



Agenda

Regular Meeting of the City Commission

City of Kalamazoo

Monday, April 1, 2019

7:00 PM

City Commission Chambers at City Hall - 241 W. South Street

A. CALL TO ORDER/ROLL CALL

B. OPENING CEREMONY

1. Invocation: Pastor Nathan Dannison, First Congregational Church
2. Pledge of Allegiance
3. Introduction of Guests
4. Proclamations
 - a. Child Abuse Prevention Month
 - b. Sexual Assault Awareness Month

C. ADOPTION OF FORMAL AGENDA

D. COMMUNICATIONS

1. Calendar of Upcoming Meetings

E. PUBLIC HEARINGS

F. CONSENT AGENDA

(Action: Motion to approve Items "1-11"; hold Item "12" until April 15, 2019; and authorize the City Manager to sign all documents on behalf of the City)

1. Approval of a one-year contract with Republic Services for the transportation and disposal of plant screenings from the Kalamazoo Water Reclamation Plant in the amount \$105,300.
2. Approval of a contract with JV Contracting for pavement line striping & specialty pavement marking in the amount of \$157,274.80.
3. Approval of a contract with Earth Works Lawn & Landscape for Mountain Home and Riverside Cemetery mowing and maintenance in the amount of \$399,900; and approve a budget adjustment in the amount of \$107,292.
4. Approval of the purchase of four new John Deere 310SL HL

backhoes with buckets, hydraulic breakers and compactors from AIS Construction Equipment in the amount of \$521,441.80.

5. Approval of a contract with Wightman & Associates, Inc. for professional engineering services related to the Oakland Drive improvements, Parkview Avenue to Howard Street, in the amount of \$178,750.
6. Approval of a one-year contract for the purchase of fluorosilic acid from PVS-Nolwood Chemicals, Inc. in the amount of \$106,500. Bid Ref# 18004-004.0
7. First reading of an ordinance to rezone 604 N. Drake Road from Zone RS-5 to Zone CC and schedule a public hearing for April 15, 2019.
8. Approval of amendments to the Fiscal Year 2018 budgeted appropriations to increase the General Fund revenues by \$1,100,000 and increase the General Fund expenses by \$2,430,000.
9. Authorization for the City Manager to execute a Bilateral Permit with Zayo Group LLC pursuant to the Metropolitan Extension Telecommunications Right of Way Oversight (METRO) Act.
10. Approval of the Mayor's reappointments to the following boards and commissions:
 - the reappointment of **Dean Bergy** to the Retirement and Perpetual Care Investment Committees for a term expiring on March 31, 2022;
 - the reappointment of **Sandi Doctor** to the Retirement and Perpetual Care Investment Committees for a term expiring on March 31, 2022;
 - the reappointment of **Jan Van Der Kley** to the Retirement and Perpetual Care Investment Committees for a term expiring on March 31, 2022.
11. Approval of the minutes from the City Commission meetings on March 18, 2019.
12. Authorization for the City Manager to execute all necessary documents for the City to acquire Lot 3 of Sun Valley Acres to address local flooding conditions. (*Hold until April 15, 2019*)

G. REGULAR AGENDA

1. Adoption of proposed amendments to Chapter 21 of the Kalamazoo City Code of Ordinances regarding the decriminalization of certain violations and changes to sections regarding Abandoned Residential Structures and nuisances, including graffiti. **(Action: Motion to adopt the ordinance)**

H. REPORTS AND LEGISLATION

1. City Manager's Report
2. City Clerk's Report

I. UNFINISHED BUSINESS

J. POLICY ITEMS

1. Approval of an amendment to City Commission Policy 45.1 addressing Freedom of Information Act Procedures and Guidelines to incorporate recent changes to state law. **(Action: Motion to approve the policy amendments)**

K. NEW BUSINESS

1. Consideration of a **RESOLUTION** addressing the proposed creation of two new local historic districts.

L. CITIZEN COMMENTS

M. MISCELLANEOUS COMMENTS BY COMMISSIONERS

N. CLOSED SESSION

O. ADJOURNMENT

ADDITIONAL INFORMATION

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Questions regarding agenda items may be answered prior to the meeting by contacting the City Manager's Office at 269.337.8047.

Persons with disabilities who need accommodations to effectively participate in City Commission meetings should contact the City Clerk's Office at 337-8792 a week in advance to request mobility, visual, hearing or other assistance.

Agendas for the regular meetings of the Kalamazoo City Commission are available on the Internet at: www.kalamazoocity.org

The Kalamazoo City Commission business meetings are held on the first and third Mondays at 7:00 p.m. and are shown live on the Public Media Network (channel 190 for

Charter customers, channel 99 for U-Verse customers). Business meetings are also web streamed live on the City's YouTube channel at <https://goo.gl/Q6DW37>. Public Media Network rebroadcasts these meetings on Tuesdays at 8:00 a.m., Wednesdays, at 1:00 a.m., and Thursdays at 3:00 p.m. Recorded meetings are also available on-demand on the YouTube channel.



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: Scott A. Borling, City Clerk

PREPARED BY: Shelby Moss, Deputy City Clerk

DATE: 2/19/2019

SUBJECT: Calendar of Upcoming Meetings

INFORMATIONAL ITEMS

Attached is the calendar of upcoming meetings of the City Commission's advisory boards, commissions, and committees.

ATTACHMENTS:

	Type	Description
▢	Meeting Schedule	20190401 Calendar of Meetings



Calendar of Upcoming Meetings

City of Kalamazoo

City Commission (next 30 days)

Regular Business Meetings – 7:00 p.m. in the City Commission Chambers

April 15th and May 6th

Regular Neighborhood Meetings – 6:00 p.m. in the Community Room at City Hall

April 15th

Advisory Boards, Commissions and Committees (next two weeks)

The **Tree Committee** will meet on Tuesday, April 2, 2019 at 2:00 p.m., in the Public Services Conference Room, located at 415 Stockbridge Avenue.

The **Parks and Recreation Advisory Board** will meet on Tuesday, April 2, 2019 at 5:30 p.m., in the Parks and Recreation Community Room at Mayors' Riverfront Park, located at 251 Mills Street.

The **Citizen-Public Safety Review and Appeals Board** will meet on Tuesday, April 9, 2019 at 6:00 p.m. in the Parks and Recreation Community Room at Mayors' Riverfront Park, located at 251 Mills Street.

The **Kalamazoo Historic Preservation Commission** will meet on Tuesday, April 9, 2019 at 6:00 p.m., in the Community Room at City Hall.

The **Planning Commission** will meet on Tuesday, April 9, 2019 at 7:00 p.m., in the City Commission Chambers at City Hall.

The **Traffic Board** will meet on Thursday, April 11, 2019 at 2:00 p.m., in the Public Services Conference Room, located at 415 Stockbridge Avenue.

The **Community Development Act Advisory Committee** will meet on Thursday, April 11, 2019 at 6:30 p.m., in the Community Room at City Hall.

The **Zoning Board of Appeals** will meet on Thursday, April 11, 2019 at 7:00 p.m., in the in the City Commission Chambers at City Hall.

The **Shared Prosperity Kalamazoo Organizing Committee** will meet on Monday, April 15, 2019 at 12:30 p.m., in the Community Room at City Hall.

The **Downtown Development Authority Board** will meet on Monday, April 15, 2019 at 3:00 p.m., in the Community Room at City Hall. The **Downtown Economic Growth Authority Board** will meet immediately following.



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE Public Services Director and City Engineer

PREPARED BY: James H. Cornell, Wastewater Division Manager

DATE: 3/8/2019

SUBJECT: Republic Services Contract Extension for Transportation and Disposal of Plant Screenings Bid Ref. #968-71-014.1

RECOMMENDATION

It is recommended the City Commission approve a one year contract with Republic Services for the transportation and disposal of plant screenings from the Kalamazoo Water Reclamation Plant in the amount \$105,300.00.

BACKGROUND

The City of Kalamazoo Water Reclamation Plant (WRP) mechanically screens plastic and debris from the influent wastewater with barscreen units and fine screen units. Additionally, City vactor crews remove blockages in sewer lines before they reach the WRP to prevent sanitary sewer overflows (SSO's). The material removed by the screens and from the sanitary sewer lines are then transported to and disposed of at a landfill.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

Funds have been budgeted for this expenditure in the Public Services budget in the amount of \$61,425 for the 2019 portion of the contract and \$43,875 will be budgeted for the 2020 portion of the contract.

ALTERNATIVES

No alternatives have been considered at this time, as landfill disposal is the proper method of disposal for this material.



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE Public Services Director and City Engineer

PREPARED BY: Eric Arnsman, PE, Traffic Engineer

DATE: 3/12/2019

SUBJECT: Contract for Annual Pavement Line Striping & Specialty Pavement Marking Bid Ref# 96861-012.0

RECOMMENDATION

It is recommended that City Commission approve contract with JV Contracting in the amount of \$157,274.80.

BACKGROUND

Pavement markings are essential for maintaining safe and efficient travel through the City of Kalamazoo for motorized and non-motorized public. Pavement markings are repainted annually after a visual inspection performed by staff during the warmer season when the markings can be applied. This year, the City of Kalamazoo and the Road Commission of Kalamazoo County participated in a joint bidding process for pavement marking services. The three categories have been combined to simplify the process. The low bid was for \$157,274.80 by JV Contracting. The contract would be for 2019 with the possibility of three (3) one year extensions.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

The cost for this service was budgeted in the 2019 budget.

ALTERNATIVES

The alternative for this contract would be to not having pavement markings on streets which would cause major traffic safety concerns and inefficient mobility for motorized and non-motorized users.

ATTACHMENTS:

Type	Description
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▣ Aerial Bid Results Summary
Photo

BID RESULTS SUMMARY

PROJECT: Cooperative Bid with RCKC for
Pavement Line Striping
BIDDERS SOLICITED: RCKC bid

DATE: March 14, 2019

BIDDERS RESPONDED: 3

BID REFERENCE NO: 96861-012.0

MBE/WBE AWARDED: No

ISSUE DATE: RCKC Bid

BID OPENING: February 15, 2019

APPROVAL REQUIRED: City Commission

FUNDED BY: City

<u>BIDDERS</u>	<u>AMOUNT BID</u>	<u>LOCATION</u>
JV Contracting	\$157,274.80	Goodrich, MI
M&M Pavement Marking	\$200,116.00	Grand Blanc, MI
PK Contracting	\$233,119.20	Troy, MI

Purchasing procedures have been followed and City Attorney has reviewed as to form.



Melissa Fuller
*Deputy Director of Mgmt Services/
Purchasing Agent*



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE Public Services Director and City Engineer

PREPARED BY: Wendy M. Burlingham, Administrative Support Manager

DATE: 3/13/2019

SUBJECT: 2019 Cemetery Property Maintenance – Bid Reference #98852-052.0

RECOMMENDATION

It is recommended that the City Commission approve a contract with Earth Works Lawn & Landscape for Mountain Home and Riverside Cemetery mowing and maintenance in the amount of \$399,900 and approve a budget adjustment in the amount of \$107,292.

BACKGROUND

In February 2019, the Purchasing Division solicited bids for this service. Earth Works Lawn & Landscape was the lowest responsive bidder. This service is for the annual mowing and leaf pick-up work at the City's two cemeteries, Mountain Home and Riverside.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

Funding is included in the 2019 operating budget for this contract and the requested budget adjustment.

ALTERNATIVES

The Commission could deny this request, however that is not recommended as it would impact the appearance of the cemeteries and put the City in violation of its own ordinances.

ATTACHMENTS:

	Type	Description
□	Aerial Photo	Bid Results Summary

BID RESULTS SUMMARY

PROJECT: Cemeteries Property Mowing

DATE: March 12, 2019

BIDDERS SOLICITED: 52

BIDDERS RESPONDED: 3

MBE/WBE BIDS SOLICITED: 17

MBE/WBE BIDDERS RESPONDED: 0

BID REFERENCE NO: 98852-052.0

MBE/WBE AWARDED: No

ISSUE DATE: February 19, 2019

BID OPENING: March 12, 2019

APPROVAL REQUIRED: City Commission

FUNDED BY: City

<u>BIDDERS</u>	<u>AMOUNT BID</u>	<u>LOCATION</u>
*JH Maintenance	\$255,000.00	Kalamazoo, MI
Earth Works Lawn and Landscape	\$399,900.00	Kalamazoo, MI
Northern Landscape	\$428,000.00	Kalamazoo, MI

*JH Maintenance withdrew Bid, unable to perform.

Purchasing procedures have been followed and City Attorney has reviewed as to form.

Melissa Fuller

Melissa Fuller
*Deputy Director of Mgmt Services/
Purchasing Agent*



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE Public Services Director and City Engineer

PREPARED BY: Gary Doorlag, City Fleet Manager

DATE: 3/13/2019

SUBJECT: Purchase of Four (4) John Deere 310SL HL Backhoes Bid Ref#00000-019.23

RECOMMENDATION

It is recommended that the City Commission approve the purchase of four (4) new John Deere 310SL HL backhoes with buckets, hydraulic breakers and compactors from AIS Construction Equipment, of Lansing Michigan in the amount of \$521,441.80.

BACKGROUND

The Public Services Department Water Division would utilize three of these backhoes. Two will serve as replacements for two backhoes (John Deere 310SG & Volvo BL70) that will be traded in for a total credit of \$23,500 which is reflected in the state contract quote number 071B770090. One will be used by the new Lead Services crew and the fourth will be utilized by the Public Works Division crew.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

Funds have been budgeted for this expenditure in the Public Services Water and Capital Improvement budgets.

ALTERNATIVES

There is no viable alternative as this equipment is needed for the City's Water and Public Works crews.



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE Public Services Director and City Engineer

PREPARED BY: Anna C. Crandall, EIT, Senior Civil Engineer – Water Resources

DATE: 3/15/2019

SUBJECT: Professional Engineering Services – Oakland Drive Improvements,
Parkview Avenue to Howard Street Bid Ref # 906-46-015.1.8

RECOMMENDATION

It is recommended that the City Commission approve a contract with Wightman & Associates, Inc. for professional engineering services related to the Oakland Drive Improvements, Parkview Avenue to Howard Street, in the amount of \$178,750.00.

BACKGROUND

Oakland Drive between Parkview Avenue and Howard Street was identified as a project receiving federal funding in 2020 on the Kalamazoo Area Transportation Study (KATS) Transportation Improvement Program (TIP). The project is slated for federal funding in the amount of \$860,000.00 for roadway improvements related to two-course HMA resurfacing and ADA ramp upgrades. This section of roadway was also identified by Public Services for water main replacement, as the current water main is undersized for its use and has experienced numerous water main breaks over the years.

Public Services reached out to Wightman & Associates, Inc. to request a quote for professional engineering services related to the roadway and water design work. Wightman & Associates, Inc. quoted a not to exceed fee of \$178,750.00 for the work. Wightman & Associates, Inc. is currently prequalified by the City for both roadway and water professional services. Public Services has been very satisfied with Wightman & Associates, Inc. work on previous projects, and recommends approval of this contract.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

Funding for this project is accounted for in the 2019 Water and Major Streets Capital Improvement Budget. Funding summary is as follows:

Funding:	2019 Water CIP Budget (wat0500319)	<u>\$90,480.00</u>
	2019 Major Streets CIP Budget (mst0100210)	<u>\$88,270.00</u>
		\$178,750.00
Costs:	Water	\$90,480.00
	Roadway	<u>\$75,530.00</u>
	Sidewalk	<u>\$12,740.00</u>
		\$178,750.00

ALTERNATIVES

The City Commission could chose to postpone or cancel this project.



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE Public Services Director and City Engineer

PREPARED BY: Thomas Spitzner, Water Operations Supervisor

DATE: 3/18/2019

SUBJECT: 2019 Contract for the Purchase of Fluorosilic Acid for Water Treatment
Bid Ref# 18004-004.0

RECOMMENDATION

It is recommended that the City Commission approve a one-year contract for the purchase of fluorosilic acid from PVS-Nolwood Chemicals, Inc. of Detroit MI in the amount of \$106,500.

BACKGROUND

The fluorosilic acid contract was bid in February 6, 2019 and PVS-Nolwood Chemicals, Inc was the low bidder.

The City of Kalamazoo has been adding fluoride to the public drinking water supply since 1951. The decision to add fluoride was based on several studies and the recommendation of the State of Michigan Department of Public Health.

The addition of fluoride to public water supplies in the United States has been shown in numerous studies to significantly improve overall dental health and substantially reduce the incidence of dental caries. The use of fluoride in public drinking water supplies has also been characterized by the Center for Disease Control and Prevention (CDC) as one of the top ten public health advancements in the last 100 years; and is strongly supported by local, state and federal representatives and the American Dental Association (ADA).

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

Funds for this contract were included in the 2019 Water Budget.

ALTERNATIVES

An alternative would be to discontinue addition of fluoride to the drinking water. Given the documented benefit to the overall dental health of City water customers, discontinuing the use of fluoride is not recommended. While addition of fluoride to the City’s water supply is not required, it is regulated by the Michigan Department of Environmental Quality (MDEQ). If the City would discontinue the use of fluoride, notification would have to be made to the MDEQ.

ATTACHMENTS:

	Type	Description
▣	Aerial Photo	Bid Results Summary

BID RESULTS SUMMARY

PROJECT: Fluorosilicic Acid

DATE: March 18, 2019

BIDDERS SOLICITED: 79

BIDDERS RESPONDED: 3

MBE/WBE BIDS SOLICITED: 14

MBE/WBE BIDDERS RESPONDED: 0

BID REFERENCE NO: 18004-004.0

MBE/WBE AWARDED: No

ISSUE DATE: January 10, 2019

BID OPENING: February 6, 2019

APPROVAL REQUIRED: City Commission

FUNDED BY: City

<u>BIDDERS</u>	<u>AMOUNT BID</u>	<u>LOCATION</u>
PVS-Nolwood Chemicals, Inc.	\$106,500.00	Detroit, MI
Alexander Chemicals	\$115,000.00	Peru, IL
Haviland Products Company	\$160,250.00	Grand Rapids, MI

Purchasing procedures have been followed and City Attorney has reviewed as to form.



Melissa Fuller
*Deputy Director of Mgmt Services/
Purchasing Agent*



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Christina Anderson, City Planner

PREPARED BY: Rob Bauckham, Senior Development Planner

DATE: 3/21/2019

SUBJECT: Rezone 604 N. Drake Road

RECOMMENDATION

It is recommended that the City Commission offer for first reading an ordinance to rezone 604 N. Drake Road from Zone RS-5 to Zone CC, and schedule a public hearing for April 15, 2019.

BACKGROUND

The subject parcel is vacant. It previously contained a single-family home. The applicant for the zoning change is Westwood Plaza, LLC. The applicant owns the parcel along with the adjacent property to the south, which contains the stores and businesses that make up the Westwood Plaza shopping complex. A new restaurant with a drive-through is being planned for the western portion of the complex at the corner of Drake Road and West Main. To better accommodate the new restaurant, the applicant would like to relocate an existing driveway entrance into the Plaza from Drake Road. This driveway would be moved north, onto the subject parcel. As such, the applicant would like to change the zoning of the parcel to the same CC zone as the current Westwood Plaza property.

