2.2 Mayor and Vice Mayor – Appointment, Power, and Duties

- 2.2.1 The selection of the Mayor and Vice Mayor occurs annually at the first Council meeting in January by majority vote of the City Council. City Council Policy A-6, Election of Mayor and Vice Mayor, sets forth nonbinding guidelines for the selection of the Mayor and Vice Mayor.
- 2.2.2 The Mayor is the presiding officer of the City Council. In the Mayor's absence, the Vice Mayor shall perform the duties of the Mayor.
- 2.2.3 The Mayor is the official head of the City for all ceremonial purposes.

- 2.2.4 The Mayor may perform such other duties consistent with the mayoral office as may be prescribed by the City Charter or as may be imposed by the Council.
- 2.2.5 The Mayor does not possess any power of veto.
- 2.2.6 The Mayor, or Council designee, coordinates with the City Manager in the development of agendas for meetings of the City Council. Once the agenda is published, the City Manager may withdraw an item; however, only the City Council may otherwise alter the agenda.
- 2.2.7 The Mayor and Vice Mayor serve at the pleasure of the Council and can be replaced at any time by a majority vote of the Council.

2.3 Council Actions

- 2.3.1 Legislative actions by the City Council can be taken by means of ordinance, resolution, or minute action duly made and passed by the majority (unless otherwise provided).
- 2.3.2 Public actions of the Council are recorded in the minutes of the City Council meeting. The City Clerk is required to make a record only of business actually passed upon by a vote of the Council and is not required to record any remarks of Councilmembers or of any other person, except at the special request of a Councilmember, with the consent of the Council.
- 2.3.3 Actions of the Council concerning confidential property, personnel, and/or legal matters of the City are to be reported consistent with State law.

2.4 Councilmember Committees (Refer to City Council Policy A-13, City Council Meetings, Section 16, and City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees)

- 2.4.1 The City Council may organize itself into standing and/or special/ad hoc committees of the Council to facilitate Council review and action regarding certain matters referred to them by the City Council or in accordance with City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.
- 2.4.2 All work undertaken by a Councilmember committee must originate with the Council or as permitted under City Council Policy A-23, Work Item

Referral Process for Council Advisory Bodies and Councilmember Committees, and all actions of committees shall be reported to the Council.

- 2.4.3 The Council may create or dissolve standing committees at any time by the affirmative vote of a majority of the Council.
- 2.4.4 The Mayor annually appoints members to standing committees.
- 2.4.5 The Council or the Mayor may create special or ad hoc committees. The Mayor appoints members to special or ad hoc committees.
- 2.4.6 The Council may dissolve special or ad hoc committees.
- 2.4.7 If permitted by the Ralph M. Brown Act, other members of the Council not assigned to a committee may attend meetings of a committee, as an observer, however, they shall be seated with the audience and may not participate in any manner or address the committee.
- 2.4.8 If an absence is anticipated on a committee and that absence may impede the work of the committee, the committee chair or other member may request that the Mayor designate another member of the Council to attend for the absent member and serve as an alternate member of the committee, provided that the member's attendance, in the opinion of the City Attorney, will comply with the Brown Act. The term for service by the alternate member will be the term designated in the appointment, or for one meeting, if no term is specified.

2.5 Establishment and Appointment of Council Advisory Bodies

- 2.5.1 The Mountain View City Charter requires a Planning Commission, Recreation and Parks Commission, and Library Board (refer to Mountain View City Charter, Article IX).
- 2.5.2 The City Council may also establish by ordinance or resolution, boards, commissions, and committees to assist the Council in making its policy decisions.
- 2.5.3 The rules of procedure and code of conduct that govern the City Council apply with equal force to all Council advisory bodies.

NOTE: See Chapter 5, Council Advisory Bodies, for additional information regarding boards, commissions, and committees.

CHAPTER 3 LEGAL AND ETHICAL STANDARDS

3.1 Preamble

The residents and businesses of Mountain View are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government;
- Be independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Mountain View City Council has adopted a code of ethics to encourage public confidence in the integrity of local government and its fair and effective operation.

This City Council code of ethics shall reside in two documents—the City Council Code of Conduct and the City Council Personal Code of Conduct. The City Council Code of Conduct and the Personal Code of Conduct shall not be interpreted to conflict with other rights and responsibilities of public officials set forth in this code or Federal, State, or local law. The City Council Code of Conduct shall be considered to be the definitive document relating to ethical conduct by Mountain View Councilmembers. The Personal Code of Conduct shall be considered to be a summary of the full City Council Code of Conduct.

3.2 Public Interest

- 3.2.1 Recognizing that stewardship of the public interest must be their primary concern, Councilmembers shall work for the common good of the people of Mountain View and not for any private or personal interest. Councilmembers must endeavor to treat all members of the public and issues before them in a fair and equitable manner.
- 3.2.2 Councilmembers shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Mountain View City Charter; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer

responsibilities, and open processes of government; and City ordinances and policies.

3.3 Conduct

- 3.3.1 Councilmembers shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.
- 3.3.2 Councilmember duties shall be performed in accordance with the processes and rules of order established by the City Council.
- 3.3.3 Councilmembers shall inform themselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand.
- 3.3.4 Council decisions shall be based upon the merits and substance of the matter at hand.
- 3.3.5 It is the responsibility of Councilmembers to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Councilmembers and the public prior to taking action on the matter.
- 3.3.6 Appropriate City staff should be involved when Councilmembers meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.
- 3.3.7 Councilmembers shall not attend internal staff meetings or meetings between City staff and third parties unless invited by City staff or directed by Council to do so.
- 3.3.8 Policy Role
 - 3.3.8.1 Councilmembers shall respect and adhere to the council-manager structure of Mountain View City government as provided in State law and the City Charter.
 - 3.3.8.2 Councilmembers shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

3.3.9 Implementation

- 3.3.9.1 Ethics standards shall be included in the regular orientations for City Council candidates. Councilmembers entering office and upon reelection to that office shall sign a City Council Personal Code of Conduct statement (Attachment 1) affirming they have read and understand this City of Mountain View City Council Code of Conduct.

3.4 Conflict of Interest

- 3.4.1 In order to assure their independence and impartiality on behalf of the public good, Councilmembers are prohibited from using their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.
- 3.4.2 In accordance with State law, Councilmembers must file annual written disclosures of their economic interests.
- 3.4.3 Councilmembers shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general.
- 3.4.4 Councilmembers shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They must neither disclose confidential information without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.
- 3.4.5 City Councilmembers should avoid any action that could be construed as, or create the appearance of, using public office for personal gain, including use of City stationery or other City resources to obtain or promote personal business.
- 3.4.6 Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Councilmembers for private gain or personal purposes.
- 3.4.7 In keeping with their role as stewards of the public interest, Councilmembers shall not appear on behalf of the private interests of a

third party before the City Council or any board, commission, or committee or proceeding of the City, except as permitted by law.

3.4.8 To the best of their ability, Councilmembers shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions publicly, members shall explicitly state they do not represent the Council or the City.

3.4.9 Mountain View City Charter Provisions

3.4.9.1 Financial Interests in City Contracts Prohibited.

No officer or employee of the City shall become financially interested except by testate or intestate succession, either directly or indirectly, in any contract, sale, purchase, lease, or transfer of real or personal property to which the City is a party or be employed by any public service corporation regulated by or holding franchises in the City. ...[A]ny contract made in contravention of this section shall be void. (Section 706)

3.4.9.2 Nepotism.

The Council shall not appoint to a salaried position under the City government any person who is a relative by blood or marriage within the second degree of any one or more of the members of such Council and neither shall any department head or other officer having appointive power appoint any relative within such degree to any such position. (Section 707)

3.4.9.3 Political Activities Prohibited; Discrimination.

This provision provides that:

1. No employee shall, while in uniform or during the employee's working hours, take an active part in any municipal or other political campaign.
2. No employee shall, while in uniform or during the employee's work hours, seek or accept contributions for or against a candidate or issue.

3. An employee may not seek or accept signatures to any petition for or against any such candidate or issue during his or her work hours.
4. No person in the classified service shall be employed, promoted, demoted, or discharged or in any way favored or discriminated against because of political opinions or affiliations or because of race or religious belief. (Section 1003) (Also see Section 4.3.7)
5. For purposes of this section, the term "employee" shall include contract employees and consultants who function as City employees.

3.4.10 Mountain View City Code Provisions

3.4.10.1 Use of City Property—Limited to Lawful Business of City. (Section 2.4)

No person or persons other than City officials or employees shall use any City-owned equipment, tools, or paraphernalia other than for the purpose of conducting the lawful business of the City.

3.4.10.2 Use of City Property for Private Purposes by City Official, Employee, etc. (Section 2.5)

No City official, City employee, or other person shall borrow, take, or remove any City-owned equipment, tools, or paraphernalia for private use.

3.4.10.3 Use of City Property—Loan, etc., by City Official, Employee, etc.

No City official, City employee, or any other person shall lend, give, or transfer possession of such City-owned equipment, tools, or paraphernalia to any other City official, employee, or any other person with knowledge that the same shall be used for private purposes. (Section 2.6)

3.4.11 California State Law Regarding Conflicts

Four key areas of California State law regulate the ethics of public officials.

3.4.11.1 Constitutional prohibitions

State law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies. The penalty for a violation includes the forfeiture of office.

3.4.11.2 Contractual conflicts of interest

This prohibition, found in Government Code Section 1090, mirrors the City's Charter Provision Section 706 and applies to elected and appointed officials as well as other City staff members. It prohibits the City from entering into a contract if one of its members (i.e., a Councilmember) is financially interested in the contract. If the bar (or prohibition) applies, the agency is prohibited from entering into the contract whether or not the official with the conflict participates or not. In some limited circumstances, officials are allowed to disqualify themselves from participation and the agency may enter into the contract.

Financial interest has been defined to include employment, stock/ownership interests, and membership on the board of directors of a for-profit or nonprofit corporation, among others. Violations can be charged as a felony. A person convicted of violating Section 1090 is prohibited from ever holding public office in the State.

3.4.11.3 Political Reform Act—Conflicts of Interest

The Political Reform Act (PRA) was adopted by the voters in 1974 and is the primary expression of the law relative to conflicts of interest (and campaign finance) in California. The Act created the Fair Political Practices Commission (FPPC), a five-member State board which administers the Act.

The Act and the regulations are complex and are continuously subjected to official interpretation. The following synopsis of

key parts of the Act will be helpful in spotting issues; however, the FPPC and/or City Attorney should be consulted for further advice and clarification.

With respect to conflicts of interest, the FPPC has promulgated a regulation which establishes an analysis which assists in determining whether a public official is participating in a government decision in which they have a qualifying financial interest and whether it is reasonably foreseeable that the decision will have a material financial effect on the public official's financial interest, which is distinguishable from the effect the decision will have on the public generally.

3.4.11.3.1 If a member has a conflict of interest regarding a particular decision, they must refrain from making or participating in the making of a decision unless otherwise permitted by law.

If a public official has a financial interest that gives rise to a conflict of interest, one of the key determinations in the eight-step analysis is to determine whether or not the public official is "participating in" or "making" a governmental decision.

3.4.11.3.1.1 A public official makes a government decision when they do the following:

- Vote on a matter.
- Appoint a person.
- Obligate or commit his or her agency to any course of action.
- Enter into any contractual agreement on behalf of his or her agency.
- Determine not to act in certain circumstances.

3.4.11.3.1.2 A public official participates in making governmental decisions when acting within the authority of his or her position, they do the following:

- Negotiate without significant substantive review with a governmental entity or private person regarding a governmental decision.
- Advise or make recommendations to the decision-maker either directly or without significant intervening substantive review by:
 - Conducting research or an investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence governmental decisions; or
 - Preparing or presenting any report, analysis, or opinion orally or in writing which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision.

3.4.11.3.2 When a public official has a qualifying financial interest, that official may not use their office or otherwise attempt to influence governmental decisions or make appearances or contacts on behalf of a business entity, client, or customer.

3.4.11.3.3 If an official has a qualifying financial interest, there are nevertheless exceptions which allow a public official to make an appearance before an agency in

very limited circumstances. The one that is most commonly encountered is an appearance by a public official to represent himself or herself with respect to a proposed project or change in their neighborhood. If the appearance is permitted under State law, the appearance is limited to appearing at a public meeting at the podium and addressing a board, commission, or the City Council. The official may not contact members of staff, the City Manager, or City Attorney, or discuss the matter with other Councilmembers. A public official with a conflict cannot interact with staff on that issue other than to ask questions, pay fees, etc.

3.4.11.3.4 Political Reform Act—Gifts, etc.

Qualifying gifts of \$50 or more must be reported on an official's Statement of Economic Interest (SEI). In addition, the Political Reform Act imposes a limit on gifts a local official can receive. The dollar amount of the gift limit is modified every odd year to reflect changes in the Consumer Price Index.* There are various exceptions that apply to whether or not a gift is a "qualifying gift." In some instances, the gift limit does not apply (e.g., wedding gifts); however, the obligation to report the gift typically does apply.

- A gift is a payment made by any person of anything of value, whether tangible or intangible, real or personal property, a good or service that provides a personal benefit to an official when the public official does not provide goods or services of equal or greater value. It can include forgiveness of a debt, a rebate or discount unless the rebate or discount is made through the regular course of business to members of the public.
- There are exceptions to gifts for informational material, gifts that are returned unused, gifts from relatives—close family, campaign

* The gift limit can be found in Government Code §89503.

contributions, home hospitality, benefits commonly exchanged, reciprocal exchanges, acts of neighborliness, bona fide dating relationship, acts of human compassion, ceremonial role, etc.

- There are specific regulations for how gifts are valued, particularly with the value of tickets and passes and attendance at dinners and events.
- Gifts can be given to the public agency and they are not charged as gifts to an individual who may use the gift (e.g., tickets) provided the express terms of the appropriate regulation are satisfied.

3.4.11.3.4.1 Travel Reimbursements

The Political Reform Act contains extensive regulations on travel reimbursements; however, travel payment by one's own public agency as part of your official duties are typically exempt. Reimbursement from other entities (other than transportation companies) within California and outside of California are subject to very specific rules.

3.4.11.3.4.2 Honoraria

Honoraria are defined as a payment made in return for giving a speech, writing an article, or attending a public or private conference, convention, meeting, social event, meal, or similar gathering. Honoraria should be distinguished from campaign funds that go into that person's campaign or to a political party. Campaign funds cannot be used for personal benefit.

- Local elected officials or candidates may not accept honoraria. A local agency employee who is required to file a Statement of Economic Interest (Form 700) may not accept honoraria from any source requiring disclosure on a public official's SEI. There are approximately 12 exceptions to honoraria, including payments made for comedic, theatrical, and musical performances; income from bona fide personal services in connection with teaching, practicing law, etc.; and travel, lodging, and subsistence in connection with a speech, limited to the day before, day of, and day after within the United States.
- The exceptions for income from personal services in connection with teaching and practicing law do not apply if the sole or predominant activity is giving speeches.

3.4.11.3.4.3 Political Reform Act—Mass Mailings

A mass mailing is defined as 200 or more substantially similar pieces of mail sent at public or private expense by a public official within a calendar month.

- Sent at Private Expense—If sent for a political purpose, sender must place the name and address on the outside of the envelope.
- Sent at Public Expense—These mailings are subject to strict

limitations. For example, the mailing may not contain the name or pictures of elected officials except as part of the standard letterhead, and within the confines of that regulation they cannot be of different size or otherwise emblazoned on the mailing. Because the rules are complex, staff should be consulted for assistance.

3.4.11.3.4.4 Political Reform Act—Enforcement

The FPPC can assess administrative fines and penalties for violation of the Act. The District Attorney and the State Attorney General may prosecute violators as civil or criminal matters. Violators may also be removed from office pursuant to Government Code Section 3060.

3.4.11.5 Common Law Conflicts of Interest

This is the judicial expression of the public policy against public officials using their official position for private benefit. An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers or their office for the benefit of any private interest. This common law doctrine continues to survive the adoption of various statutory expressions of conflict law.

3.4.11.6 Appearance of Impropriety

When participation in action or decision-making as a public official does not implicate the specific statutory criteria for conflicts of interest; however, participation still does not "look" or "feel" right, that public official has probably encountered the appearance of impropriety.

For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, public officials may need to step aside even though no technical conflict exists. An example is where a long-term nonfinancial affiliation exists between the public official and an applicant or the applicant is related by blood or marriage to the official. For the good of the community, members who encounter the appearance of impropriety should step aside.

NOTE: State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Councilmembers should consult with the City Attorney, their own attorney, or the Fair Political Practices Commission for guidance in advance.

3.5 Compliance and Enforcement— All Rules

Councilmembers take an oath when they assume their office in which they promise to uphold the laws of the State of California, the City of Mountain View, and the United States of America. Consistent with this oath is the requirement of this Council policy to comply with the laws as well as report violations of the laws and policy of which they become aware.

3.5.1 Any suspected violation or alleged violation by a Councilmember must be reported to the Mayor. In the case of a City staff member making the report regarding a Councilmember, the report should be made to the City Manager who will then report it to the Mayor. Upon report, the City Manager and City Attorney will assist the Mayor in following one of the two (2) protocols for addressing the violation or alleged violation:

3.5.1.1 If the Mayor, City Manager, and City Attorney all agree that the violation or alleged violation is minor in nature, the Mayor and either the City Manager or City Attorney may contact the individual Councilmember and advise the member of the concern and seek to resolve the matter (Protocol 1).

3.5.1.2 If the Mayor, City Manager, and City Attorney do not agree that the violation or alleged violation is minor (see Section 3.5.1.1) in nature, then the Mayor shall convene a special ad hoc committee of the Mayor (who will serve as Chair), Vice Mayor,

and most recent Mayor (the "Ethics Committee") who will meet with the City Manager and City Attorney and appropriate staff and/or witnesses to determine how the matter may proceed, be resolved or be reported to the appropriate authorities (Protocol 2).

3.5.1.3 In implementing the provisions of this section, the Ethics Committee will be authorized to conduct all inquiries and investigations as necessary to fulfill their obligation.

3.5.1.4 For purposes of Sections 3.5.1.1 and 3.5.1.2, the incident or violation is not minor if it involves the injury or potential injury to any person (e.g., physical, emotional, defamation, harassment, etc.), significant exposure to the City Treasury or the probability for a repeat occurrence.

3.5.2 Councilmembers wishing to report a suspected violation by a staff member should report it to both the City Manager and City Attorney.

3.5.3 In the event any Councilmember with a role in this policy is the subject of the inquiry, the role of that official shall be assumed by the next ranking official in the chain. For example, if the Mayor is the subject of the inquiry, the Ethics Committee shall be comprised of the Vice Mayor (who will serve as Chair) and the two (2) most recent former Mayors. If the City Manager or City Attorney is the subject, the Committee will exclude that individual.

If there is no recent former Mayor available to fill the appropriate seat(s) on the committee, the Mayor or chair will select a member of the Council to serve—selection to be based on seniority as outlined in Policy and Procedure No. A-6.

3.5.4 The term "committee" or "Ethics Committee" is used for ease of reference only as it is not intended by this policy to create a permanent or standing committee but, rather, to assemble the officials necessary to review complaints should the need arise.

3.5.5 This policy and the protocols set forth are alternatives to any remedy that might otherwise be available or prudent. In order to ensure good government, any individual, including the City Manager and City Attorney, who believes a violation may have occurred is hereby authorized to report the violation to other appropriate authorities.

- 3.5.6 These same protocols may be utilized for any suspected violations or alleged violations by a Council advisory body member. In addition to those protocols, the Mayor may also refer the matter to the City Council if further action is needed.

3.6 AB 1234 – Required Ethics Training

AB 1234 requires elected or appointed officials who are compensated for their service or reimbursed for their expenses to take two hours of training in ethics principles and laws every two years. Those who enter office after January 1, 2006 must receive the training within a year of starting their service. They must then receive the training every two years after that.

The training must cover general ethics principles relating to public service and ethics laws including:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources, and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act);
- Laws relating to fair processes, including fair contracting requirements, common law bias requirements, and due process.

CHAPTER 4 COMMUNICATIONS

4.1 Written Communications

4.1.1 Written communications addressed to the City Council are to be referred to the City Clerk for:

- Forwarding to the Council with their agenda packet, or
- Placement on an agenda with or without a staff report, or
- Direct response to the citizen with a copy of the communication and staff letter to the Council.

4.2 Request for Staff Resources

4.2.1 Council requests for research or other staff work must be directed to the City Manager, or the City Attorney regarding legal matters or the City Clerk regarding matters within the Clerk's authority.

If more than one hour of staff time will be required to complete the task/project, the item will be agendaized to ask the City Council if time should be spent on preparing a report on the proposed item.

Staff responses prepared to Council inquiries shall be distributed to all City Councilmembers.

4.3 Relationship/Communications with Staff

Staff serves the City Council as a whole, therefore:

4.3.1 A Councilmember shall not direct staff to initiate any action, change a course of action, or prepare any report. Except as provided in City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees, a Councilmember shall not initiate any project or study without the approval of the majority of the Council.

4.3.2 Councilmembers shall not attempt to pressure or influence discussions, recommendations, workloads, schedules, or department priorities absent the approval of a majority of the Council.

- 4.3.3 When preparing for Council meetings, Councilmembers should direct questions ahead of time to the City Manager so that staff can provide the desired information at the Council meeting.
- 4.3.4 Any concerns by a member of the City Council regarding the behavior or work of a City employee should be directed to the City Manager privately to ensure the concern is resolved. Councilmembers shall not reprimand employees directly nor should they communicate their concerns to anyone other than the City Manager.
- 4.3.5 Councilmembers may direct routine inquiries to either the City Manager or appropriate department head.
- 4.3.6 Councilmembers serving on Council committees or as the City's representative to an outside agency may interact directly with City staff assigned to that effort as the City Manager's designee. The City staff member so designated and assigned will keep the City Manager appropriately informed.
- 4.3.7 Soliciting political support from staff (e.g., financial contributions, display of posters or lawn signs, name on support list, etc.) is prohibited. City staff may, as private citizens with constitutional rights, support political candidates, but all such activities must be done away from the workplace and may not be conducted while in uniform. (Also see Section 3.4.9.3)

4.4 Council Relationship/Communication with Council Advisory Bodies

- 4.4.1 Councilmembers shall not attempt to pressure or influence board, commission, or committee decisions, recommendations, or priorities absent the approval of the majority of the Council. However, the Mayor and Vice Mayor can authorize a work item for a Council advisory body under certain circumstances in accordance with City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.

4.5 Handling of Litigation and Other Confidential Information

- 4.5.1 All written materials and verbal information provided to Councilmembers on matters that are confidential and/or privileged under State law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of any information in these

materials may be made to anyone other than Councilmembers, the City Attorney, or City Manager.

- 4.5.1.1 Confidential materials provided in preparation for and during Closed Sessions shall not be retained and electronic copies must be deleted or documents returned to staff at the conclusion of the Closed Session.
- 4.5.1.2 Confidential materials provided to Councilmembers outside of Closed Sessions must be destroyed, deleted, or returned to staff within thirty (30) days of their receipt.
- 4.5.1.3 Councilmembers may not request confidential written information from staff that has not been provided to all Councilmembers.

4.6 Representing an Official City Position

- 4.6.1 City Councilmembers may use their title only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.
- 4.6.2 Once the City Council has taken a position on an issue, all official City correspondence regarding that issue will reflect the Council's adopted position.
- 4.6.3 In most instances, the Council will authorize the Mayor to send letters stating the City's official position to appropriate legislators.
- 4.6.4 If a member of the City Council appears before another governmental agency organization to give a statement on an issue affecting the City, the Councilmember should indicate the majority position and opinion of the Council.
- 4.6.5 Personal opinions and comments may be expressed only if the Councilmember clarifies that these statements do not reflect the official position of the City Council.

4.7 Quasi-Judicial Role/*Ex Parte* Contacts

The City Council has a number of roles. It legislates and makes administrative and executive decisions. The Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses, and land use entitlements.

In this last capacity, quasi-judicial, the Council holds a hearing, takes evidence, determines what the evidence shows, and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to *ex parte* contacts applies.

4.7.1 *Ex Parte* Contacts/Fair Hearings. The Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the City Council or any agency, board, or commission thereof, except at the public hearing.

As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from such contacts, which is not otherwise included in the written or oral staff report, during the public hearing, and before the public comments period is opened.

Matters are "pending" when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards and commissions are not subject to this rule.

4.8 No Attorney-Client Relationship

Councilmembers who consult the City Attorney, his or her staff, and/or attorney(s) contracted to work on behalf of the City cannot enjoy or establish an attorney-client relationship with said attorney(s) by consulting with or speaking to same. Any attorney-client relationship established belongs to the City, acting through the City Council, and as may be allowed in State law for purposes of defending the City and/or the City Council in the course of litigation and/or administrative procedures, etc.

CHAPTER 5 COUNCIL ADVISORY BODIES

5.1 Boards, Commissions, and Committees Generally

- 5.1.1 The Mountain View City Charter establishes the following boards and commissions to advise the City Council:
- Planning Commission (now known as the Environmental Planning Commission) (Section 906)
 - Recreation and Parks Commission (now known as the Parks and Recreation Commission) (Section 909)
 - Board of Library Trustees (now known as the Library Board) (Section 911)
- 5.1.2 The City Charter authorizes the City Council to establish additional advisory boards and commissions to assist the Council in its policy decisions. The City Council has the inherent power to create committees.
- 5.1.3 City boards, commissions, and committees (collectively "Council advisory bodies") do not set or establish City policy or administrative direction to City staff, except as provided in City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.
- 5.1.4 Appointments to boards, commissions, and committees are made by adoption of a resolution of the majority of the Council after the review and consideration of the recommendation(s) of the Council Appointments Review Committee. Appointees to Council advisory bodies serve at the pleasure of the City Council.
- 5.1.5 The terms "board" and "commission" can be used interchangeably. Boards and commissions typically have broader policy and advisory responsibilities than committees which typically have much more focused advisory roles to the Council.

5.2 Board, Commission, and Committee Organization and Conduct

- 5.2.1 Annually, each board, commission, and committee elects one of their members to serve as the presiding officer or chair.

- 5.2.2 Boards, commissions, and committees shall hold regular and special meetings as may be required. The conduct of board, commission, and committee meetings are governed by the same rules of policy and procedure as the City Council.
- 5.2.3 Boards, commissions, and committees should comply with all applicable open meeting and conflict-of-interest laws of the State.
- 5.2.4 Upon appointment or reappointment, Council advisory body members shall sign a Council Advisory Body Personal Code of Conduct statement (Attachment 2) affirming they have read and understand this City of Mountain View City Council Code of Conduct.

5.3 Board, Commission, and Committee Appointments

- 5.3.1 The City Charter requires that members of City boards and commissions be qualified electors of the City (resident of Mountain View and United States citizen). Committees can include members that are not qualified electors.

Appointments will provide, as nearly as possible, a representative balance of the broad population of the City. All appointees should bring the skill, integrity, knowledge, interest, and commitment to evaluating issues in the broad context of the public interest.

- 5.3.2 Unless appointed to an unexpired term of less than two years caused by the resignation or other such vacancy, the term of office for each board, commission, or committee member is normally four years.

Appointees are limited to two consecutive terms prior to reappointment on a given board, commission, or committee (except where specifically provided). However, where the City Council expressly determines it to be in the best interest of the community, the City Council may reappoint beyond this limit.

- 5.3.3 The City Clerk provides application forms and maintains a composite listing of all applications on file which have been received.
- 5.3.4 The City Clerk solicits applications for vacancies in accordance with the procedures outlined in City Council Policy K-2, Board, Commission, and Committee Appointments.

- 5.3.5 Persons being considered for appointment (or reappointment) must be interviewed at least once to qualify for appointment.

5.4 Boards, Commissions, and Committees – Vacancy of Office

- 5.4.1 The City Charter provides that if "a member of a board or commission is absent from three regular meetings of such board or commission, consecutively or within a calendar quarter, or is convicted of a crime involving moral turpitude, or ceases to be a qualified elector and resident of the City, that office shall become vacant upon the declaration of Council. The Council may, for good cause, determine that a vacancy has not been created."
- 5.4.2 Resignations may be submitted at any time to the City Council either directly or through the board, commission, or committee chair. Resignations are effective upon submittal.
- 5.4.3 Upon notice of a vacancy, the Council Appointments Review Committee shall initiate the appointment procedure detailed in City Council Policy K-2, Board, Commission, and Committee Appointments, leading to a recommendation to the City Council for a successor of such vacancy and the successor will be appointed to serve only to the date of the unexpired term pursuant to Section 905 of the City Charter.

5.5 Boards, Commissions, and Committees – Removal

- 5.5.1 A board member, commissioner, or committee member is subject to removal by motion of the City Council adopted by at least four affirmative votes.

CHAPTER 6 MEETINGS

6.1. Ralph M. Brown Act

All meetings of the City Council, standing Councilmember committees, and Council advisory bodies are governed by the Ralph M. Brown Act (Government Code 54950 *et seq.*). The City Council views the Brown Act as a minimum set of standards and in several respects, the City's open meeting requirements exceed the requirements of the Brown Act.

If any member of a City legislative body, or City staff, believe that action has been taken on an item in contravention of the Brown Act, that person is privileged to place the item on a future agenda for reconsideration and/or action.

6.2 Regular Meetings

6.2.1 Regular meetings of the City Council are held on the second and fourth Tuesday of each month at 6:30 p.m. in the Council Chambers of Mountain View City Hall, 500 Castro Street.

All regular Council meetings are open to the public.

6.3 Study Sessions

6.3.1 Study Sessions are conducted as part of a public meeting which the Council may set from time to time to allow for a detailed review of important matters. Study Sessions may be conducted jointly with another City board, commission, or committee or another governmental agency. Formal action is typically not taken at a Study Session unless the agenda indicates that action may be taken. All Study Session meetings are open to the public.

6.4 Closed Sessions

6.4.1 Closed Sessions are also regulated pursuant to the Ralph M. Brown Act. All written materials and verbal information regarding Closed Session items must remain confidential. Written reports and/or exhibits or materials furnished to members of the Council as part of a Closed Session must not be copied or saved and must be deleted or returned to staff at the conclusion of the Closed Session. No member of the Council, employee of the City, or anyone else present should disclose to any other

person the intent or substance of any discussion that takes place in a Closed Session unless authorized by a majority of the Council.

- 6.4.2 Permissible topics/issues for a Closed Session discussion include, but are not limited to: labor negotiations, pending litigation, personnel actions, real estate negotiations, and certain licensing and public security issues.
- 6.4.3 All public statements, information, and press releases relating to Closed Session items should be handled by the City Attorney or as otherwise directed by the Council majority.
- 6.4.4 Closed Session meetings are closed to the public and the press.
- 6.4.5 Any suspected violation of the confidentiality of a Closed Session discussion shall be reported to the City Attorney. "Confidential information" means a communication, verbal or written, made in Closed Session that is specifically related to the legal basis for conducting the Closed Session.

6.5 Special and Emergency Meetings

- 6.5.1 Pursuant to the Ralph M. Brown Act, the Council may also hold special or emergency meetings as deemed necessary.

6.6 Meeting Agendas

6.6.1 Preparation of Agendas

- 6.6.1.1 Council agendas and supporting information are prepared by the City Manager and City Clerk.
- 6.6.1.2 For Council advisory bodies and Councilmember committees, agendas and supporting information are prepared by the supporting City department to the Council advisory body or Councilmember committee as directed by the City Manager.

6.6.2 Placing Items on Agendas

6.6.2.1 Council Agendas

- 6.6.2.1.1 The City Manager determines, in consultation with the Mayor, which items are placed on the agenda and the timing for scheduling such items.

6.6.2.1.2 A Councilmember's request for an item to be agendized will be done as an action item with support work of up to one hour by staff. If more than one hour of work is required, then the item will be agendized to ask Council if time should be spent on preparing a full report on the proposed agenda item.

6.6.2.1.3 Any person may request placement of a matter on the Council agenda by submitting a written request with the agreement of a sponsoring Councilmember.

6.6.2.2 Council Advisory Body and Councilmember Committee Agendas

Agenda items for Council advisory bodies and Councilmember committees must originate with the Council or as permitted under City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.