POLICY CONSIDERATIONS

The 2025 Master Plan Future Land Development Plan denotes the subject parcel to be included in the R-1 Residential future land use category. Staff believes the zoning change to the Commercial District is appropriate for the following reasons:

1. The boundaries of the future land use plan are "painted with a broad brush," meaning they aren't intended to exactly follow property lines. The parcel is directly north and east of commercially zoned property.
2. The parcel in question fronts and only has access from Drake Road. It shares a rear property line with a rear property line of a residential lot off a cul-de-sac, making access from the residential street, Westbury Lane, unlikely.
3. Drake Road provides this lot's commercial context.

The request also addresses the Economic Vitality goal of the Strategic Vision. It does so by allowing an existing driveway entrance to be relocated onto the subject parcel creating sufficient space for a planned new restaurant

at the corner of Drake and West Main. This project will revitalize this portion of the Westwood Plaza, which formerly contained a commercial building that was removed several years ago.

COMMUNITY RESOURCES CONSULTED

The applicant spoke with the director of the Westwood Neighborhood Association regarding the rezoning. The applicant also communicated with many neighbors surrounding the subject parcel about the request. The applicant reported that no comments of concern were provided by the neighbors or the neighborhood director.

Notices were mailed to all property owners and occupants located within 300 feet of the subject parcel regarding the rezoning request and inviting them to the Planning Commission meeting. A notice of the meeting was also published in the Kalamazoo Gazette.

During the public hearing, there were no citizen comments opposing the rezoning request. The property owner directly to the northeast voiced support for the request. A letter was received from the attorney for the property owner at 624 N. Drake Road indicating no opposition to the request. The Planning Commission voted to recommend approval of the rezoning request to the City Commission by a vote of 7 to 1. Commissioner Vyas, who voted no, questioned the open space and environmental compliance of the planned restaurant project, and the economic impact. Staff indicated that the project will be evaluated under the site plan review program. It will be required to meet the City's open space requirement of 20% for the zone, and not have a negative environmental impact on the area. The new restaurant will pay property taxes and provide employment opportunities. As such, it will have a positive economic impact.

The same noticing process will take place for the public hearing to be held by the City Commission.

FISCAL IMPACT

If the property is rezoned, it will provide enhance access to Westwood Plaza, which could have a positive economic impact on the Plaza.

ALTERNATIVES

The City Commission has the option of not approving the rezoning. The parcel fronts on the highly-trafficked N. Drake Road and is surrounded on two sides by Westwood Plaza. It is unlikely that it will be used for residential purposes in the future. It is recommended that the City Commission approve the rezoning as proposed.

ATTACHMENTS:

Type	Description
☐ Ordinances	Ordinance
☐ Minutes	Meeting minutes
☐ Aerial Photo	Aerial photo
☐ Map – Existing Zoning	Existing zoning map
☐ Map – Proposed Zoning	Proposed zoning map
☐ Map - Existing Land Use	Existing land use map
☐ Map – Future Land Use	Future land use map

- ▣ Map Ordinance map
- ▣ Concept
Plan Concept plan

CITY OF KALAMAZOO, MICHIGAN
ORDINANCE NO. _____

**AN ORDINANCE TO AMEND SECTION 1.8.A. ZONE DISTRICT MAP OF THE ZONING
ORDINANCE, BEING APPENDIX A OF THE KALAMAZOO CODE**

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Pursuant to Section 1.8.E. of the City of Kalamazoo Zoning Ordinance, being Appendix A of the Kalamazoo City Code of Ordinances, the Zone District Map described in Section 1.8.A. is amended as follows:

The land area consisting of a parcel located in Section 18 of the City of Kalamazoo, County of Kalamazoo, State of Michigan, commonly known as 604 N. Drake Road. The parcel is more fully described as follows:

Green Acres Plat – Lot 1, the South half of Lot 2, and part of Lot 15 described as follows: Beginning at the Southeast corner of said Lot; thence North 89 degrees, 30 minutes, 20 seconds West 140 feet to the Southwest corner of said Lot; thence North 1 degree, 52 minutes, 21 seconds West along the Westerly line of said Lot 109.04 feet; thence South 52 degrees, 29 minutes, 29 seconds East 180.97 feet to the place of beginning.

is rezoned from Zone RS-5 (Residential, Single-Dwelling District) to Zone CC (Commercial, Community District), as identified on the accompanying map.

Section 2. Repealer. All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Effective Date. Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____, 2019, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been available as required by said Act, and furthermore, said ordinance was duly recorded, posted, and authenticated by the Mayor and City Clerk as provided by the Charter of said City.

Bobby J. Hopewell, Mayor

Scott A. Borling, City Clerk

City of Kalamazoo
PLANNING COMMISSION
Minutes
March 7, 2019
DRAFT

Second Floor, City Hall
Commission Chambers
241W. South Street, Kalamazoo, MI 49007

Members Present: Rachel Hughes-Nilsson, Chair; Gregory Milliken, Vice Chair; Alfonso Espinosa; Emily Greenman Wright; Derek Wissner; Sakhi Vyas; Charley Coss; James Pitts

Members Excused: Jack Baartman

City Staff: Christina Anderson, City Planner; Robert Bauckham, Senior Development Planner; Jennifer Gutierrez, Community Investment Secretary; Beth Cheeseman, Code Administration Clerk/Cashier; Clyde Robinson, City Attorney; Pete Eldridge, Zoning Administrator

A. CALL TO ORDER

Commissioner Hughes-Nilsson called the meeting to order at approximately 7:01 p.m.

B. ROLL CALL

Planner Anderson proceeded with roll call and determined that the aforementioned members were present.

C. ADOPTION OF FORMAL AGENDA

Ms. Anderson informs the committee that the Natural Features is actually New Business

Commissioner Coss, supported by Commissioner Green - Wright, moved approval of the March 7, 2019 Planning Commission agenda. With a voice vote, the motion carried unanimously.

D. APPROVAL OF MINUTES

Commissioner Wissner, supported by Commissioner Vyas, moved approval of the February 7, 2019 Planning Commission minutes. With a voice vote, the motion carried unanimously.

E. COMMUNICATIONS AND ANNOUNCEMENTS

None

F. PUBLIC HEARINGS

P.C. #2019.01: Request from the Westwood Plaza, LLC to rezone 604 N. Drake Road from Zone RS-5 (Residential, Single-Dwelling District) to Zone CC (Commercial, Community

District). **[Recommendation: motion to recommend to the City Commission to approve the rezoning.]**

Planner Mr. Bauckham explains the details of the zoning plans for the parcel in question. Indicating that there will be a fast food chain known as “Chic – Fil – A” that will be occupying the area. The parcel is located in the Westwood mall; they will be relocating the driveway to accommodate the restaurant. The area was recently a mattress store. The parcel is unlikely to be used for residential purposes in the future given the commercial usage near the area.

Mr. Bauchman describes the three Rationales for staff recommendation.

1. The parcel is owned by Westwood Plaza, LLC, which owns the adjacent property to the south.
2. The parcel is needed to allow the driveway for the complex to be relocated to accommodate a new restaurant.
3. The change in zoning will place the parcel in the same zone as the Westwood Plaza.

Attorney Pat Lennon from the Honigman Firm and Terry Patterson from Treystar mention that they believe that this plan is a fantastic opportunity for the city. They believe this will make an excellent improvement to the area. They have been trying to find a right fit for the property and believe for this to be the answer. The area does not require a lot in regards to rezoning. There were questions about the hours of the business and rather it would be a 24 hour restaurant and drive thru. The applicant informs the hours of the business, that to their knowledge they will be open until 11 pm and closed on Sundays. Questions came about rather there will be landscaping involved in the plan for the site. That unfortunately could only be answered by the restaurant themselves who were not present at the time.

Commissioner Hughes-Nilsson opened public comment portion of the hearing.

Nathan Maston a property owner who is in favor of the project. His only concern is that they did not address all the residents that were going to be affected with the project and the water retaining area where the drive way construction will be located.

Commissioner Coss, supported by Commissioner Espinosa, moved to close the public comment portion of the hearing. With a voice vote, the motion carried unanimously.

Commissioner Milliken, supported by Commissioner Wissner, moved to recommend approval P.C. #2019.01: Request from the Westwood Plaza, LLC to rezone 604 N. Drake Road from Zone RS-5 (Residential, Single-Dwelling District) to Zone CC (Commercial, Community District). **[Recommendation: motion to recommend to the City Commission to approve the rezoning.]**

Commissioner Milliken is in favor of the project and sees no reason to object the approval given the details and information provided. Commissioner Vyas reports that she is in favor for opening

a fast food chain on the indicated parcel in question. Her only concern is the environmental impact it will have for the area due to the majority of the area will be concrete.

Roll call vote was taken and passed. Vyas voted no.

G. UNFINISHED BUSINESS

None

H. NEW BUSINESS

Natural Features Protection Overlay update

Ms. Anderson explains the three phases of the Natural Features Protection of the 2025 Master Plan, and updates the committee on the progress on the project.

1. Zoning Overlay (Moratorium)
2. Mapping Analysis
3. Stewardship

Ms. Anderson informs the committee that they are working on phase one and they have been working with a group of technical experts in the community, individuals with an environmental background. They have presented the project at two meetings in two different neighborhoods. There was a meeting at the eastside neighborhood and another meeting at the Winchell neighborhood. There was a meeting with the Environmental and conservation groups, as well as a few other meetings. The draft is also available online for review.

Ms. Anderson explains the Process of the Guiding Principles and the zoning overlay. She continues explaining the five Zoning Overlay Standards and how they are managing them.

1. Natural Feature of: Wetlands and Water Resources;
2. Natural Feature of: The Trees.
3. Natural Feature of: The Woodlands
4. Natural Feature of: Slopes.
5. Natural Feature of: Natural Heritage Areas.

Ms. Anderson explains that there will be a list of trees that will be protected and explains the requirements for them. There was information on the site development standards. She explained that there are three Pathways that are needed to be reviewed. There were questions on some of

the requirements and the code regulations. There will be a public meeting in two weeks from March 7, 2019

Annual meeting:

A. Review of annual report for 2018

Mr. Bauchman summarizes the annual report for 2018 to the commission. He describes in minor detail of the members of the commission and the number of rezoning requests and the status on the request. He mentions the number of new plans adopted and their approval status. Lastly he summarizes the planning division staff activities.

B. Re-nomination of Commissioners Wissner, Milliken, and Baartman for new terms

Mr. Bauchman mentions that there were a few planning commissioner with expiring terms at the end of the month. They are Commissioner Wissener, Baartman and Milliken and they are accepting an additional term.

Commissioner Greenman – Wright , Supported by Commissioner Vyas motion to the Re-nomination of Commissioners Wissner, Milliken, and Baartman for new terms – voice vote taken – motion passed.

C. Election of officers for the Planning Commission

Commissioner Hughes – Nilsson informs the commission that she will be turning in her resignation.

Nomination made for Commissioner Milliken as Chair

Voice Vote was taken and passed

Nomination made for Commissioner Greenman – Wright as Vice Chair

Voice Vote was taken and passed

Nomination made Commissioner Wissner as Secretary

Voice Vote was taken and passed

Ms. Anderson mentions that Mr. Bauchman will be retiring and that Mr. Eldridge will be taking over his position.

D. Site Plan Review Program administration discussion

Mr. Bauchmann mentions that every year there is a decision rather the site plan should be administered by the staff or the planning commission

Commissioner Wissner supported by Commissioner Greenman – Wright for site plan to remain with staff administration. Voice Vote taken and motion passed

I. CITIZENS' COMMENTS (Regarding non-agenda items)

Sara Nicholson a member from first congregational church approached and provided a letter with signatures of those opposed to the development of the local historic district in Bronson Park and Nazareth. They feel it is unnecessary and a burden to the religious and nonprofit community. They believe it would force their organization to cede authority over their buildings and their usage to a secular government commission.

J. CITY COMMISSION LIAISON COMMENTS

None

K. CITY PLANNER'S REPORT

Mr. Bauchman mentions explains the Site Plan Review Project List. He goes into small detail about each project. There are eleven projects.

L. MISCELLANEOUS COMMENTS BY PLANNING COMMISSIONERS

Commission Esponiza mentions that he noticed two properties on Lake and Bank that were demolished.

Commissioner Greenman - Wright wanted to show her appreciation to Commissioners Hughes – Nilsson leadership during her time on the Planning Commission.

M. ADJOURNMENT

Commissioner Green - Wright, supported by Commissioner Pitts, moved to adjourn the meeting. A voice vote was taken and passed unanimously. The meeting was adjourned at 8: 35 pm.

P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)



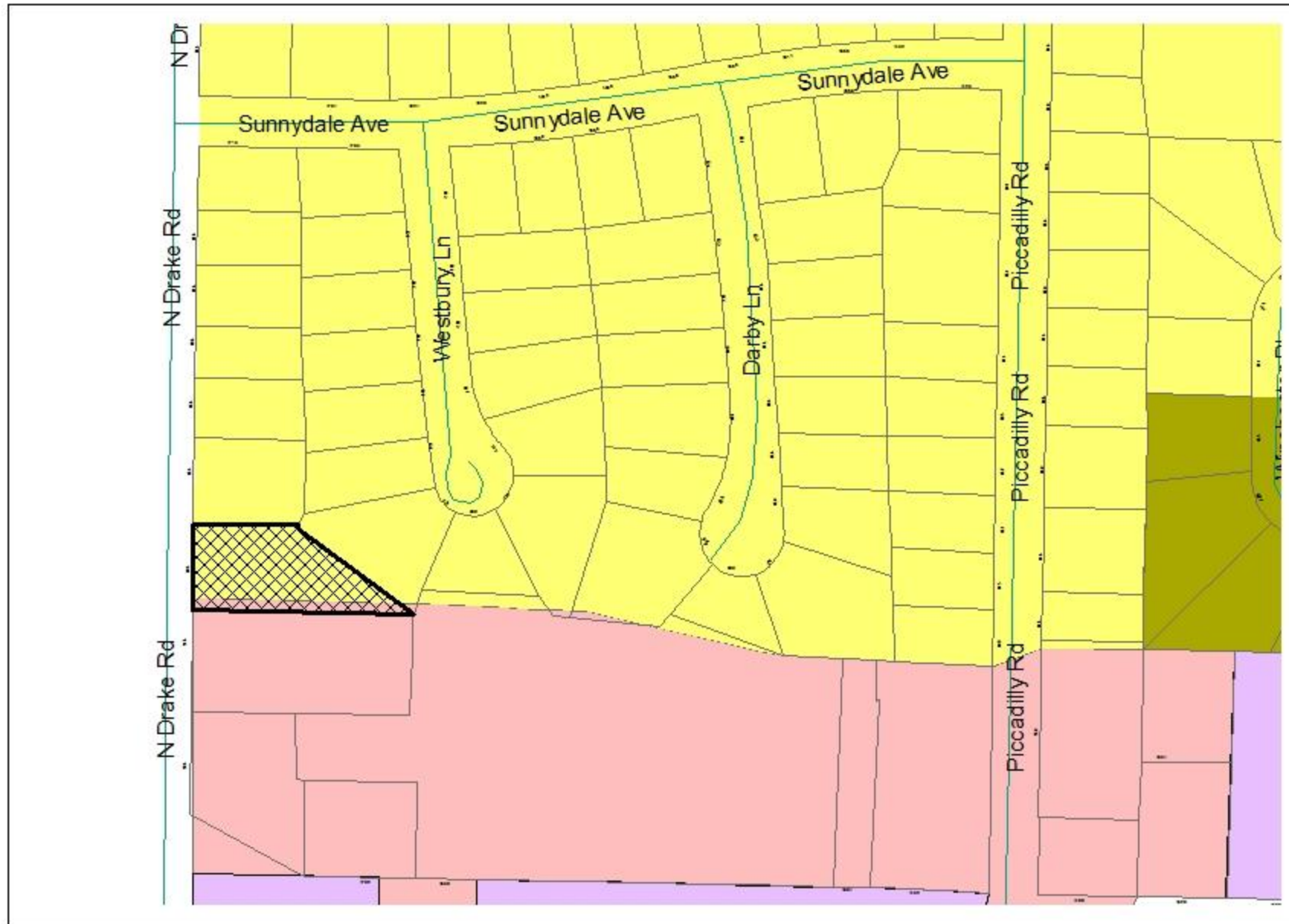
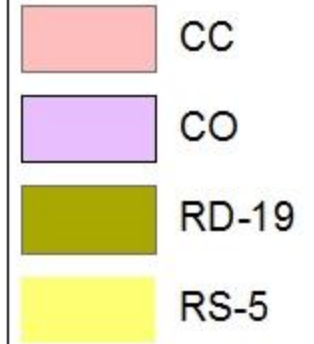
P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC
(Westwood Plaza Parcel)

0 120 240 480 Feet



P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)

**Current
Zoning**



P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)