6.6.3 Order of Agenda Items

The Council shall conduct business in the following order, except as the order may be adjusted pursuant to City Council Policy A-13, City Council Meetings.

1. **Call to Order/Pledge of Allegiance**
2. **Roll Call**
- 2A. **Proclamations/Presentations**
3. **Minutes Approval**
4. **Consent Calendar**

The consent calendar includes all matters of a routine or noncontroversial nature. All items on the consent calendar are approved by a single motion and vote. Any item on the consent calendar can be removed at the request of any member of the Council, City staff, or member of the audience when properly

recognized by the Mayor. Any items removed are considered separately by the City Council after the consent calendar.

5. Oral Communications from the Public

This is the portion of the Council meeting devoted to oral presentations to the Council by members of the public. During this time, a speaker may address the Council on any issue which does not appear on the printed agenda.

In most instances, speakers will be limited to three minutes in addressing the City Council.

Members of the Council shall not engage in debate with a member of the public or respond to issues/questions raised during this portion of the meeting.

No person who addresses the Council shall make any belligerent, personal, slanderous, threatening or abusive remark, statement, or commentary toward the Council, staff or other individuals in a manner which disrupts, disturbs, or otherwise impedes the orderly conduct of the Council meeting, nor shall any person engage in any disorderly conduct which disrupts or impedes the orderly conduct of the meeting. Any violation of this rule shall be grounds for terminating the speaker's comment period. Continued inappropriate behavior or comments, after having been directed to discontinue, shall be grounds for removal from the meeting.

Nothing in this section shall prohibit or discourage orderly criticism of any City decision or policy within the limits of State or Federal law or these rules.

6. Public Hearings

During this portion of the meeting, public hearings are conducted on all matters that have been properly and legally noticed as public hearings. Any issue scheduled for a public hearing will provide the proponents and opponents of the issue with the opportunity to express their points of view to the City Council. After all views have been expressed, the Mayor will close the public hearing, invite Council to discuss the matter and ask Council to render its decision on that matter.

7. Unfinished Business

These are items of business which, for a variety of reasons, are carried over from a previous meeting and require final Council action.

8. New Business

This portion of the meeting is devoted to discussion or consideration of items of business that have not previously been before the City Council.

9. Items Initiated by Council

Under this item, any Councilmember may bring before the Council for consideration any item he or she believes should be considered by the Council.

10. Council, Staff/Committee Reports

Councilmembers may provide a brief report on their activities, including reports on their committee activities, reports on inquiries they have received from any member, or the Council itself may provide a reference to staff or other resources for factual information, request staff to report back to the Council at a subsequent meeting concerning a matter, take action to direct staff to place a matter of business on a future agenda, or refer a work item to a Council advisory body or Councilmember committee.

11. Closed Session Report

The City Attorney will announce any reportable Closed Session actions taken by the City Council.

12. Adjournment

6.6.4 Order of Agenda Items for Council Advisory Bodies and Councilmember Committees

The order of agenda business items for all boards, commissions, and committees and Councilmember committees shall be the same as the order of Council agenda business items.

6.7 Rules of Procedure

- 6.7.1 City Council Policy A-13, City Council Meetings, provides general guidance for the conduct of Council meetings. From time to time, the Council may depart from its specific requirements for the convenience of the public, Council consideration and debate, or to expedite the processing of business. The Council by majority vote, however, may at any time reinvoke Policy A-13's specific requirements.
- 6.7.2 In instances not addressed by the rules provided in City Council Policy A-13, City Council Meetings, *The Modern Edition of Robert's Rules of Order* may be used for reference and/or guidance.

6.8 Decorum

- 6.8.1 While the City Council is in session, all persons shall conduct themselves with reasonable decorum.
- 6.8.2 Any person who is so disorderly or who so persistently disrupts the business meeting so far as to interfere with the proper conduct of the business may be ordered removed from the meeting place. At such time, the Mayor may call a recess.
- 6.8.3 The Police Chief or authorized representative shall be sergeant at arms of the Council meeting. The sergeant at arms shall carry out all orders and all instructions of the presiding officer for the purpose of maintaining order and decorum at Council meetings.

6.9 Time of Adjournment

It is the policy of the City that all evening meetings of the Council, including Study Sessions, be adjourned no later than 10:00 p.m., which time is referred to as the normal time of adjournment. No new item of business shall be taken up by the City Council after the normal time unless the Council has determined by majority vote to set aside this policy. In the event it appears that the entire agenda cannot be completed by the normal time of adjournment, the Council may take up and act upon the more pressing agenda items. All agenda items not considered at the meeting shall be on the agenda of the next regular, special, or adjourned regular meeting unless the Council directs otherwise.

6.10 Agenda Packets

- 6.10.1 Agenda packets are to be made available at the City Clerk's Office, the Mountain View Public Library, the City's web site (www.mountainview.gov), and at the Council meeting.

Council meeting agendas, minutes, and staff reports are generally available beginning the Thursday evening before each Council meeting.

NOTE: Also refer to City Council Policy A-13, City Council Meetings. This policy sets forth the rules of procedure for the conduct of City business.

CHAPTER 7 COUNCIL FINANCIAL MATTERS

7.1 Compensation

- 7.1.1 Pursuant to Article V, Section 503 of the Mountain View City Charter, each Councilmember will receive a monthly salary. The amount is the salary limit established by the State Legislature for members of the City Council of general law cities having a population range within which the City of Mountain View falls, as specified in California Government Code Section 36516(a).
- 7.1.2 The Mayor receives a monthly salary equal to the salary of a Councilmember plus an additional 25 percent.
- 7.1.3 The City Council has no power to increase its salary by ordinance, resolution, or motion.
- 7.1.4 Section 503 of the Mountain View City Charter stipulates that "if a member of the City Council, or Mayor, does not attend all meetings of the City Council or Study Sessions called on order of the City Council and held during the month, that person's salary for such month shall be reduced by the sum of Twenty-Five Dollars (\$25) for each meeting or Study Session not attended unless that person is absent on official duty with the consent of or on order of the City Council."

7.2 Benefits

- 7.2.1 The California Government Code provides that Councilmembers may receive health, retirement, and other benefits.
- 7.2.2 City-funded medical, dental, and life insurance plan benefits are provided.

7.3 City Council Budget and Expenses

- 7.3.1 City Council Policy A-2, City Council Policy Governing Expenses of the Council, provides policy guidance regarding Council expenditures for equipment, supplies and communications; travel; local expenses; and expenses charged against the City Council budget.

NOTE: Also refer to City Council Policy A-2, City Council Policy Governing Expenses of the Council. This policy sets forth the policies governing expenses of the City Council.

**CITY OF MOUNTAIN VIEW
CITY COUNCIL
PERSONAL CODE OF CONDUCT**

PREAMBLE

The residents and businesses of Mountain View are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Mountain View City Council has adopted this Code of Ethics to encourage public confidence in the integrity of local government and its fair and effective operation.

City Councilmembers shall sign this Personal Code of Conduct upon assuming office and upon reelection to that office as a symbol of each Councilmember's continuing commitment to abide by the principles of this code.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Councilmembers shall work for the common good of the people of Mountain View and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Councilmembers shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Mountain View City Charter; laws pertaining to conflicts of interest, election campaigns, financial

disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

Councilmembers shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.

4. Respect for Process

Councilmember duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Councilmembers shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council decisions shall be based upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Councilmembers to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Councilmembers.

8. Coordination with City Staff

Appropriate City staff should be involved when Councilmembers meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State, and the Federal government. As part

of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Councilmembers shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interest and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Councilmembers shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Councilmembers shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Councilmembers for private gain or personal purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Councilmembers shall not appear on behalf of the private interests of a third-party before the City Council or any board, commission, or committee or proceeding of the City.

15. Advocacy

To the best of their ability, Councilmembers shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions, members shall explicitly state that they do not represent the Council or the City.

16. Improper Influence

Councilmembers shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Councilmembers shall respect and adhere to the Council-Manager structure of Mountain View City government as provided in State law and the City Charter.

18. Positive Work Environment

Councilmembers shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

19. Implementation

Ethics standards shall be included in the regular orientations for City Council candidates. Councilmembers entering office shall sign a statement affirming they read and understood the City of Mountain View's City Council Code of Ethics.

20. Compliance and Enforcement

Councilmembers themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of City government.

**Attachment 1 to
City Council Code of Conduct**

This Personal Code of Conduct shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Mountain View City Councilmembers.

I affirm that I have read and understand the City of Mountain View City Council Personal Code of Conduct.

Signature

Date

**CITY OF MOUNTAIN VIEW
COUNCIL ADVISORY BODY
PERSONAL CODE OF CONDUCT**

PREAMBLE

The residents and businesses of Mountain View are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials, including Council advisory body members:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, Council advisory body members are expected to adhere to the Code of Conduct adopted by the Mountain View City Council to encourage public confidence in the integrity of local government and its fair and effective operation.

Council advisory body members shall sign this Personal Code of Conduct at the first meeting of the board, commission, or committee upon assuming office and, if applicable, upon reappointment to the board, commission, or committee as a symbol of each Council advisory body member's commitment to abide by the principles of this code during his or her term.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Council advisory body members shall work for the common good of the people of Mountain View and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Council advisory body members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California Constitutions; the Mountain View City Charter; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Council Advisory Body Members

Council advisory body members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of Councilmembers; other members of the Council advisory body; other boards, commissions, or committees; staff; or the public.

4. Respect for Process

Council advisory body member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Council advisory body members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council advisory body members shall base their decisions upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Council advisory body members to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council advisory body members.

8. Coordination with City Staff

Appropriate City staff should be involved when Council advisory body members meet with officials from other agencies and jurisdictions to ensure proper staff support, as needed, and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the Constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Council advisory body members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interest and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Council advisory body members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Council advisory body members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal

authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council advisory body members for private gain or personal purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Council advisory body members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee, or proceeding of the City.

15. Advocacy

To the best of their ability, Council advisory body members shall represent the official policies and positions of the City of Mountain View. When presenting their personal opinions or positions, members shall explicitly state that they represent neither the Council advisory body nor the City.

16. Improper Influence

Council advisory body members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Council advisory body members shall respect and adhere to the Council-Manager structure of Mountain View City government as provided in State law and the City Charter.

18. Positive Work Environment

Council advisory body members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

**Attachment 2 to
City Council Code of Conduct**

19. Implementation

Ethics standards shall be included in the regular orientations for Council advisory body members. Upon entering office and upon reappointment, Council advisory body members shall sign a statement affirming they read and understood the City of Mountain View's City Council Code of Conduct.

20. Compliance and Enforcement

Council advisory body members themselves have the responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of City government.

This Personal Code of Conduct shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Mountain View City Council advisory body members.

I affirm that I have read and understand the City of Mountain View City Council Code of Conduct.

Signature

Date

City of Brea

CODE OF CONDUCT FOR
CITY COUNCIL



November 2014

Last Revised: February 2021

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CODE OF CONDUCT FOR CITY COUNCIL

"Always do right. This will gratify some people and astonish the rest."

-Mark Twain

INTRODUCTION

This Code of Conduct is designed to describe the manner in which Council Members should treat one another, City staff, constituents, and others they come into contact with in representing the City of Brea. As elected representatives of the citizens of the City of Brea, it is essential that each Council Member's behavior be consistent with the level of responsibilities and duties of governance entrusted to them by the people of the City of Brea.

The constant and consistent theme throughout of the Code of Conduct is "respect." Council Members experience tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Council Members to do the right thing in even the most difficult situations. Such respect is the cornerstone of civility.

The overall principles and guidelines contained in this Code of Conduct also describe the manner in which the City Treasurer, City Clerk, Commissioners, Committee members and Board members are expected to treat one another, City staff, and all others they come into contact with in representing the City of Brea.

OVERVIEW OF ROLES AND RESPONSIBILITIES

MAYOR

- Serves at the pleasure of the City Council
- Acts as the official head of the City for all ceremonial purposes
- Chairs City Council meetings and as otherwise authorized by the Council
- Calls for special meetings
- Recognized as spokesperson for the City Council
- Selects substitute for City representation when Mayor cannot attend
- Makes Council Member assignment nominations to applicable standing committees and regional boards and committees. Appointment to such standing committees and regional boards and committees requires approval of the majority of Council. These standing committees and regional boards and committees are those that do not require appointment through external agencies or organizations (such as Orange County City Selection). Council Members who are originally appointed to ad hoc committee shall continue in their assignments. Ad hoc committee assignments are not subject to change unless an assigned

Council Member resigns from the committee or is no longer serving on the Council. Ad hoc committees shall be created to support and further Council priorities. When an ad hoc committee is created, the Council will define the committee's goals and the committee shall provide periodic progress reports to Council. No ad hoc committee will be formed without Council approval.

- Makes judgment calls on which proclamations to give
- Leads the Council into an effective, cohesive working team
- Signs documents on behalf of the City of Brea
- Serves as official delegate of the City to the Leagues of California Cities, National League of cities and other events and conferences

MAYOR PRO TEM

- Serves at the pleasure of the City Council
- Performs the duties of the Mayor if the Mayor is absent or disabled
- Chairs City Council meetings in the absence of the Mayor
- Represents the City at ceremonial functions at the request of the Mayor

ALL COUNCIL MEMBERS

All members of the City Council, including those serving as Mayor and Mayor Pro Tern, have equal votes. No Council Member has more power than any other Council Member and all should be treated and treat each other with civility and respect.

All Council Members shall:

- Demonstrate honesty, integrity, and civility in every action and statement
- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others
- Prepare in advance of Council meetings and be familiar with issues on the agenda. Make a reasonable effort to meet with staff before meetings to receive answers to questions regarding the agenda
- Represent the City at ceremonial functions at the request of the Mayor
- Place activities and events on the Council's weekly activities calendar that invite official participation of all Council Members
- Be respectful of other people's time. Stay focused and act efficiently during public meetings
- Serve as a model of leadership and civility to the community
- Inspire public confidence in Brea City government
- Provide contact information to the City Manager's Executive Assistant in case an emergency or

urgent situation arises while the Council Member is out of town

- Participate in scheduled activities to increase team effectiveness

MEETING CHAIR

The Mayor will chair official meetings of the City Council, unless the Mayor Pro Tem or another Council Member is designated as Chair of a specific meeting. The Chair of meetings:

- Maintains order, decorum, and the fair and equitable treatment of all speakers
- Keeps discussion and questions focused on the specific agenda item under consideration
- Makes parliamentary rulings with advice, if requested, from the City Attorney who acts as an advisory parliamentarian. Chair rulings may be overturned if a Council Member makes a motion as an individual and the majority of Council votes to overrule the Chair.

POLICIES AND PROTOCOL RELATED TO CONDUCT

AGENDA ITEMS

The Mayor and Mayor Pro Tem, in consultation with the City Manager, shall determine agenda items for City Council Meetings. However, to ensure all Council Member views are represented, study session agendas contain a section titled "Council Member Reports/ Requests" and general session agendas contain a section titled "Council Requests". These portions of the meeting allow any Council Member to request an agenda item for a future meeting, and allow the City Council to have a short discussion on the request (but not on the substance of the item). Any request must include an explanation of the issue and the goal of the proposed Council discussion. If at least one other Council Member indicates support for the request at that time, then the item shall be placed on a future agenda. Upon support for the request, the Council will provide direction to staff on information that is desired to be presented when the item is placed on a future agenda. The Mayor and Mayor Pro Tem shall schedule the item no later than 45 days following the request, unless the Council Member who requested the item consents to it being placed on the agenda of a later meeting. Additionally, with the advice of the City Manager and City Attorney, the Mayor and Mayor Pro Tem will determine the type of meeting (regular or special) and the type of session (closed, study, or general) at which the item will be considered.

CEREMONIAL EVENTS

City staff will handle requests for a City representative at ceremonial events. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor Pro Tem will be asked to serve as a substitute; if the Mayor Pro Tem is unavailable, the request will go to another member of the Council. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to individual Council Members at their homes are presumed to be for unofficial, personal consideration, unless otherwise indicated, and the individual is expected to represent the City of Brea in a formal capacity.

ENDORSEMENT OF CANDIDATES

Council Members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meeting or other official City meetings.

LEGISLATIVE PROCESS

The City follows parliamentary procedure for the management of meetings using guidelines adopted by Resolution No. 2014-065 on October 7, 2014.

PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS

During a designated period of the agenda, the public may comment on any item of interest that is within the subject matter jurisdiction of the Council. As a general rule, a speaker will be limited to five minutes.

The City Manager will respond, as deemed appropriate, to comments related to items on the meeting's agenda. In compliance with the Brown Act, the City Council may not take action or discuss any item that does not appear on the Council meeting agenda.

PUBLIC INQUIRIES

City staff will prepare official letters in response to public inquiries and concerns, as appropriate. These letters will carry the signature of the Mayor unless the Mayor requests that another Council Member or City staff sign them. If correspondence is addressed only to one Council Member that Council Member should generally check with staff on the best way to respond to the sender. In the event a Council Member, as an elected representative, feels compelled to express an opinion on a matter, it shall be with the express understanding and stated as such, that it is their personal opinion and does not in any way represent that of the City Council. Nor, under any circumstances, should a Council Member state or attempt to represent the opinion of the City Council or of another Council Member.

Council Members may receive public inquiries via email and may choose to respond directly via email. All such correspondence is considered a public record and should be treated as such. As with official letter responses to public inquiries, if a Council Member feels compelled to express an opinion on a matter, it shall be with the express understanding, and stated as such, that it is a personal opinion and does not in any way represent that of the City Council.

PUBLIC HEARING MEETING PROTOCOL

The applicant or appellant shall have the right to speak first after staff presentation regarding the item being appealed. The Chair will determine the length of time allowed for this presentation. Speakers representing either pro or con points of view will be allowed to follow. The Chair will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated five minutes with applicants and appellants, or their designed representatives, allowed more time. If many speakers are anticipated, the Chair may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers. No speaker will be turned away unless he/she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Chair reopens the public hearing for a limited and specific purpose.

The applicant or appellant will be allowed to make closing comments. The Chair has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly and/or accommodate extenuating circumstances.

Established protocol dictates that Council Members do not express opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council Members are not appropriate until after the close of the public hearing. To maintain proper public decorum it is important that Council Members refrain from arguing or debating with the public during a public hearing and always show respect for different points of view.

Main motions may be followed by amendments, followed by substitute motions. Any Council Member can call for a point of order. Only Council Members who voted on the prevailing side may make motions to reconsider. Council Members who desire to make the first motion on issues that they feel strongly about should discuss their intention with the Chair in advance of the Council meeting.

COUNCIL CONDUCT WITH ONE ANOTHER

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal respectfully acknowledge this potential diversity of opinion and viewpoint even as Council may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS

- Use of formal titles

The Council should generally refer to one another formally during public meetings as Mayor, Mayor Pro Tem or Council Member followed by the individual's last name

- Practice civility and decorum in discussions and debate

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not, however, grant the right for Council Members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening and otherwise disruptive can be tolerated. Disruptive behavior, at the direction of the Council, can result in expulsion from the proceedings.

- Honor the role of the Chair in maintaining order

It is the responsibility of the Chair to keep the comments of Council Members on track during public meetings. Council Members should honor efforts by the Chair to focus discussion on current agenda items. If there is a disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedures adopted on October 7, 2014. Differences of opinion of what constitutes appropriate versus inappropriate shall be resolved by consensus of the full Council at an appropriate time.

- Avoid personal comments that may offend other Council Members

If a Council Member is personally offended by the remarks of another Council Member, the offended Council Member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Council Member to justify or apologize for the language used. The Chair will maintain control of the discussion.

- Demonstrate effective problem-solving approaches

Council Members have a public stage to show how individuals with different points of view can find common ground and seek a compromise that benefits the community as a whole.

IN PRIVATE ENCOUNTERS

- Continue respectful behavior in private

The same level of respect and consideration in differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

Be aware that the insecurity of written notes, voicemail messages, and email technology allows words written or said without much forethought to be distributed wide and far. It could create unpleasant consequences and cause embarrassment. Written notes, voicemail messages and email should be treated as potentially "public" communication and part of the public record.

- Even private conversations can have a public presence

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted. Council Members must behave at all times in a manner reflective of the trust placed in them by the public.

COUNCIL CONDUCT WITH CITY STAFF

Every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community. The City of Brea is a general law city governed by the council/manager form of government. The City Council, with the assistance of its advisory commissions and boards, makes policies and fundamental governmental decisions; the City Manager is charged with implementing those policies and decisions and administering the day-to-day affairs of the City with the assistance of his/her staff. The City Council has direct authority over the City Manager and the City Attorney; all other employees of the City are under the direct authority of the City Manager. Following this hierarchy is important to the success of the basic structure and to maintaining positive and effective working relationships between the City Council and employees, and will prevent any confusion and/or inefficiency associated with potentially contradictory direction.

- Treat all staff as professionals

Clear, honest communication that respects the abilities, experience and dignity of each individual is expected. Poor behavior toward staff is improper, disrespectful and, as such, inappropriate and unacceptable.

- Limit contact to specific City staff

Questions of City staff and/or requests for additional information or services should be directed only to the City Manager. If, in the opinion of the City Manager the request makes sense and requires little staff time and/or resources, the City Manager can direct the appropriate department to fulfill the request.

- Do not disrupt City staff from their Jobs

To maintain efficiency in daily activities, it is important that Council Members not disrupt City staff while they are in meetings, on the telephone, or engrossed in performing their job functions in order to have their individual needs met.

- Respect City staffs time

Given ongoing fiscal constraints and limited staff and Council time, individual Council Members should minimize memos and maximize face-to-face interaction with other Council Members or staff.

In this respect, individual Council Members should schedule meeting with their counterparts, the City Manager, or department directors, depending on the issue to be discussed. As a matter of courtesy and mutual respect, Council Members and staff should keep their scheduled meetings or call in advance to cancel or reschedule.

- Requests for information

All Council Members will receive the same material and information to make legislative and other policy decisions and all requests for information should be made to the City Manager to ensure consistency.

If a Council Member requests research on an issue, staff shall provide such research if it does not require extensive time to research the issue. The City Manager shall determine if the research is "extensive" or not. If the issue is complex and requires extensive staff time, the request must be approved by the City Council.

If a Council Member needs to review a document maintained in the City's records system, upon request to the City Manager, staff will retrieve the requested document. The City Manager is legally responsible for the management and retention of City records, and only staff is authorized to retrieve information from the records system.

Because of the associated costs, individual Council Members shall not make direct contact to City or Agency consultants or outside legal counsel requesting information, research or service. Any request should be directed to the City Manager for compliance.

Confidential private financial statements are not provided to individual Council Members or the Council as a whole without the concurrence of the City Attorney.

- Never publicly criticize an individual employee

Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation.

- Do not get involved in administrative functions

To prevent raising concerns of misdeeds, or questionable motives, Council Members must not attempt to influence City staff on the making of appointments, awarding of contracts, selection of consultants, processing of development applications, or granting of City licenses and permits.

- Check with City staff on correspondence before taking action

To prevent conflicting statements or duplications, before sending correspondence, Council Members shall check with City staff to see if an official City response has already been sent or is in progress. Typically the Mayor, through consultation with staff, should respond to communications addressed to the entire Council. When it is unclear whether a correspondence is to an individual Council Member or the City Council as a whole, Council Members should consult with the Mayor or staff to determine the appropriate response.

- Council Members are discouraged from attending public meetings with City staff unless requested by staff

Council Members correctly feel their presence at public meetings demonstrates an interest in the issue, however, it can also leave the public with an impression of the Council Member's position on the issue that may or may not be correct. Even if the Council Member does not say anything, the Council Member's presence can impact the meeting by implying support, showing partiality, intimidating staff, and hampering staff's ability to do their job objectively. This should be avoided because when the item does come before the City Council, Council Members' deliberative process may have produced a different outcome, which may be viewed as the Council Member misleading the public.

Staff will always provide the public with this explanation of why the City Council is not present at the meeting.

- Requests for additional staff support

Requests for additional staff support, even in high priority or emergency situations, should be made to the City Manager or Assistant City Manager, or designated representative who is responsible for allocating City resources in order to maintain a professional, well-run City government.

- Do not solicit political support from staff

Council Members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support lists, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates, but all such activities must be conducted away from the workplace.

COUNCIL CONDUCT WITH THE PUBLIC

IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council Members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- Be welcoming to speakers and treat them with care and respect

Remember that most people who address the Council are not professional speakers and are not accustomed to speaking in public, and even those that are may be intimidated by the situation.

- Be fair and equitable in allocating public hearing time to individual speakers

Public hearings provide the opportunity for the public to provide comment and feedback to the Council on issues that are of importance to them, and sometimes these comments can cause the meeting to go much longer than anticipated. However, each member of the public who wishes to speak should be given equal consideration and attention, and not rushed. But each speaker is expected to stay within the allocated time.

- Actively listen

Listening is a critically important skill. In the interest of courtesy and decorum, Council Members should listen patiently to various opinions from all quarters. It can be disconcerting to speakers to have Council Members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time, or gazing around the room gives the appearance of disinterest and may unintentionally offend the speaker. As public official it's important to be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

- Ask for clarification, but it's important to avoid debate and argument with the public

Only the Chair – not individual Council Members – can interrupt a speaker during a presentation. However, a can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior/language the Council Member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council Members to members of the public testifying should seek to clarify or expand information. It is never appropriate for elected officials to belligerently challenge or belittle a speaker. Council Members personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

- No personal attacks of any kind, are appropriate under any Circumstance

Council Members should be aware that their body language and tone of voice may appear to be intimidating or aggressive to some speakers.

- Follow adopted parliamentary procedure in conducting public meetings

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Chair, subject to an appeal by the full Council.

IN UNOFFICIAL SETTINGS

- Make no promises on behalf of the Council

No individual Council Member has the authority to represent or make commitments on behalf of the City Council. Council Members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a street tree, plant new flowers in the median, etc.).

- Make no personal comments about other Council Members

It is acceptable to publicly disagree about an Issue, but it is unacceptable to make derogatory comments about other Council Members, their opinions and actions. Doing so may undermine confidence in and respect for the City Council as a body.

Remember that Brea is a small town at heart. Council Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City. Honesty and respect for the dignity of each individual should be reflected in the words and actions taken by Council Members. It is a serious and continuous responsibility.

COUNCIL CONDUCT WITH OTHER PUBLIC AGENCIES

- Be clear about representing the City or personal interests

If a Council Member appears before another governmental agency or organization to give a statement on an Issue, the Council Member must clearly state if his/her statement reflects personal opinion or is the official stance of the City and whether this is the majority or minority opinion of the Council. If the Council Member is representing the City, the Council Member must support and advocate the official City position on an Issue, not a personal viewpoint. If the Council Member is representing another organization whose position is different from the City, the Council Member should withdraw from voting on the Issue if it significantly impacts or is detrimental to the City's interests.

Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- Correspondence also should be equally clear about representation

City letterhead may be used when the Council Member is representing the City and the City's official position. A copy of the official correspondence should be given to the City Manager's Executive Assistant to be filed in the Council Office as part of the permanent public record.

It is best that City letterhead not be used for correspondence of Council Members representing a personal point of view, or a dissenting point of view from an official Council position. However, should a Council Member use City letterhead to express a personal opinion, it must be clear to the reader that this is not the official City position.

COUNCIL CONDUCT WITH COMMISSIONS, COMMITTEES AND BOARDS

The City has established commissions, committees and boards as a means of gathering more community input. Citizens who serve as such become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- If attending a commission, committee or board meeting, be careful to only express individual personal opinions

Council Members may attend any commission, committee, or board meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation, especially if it is on behalf of an individual, business or developer, could be viewed as unfairly affecting the process. Any public comments by a Council Member at a commission, committee or board meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

- Limit contact with commission, committee, or board members to questions of clarification

It is inappropriate for a Council Member to contact a commission, committee, or board member to lobby on behalf of an individual, business, or developer. It is acceptable for Council Members to contact commission, committee, or board members in order to clarify a position taken by the commission, committee, or board.

- Remember that commissions, committees, and boards serve the community, not individual Council Members

The City Council appoints individuals to serve on commissions, committees, and boards and it is the responsibility of these groups to follow policy established by the Council.

But commission, committee and board members do not report to individual Council Members, nor should Council Members feel they have the power or right to threaten members with removal if they disagree with them about an issue. Appointment and reappointment to a commission, committee, or board is governed by the Municipal Code and should be based on such criteria as expertise, ability to work with staff and the public, commitment to the community and to fulfilling official duties.

- Be respectful of diverse opinions

A primary role of commissions, committees, and boards is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council Members may have a closer working relationship with some individuals serving on commissions, committees and boards, but must be fair and respectful of all citizens serving on commissions, committees and boards.

- Keep political support away from public forums

Commission, committee and board members may offer political support to a Council Member, but not in a public forum while conducting official duties. Conversely, Council Members may support commission, committee or board members who are running for office, but not in an official forum in their capacity as a Council Member.

COUNCIL CONDUCT WITH THE MEDIA

Council Members are frequently contacted by the media for background and quotes.

- The Mayor and the City Manager shall determine the official spokesperson for the City's position on high-profile Issues

If an individual Council Member is contacted by the media, the Council Member should refer the media to the Mayor or the City Manager and refrain from making statements that would give the appearance of representing the City's position.

- The City Manager or his/her designee shall be the City's spokesperson on routine media inquiries
- Remember who you are

A Council Member must always be aware of his/her role as a policy maker in the organization, and the deference that is afforded you by the public because of your office. Consequently, it is very important to remember not to speculate or venture outside your area of expertise. The public will rely on what they are told by an elected official.

- The best advice for dealing with the media is to never go "off the record"

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

- Never say "no comment"

This statement can easily be misconstrued. If a Council Member does not have the information available, it is best to say so and let the media know when the information will be available and then make certain to follow through.

- Do not be afraid to say "I don't know"

If a Council Member does not know the answer to a question, it is best to just say so, then find out. It is helpful to ask the media for their deadline and then get back to them on time.

- Don't speculate; avoid hypothetical questions

A Council Member may choose to raise a case study hypothesis to illustrate a process, but should not be lured into speculating about what has not occurred.

- Be positive, not defensive
- Choose words carefully and cautiously

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

- Avoid "never" and "always"

Opinions may change as additional information is revealed. Absolutes can come home to haunt!

- Do not fill in the silences

Silences can be a tool used by the media to keep a Council Member talking in hopes of obtaining more information. The only thing that should be said to fill in a silence is the Council Member's own prepared key messages.

- Do not lose your composure

A Council Member may win the battle, but will always lose the war.

- Do not argue with the media

Arguing with the media is a no-win situation. A Council Member who is calm and in good temper will also look like a sensible adult. That is a good image to convey. Keep in mind that editing has final control and an argument may be the only thing shown on the evening news.

- Never lie

It is better not to express an opinion than to fabricate a response that may not be entirely factual, and would tend to mislead the press.

SANCTIONS

PUBLIC DISRUPTION

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.

INAPPROPRIATE STAFF BEHAVIOR

City staff members who do not follow proper conduct in their dealings with Council Members, other City staff, or the public will be referred to the City Manager. These employees may be disciplined by the City Manager in accordance with City policies and procedures.

COUNCIL MEMBERS BEHAVIOR AND CONDUCT

City Council Members who are alleged to be in violation of State or Fair Political Practices laws or guidelines should be referred to the appropriate agencies.

City Council Members who intentionally and repeatedly do not follow proper conduct as outlined in this Code of Conduct may be reprimanded or formally censured by the Council, lose seniority or committee assignments (both within the City or with intergovernmental agencies) or have official travel restricted. Serious infractions of the City's Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

It is the responsibility of the individual Council Member to initiate action if a Council Member's behavior may warrant sanction. The alleged violation(s) can be presented to the full Council in a public meeting. If violation of the Code of Ethics or Code of Conduct is outside of the behaviors observed by the Council, then subsequent investigation and potential sanctions should be reviewed and approved by the Council.