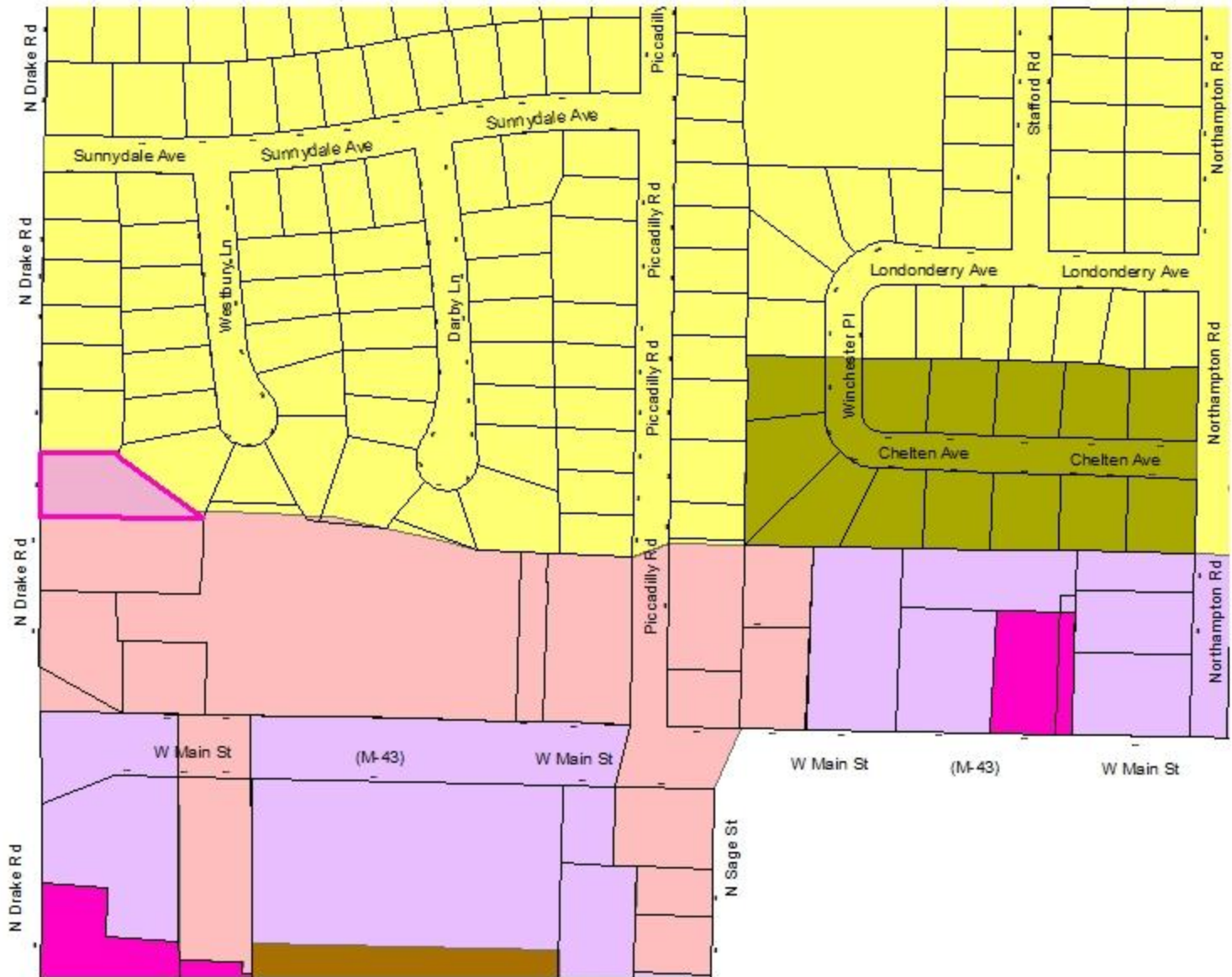
0 80 160 320 Feet



P.C #2019.01 Rezone 604 N Drake Rd from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)

PROPOSED ZONING

-  CBTR
-  CC
-  CCBD
-  CMU
-  CN-1
-  CO
-  IC
-  M-1
-  M-2
-  PUD
-  RD-19
-  RM-15
-  RM-15C
-  RM-24
-  RM-36
-  RMU
-  RS-5
-  RS-7

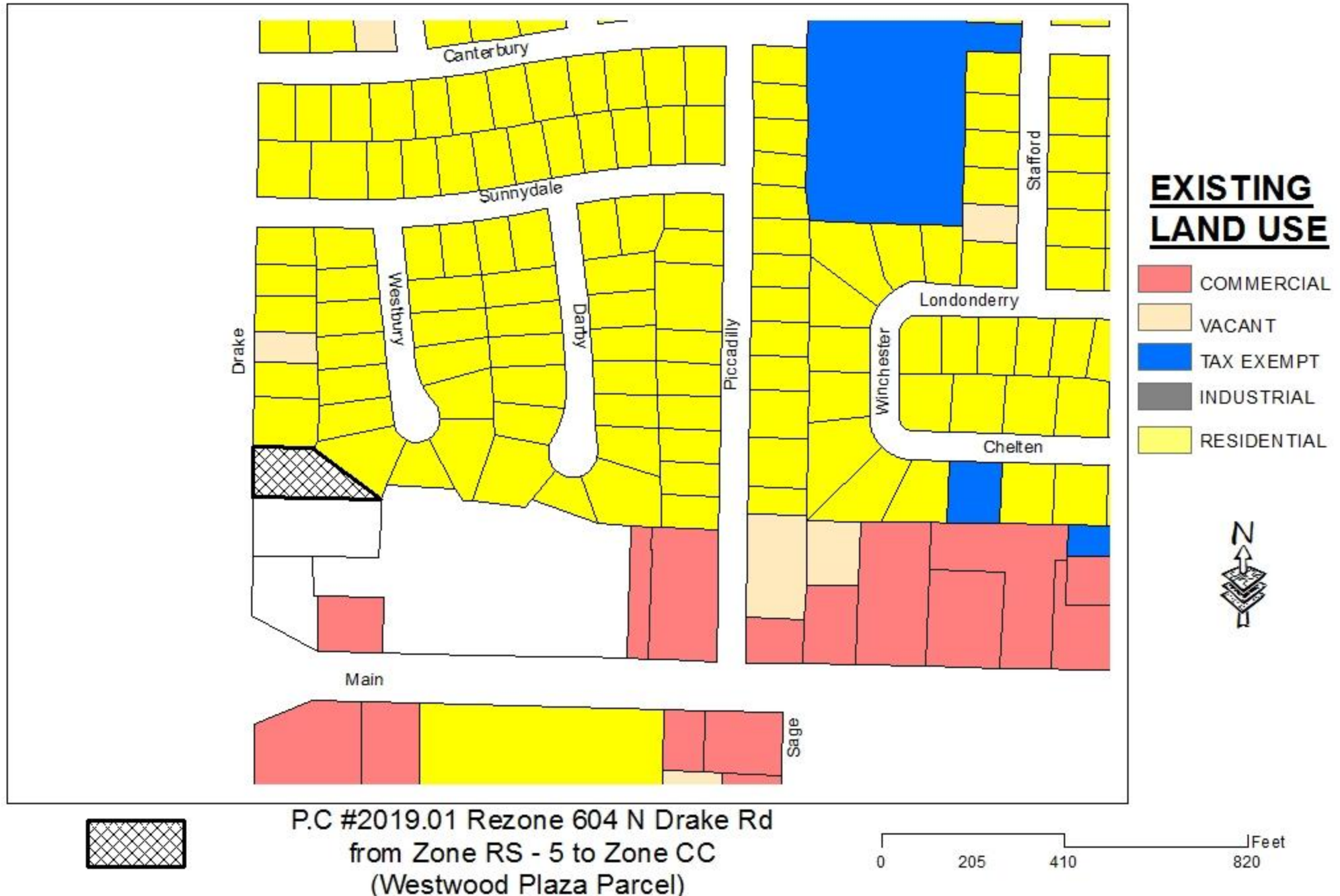


P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)

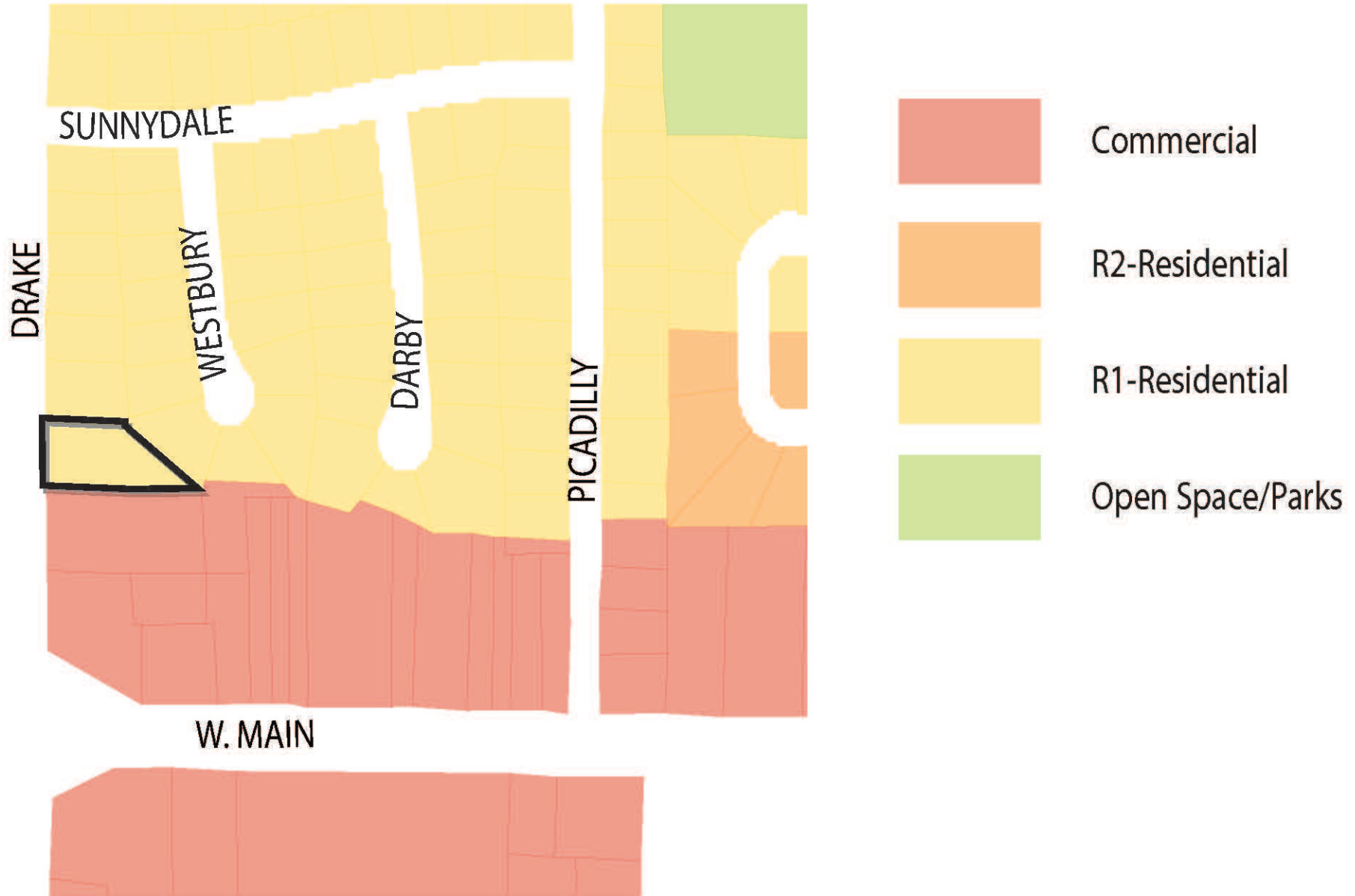
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P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)

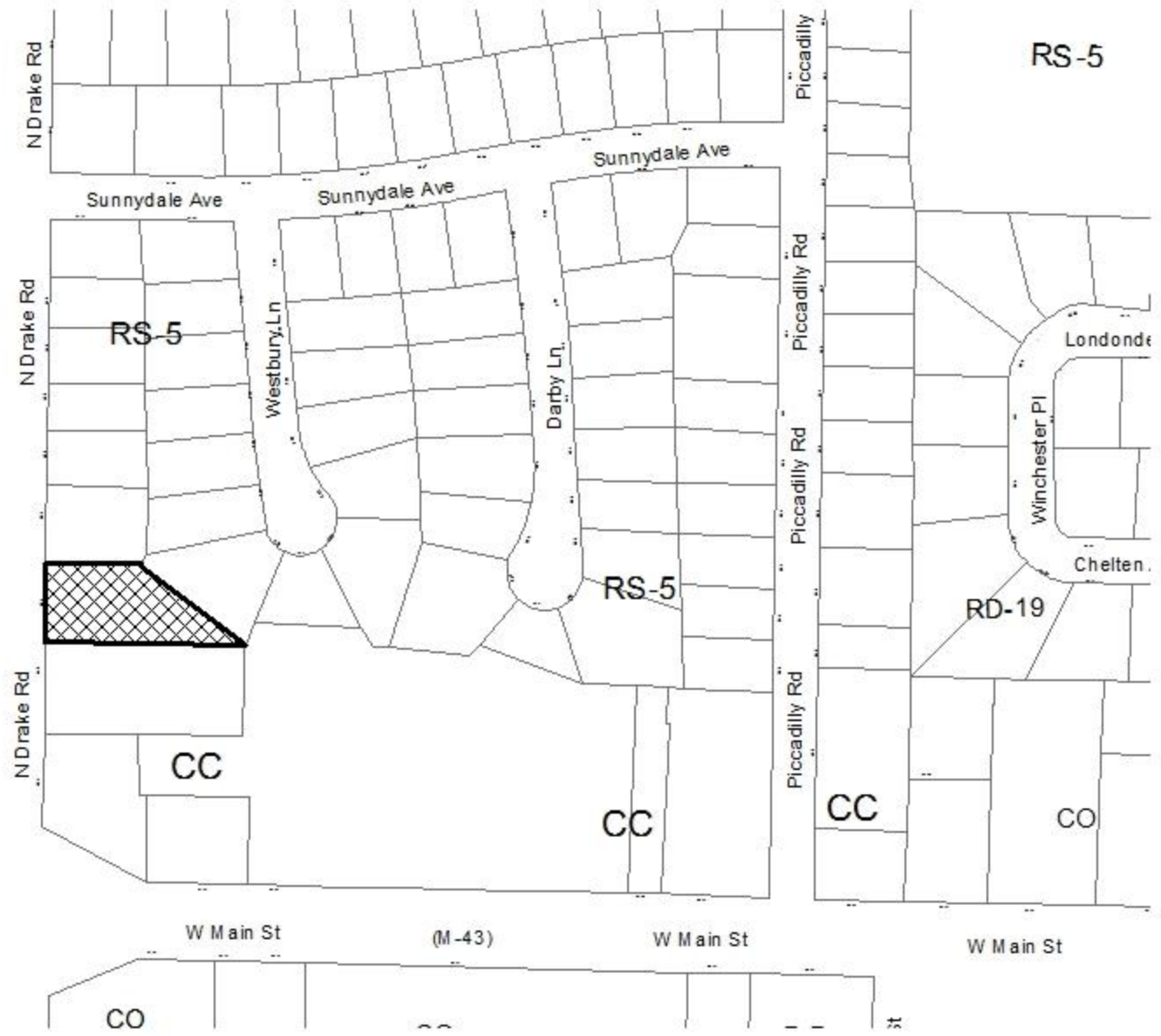


P.C. #2019.01 Rezone 604 N Drake Rd
from RS-5 to CC (Westwood Plaza Parcel)



 P.C. #2019.01 Rezone 604 N Drake Rd
from RS-5 to CC (Westwood Plaza Parcel)

P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)

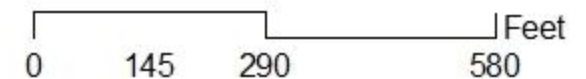


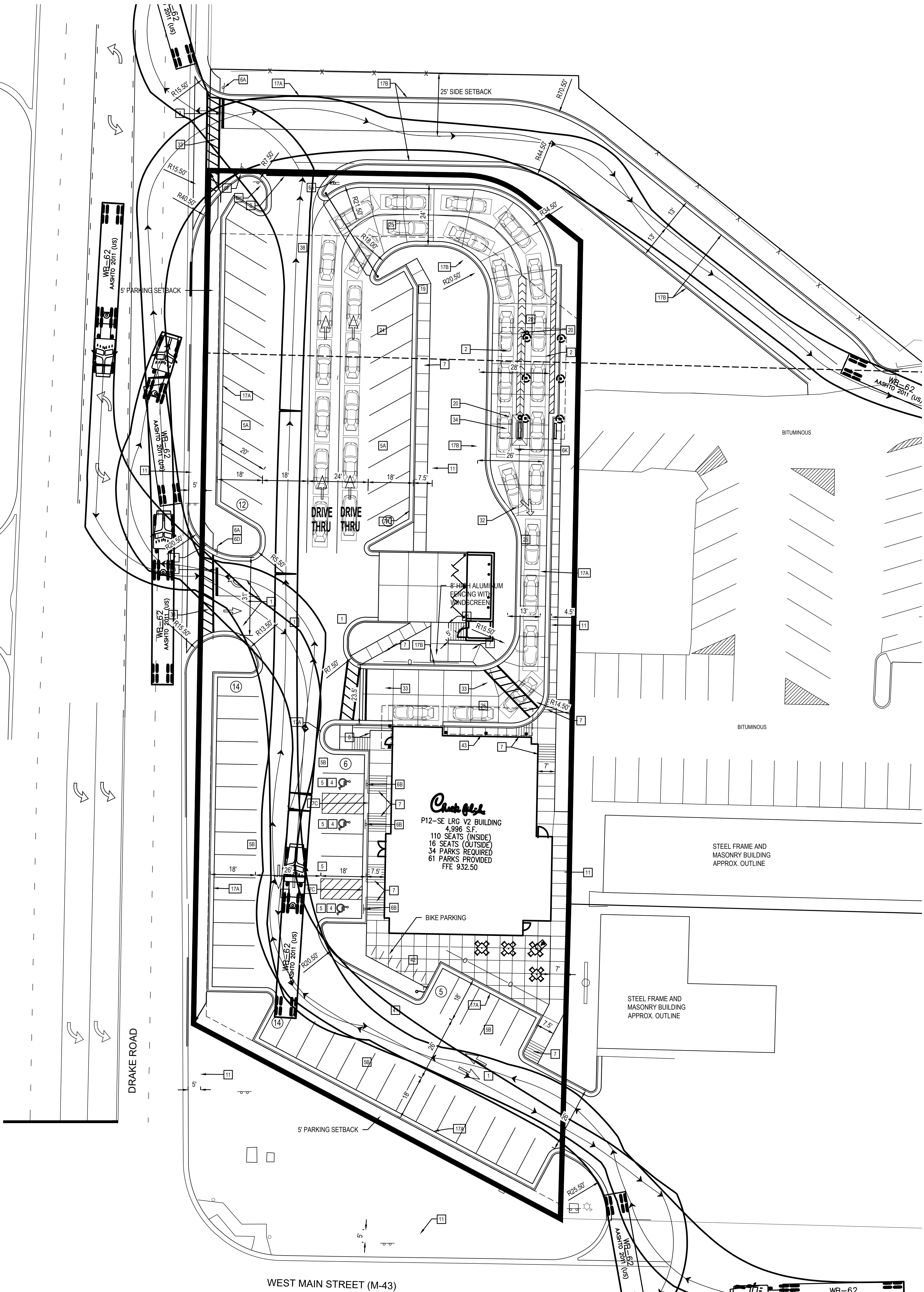
ZONING

- M2 - MANUFACTURING, GENERAL
- M1 - MANUFACTURING, LIMITED
- CCBD - COMMERCIAL, CENTRAL BUSINESS
- CBTR - COMMERCIAL, BUSINESS
- TECHNOLOGY AND RESEARCH
- CC - COMMERCIAL, COMMUNITY
- CNO - COMMERCIAL, NEIGHBORHOOD OFFICE
- CN-1 - COMMERCIAL (LOCAL) NEIGHBORHOOD
- CO - COMMERCIAL, OFFICE
- RM-36 - RESIDENTIAL, MULTI-DWELLING
- RM-15 - RESIDENTIAL, MULTI-DWELLING
- RM-15C - RESIDENTIAL, MULTI-DWELLING
- CAMPUS AREA
- RD-19 - RESIDENTIAL, DUPLEX
- RS-7 - RESIDENTIAL, SINGLE-DWELLING
- RS-5 - RESIDENTIAL, SINGLE-DWELLING