PRINCIPLES OF PROPER CONDUCT

PROPER CONDUCT IS...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

PROPER CONDUCT IS NOT

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

IT ALL COMES DOWN TO RESPECT

- Respect for one another as individuals
- Respect for the validity of different opinions
- Respect for the democratic process
- Respect for the community that we serve

CHECKLIST FOR MONITORING CONDUCT

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense?
- Will it destroy their trust in me?
- Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for?
- Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

GLOSSARY OF TERMS

Attitude	The manner in which one shows one's dispositions, opinions, and feelings
Behavior	External appearance or action; manner of behaving; carriage of oneself
Civility	Politeness, consideration, courtesy
Conduct	The way one acts; personal behavior politeness connected with kindness
Courtesy	Suitable; proper; good taste in behavior
Decorum	A way of acting; a style, method, or form; the way in which things are done
Manners	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
Point of order	A challenge to a speaker to defend or apologize for comments that a fellow
Point of personal privilege	Council Member considers offensive
Propriety	Conforming to acceptable standards of behavior
Protocol	The courtesies that are established as proper and correct

APPENDIX

REVISIONS TO CODE

DATE	SECTION	ACTION
October 2, 2018	COUNCIL CONDUCT WITH COMMISSIONS, COMMITTEES AND BOARDS	<p><u>Removal</u> of language:</p> <p><i>Inappropriate behavior can lead to removal - Inappropriate behavior by a commission, committee, or board member should be noted to the Mayor, and the Mayor should counsel the offending member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Council and the individual may be subject to removal from the commission, committee or board.</i></p>
January 15, 2019	POLICIES AND PROTOCOL RELATED TO CONDUCT – AGENDA ITEMS	<p>Revisions amended the procedures for City Council to make agenda requests.</p> <p><u>Removal</u> of language:</p> <p><i>Individual Council Members should submit requests, preferably written, for agenda items to the Mayor for consideration. In the case of a dispute a Council Member may, at a public meeting, request the support of the majority of the Council to place an item on the agenda.</i></p> <p><u>Addition</u> of language:</p> <p><i>However, to ensure all Council Member views are represented, study session agendas contain a section titled "Council Member Reports/ Requests". In addition to their reports, this portion of the meeting allows any Council Member to request an agenda item for a future meeting, and allows the City Council to have a short discussion on the request (but not on the substance of the item). Any request must include an explanation of the issue and the goal of the proposed Council discussion. If at least one other Council Member indicates support for the request at that time, then the item shall be placed on a future agenda. Upon support for the request, the Council will provide direction to staff on information that is desired to be presented when the item is placed on a future agenda. Additionally, with the advice of the City Manager and City Attorney, the Council will provide direction to staff on the type of meeting (regular or</i></p>

		<p><i>special) and the type of session (closed, study, or general) at which the item will be considered. The Mayor and Mayor Pro Tem shall schedule the item no later than 45 days following the request, unless the Council Member who requested the item consents to it being placed on the agenda of a later meeting.</i></p>
April 2, 2019	<p>POLICIES AND PROTOCOL RELATED TO CONDUCT – AGENDA ITEMS</p>	<p>Revisions clarified that the Mayor and Mayor Pro Tem, rather than the full Council, have the authority to provide direction to staff on the type of meeting and session at which Council-requested agenda items will be considered.</p> <p>Revisions also added an opportunity for City Council to make agenda requests during General Session.</p> <p><u>Removal</u> of language:</p> <p><i>Additionally, with the advice of the City Manager and City Attorney, the Council will provide direction to staff on the type of meeting (regular or special) and the type of session (closed, study or general) at which the item will be considered..</i></p> <p><u>Addition</u> of language:</p> <p><i>...and general session agendas contain a section titled "Council Requests."</i></p> <p><i>Additionally, with the advice of the City Manager and City Attorney, the Mayor and Mayor Pro Tem will determine the type of meeting (regular or special) and the type of session (closed, study, or general) at which the item will be considered.</i></p>
February 16, 2021	<p>OVERVIEW OF ROLES AND RESPONSIBILITIES - MAYOR</p>	<p>Revisions clarified Mayor's role in making internal and external committee assignments.</p> <p>Language revision:</p> <p><i>Makes Council Member assignments nominations to Council subcommittees applicable standing committees and regional boards and committees through consultation with other members. Appointment to such standing committees and regional boards and committees requires approval of the majority of Council. These standing committees and regional boards and committees are those that do not require appointment through</i></p>

		<p><i>external agencies or organizations (such as Orange County City Selection). Council Members who are originally appointed to ad hoc committee shall continue in their assignments. Ad hoc committee assignments are not subject to change unless an assigned Council Member resigns from the committee or is no longer serving on the Council. Ad hoc committees shall be created to support and further Council priorities. When an ad hoc committee is created, the Council will define the committee's goals and the committee shall provide periodic progress reports to Council. No ad hoc committee will be formed without Council approval.</i></p>
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Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

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Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

OVERVIEW AND PURPOSE

The Town of Berthoud, a Colorado Town, (hereafter the “**Town**” or “**Town of Berthoud**”) is committed to transparent, collegial, ethical local government, and to that end endorses the following “Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions” (hereafter “**Code of Conduct**”) to provide guidance assisting Public Servants in the performance of their duties in a manner which serves the public interest and honors public trust. This document is intended to embody core values of the government of the Town of Berthoud, including:

Fiscal Responsibility	Professionalism	Accountability	Integrity
Transparency	Respect	Service	

DEFINITIONS

“**Appearance of Impropriety**” means actions or decisions which do not fall under conflict of interest statutes, but reasonably give rise to an implication that an action is self-serving rather than considered solely with respect to its impact on the Town and its citizens.

“**Censure**” means an official written statement approved by the Board of Trustees as an official Sanction which identifies the Code of Conduct violation and expresses disapproval of those violations.

“**Gifts of Substantial Value**” are as defined in Section 18 of Title 24 of the Colorado Revised Statutes and include, but are not limited to, gifts which could be perceived as a reward for an official action taken.

“**Public Servant**” means any elected or appointed official of the Town of Berthoud as well as employees and volunteers, including, but not limited to: Board of Trustee members; Planning & Zoning Commissioners; Parks, Open Space, Recreation and Trails (PORT) Committee Members; Youth Advisory Committee Members; Historical Preservation Committee Members; Tree Board Members; any other Town boards or commissions that may arise from time to time; part time employees; recreation instructors and volunteers; and temporary employees.

“**Sanction**” means an action taken by the Board of Trustees if an individual member of the Board of Trustees or an advisory board member is in violation of this Code of Conduct. Sanctions can include Reprimand, formal Censure, and removal from boards and commissions (in compliance with state law).

“**Reprimand**” means a verbal statement in a meeting that addresses a violation of this Town of Berthoud Code of Conduct, and specifically references the provision that has been violated.

ROLES & RESPONSIBILITIES

The Town of Berthoud operates under the statutory town form of government and recognizes the importance of maintaining a transparent and well-defined structure. The Board of Trustees is composed

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

of six Trustees and one Mayor. The Town Administrator is responsible for staff management and day-to-day operations; the Board of Trustees is responsible for legislative functions such as setting policy, establishing goals, and interacting with the public.

STATEMENT OF AGREED PRINCIPLES

The Town of Berthoud is committed to adhering to these principles in order to best serve its constituents. The Following are adopted as joint goals and commitments of all Public Servants:

- Be accountable to the community and public.
- Enhance and promote good will and public discourse among citizens and fellow Public Servants.
- Give consideration to potential consequences of conduct – both short and long term.
- Strive to maintain and improve public trust in their Public Servants.
- Behave and conduct all public business in a professional manner.
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- Listen and consider all perspectives before reaching a conclusion.
- Approach discussion and decisions with an open mind.
- Engage in respectful and constructive discourse with an eye towards a mutually beneficial outcome.

CONFLICTS OF INTEREST

All Public Servants of the Town of Berthoud are expected to be familiar with and at all times comply with Colorado statutes addressing ethics and conflicts of interest as a baseline level of conduct. A summary of all applicable statutory provisions compiled by the Colorado Municipal League legal staff is attached hereto and incorporated herein as "Appendix A". The following provisions are intended only as practical direction for implementing such standards or for issues which do not rise to levels prohibited by statute but nonetheless raise the appearance of impropriety.

If a Board Member has questions or concerns about a potential conflict of interest or any other ethical issue, he or she should consult the Town Administrator (outside of a Board of Trustees meeting) requesting that the Town Administrator consult with the Town Attorney, or consult the Town Attorney during a meeting.

When participation in action or decision-making as a Public Servant does not implicate the specific statutory criteria for conflicts of interest, but does raise an Appearance of Impropriety, then that Public Servant is encouraged to recuse him/herself in order to avoid any Appearance of Impropriety.

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

No board member may vote on any matter before the board if the board member's participation is prohibited by statute. If a conflict isn't clear, the member may choose to disclose the nature of the potential conflict to the board prior to a vote taking place, and request a determination be made by the non-conflicted board members as to whether the potentially conflicted board member may cast his/her vote. If the potentially-conflicted-member makes a request for the remaining members to determine whether the potentially-conflicted-member has a conflict of interest, then the remaining members may determine, by motion adopted by the affirmative vote of a majority of the remaining members, whether a conflict of interest exists. On all matters not rising to the level of a statutory prohibition, such vote shall be advisory only.

When a board member is precluded from voting on a matter because of a conflict of interest, then the board member shall physically remove himself/herself from the council dais, from the board room in which it is meeting, and shall refrain from attempting to influence the decisions of the other members of the board who will cast a vote on that matter. After the board has completed consideration of the matter, the board member may return and resume his or her duties as a member of the board.

As soon as a board member determines that he or she has a conflict of interest on any matter before the board, then he or she shall immediately refrain from attempting to influence the decision of the other members of the board on that matter.

No board member shall vote on any question concerning the member's own conduct.

CONFIDENTIALITY

Public Servants will often be privy to sensitive, private, or confidential matters, in formal and informal settings. All Public Servants shall respect the letter and intent of the open meetings laws, and keep secret all private and confidential matters. No Public Servant may disclose to third parties any confidential information, unless authorized to do so by a 2/3 vote of the applicable board. Public Servants shall comply with applicable state law – including without limitation C.R.S. 24-18-104 – concerning the prohibition of the use of confidential information for personal benefit.

GIFTS

Public Servants shall not accept Gifts of Substantial Value or of substantial economic benefit tantamount to a Gift of Substantial Value which would tend to improperly influence a reasonable person in a public position to depart from the faithful and impartial discharge of the Public Servant's public duties, of which the Public Servant knows, or which a reasonable person should know, is being gifted primarily for the purpose of rewarding an Official Action the Public Servant has taken or could take.

Public Servants shall comply with applicable state law – including without limitation C.R.S. 24-18-104 – concerning the prohibition of the receipt of Gifts of Substantial Value.

GENERAL ETHICS GUIDELINES

NEPOTISM - Except as otherwise required by law, no Public Servant should participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any appointed or elected

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

position at the Town of Berthoud. Public Servants are expected to disclose the relationship, and recuse or remove him/herself appropriately.

PERSONAL USE OF TOWN PROPERTY - No Elected Official or Public Servant shall utilize Town Property for personal purposes. This prohibition shall not apply to occasional use of telephones, copiers, or technological equipment to the same extent that such use would be allowed to any citizen of the Town.

CODE OF CONDUCT

WITH ONE ANOTHER

Governing bodies are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the community and its future. In all cases, this common goal should be acknowledged even as Board members may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of any individual Board member toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony. In addition, Board members should strive to:

- Be welcoming to speakers
- Speaking in public can be uncomfortable. Some issues and decisions can be personal or emotional. Be courteous, kind, supportive, attentive, and do not interrupt. Be fair and equitable in allocating public hearing time to individual speakers.
- Ask for clarification, but avoid debate and argument(s) with the public.
- Honor the role of the Mayor in maintaining order. It is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Board members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Board members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed. All Board Members shall refrain stating their final decision until all information has been presented in the public meeting where the agenda item is to be voted upon.
- Practice civility, professionalism and decorum in discussions and debate
- Conflict, difficulty reaching consensus, and disagreement is a matter of course for a

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

governmental organization; however, belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments will not be tolerated.

- Public Servants should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- Demonstrate effective problem-solving approaches
- Look for opportunities to utilize public discourse as an opportunity to display how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.
- Be respectful of others' time. Everyone in attendance at a public meeting has made a commitment to attend meetings and partake in discussions. Their time is valuable. Therefore, it is important that Public Servants are punctual and that meetings start on time. It is also important that comments are productive and relevant so that adequate time may be spent on scheduled issues.
- Abstain responsibly. Abstain (and furthermore, recuse) when you have any financial interest or other conflict of interest according to state law. Abstain from matters for which you do not have necessary information, such as the approval of minutes. While you cannot be compelled to vote on any given matter, keep in mind that it's your duty to vote on critical public matters even if the decision is difficult or uncomfortable.

IN PRIVATE ENCOUNTERS

- Continue respectful behavior in private
- The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.
- Be aware of the insecurity of written notes, voicemail messages, and e-mail.
- Technology presents the risk of quick public dissemination of communications far beyond the intended recipient. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.
- Even private conversations can have a public presence.
- Public Servants are always on display – their actions, mannerisms, language, and interactions in

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

non-official settings are under scrutiny. Public Servants should endeavor to conduct themselves in a way which would not reflect poorly on the Town of Berthoud's values.

BETWEEN STAFF & ELECTED OFFICIALS

Exemplary governance in Berthoud depends on the cooperative and symbiotic efforts of elected officials, who set policy, and Town staff, who implement and administer policy. Every effort should be made to be cooperative and show mutual respect for the contributions made by each Public Servant for the good of the community.

- Treat all Public Servants as professionals - Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.
- Job Disruption - Elected Officials should not disrupt Town staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Questions of Town staff and/or requests for additional background information should be directed to the Town Administrator.
- Never publicly criticize an individual employee – Board Members should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's supervisor. Comments about staff performance should only be made to the Town Administrator through private correspondence or conversation.
- Do not act outside the scope of your authority – Board members should not attempt to influence Town staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of Town licenses and permits. Unsolicited attendance to staff meetings is discouraged. .
- Honor the established structure. Elected officials should not be involved with administrative matters. Staff members should not circumvent their supervisor or the established structure by appealing to an elected official for a raise or other consideration that should be between the staff member and their supervisor.
- Limit requests for staff support - Requests for additional staff support – even in high priority or emergency situations -- should be made to the Town Administrator who is responsible for allocating Town resources in order to maintain a professional, well-run Town government.
- Do not solicit political support from staff - Council members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from Town staff. Town staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

BETWEEN BOARDS & COMMISSIONS

- Familiarize yourself with the bylaws, policies, and structure of the Town and its governing entities and advisory entities. Act in a manner which honors those structures.
- Make an effort to communicate as one voice between boards & commissions. Take the time and make an effort to reach consensus and avoid confusing official recommendations with personal opinion or ex-parte information once a compromise has been reached.
- Do not direct staff individually or as an entity in a way that is inconsistent with established structures.

WITH THE MEDIA

- Make no promises on behalf of the Town of Berthoud
- Board members will frequently be asked to explain a Board action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of Town policy and to refer to Town staff for further information. It is inappropriate to overtly or implicitly promise Board action, or to promise Town staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).
- Staff should inform the media of official public actions, refer media to the public record, and refrain from providing personal opinions. If appropriate, always refer the media to the “point person” on any particular topic, such as a project lead or a department head rather than providing second-hand knowledge.
- Do not speak, write, or otherwise communicate for the Town of Berthoud without proper authorization.
- Unless you are expressly permitted to do so by Board of Trustee action prior to your communication, do not speak for the Town of Berthoud in an explicit or even implied manner. Always disclose your communications as an individual and not as a representative of the Town of Berthoud as a whole.
- It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory or personal comments about other Public Servants, or their opinions, actions or perceived motivations.
- After a Board has voted on an any policy issue it is considered closed and the Board moves on to other matters Board Members shall refrain from acting in any manner that would impede the carrying out of a decision which has been made by the Board. Continued actions to impair implementation of a decision undermines Board governance and the Board’s credibility and

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

trust with constituents and potential investors.

ENFORCEMENT/SANCTIONS

This Code of Conduct is meant to be self-enforcing. Public Servants should be familiar with its contents and support any training necessary to further its implementation.

If a member of the staff or a volunteer for the Town of Berthoud is in violation of this Code of Conduct, then their actions should be referred to the Town Administrator, and the employee/volunteer will be subject to Town disciplinary procedures at the Town Administrator's discretion.

If a member of the Board of Trustees or an advisory board for the Town is in violation of this Code of Conduct, then they may be Reprimanded or formally Censured by the Board of Trustees.

Serious infractions could lead to Sanctions as determined by a majority vote of the Board of Trustees.

Those Sanctions may include but are not limited to: Reprimand, formal Censure, and removal from boards and commissions (in compliance with state law). In the event that a violation escalates into a situation in which the board wishes to pursue a Sanction, an independent attorney may be consulted to avoid a conflict of interest with the Town Attorney.

COLORADO STATUTORY PROVISIONS CONCERNING ETHICS AND CONFLICTS OF INTEREST FOR MUNICIPAL OFFICIALS AND EMPLOYEES

by

Geoffrey Wilson, CML General Counsel

Applicable Statutes

Ethics and conflicts of interest for local government officers and employees are addressed in three areas of the Colorado Revised Statutes:

- I. Article 18 of Title 24. Part 1 is Colorado's "Code of Ethics" for public officers and employees. Part 2 addresses proscribed interests in contracts;
- II. Sections 31-4-404(2) and (3), concerning restrictions on members of municipal governing bodies voting on matters in which they have a personal or private interest; and
- III. Section 18-8-308 of the Colorado Criminal Code, imposing certain disclosure requirements on public officials.

Caveat: Be sure to check for local charter or ordinance provisions that may also bear on these issues.

Colorado "Code of Ethics" for Public Officials and Employees-

[C.R.S. 24-18-101, et seq.; C.R.S. 24-18-201, et seq.]

Violation of Public Trust and Fiduciary Duty- Standard of Proof

The Code of Ethics identifies several rules of conduct for local government officials and employees. Violation of these rules is declared to be a breach of fiduciary duty and the public trust. [C.R.S. 24-18-103(2)] A local government official or employee whose conduct departs from his fiduciary duty is "liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust." The district attorney in the district where the trust is violated is authorized to bring "appropriate judicial proceedings" on behalf of the people, and money collected in such proceedings is paid to the general fund of the local government. Successful prosecution under the Code of Ethics for breach of fiduciary duty requires proof beyond a reasonable doubt of the commission of any act proscribed in the Code.

Code of Ethics: Rules of Conduct

[C.R.S. 24-18-101, et seq]

The Code of Ethics specifies “Rules of Conduct”, violation of which constitutes breach of fiduciary duty and the public trust. (The Code also specifies non-binding “Ethical Principles”, which are intended as guides to conduct.)

1. Use of Confidential Information for Personal Benefit. [C.R.S. 24-18-104-(1)(a)]

A local government official or employee shall not:

“Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interest.”

- Note that this section restricts only use of “confidential” information.
 - “Financial interest” is defined as a substantial interest held by an individual which is:
 - (a) An ownership interest in a business
 - (b) A creditor interest in an insolvent business
 - (c) An employment or prospective employment for which negotiations have begun
 - (d) An ownership interest in real or personal property
 - (e) A loan or any other debtor interest
 - (f) A directorship or officership in a business.
- (24-18-102-(4), C.R.S)

2. Accepting Gifts or Economic Benefits as Rewards or Inducements. [C.R.S. 24-18-104-(1)(b)]

A local government official or employee shall not:

“Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

- 1) *Which would tend to improperly influence a reasonable person in his position to depart from the faithful discharge of his public duties; or*
 - 2) *Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.”*
- This prohibition utilizes an objective “reasonable person” standard. Thus it is no defense to argue that the gift or benefit did not actually induce improper conduct or was not actually understood to be a reward for official action.
 - *Inclusions:* “Economic benefit tantamount to a gift if substantial value”
 - I. A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans, and
 - II. Compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. [C.R.S. 24-18-104(2)]

- **Exclusions:** Economic benefits”. The Code does not define “gift of substantial value”; however, it does identify several items that are not considered “gifts of substantial value” or “economic benefits tantamount to gifts of substantial value.” [See C.R.S. 24-18-104(3)] Among these exclusions are:
 - Campaign contributions reported under the Fair Campaign Act,
 - Honoraria
 - “Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational, or cultural events.”

3. Transactions With Those One Supervises or Inspects. [C.R.S. 24-18-109(2)(b)]

A local government official or employee shall not:

“Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties.”

4. Acts Benefitting Ones Business or Client. [C.R.S. 24-18-109-(2)(b)]

A local government official or employee shall not:

“Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.”

- “Official act” is defined as including any “vote, decision, recommendation, approval, disapproval, or other action, including in action, which involves the use of discretionary authority.” [C.R.S. 24-18-102(7)]

Exclusions: Section 24-18-109(4) provides that it is not a breach of fiduciary duty or the public trust for a local government official or employee to:

- (i) Use local government facilities or equipment to communicate with constituents, family members or business associates, or
- (ii) Accept or receive benefits as an indirect consequence of transaction local government business

Defense: Disclosure

- A. Section 24-18-110 provides for voluntary disclosure by a local government official or employee of the “nature of his private interest” prior to acting in a manner that may impinge upon fiduciary duty and the public trust. Proper disclosure is an affirmative defense to “any civil or criminal action or any other sanction.” (Emphasis added)
- B. Proper disclosure:
 - 1. For local government officials and employees, disclosure must be in writing to the Secretary of State. Disclosure may be accomplished online: go to the Secretary of State website, www.sos.state.co.us; click on “Elections” and then “Conflict of Interest”.

2. Elements of the disclosure
 - (i) Amount of financial interest if any,
 - (ii) Purpose and duration of services rendered, if any,
 - (iii) Compensation received for services, or
 - (iv) "Such other information as necessary to describe" the interest.
3. If the act is then performed, the official or employee shall state for the record the fact and nature of the interest involved.

Code of Ethics: Prohibited Interests in Contracts

[C.R.S. 24-18-201, et seq.]

Rule: Local government officials and employees *"shall not be interested in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees."*

- **Note:** See particularly part (e) below, concerning compliance with the "Disclosure and Abstention" statutes.
- **"Safe Harbors":** The statute states that certain types of transactions are not "contracts" for purposes of these restrictions. [C.R.S. 24-18-201(1)(b)] Excluded transactions include:
 - a. Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
 - b. Merchandise sold to the highest bidder at public auction;
 - c. Investments or deposits in financial institutions which are in the business of loaning or receiving monies;
 - d. A Contract with an interested party if, because of geographical restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.
 - e. A contract with respect to which any... local government official or employee has disclosed a personal interest and has not voted thereon or with any respect to which any member of the governing body of a local government has voted thereon in accordance with Section 24-18-109(3)(b) or 31-4-404(3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees.
- **Noncompliance- contract voidable:** Violation of the prohibitions described above shall render the contract voidable at the instance of any party to the contract except the officer interested therein. [C.R.S. 24-18-203]

Rule: “Revolving Door” Provision: Former employees may not within six months of the end of their employment contract or be employed by any employer that contracts with a local government during his employment.

Title 31-Municipal Governing Body Members –Disclosure/Abstention

[C.R.S. 31-4-404(2) and (3)]

Rule: “Disclosure and Abstention”, a member of the governing body of a city or town who has a personal or private interest in any matter proposed or pending before the governing body shall:

- A. Disclose such interest to governing body,
- B. Not vote and
- C. Not attempt to influence the votes of other members of the governing body. [C.R.S. 31-4-404-(2)]

Exception

A member of the governing body may vote notwithstanding his or her personal or private interest if:

- A. Such member’s participation is necessary to achieve a quorum or otherwise enable the body to act, and
- B. Disclosure is made pursuant to Section 24-18-110 C.R.S. of the Colorado Code of Ethics for Public Officials and Employees (which, as noted above, requires disclosure in writing to the Secretary of State prior to official action). [31-4-404-(3)] C.R.S.

Criminal Code Disclosure Requirements

[C.R.S. 18-8-308]

Section 18-8-308 of the Colorado Criminal Code contains additional disclosure requirements affecting local government officials and employees.

Rule: When the disclosure requirement of section 18-8-308 C.R.S. is triggered, “actual advance written notice” to the Secretary of State and to the governing body is required 72 hours before any action is taken.

What triggers the Law (When you pay attention to this rule): An impending exercise of “substantially discretionary function with respect to a government contract purchase, payment or other pecuniary transaction” where a “potential conflicting interest” is known by the official or employee to exist.

- A “potential conflicting interest” exists when the public servant is a director, president, general manager or similar executive officer or owns or controls directly or indirectly a substantial interest in any non-governmental entity participating in the transaction in question.

Ethics Handbook for Michigan Municipalities



integrity ➤ fair dealing ➤ responsibility ➤ accountability ➤ openness



michigan municipal league
Better Communities. Better Michigan.



Thank you

The Michigan Association of Municipal Attorneys wishes to thank the Michigan Municipal League Foundation for their generous financial support of the Ethics Handbook project. The Foundation contribution has greatly assisted with the publication and distribution of the handbook, ensuring that it will be available to local governments and interested parties throughout Michigan.

Ethics Handbook For Michigan Municipalities

Presented by
The Ethics Roundtable
of the Michigan Association of Municipal Attorneys



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Dedication

This handbook is dedicated to the memory of William L. Steude, general counsel of the Michigan Municipal League from 1971 to 1997, and past chair of the Ethics Roundtable, a committee of the Michigan Association of Municipal Attorneys. Bill was a proponent of ethical conduct and civility in government at all levels, and this handbook was originally his idea. The essay on “Civility in Government” is his, and in it he considers the respect that is deserved by and owed to, both the public and its dedicated local government officials and staff. We have all benefited from Bill’s belief in the necessity of the trustworthiness of government, and with this handbook we hope to advance that belief.

Foreword

The Michigan Municipal League, representing some 518 local governments, is proud to join the Michigan Association of Municipal Attorneys in presenting a comprehensive resource for local government officials interested in the topic of ethics as it applies to municipalities.

One of the hallmarks of municipal governance in Michigan is its strong tradition of ethical conduct in the provision of services for local communities. The actions of municipal elected and appointed officials adhere not only to a statutory framework, but also to professional codes of conduct, local provisions, local organizational culture and, perhaps most importantly, a strong sense of personal ethics borne of the civic pride that leads individuals to be municipal officials. The Michigan Municipal League has traditionally worked to articulate and support the tradition of ethical conduct in Michigan's municipalities. This handbook represents an important additional step. It is both a conceptual resource and a "how to" manual. It is comprehensive in that it addresses numerous facets of ethics. And, it documents the ways numerous municipalities have addressed ethics, in a formal sense, by adopting a local ethics ordinance.

One of the great attributes of municipal government in Michigan is that the government can be tailored to meet the needs of a particular community. The best way to address an issue in one community may be very different from a neighboring community—the topic of ethics included. Thus, this handbook does not seek to present a "model." Rather it discusses the concept of ethics as it applies to municipal government, highlights particular issues, and then presents how several communities have addressed

those issues. It should be pointed out that for many municipalities it will be appropriate to adopt only selected provisions set forth in the handbook.

In making the choice to adopt an ordinance, a community should bear in mind that an ethics ordinance is a tool. While adopted with the intent of improving the government of the municipality, care has to be given to how this tool is used. That is, an ethics ordinance can be a shield—to shield the community from unethical conduct—or it can be used as a sword to unfairly attack municipal officials, and if so used, it can be a detriment to the community.

Ultimately, this handbook is a powerful resource for Michigan's municipal leaders to engage in community dialogue and deliberation to choose the best approach *locally* for maintaining high ethical standards in Michigan municipalities.

This handbook represents a great deal of devotion to this topic by a number of persons. Without their selfless contributions, it would not have been possible. In particular I would like to recognize and thank Daniel C. Matson, chair of the Ethics Roundtable whose guidance and persistence made the handbook a reality. Dennis A. Mazurek, senior counsel of Detroit's Law Department, who organized and analyzed the sample ordinance provisions, and Mary M. Grover, the editor of the handbook, who molded its disparate parts into a unified publication.

William C. Mathewson
General Counsel, Michigan Municipal League;
Secretary/Treasurer, Michigan Association of
Municipal Attorneys

Preface

This handbook is offered as a guide for establishing ethical standards for the conduct of all persons in service to municipal governments in Michigan. A number of Michigan communities have adopted some form of statement about ethics which may appear in the local charter, in an ordinance, or in both. Other communities may be considering adopting some form of standards of conduct for their public officials. This publication is intended to provide assistance to municipal officials in their efforts to either create new ethics policies and procedures, or to update them in keeping with today's expectations regarding the conduct of elected officials, employees, and volunteers.

The Home Rule principle allows Michigan communities to tailor ethics standards to fit local needs and expectations. Each can adopt provisions that are appropriate for a particular community in order to promote public trust in public officials and in government. Elected and appointed officials, staff and volunteers may rely upon this stated framework within which they conduct the affairs of government.

The authors and reviewers of this handbook bring considerable experience to the effort as they have represented the interests of Michigan municipalities and have encountered a broad range of ethical issues and concerns that confront public officials. The publication is the outcome of many such experiences as identified by members of the Ethics Roundtable, a group formed by the Michigan Association of Municipal Attorneys. The Roundtable has focused on aiding local officials to understand and to resolve ethics problems within established legal and voluntary requirements.

With this reference, municipal officials may consider addressing a variety of areas of conduct that would be appropriate for their organizations. The reader may also examine a variety of options that are currently in use in a number of Michigan communities. These approaches are the result of extensive study and discussion, and they reflect local concerns and values.

It is strongly recommended that the municipal attorney be involved in each step of the process of developing, proposing, and adopting ethical

standards. Numerous legal issues must be considered whenever local law of this nature is created, and particularly when enforcement is involved.

Ethical administration of government invites the citizen's confidence in, and respect for, government. Good governance is valued by the community. It is sustained by those who have dedicated themselves to public service, and it is reflected in the decisions made and the actions taken by that government. To that end, the Ethics Roundtable commends this handbook to all citizens of Michigan communities, and to those who serve them, in recognition of the need to promote, and to earn, the public trust.

I wish to acknowledge contributions to this work by members of the Ethics Roundtable of the Michigan Association of Municipal Attorneys, including the following: Dennis A. Mazurek, senior counsel of the City of Detroit Law Department, for his comprehensive research and analysis in authoring Chapter 3, the central chapter of the handbook. John J. Rae, former Midland city attorney, who brought erudite and insightful sharing of the meaning of ethics. Peter A. Letzmann, former Troy city attorney, and foremost seminar organizer and presenter to municipalities on many topics, always with ethical concerns in mind. Michael P. McGee, senior principal with Miller, Canfield, Paddock and Stone, PLC, who applies labor law considerations to the book. William C. Mathewson, general counsel, and Sue A. Jeffers, associate general counsel, of the Michigan Municipal League, who continue to field numerous inquiries regarding ethical issues from constituent municipalities. Dene Westbrook, Jeanette Westhead, and Breanne Bloomquist at the League for their design and production expertise. Mary M. Grover, of Traverse City, public sector facilitator, trainer and presenter of ethics programs on local, state, national and international levels, who served as editor. Many others have generously served as members of the Ethics Roundtable through its years of existence, and their meaningful participation in the ever-current ethics discussion has led to the completion of this handbook.

Daniel C. Matson, Chair
The Ethics Roundtable

Chapter 1: The Importance of Ethics for a Local Government

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“Ethics” and Why it Matters

By John J. Rae

Why should a municipal government be concerned about ethics? At first blush this appears to be a question, the answer to which is so obvious, that it need not be asked. As is the case with so many things, however, things are, more often than not, more complicated than they appear to be.

Aside from the almost automatic response of many, who might say that ethics must mean some sort of standard of good behavior, there appears to be little agreement about what the word “ethics” really means. This has led, unfortunately, to the term becoming so loose in scope and meaning that it is in danger of becoming as floppy as words like *liberal*, or *conservative*, words which often convey whatever meaning the speaker or writer wants, but to the listener or the reader, the words may have a very different meaning.

In addition to the immediate barrier to understanding which this moveable meaning creates (or perpetuates), the standard of good behavior which is supposedly being followed is, by this confusion, in danger of becoming nothing more than a belief that one’s personal opinion on the subject is no better or worse than the opinion of anyone else. The result is a kind of relativism around the word “ethics,” which logically raises the question of whether there should really be any “ethics” standards in the first place.

A large part of the problem here is that the term “ethics” has a number of meanings assigned to it by any standard dictionary. For example, one reference includes all of the following:

1. the study of the general nature of morals and of the specific moral choices to be made by an individual in his relationship with others; i.e. the philosophy of morals or moral philosophy;
2. a set of moral principles or values;

3. the moral quality, fitness or propriety of a course of action; and
4. the rules and standards governing the conduct of a profession.

Also, the historical tension between the religious traditions in our pluralistic society, and the protections of individual rights under our governmental system, inevitably lead to even more disagreement over the subject of “ethics.”

Given all of the foregoing, then why do we bother trying to establish any kind of rational system of ethics guidance for municipal government? The answer is that most people recognize civil society’s need for something which will enable them to live together in a peaceful and productive way. This recognition is already reflected in our Constitution, public laws, statutes, ordinances and regulations. What is driving the renewed interest in codes of ethics, however, appears to be an ever-growing belief that these laws do not go far enough.

What a carefully crafted and defined “ethics” code or ordinance can do is to establish behavioral standards of integrity, fair dealing, responsibility, accountability, and disinterested conduct which are not specifically covered by existing laws, but which are an essential part of the fiduciary duty (the highest standard of conduct) which is almost universally recognized in this country as being owed to the public by its public servants and officials.

Civility in Local Government: The Civil Society

By William L. Steude

While the subject of civility in government is a different concept than that of ethics in government, there can be little doubt that there is a close relationship between the two. It is hard to imagine that true ethical behavior would not be characterized by civil behavior, even though the opposite might not always be the case. The authors of this publication believe that these concepts complement one another, and for this reason have decided to include this chapter. We can find no better explanation and exposition of the subject than was set forth by our mentor, teacher and friend, Bill Steude, in an article entitled, "Civility in Local Government: The Civil Society," which appeared in the April 2001 issue of the Michigan Municipal Review. The article follows, in its entirety. – Editor

The decline in civil conduct and discourse, public and private, needs no documentation. But a search over the Internet under "civility" produces much that supports the case for its sharp decline and a yearning for its restoration. Universities have commissions to promote civility on campuses. Churches offer civility pledges to candidates for public office. Congress even had a civility camp where members and their families gathered to improve the courtesy level in the U.S. House of Representatives. The City of Bloomington, Indiana, established a task force for a safe and civil city, promoting discussion of what it means to be a civil participant. Several state jurisdictions have promulgated civil codes for practicing attorneys.

President George W. Bush, in his 13-minute inaugural address, referred to "civility" four times. He said, "Civility is not a tactic or a sentiment. It is the determined choice of trust over cynicism, of community over chaos."

To be civil, in ordinary understanding, means to be polite, respectful, decent, tolerant, graceful in language and gesture, tone, exercising restraint toward others, cooling the hot passions

of partisanship, adversarial and personalized argument, with magnanimity toward others.

The decline in civility in public affairs reflects the overall decline in American civility – in professional sports, the media, talk shows, politics, academics, interpersonal communication, even road rage. The loss of civility in our national life betrays more fundamental trends in our society and culture, argues Harvard Law Professor Stephen L. Carter in his recent book on civility.¹ He traces the historic, cultural and religious roots of civility that have withered or rotted and now account for the serious lapse in civil social behavior.

Civility probably cannot be codified into standards of behavior enforceable by penalty. In fact, civility codes for public officials may even set a lower threshold, and be an incentive for lowering, rather than raising standards, by setting what you can get away with, not how you should be.

There is no constitutional duty of a public official to be civil. But note Article I, Section 17 of the Michigan Constitution, in the same section in which the due process clause appears, which provides:

"the right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

This "fair and just treatment clause" does not speak to civility, but civility can help set the tone for demonstrating fair and just treatment in hearings and investigations.²

However impossible it may be to mandate, civility might be inspired by conscientious attention to the trappings of a meeting of a public body, by the physical setting, by the rules of procedure and the conscious example of members of the public body themselves.

The trappings of a meeting

Opening ceremonies, such as a prayer by a member of the clergy in the community, the pledge of allegiance to the flag led by Girl or Boy Scouts or by veterans, and a formal roll call of the members can set the level of respect with which such formality is usually accorded.

Remember, a city commission or council is an elected legislative body whose members take exactly the same constitutional oath of office taken by the governor and by every other elected official in the state. If members and the public have the respect for one another and from one another that reflects that status, a certain formal level of discourse and decorum might maintain a higher level of civility.

The physical setting for the meeting, the furnishings and seating arrangements, and even the council's attire influence and can elevate expectations about public deportment at council meetings. A card table or fold up table with folding chairs for the council members seems to belittle the office and may invite an informality that can slide into uncivil discourse or worse.

Money spent on decent furnishings and the setting is well worth the cost. It reflects the level of respect accorded by the community toward its self-government and its elected representatives.

Rules of procedure

No deliberative body can efficiently conduct its business without rules. A governing body has a relatively free hand in designing its own rules of procedure as long as constitutional (First Amendment), statutory (Open Meetings Act), and local charter requirements are not violated. Although most municipal governments which have rules seem to have automatically adopted *Robert's Rules*, *Robert's* does not necessarily have to be the primary source for local rules of procedure.

Robert's Rules of Order are complicated, highly detailed, and are intended primarily for large legislative bodies or for meetings of large associations whose membership may number

hundreds. Its procedures may be unnecessarily cumbersome for small governing bodies: the five-to-seven-member councils of most Michigan municipalities.³

For example, *Robert's* requires a second to support an ordinary motion and put it into debate, but a *small* body which meets weekly, fortnightly or monthly might opt not to require a second at all, but could proceed to debate directly if the rules permit it.

The complex details of parliamentary procedure may also confuse and frustrate elected officials and the public, particularly if the rules are seen as being manipulated for or against one side of an issue or the other, or are seen as being ignored, misunderstood or wrongly invoked. Such a use of the rules of procedure, or the perception of their *misuse*, will counter the very purpose of rules of procedure – to protect the minority and promote orderly deliberations and decisions, and will further undermine public confidence in government.

Truth in government depends on a set of procedural rules that are followed consistently, give equal opportunity for every member of the body to participate in making the decision, make for the most efficient procedure possible, and result in a decision by a majority of the body on the merits of the issue, not on manipulation of procedures.

A governing body ordinarily has the discretion to adopt its own simplified set of procedural rules, unless *Robert's Rules* or some other authority has been mandated by the municipal charter.⁴ Such rules do not automatically command civility, but a good set of rules may minimize the perception that the rules are drawn, or bent, to control an outcome. If parliamentary maneuvering is seen as manipulating the proceedings, a frustrated council member or minority, or the attending public, can erupt in anger.

Civility and decorum is strained by the gadfly, the activist and the protester, who tend to distrust government and those in government. If they engage in abusive and baseless charges, or monopolize a meeting, the presiding official can rapidly lose the ability to maintain order, unless the council backs a zero tolerance policy toward such disruptive behavior.

Personal attacks generate counter attacks and lead to verbal duels and free-for-alls difficult to break, leaving civility and decorum in the dust. The presiding officer in that event may have no choice except to declare a brief recess so tempers and rhetoric may cool.

A rule against personal attacks, applicable equally to members of the body and the public, can help keep a discussion “problem centered” and not “person centered.” A procedure to enforce a zero tolerance policy in progressive steps can be effectuated,

1. By reminding the speaker of the rule if a violation occurs.
2. If the misconduct persists, by calling the speaker to order, citing the rule—a formal warning which may cause the speaker to lose the floor, if the rule so provides (although it may also authorize restoring the floor to the speaker if the abuse ends and the body formally permits the speaker to resume); or
3. If the abuse still persists after warnings, the chair “names the offender”—a last resort step which has the effect of preferring charges. The presiding officer states what the offender has done. The body then decides how to penalize the member, if the offender is a member of the governing body. The rule could specify a range of penalties—e.g. reprimand, formal censure, or municipal civil infraction. If the offender is a member of the public, the presiding officer may order the offender to be escorted from the meeting room.⁵

A rule limiting the length of council meetings and speeches by elected officials and the public will contribute to keeping the deliberations on point. No good government is likely to occur in the late night hours of a meeting when the limits of patience strain the limits of civility.

Procedural rules that permit and promote flexible opportunities for public input may diffuse public frustration at being foreclosed from opportune comment and encourage constructive debate. For example,

- Schedule public comment time at the beginning of the meeting (or of a work session), rather than at the end of the meeting.
- Provide a short time for public comment at the first reading of an ordinance, rather than, or in addition to, at the second reading; (preliminary public comment may surface overlooked problems early and minimize any perception at the second reading that the work has already been done and gone too far to be altered and the issue already decided).
- Hold regular meetings explicitly for public participation separate from or in conjunction with and preceding the regular council meeting.

Titles and debate

How members of a governing body address one another and how the public is conditioned to address the council can promote the level of civility if formalities are observed. Using the “first name” may be appropriate in a casual street encounter or on the phone with a friend or neighbor who is a colleague on the council or a constituent, but it is not appropriate in a formal session of the governing body when addressing one another.

Titles may be a source of sensitivity to gender biased titles.

“Commissioner” when the legislative body is a commission is an easy gender-free title. “councilman” requires its counterpart, “councilwoman,” but “councilmember” fits either, and “councilor” is a shorter alternative. “Trustee” will work for general law villages. “Madam” or “mister mayor,” or just plain “mayor” works for cities. “Madam” or “mister president,” or just plain “president” works for a village presiding officer.

If the title is not in the municipal charter, the rules of procedure can establish the titles, how to address one another, and the practice that members of the public should be requested to follow suit. For example, “Council members shall be addressed as “councilor.”

Remember, a local government council is not only a local elected legislative body with chartered status. A council acquires a quasi-judicial character when it sits as a zoning board of appeals or other appellate hearing body. The decorum should reflect the quasi-judicial duty to be, and seem, judicious and dignified.

Judge Learned Hand was right: “(This) much I *think* I do know—that a society so driven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that a society which evades its responsibility by thrusting on the courts the nurture of this spirit, that spirit in the end will perish.” The same might be said of civility.

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1. Stephen L. Carter, *Civility: Manners, Morals and the Etiquette of Democracy*, 1998, Basic Books.
 2. Violation of fair and just treatment in a legislative hearing was the basis for a \$7.6 million judgment against the Detroit Board of Education in an unpublished opinion of the Michigan Court of Appeals in *Jo-Dan Ltd. v. Detroit Board of Education*, No. 201406, July 14, 2000.
 3. A Michigan Municipal League survey of councils disclosed 80 with 5 members; 2 with 6; 420 with 7; 11 with 8; 15 with 9; 3 with 10; and 2 with 11 members. Of 533 councils, 502, or 94%, had 7 or fewer members.
 4. See *Suggested Rules of Procedure for Small Local Government Boards*, A. Fleming Bell II, Institute of Government, 2nd edition, 1998, presented to the IMLA 65th Annual Conference, 2000.
 5. See David M. Grubb, “Maintaining Civility at Council Meetings,” *New Jersey Municipalities*, March 1995, pp. 24, 47-48 for a good discussion of this. See also Webster’s *New World Robert’s Rules of Order, Simplified and Applied*, 1999, pp. 155-156.

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Different Forms of Local Government; Different Routes to Adopting Ethics Standards for Your Community

By William C. Mathewson

For most people, using this handbook will be straight forward. Michigan municipal elected and appointed officials who are giving consideration to adopting ethics standards for their community can review the handbook to see how others have addressed this issue. Finding the preferred approach from the materials presented, an official can offer a route for adoption of ethics standards in his or her community. However, to enhance the handbook as a resource, especially for persons new to municipal government within Michigan or from outside the state, it may be helpful to pause for a moment to review the Michigan local government structure in which the adoption of ethics standards fits, once the decision has been made locally to do so.

This handbook, which is a collection of essays, makes reference to different legal routes for the incorporation of ethics standards in the governance of a Michigan municipality. Each is accurate but it is helpful to understand how each fits within the larger picture.

There are several forms of local government within Michigan. In addition to Michigan's eighty-three counties, there are home rule cities (HRC), home rule villages (HRV), general law villages (GLV), charter townships (CT) and general law townships (GLT). Michigan cities and villages maintain a strong tradition of home rule. However, with ethics as with other governmental concerns, the state can prescribe what will be the law on a particular subject matter so long as the state statute is consistent with the state constitution. Some state laws relate to local ethics provisions. Two examples are labor law and campaign finance.

But to date, the state Legislature has not chosen to enact a comprehensive statute that would control the way local units of government would enforce ethical conduct within their jurisdictions. This may not always be the case, as it has periodically been discussed, typically within the context of addressing ethics with respect to all governmental jurisdictions within the state, including state government. Thus,

at present, local units of government have discretion in choosing the best approach to take to address ethical conduct within their unit of government.

For cities and villages in Michigan, this means that they may proceed in one of two ways. They can adopt an ethics provision in their city or village charter (the local equivalent of a constitution) coupled with the subsequent adoption of a local ordinance (the local equivalent of a statute) to carry out the intent of the charter provision. They can also adopt an ethics ordinance, without direct mention of the topic in the charter, under the authority granted in the Home Rule City Act, Home Rule Village Act or General Law Village Act to adopt ordinances to carry out the general grant of authority to these units of local government. If this were done, however, some sanction provisions might not be enforceable. (Perhaps a third way would be local guidelines, but they would not have the force of law and would not be legally enforceable.)

The essay by Bill Steude that follows this one discusses in some detail ethics provisions in the context of a municipal charter commission. This route is applicable to a city or home rule village that is being incorporated for the first time and thus has a charter commission to write its initial charter. Or, more likely, this route is one that would be taken by an existing city or home rule village that has chosen to convene a charter commission to review and offer new or revised sections of its existing charter for presentation to the electorate—which could include a provision regarding ethics.

Putting an ethics provision in the city's or village's local "constitution" (charter) could also take the form of a charter amendment. An amendment to the city's or village's existing charter could be offered to the citizens for their approval without convening a charter revision commission. An ethics amendment could stand alone or be one of a few amendments placed on the ballot for the electorate to consider. There are thus two ways to change an existing city or village charter: in cities or home rule villages

through the convening of a charter commission and presenting the proposed revised charter to the voters; or in cities and all villages by placing selected amendments on the ballot.

While a city or village charter can speak to or even require, addressing ethics, it need not do so. A city or village could adopt a binding set of ethics provisions in the form of an ordinance without the specific involvement of the charter. The majority of this handbook is devoted to setting forth samples and discussion of ethics provisions in ordinance form. This is appropriate because regardless of the approach taken in a charter, it is presumed that the implementation of ethical conduct/standards will be in the form of an ordinance. In fact, it would be impractical to put in a charter (again, the local equivalent of a constitution) the level of detail that is typical in an ordinance that addresses ethics.

With respect to cities and villages, a logical next question is why involve the charter of a city or village if a legally enforceable ethics ordinance can be adopted on its own, so to speak. There are various responses and ultimately the individual community will need to decide what the best approach is. That having been said, one reason is that some sanction provisions in an ordinance, such as removal from office, would not be enforceable if not authorized in the charter. Another reason for a charter provision is that it could be drafted to *mandate* that there be an ethics ordinance for the city or village. While it is beyond the scope of this publication to discuss the degree to which it is appropriate to require the legislative body (council or commission) to enact such an ordinance, if the citizens feel strongly enough about the topic of ethics they can require that the city or village adopt and enforce standards.

But whether a charter requires adoption of an ethics ordinance or speaks more generally about the topic, making reference in the charter is a clear expression of the intent of the electorate and should serve to guide the elected and appointed officials. Also, as a practical matter, a charter provision once adopted by the electorate will stand until changed by that electorate, unless the charter provision is nullified by state or federal law.

Conversely, care should be taken in putting an ethics (or any) provision in a charter. For instance, if the issue addressed is too topical, it may lose importance over time and the city or village will be saddled with a provision in its charter that is obsolete. The more relevant danger, however, is that the charter provision will be too detailed or too inflexible, thus restricting the appropriate implementation of the intent of the provision through the adoption, and if needed, subsequent revision of an ordinance. Again, further discussion of this aspect is beyond the scope of this particular essay. But suffice to say, care should be taken in drafting and adopting an ethics provision in a charter (or for that matter in ordinance form)...if for no other reason, as even with the best of intentions, such provisions may be subject to misuse, to unfairly attack a local official (sword) rather than protect (shield) the community.¹

Each of the sample ordinances presented in this handbook happen to be from cities. Other local units of government in Michigan could adopt similar provisions. In the case of villages, under the Home Rule Village or General Law Village Acts, the considerations for doing so are equivalent to cities. With respect to general law villages' charter authority² while their basic governing document is a state statute (the GLV Act) it is deemed to be their charter. The Act does not speak to ethics provisions but general law villages have the authority to amend their charters (via amendment but not revision) and to adopt local ordinances, including provisions pertaining to ethics.

Charter townships and general law townships do not have home rule charters, but rather are respectively governed by specific state statutes augmented by somewhat limited authority to adopt local ordinances. Ethics ordinances could be adopted, with the above noted limitation regarding sanctions.

	HRC	HRV	GLV	CT	GLT
Charter Revision	X	X			
Charter Amendment	X	X	X		
Ordinance	X	X	X	X	X
Guidelines	X	X	X	X	X

In summary, then, local government officials who seek to address the topic of ethics within their local governments need to be cognizant of the fact that there are different routes that can be taken. For cities and villages, their respective charter may or may not address the topic, in the initial charter or later by revision (HRC, HRV) or amendment (HRC, HRV, GLV), but to the extent that enforceable specifics are desired they will be in the form of a city or village ordinance. And in the case of local governments without charters, ethics ordinances may be adopted to the extent of their respective ordinance adoption authority under state law. Finally, the local approach presumes that the state does not in the future seek to preempt local authority and impose ethics standards on government officials including those at the local level.

For a complete discussion of forms of local government, a good source of information is chapter one of *Local Government Law and Practice in Michigan*, published by the Michigan Municipal League and the Michigan Association of Municipal Attorneys. This chapter, by Stratton S. Brown and Cynthia B. Faulhaber, outlines each of the forms

of local government and the authority that each has. Also, chapter seventeen, by Daniel C. Matson, sets forth the process of charter amendment and revision. Additional material regarding charter revision and amendment and other powers of cities and villages is available through the Municipal League's library. Information with respect to Michigan's townships is available from the Michigan Townships Association. Practical expertise on charter revision and amendment is available from municipal attorneys who specialize in that area of the law. Finally, the city, village, or township attorney for each jurisdiction is an essential resource when consideration is given to adopting standards for the local government to govern ethical conduct by its elected and appointed officials.

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1. See the following essay by Bill Steude, "Including Ethics Provisions in Charters: Advice for Charter Commissions"
 2. There are 211 general law villages; new village incorporations must be as home rule villages.

Including Ethics Provisions in Local Government Charters: Advice for Charter Commissions

By William L. Steude

[Editor's note: In this essay the author primarily addresses the incorporation of an ethics provision through the charter revision process that applies to Home Rule cities and villages. See the preceding essay, "Different Forms of Local Government; Different Routes to Adopting Ethics Standards for Your Community."]

Revelations in the media about the conduct of some public officials have raised the consciousness of local voters and taxpayers about appropriate standards of conduct for government officials. In

response, some local governments have voluntarily adopted ethics codes that focus on various aspects of the conduct of those entrusted with the public's business. In 1998 the Michigan Law Revision Commission published a report¹ calling for adoption of legislation that would provide an ethics code with uniform standards applicable to all public officials in local governments statewide. Charter commissions, authorized to draft or to revise the charter of a local government, often wonder *whether* to include ethics provisions, and *how far to go* in mandating adoption of an ethics code or ethical conduct.

Michigan law

The Home Rule Acts² neither mandate nor prohibit including a provision regarding ethical conduct or a code of ethics, so a charter commission could choose not to include ethics. In fact, most Home Rule charters in Michigan address ethics indirectly, or selectively, or not at all.

A Home Rule local government can enact an ethics ordinance without a specific charter provision authorizing it to do so. A broad powers provision in the charter could authorize the adoption of a comprehensive ethics code, as the Home Rule City Act permits a charter to provide,

... for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.³

General approaches and alternatives

A charter is not an ordinance; rather, it is the basic local law by which the local government is to be governed for a period that may be as long as forty or fifty years. The job of a charter commission is to establish a prescriptive legislative framework for the community, a document that isn't caught up in issues that may be currently of public concern. A charter commission *can* include a detailed system of ethical standards and enforcement procedures in the charter. However, this approach will be time consuming, and it carries some risk of making the charter outdated if some of the details are nullified by subsequent preemptive state legislation. In general, charter commissions are advised to *avoid excessive detail in the charter*, and leave the task of developing the details, by ordinance and policy, to the local governing body.

One approach would be for the charter to provide an alternative to inaction by the governing body by authorizing citizen initiatives and referenda. By this means, local voters could initiate an ethics ordinance by petition, or originate or reject local ethics legislation through the ballot process.⁴ The

charter may also be amended by the legislative body or by initiative of the voters, to address ethics requirements.⁵

If the commission chooses to include an ethics provision in the proposed charter, it has a number of options to consider.

1. It can *authorize* the adoption of an ethics ordinance by the governing body, which then could enact a detailed code of ethics.
2. It can *mandate* that an ethics ordinance be adopted within a specific period of time after the charter is adopted.⁶

A charter commission could also:

3. include in the charter a list of general principles or standards of conduct, without going into specific detail. For example, the list could refer to general standards of accountability, impartiality, integrity, confidentiality, conflicts of interest, or public trust. An ordinance could subsequently define these standards in greater detail, and provide procedures for enforcement.
4. take a traditional approach and address selective aspects of ethical conduct in the charter, focusing on particular problems that may have triggered community concerns, such as nepotism (the public employment of relatives), or specific areas of conflicts of interest, and require timely disclosure.⁷
5. specifically authorize or require in the charter the governing body to adopt a comprehensive ordinance with specific provisions governing the receipt of gifts, disclosure of conflicts of interest, moonlighting (i.e., a local government employee having a second job that might create a conflict of interest with the employee's public employment), pre-employment and post-employment limitations, and restrictions regarding nepotism, political activity, and representation before local government bodies.
6. have the charter authorize or require the establishment of an enforcement body, such as an ethics commission or board,

with responsibility to maintain and enforce the ethical standards of the charter and ordinances. Such a board or commission could assist local officials in determining the appropriate course of action when they are faced with uncertainty or conflict between ethical obligations. It could support public officials and employees in situations of unwarranted charges or criticism by adopting administrative rules, issuing advisory opinions, or recommending amendments to an ordinance or charter. It could also sanction unfounded complaints.

7. include a provision to require the governing body, and each local government board and commission established by charter, ordinance or law, to adopt standards of conduct for their respective members. The standards of conduct could be made subject to periodic review and approval by the governing body, or by the ethics board or commission if one is established.
8. include a provision to require that ethics education be included in orientation programs for newly elected officials, and in the training and continuing education of public employees.

Finally, the Michigan Municipal League maintains a charter database that is an excellent resource with examples of some of the approaches charter commissions have taken in recent years, to improve the ethical environment in the local government, and by extension, in the community.

4. State law would remain applicable to local officials and local governments. It governs conflicts of interest in public contracts, campaign finance, lobbying, the expenditure of public funds, codes of professional conduct governing the city manager, city attorney, public accountants, licensed engineers and other occupations, personnel policies and collective bargaining agreements affecting public employees.
5. See MCL 117.21, amendment by initiative for cities; and MCL 78.17, amendment by initiative for Home Rule villages.
6. One charter commission mandated enactment of a comprehensive ordinance within six months of the adoption of the charter. It was difficult to meet this deadline, and a longer period should be considered. A better approach is found in the Charter of the City of Jackson, Section 9.13: "Within two years after the effective date of this charter, the council shall adopt by ordinance a code of ethics by which all persons in the municipal service shall abide, whether compensated or voluntary." The Charter was adopted on November 4, 1997; the Ethics Ordinance was adopted November 16, 1999.
7. For example, Section 2-106 of the 1997 Detroit City Charter provides, "The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, consistent with state law. . . . The ordinance shall provide for the reasonable disclosure of substantial financial interests held by any elective officer, appointee, or employee who regularly exercises significant authority over the solicitation, negotiation, approval, amendment, performance or renewal of city contracts, and in real property which is the subject of a governmental decision by the city or any agency of the city. The ordinance shall prohibit actions by elective officers, appointees, or employees which create the appearance of impropriety."

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1. *Final Report to the Michigan Law Revision Commission on the Proposed Government Ethics Act of 1999*, Michael A. Lawrence, November 2, 1998; published in the MLRC 33rd Annual Report, 1998, p. 13119.
 2. The Home Rule City Act 279 of 1909, MCL 117.1 et seq.; the Home Rule Village Act 278 of 1909, MCL 78.1 et seq.
 3. MCL 117.4j.

Labor Considerations

By Michael P. McGee

Although a municipal government may have authority to adopt an ethics policy or ordinance, the government as a public employer also may have an affirmative obligation to negotiate over such a policy or ordinance if the public employer is unionized. Specifically, if the policy or ordinance has an impact on or concerns the union members' wages, hours, or other employment conditions ("mandatory subjects of bargaining"), the public employer must bargain with the union before the policy or ordinance may be adopted.

In the seminal case of *Detroit Police Officers Association v City of Detroit*, 391 Mich 44 (1974), the city adopted a residency ordinance after reaching impasse in contract negotiations with the union. The union filed an unfair labor practice charge, and the case proceeded to the Michigan Supreme Court which held that just because an employer may have a legal right to take such action, it does not mean it may do so in derogation of its obligation under the Public Employment Relations Act ("PERA"):

"The enactment of an ordinance, however, despite its validity and compelling purpose, cannot remove the duty to bargain under PERA if the subject of the ordinance concerns the "wages, hours or other terms and conditions of employment" of public employees. If the residency ordinance were to be read to remove a mandatory subject of bargaining from the scope of the collective bargaining negotiations, the ordinance would be in direct conflict with state law and consequently invalid. Const. 1963, art.7, §22. . . . Therefore, if as we will consider below, residency is a mandatory subject of bargaining, a city ordinance cannot foreclose collective bargaining on the subject." *Id.*

The Court concluded that a residency requirement is a mandatory subject of bargaining, but found that the city did not engage in an unfair labor practice because it did not adopt the ordinance until after it had bargained to impasse in good faith. The Court noted that "[i]n future negotiations, however, the

city will again be required to bargain in good faith on the residency requirement if it is proposed as a bargaining issue by the [union]." *Id.*

Both the Michigan Employment Relations Commission (MERC) and subsequent appellate decisions have resulted in similar holdings circumstances other than residency. For instance, in *Pontiac Police Officers Association v City of Pontiac*, 397 Mich 674 (1976), the city refused to bargain over a union proposal regarding a grievance procedure for disciplined police officers. The city argued that because the city charter provided for a specific means by which discipline was to be imposed upon the officers, the charter provision controlled and there was nothing to bargain over. MERC disagreed, holding that the city committed an unfair labor practice by refusing to bargain because the grievance procedure was a mandatory subject of bargaining. On appeal, the Michigan Supreme Court affirmed MERC's ruling. See also *Local 1383, International Association of Firefighters, AFL-CIO v City of Warren*, 411 Mich 642 (1981) (a collective bargaining provision negotiated under PERA supersedes both a City Charter and the Michigan Constitution); *Senior Accountants, Analysts and Appraisers Association, UAW v City of Detroit*, 218 Mich App 263 (1996) (city cannot unilaterally implement pension provisions for union members without collective bargaining; the city could, however, through a City Charter Revision Commission, submit proposed changes to the electorate prior to collective bargaining as long as the city did not implement or enforce the voter-approved changes until the employer satisfied its PERA collective bargaining obligations).

Neither the courts nor MERC have yet addressed the question of whether ethics regulation is a "mandatory subject of bargaining" under PERA. Ethics regulation typically does not implicate wages or hours, and thus the unanswered question is whether ethics regulation falls within the scope of "other terms and conditions of employment."

This will depend on the facts and circumstances of the particular regulatory scheme. It may be, for example, that the *standards* announced by an ethics policy (e.g., disclosure of conflicts of interest, prohibitions for receiving gifts, etc.) may be imposed in the exercise of normal management rights.

Consequences for breaching the standards, on the other hand, to the extent they affect discipline or punishment, may very well fall within the scope of mandatory bargaining under *Detroit Police Officers Association, supra*, and its progeny.

Accordingly, before a municipal employer adopts or implements an ordinance or any type of ethics policy or regulation that may affect its unionized employees, or refuses to bargain with a union based on a conflicting governmental policy, the employer should first consult with legal counsel to evaluate compliance with applicable labor law.

Chapter 3: The Substance of a Local Government Ethics Ordinance

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Definitions for an Ethics Ordinance

By Dennis A. Mazurek

Initial drafting considerations

An ethics ordinance should include definitions of some of the terms that will be used in its provisions. Many of these words will have a definition that is specific to the ordinance, rather than a more commonly understood meaning.

Charter requirements

Before drafting definitions, it must first be determined whether the local government charter requires that an ethics ordinance be organized around a central directive, and whether it must include specific definitions.¹ For example, the Detroit ethics ordinance was required to define the term “private gain,” and it is organized around the central theme of prohibiting the use of public office for private gain.

Jurisdiction and scope

As with any ordinance, the drafters must determine the persons to be regulated by the ethics ordinance, and the scope of the regulation. The definitions will establish the persons and relationships that are intended to be regulated. The jurisdiction of an ethics ordinance could be extended to,

- elected and appointed officials,
- full-time and part-time employees,
- paid and unpaid members of boards and commissions,
- people who provide services under a personal services contract, and
- the spouses or domestic partners, children, and other relatives of any or all of the above.

The scope of the ordinance will also be reflected in the definitions. For example, the definitions could establish that the ordinance will regulate,

- certain confidential information,
- decisions, and
- ownership interests.

Universal and comprehensive

It is important that the definitions be universal and comprehensive, and in as clear language as possible. Universality means the definition could be applied to most, if not all, Michigan municipalities. Comprehensive means complete definitions that have a tight interrelationship to one another.

Examples of definitions

Although there are no “definitive” definitions, the following definitions would be applicable in most local governments. They are both universal and comprehensive, and the list itself is comprehensive, as well.²

Agency means any department, office, multi-member body, or other organization of the local government.

Appointee means one who holds either a compensated or an uncompensated position, including an individual who is appointed by the mayor, the legislative body, other elected officials, or a department, division or commission head.

Basic living expenses means shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the [spouse or] domestic partners and any other cost, such as medical care, where some or all of the cost is paid as a benefit because a person is another person’s [spouse or] domestic partner.

City means the city of _____. [Alternatively, **village, township, or county** means the local government of _____.]

Clerk means the clerk of the local government of _____.

City council means the legislative body of the city of _____. [Alternatively, commission or board means the legislative body of the jurisdiction of _____.]

Commercial gain means the use by a public servant of any local government resource including, but not limited to, the local government's time, equipment, facilities, supplies or staff, which results or is intended to result in unauthorized income or other benefit to the public servant.

Confidential information means information that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, being MCL 15.231 *et seq.*, or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose, including:

1. any written information, whether in document or in electronic form, which could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
2. any non-written information which, if written, could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
3. information which was obtained in the course of or by means of a written or electronic record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing the information is authorized by state law to make disclosure, or unless the public servant disclosing the information has been properly authorized to make disclosure pursuant to an applicable law, regulation, policy or procedure, except that when such information is available through channels

which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

Decision means:

1. a determination, action, vote, or other disposition upon a motion, proposal, recommendation, resolution, or ordinance by members of the governing body, or of a governing body of a local government agency; or
2. a determination, action or other disposition taken by an elected official with the authority to do so, or a local government agency in the performance of its public duties.

Domestic partner³ means one of two adults who

1. have a common residence; and
2. agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership; and
3. are not married or are not a member of another domestic partnership; and
4. are not related by blood in a way that would prevent them from being married to each other in this state; and
5. are at least eighteen years of age; and
6. have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and
7. are capable of consenting to the domestic partnership.

Exercises significant authority means having the ability to influence the outcome of a decision on behalf of the local government in the course of the performance of a public servant's duties and responsibilities.

Extraordinary circumstances means circumstances which, due to the unavailability of information that is critical to the disposition by the Board of Ethics of an advisory opinion request or of a complaint, have prevented the board from completing its investigation.

Have a common residence means that both domestic partners share the same residence. Two people can have a common residence even if one or both have additional residences, or if both domestic partners do not possess legal title to the common residence. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return to it.