P.C #2019.01 Rezone 604 N Drake Rd
from Zone RS - 5 to Zone CC (Westwood Plaza Parcel)





SITE LAYOUT PLAN
1"= 20'
0 20'
NORTH

LEGEND

- BITUMINOUS PAVEMENT
1.5" MDOT 36A, 165#/SY BITUMINOUS
2.5" MDOT 131, 275#/SY BITUMINOUS
8" MDOT 21AA AGGREGATE BASE
- CONCRETE WALKS & PATIO
4" MDOT P1 LIMESTONE CONCRETE
4" MDOT CLASS II SAND
- CONCRETE DRIVE-THRU
6" MDOT P1 CONCRETE
4" MDOT 21AA AGGREGATE BASE
- CONCRETE APRON AT TRASH ENCLOSURE
8" MDOT P1 CONCRETE
4" MDOT 21AA AGGREGATE BASE
- PROPOSED 25' HIGH LIGHT POLE
- KEY NOTE
- NUMBER OF PARKING SPACES

SITE DATA

SITE AREA: 1.27 ACRES
CURRENT ZONING: CC - COMMERCIAL
EXISTING GREEN SPACE: 16,367 SF
PROPOSED GREEN SPACE: 11,866 SF 9,821 sf = 17.75%

PARKING DATA:
58 REGULAR SPACES PROVIDED
3 ACCESSIBLE SPACES PROVIDED
61 PARKING SPACES PROVIDED

DRIVE-THROUGH DATA:
REQUIRED STACKING: 3 SPACES
PROVIDED STACKING: 37 SPACES

REQUIRED PARKING:
PARKING SPACES REQUIRED: 1 PER 150 GSF
GROSS FLOOR AREA = 4,996 GSF
34 PARKING SPACES REQUIRED

BICYCLE PARKING REQUIRED: 1 SPACE PER 12 CUSTOMERS
PLUS 1 SPACE PER 5 EMPLOYEES

REQUIRED BUILDING SETBACKS:
FRONT SETBACK: 0'
NORTH SIDE SETBACK: 25'
SOUTH SIDE SETBACK: 0'
REAR SETBACK: 0'
REQUIRED PARKING SETBACKS: 5'

SITE LAYOUT AND PAVING NOTES

- VERIFY THE HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION.
- REFER TO DRAWING C-100 FOR BENCHMARK INFORMATION.
- ALL EARTHWORK AND PAVING WORKMANSHIP AND MATERIALS SHALL BE ACCORDING TO THE 2012 MICHIGAN DEPARTMENT OF TRANSPORTATION (M.D.O.T) STANDARD SPECIFICATIONS FOR CONSTRUCTION.
- CONTRACTOR'S MANNER AND METHOD OF INGRESS AND EGRESS WITH RESPECT TO THE PROJECT AREAS SHALL IN NO WAY PROHIBIT OR DISTURB NORMAL PEDESTRIAN OR VEHICULAR TRAFFIC IN THE VICINITY AND IS SUBJECT TO REGULATION AND WRITTEN APPROVAL OF APPROPRIATE GOVERNING AGENCIES.
- CONTACT "811" THREE (3) DAYS PRIOR TO THE START OF CONSTRUCTION, EXCLUDING SATURDAYS, SUNDAYS, AND HOLIDAYS.
- NO DIMENSION MAY BE SCALED. REFER UNCLER ITEMS TO THE ENGINEER FOR INTERPRETATION.
- DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS OTHERWISE NOTED AS B-B (BACK TO BACK) OR E-E (EDGE OF METAL TO EDGE OF METAL).
- CONCRETE CONTROL JOINTS SHALL BE SPACED AT NO GREATER THAN 15'.
- AT CONSTRUCTION JOINTS, KEYED CONSTRUCTION JOINT OR BUTT END CONSTRUCTION JOINT IS RECOMMENDED.
- ISOLATION JOINTS ARE REQUIRED FOR CONCRETE AREAS THAT ABUT FIXED OBJECTS SUCH AS AROUND LIGHT POLES, CURBS AND INLETS.

SITE PLAN DESIGN AND KEY NOTES:

- | | |
|--|------------------|
| 1 PAINTED DIRECTIONAL ARROW | DETAIL 1/C-4.0 |
| 2 PAINTED DRIVE-THRU GRAPHICS | DETAIL 2/C-4.0 |
| 3 PAINTED STOP LINE GRAPHIC | DETAIL 3/C-4.0 |
| 4 PAINTED HANDICAP PARKING SYMBOL | DETAIL 4/C-4.0 |
| 5 ACCESSIBLE PARKING STALL | DETAIL 5/C-4.0 |
| 6 60' PARKING STALL | DETAIL 5/C-4.0 |
| 7 90' PARKING STALL | DETAIL 5/C-4.0 |
| 8 DIRECTIONAL SIGNAGE (SEE SIGNAGE PACKAGE) | DETAIL 6/C-4.0 |
| 9 "STOP" SIGN (SEE SIGNAGE PACKAGE) | DETAIL 6A/C-4.0 |
| 10 "ACCESSIBLE PARKING" SIGN (SEE SIGNAGE PACKAGE) | DETAIL 6B/C-4.0 |
| 11 "CIRCLE BUILDING FOR DRIVE-THRU SERVICE" (SEE SIGNAGE PACKAGE) | DETAIL 6C/C-4.0 |
| 12 "RIGHT TURN ONLY" SIGN (SEE SIGNAGE PACKAGE) | DETAIL 6D/C-4.0 |
| 13 "ONE WAY" SIGN (USE APPLICABLE DIRECTION) (SEE SIGNAGE PACKAGE) | DETAIL 6E/C-4.0 |
| 14 "NO RIGHT TURN" SIGN (SEE SIGNAGE PACKAGE) | DETAIL 6F/C-4.0 |
| 15 "PEDESTRIAN CROSSWALK" SIGN (SEE SIGNAGE PACKAGE) | DETAIL 6G/C-4.0 |
| 16 "DO NOT ENTER" SIGN (SEE SIGNAGE PACKAGE) | DETAIL 6H/C-4.0 |
| 17 "NO PARKING" SIGN (SEE SIGNAGE PACKAGE) | |
| 18 "LANES MERGE" SIGN (SEE SIGNAGE PACKAGE) | |
| 19 SIDEWALK ACCESSIBLE RAMP | DETAIL 7/C-4.0 |
| 20 CURB RAMP WITH FLARED SIDES | DETAIL 8/C-4.0 |
| 21 CURB RAMP WITH SHORT FLARED SIDES | DETAIL 8A/C-4.0 |
| 22 RETURNED CURB ACCESSIBLE RAMP | DETAIL 9/C-4.0 |
| 23 TRUNCATED DOMES, CAST IN PLACE | DETAIL 10/C-4.0 |
| 24 TYPICAL CONCRETE SIDEWALK - 4" THICK CONCRETE | DETAIL 11/C-4.0 |
| 25 SIDEWALK WITH CURB & GUTTER SECTION | DETAIL 12/C-4.0 |
| 26 DRIVE-THRU PLAN | DETAIL 13/C-4.1 |
| 27 DRIVE-THRU ISOMETRIC | DETAIL 14/C-4.1 |
| 28 SOLID PLASTIC WHEEL STOP | DETAIL 15/C-4.1 |
| 29 LANDSCAPE & IRRIGATION PROTECTOR | DETAIL 16/C-4.1 |
| 30 SPILLING 24" CONCRETE CURB & GUTTER | DETAIL 17A/C-4.1 |
| 31 CATCHING 24" CONCRETE CURB & GUTTER | DETAIL 17B/C-4.1 |
| 32 DEPRESSED SPILLING 24" CONCRETE CURB & GUTTER | DETAIL 17C/C-4.1 |
| 33 DEPRESSED CATCHING 24" CONCRETE CURB & GUTTER | DETAIL 17D/C-4.1 |
| 34 CATCHING GUTTER AT ACCESSIBLE RAMP | DETAIL 17E/C-4.1 |
| 35 SPILLING GUTTER AT ACCESSIBLE RAMP | DETAIL 17F/C-4.1 |
| 36 ROLL-OVER/MOUNTABLE CURB | DETAIL 18/C-4.1 |
| 37 SCREENED REFUSE ENCLOSURE | DETAIL 19/C-4.1 |
| 38 SCREENED REFUSE ENCLOSURE STAGGERED | DETAIL 19A/C-4.1 |
| 39 SCREENED REFUSE ENCLOSURE ALTERNATE DRAINAGE | DETAIL 19B/C-4.1 |
| 40 CONCRETE BOLLARD | DETAIL 20/C-4.1 |
| 41 TYPICAL ASPHALT SECTION | DETAIL 21/C-4.2 |
| 42 PAVEMENT EDGE DETAIL | DETAIL 21A/C-4.2 |
| 43 TRANSVERSE & LONGITUDINAL CONTRACTION JOINT | DETAIL 22/C-4.2 |
| 44 TRANSVERSE & LONGITUDINAL DOWELED CONSTRUCTION JOINT | DETAIL 23/C-4.2 |
| 45 CONCRETE APRON @ TRASH ENCLOSURE - 8" THICK CONCRETE | DETAIL 24/C-4.2 |
| 46 CONCRETE PAVING DRIVE-THRU LANE - 6" THICK CONCRETE | DETAIL 25/C-4.2 |
| 47 CONCRETE PAVING CAR PARKING | DETAIL 25A/C-4.2 |
| 48 CONCRETE PAVING PARKING LOT | DETAIL 26/C-4.2 |
| 49 TYPICAL ADA RAMP AND HANDRAIL | DETAIL 27/C-4.2 |
| 50 CONTRACTION JOINT | DETAIL 28/C-4.2 |
| 51 KEYED CONSTRUCTION JOINT | DETAIL 29/C-4.2 |
| 52 LONGITUDINAL BUTT JOINT | DETAIL 30/C-4.2 |
| 53 EXPANSION JOINT | DETAIL 31/C-4.2 |
| 54 MULTI-LANE DIRECTIONAL GRAPHICS | DETAIL 32/C-4.3 |
| 55 PAINTED CROSS WALK | DETAIL 33/C-4.3 |
| 56 DRIVE THRU ORDER POINT ISLAND CURB | DETAIL 34/C-4.3 |
| 57 MENU BOARD LOOP DETECTION SYSTEM | DETAIL 35/C-4.3 |
| 58 ENTRY DOOR FROST SLAB | DETAIL 36/C-4.3 |
| 59 LANDSCAPED AREA (SEE LANDSCAPE PLAN) | |
| 60 CLEARANCE BAR (SEE SIGNAGE PACKAGE) | |
| 61 PAVEMENT STRIPING AREA | |
| 62 THICKENED SLAB EDGE AT RAILING CORE-DRILLS | |
| 63 FLAGPOLE, (SEE SIGNAGE PACKAGE) | |
| 64 OUTDOOR PATIO SPACE. SEE ARCHITECTURAL PLANS | |
| 65 4" THICK CONCRETE STRIP BETWEEN BUILDING AND BACK OF CURB | |
| 66 4" WIDE PAINT STRIPE | |
| 67 PATIO SEPARATION RAILING | |
| 68 UNLOADING ZONE AREA (OFF HOURS) | |



Chick-fil-A
5200 Buffington Road
Atlanta, Georgia
30349-2998

progressive|ae

Progressive Architecture Engineering, P.C.
1811 4 Mile Rd N.E., Grand Rapids, MI 49525
616 361 2664 OFFICE 616 361 1493 FAX
www.progressiveae.com

I HEREBY CERTIFY THAT THESE PLANS HAVE BEEN PREPARED UNDER MY SUPERVISION AND THAT TO THE BEST OF MY KNOWLEDGE, THE SAME COMPLY WITH ALL RULES, REGULATIONS AND ORDINANCES OF HOLLAND, MI RELATING TO STRUCTURES AND BUILDINGS.

CHICK-FIL-A
KALAMAZOO FSR
DRAKE ROAD AND W. MAIN STREET (M-43),
WESTWOOD PLAZA, KALAMAZOO, MI

FSR# 04369

REVISION SCHEDULE		
NO.	DATE	DESCRIPTION

PROJECT NUMBER	77020020
PRINTED FOR	CHICK-FIL-A REVIEW
DATE	01.28.2019
DRAWN BY	DCM

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SHEET
SITE LAYOUT PLAN

SHEET NUMBER

C-2.0



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Steve Vicenzi, Management Services Director / CFO

PREPARED BY: Neena Porter, Management Services Coordinator

DATE: 3/22/2019

SUBJECT: Year End Budget Amendments – Fiscal Year 2018

RECOMMENDATION

It is recommended that the City Commission approve the attached schedule of amendments to Fiscal Year 2018 Budgeted appropriations:

- Increase the General Fund revenues by \$1,100,000
- Increase the General Fund expenses by \$2,430,000

BACKGROUND

The City's Budget Policies and State law require that the City's final legislatively appropriated expenditures are adequate to cover actual expenditures. The City recommends the following changes.

General Fund:

Increased revenues in the amount of \$1,100,000 for state fire reimbursement revenues. The state has changed the disbursement process to increase fire reimbursements moving forward.

Increased appropriation in the amount of \$2,430,000:

- The Customer Service phone center became operational earlier than expected, prompting expenditure increases of \$200,000.
- Public Safety had two months of additional dispatch operations that were not anticipated in the original budget resulting in increases of \$430,000.
- Additional funds were required to assist with the setup and operations of the Central Dispatch costing \$845,000.
- Public Safety had staffing shortages resulting in additional overtime in the amount of \$710,000.

- Informational Technology had increased costs related to various software costs related to increased Microsoft Office 365 licensing fees, bid and quote web extension software, and OpenGov implementation fees in the total amount of \$150,000.
- Unexpected emergency service costs related to the PFAS and flooding emergencies. Some of these costs are expected to be recuperated through grants. The total increased appropriation is \$95,000.

POLICY CONSIDERATIONS

None.

COMMUNITY RESOURCES CONSULTED

None.

FISCAL IMPACT

The net budgetary impact is an increase of \$1,330,000 in General Fund appropriations over revenues. Funding is available in the fund balance.

ALTERNATIVES

The City Commission could choose not to amend the FY2018 budget for the requested additional appropriations. This is not recommended, since it would leave the city out of compliance with budgetary legislation.

ATTACHMENTS:

Type	Description
Summary	
▣ of Changes	2018 Year End Budget Amendment

CITY OF KALAMAZOO
GENERAL FUND PROPOSED BUDGET AMENDMENT

	2018 Adopted Budget	2018 Amended Budget	2018 Year-End Proposed	2018 Proposed Amended
REVENUE				
Tax Levy Revenue	19,046,164	19,046,164		19,046,164
Other Tax or PILOT Payments	2,059,148	2,059,148		2,059,148
Licenses, Permits & Fees	2,350,900	2,350,900		2,350,900
Intergovernmental Revenue	10,353,890	10,353,890	1,100,000	11,453,890
Foundation for Excellence Operational	15,084,225	15,084,225		15,084,225
Charges for Services	9,016,237	9,016,237		9,016,237
Interest	162,800	162,800		162,800
Fines and Forfeitures	36,300	36,300		36,300
Other Revenue	339,700	339,700		339,700
OTHER				
Foundation for Excellence Aspirational	868,000	998,015		998,015
Sale of Fixed Assets	10,000	1,405,922		1,405,922
Transfer from Other Funds	1,110,000	1,110,000		1,110,000
Total Revenue	60,437,364	61,963,301	1,100,000	63,063,301
EXPENDITURES				
City Commission	85,607	85,607		85,607
City Administration	1,827,015	1,880,905		1,880,905
City Attorney	766,240	819,472		819,472
City Clerk	801,015	820,717		820,717
Internal Auditor	87,961	94,975		94,975
311 Customer Service	-	81,735	200,000	281,735
Human Resources	788,879	831,764		831,764
Information Technology	1,924,094	2,271,791	150,000	2,421,791
Management Services	3,564,549	3,666,848		3,666,848
Public Safety	30,372,632	30,531,162	1,985,000	32,516,162
Public Services	5,955,613	6,457,873		6,457,873
Community Planning & Development	2,267,283	2,390,572		2,390,572
Economic Development	307,656	315,360		315,360
Parks & Recreation	2,378,130	2,348,074		2,348,074
Non-Departmental Expenditures	469,657	0	95,000	95,000
OPEB Expense	6,326,412	6,326,412		6,326,412
Total Operating Expenditure	57,922,743	58,923,267	2,430,000	61,353,267
Transfer to Demolition Fund	-	400,000		400,000
Transfer to Downtown Development		1,395,922		1,395,922
Transfer to CIP Fund	2,450,000	2,450,000		2,450,000
Total Transfer for Capital Improvement	2,450,000	4,245,922	-	4,245,922
TOTAL EXPENDITURES	60,372,743	63,169,189	2,430,000	65,599,189
Beginning Fund Balance	11,978,695	11,978,695		11,978,695
Surplus / (Deficit)	64,621	(1,205,888)	(1,330,000)	(2,535,888)
Contribution from/(to) Contingency Reserve	-	(150,000)	-	(150,000)
Ending Fund Balance	12,043,316	10,622,807		9,292,807
Target Fund Balance	8,767,405	8,767,405		8,932,405
Amount Over (Under) Target	3,275,911			360,403



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: Clyde J. Robinson, City Attorney

PREPARED BY: Clyde J. Robinson, City Attorney

DATE: 3/21/2019

SUBJECT: Metro Act Right-of-Way Permit Authorization

RECOMMENDATION

It is recommended that the City Commission authorize the City Manager to execute a Bilateral Permit with Zayo Group LLC pursuant to the Metropolitan Extension Telecommunications Right of Way Oversight (METRO) Act, MCL 484.3101 *et seq.*

BACKGROUND

State law allows telecommunication operations to obtain right-of-way permits from municipalities. The City has received a request from Zayo Group, L.L.C., ("Zayo") which seeks to install fiber optic wire and associated equipment in the public right of way. Pursuant to State law, Zayo must obtain a METRO act permit from the City. Zayo is seeking a Bilateral Permit under the METRO Act which grants it a 15-year term which can be renewed for 3 additional terms of 5 years each in the future. The Application Packet which accompanying the request from Zayo includes all the necessary support documents and evidence of statutorily required insurance coverage.

COMMUNITY RESOURCES CONSULTED

None.

FISCAL IMPACT

In addition to a State-mandated \$500 permit fee that must be paid to the City, Zayo will pay a per-foot charge to the State. That money will go into the METRO Act pool, from which the City of Kalamazoo receives its share.

ALTERNATIVES

The City has 45 days from when it receives a complete request to grant or deny a permit; the City Clerk received the Application Packet on March 14, 2019. Failure to grant or deny a permit request in a timely manner exposes the City to fines of up to \$40,000 a day. As the Application for a METRO Permit filed with the City by Zayo is complete, there are no grounds to deny the request. Denial would expose the City to substantial financial penalties.