Immediate family means:

1. a public servant's spouse or domestic partner, or
2. a public servant's relative by marriage, lineal descent, or adoption who receives, directly or indirectly, more than one-half of his or her support from the public servant, or from whom the public servant receives, directly or indirectly, more than one-half of his or her support; or
3. an individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code, being 26 USC 1 *et seq.*

Joint responsibility means that each domestic partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for himself or herself.

Local government means the governmental organization of a jurisdiction which is a subdivision of a major political unit, as a state; the governing organization of the jurisdiction of _____.

Mayor means the mayor of the city of _____.

Municipal government means a Michigan city or village, for the purposes of this handbook.

Ownership interest means a financial or pecuniary interest that a public servant has in the affairs of 1) any business entity in which the public servant or a member of his or her immediate family is an officer, director, member, or employee; 2) any business entity in which the public servant or a member of his or her immediate family controls, or directly or indirectly owns, in excess of 5% of the total stock or an interest totaling \$50,000 or more in value; or 3) any person or business entity with whom the public servant has a contract.

Personal services contract means a contract for the retention of an individual to perform services on behalf of the local government for a fixed period and for fixed compensation.

President means the president of the village of _____.

Private gain⁴ means any benefit which is accepted or received by a public servant, or is perceived by a reasonable person to be accepted or received by a public servant, as remuneration for the purpose of improperly influencing an official action in a specific manner or for refraining from the performance of an official action in a specific manner, or as inducement for the public servant to act in favor of some interest other than in the public interest.

To clarify, *unless the above-standard is violated*, the following types of benefits, monetary payments or reimbursements, gifts, awards or emoluments may be received by a public servant:

1. payment of salaries, compensation or employee benefits to a public servant by the local government, or the payment of salaries, compensation or employee benefits to a public servant by an employer or business other than the local government pursuant to a contract where the payment is unrelated to the public servant's status as a public servant;
2. authorized reimbursement by the local government to a public servant of actual and necessary expenses incurred by the public servant;
3. fees, expenses or income, including those resulting from outside employment, which are permitted to be earned by, or reimbursed to, a public servant in accordance with the Code, policies, rules and regulations of the local government;
4. campaign or political contributions which are made and reported by a public servant in accordance with state law;
5. admission or registration fee, travel expenses, entertainment, meals or refreshments a) that are furnished to a public servant by the sponsor(s) of an event, appearance or ceremony which is related to official local government business in

- connection with such an event, appearance or ceremony and to which one or more members of the public are invited, or b) that are furnished to a public servant in connection with a speaking engagement, teaching, or the provision of assistance to an organization or another governmental entity as long as the local government does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity;
6. admission, regardless of value, to a charitable or civic event to which a public servant is invited in his or her official representative capacity as a public servant where any admission or other fees required of all persons attending the event are waived or paid for the public servant by a party other than the local government or the public servant;
 7. an award publicly presented to a public servant by an individual or by a non-governmental entity or organization in recognition of public service, acts of heroism, or crime solving;
 8. an award, gift or other token of recognition presented to a public servant by representatives of a governmental body or political subdivision who are acting in their official capacities;
 9. a gift received from a public servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article;
 10. a registration fee for a seminar or other informational conference that a public servant attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the public servant's attendance is waived or paid for the public servant by a party other than the local government or the public servant;
 11. expenses or gratuities, including but not limited to admission fees, lodging, meals or transportation, that are paid for a public servant and are related to the public servant's participation at a seminar, conference, speaking engagement or presentation in his or her official capacity as a speaker, panelist or moderator where such expenses or gratuities are waived or paid for, as the case may be, by a party other than the local government or the public servant, provided that, within five business days after the conclusion of the seminar, conference, speaking engagement or presentation, such public servant files with the clerk a statement which contains the following information for each expense that is paid for or waived or for each gratuity that is provided: a) a description of the expense or of the gratuity; b) the amount of the expense or of the gratuity; c) the date that the expense was incurred or that the gratuity was received; d) the date that the expense was paid or waived, or that the gratuity was received; and e) the name and address of the party who paid or waived the expense or who provided the gratuity;
 12. meals or beverages provided to the public servant by an individual or by a non-governmental organization during a meeting related to official local government business;
 13. anything of value, regardless of the value, presented to or received by a public servant on behalf of the local government where the thing of value is offered to, and accepted by, the local government;
 14. a gift to a public servant that either is returned to the donor or is donated to the local government or to a charitable organization within thirty days of the public servant's receipt of the gift, provided that the public servant does not claim the donation as a charitable contribution for tax purposes;
 15. complimentary single copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials that are received by a public servant;
 16. compensation paid to a public servant for a published work which did not involve the use of the local government's time, equipment, facilities, supplies, staff or other resources where the payment is arranged or paid for by the publisher of the work;

17. compensation paid to a public servant for a published work which did involve the use of the local government's time, equipment, facilities, supplies, staff or other resources where the payment of the compensation to the public servant is lawfully authorized by a representative of the local government who is empowered to authorize such compensation;
18. receipt by the public servant of anything of value, where the payment, gift or other transfer of value is unrelated to, and does not arise from, a public servant's holding or having held a public position, and where the activity or occasion for which the payment, gift or other transfer of value given does not involve the use of the local government's time, equipment, facilities, supplies, staff or other resources in any manner or degree that is not available to the general public;
19. hospitality that is extended to a public servant by an individual, or by an organization, for a purpose unrelated to the official business of the local government, including a gift of food, beverage, or lodging; and
20. receipt by a public servant of a devise, bequest or inheritance.

Public servant means the elected mayor, president, members of the legislative body, any member of any local government agency, board, commission, or other voting body that is established by the local government Charter or by the Code, and any appointee, any employee, or any individual who provides services to the local government within or outside of its offices or facilities pursuant to a personal services contract.

Relative means a person who is related to a public servant as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, uncle, aunt, nephew, niece, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law, or sister-in-law.

Voting body means the governing body and any other local government authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative, or quasi-judicial or any combination thereof, which, in order to take any official action, even where the action is advisory, must act as a body on the basis of a vote of some or all of its members.

Summary and conclusion

A first step in drafting an ethics ordinance must be a consideration of and discussion about the following issues:

1. Does the local government charter *require* that the ethics ordinance be organized around a central directive, or contain specific definitions?
2. If the charter does not mandate the enactment of an ethics ordinance, and if it doesn't require that the ethics ordinance be organized around a central directive or theme, and if it does not require specific definitions, which of the definitions listed in this chapter should be included?
3. What kinds of ethical issues have occurred in the past, or might arise in the future, with the elected officials, appointees, employees, volunteers and independent contractors associated with the local government?

The answers to these and other policy questions will ensure that charter-mandated requirements will be met, and that the definitions will be tailored to the needs and the concerns of the community. The answers will also assist policy makers in building a consensus with local government elected officials, appointees, employees, volunteers and independent contractors, as well as with the public, in accepting and adhering to the ethics ordinance. It is, therefore, recommended that the drafters of the ethics ordinance favorably consider the above definitions as a starting point for debate.

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1. For example, see the 1997 Detroit City Charter, Section 2-106, footnote.
 2. The terms and the definitions are adapted from the ethics ordinance of the City of Detroit, Section 2-6-3 of the 1984 Detroit City Code.
 3. The inclusion of “*domestic partner*” relationships is based on the reality that there are certain close personal, often intimate relationships involving non-married public servants which are equivalent to the personal relationships which exist between legally married spouses. The potential for public servants to be influenced by or on behalf of partners involved with them in such “domestic partner” relationships or arrangements is just as real as the potential for public servants to be influenced by or on behalf of spouses in legal marriages or family members. This article does not adopt any position regarding the propriety of such non-marital relationships among domestic partners. However, for purposes of implementing standards for the conduct of public servants in the performance of their duties for the local government, the article does attempt to include within its reach all public servants.

The definition of domestic partner included in this section is modeled on the definition of domestic partner contained in Division 2.5 of the Family Code, Article 9 of Chapter 1, Part 5 of Division 5 of Title 2 of the Government Code, and Section 1261 of the Health and Safety Code of the State of California.

4. *Private Gain*: Section 2-106 of the 1997 Detroit City Charter expressly prohibits the use of public office for private gain. Accordingly, a major provision in this article is the prohibition against a public servant's acceptance or receipt of private gain as compensation for 1) the taking of an official action in a specific manner by the public servant (for example, a particular decision or vote in a specific manner), or refraining from the taking of an official action, as the result of an improper influence by another party; or 2) incentive or inducement for the public servant to act in favor of an interest other than the public interest. In the interest of maintaining honesty, integrity and impartiality in government, the goal of this provision is to ensure that public servants conduct government business in a manner that enhances public confidence and respect for city government, and places paramount importance on the public interest, rather than a public servant's own personal interest or the private interest of a third-party.

Improper influence upon a public servant's official actions refers to 1) any action that would constitute a violation of federal or state laws regulating the conduct of public officials, such as state law prohibiting the acceptance by any executive, legislative or judicial officer of a bribe (Section 118 of the Michigan Penal Code, being MCL 750.118; or 2) facts, events or circumstances which give rise to an appearance of impropriety in the taking of an official action by a public servant, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

What constitutes private gain to a public servant may take many shapes and forms and may vary depending upon the facts and circumstances of a situation. Therefore, the above definition of private gain does not attempt to enumerate all forms or types of tangible economic gain, or circumstances or situations from which a public servant may derive tangible economic gain for himself or herself. Rather than attempt to list what is private gain that may not be accepted in all circumstances, the article attempts to illustrate for public servants the circumstances or types of remuneration, emoluments, gratuities or other items that a public servant may accept without violation of this article. The listing set forth in this section is based on the most typical situations which confront city public servants. However, this is not an exhaustive list, and there may be other types of economic benefit to a public servant that are permissible under this article.

Fundamental Standards of Conduct For an Ethics Ordinance

By Dennis A. Mazurek

Overview

Before deciding upon the standards of conduct to regulate, drafters of the ethics ordinance must first determine whether the local government charter requires that its ethics ordinance include certain standards of conduct. For example, the 1997 Detroit City Charter (Section 2-106) required enactment of an ethics ordinance which, at a minimum, regulated specific areas of conduct: prohibiting the use of public office for private gain; “reasonable” financial disclosure for some officers; and the avoidance of the appearance of impropriety.

If the charter does not mandate specific provisions or standards for the ethics ordinance, the drafters can be guided by the experience of ethics experts and the ten fundamental standards of conduct that follow. Human nature too often lures public officials and public employees into taking advantage of their positions of trust to use these positions inappropriately and to unfairly benefit themselves, their families or their friends. It is this competition between self-interest and the public interest that results in unethical (and sometimes illegal) conduct; it is this conflict that gives rise to formal, codified statements regarding ethical conduct.

Ethics ordinances from 18 local governments were surveyed for this publication: Bay City, Detroit, DeWitt, Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Rochester Hills, Royal Oak, Sterling Heights, Warren, Wyandotte, and Ypsilanti. Many of them include some or all of the ten fundamental standards. In alphabetical order, the standards are:

1. Conflicts of interest
2. Disclosure
3. Impartiality
4. Improper use of position
5. Incompatible employment

6. Nepotism
7. Personal interests
8. Political activity
9. Public information
10. Public property and personnel

A list of citations to these local governments' charter and ordinance provisions is in Appendix C.

These are the areas that are most often regulated because these are the areas in which misconduct by public officials most often occurs. In order to give drafters the benefit of learning from the language and the experience of existing ethics ordinances, excerpts from the ordinances of these communities are offered to illustrate different approaches to articulating the ten basic standards of conduct. In the pages that follow, each standard is presented with a statement of its purpose, along with a compilation of excerpts from ethics ordinances. In some instances the actual language is used; in others, the codes were used as references and the language is not verbatim. Variations that are used by different municipalities are noted in footnotes.

Editor's note: To aid the reader, ordinance language options are either in brackets within the text, or footnoted. The excerpts presented here reflect a community's thinking at a point in time, although the ethics ordinance may have subsequently been revised. Also, some stylistic changes were made for consistency with the rest of the text, eg. capitalization of the titles of officials.

1. Conflicts of interest

Purpose: The duty of a public servant is to represent the best interests of the public entity, and to serve the entity with the highest degree of loyalty. This standard is at the heart of any ethics ordinance. The absence of an easily understood standard regarding conflicts of interest diminishes the effectiveness of an ethics ordinance, and ignores the primary reason for having one. The fundamental concept is that a public official is not to exploit this position of power in unjust or inappropriate ways.

- A public servant shall not make a loan of public funds, grant a subsidy, fix a rate, issue a license, permit or certificate, [participate in the negotiation or execution of contracts] or otherwise regulate, supervise or participate in a decision that pertains¹ to an entity in which the public servant, or a member of his or her immediate family, has an ownership [or financial or personal] interest.² *(Bay City, Detroit, Harper Woods, Lansing, Rochester Hills, Warren)*
- A public servant [whether paid or unpaid] shall not solicit or accept [or receive, directly or indirectly] a³ gift or loan of money, [compensation], goods, services⁴ [contribution, reward, employment],^{5 6 7} or other things of value^{8 9} which would tend to influence¹⁰ the manner in which the officer or employee performs his or her official duties.^{11 12 13 14 15 16 17} *(Bay City, DeWitt, Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Rochester Hills, Warren, Wyandotte, Ypsilanti)*
- A public servant shall not represent his or her individual [personal] opinion as that of the city.¹⁸ *(DeWitt, Harper Woods, Lansing, Warren)*
- A public servant shall not solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity in any proceeding or application, request for ruling,

determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or any solicitation or proposal thereof.

(Royal Oak)

- A public servant shall not accept any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a contract or order. *(Royal Oak)*
- A public servant shall not retain a person to solicit or secure a contract with the local government upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. *(Royal Oak)*
- A public servant shall not be a party, directly or indirectly, to any contract with the city except for the renewal or negotiation of an employment or independent contractor contract with a city officer or employee, or a collective bargaining agreement or contracts with any bona fide union. *(Ypsilanti)*
- Except for personal employment agreements authorized by the governing body, a public servant shall not solicit, negotiate, renegotiate, or approve, directly or indirectly, any contract, or amendment of any contract, with the city and 1) himself or herself, 2) any partnership, limited liability company or unincorporated association, or other legal entity of which the officer or employee is a partner, member, owner or part owner or employee, 3) any corporation in which the officer or employee is an owner or stockholder of more than one percent (1%) of the total outstanding stock of any class where the stock is not listed on an exchange, or of value of \$25,000 or more where the stock is listed on a stock exchange or of which the public servant is a director, officer, or employee, or 4) any trust of which the officer or employee is a beneficiary or trustee, or represents any party to such contract. *(Ypsilanti)*

2. Disclosure

Purpose: If a government is to be both transparent and accountable, the public must know of real and potential conflicts of interest. The general public, and those within the local government organization, are entitled to know about the relationships and circumstances which might influence a public servant's performance of duty, and which might diminish an official's independence and objectivity. Public disclosure makes it possible to evaluate the potential effects of these interests upon the public official, and to prohibit participation in decision making, in the public interest. Questions about which information, how much, and when to disclose it should be resolved in favor of full, and timely, public disclosure.

- A public servant [or his or her relative] shall not engage in business with the city, directly or indirectly, [or have any financial or personal interest in any business transaction with the city] without filing a complete [written] disclosure statement for each business activity, prior to engaging in the activity, and on an annual basis. *(Farmington Hills, Jackson, Midland, Sterling Heights)*
- A public servant shall not participate, as an agent or representative of the city, in approving, disapproving, voting upon, abstaining from voting, recommending or otherwise acting upon any matter¹⁹ in which he or she [or a relative] has a direct or indirect financial²⁰ interest²¹ without disclosing²² the full nature and extent of their interest.²³ *(Detroit, Farmington Hills, Jackson, Midland, Riverview)*

3. Impartiality

Purpose: Public officials must assure the public that, except for publicly approved pay and related benefits, they receive no benefits or services that aren't available to any member of the public.

Intent and purpose

- It is the intent of this Code that a public servant, regardless of whether specifically prohibited by this Code, shall avoid any action which might result in, or create the appearance of,

1. Using public office or employment for private gain.
2. Giving improper preferential treatment to any person or organization.
3. Impeding government efficiency or economy.
4. A lack of independence or impartiality of action.
5. Making a government decision outside of official channels.
6. Affecting adversely the confidence of the public in the integrity of the local government.

It is not the intent of this Code to limit the right or ability of any public servant to exercise his or her discretion in making legitimate policy decisions which are within their discretion so long as such action does not provide a special benefit to that person, relieve the public servant of a particular duty, or treat that person differently than other similarly situated residents in the community. *(DeWitt)*

Fair and equal treatment

- No public servant shall request, use or permit the use of any consideration, treatment, advantage or favor beyond that which is the general practice to grant or make available to the public at large. All public servants shall treat all citizens of the local community with courtesy, impartiality, fairness and equality under the law. *(DeWitt)*

4. Improper use of position

Purpose: To the public, an official is the governmental organization. An official's misuse of his or her position not only destroys public confidence in that public official, but it also destroys trust and confidence in the governmental organization as well. A public official must use the position and power of public office for the benefit of the community as a whole. Thus, a public official should not receive a greater benefit from his or her actions than anyone else in the community. Although this standard may seem unnecessary because the potential effect of the misconduct is so

obvious, a clear and specific statement establishes for all the assurance that abuse or exploitation of public office or public employment will not be tolerated.

- A public servant shall not make any policy statements which promise to authorize or to prevent any future action, agreement or contract, when, in fact, the public servant has no authority to do so. *(Lansing)*
- A public servant shall not act on behalf of the city in the making of contracts when, in fact, he or she has no authority to do so. *(Ypsilanti)*
- A public servant shall not make policies that affect the citizens of the community that are not authorized by the local government Charter, Code of Ordinances, governing body, an authorized agency of the local government, or its adopted policies. *(Wyandotte)*
- A public servant shall not use his or her official position in violation of federal or state law, or to obtain or to create the appearance to obtain a private gain for the public servant in return for improperly influencing a decision of the mayor, of the city council, of the city clerk, or of a member of a city authority, board, commission, committee, council or group, or other city agency. *(Detroit, Rochester Hills)*
- A public servant shall not use, or attempt to use, his or her official position to unreasonably secure, request or grant, any privileges, exemptions, advantages, contracts, or preferential treatment for himself or herself, a relative, his or her immediate family, or others. *(Farmington Hills, Jackson, Livonia, Mason, Midland)*
- A public servant shall not use his or her public office and employment for personal [private or economic] gain,^{24 25} [or use or attempt to use his official or her official position to secure special privileges or exemptions for himself or herself, or others, except as provided by law].²⁶ *(Bay City, Flushing, Lansing, Rochester Hills, Sterling Heights, Wyandotte, Ypsilanti)*
- A public servant shall not make or participate in making a decision in his or her capacity as a public servant knowing that the decision will provide him or her, a member of his or her immediate family, or a business with which he or she is associated, a financial benefit of more than an incidental nature which is distinguishable from the benefits to the public servant as a member of the public or as a member of a broad segment of the public. *(Ypsilanti)*
- A public servant shall not take any action or create the appearance of making a government decision outside official channels. *(Rochester Hills)*
- A public servant shall not take any action or create the appearance of impeding government efficiency or economy. *(Rochester Hills)*
- A public servant shall not take any action or create the appearance of giving preferential treatment to any organization or person. *(Rochester Hills)*
- A public servant shall not take any action, or create the appearance, that adversely affects the confidence of the public in the integrity of the city. *(Rochester Hills)*
- Public servants who are members of a city agency shall not take final action on any matter under consideration that is before the agency until the citizens' rights to address the agency have been provided for, subject always to the provisions of the Michigan Open Meetings Act. *(Wyandotte)*
- A public servant shall not interfere with the ordinary course of law enforcement within the city, and shall not suggest or request special favors or consideration or disposition of any law enforcement person of the city, including the city manager, chief of police, police officers, ordinance officers, city attorney or administrative staff, concerning any city law enforcement matter including, but not limited to, parking tickets, traffic tickets, ordinance tickets, or the enforcement of city codes. *(Ypsilanti)*

5. Incompatible or dual employment

Purpose: Dual employment or dual representation by a public official can cause a conflict of interest between the discharge of official duties and the requirements of another employer. Such a conflict might impair the official's independent judgment. However, it may be possible to permit a public servant to participate in discussion or decision making due to "necessity," as determined by the public body, provided that full, timely and public disclosure takes place prior to discussion and action.

- A public servant shall not engage in or accept employment, or render services, for a private or public interest where such employment or service is incompatible [or in conflict] with the [proper] discharge [or performance] of the public servant's official duties [and responsibilities] for the city, or where such employment or service is reasonably expected²⁷ to impair the public servant's independence of judgment or action in the discharge [performance] of his or her official duties [and responsibilities] for the city. *(Bay City, Detroit, DeWitt, Farmington Hills, Harper Woods, Riverview, Rochester Hills, Warren, Wyandotte)*
- A public servant shall not act, for compensation from any person other than the municipality, as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency [other than in the course of the duties and responsibilities of his or her office or employment pursuant to duties assigned by city employee unions] [other than himself or herself before the governmental body of which the public servant is a member or employee] . *(Detroit, Flushing, Lansing)*
- A public servant may represent another person, business, or organization before a city agency where such representation is a required part of the public servant's official duties. *(Detroit)*

- A public servant shall not engage in private employment with, or render services for, any private person who has business transactions with the city, without first making a full public disclosure of the nature and extent of such employment. *(Sterling Heights)*
- A public servant who, while a city employee, is participating directly or indirectly in the procurement process, shall not become or be the employee of, or perform a service for, any person who is contracting with the city. *(Royal Oak)*
- An elected public servant shall not engage in employment with any other agency or department of the city. *(Wyandotte)*

Note: Incompatible public offices

Daniel C. Matson

There are standards governing an official holding more than one public office at the same time, and they are found in the Incompatible Public Offices Act, (IPOA), 1978 PA 566 (MCL 15.181 *et seq.*). Section 1(b) of the Act defines "incompatible offices:"

"Incompatible offices" means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

1. The subordination of one public office to another
2. The supervision of one public office by another
3. A breach of duty of public office

Perhaps the most difficult questions arise as to when a breach of duty of public office has occurred when more than one public office is held.

The Michigan Attorney General has issued numerous formal opinions regarding public officials holding incompatible offices simultaneously. Excerpts from opinions adopted by courts involving breach of duty include these interpretive statements:

A breach of duty arises when a public official holding dual offices cannot protect, advance, or promote the interest of both offices simultaneously. A public office is a public trust, and the courts have imposed a fiduciary standard upon public officials that requires disinterested conduct.

It is well established that a breach of duty creating an incompatibility exists when a person holding dual public offices is placed at opposite sides of a contract. An incompatibility can also result out of a non-contractual matter, such as when one office has to pass upon a matter affecting the other office. (OAG 1997, No. 6931, p 124 (February 3, 1997); *Macomb County Prosecutor v Murphy*, 233 Mich App 372, 381, 382 (1999).)

Section 3 of the IPOA allows certain limited exceptions to a person holding two or more incompatible offices at the same time. The exceptions do not apply to allow or sanction activity constituting conflict of interest prohibited by the Constitution or laws of Michigan.

If there is any question about whether or not holding more than one office is incompatible, it is advisable to seek an opinion from the municipal attorney *before* the problem arises.

6. Nepotism

Purpose: Whether deserved or not, the limitation or prohibition of public service by certain persons related by blood, adoption or marriage, to others within the governmental organization avoids actual and perceived favoritism or partiality. The very fact of the relationship creates the perception of unfairness. In smaller communities it may be common for related parties to work for, or to serve in, the local government, particularly in dual-income families. In these situations the perception of favoritism can be reduced if the local government requires that such relationships be fully and publicly disclosed.

- A public servant shall not cause the employment or any favorable employment action of an immediate family member, or participate in any employment decision about such family member.

- The spouse of any elected city official, or the city administrator, shall be disqualified from holding any appointive office. The immediate family members of any elected official, or the city administrator, or the spouses of any such family members shall be disqualified from holding full-time or permanent part-time employment exceeding ten hours per week with the city during the term served by the elected official or during the tenure of the city administrator. (*Livonia, Mason*)

7. Personal interests

Purpose: The existence of a private business relationship between a public official and the municipality presents the opportunity for real or perceived abuse of public office. To protect the interests of all, the relationship should either be avoided, or should be fully and publicly disclosed.

This standard is akin to incompatible employment in that the conduct is detrimental to the objectivity of the public servant. However, participation in discussions or actions may be permitted if there is a showing of "necessity," as determined by the public body, provided that full public disclosure, and explanation, takes place.

- A public servant shall not engage in any act [or business transaction which may cause him or her] [or his or her immediate family or business that he or she is associated with] to derive a personal profit or gain directly or indirectly as a result of his or her official position [or authority] or omission in the discharge of his or her official duties for private gain [or use his or her official position or authority to profit from a business transaction] [or act in an official capacity on matters in which he or she has a private financial interest clearly separate from that of the general public]. (*Bay City, Detroit, DeWitt, Flushing, Harper Woods, Lansing, Warren*)
- A public servant shall not speculate or deal in equipment, supplies, materials, or property purchased by or sold to the city. (*Rochester Hills*)

- A public servant shall not hold a substantial financial interest, i.e., any stake, including stockholder, partner, joint venture, creditor, guarantor or director, in a firm which provides services or supplies, materials or equipment to the city, *excluding* holding an interest in a firm providing services or supplies, materials, or equipment to the city where, after reporting the conflict, 1) the contract for services or supplies, materials, or equipment is awarded pursuant to sealed bids, 2) the public servant is not involved, directly or indirectly, with making the decision on the award of the contract or with the city department for which the contract relates, and 3) the city council determines, after reviewing the circumstances, that the award of the contract would be in the best interests of the city. (Rochester Hills)

8. Political activity²⁸

Purpose: Public officials do not waive their constitutional rights upon assuming a position in a municipal government. However, reasonable limits can be established so that there is no public subsidy of the political activity. Political activity by public officials and employees jeopardizes the goal that the governmental unit will be objective and fair, and treat all equally. Local government assets such as employees' time, materials and other resources belong to the public, and should not be used for personal or political purposes.

Public officials must use public assets for authorized purposes only, and not for personal political benefit, or for the political benefit of someone else. Political activity should not be permitted under any circumstance during business hours.

- A public servant shall not use any city time or property for his or her own political benefit or for the political benefit of any other person seeking elective office, provided that the foregoing shall not prohibit the use of property or facilities available to the general public on an equal basis for due consideration paid. (Livonia, Mason)

9. Public information

Purpose: Government insiders are often "those in the know," with access to information that may not be generally available. To avoid abuse of a public position, information must be used only as authorized, and not for personal benefit or advancement.

- A public servant shall not benefit financially²⁹ [or further his or her private economic interests or that of a relative or any other person] from confidential information acquired in the course of holding office or employment,^{30 31} [or knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person].³² (Bay City, Detroit, DeWitt, Farmington Hills, Harper Woods, Jackson, Lansing, Midland, Rochester Hills, Royal Oak, Sterling Heights, Warren, Wyandotte, Ypsilanti)
- Except as authorized by law, a public servant shall not knowingly disclose³³ to a third party [to any unauthorized person] confidential information that is acquired in the course of his or her employment [in the course of holding office]^{34 35} [including, but not limited to, information provided, obtained or discussed in closed or executive sessions of city council]³⁶ [in advance of the time prescribed [authorized] [by the governmental body] [department head, city manager or law] for its authorized release to the public], [except as otherwise required [provided] or permitted by law]. (Bay City, Detroit, DeWitt, Harper Woods, Lansing, Rochester Hills, Warren, Wyandotte, Ypsilanti)
- A public servant shall not use information protected from disclosure by the Michigan Freedom of Information Act which she or he has obtained by reason of such position or authority. (Flushing)
- A public servant shall not disclose any confidential information, without prior formal authorization of the public body having jurisdiction, concerning any city official or employee, or any other person, or any property or governmental affairs of the city. (Sterling Heights)

- A public servant shall not suppress or refuse to provide city reports or other information which is publicly available. (*Livonia, Mason*)
- A public servant shall not suppress any public city report, document, or information available to the general public because it might tend to affect unfavorably his or her private financial or political interest. (*Farmington Hills*)

10. Public property and personnel

Purpose: Public resources or assets that are not offered to the general public are not to be used by the public official or anyone else for private purposes. To do so subsidizes private activities with public dollars.

- [Unless judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures], a public servant shall not [request], [directly or indirectly] use [misuse] [or permit others to use] any city [publicly]-owned [or publicly-supported] real or personal property, [vehicle, equipment, material, labor or service], city funds, city personnel, or any other tangible city assets [under his or her care] [or control] for commercial gain [for personal [financial] gain or benefit] [or personal convenience or private advantage of himself or herself or any other person] [for private economic interest or that of a relative] [or for a member of his or her immediate family or a business entity with which he or she is associated] [or the private benefit of a third party]. (*Bay City, Detroit, Farmington Hills, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Sterling Heights, Warren, Ypsilanti*)

Summary

When selecting the standards of conduct to be codified, drafters should consider:

1. Whether the local government charter requires that the ethics ordinance contain certain minimum standards of conduct;

2. Whether the charter requires that the ethics ordinance have a specific focus, for example, a requirement to prohibit or limit the acceptance of gifts;
3. Whether some or all of the standards of conduct that have been featured in this chapter should be included; and
4. What kinds of ethical issues have occurred in the local government in the past, or what kinds of ethical issues might arise in the future, with elected officials, appointees, employees, and independent contractors.

Answering these questions will ensure that charter-mandated requirements will be met, and that the standards of conduct will be tailored to the needs and the will of the community. Further, the discussion itself will increase awareness of ethical issues, and will help build a consensus among elected officials, appointees, employees, and independent contractors, as well as with the public.

-
1. or relates
 2. other than as a citizen, officer, or employee of the city
 3. substantial
 4. promise
 5. or promise of future employment
 6. for the benefit of a person or organization, other than the city
 7. in the form of money, a loan, service, travel, entertainment, hospitality, or other thing of promise
 8. for the benefit of a person or organization
 9. or give anything of value
 10. or would unduly influence
 11. under circumstances where it can reasonably be inferred that the gift is intended to influence him or her in the performance of his or her official action or is intended as a reward for any official action
 12. or duties
 13. based upon an agreement or understanding that a vote or an official action or decision would be influenced thereby
 14. to accept in a one-year period a gift or any other item exceeding \$100 in value from people or business entities under circumstances which may tend to impair his or her independence of judgment or action in the performance of his or her official duties

15. or favors, gratuities, or special consideration from anyone currently doing business with the city, seeking to do business with the city, or who may currently be negotiating to do business with the city in the future, or who may otherwise is or may seek any actions or approval by the city unless specifically allowed by city policy, including soliciting or accepting, without reimbursement, meals, sporting event tickets, social amenities, or attendance at any event with any organization that does business or seeks to do business with the city unless specifically sanctioned as a city sponsored event,
16. or which is intended to influence a vote, decision, or other exercise of official authority in any matter involving the city
17. based upon an agreement that the vote or official action or the official action or decision of the public servant would be influenced thereby
18. or falsely represent his or her personal opinion to be the official position or determination of the governmental body which he or she is a member or employee
19. or in a decision or transaction
20. an economic
21. or benefit
22. on the public record
23. or without providing written notification to the city council, if an elected public servant, or to his or her immediate supervisor if a non-elected public servant.
24. or use the authority, title, or prestige of his or her public office for the attainment of a public servant's financial gain or that of a member of his or her immediate family's private financial benefit when inconsistent with the public interest
25. or engage in a business transaction in which the public servant may profit from his or her official position or authority
26. or make unauthorized use of his or her public position to obtain financial gain for himself or herself, a member of his or her immediate family, or a business [or entity] with which he or she is associated.
27. or tends to impair
28. The Michigan Campaign Finance Act, MCL 169.201 *et seq.*, requires that candidates for public office make campaign contributions and expenditures public by filing appropriate reports.
29. or use for private gain
30. or obtained or may obtain by reason of his or her position or authority
31. or use or permit the use of confidential information to advance a financial or personal interest of himself or herself, or of any other person
32. or make unauthorized use of any confidential information received through holding such public position to obtain financial gain for himself or herself, a member of his or her immediate family or a business [or entity] with which he or she is associated
33. or divulge
34. in the course of holding his or her position
35. in the course of his or her service
36. to any person not authorized to obtain such information

Consequences for Violating the Ethics Ordinance

By Dennis A. Mazurek

Overview

This chapter discusses the range of penalties, or sanctions, which can be found in the ethics ordinances of the 18 local governments that were surveyed for this study. These municipalities have taken different approaches to responding to violations of their ethics ordinances, and to enforcement. It's important to remember there are many players on the municipal stage, such as elected and appointed officials, employees (full-time and part-time), volunteers, vendors, and

contractors. Not all will come within the scope of an ethics ordinance. For those who are subject to an ethics ordinance, the range of sanctions runs from self-policing with no formal sanctions, to criminal penalties:

- No sanction or penalty
- Public admonition or reprimand
- Public censure

Forfeiture of office and removal proceedings

Disciplinary action

Termination of contract (external vendors or contractors)

Municipal civil infraction

Cumulative sanctions

Misdemeanor

Felony

Review of decision

Those who are charged with drafting or developing an ethics ordinance can consider a wide range of penalty options, and the penalties can be tailored to fit the community.