ATTACHMENTS:

	Type	Description
▣	Aerial Photo	Metro Act Right-of-Way Permit Application



400 Centennial Pkwy, Suite 200
Louisville, Colorado 80027
t 303.381.4683
www.zayo.com

March 12, 2019

City of Kalamazoo
Attention: Scott Borling, Clerk
241 West South Street
Kalamazoo, MI 49007
Phone: 269-383-8840
E-mail Cokcityclerk@kalamazoocity.org

RECEIVED
MAR 14 2019
Kalamazoo City Clerk

Dear Mr. Borling,

Please find enclosed a Metro Act Permit Application form for the City of Kalamazoo. This application is for access to and ongoing use of public ways by Telecommunications Providers under Metropolitan Extension Telecommunications right-of-way oversight Act 2002 PA 48, MCLA sections 484.3101 to 484.3120 by ZAYO Group LLC.

In accordance with the application, I have enclosed the application fee of five hundred dollars (\$500.00), a Certificate of Good Standing for Zayo Group, LLC along with a Copy of Liability Insurance for Zayo Group, LLC.

Please feel free to contact us with any questions.

Thank you,

A handwritten signature in blue ink, appearing to read "G Babinski".

Greg Babinski
OSP Project Manager
240 E South St
Lansing, MI 48910
M: 616.570.9900
O: 517.913.0498
greg.babinski@zayo.com
<http://www.zayo.com>

MASTER COPY

**METRO Act Permit Application Form
Revised February 2, 2015**

City of Kalamazoo

Name of Local Unit of Government

**APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS
UNDER
METROPOLITAN EXTENSION TELECOMMUNICATIONS
RIGHTS-OF-WAY OVERSIGHT ACT
2002 PA 48
MCL SECTIONS 484.3101 TO 484.3120**

BY

**Zayo Group LLC
("APPLICANT")**

Unfamiliar with METRO Act?--Assistance: Municipalities unfamiliar with Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("METRO Act") permits for telecommunications providers should seek assistance, such as by contacting the Telecommunications Division of the Michigan Public Service Commission at 517-284-8190 or via its web site at http://www.michigan.gov/mpsc/0,4639,7-159-16372_22707---,00.html.

45 Days to Act—Fines for Failure to Act: The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3). The Michigan Public Service Commission can impose fines of up to \$40,000 per day for violations of the METRO Act. It has imposed fines under the Michigan Telecommunications Act where it found providers or municipalities violated the statute.

Where to File: Applicants should file copies as follows [municipalities should adapt as appropriate—unless otherwise specified service should be as follows]:

-- Three (3) copies (one of which shall be marked and designated as the master copy) with the Clerk at 241 West South Street Kalamazoo Mi, 49007

City of Kalamazoo

**APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS**

**By
Zayo Group LLC**

This is an application pursuant to Sections 5 and 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 (the "METRO Act") for access to and ongoing usage of the public right-of-way, including public roadways, highways, streets, alleys, easements, and waterways ("Public Ways") in the Municipality for a telecommunications system. The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3).

This application must be accompanied by a one-time application fee of \$500, unless the applicant is exempt from this requirement under Section 5(3) of the METRO Act, MCL 484.3105(3).

1 GENERAL INFORMATION:

1.1 Date: 11/3/2018

1.2 Applicant's legal name: Zayo Group LLC
Mailing Address: 400 Centennial Parkway
Louisville, CO 80027

Telephone Number: 303-381-4683
Fax Number: 303-260-5922
Corporate website: www.zayo.com

Name and title of Applicant's local manager (and if different) contact person regarding this application:

Greg Babinski-OSP Manager, Michigan
Mailing Address: 240 E South St
Lansing, Michigan 48910

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Telephone Number: 517-913-0498
Fax Number: 517-913-1014
E-mail Address: greg.babinski@zayo.com

1.3 Type of Entity: (Check one of the following)

- ☐ Corporation
☐ General Partnership
☐ Limited Partnership
☒ Limited Liability Company
☐ Individual
☐ Other, please describe: _____

1.4 Assumed name for doing business, if any: N/A

1.5 Description of Entity:

- 1.5.1 Jurisdiction of incorporation/formation; A Delaware Co
1.5.2 Date of incorporation/formation; 2007
1.5.3 If a subsidiary, name of ultimate parent company; N/A
1.5.4 Chairperson, President/CEO, Secretary and Treasurer (and equivalent officials for non-corporate entities).

Glenn Russo, Dan Caruso, Scott Beer, Tim Gentry

1.6 Attach copies of Applicant's most recent annual report (with state ID number) filed with the Michigan Department of Licensing and Regulatory Affairs and certificate of good standing with the State of Michigan. For entities in existence for less than one year and for non-corporate entities, provide equivalent information.

Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe: N/A.

1.7 In the past three (3) years, has Applicant had a permit to install telecommunications facilities in the public right of way revoked by any Michigan municipality?

Circle: Yes ☒ No

If "yes," please describe the circumstances.

1.8 In the past three (3) years, has an adverse finding been made or an adverse final action been taken by any Michigan court or administrative body against Applicant under any law or regulation related to the following:

A felony; ☒ No

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1.8.1 A revocation or suspension of any authorization (including cable franchises) to provide telecommunications or video programming services?

Circle: Yes ☒ No

If "yes," please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.

1.9 [If Applicant has been granted and currently holds a license to provide basic local exchange service, no financial information needs to be supplied.] If publicly held, provide Applicant's most recent financial statements. If financial statements of a parent company of Applicant (or other affiliate of Applicant) are provided in lieu of those of Applicant, please explain.

1.9.1 If privately held, and if Municipality requests the information within 10 days of the date of this Application, the Applicant and the Municipality should make arrangements for the Municipality to review the financial statements.

If no financial statements are provided, please explain and provide particulars.

2 DESCRIPTION OF PROJECT:

2.1 Provide a copy of authorizations, if applicable, Applicant holds to provide telecommunications services in Municipality. If no authorizations are applicable, please explain.

2.2 Describe in plain English how Municipality should describe to the public the telecommunications services to be provided by Applicant and the telecommunications facilities to be installed by Applicant in the Public Ways.

Fiber Optic Cable for Zayo network infrastructure.

2.3 Attach route maps showing the location (including whether overhead or underground) of Applicant's existing and proposed facilities in the public right-of-way. To the extent known, please identify the side of the street on which the facilities will be located. (If construction approval is sought at this time, provide engineering drawings, if available, showing location and depth, if applicable, of facilities to be installed in the public right-of-way).

2.4 Please provide an anticipated or actual construction schedule.

Pending

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2.5 Please list all organizations and entities which will have any ownership interest in the facilities proposed to be installed in the Public Ways.

Zayo Group, LLC

2.6 Who will be responsible for maintaining the facilities Applicant places in the Public Ways and how are they to be promptly contacted? If Applicant's facilities are to be installed on or in existing facilities in the Public Ways of existing public utilities or incumbent telecommunications providers, describe the facilities to be used, and provide verification of their consent to such usage by Applicant.

Zayo Group LLC, 240 E South St, Lansing, MI 48910, Greg Babinski – OSP Manager, Office - 517-913-0498, greg.babinski@zayo.com

Zayo facilities will be placed overhead on utility poles owned by Consumer's Energy and Frontier Communications.

3 TELECOMMUNICATION PROVIDER ADMINISTRATIVE MATTERS:

Please provide the following or attach an appropriate exhibit.

3.1 Address of Applicant's nearest local office; Zayo Group LLC, 240 E South St., Lansing, MI 48910

3.2 Location of all records and engineering drawings, if not at local office;

3.3 Names, titles, addresses, e-mail addresses and telephone numbers of contact person(s) for Applicant's engineer or engineers and their responsibilities for the telecommunications system; Greg Babinski – OSP Manager, Zayo Group LLC, 240 E South St., Lansing MI 48910 greg.babinski@zayo.com, Office-517-913-0498

3.4 Provide evidence of self-insurance or a certificate of insurance showing Applicant's insurance coverage, carrier and limits of liability for the following:

3.4.1 Worker's compensation; Attached

3.4.2 Commercial general liability, including at least: Attached

3.4.2.1 Combined overall limits; Attached

3.4.2.2 Combined single limit for each occurrence of bodily injury; Attached

3.4.2.3 Personal injury; Attached

3.4.2.4 Property damage; Attached

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3.4.2.5 Blanket contractual liability for written contracts, products, and completed operations; Attached

3.4.2.6 Independent contractor liability; N/A

3.4.2.7 For any non-aerial installations, coverage for property damage from perils of explosives, collapse, or damage to underground utilities (known as XCU coverage);

3.4.2.8 Environmental contamination; Attached

3.4.3 Automobile liability covering all owned, hired, and non-owned vehicles used by Applicant, its employee, or agents. Attached

3.5 Names of all anticipated contractors and subcontractors involved in the construction, maintenance and operation of Applicant's facilities in the Public Ways.

Zayo Group LLC

MASTER COPY

4 CERTIFICATION:

All the statements made in the application and attached exhibits are true and correct to the best of my knowledge and belief.

11/3/2018

Date

Zayo Group LLC

By: Greg Babinski

Greg Babinski
OSP Manager Michigan

S:\metroapplicationform.doc



Commission Agenda Report

City of Kalamazoo

TO: Vice Mayor Knott and City Commissioners

FROM: Bobby J. Hopewell, Mayor

PREPARED BY: Scott A. Borling, City Clerk

DATE: 2/21/2019

SUBJECT: Approval of the Mayor's Reappointments to Boards and Commissions

RECOMMENDATION

It is requested that the City Commission approve the Mayor's reappointments to the following boards and commissions:

- the reappointment of **Dean Bergy** to the Retirement and Perpetual Care Investment Committees for a term expiring on March 31, 2022;
- the reappointment of **Sandi Doctor** to the Retirement and Perpetual Care Investment Committees for a term expiring on March 31, 2022;
- the reappointment of **Jan Van Der Kley** to the Retirement and Perpetual Care Investment Committees for a term expiring on March 31, 2022.

BACKGROUND

City ordinance establishes that the Mayor appoints members to the Retirement and Perpetual Care Investment Committees (RIC and PCIC). I have reviewed the Nomination Report for Dean Bergy, Sandi Doctor, and Jan Van Der Kley, and I have reappointed these members to the RIC and PCIC. I am now requesting City Commission approval of these reappointments as required by ordinance. The attached *Nomination Report* describe the nominees' qualifications.

COMMUNITY RESOURCES CONSULTED

None

FISCAL IMPACT

There is no fiscal impact directly associated with these reappointments.

ALTERNATIVES

The City Commission could approve the reappointments, not approve them, or postpone action to a date certain.

ATTACHMENTS:

Type	Description
------	-------------

- | | |
|---|---|
| ▣ | Report Investment Committee Nomination Report |
|---|---|



Advisory Boards and Commissions Appointee Nomination Report

City of Kalamazoo

RECOMMENDATION

The City of Kalamazoo Employees' Retirement System Investment Committee recommends the City Commission approve the reappointment of the following members:

- the reappointment of Dean Bergy for a term expiring on March 31, 2022.
- the reappointment of Sandi Doctor for a term expiring on March 31, 2022.
- the reappointment of Jan Van Der Kley for a term expiring on March 31, 2022.

SPECIAL REQUIREMENTS FOR THIS POSITION

As stated in the Pension Ordinance, the members of the Investment Committee must have a proven financial background, cannot be members of the Retirement System and, to avoid a conflict of interest, cannot be employed or associated with any organization that provides similar investment services to those retained or used by the Committee. Some of the other duties of the Committee members include formulating the investment policy and any amendments, establishing investment performance monitoring systems, ensuring the plan is properly audited and recommending investment managers, actuaries and other necessary services to the City Commission.

SELECTION PROCESS

It has been the long-standing practice to reappoint qualified members to the Investment Committee.

NOMINEE QUALIFICATIONS

Dual Board Memberships

Dual board membership between the Retirement Investment Committee and the Perpetual Care Investment Committee is by design. All three nominees are therefore sitting members of both committees. None of the nominees are members of boards/commissions/committees other than the investment committees.

Residency

Mrs. Van Der Kley resides in Richland Township; Mr. Bergy and Mrs. Doctor reside in Texas Township. Given that there are strict membership qualifications, the City Commission has appointed members who are not residents of the City. All three nominees are committed to the vitality and excellence of Kalamazoo.

Term Limits

It has been a long-standing practice to reappoint qualified members to the Investment Committee. Mrs. Van Der Kley has been serving on the Investment Committee since 1997, and would be serving her eighth term. Mr. Bergy has been serving on the Investment Committee since 2010, and would be serving his fourth term. Mrs. Doctor has been serving on the Investment Committee since October of 2014 and would be serving her second term

Training, Experience, Education And Skills

Ms. Van Der Kley has an MSA and is the Vice President for Business and Finance at Western Michigan University. Prior to joining the University, she worked in public accounting. As part of her responsibilities, she is assistant treasurer of the University as well as the affiliated Foundations. Jan has served on the investment committee of the City of Kalamazoo Employees' Retirement System since 1995, on the Kalamazoo County Employees' Retirement System since 1995, and on the Financial Investment Committee of the Kalamazoo Community Foundation since 2005.

Mr. Bergy is a Certified Public Account. Prior to joining the Stryker Corporation in June 1994. Mr. Bergy was a Senior Manager with Ernst & Young LLP. Dean H. Bergy was named Vice President, Corporate Secretary in October 2012. Mr. Bergy joined the Stryker Corporation in 1994 as the Corporate Controller. In 1996, he was promoted to Vice President, Finance of the Medical division and then to Vice President, Finance of the corporation in 1998. In January 2003, he was appointed Vice President and Chief Financial Officer. He also held the role of Secretary from January 2003 to February 2005, and resigned as Vice President, CFO in March 2009. Mr. Bergy continued to be employed by the Company as an Advisor to the CFO and was elected Secretary of the Company in September 2011, and also served as Interim Chief Financial Officer and Vice President, Corporate Secretary from October 2012 until April 22, 2013. Mr. Bergy has served as a financial advisor for a variety of nonprofit institutions. He is a member of the Kalamazoo Institute of Arts Endowment Committee. Dean holds a bachelor of business administration degree from the University of Michigan and completed the program for management development at the Harvard Business School.

Sandi Doctor has worked in the investment advisory business for nearly 30 years. She started her career as an Analyst and Portfolio manager for First of America Investment Group in 1984. In 1987, she left to form LVM Capital Management with a group of colleagues from First of America. At LVM, she managed portfolios for individuals, companies and foundations for 25 years. Late in 2013, she left LVM to join Northwood Group which is the family office for William U. Parfet. She is Chartered Financial Analyst and a graduate of Grand Valley State University. She completed her MBA in Finance at WMU in 1984. Sandi has served on the Pretty Lake Camp Finance Committee, the Stewardship Committee at Portage United Church of Christ, the Dean's Advisory Council at Haworth College of Business at WMU and volunteered for Open Door/Next Door Shelters and the Junior League of Kalamazoo.

Contribution To Diversity

All three nominees are of European-American descent.

NOMINATION RATIONALE

The Investment Committee chose to reappoint Mrs. Doctor because of her expertise. The Investment Committee chose to reappoint Mrs. Van Der Kley and Mr. Bergy because of their expertise and longevity with the Committee. Continuity for this Committee is needed for several reasons. There is multi-year monitoring of styles and strategies of the fund managers. The investment policy looks at 1-5 years for the short term and 3-4 market cycles for long-term investments. The Committee has fiduciary responsibilities regarding the investment of the pension assets that requires a long-term commitment. This Committee also requires a significant time commitment because the Committee serves the County of Kalamazoo in the same capacity. Having the same membership for both Pension Plans has resulted in keeping administrative costs well below industry standards.

CITY CLERK'S CERTIFICATION

The nominee's qualifications regarding dual board memberships, residency, and term limits have been reviewed and verified by the City Clerk's Office.

Scott A. Borling, City Clerk



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners
FROM: Scott A. Borling, City Clerk
DATE: 3/25/2019
SUBJECT: Approval of Minutes

RECOMMENDATION

It is recommended that the City Commission approve the minutes from its meetings on March 18, 2019.

ATTACHMENTS:

Type	Description
------	-------------

- | | |
|--------------------------|---|
| ☐ | Minutes March 18, 2019 Neighborhood Meeting |
| ☐ | Minutes March 18, 2019 Business Meeting |

	A neighborhood meeting of the Kalamazoo City Commission was held on Monday, March 18, 2019 at 6:00 p.m. in the Community Room at City Hall, 241 W. South Street.
Roll Call	COMMISSIONERS PRESENT: Mayor Bobby J. Hopewell Vice Mayor Erin Knott David Anderson Don Cooney Eric Cunningham Jack Urban COMMISSIONERS ABSENT: Shannon Sykes* Also present were City Manager Jim Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.
Commissioners Excused	Commissioner Anderson, seconded by Commissioner Cooney, moved to excuse the absence of Commissioner Sykes. With a voice vote the motion passed.
Communications	An opportunity was given for miscellaneous communications, but no communications were offered.
Neighborhood Communications	Neighborhood communications were received next. Representatives from the following neighborhood associations were present and addressed the City Commission: <u>Edison Neighborhood Association</u> Steve Dupuie, Board President Tammy Taylor, Executive Director <u>Stuart Area Restoration Association</u> Valarie Badar, Board Chair Dana Underwood, Treasurer <u>Vine Neighborhood Association</u> Sarah Ruggles, Board Vice Chair Margaret Wilson, Secretary
Edison Neighborhood Association	The Edison Neighborhood Association representatives: - Distributed and reviewed the Edison Neighborhood Association <i>Annual Report 2018</i>.
Stuart Area Restoration Association	The Stuart Area Restoration Association representatives: - announced the Association's annual meeting and board elections would take place on April 8th. - described upcoming events and projects. - expressed concern about the disrepair of The Stuart House and the blight on the corner of North Street and Douglas Avenue.

*Commissioner Sykes arrived at 6:06 p.m.

- asked about the development of the Kalamazoo Avenue/West Main Street area relative to streetscape improvements and conversion to 2-way streets.
- reported 8 people were running for positions on the Board of Directors, including three people with prior service on the board and five people who had never been on the board and were new residents in the neighborhood.

Community Planning and Development Director Rebekah Kik stated right-of-way improvements were not happening in the Kalamazoo Avenue/West Main Street area. Director Kik explained the City had only recently assumed jurisdiction of these streets, and there would be a lengthy planning and design process before any improvements were implemented.