Before thinking about penalties, however, the first step must be to decide whether the ethics ordinance should be “*aspirational*,” whether it should have sanctions that are enforceable, or whether it should be something in between. An aspirational approach reminds officials of their mission in service to the public, sets forth what they should aspire to and how they should conduct themselves, but it stops short of imposing serious penalties for failing to live up to the standards. An approach that demands greater accountability states the standards of conduct that are expected, the consequences for violating the standards, and the means by which it will be enforced, which is usually through the local court system.

Ethics ordinances that lean toward the aspirational can be found in both large and small municipal governments, such as Detroit, Farmington Hills, Jackson, Mason, Midland, Riverview, and Rochester Hills. A more accountable approach can be found in the ethics ordinances of Bay City, Flushing, Harper Woods, Lansing, Livonia, Royal Oak, Sterling Heights, Warren, and Ypsilanti. Interestingly, two communities, DeWitt and Wyandotte, have combined the two approaches.

Considerations

To help drafters think through the kind of ethics ordinance they want for their community, the following considerations are proposed for discussion.

1. What does the local government charter say about enforcement?
2. Should the ethics ordinance be aspirational, establishing the standards of conduct that public officials should exemplify, or should the standards be enforceable, with penalties or sanctions imposed when violations occur?
3. If the standards of conduct are to be enforced, who will,
 - a. Receive and process complaints?
 - b. Investigate complaints?
 - c. Decide whether a violation has occurred?
 - d. Decide whether a sanction should be imposed?
 - e. Enforce the sanction?
 - f. Oversee the process?
 - g. Provide advice about whether a proposed action violates the ethics ordinance?
 - h. Provide training to all those to whom the ethics ordinance applies?
4. At what point in the process does the Michigan Freedom of Information Act provide the public with a right to know?
5. Should a body, such as a board of ethics, be created to respond to requests for advisory opinions and complaints?
6. Where discipline is contemplated, how will collective bargaining agreements be affected?
7. Will the local government be able to successfully prosecute its elected officials before its elected district court judges?
8. What effect will potential civil or criminal penalties have on employee morale?

9. Will civil or criminal penalties dissuade potential employees from seeking employment with the local government organization?
10. Does the political will exist to adopt an ordinance with serious sanctions?
11. Will the sanctions be fairly and uniformly applied?

A discussion of these questions is important to help policy makers understand what is being undertaken, and to develop a consensus for action. The process can be especially challenging when, in effect, the policy makers are proposing and enacting legislation to regulate themselves.

Responding to violations of an ethics ordinance

Eleven different kinds of responses to violations have been identified in the ethics ordinances of the 18 local governments that were surveyed. The enforcement sanctions are included below in the order of severity, from lesser to greater. Each example provides the actual language from the ordinance.

No sanctions

An aspirational ordinance is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and employees; it is not designed to be a punitive measure. It is anticipated that the issuance of advisory opinions by the Board of Ethics will conclude all matters originating as requests for advice, and substantially all matters originating as complaints. The Board of Ethics is not an adjudicative body and no finding of the Board should be deemed conclusive, nor should it subject any municipal official or employee to penalties. *(Mason)*

This chapter is intended to establish standards governing conduct in dealings with the city. Violations of this chapter shall not make the violator subject to a fine or incarceration. *(Rochester Hills)*

Public admonition

In the event the Board of Ethics determines that a violation of this article has occurred, the Board may adopt a resolution of public admonition [*Editor's note: mild rebuke or reprimand*] against a public servant which includes the mayor, members of the city council, the city clerk, any member of any city agency, board, commission, or other voting body that is established by the city charter or by the city code, and any appointee, any employee, or any individual who provides services to the city within or outside of its offices or facilities pursuant to a personal services contract regarding the violation. *(Detroit)*

Public censure of elected officials

Violation of this Ordinance by an elected official may result in censuring by unanimous vote of the remaining members of the city council. [*Editor's note: A censure is a strong disapproval or condemnation, expressed by a resolution passed by the governing body.*] *(Riverview)*

Forfeiture of office and removal proceedings

Where, based upon an investigation arising from a complaint, the Board of Ethics determines that there may be grounds for further investigation for possible forfeiture of or removal from office under the City Charter and applicable law, the matter may be referred by the Board to the city council for consideration of forfeiture or removal proceedings in accordance with the City Charter. *(Detroit)*

Depending upon the employment status of the city official or employee involved, or group concerned, and the nature of the action requested, all matters concerning the Conflict of Interest and Ethical Code shall be directed to either i) the mayor, the city council and the city attorney for elected and appointed officials, or ii) to the city manager and the city attorney for full and part-time appointed employees. In matters concerning the mayor, city manager or city attorney, the mayor pro tem will assume

the controlling authority position in place of the affected official. When requested, these authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning Conflict of Interest and the Ethical Code policy of the city. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include, but is not limited to, taking *[Editor's note: or recommending]* appropriate disciplinary action, including removal from office or appointed position, in accordance with the City Charter, the City Code, state law, or the regulations or policies of the city. *(Farmington Hills, Jackson, Midland)*.

The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be enforced. *(DeWitt, Sterling Heights)*

Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant. When requested, the above-listed authorities shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, taking appropriate disciplinary action, including removal from office or appointed position in accordance with the City Charter, Code of Ordinances or state law. *(Wyandotte)*

Disciplinary action

Where the Board of Ethics determines that a violation of this article by such public servant may present grounds for disciplinary action, the matter may be referred by the Board to such public servant's supervisor with a recommendation that the public

servant's conduct be reviewed for disciplinary action. Any such disciplinary action must be carried out in accordance with the provisions of the City Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense. *(Detroit)*

Depending upon the employment status of the public servant or group involved, or group concerned, and the nature of the action requested, all matters concerning the Conflict of Interest and Ethical Code shall be directed to either i) the mayor, the city council and the city attorney for elected and appointed officials, or ii) to the city manager and the city attorney for full and part-time employees. In matters concerning the mayor, city manager or city attorney, the mayor pro tem will assume the controlling authority position in place of the affected official. When requested, these authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning Conflict of Interest and the Ethical Code policy of the City. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include, but is not limited to, taking *[Editor's note: recommending]* appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the City Charter, the City Code, state law, or the regulations or policies of the city, or the requirements of any collectively bargained agreement. *(Farmington Hills, Jackson, Midland)*

Violation of this Ordinance by the city manager, or an officer or employee may result in disciplinary action, up to and including discharge, in accordance with city policies, applicable collective bargaining agreements, and employment contracts. *(Riverview)*

Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the city of Wyandotte

chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant. When requested, the above-listed authorities shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the City Charter, Code of Ordinances or state law. *(Wyandotte)*

Recommendation of termination of contract

Where the Board of Ethics determines that an existing city contract has been entered into in violation of the provisions of this article, after such determination and recommendation from the Board, the city may void or seek termination of the contract where legally permissible. *(Detroit)*

Municipal civil infraction¹

This chapter is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and employees and is not intended to be a punitive measure. It is anticipated that the issuance by the Board of Ethics of advisory opinions will conclude all matters originating as requests for advice and substantially all matters originating as complaints. The Board of Ethics is not an adjudicative body and no finding of the Board shall be deemed conclusive nor, in and of itself, subject any city official or employee to penalties. In the event of legal proceedings alleging a violation of this chapter, then in accordance with the provisions of the City Charter, a violation of this chapter shall constitute a municipal civil infraction, and shall subject a person found responsible by a court of violating this chapter to a maximum civil fine of not more than one hundred dollars. *(Livonia)*

Misdemeanor

Any official, officer or employee who violates this ordinance shall be guilty of a misdemeanor, which shall be punishable by a fine not to exceed \$500 or by imprisonment of not more than ninety days in jail or both, in the discretion of the court. *(Bay City, DeWitt, Ypsilanti)*

Any person violating any of the provisions in this article shall, upon conviction, be punished as prescribed in this Code. *(Sterling Heights)*

Any person convicted under the provisions of this ordinance shall be deemed guilty of misconduct. *(DeWitt, Sterling Heights)*

Violation of the provisions of this ordinance shall be a misdemeanor. *(Flushing, Harper Woods, Lansing)*

Failure of an elected official or appointee to file a disclosure form with the city clerk by March 28 of each year, or to file a conflict of interest disclosure form with the city clerk, shall be a misdemeanor and may result in a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than ninety days, or both. *(Wyandotte)*

Felony

To the extent that violations of ethical standards of conduct set forth in this Ordinance constitute violations of the Michigan Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Ordinance. *(Royal Oak)*

Cumulative sanctions

The invocation of one subsection of this section does not preclude the application of any other subsection of this section or of any other applicable laws or policies. *(Detroit)*

The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be imposed. *(DeWitt, Sterling Heights)*

Review of Decision

Where the Board of Ethics finds that a decision of the mayor, the city council, the city clerk, an appointee, or other public servant was made in violation of this article, the board may recommend to the mayor, the city council, the city clerk, an appointee, or other public servant that such decision be reviewed in accordance with the applicable provisions of the City Charter and the City Code. Upon such recommendation, the decision may be reviewed by the mayor, the city council, the city clerk, appointee, or other public servant in accordance with the applicable provisions of the City Charter, the City Code, and any other applicable laws. (Detroit)

Conclusion

What will happen when it appears, or when it is determined, that the ethics ordinance has been violated? Is it enough to plainly say what the public official's duty to the public is? Is it enough to say, in a formal and public way, what the standards of conduct should be for those who serve the local government? Or should some kind of consequence, from private admonition to criminal penalty, flow from a violation of those standards?

In drafting an ethics ordinance, the selection of an appropriate sanction and enforcement process for a municipality is a difficult task. While it is advisable to avoid harsh and extreme punishment for incidental infractions, it is unwise to allow significant violations to go unpunished. At the same time, it is important to remember that Michigan statutes provide for the prosecution of criminal offenses.

While both the aspirational and accountable approaches to ethics ordinances are worthy of consideration, the aspirational approach affords greater control of the enforcement process than does a more punitive approach. With both, enforcement involves some type of sanction. The aspirational approach is grounded in the concept of self-policing, and minimizes reliance on overloaded district courts by keeping enforcement "in-house." On the other hand, the punitive approach ultimately plays out in the courts, where the imposition of sanctions is a matter left to the discretion of judges for whom a violation of an ethics ordinance may be no more compelling than a minor violation of any ordinance of the local government.

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1. There is an important legal distinction between a *municipal civil infraction* and a *civil infraction* as defined by statute. Consult the enabling act relevant to your jurisdiction to determine which class of infraction applies. Section 4L of the Michigan Home Rule City Act, MCL 117.4L, identifies certain statutes that will permit or prohibit their classification in either category.

Enforcement and Administration of an Ethics Ordinance

By Dennis A. Mazurek

Considerations

In designing systems for enforcement and administration of an ethics ordinance, the complexity of the task will depend on whether the drafters choose an aspirational approach to encouraging ethical behavior, or a more accountable and enforceable approach by which certain ethical conduct is required. The aspirational approach reminds public officials of the standards of conduct to which they should aspire, but it does not assign serious penalties for failure to abide by

the standards. On the other hand, an approach that includes serious sanctions must set clear standards for required conduct, along with the consequences for violating the standards.

In thinking through an enforcement system, drafters should consider some basic questions.

1. Which segments of the municipal organization come within the jurisdiction of the ethics ordinance?

2. Should there be one enforcement system for elected and appointed officials, and a separate process for employees?
 3. Who should be given authority to investigate and enforce the ordinance when the conduct of elected officials is questioned?
 4. Should the group that will have responsibility for enforcement be part of the municipal organization, or should it be independent of the municipality?
 5. Who shall appoint the members of that group, and how long should they serve?
 6. How should the process balance an individual respondent's right to privacy, and the public's right to know? Can any part of the process remain private under the Michigan Freedom of Information Act?
 7. How shall the enforcement system be funded? Should the ethics ordinance include a requirement that the municipality provide "adequate" resources for enforcement?
- k. Keeping records of complaints and results;
 - l. Providing advice, or advisory opinions, about whether a contemplated action would violate the ethics ordinance; and
 - m. Providing periodic training to all who are within the jurisdiction of the ethics ordinance.

In general, an enforcement process and administrative system usually include:

- a. Receipt and processing of complaints or allegations that the ethics ordinance has been violated;
- b. Notice to the person(s) complained about;
- c. Investigation of complaints;
- d. An initial decision whether a violation may have occurred, or whether the complaint is without grounds and should be dismissed;
- e. Gathering and recording of facts;
- f. Hearing the respondent's version of the circumstances of the alleged misconduct;
- g. Testimony from witnesses;
- h. Deciding whether a sanction should be imposed, and if so, what sanction;
- i. Implementing or enforcing the sanction;
- j. Overseeing the enforcement process;

Overview

As always, a first step is to determine whether the local government charter requires a specific enforcement mechanism that must be codified in the ethics ordinance, and then implemented. An example of how a local government incorporated some of the elements listed above, Section 2-106(2) of the 1997 Detroit City Charter may be helpful. It mandates a comprehensive structure for enforcement and improvement of ethical standards, and a Board of Ethics is its primary enforcement and administrative mechanism.

Section 2-106(2) An independent Board of Ethics is created. The Board of Ethics shall consist of seven members:

1. Seven members of the public,
 - a. Three of whom shall be appointed by the city council,
 - b. Three of whom shall be appointed by the mayor; and
 - c. One of whom shall be jointly appointed by the mayor and city
2. None of the Board members shall be removed by the respective appointing authority except for cause; *[Editor's note: "Cause" in this context might include breach of a duty relating to the office, e.g. misfeasance, malfeasance, or nonfeasance.]*
3. The term of membership of the Board shall be five years, and not more than two members' terms shall expire in any one year;
4. Each appointee may serve a maximum of two consecutive five-year terms, not to exceed a total of ten years.

Public members of the Board shall be residents of the city who are not elected officers, appointees, or employees of the city at any time during their Board membership. Members shall serve without compensation. All city elected officers, appointees, and employees shall be available for consultation with the Board of Ethics as it deems necessary. The Board of Ethics shall issue advisory opinions regarding the meaning and application of provisions of the Charter, city ordinances or other laws or regulations establishing standards of conduct for elected officers, appointees, or employees. Advisory opinions shall be rendered upon written request by an elected officer, appointee, or employee. Advisory opinions shall be published by the Board annually in a report to the mayor and city council. The opinions shall not disclose the identity of the elected officers, appointees, or employees concerned.

All meetings of the Board shall be open to the public, unless an individual involved in the matter to be addressed requests in writing that the meeting be closed, or unless otherwise provided by ordinance.

Consistent with state law, the Board of Ethics may recommend improvements in the standards of conduct to ensure the ethical behavior of city elected officers, appointees, and employees, or in the organization and procedures related to the administration and enforcement of those standards. The Board of Ethics shall be authorized by ordinance to conduct investigations on its own initiative, subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, appoint independent counsel when necessary, and to perform other functions essential to ensure the integrity of city government. The Board shall establish its rules and procedures, in accordance with Section 2-111 of this Charter. Funds sufficient to enable the Board to perform its duties shall be appropriated annually.

Examples of different enforcement systems

The ethics code enforcement mechanisms in the ordinances of 17 local governments in Michigan were surveyed and are highlighted below. These examples are from Bay City, Detroit, DeWitt,

Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Royal Oak, Sterling Heights, Warren, Wyandotte, and Ypsilanti. Six different versions of enforcement systems were identified in these ordinances.

1. Boards of Ethics

The cities of Detroit, Lansing, Livonia, Mason, and Warren have enacted ordinances requiring a Board of Ethics. Although the Ethics Ordinance of the city of Detroit goes far beyond where most communities will want to go, it, again, provides a useful and detailed example of the various elements that drafters might want to consider.

Charter independence; duties; promulgation of rules.

- a. The city of Detroit Board of Ethics is an independent body that was created by Section 2-106(2) of the 1997 Detroit City Charter for the following purposes:
 1. To render advisory opinions regarding the meaning and application of provisions of the 1997 Detroit City Charter, this article, and other laws or regulations which pertain to disclosure requirements and standards of conduct for public servants;
 2. To conduct investigations based upon a complaint in order to ensure the integrity of city government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and
 3. To recommend a) improvements in the disclosure requirements that are found in Division 2 of this article, and the standards of conduct that are found in Division 3 of this article, and b) improvements in the administration and enforcement thereof, in order to promote an ethical environment within city government, and to ensure the ethical behavior of public servants.

- b. In accordance with Section 2-111 of the 1997 Detroit City Charter, the Board of Ethics shall promulgate administrative rules to perform its duties as set forth in the 1997 Detroit City Charter and this article.

Limitations on Board's authority

The Board does not have the authority to reverse or otherwise modify a prior decision of the mayor, the city council, the city clerk, appointee, or other public servant.

Resources and staffing

- a. A sufficient annual appropriation shall be provided to enable the Board of Ethics to perform its duties as set forth in the 1997 Detroit City Charter and this article, including hiring adequate staff.
- b. The corporation counsel shall assign legal counsel from the city of Detroit Law Department who shall provide representation and advice to the Board on legal matters. The Board may refer a matter to the city attorney from the law department who represents the Board for appropriate action. Upon completion of review and consideration, the city attorney shall report his or her findings to the Board. Any retention of outside counsel on behalf of the Board of Ethics shall be governed by the provisions of section 6-408 of the 1997 Detroit City Charter.

Each city agency to cooperate and assist

As needed, each city agency shall cooperate in gathering information to assist the Board of Ethics in performing its duties.

Information provided to Board to remain confidential

Members of the Board of Ethics or any public servant who have access to any confidential information that is related to the functions or activities of the Board are prohibited from divulging such information to any person who is not authorized to possess the information.

Annual report

- a. On or before April 1 of each year, the Board of Ethics shall issue simultaneously to the mayor and to each member of the city council a report that contains:

1. An analysis of all activities of the Board including the number of advisory opinions requested and the number issued, and the number of complaints filed and the disposition thereof during the preceding calendar year;
2. A compilation of opinions that have been issued during the preceding calendar year; and
3. The Board's recommendations, if any,
 - a) for improvement of the disclosure requirements that are found in Division 2 of this article, and of the standards of conduct that are found in Division 3 of this article, and b) for improvement of the administration and enforcement thereof.
- b. In addition, a copy of this annual report shall be submitted to the city clerk, each department director, each agency head and the municipal reference library.

2. Chief of police/city attorney

In the ethics ordinance of the city of Wyandotte, the chief of police and the city attorney direct the enforcement process.

- a. Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the city of Wyandotte chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant.
- b. The above listed authorities, when requested, shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article.
- c. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, any of the following:
 1. Pursuing further investigation by the controlling authority;

2. Taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the Wyandotte City Charter, Code of Ordinances or state law;
3. Pursuing such other course of action which is reasonable, just and appropriate under the circumstances;
4. Pursuing criminal prosecution for failure to file the necessary disclosure forms required in this article;
5. Determining no action is required and stating the reasons therefore; and
6. Recovering the costs and expenses the city has incurred against an individual under the cost recovery provisions of Section 2-312.5.

3. City attorney

The Bay City ordinance provides that the city attorney shall head up the enforcement system.

All complaints concerning violations of this ordinance shall be made to the city attorney, who shall investigate and prosecute all allegations concerning or relating to violations of this ordinance.

4. City manager/city commission/ city council

Riverview and Royal Oak chose the city manager, city commission and city council to be the enforcement system.

The following sanctions shall not be construed to diminish or impair the rights of an employee under any collective bargaining agreement, nor the city's obligation to comply with such collective bargaining agreements.

- a. Mayor and commissioners. The Royal Oak city commission shall have the authority to issue an oral or written warning or reprimand to one of its members for violations of the ethical standards in this Ordinance.
- b. Employees other than elected officials. The city manager, or the city commission if the employee is appointed by the commission pursuant to the Charter, may impose any

one or more of the following sanctions upon an employee for violations of the ethical standards in this Ordinance:

1. Oral or written warnings or reprimands;
 2. Suspension with or without pay for specified periods of time; or,
 3. Termination from employment.
- c. Non-employees. The city manager or city commission may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:
1. Written warnings or reprimands;
 2. Termination of contract; or,
 3. Disbarment or suspension.

5. Mayor/city council/ city attorney/city manager

The ordinances of Farmington Hills, Jackson, and Midland include the mayor, city council, city attorney, and city manager in the enforcement system.

- a. All matters concerning the conflict of interest and ethical code shall be directed to one of the two following controlling authorities depending upon the employment status of the city of Farmington Hills official /employee involved, or group concerned, and the nature of the action requested:
 1. Elected and appointed officials of the city of Farmington Hills to the mayor, city council and city attorney.
 2. Appointed employees, full and part-time, of the city of Farmington Hills to the city manager and city attorney.
- b. The above listed authorities when requested, shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning conflict of interest and the ethical code policy of the city of Farmington Hills. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include but is not limited to any of the following:

1. Referral of the matter to a higher authority.
 2. Pursuing further investigation by the controlling authority.
 3. Taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the Farmington Hills City Charter, City Code, state law, or the regulations or policies of the city of Farmington Hills.
 4. Determining no action is required.
 5. Pursuing such other course of action which is reasonable, just and appropriate under the circumstances.
- c. The above listed controlling authorities may render written advisory opinions, when deemed appropriate, interpreting the Conflict of Interest and Ethical Code of Conduct as set forth in Section 3 above. Any city official /employee may seek guidance from the controlling authority upon written request on questions directly relating to the propriety of their conduct as officials and employees. Each written request and advisory opinion shall be confidential unless released by the requester.
1. Request for opinions shall be in writing.
 2. Advisory opinions may include guidance to any employee on questions as to:
 - a. Whether an identifiable conflict exists between his/her personal interests or obligations and his/her official duties.
 - b. Whether his/her participation in his/her official capacity would involve discretionary judgment with significant affect on the disposition of the matter in conflict.
 - c. What degree his/her personal interest exceeds that of other persons who belong to the same economic group or general class.
 - d. Whether the result of the potential conflict is substantial or constitutes a real threat to the independence of his/her judgment.
 - e. Whether he/she possesses certain knowledge or know-how which the city will require to achieve a sound decision.
 - f. What effect his/her participation under the circumstances would have on the confidence of the people in the impartiality of their city officials and employees.
 - g. Whether a disclosure of his/her personal interests would be advisable, and, if so, how such disclosure should be made so as to safeguard the public interest.
 - h. Whether it would operate in the best interest of the people for him/her to withdraw or abstain from participation or to direct or pursue a particular course of action in the matter.

6. District court

Dewitt, Flushing, Harper Woods, Sterling Heights, and Ypsilanti have ethics ordinances featuring the district court as the head of the enforcement system.

Any person who shall be convicted, by a court of competent jurisdiction, of violating any of the provision(s) of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars or by imprisonment of not more than ninety days, or both, in the discretion of the court.

- a. In addition, any person so convicted by a court of competent jurisdiction shall forfeit any city employment or office held. The office shall be vacant upon conviction.
- b. Any person convicted by a court of competent jurisdiction of a misdemeanor involving election fraud, or any felony, or a misdemeanor involving moral turpitude committed in the course of employment with the city, shall forfeit any city employment or office held. The office shall be vacant upon conviction.

Chapter 4: How to Proceed

Essay

Developing, Adopting and Implementing an Ethics Ordinance: The Process	55
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Developing, Adopting and Implementing an Ethics Ordinance: The Process

By Daniel C. Matson

1. Getting started

A charter can be *silent* on the question of an ethics ordinance, or it can *mandate* the adoption of an ethics ordinance, along with a time certain for enactment. In either case, because there is much to consider about the content of an ethics ordinance, and because there is much to research, a reasonable amount of time for its development should be allowed. A period of one year seems to be adequate time for most communities to prepare and enact an ethics ordinance, although some require a longer time.

2. The study committee

A committee should be formed to review the initial draft of a proposed ethics ordinance or to draft the ordinance in consultation with a knowledgeable municipal attorney. It is helpful to involve people with municipal experience, people with a legal background, and people with broad experience in the community. It is helpful to include at least one elected official who serves on the legislative body and who is interested in the undertaking. This person may assist in formulating the ethics policy, and also by endorsing and presenting the ordinance to the legislative body for adoption.

3. Finding background materials and examples

This publication is intended to serve as a guide for the ethics ordinance study committee. It provides the basic standards of conduct that are found in many ethics ordinances, and it points to a number of ordinances currently in use in Michigan cities. The Michigan Municipal League database can identify more communities in which comprehensive ethics ordinances exist. In addition, the League will provide

copies of ordinances upon request. Since no two communities will have the same perspective or approach toward codifying standards of conduct, it is strongly advised that the ethics ordinance of another local government not be adopted as is. One size doesn't fit all, and it is important that an ethics ordinance be tailored to the circumstances of the community and the municipality that will be asked to adopt and to abide by the ordinance.

4. Legal research and drafting

Ideally, the development of an ethics ordinance should have the benefit of legal advice every step of the way. This might be a luxury for some municipal governments, but legal review should occur periodically, or at least at the end of the drafting process, before the work product is offered to the public. Both Constitutional and statutory law must be consulted to ensure that the ethics provisions are valid subject matters for the ordinance, and are not preempted by higher law. Also, the ethics ordinance will affect various rights and duties of municipal employees, and collective bargaining agreements must be considered.

The municipal charter or a contract with the attorney may require the attorney to draft the document in its entirety because it is to be an ordinance, or may at least require the attorney's review prior to its presentation to the legislative body. Involving the attorney in the complete process is strongly recommended.

5. Adopting the ordinance

When the ethics ordinance committee is satisfied with its work product, and after it has had adequate legal review, the proposed ordinance is then submitted to the legislative body for consideration,

along with the committee's recommendation for adoption. Members of the committee may assist in the discussion during the public forum as the matter is debated. They can provide background information, explain the rationale for the standards of ethical conduct chosen, explain the committee's approach to the proposed ordinance, and facilitate an understanding of both the meaning and the effect of the provisions in the proposed ordinance.

6. Publication of the ordinance

The complete ordinance, or a summary of it, must be published in the manner required by state and local law. In addition, each person in service to the municipality (elected and appointed officials, full- and part-time employees, and volunteers serving on boards and commissions) should be given a copy of the ordinance. They should also be required to read it and be given an opportunity to raise questions about its effects. Depending upon the structure of the organization, it may be appropriate to have department heads review the ordinance with staff in special meetings scheduled for that purpose.

7. Living with the ethics ordinance

The ethics ordinance exists to provide a reasonable framework in which the local government servant is to function and meet public expectations. To be as effective as possible, on-going training and discussion should be available for all who come within the jurisdiction of the ordinance. The purpose of any ethics ordinance is, after all, to promote the trustworthiness of government. Those who serve *in* government, and those who are served *by* government, which is all of us, want to know that our government exists to promote the public good.

Appendix A:

The Contributors

The contributing authors and the editor of the Ethics Handbook are all attorneys at law and they are all current and longstanding members of the Ethics Roundtable of the Michigan Association of Municipal Attorneys. All are indebted to William L. Steude, as without his belief in the importance of ethical conduct in the affairs of government, this project would not have happened.

Daniel C. Matson

City Attorney, City of DeWitt
Village Attorney, Village of Fowler
Chair, Ethics Roundtable

Contribution:

The Dedication, Preface, and “Developing, Adopting and Implementing an Ethics Ordinance: The Process”

Dennis A. Mazurek

Chief Assistant Corporation Counsel
City of Detroit Law Department

Contribution:

Chapter 3, “The Substance of a Local Government Ethics Ordinance”

William C. Mathewson

General Counsel, Michigan Municipal League
Secretary/Treasurer, Michigan Association of Municipal Attorneys

Contribution:

The Forward and “Different Forms of Local Government; Different Routes to Adopting Ethics Standards for Your Community”

William L. Steude

Former General Counsel, Michigan Municipal League
and Secretary/Treasurer, Michigan Association of Municipal Attorneys

Contribution:

“Civility in Local Government: The Civil Society” and
“Including Ethics Provisions in Local Government Charters: Advice for Charter Commissions”

John J. Rae

Retired, former City Attorney, City of Midland

Contribution:

“Ethics and Why It Matters”

Michael P. McGee

Senior Principal,
Miller, Canfield, Paddock and Stone, PLC
Lecturer and Advisor on Municipal Ethics

Contribution:

“Labor Considerations”

Peter A. Letzmann

Former City Attorney, City of Troy
Adjunct Professor, Grand Valley State University
Chair, Education and Professionalism Committee,
Michigan Association of Municipal Attorneys

Contribution:

“An Ethics Bibliography”

Mary M. Grover

Retired attorney, former International City/County
Management Association Ethics Advisor
Public Sector Ethics Consultant and Trainer

Contribution:

Editor

Appendix B:

Some Ethics-Related Michigan Statutes

The following are Michigan statutes that have been referred to in the text, and that have implications for the development of ethics codes and ethics ordinances by local governments. The list is not intended to be comprehensive, but, rather, instructive.

Conflicts of Interests as to Contracts Act,
Act 317, 1968 (MCL 15.321 *et seq.*)

Failure to uphold or enforce the law
(MCL 752.11)

False statement of public finances
(MCL 750.489)

Incompatible Public Offices Act
(MCL 15.181)

Political Activities by Public Employees,
Act 160, 1976 (MCL 15.401 *et seq.*)

Public moneys, manner of keeping,
embezzlement, etc.
(MCL 750.490)

Purchase of goods on public credit
(MCL 750.490a)

Standards of Conduct and Ethics Act,
Act 196, 1973
(MCL 15.341 *et seq.*)

Whistleblower's Protection Act,
Act 469, 1980
(MCL 15.361-15.369)

Willful neglect of duty
(MCL 750.478)

Appendix C:

Eighteen Local Government Ethics Ordinances

The text refers to eighteen municipalities' charters and ethics ordinances that were reviewed, and excerpts from them were offered as examples. The following is a listing of the citations for these charters and ordinances, some of which are available on the Michigan Municipal League website. Also included are citations for municipal charters that include provisions regarding ethics.

Local Government	Population ¹	Charter or Ordinance Citation
DeWitt	4,441	Charter Art. 8, §8.14; Code of Ordinances, Ch. 2, Art. VI, §2-191 <i>et seq.</i>
Mason	7,985	Ordinance 132, effective October 1, 1999
Flushing	8,110	Ch. 37 of Ordinances, §3701 Code of Conduct, A through G; and §3702 Financial Disclosure; adopted 1993
Riverview	12,744	City Code of Ordinances, Ch. 2, Div. 3, Secs. 2-71 through 2-78
Harper Woods	13,621	Ordinance 96-3: Article VIII, Secs. 2-275 through 2-280, City Code of Ordinances
Ypsilanti	21,832	Ypsilanti City Code, Chapter 46, Articles II and III, adopted May 22, 1995
Wyandotte	26,940	Ord. No. 1235, Sec. 1; revised July 18, 2005
Jackson	34,879	Charter, §9.13 Ethics Ordinance, adopted Nov. 4, 1997; Ordinance 99-25, adopted Nov. 16, 1999
Bay City	34,879	Charter, Article 7, §§7.1-7.3; Code of Ordinances, Chapter 2, §2.30 <i>et seq.</i>
Midland	41,760	Ordinance No. 1337: Ch. 32, Secs. 32-1 through 32-6, City of Midland Code of Ordinances, dated January 22, 1996
Royal Oak	58,299	Ch. 45, Royal Oak City Code, adopted in 1993, and amended in 1998 and 2004
Rochester Hills	69,995	Ch. 50, Ethics, Secs. 50-1 through 50-7, effective February 13, 1996
Farmington Hills	80,223	Code of Ethics, adopted December 11, 1989
Livonia	97,977	Ethics Ordinance, §2.200.010 through §2.200.100, adopted 1997
Lansing	115,518	Charter, Ch. 5, §§5-501-5-505; Ordinance 290.01-290.12 (1966)
Sterling Heights	128,034	Code of Ethics for Public Officials and Employees, Ord. No. 165, §1.01, with Guidelines, effective December 18, 1974
Warren	135,311	Article VIII, Code of Ethics, §§2-371 through 2-381, adopted September 11, 1991
Detroit	886,671	Detroit City Charter, §2-106 <i>et seq.</i> , 1997 Detroit City Charter; Detroit Code, Article VI Ethics, §2-6-1 <i>et seq.</i>

1. Source of population data: U.S. Census Bureau, 2005 population estimates

Appendix D:

Ethics Resources for Local Governments

Aaron, Henry J., Thomas E. Mann and Timothy Taylor. *Values and Public Policy*. Brookings Institution Press, Washington, D.C., 1994.

Bell, A. Fleming, II. *Ethics in Public Life, Adapted from Ethics, Conflicts, and Offices: A Guide for Local Officials*. Institute of Government, the University of North Carolina at Chapel Hill, 1998. The book explores what ethics and the public trust mean, and presents ways that the ethical climate of government can be improved.

Berman, Evan M., Jonathan P. West, and Stephen J. Bonczek, eds. *The Ethics Edge*. Washington, D.C.: International City/County Management Association, 1998. A collection of articles covering contemporary insights and current ideas on management practice in ethics.

Bok, Sissela. *Lying: Moral Choice in Public and Private Life*. Pantheon Books, a division of Random House, Inc., 1978. A inquiry into the practice of lying, the avoidance of the hard questions, and the resulting damage.

Bowman, James S., ed. *Ethical Frontiers in Public Management*. Jossey-Bass Publishers, San Francisco, 1992. The book presents current research that defines the moral environment found in public management, examines how and why thinking about government ethics needs to be revitalized, and offers theoretical strategies to bring that renewal to fruition.

Denhardt, Kathryn G. *The Ethics of Public Service: Resolving Moral Dilemmas in Public Organizations*. Greenwood Press, New York, 1988.

Dworkin, Ronald. *A Matter of Principle*. Harvard University Press, Cambridge, MA, 1985.

Elliott, Kimberly Ann, ed. *Corruption and the Global Economy*. Institute for International Economics, Washington, D.C., 1997. In some parts of the world, corruption threatens to slow or reverse trends toward democratization and international economic integration.

Ethics in Action Training Package. Washington, D.C.: International City/County Management Association, 1999. Designed to help local government leaders and staff explore ethics issues together. Using case studies, exercises, real local government examples, and mini lectures, the training package addresses how all staff can make ethical decisions all the time and how to build and maintain an ethical local government.

Fisher, Roger, Elizabeth Kopelman, and Andrea Kupfer Schneider. *Beyond Machiavelli: Tools for Coping with Conflict*. Harvard University Press, 1994. The authors look systematically at what is wrong with the world, present a theory on how conflicts ought to be handled, and suggest practical skills for bringing that theory to bear on the real world. They bring a perspective that is applicable on the world stage, and at the dinner table.

Fisher, Roger, and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*. Houghton Mifflin Company, 1981. What is the best way for people to deal with their differences? Being respectful, and separating the people from the problem goes a long way.

Glazer, M.P., et al. *The Whistleblowers: Exploring Corruption in Government and Industry*. Basic Books, New York, 1989.

Institute for Local Government, *Ethics Law Compliance Best Practices, A Check List*, 2005. See http://www.cacities.org/resource_files/23862.finalcompliancebooklet.pdf

Kellar, Elizabeth K., ed. *Ethical Insight, Ethical Action: Perspectives for the Local Government Manager*. Washington, D.C.: International City/County Management Association, 1988. The book covers the inevitable tensions between personal and organizational ethics, and several of the articles deal specifically with the nature of responsibility in public organizations.

Kellar, Elizabeth K., and Mary Slawson. *Ethos: Multimedia Ethics Training for Local Governments CD-ROM*. Washington, D.C.: International City/County Management Association, 1999. An interactive training program featuring 21 real-life ethics scenarios with options for resolutions. The participant watches a scenario, chooses a response, and learns the preferred response.

Lewis, Carol W. *The Ethics Challenge in Public Service: A Problem-Solving Guide*. Jossey-Bass Publishers, San Francisco, 1991. The author offers practical tools and techniques that public managers can use in making ethical choices in the ambiguous, pressured world of public service.

Lewis, Carol W. *Scruples & Scandals: A Handbook on Public Service Ethics for State and Local Government Officials and Employees in Connecticut*. The Institute of Public Service and the Institute of Urban Research, The University of Connecticut, 1986. The book looks further than Connecticut, and is meant to provide a useful, practical examination of the formal procedures and processes by which we seek to encourage, if not ensure, "good" or "right" behavior.

McCollough, Thomas E. *The Moral Imagination and Public Life: Raising the Ethical Question*. Chatham House Publishers, Chatham, NJ, 1991.

Richter, William L., Frances Burke and Jameson W. Doig, eds. *Combating Corruption, Encouraging Ethics: A Sourcebook for Public Service Ethics*. American Society for Public Administration, Washington, D.C., 1990.

Sabato, Larry J., and Glenn R. Simpson. *Dirty Little Secrets: The Persistence of Corruption in American Politics*. Times Books, New York, 1996.

Salkin, Patricia E., ed. *Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials*. Section of State and Local Government Law, American Bar Association, 1999. The book is a compilation of essays, articles, and research, intended to help government lawyers focus on some of the ethical considerations that arise in the practice of law in the public sector.

Speers, JoAnne, *2000-2006: A California Ethics Odyssey*. A report distributed by the International Municipal Lawyers Association at its 2006 Mid Year Seminar held April 23-25, 2006 in Washington, D.C.

Steinberg, Sheldon S., and David T. Austern. *Government, Ethics, and Managers: A Guide to Solving Ethical Dilemmas in the Public Sector*. Praeger, New York, 1990.

Zimmerman, Joseph. *Curbing Unethical Behavior in Government*. Greenwood Press, Westport, Connecticut, 1994. The book stresses the importance of action to ensure open government as a deterrent to improper conduct, a facilitator for its detection, and a promoter of a moralistic political culture.

Appendix E: Professional Associations' Codes of Ethics

American Association of School Administrators
aasa.org

American Institute of Certified Planners
planning.org

American Planning Association
planning.org

American Public Works Association
(Standards of Professional Conduct)
apwa.net

American Water Works Association
(Members' Code of Practice, and Policy
on Conflicts of Interest)
awwa.org

Association of Government Accountants
agacgfm.org

Government Finance Officers Association
gfoa.org

International Association of Assessing Officers
iaao.org

International Association of Chiefs of Police
(Also at ethics.iit.edu/codes)
theiacp.org

International City/County Management Association
icma.org

Michigan Association of Planning
planningmi.org

Michigan Government Finance Officers Association
migfoa.org

Michigan Local Government Management
Association (adopted the ICMA Code of Ethics)
mlgma.org

Michigan Municipal Treasurers Association
(Code of Professional Ethics)
mmta-mi.org/pdf/profcodeethics

National School Boards Association
nsba.org

State Bar of Michigan
Rules of Professional Conduct
Code of Judicial Conduct
michbar.org



michigan municipal league
Better Communities. Better Michigan.

**BIRMINGHAM CITY COMMISSION
SPECIAL MEETING AGENDA
WORKSHOP
MONDAY, FEBRUARY 14, 2022
6:30 P.M.**

WORKSHOP SESSION

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 regarding a Code of Conduct for the City.

I. CALL TO ORDER

Therese Longe, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk

III. PRESENTATION & DISCUSSION

A. Introduction – Tom Markus, City Manager

Early in 2021, Workshop Guidelines were approved by the City Commission to organize the sequence of upcoming topics, the structure and time management of the workshops and to establish procedures to guide the workshops in a smoother and more purposeful manner. Conduct guidelines were adopted as follows:

- Start on time and end on time.
- Cell phones must be on mute, no outside or behind the scenes communication on the content is permitted.
- Stay focused on the topic or question at hand.
- Actively listen and participate in discussion.
- Attack the issue, not the person.
- Maintain an open and positive mindset, explore multiple perspectives, and discuss potential outcomes.
- Workshops are not a place to argue or set policy. Formal decisions can only be made at the regular City Commission meeting, not during a workshop.
- Public comment is to be heard, not responded to.

B. Staff Update

C. City Commission Questions, Discussion and Comment

1. Is there support for a Code of Conduct to clearly convey expectations of professional and courteous discourse to provide sound governance for the City?
2. If so, are there any areas reviewed tonight that should be excluded from a proposed Code of Conduct for the City?

IV. PUBLIC COMMENT

V. ADJOURN

This meeting is open to the public and the public is welcome to attend.

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).

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MEMORANDUM

City Manager's Office

DATE: February 21, 2022

TO: Thomas Markus, City Manager

FROM: Jana Ecker, Assistant City Manager

SUBJECT: Code of Conduct

The City Commission has recently expressed interest in adopting a formal code of conduct to establish rules and/or protocols to guide the communication and conduct of local government elected officials, appointed officials and members of the public.

On February 14, 2022 the City Commission held a workshop to discuss the purpose and benefits of adopting a code of conduct to ensure respectful and civil communication and public engagement between elected and appointed officials and members of the public. Sample provisions from ordinances and resolutions adopted in other municipalities were reviewed. Based on the discussion, there appeared to be support for the adoption of a formal code of conduct to encourage civil and respectful communication between all parties engaged in local governance.

ATTACHMENTS:

- Powerpoint presentation from February 14, 2022 City Commission Workshop

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution directing the City Manager to prepare a draft Code of Conduct for the City for placement on a future City Commission agenda for review and consideration.



Code of Conduct Workshop



City Commission
February 14, 2022

What is a Code of Conduct?

- Document adopted by the City Commission outlining the expectations for the conduct and communication between elected and appointed officials, City staff and the public
- Different than code of ethics, but very closely related
- Standard provisions include:
 - Clearly defined roles and responsibilities
 - Standards of conduct during public meetings and at ceremonial, public and private events
 - Standards of conduct required of elected officials in all communications with each other, other officials, City staff, the media and the public
 - Process for reporting, investigating and enforcing the Code of Conduct



Why do we need a Code of Conduct?



- Public officials have a responsibility to promote and maintain high standards of conduct to uphold the integrity of the public process and enhance public trust in government
- A Code of Conduct establishes standards to promote integrity, objectivity, leadership and accountability to ensure a transparent and open public process
- A Code of Conduct establishes standards to allow for the expression of different opinions and debates on policies, while ensuring respect for individuals and the process, ensuring issue oriented discussion and eliminating personal attacks

Workshop Code of Conduct February 2021

- Start on time and end on time
- Cell phones must be on mute, no outside or behind the scenes communication on the content is permitted
- Stay focused on the topic or question at hand
- Actively listen and participate in discussion
- Attack the issue, not the person
- Maintain an open and positive mindset, explore multiple perspectives, and discuss potential outcomes
- Workshops are not a place to argue or set policy. Formal decisions can only be made at the regular City Commission meeting, not during a workshop
- Public comment is to be heard, not responded to

When / where would a Code of Conduct apply?



- On Duty:
- When conducting business of the elected office, including during City Commission meetings and other official public events
- When acting as a representative of the City Commission or giving the impression of representation **10E2**

- Off Duty:
- Continue respectful behavior at both public and private events - elected and appointed officials are always on display



General Obligations

- Inspire public confidence in City government
- Work for the common good
- Treat others with respect
- Refrain from discrimination
- Refrain from bullying or intimidating others
- Disagree civilly and professionally
- Be open to all opinions
- Provide open access to information
- Do not use your position to gain an advantage or cause a disadvantage
- Declare any conflicts
- Respect the roles of elected official and City staff
- Utilize City resources properly

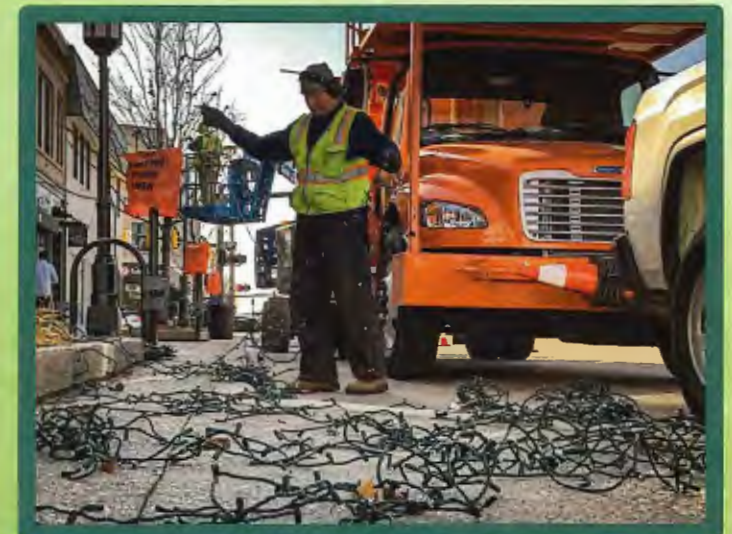


Sample Provisions: Outline Roles & Responsibilities



- City Commission is governing body responsible for policy making, approving budget, ordinances, development proposals, hiring City Manager and appointing members to advisory boards
- Should avoid personal involvement in day to day operations
- City Manager oversees staff and manages operation, implements Commission decisions

City Council	City Manager & Staff
<ul style="list-style-type: none">• Make policy-level decisions• Hire & supervise City Manager• Approve<ul style="list-style-type: none">◦ Budget and related work plan◦ Ordinances and policy decisions◦ Development proposals◦ Variances and rezoning requests• Appoint representatives to advisory boards and commissions	<ul style="list-style-type: none">• Provide best efforts and technical advice to Council• Manage operations and staff• Propose budget and policies• Carry out Council decisions• Deliver services• Equitably enforce codes & policies



Eliminate Predetermination on Issues

- Establish expectation that Commissioners cannot have or appear to have a closed mind or predetermined opinion on an issue prior to the public meeting
- Require Commissioners to come into the discussion with an open mind
- Come to public meeting prepared to actively listen, openly discuss issues, consider all perspectives



Conduct Issue-Oriented Discussion



- Require discussion to be focused on issues relative to the topic only
- Requirements for conduct between elected officials to ensure issue-oriented discussion and not personal attacks
- Allow for disagreement, but not derogatory comments about other Commission members, their opinions and actions
- Establish a "Point of Personal Privilege" rule for offensive remarks or conduct
- Encourage effective problem-solving
- Avoid debate with members of the public

Respect

GIVE IT



TO GET IT

Clear Communication Requirements

- Commissioner requests for research or other staff work to be directed to the City Manager
- Establish parameters - If more than one hour of staff time will be required to complete the task, item will be placed on City Commission agenda to determine the direction of the entire Commission
- Commissioner requests for information or service from City consultants to be directed to the City Manager
- Once a majority decision of the Commission has been made, all Commissioners must respect that official position and defend if needed, even if dissenting
- Media – Mayor is the official spokesperson



Avoid Conflict with Open Meetings Act



- Commissioners to refrain from receiving information and evidence outside of a Commission meeting (*ex parte communication*) on any quasi-judicial matter pending before the Commission
- If a Commissioner is exposed to *ex parte* communication, the Commissioner must disclose all such information during the public hearing before public comment is held
- Individual Commissioners not to make promises on behalf of the City Commission

Enforcement Provisions

- Establish process for review of potential violations of Code of Conduct
- Establish potential repercussions or sanctions for violation by elected officials, City staff and members of the public
- Sanction – An action taken by the City Commission if a person is found in violation of the Code of Conduct, may include:
 - Reprimand – a verbal statement in a meeting that addresses a violation of the Code of Conduct
 - Formal Censure – an official written statement approved by the City Commission as an official sanction which identifies the Code of Conduct violation and expresses disapproval of the violation(s)
 - Mandatory training, removal from board / committee assignments etc.



Code of
Conduct

Next Steps:



- Is there support for a Code of Conduct to clearly convey expectations of professional and courteous discourse to provide sound governance for the City?
- If so, are there any areas reviewed tonight that should be excluded from a proposed Code of Conduct for the City?
- What is the vision of the City Commission's organizational culture and values?



Questions?



MEMORANDUM

Legal Department

DATE: July 11, 2022
TO: Thomas M. Markus, City Manager and City Commission
FROM: Mary M. Kucharek
SUBJECT: Code of Conduct

INTRODUCTION:

Before the City Commission this evening is the first review of a proposed Code of Conduct for the Birmingham City Commission.

BACKGROUND:

In January and February of 2022, the City Commission discussed having a Code of Conduct for the City Commissioners, in conjunction with the Rules of Procedure which have already been adopted. At a workshop, the City Commission discussed and reviewed potential language of a Code which was presented by Assistant City Manager, Jana Ecker. Staff now brings before you a proposed draft of the Code of Conduct for your consideration and adoption.

LEGAL REVIEW:

The City Attorney has collaboratively drafted the Code of Conduct for your consideration and recommends City Commission approval and adoption.

FISCAL IMPACT:

The Code of Conduct is believed to foster more productive and efficient meetings of the Birmingham City Commission. Staff members also attend Birmingham City Commission meetings and whenever decisions are made and meetings are held that are more congenial and efficient then productivity is increased, which is always financially beneficial to the tax paying citizens.

PUBLIC COMMUNICATIONS:

Once approved, this Code of Conduct will be published on the City of Birmingham website along with the City Commission's Rules of Procedure.

SUMMARY:

The City Commission is asked to review and adopt this Code of Conduct for defined behaviors and expectations of City Commissioners. This document will result in defined actions of the City Commission and will be self-regulating.

ATTACHMENTS:

The City of Birmingham Code of Conduct.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the City of Birmingham Code of Conduct and further direct staff to publish this document on the City of Birmingham website along with the Rules of Procedure of the Birmingham City Commission.



CITY OF BIRMINGHAM

Code of Conduct

As elected leaders of this community, we are entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, we must come to meetings with an open mind, think strategically about City issues, and conduct ourselves in a respectful and professional manner at all times. We shall strive to maintain a culture of candor, trust, and respect.

ROLES AND RESPONSIBILITIES

Sec. 1-1. – The Do's and Don'ts.

City Commission	City Manager & Staff	Boards, Committees, Subcommittees & Task Forces
<ul style="list-style-type: none"> • Make policy-level decisions. • Hire & consult with the City Manager. • Consider & Approve: <ul style="list-style-type: none"> ○ Budget and related work plan; ○ Ordinances & policy decisions; ○ Development proposals; and ○ Rezoning requests. • Appoint representatives to advisory boards and committees. • Follow the established and accepted Rules of Procedure. • Delegate details of implementations to staff. 	<ul style="list-style-type: none"> • Provide best efforts & advice to the City Commission. • Manage operations & staff. • Propose budget & policies. • Carry out City Commission decisions. • Deliver services. • Equitably enforce codes & policies. 	<ul style="list-style-type: none"> • Provide community perspective. • Propose work plan items. • Advise the City Commission. • Hold hearings as directed by City Commission. • Assist as directed.

City Commission does NOT:

- Hire and fire staff.
 - Direct the activities of others, other than the City Manager.
 - Individually direct the activities of boards, committees, subcommittees or other resident groups.
 - Individually approve policies, projects, etc.
 - Individually commit City resources or staff to specific causes.
 - Individually enforce policies, City Code, etc.
 - Individually speak or prepare official correspondence on behalf of the City unless authorized by City Commission.
- The City Commission DOES speak through its motions and resolutions collaboratively.

Sec. 1-2. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

City Commissioners Make the Following Commitments to City Staff:

- Respect staff as valued resources and members of our team.
- Treat all staff as professionals.
- Not disrupt staff from their jobs.
- Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
- Provide direction to the City Manager and not direct the work of individual staff members.
- When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
- Send to the City Manager all communications and questions for staff.
- Agree that information they ask of the City Manager will be shared equally with all City Commission members.
- Not solicit political support from staff.

City Commissioners Make the Following Commitments to Board, Committee and Commission Members:

- View boards and committees as vitally important resources to support decision-making.
- Communicate effectively with boards and committees to ensure they have the tools to do their work.
- Give clear direction as a body and take adequate time to review the result of their deliberations.
- Understand, because of the value of the independent advice of boards, committees and task forces to the public decision-making process, members of the City Commission shall refrain from using their position to influence the deliberations or outcomes of boards, committees, and task force proceedings.
- Respect the expectation that City Commission members will not attend board, committee or task force meetings. However, under special circumstances, if City Commissioners do attend a board meeting, they will do so only as an anonymous observer, via Zoom.

Sec. 1-3. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. Despite this diversity, all City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. In all cases, this common goal should be acknowledged even as City Commissioners may "agree to disagree" on more controversial issues.

(a) IN PUBLIC MEETINGS

i. Practice civility, professionalism and decorum in discussions and debate

Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.

ii. Use Respectful Behavior at All Times

Members Should STRIVE to:

- Treat people with courtesy, politeness and kindness.
- Encourage others to express their opinions and ideas.
- Listen to what others have to say.
- Use the ideas of others to improve decisions and outcomes.
- Recognize and respect differences.
- Prepare for the issues at hand.
- Focus on the business of the body.
- Consider only legally germane information in decisions.
- Act as a decision maker, not an advocate.

Members should AVOID:

- Speaking over or cutting off another individual's comments.
- Insulting, disparaging, or putting down people or their ideas.
- Bullying others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
- Violence or the threat of violence which will not be tolerated.

iii. Honor the role of the Mayor in maintaining order

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the

Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

iv. **Avoid personal comments that could offend other City Commissioners**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

v. **Demonstrate effective problem-solving approaches**

City Commissioners operate on a public stage, and, thus, have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. City Commissioners should work together to resolve issues and act as public role models.

vi. **Be punctual and keep comments relative to topics discussed**

City Commissioners have made a commitment to attend meetings and partake in discussions. Therefore, it is important that City Commissioners be punctual and that meetings start on time. It is equally important that discussions be relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(b) **IN PRIVATE ENCOUNTERS**

i. **Continue respectful behavior in private**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

ii. **Be aware of the insecurity of written notes, voicemail messages, and e-mail**

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable having this note faxed to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this email message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

iii. **Even private conversations can have a public presence**

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

(c) **EX PARTE COMMUNICATION**

The City Commission has a number of roles. It legislates and makes decisions on issues prescribed to the City Commission by law. The City Commission also acts in a quasi-judicial capacity when it rules on various permits, licenses, and land use entitlements.

- i. **Ex Parte Contacts/Fair Hearings.** City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.
- ii. **Exposure to Information.** As an elected official, it is often impossible to avoid contacts and exposure to information. Therefore, if any City Commissioner is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits, the City Commissioner member must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing, or meeting, and before the public comments period is opened. The Mayor will ask each City Commissioner at every meeting for disclosures of ex-parte communications. Self-reporting and disclosure is mandatory.

Sec. 1-4. - Working with the Public

- i. **Residents:** City Commissioners are sometimes the first call for help for residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners or staff that it is difficult for the resident and could increase liability for the City. Therefore, all residents should be directed to the City Manager or GovPilot to address their concerns. The Manager will ensure that inquiries are responded to either by the Manager's office or the appropriate departmental representative. If the City Manager determines that the question and response is of public importance, the Manager may share the information with the City Commission and or making the information a subject of a public news report.
- ii. **Business or other interests:** The purpose of the City Commission meeting is to discuss information, review information, and decide upon issues. Particularly around development issues, business interests might ask a member to meet outside of the City Commission meeting to facilitate ideas about proposals. This contact is dissuaded as the City Commission should be receiving all information as a whole Commission.
- iii. **The City Commission's overarching principals for working with the community are:**
 - o Never grant any special consideration, treatment, or advantage.
 - o Respect sensitivity of personal information.
 - o Do not advocate for a certain point of view.
 - o City Commissioners should be cautious when participating in meetings or events and not prejudge an issue before the whole City Commission has had a chance to deliberate.
- iv. **Meetings or discussions requested by residents or businesses:**
 - o During Decision: If a City Commissioner is invited to discuss an issue that will be before the City Commission in the present or future, uphold the above principles for working with the community; and:
 - Do not make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and the City Commissioner is called upon to cast his or her vote.
 - o After Decision: If a City Commissioner is invited to discuss an issue the City Commission has decided upon, explain how the City Commission as a whole arrived at the decision. Be supportive of the vote, even if in disagreement.

Sec. 1-5. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If a member of the City Commission is in violation of this Code of Conduct, or the Code of Ethics, then their actions should be referred to the City Commission as a whole or the Ethics Board.

If a member of the City Commission is accused of violating this Code of Conduct, then a public hearing shall occur with the Chair of the Ethics Board presiding over and managing testimony, physical evidence, discussion and public comment.

If a member of the City Commission is in violation of this Code of Conduct, then they may be reprimanded or formally censured by the City Commission. Serious infractions could lead to sanctions as determined by a majority vote of the City Commission. Those sanctions may include, but are not limited to: reprimand, formal censure, and removal from the City Commission (in compliance with state law).

Adopted by Resolution on _____, 2022.



MEMORANDUM

Legal Department

DATE: February 13, 2023
TO: Thomas M. Markus, City Manager and City Commission
FROM: Mary M. Kucharek
SUBJECT: Code of Conduct

INTRODUCTION:

The purpose of this Code of Conduct is to define the minimum standards of conduct that are expected of the City Commission and the individual Commissioners as determined by the City Commission, in conjunction with its Ethics Ordinance, in order to collaborate and conduct efficient and productive meetings.

BACKGROUND:

In January and February of 2022, the City Commission discussed the desire to draft and adopt a Code of Conduct for the City Commission in conjunction with the Rules of Procedure which have already been adopted. At a workshop, the City Commission discussed and reviewed potential language of a Code which was presented by Assistant City Manager, Jana Ecker. Staff drafted and presented a proposed Code of Conduct on July 11, 2022. Discussion occurred and suggestions were made by the City Commission. The City Manager now directs it is time once again to consider adopting a Code of Conduct.

LEGAL REVIEW:

The City Attorney has collaboratively drafted the Code of Conduct for your consideration and recommends City Commission approval and adoption.

FISCAL IMPACT:

The Code of Conduct is believed to foster more productive and efficient meetings of the Birmingham City Commission. Staff members also attend Birmingham City Commission meetings and whenever decisions are made and meetings are held that are more congenial and efficient then productivity is increased, which is always financially beneficial to the tax paying citizens.

PUBLIC COMMUNICATIONS:

Once approved, this Code of Conduct will be published on the City of Birmingham website along with the City Commission's Rules of Procedure.

SUMMARY:

The City Commission is asked to review and adopt this Code of Conduct to establish the defined conduct standards and expectations. This document will result in published and accepted expectations of the City Commission and individual Commissioners. This Code of Conduct is to be a self-regulatory policy.

ATTACHMENTS:

The City of Birmingham Code of Conduct.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the City of Birmingham Code of Conduct and further direct staff to publish the Code of Conduct as adopted on the City of Birmingham website along with the Rules of Procedure of the Birmingham City Commission.



City Commission Code of Conduct Resolution # _____

Sec. 1-1. – Purpose

As elected leaders of the community, the City Commission is entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

Sec. 1-2. – Role of City Commission

- (1) The role of the City Commission is to:
 - (a) Make policy decisions.
 - (b) Hire & consult with the City Manager.
 - (c) Consider For Approval:
 - i. Budget and related work plan;
 - ii. Ordinances & policy decisions;
 - iii. Certain Development proposals; and
 - iv. Rezoning requests.
 - (d) Appoint representatives to advisory boards and committees.
- (2) Each City Commissioner is expected to:
 - (a) Act in accordance with the established and accepted Rules of Procedure.

- (b) Act in accordance with the City Charter and the City Code of Ordinances.
 - (c) Recognize the City Commission as a whole speaks through its motions and resolutions collaboratively.
- (3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:
- (a) Hire and fire staff.
 - (b) Direct the activities of staff members, other than the City Manager.
 - (c) Individually direct the activities of boards, committees, subcommittees or other resident groups.
 - (d) Individually approve policies, projects, etc.
 - (e) Individually commit City resources or staff to specific causes.
 - (f) Individually enforce policies, City Code, etc.
 - (g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.
- (4) City Commissioners recognize it is the role of the City Manager to:
- (a) Provide best efforts & advice to the City Commission.
 - (b) Manage City operations & direct staff.
 - (c) Propose budget & policies.
 - (d) Implement City Commission decisions.
 - (e) Deliver services to the citizens.
 - (f) Equitably enforce codes & policies.
- (5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:
- (a) Provide the community's perspective.

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

- (1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:
 - (a) Respect staff as valued resources and members of the team.
 - (b) Treat all staff as professionals.
 - (c) Refrain from disrupting staff from their jobs.
 - (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
 - (e) Provide direction to the City Manager and not direct the work of individual staff members.
 - (f) Send to the City Manager all communications and questions for staff.
 - (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
 - (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
 - (i) Refrain from soliciting political support from staff.
- (2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:
 - (a) View boards and committees as vitally important resources to support decision-making.

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

(1) IN PUBLIC MEETINGS

- (a) **Practice civility, professionalism and decorum in discussions and debate.**
Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.
- (b) **Use Respectful Behavior at All Times.**
 - i. **City Commissioners shall:**
 1. Treat people with courtesy, politeness and kindness.
 2. Encourage others to express their opinions and ideas.
 3. Listen to what others have to say.
 4. Use the ideas of others to improve decisions and outcomes.
 5. Recognize and respect differences.

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

(a) **Continue respectful behavior in private.**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

(b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(3) **EX PARTE COMMUNICATION**

(a) **Ex Parte Contacts/Fair Hearings.**

City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.

(b) **Exposure to Information.**

A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self-reporting and disclosure is mandatory.

Sec. 1-5. - Working with the Public

(1) **Residents.**

City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting.

(2) **Business or other interests.**

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

proposals. The City Commission should be receiving all information as a whole Commission in a public meeting.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public.
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote.
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censored by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

O:\Birmingham\CODE OF CONDUCT\2023.02.03 RESOLUTION 2023 - (CLEAN) CODE OF CONDUCT.docx

DRAFT



Alex Bingham <abingham@bhamgov.org>

Fwd: Code of Conduct

Tom Markus <tmarkus@bhamgov.org>

Wed, Mar 8, 2023 at 11:43 AM

To: Alex Bingham <abingham@bhamgov.org>, Christina Woods <cwoods@bhamgov.org>

Cc: Mary Kucharek <Mkucharek@bhlaw.us.com>

Please move the email and attachment into pending and i will place it under reports

----- Forwarded message -----

From: **Mary Kucharek** <Mkucharek@bhlaw.us.com>

Date: Wed, Mar 8, 2023 at 11:03 AM

Subject: Code of Conduct

To: Tom Markus <tmarkus@bhamgov.org>

Cc: Jana Ecker <Jecker@bhamgov.org>, Melissa Fairbairn <mfairbairn@bhamgov.org>

Tom,

As requested by the City Commission, I have identified and highlighted parts of the draft Code of Conduct that are duplicative and contained in others rules, charter provision or ordinances. However, the majority of the draft Code is not contained elsewhere, and I would suggest theses few area highlighted are worth repeating in one document. Once the Commissioners send to you their edits, we will combine their suggestions into one document for everyone's review.

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

**20230308111530743.pdf**

1505K

19521



City Commission
Code of Conduct
Resolution # _____

Sec. 1-1. – Purpose

As elected leaders of the community, the City Commission is entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

Sec. 1-2. – Role of City Commission

(1) The role of the City Commission is to:

(a) Make policy decisions.

(b) Hire & consult with the City Manager.