The Vine Neighborhood Association representatives:

- reported they had signed the Neighborhood Initiative Agreement and indicated they were looking forward to the neighborhood assessment.
- thanked Neighborhood Activator Katie Reilly for her work on the Imagine Vine Plan and stated walkability was a major goal that came out of the planning process.
- thanked City code inspectors and Community Police Officer Ryan Shank for their work in the neighborhood.
- stated the Association had refinanced its loan with the Local Initiatives Support Corporation (LISC) and reported the value of the Association's property had doubled since they bought it.
- indicated the annual membership meeting would take place in May, and three director positions would be open.
- reported the Association was partnering with the Kalamazoo Public Art Initiative to refurbish the Central Corners Building, which would include two additional large murals.
- stated there was a full Art Hop schedule in place for the first half of the year.
- indicated the Association had reworked its budget, with one of the goals being to increase support for events.
- spoke about blighted, fire-damaged houses that were owned by the Kalamazoo County Land Bank and asked why it was taking so long for these houses to be torn down.

City Attorney Robinson explained the challenges involved with demolishing fire-damaged homes.

Director Kik offered to look up blighted properties to check their status, and she explained the City was working to try to save homes as an affordable housing strategy.

Stuart Area Restoration Association (cont'd)

Vine Neighborhood Association

Public Comments

When an opportunity was given for public comments, the following people addressed the City Commission:

Jody Dozeman, City resident, spoke about her bus fares for people with disabilities and her ideas for the development on Lake Street.

Richard Stewart, City resident, presented reasons why the Southtown area should be its own neighborhood with a neighborhood association. Mr. Stewart described the Southtown boundaries and stated flooding and failing infrastructure were the biggest concerns of property owners and residents. Mr. Stewart reported City staff had put requirements on Southtown that they had not put on other parts of the City that have formed neighborhood associations.

Dana Underwood, City resident, stated she had been asking the City for information about the requirements to be a neighborhood association, but she had not received a response.

Steve Dupuie, City resident, noted he lived in the Southtown area and felt represented by Edison Neighborhood Association. Mr. Dupuie stated Mr. Stewart's comments were the first time he had heard about Southtown residents/businesses wanting to separate from their current neighborhoods.

Commissioner
Comments

Next an opportunity was given for miscellaneous comments by City Commissioners.

Mayor Hopewell encouraged people who were not satisfied with City staff to contact their supervisors.

In response to a question from Commissioner Urban, Mayor Hopewell stated the City did not have a land bank.

Adjournment

The meeting adjourned at 6:39 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on April 1, 2019

Approved by: _____
Bobby J. Hopewell, Mayor
Dated: April 1, 2019

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	A regular meeting of the Kalamazoo City Commission was held on Monday, March 18, 2019 at 7:00 p.m. in the City Commission Chambers at City Hall, 241 West South Street.
Roll Call	COMMISSIONERS PRESENT: Mayor Bobby J. Hopewell Vice Mayor Erin Knott David Anderson Don Cooney Eric Cunningham Shannon Sykes Jack Urban COMMISSIONERS ABSENT: None Also present were City Manager Jim Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.
Opening Ceremony	The invocation, given by Pastor Lenzy E. Bell, First United Baptist Church, was followed by the Pledge of Allegiance.
2019-0073 Report and Award Presentation re: Rose Park Veterans Memorial	Joanna Johnson of the Kalamazoo Sunrise Rotary and Steve Carlisle of Wightman and Associates described the "Locate My Brick" project for Rose Park Veterans Memorial and presented the City with the <i>2019 Merit Award – Surveying</i> from the American Council of Engineering Companies (ACEC). Mayor Hopewell accepted the award on behalf of the City. A picture of the award and a brochure entitled <i>Rose Park Veterans Memorial</i> were filed with the papers for this meeting.
Legislative Update	State Representative Jon Hoadley presented a legislative update. At the Mayor's request, Representative Hoadley explained the concept of State Shared Revenue. In response to a question from Commissioner Cooney, Representative Hoadley discussed proposals designed to keep people out of the criminal justice system and to help people transition from incarceration back to their communities.
Adoption of the Agenda	By unanimous consent the City Commission adopted its meeting agenda with the following changes: - a citizen requested that items F-6, the lease of 26 light duty fleet vehicles from Enterprise Fleet Management, and F-9, a Payment in Lieu of Taxes (PILOT) for the Ebbitt's Crossing project, be moved to the Regular Agenda.
Communications	City Manager Ritsema announced the City Commission would meet on Saturday, March 23rd at 12:00 p.m. at The Foundry, 600 East Michigan Avenue, to discuss implementation of Imagine Kalamazoo 2025, projects for 2020, and additional strategic objectives.
Consent Agenda	Consent Agenda items were presented as follows with a recommendation to approve the items with authorization for the City Manager to sign on behalf of the city:
2019-0074	- approval of a sole source purchase of a Hydra-Stop/line tap/valve insertion machine from Hydra-Stop in the amount of \$153,177.

- approval of a one-year contract extension with Republic Services of West Michigan for the rental, placement, and removal of roll-off containers and disposal of all street sweeping materials deposited in those containers in the amount of \$210,240.	2019-0075
- approval of one-year contract with Safebuilt Michigan, LLC to provide plumbing and mechanical inspection services, for a not-to-exceed amount of \$242,000.	2019-0076
- approval of a sole source contract with Ferguson Waterworks for the replacement of water meters in the amount of \$413,377.40.	2019-0077
- approval of a change order for State Approved Inspection Services for February and March 2019 plumbing and mechanical inspections in the amount of \$24,000.	2019-0078
- approval of a one-year contract extension to purchase Powdered Activated Carbon from Omni Materials, Incorporated in the amount of \$1,023,000.	2019-0079
- adoption of a RESOLUTION adopting a final project plan for water system improvements and designating an authorized project representative.	2019-0080 Resolution 19-14
- adoption of a Notice of Intent RESOLUTION for the issuance of 2019 Capital Improvement Bonds in an amount not to exceed \$11,000,000.	2019-0081 Resolution 19-15
- adoption of a Notice of Intent RESOLUTION for the issuance of 2019 Water Supply System Revenue Bonds in an amount not to exceed \$12,000,000.	2019-0082 Resolution 19-16
- adoption of a Notice of Intent RESOLUTION for 2019 Wastewater System Revenue Bonds in an amount not to exceed \$10,000,000.	2019-0083 Resolution 19-17
- approval of the nominate the following appointments and reappointment of Sector Representatives for the Foundation for Excellence Board of Directors:	2019-0084
- the appointment of Rachel Lonberg as a Faithbased Sector Representative for a full three-year term.	
- the appointment of Charlene Taylor as a Nonprofit Sector Representative to complete the unexpired term of Mia Henry.	
- the reappointment of Sandra Calderon-Huezo as the Edison Representative for a full three-year term.	
- approval of the following appointments and reappointments to boards and commissions:	2019-0085
- the appointment of Benjamin Bierlein to the Building Board of Appeals for a term expiring on March 31, 2022.	
- the reappointment of Lyndia Bruckbauer to the Building Board of Appeals for a term expiring on March 31, 2022.	

2019-0085
(cont'd)

- the reappointment of Richard Emig to the Building Board of Appeals for a term expiring on March 31, 2021.
- the reappointment of Emily Parfet to the Building Board of Appeals for a term expiring on March 31, 2021.
- the reappointment of Linda Servis to the Building Board of Appeals for a term expiring on March 31, 2021.
- the appointment of Andrew Van Lente to the Building Board of Appeals for a term expiring on March 31, 2022.
- the appointment of Reed Youngs to the Zoning Board of Appeals for a term expiring on March 31, 2022.
- the appointment of Richard Skalski to the Zoning Board of Appeals for a term expiring on March 31, 2022
- approval of the minutes from the City Commission meeting on March 4, 2019.

Commissioner Sykes, seconded by Vice Mayor Knott, moved to approve the consent agenda requests and authorize the City Manager to sign all documents on behalf of the City.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Anderson, Cooney, Cunningham, Sykes, Urban, Vice Mayor Knott, Mayor Hopewell

NAYS: None

Regular Agenda

Regular Agenda items were considered next.

2019-0086
Lease of 26 Light Duty
Fleet Vehicles

When an opportunity was given for public comments on the lease of 26 light duty fleet vehicles from Enterprise Fleet Management Trust over 60 months, including additional equipment, in the amount of \$689,397.51, the following people addressed the City Commission:

Angel Johnston, City resident, asked if the City had performed a cost-benefit analysis regarding the proposed vehicle lease.

Commissioner Anderson, seconded by Commissioner Urban, moved to approve the lease of 26 light duty fleet vehicles from Enterprise Fleet Management Trust over 60 months, including additional equipment, in the amount of \$689,397.51.

Prior to a vote on the motion, and in response to a question from Mayor Hopewell, Public Services Director James Baker and Management Services Director Steve Vicenzi noted this was the third year the City was using a lease-equity program for vehicles and explained why the City had chosen to lease vehicles rather than purchase them.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Anderson, Cooney, Cunningham, Sykes, Urban,
Vice Mayor Knott, Mayor Hopewell

NAYS: None

When an opportunity was given for public comments on a resolution granting a Payment in Lieu of Taxes for the Ebbitt's Crossing Limited Dividend Housing Association Limited Partnership at 711 W. Michigan Avenue, the following people addressed the City Commission:

Angel Johnston, City resident, expressed concerns about high rents for the proposed housing units and negative online reviews from tenants in Woda-Cooper's existing housing communities.

Tobi Hannah-Davies, City resident and Co-Chair of the ISAAC Housing Task Force, spoke about the benefits of mixed income housing developments.

Garrett LeDonne, non-resident and Vice President of Development and IT for Woda-Cooper Companies, addressed Ms. Johnston's concerns about rents and tenant complaints.

David Elias, non-resident, spoke about the need for code enforcement on Jackson Street.

Commissioner Sykes, seconded by Commissioner Urban, moved to adopt a **RESOLUTION** granting a Payment in Lieu of Taxes for the Ebbitt's Crossing Limited Dividend Housing Association Limited Partnership at 711 W. Michigan Avenue (Parcel No. 06-16-481-100), pursuant to Section 35-4 of the Kalamazoo City Code.

Prior to a vote on the motion, and in response to a request from Commissioner Sykes, Community Planning and Economic Development Director Rebekah Kik: 1) stated the City did not choose developers for affordable housing projects; 2) explained the importance of PILOTs in the Michigan State Housing Development Authority's (MSHDA's) competitive tax-credit application process; and 3) noted the City Commission had granted a PILOT for this project in 2018.

In response to questions from Commissioner Urban and Mayor Hopewell, Mr. LeDonne explained Woda-Cooper had withdrawn their 2018 MSHDA application due to issues with the project that had since been resolved, and he described the dispute resolution process available to Woda-Cooper tenants.

In response Commissioner Cooney, Director Kik cited figures from the agenda report regarding the number of units, their rents, and income qualifications.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Anderson, Cooney, Cunningham, Sykes, Urban,
Vice Mayor Knott, Mayor Hopewell

NAYS: None

2019-0086

Lease of 26 Light Duty
Fleet Vehicles (cont'd)

2019-0087

Resolution 19-18
Granting a PILOT for the
Ebbitt's Crossing Project
at 711 West Michigan
Avenue

2019-0088

Youth Mobility Fund
Project Services
Agreement

Foundation for Excellence Coordinator Steve Brown provided brief remarks on the Youth Mobility Fund Project.

An opportunity was given for public comments on a Youth Mobility Fund Project Services Agreement with Kalamazoo Public Schools and the Central County Transportation Authority, but no comments were offered.

Commissioner Anderson, seconded by Commissioner Cunningham, moved to approve the Youth Mobility Fund Project Services Agreement with Kalamazoo Public Schools and the Central County Transportation Authority.

Prior to a vote on this motion, Commissioners expressed excitement about the Youth Mobility Fund Project; highlighted the importance of investing in young people; remarked on how this tactic would remove roadblocks and allow prosperity to happen; and thanked staff and community partners for their work to make the project a reality.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Anderson, Cooney, Cunningham, Sykes, Urban,
Vice Mayor Knott, Mayor Hopewell

NAYS: None

2019-0089

Acceptance of a 2018
Lead Hazard Reduction
Grant

Community Investment Manager Dorla Bonner delivered a presentation entitled *2019 Lead-based Paint Hazard Reduction Program*. A copy of the slides from this presentation were filed with the papers for this meeting.

When an opportunity was given for public comments on the 2018 Lead Hazard Reduction Grant and approval of the terms and conditions, the following people addressed the City Commission:

Matt Milcarek, City resident and Construction Manager for Kalamazoo Neighborhood Housing Services, thanked City staff for their work on this grant and commented on the need for new lead abatement funding after county funding was eliminated in 2013.

Matt Lager, Executive Director of Kalamazoo Neighborhood Housing Services, spoke about the importance of lead abatement.

Commissioner Sykes, seconded by Commissioner Cunningham, moved to accept the 2018 Lead Hazard Reduction Grant and approve the terms and conditions.

Prior to a vote on the motion, Commissioners Sykes and Urban noted this grant funding would address lead in houses, which was a larger cause of high lead levels in children compared with other possible sources, such as water.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Anderson, Cooney, Cunningham, Sykes, Urban,
Vice Mayor Knott, Mayor Hopewell

NAYS: None

Director Baker reported on the City's efforts to address potholes.

Next, when an opportunity was given for general citizen comments, the following people addressed the City Commission:

Jody Dozeman, City resident, spoke on various topics.

Pamela Rups, City resident and a member of First Congregational Church, expressed opposition to the proposed Bronson Park and Nazareth Local Historic Districts. A copy of Ms. Rups' written remarks were filed with the papers for this meeting.

Roger Parzyck, City resident, expressed support for the proposed Bronson Park and Nazareth Local Historic Districts.

Nelson Nave, City resident, expressed support for the proposed Bronson Park and Nazareth Local Historic Districts.

Patricia Hirsch, City resident, expressed support for the proposed Bronson Park and Nazareth Local Historic Districts.

Tony Holewinski, City resident, expressed support for preserving First Reformed Church on Bronson Park.

Lynn Stevens, City resident, presented myths and facts about historic districts.

Pam O'Connor, City resident, expressed support for the proposed Bronson Park and Nazareth Local Historic Districts.

Claire Milne, City resident, expressed support for the proposed Bronson Park and Nazareth Local Historic Districts and urged the City Commission to set a review period.

Carol Howard, City resident, expressed support for the proposed Bronson Park and Nazareth Local Historic Districts.

Sue Robinson, City resident, remarked on the importance of Kalamazoo's Dutch heritage and expressed support for preserving First Reformed Church on Bronson Park.

Beverly McCall, City resident, described upcoming events for the Kalamazoo Alumni Chapter of Delta Sigma Theta Sorority.

Peter Carroll, City resident, expressed support for historic districts and for the proposed Bronson Park and Nazareth Local Historic Districts.

Rex Brueggemann, City resident and a member of First Congregational Church, described the business deals involving First Congregational Church and First Reformed Church. Mr. Brueggemann expressed opposition to the proposed Bronson Park Local Historic District.

City Manager's Report

Citizen Comments

2019-0090

Citizen Comments
(cont'd)

Jody Brylinsky, non-resident and member of First Congregational Church, expressed opposition to the proposed Bronson Park Local Historic District and stated the Historic District Study Plan for this district contained wrong information.

City Commissioner
Comments

Finally, an opportunity was given for miscellaneous comments from City Commissioners.

Commissioner Sykes offered remarks on the proposed local historic districts and the need to value people more than buildings.

Commissioner Anderson commented on the relative importance of the local historic district issue and the items on the meeting agenda compared to recent, high-profile deaths in the City, including a man who was shot by Public Safety Officers.

Commissioner Cooney noted the Walk for the Homeless would take place on March 23rd. Commissioner Cooney stated the City Commission needed to act on the proposed local historic districts at its April 1st meeting.

Commissioner Urban expressed support for allowing the normal historic district process to play out, as this process would create a forum for learning.

Vice Mayor Knott offered remarks on the importance of property rights and the existence of opportunities to preserve history in ways other than preserving structures. Vice Mayor Knott stated the question should be called at the next meeting.

Mayor Hopewell stated he was unconvinced by either side of the local historic district question and noted this was an opportunity for the community to find a path forward together. Mayor Hopewell observed there was no historic district in place at present, so property owners were not restricted. Mayor Hopewell recommended that Commissioners work with City Attorney Robinson on language if they intended to bring forward a motion on April 1st.

In response to a request from Mayor Hopewell, Public Safety Chief Karianne Thomas reported the officers involved in the shooting on March 12th were doing well. Chief Thomas spoke about her responsibility for keeping officers safe, and she thanked the City Commission for supporting the Department of Public Safety with excellent training and equipment.

Mayor Hopewell remarked that the officers involved with the shooting were wearing bulletproof vests that had been approved for purchase by the City Commission in 2017 and were put into service just one week before the March 12th incident. Mayor Hopewell commented on the importance of seemingly mundane Commission actions like this and thanked the Department of Public Safety and Public Safety Officers for their service.

Adjournment

The meeting adjourned at 10:06 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on April 1, 2019

Approved by: _____
Bobby J. Hopewell, Mayor
Dated: April 1, 2019



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: Clyde J. Robinson, City Attorney

PREPARED BY: Clyde J. Robinson, City Attorney

DATE: 3/22/2019

SUBJECT: Acquisition of Vacant Property on Sun Valley Drive

RECOMMENDATION

It is recommended that the City Commission authorize the City Manager to execute all necessary documents for the City to acquire Lot 3 of Sun Valley Acres to address local flooding conditions.

BACKGROUND

Following severe flooding in October of 2017 the Department of Public Services responded to reports that Sun Valley Drive was inundated and impassible. The road was closed, stranding residents with no way into or out of their neighborhood. As a temporary solution the Department of Public Services raised the road approximately nine inches at centerline to permit travel. Funds were budgeted and an engineering consultant was retained to design and permit a permanent solution. The design team was then expanded with input from the Michigan Department of Natural Resources due to the complexities involving a National Wetland Inventory protected forested wetland complex.

Property acquisition is needed to properly implement a design that will connect the protected wetland to the West Fork of Portage Creek, raise Sun Valley Drive several feet and install a new vernal pond between Sun Valley Drive and the West Fork of Portage Creek.

Several more phases of engineering design and permitting through the Michigan Department of Environmental Quality and MDNR will be needed following property acquisition. This project was funded in 2018 with all funds carried forward to 2019. Construction is planned for late season 2019 or early summer 2020 contingent on final permit approvals.

COMMUNITY RESOURCES CONSULTED

Not applicable.

FISCAL IMPACT

The cost to acquire the necessary parcel of private property is \$20,000 plus associated costs of closing.

ALTERNATIVES

The City Commission may refuse to acquire the property. However, such is not recommended as the property is essential for flood control in this neighborhood.

ATTACHMENTS:

Type	Description
☐	Agreement Sales Agreement



**AUTHORIZED BUY & SELL AGREEMENT ("Agreement") OF THE
GREATER KALAMAZOO ASSOCIATION OF REALTORS®**



Date 3-15, 2019 ☐ A.M. / ☐ P.M. (TIMES ARE KALAMAZOO, MICHIGAN TIME.) MLS No. N/A

AGENCY

The undersigned Buyer and Seller ("The Parties") each acknowledge that they have read and signed the Real Estate Agency Disclosure.