Commented [JC1]: Charter / Ordinance

(c) Consider For Approval:

i. Budget and related work plan;

Commented [JC2]: Charter / Ordinance

ii. Ordinances & policy decisions;

Commented [JC3]: Charter, Chapter III., Sec. 2

iii. Certain Development proposals;

iv. Rezoning requests.

Commented [JC4]: In Zoning Ordinance in certain Chapters

(d) Appoint representatives to advisory boards and committees.

Commented [JC5]: Ordinances and resolutions not one spot

(2) Each City Commissioner is expected to:

(a) Act in accordance with the established and accepted Rules of Procedure.

- (b) Act in accordance with the City Charter and the City Code of Ordinances.
 - (c) Recognize the City Commission as a whole speaks through its motions and resolutions collaboratively.
- (3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:
- (a) Hire and fire staff.
 - (b) Direct the activities of staff members, other than the City Manager.
 - (c) Individually direct the activities of boards, committees, subcommittees or other resident groups.
 - (d) Individually approve policies, projects, etc.
 - (e) Individually commit City resources or staff to specific causes.
 - (f) Individually enforce policies, City Code, etc.
 - (g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.
- (4) City Commissioners recognize it is the role of the City Manager to:
- (a) Provide best efforts & advice to the City Commission.
 - (b) Manage City operations & direct staff.
 - (c) Propose budget & policies.
 - (d) Implement City Commission decisions.
 - (e) Deliver services to the citizens.
 - (f) Equitably enforce codes & policies.
- (5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:
- (a) Provide the community's perspective.

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

(1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:

- (a) Respect staff as valued resources and members of the team.
- (b) Treat all staff as professionals.
- (c) Refrain from disrupting staff from their jobs.
- (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
- (e) Provide direction to the City Manager and not direct the work of individual staff members.
- (f) Send to the City Manager all communications and questions for staff.
- (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
- (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
- (i) Refrain from soliciting political support from staff.

Commented [JC6]: Ethics Ordinance not verbatim though

(2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:

- (a) View boards and committees as vitally important resources to support decision-making.

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

Commented [JC7]: Ethics Ordinance

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

(1) IN PUBLIC MEETINGS

- (a) **Practice civility, professionalism and decorum in discussions and debate.**
Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.
- (b) **Use Respectful Behavior at All Times.**
 - i. **City Commissioners shall:**
 1. Treat people with courtesy, politeness and kindness.
 2. Encourage others to express their opinions and ideas.
 3. Listen to what others have to say.
 4. Use the ideas of others to improve decisions and outcomes.
 5. Recognize and respect differences.

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

Commented [JC8]: In general Robert's Rules of Order

Commented [JC9]: Ordinance Sec. 74

Commented [JC10]: Robert's Rules of Order

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

Commented [JC11]: Robert's Rules of Order

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

(a) **Continue respectful behavior in private.**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

(b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(3) **EX PARTE COMMUNICATION**

(a) **Ex Parte Contacts/Fair Hearings.**

City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.

(b) **Exposure to Information.**

A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self-reporting and disclosure is mandatory.

Sec. 1-5. - Working with the Public

(1) **Residents.**

City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting.

(2) **Business or other interests.**

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

proposals. The City Commission should be receiving all information as a whole Commission in a public meeting.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public.
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an Item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote.
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

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DRAFT

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:24 AM
To: Janine Cochran
Subject: Fwd: City Commission Code of Conduct Feedback

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 27, 2023 at 7:12:13 AM EDT
To: Elaine McLain <emclain@bhamgov.org>
Cc: Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: Re: City Commission Code of Conduct Feedback

Received, thank you.

On Sun, Mar 26, 2023 at 10:34 PM Elaine McLain <emclain@bhamgov.org> wrote:

Elaine McLain
Mayor Pro Tem,
City of Birmingham
248-225-9903

Begin forwarded message:

From: Elaine McLain <ekmclain@gmail.com>
Date: March 26, 2023 at 10:32:25 PM EDT
To: Elaine McLain <emclain@bhamgov.org>
Cc: Mary Kucharek-cell <Mkucharek@bhlaw.us.com>
Subject: City Commission Code of Conduct Feedback

Tom: It may be helpful to link the Code of Conduct red box references (Charter/Ordinances that already exist elsewhere) by an asterisk linked at the end of the document. I have no serious issue with repetition of what appears elsewhere. This document is meant for the Commission, by the Commission. Related existing info can add content and perspective.

My suggested changes are underlined:

Sec 1-2 Role of the Commission:

(4) City Commissioners recognize it is the role of the City Manager to:

(d) Implement City Commission decisions and support City Commission Strategic Goals.

Sec 1-3 City Commissioner Conduct with City Staff and Boards, Committees and Commissions:

(i) Refrain from soliciting political support, exerting political influence or pressure on staff.

Sec 1-4 City Commission Conduct with One Another

(b) i/9 Act as an informed objective decision maker with all the facts shared with the Commission. (Exclude "advocate" phrase or artfully rephrase intent.)

Sec 1-5 Working with the Public:

(2) ...should not meet with APPLICANTS (capitalize) outside a public meeting ...
(We may often see members of the public asking questions about
city matters in general and can certainly refer them to the City Manager, email
or GovAlert app for answers.)

****Question:** How do we recommend handling sitting Commissioner behavior/guidance for things like social media outreach for meeting at The Farmer's Market?
Coffee with The Commish? Morning Walk with the Mayor or Mayor Pro Tem?******

Sec 1-6 Enforcement/Sanctions:

****Question:** How do we ensure that this self-enforcing Code of Conduct is not somehow hijacked, for want of another phrase, by a misguided or politically motivated majority for their own means? Can we somehow simplify the process listed?

Finally, the overarching goal of this Code of Conduct, is to guide a respectful, ethical and civil discourse as elected officials transparently serving the public. This is the time for us to work together to maintain the public's confidence in our balanced legislative process,

Elaine McLain
Mayor Pro Tem
248-225-9903

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: City Commission Code of Conduct

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 26, 2023 at 9:49:51 PM EDT
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: Fwd: City Commission Code of Conduct

----- Forwarded message -----

From: Katie Schafer <kschafer@bhamgov.org>
Date: Sun, Mar 26, 2023 at 8:33 PM
Subject: City Commission Code of Conduct
To: Tom Markus <tmarkus@bhamgov.org>

Tom,

I didn't want you to think that I didn't have anything to say about the work that has been done on the Commission Code of Conduct by you and Mary.

Generally, as I have stated before, I believe that myself and my fellow commissioners can abide by this document and I don't feel there is much redundancy as might have been suggested by others.

Let this email serve to let you know I approve of the document as written.

I hope you had a nice weekend.

Thanks.

Katie



Jana Ecker <jecker@bhamgov.org>

Fwd: Code of Conduct

1 message

Tom Markus <tmarkus@bhamgov.org>
To: Jana Ecker <jecker@bhamgov.org>

Thu, Apr 13, 2023 at 9:27 AM

Please add this to the report. It is in the approved agenda file.

----- Forwarded message -----
From: **Pierre Boutros** <pboutros@bhamgov.org>
Date: Thu, Apr 13, 2023 at 8:43 AM
Subject: Re: Code of Conduct
To: Tom Markus <tmarkus@bhamgov.org>

Tom,
I don't have any comments.

Pierre Boutros
City of Birmingham
248.361.6868

On Apr 12, 2023, at 1:29 PM, Tom Markus <tmarkus@bhamgov.org> wrote:

Pierre:
I have received comments per the commission direction to have the commissioners comment on the code of conduct from everyone but you at this time. Maybe when you get a chance you can review the code and give me your comments. Tom

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: Commission Code of Conduct

Sent from my iPhone

Begin forwarded message:

From: Mary Kucharek <Mkucharek@bhlaw.us.com>
Date: March 26, 2023 at 12:00:19 PM EDT
To: Tom Markus <tmarkus@bhamgov.org>
Subject: Re: Commission Code of Conduct

Ugh. Don't even know where to begin answering said comments...if we can discuss tomorrow the best approach to all of them. I have some thoughts. Thanks. Enjoy the pretty day .

Sent from my iPhone

On Mar 26, 2023, at 10:43 AM, Tom Markus <tmarkus@bhamgov.org> wrote:

It is time to remind Mr. Host where this initiative came from. Please go back into the minutes to point out how all of this started.

----- Forwarded message -----

From: Brad Host <bhost@bhamgov.org>
Date: Sun, Mar 26, 2023 at 10:21 AM
Subject: Commission Code of Conduct
To: Kucharek, Mary <mkucharek@bhlaw.us.com>, Tom Markus <tmarkus@bhamgov.org>

Dear Mary and Tom,

The general tone of the proposed Code is excessively untrusting, controlling, defensive and punitive. It is overreaching in an effort to close off Commissioners from their constituents and sets up easy opportunities for Commissioners and City officials to bring charges of misbehavior against one another.

Throughout, there is a lack of understanding that Commissioners are elected officials, serving

at the will of the citizens of Birmingham---who have the authority to elect them or remove them

at the ballot box. Commissioners earn votes by having personalities, being good listeners,

holding and expressing opinions/positions on issues that come in front of the Commission.

The proposed Code discourages, if not forbids all that, I showed this first draft to a municipal attorney (and a former City Manager) who stated as written this Code is a City Manager's dream of controlling her/his employers. Outrageous is the overall observation. I remind you, I talked with Chris Johnson---MML counsel-- who calls this "overreaching". More on Mr. Johnson's comments later.

While the entire Code should be reexamined through a more constructive lens, here are three sections that in my opinion deserve the most attention and push back:

Section 1.1-PURPOSE.....The use of the adjective "united" with "team" is totally off base and needs to be changed to "democratic" or eliminated entirely. Are you trying to codify unity or

harmony? Ridiculous unless pro offering institutions of a police state.

Section 1.4 (3) EX PARTE COMMUNICATION....(b) This provision (like my third section), in addition to interfering with a Commissioner's freedom of speech, unreasonably closes Commissioners off from their constituents. Commissioners should be accessible, responsive, and involved members of our community. Such a provision would require Commissioners to hold their beliefs, curiosity and relationships in abeyance. Again, ridiculous and unreasonable. Also note (b) starts "A City Commissioner that is exposed" should be corrected to state "A City Commissioner who is exposed". This is a perfect example of the author's notion that Commissioners are objects or commodities, not people.

Respectfully, this section's prejudicial heading "Ex Parte Communication" (which in a legal sense suggests inappropriateness) should be changed to "Communication Outside Public Hearings." Also change the subhead from "Exposure to Information" (again, unnecessarily negative--- you get "exposed" to bad things like viruses, and Commissioners should be encouraged to get information, not hide from it) to "Disclosing Material Information."

Section 1.5 (3) THE CITY COMMISSION'S OVERARCHING PRINCIPALS..." (b) (c) and (d) Chris Johnson, MML Counsel, herein suggests saying something simple like "Keep an open mind."

These three subsections should be eliminated. "PRINCIPALS" should be corrected to "Principles" in any rewrite. Lastly, (d) demands the rules of a police state and certainly is undemocratic.

I hope all Commissioners are given an opportunity to address their concerns in one of our next meetings. This Code of Conduct, as presently written, would do serious damage to the effectiveness of the Commission.

Respectfully submitted,
Brad Host

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: City Code of conduct 20230324
Attachments: BIRMINGHAM.pdf

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 25, 2023 at 10:38:22 PM EDT
To: Jana Ecker <Jecker@bhamgov.org>, Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: Andrew Haig <ahaig@bhamgov.org>
Subject: Fwd: City Code of conduct 20230324

Andrews comments.

----- Forwarded message -----

From: Andrew Haig <ahaig@bhamgov.org>
Date: Sat, Mar 25, 2023 at 7:42 PM
Subject: City Code of conduct 20230324
To: Markus Tom <tmarkus@bhamgov.org>, Kucharek Mary <mkucharek@bhlaw.us.com>

Please find a scan of my hand markup of the proposed code of conduct.
Let me know if any of it is hard to read.
Andrew

City Code of conduct 20230324

From the Ether

GENERAL NOTES FROM 1ST MEETING:

- NOT A LAW OR ORDINANCE BUT APPEARS TO BE QUASI LEGAL AS IT IS APPARENTLY A BINDING "CONTRACT" BETWEEN PARTIES, WITH CONSEQUENCES
- "INTERNAL" DOCUMENT THAT IS PUBLIC DOMAIN AND IS ENFORCED?
- POLICY FOR THE C.C. BY THE C.C.
- DOES NOT APPLY TO RESIDENTS - DESPITE THE FACT C.C ARE RESIDENTS AS WELL.
- BROAD FORM RESIDENT CODE TOO? IS AMENDMENT ISSUES WITH THE ABILITY TO EXPRESS FREELY AS A RESIDENT IS OUR MAIN TIME / LIFE AND IS A PRE-REQUISITE TO BE A C.C.



City Commission

Code of Conduct

Resolution # _____

- WHAT IF PERSONAL RESIDENT CONCERNS ARE SIGNIFICANT IN SOME ISSUES - DO WE NOW "SUFFER IN SILENCE" AS A CONSEQUENCE? AFFECTS OUR FAMILIES?

Sec. 1-1. - Purpose

As elected leaders of the community, the City Commissioners are entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

Sec. 1-2. - Role of City Commission

(1) The role of the City Commission is to:

- Make policy decisions.
→ AND FIRE
- Hire & consult with the City Manager.
- Consider For Approval:
 - Budget and related work plan;
 - Ordinances & policy decisions;
 - Certain Development proposals;
 - Rezoning requests.

REDUNDANT?

NOTE FULL COMMENT:

Commented [JC1]: Charter / Ordinance

- Appoint representatives to advisory boards and committees.
→ AND BOARD MEMBER

REDUNDANT?

Commented [JC2]: Charter / Ordinance

Commented [JC3]: Charter, Ordinance, City Code

Commented [JC4]: In Zoning Ordinance in certain Chapters

Commented [JC5]: Ordinances and resolutions not one spot

(2) Each City Commissioner is expected to:

- Act in accordance with the established and accepted Rules of Procedure.

CONSOLIDATION OF DOCUMENTS
BUT IS IT REDUNDANT?

(b) Act in accordance with the City Charter and the City Code of Ordinances.

(c) Recognize the City Commission as a whole speaks through its motions and resolutions collaboratively. → NEEDS TO LINK TO HOW BOARDS REFER UP TO THE C.C. OR IT'S ONLY 1 WAY.

(3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:

* CITY

COMMISSIONER OR
ITS COMMISSIONERS

DO NOT

(a) Hire and fire staff. - EXCEPT THE CITY MANAGER - UNLESS SPECIFIED THIS INDICES QUESTIONS + CONTRADICTION?

(b) Direct the activities of staff members, other than the City Manager.

(c) Individually direct the activities of boards, committees, subcommittees or other resident groups.

(d) Individually approve policies, projects, etc.

(e) Individually commit City resources or staff to specific causes.

(f) Individually enforce policies, City Code, etc.

(g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.

(4) City Commissioners recognize it is the role of the City Manager to:

(a) Provide best efforts & advice to the City Commission.

(b) Manage City operations & direct staff.

(c) Propose budget & policies.

(d) Implement City Commission decisions.

(e) Deliver services to the citizens.

(f) Equitably enforce codes & policies.

- WHERE DOES THE CITY ATTORNEY
COME INTO THE PICTURE HERE?
C.A. BESS REFERRED TO FREQUENTLY
IN PRACTICE.

C.A. IS ALSO PICKED WITH C.C. INPUT → ?

HOW DOES THIS INTERACTION + RESPONSIBILITY
TO ALL PARTIES QUESTIONS + ACTIVITIES
WORK WITH THE C.C. IN REALITY?

DOES IT NEED SPECIFYING
AS THIS COULD GET
BUDGET SOME.

(5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:

(a) Provide the community's perspective.

↳ TO ALLOW THIS TO HAPPEN C.C. CANNOT

BE CONSTRAINED IN MEETING, TALKING WITH, COMMUNICATING WITH
ALL THE ENTIRE COMMUNITY AS IT WHOLE OR ELSE IT IS PREVENTING
OUR ABILITY TO PERFORM THIS ONE SENTENCE AT ALL WELL.

CANNOT THROTTLE OR SUPPRESS INTERACTION OR FEEDBACK AS
THIS IS IMPOSSIBLE TO ACHIEVE. BECOMES A TUNNEL
PERSPECTIVE AND A DISTORTED COMMUNITY VIEW (RISK).

10E1

CC MUST BE ALLOWED TO 'TRUST BUT VERIFY'

10E2

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

IF WE ARE PREVENTED FROM JOINT MEETINGS OR FROM HAVING ROUTINE IN PERSON INTERACTION WITH THEM, THIS BECOMES TOO ABSTRACT AND AT RISK OF MISUNDERSTANDING DUE TO LIMITED COMMUNICATION Avenues USED.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

- (1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:
 - (a) Respect staff as valued resources and members of the team.
 - (b) Treat all staff as professionals.
 - (c) Refrain from disrupting staff from their jobs.
 - (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
 - (e) Provide direction to the City Manager and not direct the work of individual staff members. → CITY ATTORNEY DIRECTION IN SOME SITUATIONS?
 - (f) Send to the City Manager all communications and questions for staff.
 - (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
 - (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
 - (i) Refrain from soliciting political support from staff.
- (2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:
 - (a) View boards and committees as vitally important resources to support decision-making.

– HOW MUCH IS DOCUMENTED IN OTHER FORMS?

HOW MUCH IS GENERALLY ACCEPTED HUMAN BEHAVIOUR?

– HOW DOES THIS APPLY TO EVERYONE ELSE?

THIS IS A 2 PARTY INDUCTION AND REQUIRES BOTH TO OPERATE UNDER THE SAME RULES

– COMMON THEMES TO ALL BOARDS TOO?

CANNOT CREATE A SUBSET THAT IS SOMEWHAT DISCRIMINATORY....

Commented [JG]: Ordinance not verbatim though

THESE SOMEWHAT COUNTERACT WITH
EACH OTHER. HOW DO WE GET FEEDBACK
PROPERLY, HOW DO THE JUNE MTG'S WORK
IN PRACTICE?

HOW DO WE CROSS POLLINATE AND THRIVE? →

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work. *PERMITTED, WHICH HAS BEEN AN ISSUE ALREADY. (SEE OTHER NOTES)*
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

THIS CROSS POLLINATION IS
→ LACKING AND NOT BEING
PERMITTED, WHICH HAS BEEN AN ISSUE ALREADY.
(SEE OTHER NOTES)

Commented [JC7]: Ethics Ordinance

THIS HAS BEEN SHOWN TO BE
→ AN ISSUE WHEN ACTIVITIES
AFFECT C.C. PERSONAL LIVES.

SOMETIMES THIS CANNOT BE
ENFORCED AS IT WILL BE TO OUR
PERSONAL DETRIMENT AND THAT IS
NOT FAIR + CAN CREATE A
2 CLASS SYSTEM FOR
RESIDENTS.

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

(1) IN PUBLIC MEETINGS

- (a) Practice civility, professionalism and decorum in discussions and debate. Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.

MUST APPLY TO ALL
OF ITS POINTERS.

HOWEVER THIS INHIBITS THE
DESIRED CROSS POLLINATION
OF IDEAS + THOUGHT.

- (b) Use Respectful Behavior at All Times.

AND BOARD MEMBERS.

i. City Commissioners shall:

1. Treat people with courtesy, politeness and kindness.
2. Encourage others to express their opinions and ideas.
3. Listen to what others have to say.
4. Use the ideas of others to improve decisions and outcomes.
5. Recognize and respect differences.

COMMON COURTESY

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

MY NOTE TOO
Commented [JC8]: In general Robert's Rules of Order

Commented [JC9]: Ordinance Sec. 14

Commented [JC10]: Robert's Rules of Order

(c) **Honor the role of the Mayor in maintaining order**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

*WHAT IF THE MAYOR IS OVER
RULING OR NOT BEHAVING WELL?
WHO THEN STEPS IN AS THE
"ADULT IN THE ROOM"?*

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion. *→ WHAT IF THE MAYOR IS NOT*

Commented [JC11]: Robert's Rules of Order

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

*MAINTAINING CONTROL OR IS
THE ONE CAUSING OFFENSE ETC?
- WHAT IF THIS IS OUTSIDE
OF A MEETING (FORMAL)*

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

(a) **Continue respectful behavior in private.**

- SOCIAL MEDIA?
- "FEEDING" MEDIA IN GENERAL IN PRIVATE. WE KNOW THIS HAPPENS REGULARLY BY SOME.

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

- (b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(3) EX PARTE COMMUNICATION

- (a) **Ex Parte Contacts/Fair Hearings.**

City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing. *WHAT EXACTLY MEANS QUASI JUDICIAL? WHO DEFINES IT BY CIRCUMSTANCE? WHO DRAWS THE LINE AND WHO APPROVES THE DELINEATION?*

- (b) **Exposure to Information.**

A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self reporting and disclosure is mandatory. *WHO DEFINES EXPOSURE LIMITS? - READING A SOCIAL MEDIA POST?*

THIS HAS A HUGE RISK OF CRIPPLING INFORMATION GATHERING ABILITY IF NOT CAREFUL.

Sec. 1-5. - Working with the Public

WHAT IF C.C. OR ANYONE ELSE DISAGREES WITH THIS?

IF SOMEONE FEELS STRONGLY ENOUGH TO ASK, WHAT ARE THE CRITERIA FOR DETERMINING THE PUBLIC IMPORTANCE?

(1) Residents.

City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting. *→ WHAT IF IT IS ASKED TO BE PUBLIC COMMENT IN A MEETING?*

(2) Business or other interests.

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

proposals. The City Commission should be receiving all information as a whole Commission in a public meeting.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public. → 1ST, THEN DIVIDED. CANNOT
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote. → NOTHING IS OFFICIAL UNTIL VOTED UNANIMITY
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

SUPPOSE PERSONAL OPINIONS AS NOT EVERYTHING CAN BE FORMALISTIC OR BINARY ANSWERS

UNLESS IT IS INCOMPLETE DUE TO INCOMPLETE DATA AND DELIBERATION.

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

→ WHY? IF PERSONAL POSITION WAS DISTANCE

FACTUAL VOTE RESULT IS THAT PERSONAL REASONS ARE BEHIND THE DECISIONS DATA AND DELIBERATIONS

- WHAT IF THE MAYOR IS THE OFFENDER? WHO TAKES OVER IN THAT SITUATION?

- WHAT IF THE MAYOR IS THE COMPLAINANT? → RISK.

- IS THIS A UNILATERAL DECISION PROCESS? POSSIBLY THAT CAN BE A BITS ASIDE DUE TO PERSONAL REASONS
THIS IS WHY WE HAVE A 7 PERSON C. FOR A MAJORITY CONSENSUS

10E1

- IS THIS A REDUNDANT THAT FUNCTIONALLY IS REDUNDANT AS THERE IS NO PROCEED AND IT IS AN AUTOMATIC "IF-THEN" STATEMENT? CUMMINGS

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

O:\Birmingham\CODE OF CONDUCT\2023 02 03 RESOLUTION 2023 (CLEAN) CODE OF CONDUCT.docx

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: Code of Conduct - invited comments
Attachments: Code of Conduct - Comments.pdf

Sent from my iPhone

Begin forwarded message:

From: Therese Longe <tlonge@bhamgov.org>
Date: March 24, 2023 at 9:58:36 PM EDT
To: Tom Markus <tmarkus@bhamgov.org>, Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: **Code of Conduct - invited comments**

Comments attached.

Thank you!



City Commission

Code of Conduct

Resolution # _____

Sec. 1-1. -- Purpose

As elected leaders of the community, the City Commission is entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

only?
The Commission has an obligation to provide responsible governance and to foster a collaborative, respectful, and inclusive environment that encourages people to live, work, and visit the City.

Sec. 1-2. -- Role of City Commission

(1) The role of the City Commission is to:

- (a) Make policy decisions.
- (b) Hire & consult with the City Manager.
- (c) Consider For Approval:
 - i. Budget and related work plan;
 - ii. Ordinances & policy decisions;
 - iii. Certain Development proposals;
 - iv. Rezoning requests.
- (d) Appoint representatives to advisory boards and committees.

(2) Each City Commissioner is expected to:

- (a) Act in accordance with the established and accepted Rules of Procedure.

Commented [JC1]: Charter Ordinance

Commented [JC2]: Charter / Ordinance

Commented [JC3]: Charter, Chapter III., Sec. 2

Commented [JC4]: In Zoning Ordinance in certain Chapters

Commented [JC5]: Ordinances and resolutions not one spot

1

Sec 1-3

Unclear meaning:

in joint meetings?

When Commission gives direction at the meeting?

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

> duplicative?

Commented [JC7]: Ethics Ordinance

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

(1) IN PUBLIC MEETINGS

- (a) **Practice civility, professionalism and decorum in discussions and debate.**
Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.
- (b) **Use Respectful Behavior at All Times.**
 - i. **City Commissioners shall:**
 1. Treat people with courtesy, politeness and kindness.
 2. Encourage others to express their opinions and ideas.
 3. Listen to what others have to say.
 4. Use the ideas of others to improve decisions and outcomes.
 5. Recognize and respect differences.

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

Commented [JC8]: In general Robert's Rules of Order

Commented [JC9]: Ordinance Sec. 74

Commented [JC10]: Robert's Rules of Order

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

support and facilitate

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

Commented [JC11]: Robert's Rules of Order

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

(a) **Continue respectful behavior in private.**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

(b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

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(3) **EX PARTE COMMUNICATION**

(a) **Ex Parte Contacts/Fair Hearings.**

City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.

(b) **Exposure to Information:**

A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self-reporting and disclosure is mandatory.

Sec. 1-5. - Working with the Public

(1) **Residents.**

City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting.

(2) **Business or other interests.**

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

*Requests for information
or resolution of complaints.*

proposals. The City Commission should be receiving ~~all~~ information as a whole Commission in a public meeting.

from applicants

Note: this should not prevent Commissioners from participating in other forums, service orgs, reading, etc.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public.
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote.
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

While a Commissioner may have a pre-existing point of view,

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand.

Commissioners should refrain from disparaging in public, or in conversation with members of the public, decisions of the Commission with which they disagree.

- Does this duplicate role of Ethics Board?
- Seems burdensome in process.
- Can we simplify?

Is there any burden or test, or does every question/complaint lead to a public hearing?

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: Code of conduct comments
Attachments: Code of Conduct comments.pdf

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 24, 2023 at 5:45:41 PM EDT
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: Clinton Baller <cballer@bhamgov.org>
Subject: Fwd: Code of conduct comments

----- Forwarded message -----

From: Clinton Baller <clinton@baller4bham.com>
Date: Fri, Mar 24, 2023 at 5:41 PM
Subject: Code of conduct comments
To: Tom Markus <tmarkus@bhamgov.org>, Jana Ecker <Jecker@bhamgov.org>
CC: Therese <tmquattro@gmail.com>

Tom: Please see attached and forward to Ms. Kucharek. Thanks. cb



**City Commission
Code of Conduct**

Resolution # _____

Sec. 1-1. – Purpose

As ~~elect~~ elected leaders of the community, the City Commission is entrusted to collaborate, and work as a ~~united~~ team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners ~~must~~ come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect. **should**

Sec. 1-2. – Role of City Commission

(1) The role of the City Commission is to:

(a) Make policy decisions.

(b) Hire & consult with the City Manager.

Commented [JC1]: Charter / Ordinance

(c) Consider For Approval:

- i. Budget and related work plan;
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- iii. Certain Development proposals;
- iv. Rezoning requests.

Commented [JC2]: Charter / Ordinance

Commented [JC3]: Charter, Chapter III., Sec. 2

Commented [JC4]: In Zoning Ordinance in certain Chapters

Commented [JC5]: Ordinances and resolutions not one spot

(d) Appoint representatives to advisory boards and committees.

(2) Each City Commissioner is expected to:

(a) Act in accordance with the established and accepted Rules of Procedure.

- (b) Act in accordance with the City Charter and the City Code of Ordinances.
- (c) Recognize the City Commission as a whole speaks through its motions and resolutions ~~collaboratively~~.

Most of this either goes without saying, or is part of charter or established rules of procedure. But no objections.

(3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:

- (a) Hire and fire staff.
- (b) Direct the activities of staff members, other than the City Manager.
- (c) Individually direct the activities of boards, committees, subcommittees or other resident groups.
- (d) Individually approve policies, projects, etc.
- (e) Individually commit City resources or staff to specific causes.
- (f) Individually enforce policies, City Code, etc.
- (g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.

If this is "in accordance with the City Charter and Code of Ordinances," then it is duplicative. But no objections.

(4) City Commissioners recognize It is the role of the City Manager to:

- (a) Provide best efforts & advice to the City Commission.
- (b) Manage City operations & direct staff.
- (c) Propose budget & policies.
- (d) Implement City Commission decisions.
- (e) Deliver services to the citizens.
- (f) Equitably enforce codes & policies.

(5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:

- (a) Provide the community's perspective.

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

(1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:

- (a) Respect staff as valued resources and members of the team.
- (b) Treat all staff as professionals.
- (c) Refrain from disrupting staff from their jobs.
- (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
- (e) Provide direction to the City Manager and not direct the work of individual staff members.
- (f) Send to the City Manager all communications and questions for staff.
- (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
- (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
- (i) Refrain from soliciting political support from staff.

Commented [JC6]: Ethics Ordinance not verbatim though

(2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:

- (a) View boards and committees as vitally important resources to support decision-making.

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

I suggest rewording (b). There are really two ideas here: communicate effectively and give them tools.

Commented [JC7]: Ethics Ordinance

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

Most of this is unnecessary and presumptive. The commission is comprised of individuals who managed to get themselves elected. Period. The only part that matters is that "each commissioner agrees to abide by the following standards of conduct."

(1) IN PUBLIC MEETINGS

- (a) **Practice civility, professionalism and decorum in discussions and debate.**
Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.
- (b) **Use Respectful Behavior at All Times.**
 - i. **City Commissioners shall:**
 1. Treat people with courtesy, politeness and kindness.
 2. Encourage others to express their opinions and ideas.
 3. Listen to what others have to say.
 4. Use the ideas of others to improve decisions and outcomes.
 5. Recognize and respect differences.

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

Some of this duplicates what is above, beginning with "Practice civility..." I would suggest combining it.

Commented [JC8]: In general Robert's Rules of Order

Commented [JC9]: Ordinance Sec. 74

Commented [JC10]: Robert's Rules of Order

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

"Honor," or RESPECT?

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

Commented [JC11]: Robert's Rules of Order

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

(a) **Continue respectful behavior in private.**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

(b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(3) **EX PARTE COMMUNICATION**

(a) **Ex Parte Contacts/Fair Hearings.**

City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.

(b) **Exposure to Information.**

A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self-reporting and disclosure is mandatory.

It would be helpful to institute, at least temporarily, a regular reminder of this rule before relevant commission discussions.

Sec. 1-5. - Working with the Public

(1) **Residents.**

City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting.

This needs clarification, probably in the use of the word "concerns." It should not prohibit a commissioner from discussing city business or policy questions (possibly considered "concerns,") with constituents.

(2) **Business or other interests.**

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

proposals. The City Commission should be receiving all information as a whole Commission in a public meeting.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) ~~Do not advocate for a personal or specific point of view outside of City Commission meetings with the public.~~
~~XXXXXXXXXXXX~~
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote.
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

The last sentence about "receiving all information" might be omitted or clarified. It should not prohibit a commissioner from independently researching a topic in preparation for a discussion.

I would not call these "overarching principals." Which raises the very good question that each commissioner might be asked: "What do you believe are the overarching principals for working with the community?"

This should be amended to explicitly state that nothing here is meant to suggest that a commissioner is in any way prohibited from advocacy on behalf of legislation or other public policy.

Commissioners, in their oaths of office, promise to uphold the law. Does that mean they can't disagree with established law? What about cases in which amendments to law are proposed? A disclaimer here might also be appropriate. Nothing is meant to abridge a commissioner's right to free speech. Or just suggest that, in general, commissioners should do this or that, and lose any firm prescriptive language.

NO, NO, NO!! You say it is meant to be "self-enforcing," (whatever that means!), and then go on to prescribe an elaborate procedure that seems to be anything but, allowing anyone to make a claim of "violation." Notice? Certified mail?! Hearings!? NO! If someone breaks the law (including the Ethics Ordinance), then let them face the appropriate consequences of breaking that law. This entire section should be deleted.

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

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