The agency relationships at the time of execution of this Agreement are as follows:

☐ Seller Only ☐ Seller and Buyer (Disclosed Dual Agent) ☐ Neither (Transaction Coordinator)	Listing Broker represents: _____, Listing Salesperson represents: _____	☐ Seller Only ☒ Buyer Only ☐ Seller and Buyer (Disclosed Dual Agent) ☐ Neither (Transaction Coordinator)	Doorlag Realty Company Selling Broker represents: _____, Selling Salesperson represents: Mark Doorlag
☐ Seller Only ☐ Seller and Buyer (Disclosed Dual Agent) ☐ Neither (Transaction Coordinator)	_____, Listing Salesperson represents: _____	☐ Seller Only ☒ Buyer Only - Addendum # _____ ☐ Seller and Buyer (Disclosed Dual Agent) - Addendum # _____ ☐ Neither (Transaction Coordinator) - Addendum # _____	_____, Selling Salesperson represents: _____

OFFER

- PRIOR OFFERS:** This offer terminates any prior offers or counteroffers between The Parties for The Property.
- PROPERTY DESCRIPTION:** Buyer agrees to buy from Seller The Property, whose address is 4200 Sun Valley Drive
 _____, MI 49008. The Property is located in the ☒ CITY ☐ VILLAGE ☐ TWP. of Kalamazoo
 _____, County, Michigan, and legally described as: Sun Valley Acres, Lot 3
 _____, subject to existing zoning ordinances. TAX ID# 39063237903

The Property shall include all buildings, improvements, appurtenances, fixtures and, if now in or on the property, the following: antennas and/or satellite dishes including all accessories and complete rotor equipment (unless rented); all landscaping, including all plantings; landscape lighting; ceiling fans; lighting fixtures, light bulbs and their shades; built-in sound system wiring and built-in speakers; wall mounted hardware for TV's (excluding TV); security systems; fireplace doors, screens and grates; wood burners and fireplace inserts; drapery and curtain hardware; window shades and blinds; wall-to-wall carpeting; screens, storm windows and doors; stationary laundry tubs; all water conditioning equipment (unless rented); water heaters (unless rented); sump pumps; heating and air conditioning equipment (excluding window units); LP tanks (unless rented); water pump and pressure tank; underground sprinkling systems; built-in kitchen appliances; awnings; mail boxes; garage door openers and transmitters; stationary outdoor grills; storage sheds; pool and pool equipment; fencing; attached: outdoor play equipment, work benches, cabinetry, shelving, mirrors, smoke/fire detectors, carbon monoxide detectors, thermostats, timers, and under-cabinet appliances; invisible fencing and controllers; hot tub and/or spa and all related equipment, and

But shall exclude RENTED ITEMS and _____

- SALE PRICE:** Twenty Thousand Dollars (\$ 20,000.00) Dollars
- CLOSING:** Sale shall be closed on a day and time mutually agreeable to The Parties, but not earlier than ASAP and not later than June 15, 2019. Buyer shall pay any closing fee charged by a title company, except Seller shall pay said closing fee and wood destroying insect inspection fee(s) if required by a VA lender. Seller shall pay real estate transfer taxes at the time the deed is delivered.
- POSSESSION:** Buyer shall be entitled to possession of The Property as follows: (Check one box)
☒ At the completion of closing. OR
☐ Seller shall pay to Buyer at closing, a non-refundable delayed possession fee of \$ _____, and shall have the right to possession of The Property until 11:59 p.m. on the _____ day after the day of closing.

Seller shall not be entitled to possession after the time agreed above. Unless otherwise provided in writing and signed by The Parties, Seller shall provide possession of The Property free from the rights of any other person or entity, including, but not limited to, tenants. At the time of transfer of possession of The Property, Seller shall have removed all personal property (unless otherwise stated in this or an additional written agreement), made arrangements for final payment on all utilities, and shall deliver all keys to Selling Broker or Buyer.

The Property shall be free and clear of trash and debris; buildings and improvements shall be left in broom-clean condition. Seller shall maintain The Property in its present condition until time of possession in this transaction, normal and reasonable wear excepted. Seller shall pay for utilities and for any repairs due to damage caused by the Seller to The Property after closing and before transfer of possession. Seller is responsible for obtaining any insurance Seller deems necessary, covering Seller to the time of transfer of possession.

If Seller fails to give possession to Buyer as provided, Seller shall pay Buyer \$ _____ for each day that Seller retains The Property beyond the agreed time and shall be liable for all court costs and reasonable actual attorney fees incurred by Buyer in obtaining possession and collecting the amount due.

- ATTACHMENTS:** ☐ No ☐ Yes Attachments and/or addendum #: _____

7. **DISCLAIMER:** Buyer understands and agrees that the real estate Brokers and Salespersons do not warrant: (i) The Property's boundaries, the size of the land, the size of the buildings and improvements; (ii) the condition of The Property; or (iii) that appropriate permits were obtained for repairs or other work performed on buildings or improvements. Buyer understands and agrees that the real estate Brokers and Salespersons also do not assume any responsibility for the representations made by Seller. It is further understood that no representations or promises have been made to Buyer by the real estate Brokers or Salespersons, or by Seller other than those contained in this Agreement or as otherwise made or given by Seller to Buyer in the written disclosure statement(s). The Parties understand that Brokers and Salespersons are not environmental experts. Unless expressly contained in a written instrument signed by the Brokers, Brokers and Salespersons have no knowledge of, and make no representations regarding (a) the environmental condition of The Property, (b) the existence of underground storage tanks at The Property now, or in the past, (c) whether The Property is, has been or may be listed as a site of environmental contamination, or (d) whether any such sites are located in the proximity of The Property. If Buyer or Seller requests the Brokers or Salespersons to recommend inspectors, repairmen or other professionals, The Parties agree that the Brokers and Salespersons shall not be liable for errors or omissions made by said inspectors, repairmen or other professionals.
8. **BUYER INVESTIGATIONS:**
- A. **Buyer Acknowledgment:** Buyer acknowledges that Buyer has been advised to carefully evaluate The Property to determine its condition and suitability for Buyer's intended use. Buyer is aware that inspectors and inspection services are available to aid Buyer in these evaluations. Items Buyer should evaluate include, but are not limited to, the following: structural integrity; condition of mechanical systems; infestation by termites or other wood-destroying insects; environmental concerns such as underground storage tanks or abandoned uncapped wells; health or safety issues, including radon and mold; zoning; assessed valuation, including the Principal Residence Exemption status and any possible changes to that status; the size of the land; the size of the buildings and improvements; the availability of utilities, including the cost to extend or hook-up; soil erosion or settling; the existence of wetlands; the availability of homeowner's insurance or flood insurance at a cost acceptable to Buyer.
- B. **Buyer Investigation Period:** Buyer shall have ten (10) days from the last dated acceptance of this Agreement ("Investigation Period") to investigate The Property. During the Investigation Period, Buyer and Buyer's investigators shall have reasonable access to The Property to conduct investigations as Buyer deems necessary. Buyer agrees to defend, indemnify and hold Seller harmless from any physical damage to persons or property resulting from such investigations. To the extent The Property is damaged due to any of Buyer's investigations, Buyer agrees to restore The Property to its original condition. Buyer is solely responsible for ordering and paying for any inspections and evaluations, except, if Buyer has elected to use VA financing, Seller shall pay for the wood destroying insect inspection at closing.
- C. **Seller Responsibility Concerning Utilities:** Seller shall have the following utilities, if attached, turned on for Buyer's investigations, appraisals and final inspection: electric, natural gas, propane, heating oil, sewer and water. Seller shall be solely responsible for de-winterization, re-winterization and any and all costs and procedures associated with this subparagraph.
- D. **Results of Investigations:** If any investigation reveals a condition unacceptable to Buyer, then, prior to the expiration of the Investigation Period, Buyer may pursue one of the following resolutions:
1. **Buyer may Deliver to Seller or Listing Broker a written request for corrective action(s)** on the GKAR Investigations Addendum, or a similar notice, along with any applicable documentation or report(s) AND ANY APPLICABLE WRITTEN COST ESTIMATE(S). Seller shall have five (5) days from receipt of the Investigations Addendum, or a similar notice, to respond to Buyer, in writing, as to whether Seller will agree to pay for and/or perform said requested corrective action(s). **If Seller rejects any part of Buyer's request in writing, Buyer shall have three (3) days from receipt of Seller's written rejection to terminate this Agreement in writing. If Seller does not respond in writing, Buyer shall have three (3) days from the expiration of Seller's allowed five (5) day period to terminate this Agreement in writing. If Buyer fails to so terminate this Agreement, Buyer shall be deemed to have accepted the condition of the Property in its "AS-IS" condition as it relates to this paragraph.**
 2. **Buyer may terminate this Agreement** by providing written notice of the termination to Seller or Listing Broker, identifying the unacceptable condition. If requested by Seller, Buyer shall provide Seller with a copy of any inspection report or documentation of unacceptable condition.
- E. **Waiver of Contingencies:** BUYER AGREES THAT THE CONTINGENCIES IN THIS PARAGRAPH SHALL BE DEEMED TO HAVE BEEN WAIVED IF (1) BUYER FAILS TO DELIVER WRITTEN NOTICE OF BUYER'S PROPOSED RESOLUTION TO SELLER OR LISTING BROKER WITHIN THE INVESTIGATION PERIOD OR (2) BUYER FAILS TO TERMINATE THIS AGREEMENT IN WRITING AS PROVIDED ABOVE. IF THESE CONTINGENCIES ARE WAIVED, OR IF BUYER ELECTS TO CLOSE THIS TRANSACTION, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE PROPERTY IN ITS "AS-IS" CONDITION AS OF THE DATE OF CLOSING.
9. **LOCATION OF BOUNDARIES AND IMPROVEMENTS:** Buyer may, at Buyer's expense, obtain a survey or mortgage report of The Property. If the survey or mortgage report: (1) reveals material differences in The Property's boundaries or land area from that which was represented by Seller in writing, or (2) reveals encroachments, setback violations, or matters which would interfere with Buyer's intended use of The Property ("Survey Defects"), Buyer shall furnish Seller with a copy of the survey or mortgage report, along with a written request that Seller correct the Survey Defect(s). These must be received by Seller no later than fifteen (15) days after delivery of the title commitment referenced in Paragraph 16 to Buyer or Selling Broker. Seller shall respond in writing to Buyer within five (5) days as to whether or not Seller will correct the Survey Defect(s). If Seller does not agree to do so or fails to respond, Buyer shall have three (3) days from receipt of Seller's written refusal (if any) or from the expiration of Seller's allowed time, whichever first occurs, to terminate this Agreement in writing.
- BUYER AGREES THAT THIS CONTINGENCY SHALL BE DEEMED WAIVED IF (1) BUYER FAILS TO PROVIDE SELLER WITH A SURVEY OR MORTGAGE REPORT OR (2) BUYER FAILS TO TERMINATE THIS AGREEMENT IN WRITING AS PROVIDED ABOVE. IF THIS CONTINGENCY IS WAIVED AND BUYER ELECTS TO CLOSE THIS TRANSACTION, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE LOCATION OF THE PROPERTY BOUNDARIES AND IMPROVEMENTS, "AS IS".
10. **WELL/WATER/SEPTIC SYSTEM EVALUATIONS:** If The Property is serviced by a water well, Seller agrees to order within five (5) days of the last dated acceptance of this Agreement and promptly provide to Buyer and/or Selling Broker, at Seller's expense, an evaluation report from the County Health Department or the private well evaluation company listed in Paragraph 11, covering the well and tests for nitrates and bacteria in the water by either the County Health Department or other government approved laboratory. Any water evaluation beyond tests for nitrates and bacteria shall be Buyer's responsibility and Buyer's expense. If The Property is serviced by a septic system, Seller agrees to order within five (5) days of the last dated acceptance of this Agreement and promptly provide to Buyer and/or Selling Broker, at Seller's expense, an evaluation report covering the condition of the septic system by the local County Health Department or the private septic evaluation company named in Paragraph 11. Seller further agrees to have the septic tank pumped if required by the local County Health Department.

If the evaluation report(s) in any of the above circumstances disclose(s) a condition which Buyer reasonably deems unacceptable, Buyer shall notify Seller or Listing Broker of such condition and requested corrective action in writing within five (5) days of the date Buyer has received the applicable report(s). If Seller does not agree or fails to respond within fifteen (15) days of Buyer's requested corrective action, Buyer shall have the right to terminate this Agreement by providing written notice to Seller or Listing Broker within three (3) days from receipt of Seller's written refusal (if any) or from the expiration of Seller's allowed time, whichever first occurs.

BUYER AGREES THAT THE CONTINGENCY PROVIDED BY THIS PARAGRAPH SHALL BE DEEMED TO HAVE BEEN WAIVED IF (1) BUYER FAILS TO PROVIDE WRITTEN NOTICE OF A CONDITION DEEMED UNACCEPTABLE WITHIN FIVE (5) DAYS AFTER BUYER HAS RECEIVED THE APPLICABLE REPORT(S) OR (2) BUYER FAILS TO TERMINATE THIS AGREEMENT IN WRITING AS PROVIDED ABOVE.

IF THESE CONTINGENCIES ARE WAIVED, OR IF BUYER ELECTS TO CLOSE THIS TRANSACTION, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE PROPERTY IN ITS "AS IS" CONDITION AS OF THE DATE OF CLOSING.

11. **PRIVATE WELL AND/OR SEPTIC EVALUATION COMPANIES:** The Parties agree that the following shall be used to evaluate the well/water/septic system per Paragraph 10: For evaluation of the well and water: _____
For evaluation of the septic system: _____. A blank line shall indicate the agreement of The Parties to use the local County Health Department.

12. **SOURCE OF FUNDS:** This Agreement:

☒ A. **IS NOT CONTINGENT** on the sale or exchange of any real or personal property by Buyer. **BUYER REPRESENTS THAT THE FUNDS NECESSARY TO COMPLETE THIS AGREEMENT (ON THE TERMS SPECIFIED) ARE CURRENTLY AVAILABLE TO BUYER IN CASH OR AN EQUALLY LIQUID EQUIVALENT.**

☐ B. **IS CONTINGENT ON:**

☐ (1) THE CLOSE OF THE PENDING SALE OF BUYER'S PROPERTY located at _____.

A copy of the agreement(s) to sell or exchange Buyer's property is being delivered to Seller or Listing Broker along with this offer. Buyer shall notify Seller or Listing Broker in writing within 48 hours of any changes in the terms or progress of said agreement(s) that will delay or materially affect the consummation of this Agreement. In such an event, Seller may terminate this Agreement by written notice to Buyer or Selling Broker within 48 hours of receipt of said notice from Buyer. Failure of Buyer to notify Seller of such changes, or a default by Buyer in said agreement(s), shall be considered a default in this Agreement.

☐ (2) **OTHER:** _____

13. **METHOD OF PAYMENT:** All moneys must be paid in US funds by wire transfer, certified check, cashier's check, or money order. The sale will be completed upon Seller's delivery of a warranty deed conveying marketable title by the following method:

☒ A. **CASH.** Buyer will pay the sale price by cash, certified check, cashier's check or money order.

☐ B. **NEW MORTGAGE.** This Agreement is contingent upon Buyer's ability to obtain a(n) _____ (type) mortgage loan in the amount of \$ _____ or _____ % of the sale price. Buyer shall apply for the loan from _____ (name of financial institution-Lender) within _____ days of the last dated acceptance of this Agreement.

Loan application shall include the payment of any appraisal fee, application fee, and all other costs customarily charged by Lender for loan approval. Buyer acknowledges that failure to complete the loan application as agreed shall constitute a default by Buyer. Buyer shall take no action that would impair Buyer's credit or ability to obtain the loan and shall accept such loan if offered. Buyer may waive this mortgage loan contingency by written notice to Seller or Listing Broker and pay cash as provided in subparagraph A above.

Seller may terminate this Agreement by written notice to Buyer or Selling Broker if Buyer fails to provide Seller or Listing Broker with evidence of loan approval by 5:00 p.m. _____ ("Loan Approval Deadline Date"). If Buyer is unable to obtain written verification of Lender's approval, Buyer may provide oral verification from Lender to Seller or Listing Broker. If said loan approval is acceptable to Seller, no response shall be necessary.

If Seller reasonably determines that the evidence of loan approval is inadequate or unacceptable and if Seller therefore wishes to terminate, Seller must deliver written notice of termination of this Agreement by 5:00 p.m. on the third day after the Loan Approval Deadline Date. If Seller so terminates, Buyer may waive this mortgage contingency and void the termination by delivering written notice of such waiver to Seller or Listing Broker by 5:00 p.m. on the third day after Seller's delivery of termination. If Buyer waives this mortgage contingency and subsequently fails to close due to Buyer's failure to secure financing, Buyer shall be considered in default in this Agreement.

BUYER HEREBY INSTRUCTS LENDER TO RELEASE TO SELLING BROKER AND SELLER OR LISTING BROKER INFORMATION CONCERNING COMPLETION OF LOAN APPLICATION AND STATUS OF LOAN APPROVAL.

☐ C. **LAND CONTRACT.** See attached GKAR Land Contract Addendum.

14. **SELLER'S DISCLOSURE STATEMENT:** BUYER ☐ HAS ☐ HAS NOT RECEIVED A COMPLETED AND SIGNED COPY OF THE SELLER'S DISCLOSURE STATEMENT # _____ DATED OR REVISED _____. SELLER HEREBY CERTIFIES THAT, TO THE BEST OF SELLER'S KNOWLEDGE, THE INFORMATION CONTAINED IN SUCH SELLER'S DISCLOSURE STATEMENT IS CURRENT AS OF THE DATE OF THIS AGREEMENT. FURTHER, SELLER AGREES TO INFORM BUYER IN WRITING OF ANY CHANGES IN THE CONDITION OF THE PROPERTY RELATING TO THE INFORMATION CONTAINED IN SUCH DISCLOSURE STATEMENT.

15. **LEAD BASED PAINT DISCLOSURE STATEMENT:** BUYER ☐ HAS ☐ HAS NOT RECEIVED BOTH AN EPA PAMPHLET "PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME" AND A COMPLETED AND SIGNED COPY OF THE SELLER'S LEAD BASED PAINT DISCLOSURE STATEMENT # _____.

If The Property was constructed prior to January 1, 1978, Buyer will not be obligated to the terms of this Agreement unless the above documents are received by Buyer. If the above documents are received after the last dated acceptance of the Agreement, Buyer shall have the right to terminate this Agreement within 72 hours after Buyer's receipt of the above documents if the Seller's Lead Based Paint Disclosure Statement indicates any condition unacceptable to Buyer. If Buyer fails to terminate this Agreement within said 72 hours, Buyer's right to terminate under this provision shall be considered waived. BUYER ☐ WAIVES OR ☐ REQUESTS LEAD BASED PAINT INSPECTIONS TO BE PERFORMED PER LEAD-BASED PAINT ADDENDUM # _____, WHICH IS ATTACHED HERETO.

16. TITLE EVIDENCE: Seller agrees to convey marketable title to The Property subject to: conditions, limitations, building and use restrictions and easements of record ("Exceptions"). As evidence of marketable title, Seller shall furnish Buyer, at Seller's expense, an *expanded coverage ALTA Homeowner's Policy of Title Insurance* ("Expanded Policy"), if available, in the amount of the sale price. Seller shall order the commitment for such policy, along with copies of the Exceptions, and shall deliver same to Buyer or Selling Broker within ten (10) days after the last dated acceptance of this Agreement. If a survey or mortgage report is required by the commitment, it shall be completed at Buyer's expense in accordance with Paragraph 9 LOCATION OF BOUNDARIES AND IMPROVEMENTS. If an *Expanded Policy* is not available or if Buyer declines any required survey or mortgage report cost, Seller agrees to provide and Buyer agrees to accept a *standard coverage ALTA Owner's Policy of Title Insurance including all standard exceptions*.

If the commitment discloses any title defect(s) or anything in the Exceptions which would interfere with Buyer's intended use of The Property, Buyer must notify Seller or Listing Broker, in writing, of Buyer's objections within five (5) days of Seller's delivery of the commitment and Exceptions. Further, if, prior to closing, Buyer shall become aware of new title defect(s), Buyer must notify Seller or Listing Broker, in writing, within five (5) days of Buyer becoming aware of such defect(s).

If Seller receives any such notification, Seller shall have either thirty (30) days from Buyer's delivery of written objection(s) or until the latest closing date set forth in Paragraph 4 of this Agreement, whichever first occurs, to resolve Buyer's objection(s). If Seller is unable to cure the title defects(s), or unable or unwilling to resolve Buyer's objection(s) to Exceptions, within this time period, Buyer may terminate this Agreement in writing and receive a full refund of the earnest money or proceed to closing, accepting the status of the title "AS IS".

17. PRORATIONS: Items normally prorated in real estate transactions, including association fees, rental income, taxes as discussed below, interest on any existing land contract, mortgage, or lien assumed by Buyer shall be adjusted to the date of closing in accordance with the calendar year. All rental security deposits shall be paid to Buyer at closing.

18. REAL ESTATE TAXES: Current real estate taxes shall be prorated to the date of closing and shall be deemed to cover the calendar year in which they become due and payable. Taxes shall be deemed due and payable as follows: Summer taxes – July 1st or August 1st; Winter taxes – December 1st. If the actual tax bill(s) for the year have not been determined by the municipality at the time of closing, taxes shall be estimated by multiplying the current taxable value by the most recently available tax rate. If The Property's Principal Residence Exemption ("PRE") status for the calendar year in which the closing occurs will change as a result of the closing, the tax rate associated with the new PRE status shall be used.

If the current PRE percentage claimed by Seller is greater than zero, Seller represents that such claim by Seller is accurate and lawful. Such representations shall survive the closing. Seller shall defend, indemnify and hold harmless Buyer from any loss, claim or damage resulting from any inaccuracy in such representations. Such loss, claim or damage shall include, but shall not be limited to, any loss, claim or damage resulting subsequently to Buyer from the tax proration calculation made at the time of closing or from the change in PRE status by the municipality for any prior years. Seller shall also be responsible for reasonable actual attorney fees incurred by Buyer in enforcing the provisions of this paragraph, regardless of whether suit is actually filed. The representations and obligations under this paragraph may only be terminated by a separate written document signed by The Parties specifically referring to this paragraph by number.

19. SPECIAL ASSESSMENTS: Special assessments levied on The Property shall be handled as follows:

- A. Existing special assessments, whether there is a lien or not, which can be paid in full and permanently discharged shall be paid by Seller at close of sale.
- B. Existing special assessments which have ongoing installments and cannot be paid in full and permanently discharged shall be prorated as referenced in the paragraph entitled Prorations. This type of assessment is generally for services or maintenance, including, but not limited to: street lighting, lake weed control, emergency services, etc.
- C. Special assessments which are levied on The Property after the last dated signature of this Agreement shall be the responsibility of Buyer.

20. WATER/SEWER CHARGES: Seller shall be responsible for water and sewer charges until date of possession. The cost of water and sewer hookups after closing shall be paid by Buyer. If The Property is not presently served by these utilities, Buyer is advised to consult with the local units of government for information regarding when and if such hookup is or may be required, feasibility and cost of such hookup, and whether any assessment will be imposed at that time.

21. LIQUID FUEL: Seller agrees that the existing supply of liquid heating and cooking fuel shall be depleted only in the course of normal usage. Buyer shall be entitled to all such fuel owned by Seller and located or stored upon The Property at the time of possession. Buyer acknowledges Buyer has been advised to determine whether any existing supply of liquid fuel is owned by Seller or the supplier.

22. SELLER'S REPRESENTATIONS: The following representations shall survive the closing and, except as otherwise disclosed in writing, Seller represents to the best of Seller's knowledge and belief that:

- A. There are no existing violations of any laws, statutes, ordinances, regulations, orders or requirements of any governmental authority affecting The Property.
- B. There is no pending or threatened litigation, administrative action or claim relating to The Property.
- C. Seller has not been notified of any assessments to be placed on The Property.
- D. The Seller is the owner of title to The Property in the condition required for performance hereunder.

If The Property is rented to tenants:

- E. As referenced in Paragraph 5, Seller shall notify Buyer or Selling Broker in writing of the possession rights of any person or entity, including, but not limited to, tenants. Seller shall provide copies of all leases and security deposit information to Buyer or Selling Broker within three (3) days of the last dated acceptance of this Agreement. This Agreement is contingent upon Buyer's written acceptance of such possession rights, leases and security deposit information within five (5) days of receipt of such notice and copies. If Seller does not provide such notice and copies within such three (3) days, Seller warrants that no other person or entity has possession rights. If Buyer receives such notice and copies and neither accepts nor rejects such items within the five (5) days, Buyer shall be deemed to have accepted them and this contingency shall be deemed satisfied.
- F. None of the tenants occupying The Property shall be entitled to any concessions, rebates, allowances or free rent for any period after the Closing Date.
- G. After the date hereof, the Seller will not enter into any agreement pertaining to The Property or any modification of, or release from, an existing lease or rental agreement, without the prior written consent of Buyer.

23. **FINAL INSPECTION:** Buyer shall have the right to inspect The Property within seventy-two (72) hours prior to closing to make sure that the real estate and personal property are in place and in a condition that is not substantially different from the condition at the time of Buyer's offer per this Agreement, or as improved by any agreed-upon corrective action. If substantial differences have occurred, then Buyer shall immediately notify Seller and/or Listing Broker in writing, of said differences and Buyer's requested corrective action. The Parties shall be deemed to have settled such differences as of close of sale. Broker(s) and/or Salesperson(s) have no responsibility for the condition of The Property.
24. **DISCLOSURE:** Buyer acknowledges Buyer has been advised that Seller and Seller's agent may not consider the existence of or terms of Buyer's offer to be confidential. The Parties further acknowledge that the sale price and terms will be disclosed to the Greater Kalamazoo Association of REALTORS®/MLS/SWMRIC, who may use it in the ordinary course of business.
25. **UNPLATTED LANDS:** Seller represents that The Property is not a new land division under the Land Division Act and Seller owns no other contiguous, unplatted land unless otherwise disclosed in writing. Seller is transferring to Buyer all available divisions, if any, under Section 108 of the Land Division Act but makes no representations as to the number. Buyer has not relied on any information or opinions of the Broker(s) or Salesperson(s) on this matter.
26. **LEGAL COUNSEL:** Buyer acknowledges that Broker(s) and/or Salesperson(s) have recommended that Buyer retain an attorney to pass upon the marketability of title to The Property. The Parties acknowledge that Broker(s) and/or Salesperson(s) have recommended that they each retain an attorney to ascertain that the requirements of this Agreement have been met.
27. **DUE ON SALE: SELLER UNDERSTANDS THAT SELLING OR TRANSFERRING THE PROPERTY DOES NOT RELIEVE SELLER OF ANY MORTGAGE OBLIGATION OR OTHER INDEBTEDNESS TO WHICH THE PROPERTY IS SUBJECT, UNLESS OTHERWISE AGREED TO BY THE LENDER OR REQUIRED BY LAW OR REGULATION.**
28. **CONSENT TO FEES:** The Parties acknowledge that Brokers may be offered placement fees, finder's fees or other consideration from others who become involved in the sale of The Property. The Parties hereby grant Broker(s) permission to receive such fees and/or consideration, unless otherwise agreed in writing.
29. **CASUALTY:** In the event that, on or before the closing date, any buildings or other improvements on The Property shall be damaged by fire, storm or other casualty, and the cost to repair same is in excess of 10% of the sale price, either party shall have the right to rescind this Agreement by written notice to the other party within seven (7) days after receiving notice of such casualty, and Buyer shall be entitled to a refund of any earnest money.
30. **ARBITRATION:** The Parties acknowledge that they have been informed that any claim or dispute between them, related to this Agreement, may be arbitrated if Seller and Buyer each agree in writing to such arbitration.
31. **EARNEST MONEY RESOLUTION:** If this Agreement is not closed in the time and manner provided, the Selling Broker shall have the right, but is not obligated, to propose a final disposition of the earnest money in writing to Buyer or Buyer's Salesperson and to Seller or Seller's Salesperson. Unless Broker, within thirty (30) days of the date of giving such notice, receives different instructions in a written instrument signed by both of The Parties, or is furnished written evidence that a lawsuit has been filed relating to enforcement or termination of this Agreement or disposition of the earnest money, all parties shall be deemed to have agreed to Broker's proposed disposition of the earnest money. If a party objects and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by The Parties. In the event of litigation involving the earnest money, in whole or in part, the non-prevailing Buyer or Seller, as determined by the court, shall reimburse the other for reasonable actual attorneys' fees and expenses incurred in connection with the litigation, and shall reimburse Broker for any reasonable actual attorney's fees and expenses incurred in connection with the interpleader action instituted.
32. **COUNTERPARTS/SIGNATURES:** This Agreement may be signed in one or more counterparts each of which will be deemed to be an original copy of this Agreement and all of which, when taken together will be deemed to constitute one Agreement. The exchange of copies of this Agreement and signature by facsimile or other similar electronic device shall constitute effective execution and delivery of this Agreement as to The Parties, and may be used in lieu of the original Agreement for all purposes. Copies shall be deemed to mean any duplicate, reproduction or similar or exact imitation of the original executed Agreement. Signatures of The Parties transmitted by facsimile or other similar device shall be deemed to be their original signatures for all purposes and shall be deemed valid and binding upon The Parties as if their original signatures, initials and modifications were present on the documents in the handwriting of each party. Neither Buyer nor Seller shall assert the statute of frauds or non-enforceability or validity of this Agreement because of facsimile or similar electronic device copies being used, and both of The Parties specifically waive and relinquish any such defense. Each party agrees to provide an original signed document to the other upon request.
33. **HOME PROTECTION PLAN:** The Parties have been informed that home protection plans are available. Such plans may provide additional protection and benefit to the parties.

34. OTHER PROVISIONS: Buyer to pay all of the sellers cost to sell and seller to receive \$20,000 at the time of closing. Buyer to pay Doorlag Realty Company \$1,000 as buyer Broker at the time of closing
Buyer to pay all taxes, no proration.

35. DEFAULT: If Buyer defaults, Seller may enforce this Agreement, or may declare Buyer's right to purchase terminated, retain the earnest money, and pursue Seller's legal remedies. If Seller defaults, Buyer may enforce this Agreement, or may demand return of the earnest money and pursue Buyer's legal remedies. Broker(s) and Salesperson(s) have no responsibility for the performance of this Agreement by the parties.

36. EARNEST MONEY: Buyer is depositing \$ 0 ☐ cash ☐ check ☐ note with Broker as earnest money evidencing good faith. Broker is required by law to deposit the earnest money in a separate custodial or trust account within two (2) banking days after this Agreement is signed by The Parties. If the offer made is not accepted or if the sale is not closed due to a failure to satisfy a contingency specified herein for a reason other than the fault of Buyer, the earnest money shall be refunded to Buyer. The earnest money will be applied to the sale price at closing.

ACCEPTANCE

WHEN SIGNED BY BOTH PARTIES, BUYER AND SELLER AGREE THAT THIS SHALL BE A BINDING AGREEMENT FOR THE SALE AND PURCHASE OF THE PROPERTY. DELIVERY OF ACCEPTANCE OF THIS OFFER AFTER SIGNING BY THE PARTIES IS NOT NECESSARY TO CREATE A BINDING AGREEMENT.

37. TIME IS OF THE ESSENCE: TIME IS OF THE ESSENCE WITH RESPECT TO THIS AGREEMENT. TIME LIMITS SHALL BE STRICTLY OBSERVED.

38. AUTHORIZATION: Buyer gives Broker until 0, 20____, ____ ☐ A.M./☐ P.M. to obtain Seller's written acceptance of Buyer's offer.

39. FINAL AGREEMENT: THIS AGREEMENT EXPRESSES THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES CONCERNING THIS TRANSACTION AND SUPERCEDES ALL PREVIOUS UNDERSTANDINGS, WHETHER ORAL, WRITTEN OR ELECTRONIC, INCLUDING ANY PROMOTIONAL MATERIALS OR LISTING DESCRIPTIONS. No modifications of this Agreement shall be binding unless in writing and signed by Buyer and Seller. In signing below, The Parties acknowledge that they have read the Agreement carefully before signing and have received copies of pages 1, 2, 3, 4, 5 & 6 as well as any attachments.

40. FUTURE NOTICES: The Parties authorize Broker(s) to use the contact information set forth below for notices after the last dated acceptance of this Agreement. During the term of this Agreement, The Parties agree to notify Broker(s) of any contact information changes. The contact information set forth below shall not constitute a material part of this Agreement and any addition or modification of the same shall not constitute a rejection of an offer, the creation of a counteroffer or an amendment to this Agreement. Any future notices required or permitted to be given under this Agreement shall be in writing and signed by the party giving notice. Notice shall be deemed to have been given: (i) at the time of personal delivery; or (ii) at the time sent by facsimile (with a successful facsimile confirmation sheet); or (iii) at the time sent by electronic mail. Future notices shall be given to Buyer's or Seller's Broker and shall constitute notice given to Buyer or Seller, respectively. If either party is not represented by a Broker, future notices shall be given to such party directly.

Salesperson Name (print): MARK DOORLAG

Salesperson Phone: 269-808-1709 Fax: —

Salesperson Email: mbdoorlagrealtors@sbcbglobal.net

Buyer Street Address: _____

City: _____ State: _____ Zip: _____

X James Ritsema
Buyer

James Ritsema
Print Legal Name (as you wish it to appear on final papers)
City Manager, City of Kalamazoo

X _____
Buyer

Print Legal Name (as you wish it to appear on final papers)

SELLER'S RESPONSE: (Date/Time) _____, 20____, ____ ☐ A.M./☐ P.M.

41. THE ABOVE TERMS OF SALE ARE (Check one) ☐ ACCEPTED AS OFFERED ☐ SUBJECT TO COUNTEROFFER NO. _____

Salesperson Name (print): Mark Doorlag

Salesperson Phone: 269-808-1709 Fax: —

Salesperson Email: mbdoorlagrealtors@sbcbglobal.net

Seller Street Address: 221 W Elm Ave PO Box 165

City: Atwood State: IL Zip: 61913

217-871-2929

X Ruth Ann Drake
Seller

Print Legal Name (as you wish it to appear on final papers)

X Ruth Ann Drake
Seller

Print Legal Name (as you wish it to appear on final papers)

OK to form
CAR
3-15-2019
City Attorney



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: Richard O. Cherry, Assistant City Attorney

PREPARED BY: Laura Echtenaw, Legal Secretary

DATE: 3/22/2019

SUBJECT: Amendments to Chapter 21

RECOMMENDATION

It is recommended that the City Commission adopt proposed amendments to Chapter 21 of the Kalamazoo City Code of Ordinances.

BACKGROUND

This City Commission has issued a mandate that the City Attorney's Office decriminalize sections of the Kalamazoo City Code changing most of the violations from misdemeanors to municipal civil infractions. In response, the City Attorney has embarked on a comprehensive overhaul of the Kalamazoo City Code. The City Attorney's Office has elicited input from City departments to update the City code to allow each department the ability to be more effective in serving the citizens of the City of Kalamazoo. After a comprehensive review of the Kalamazoo City Code, with the aid of other departments, the City Attorney recommends that all nuisance type offenses be combined into one chapter. The proposed amendment expands and renames Chapter 21- Noise to Nuisance which includes all types of nuisance offenses. Descriptions of these changes are discussed in further detail below.

Since 2010, CP&ED inspectors have issued graffiti notices to property owners to indicate that graffiti is considered a nuisance and must be removed. CP&ED staff have also distributed helpful graffiti removal information and held community trainings. To assist residents who have received a notice of violation for graffiti on their property, the City of Kalamazoo has acquired and distributed graffiti removal supplies to the core neighborhood associations. However, despite the notices, graffiti removal supplies and educational efforts, CP&ED has continued to struggle to address graffiti on private property.

The Kalamazoo Code of Ordinances, Chapter 22 (General Nuisances), lists a variety of nuisances, including tall weeds/grass, junk and debris in yards, accumulation of dead vegetation, and havens for pests, but graffiti is not listed as a nuisance. This means that inspectors do not have the same legal recourse with property owners that refuse to remove graffiti from their property. With these amendments, City staff will now have the ability to abate the nuisance and/or charge property owners with civil infractions in order to exert more control over the graffiti problem in the City. The City's administration plans to hold itself accountable for removal of graffiti from City property. Additionally, designated graffiti art will not be subject to this ordinance. Additionally, during the review of Chapter 22, it was determined that, wording for noxious weeds and tall grass needed clarification. It is proposed that the height that grass is considered a nuisance be reduced from twelve (12) inches to eight (8) inches. The reason for this change is that once a ten-day notice is sent by the

City, and the owner does not comply after ten days, it takes several additional days to get the information to the mowing contractor. This essentially allows an additional two weeks of growth before the grass is mowed. The city's mowing contractor has indicated it is relatively difficult for a normal mower to mow grass at twelve inches or higher and often involves special equipment (at a greater cost). A survey of communities in Michigan indicated that ordinances have various heights anywhere from six inches to twelve inches, with our closest neighbor, the City of Portage, enforcing at eight inches. Further, the City Housing Code was amended significantly in 2015 to reduce overlap with the adopted International Property Maintenance Code (IPMC). The IPMC can be applied to residential and commercial structures/properties. However, it was determined after its adoption that the IPMC did not cover the unenclosed porch issues that are encountered in Kalamazoo with the numerous student rentals. Upholstered furniture and other materials left on porches and decks are often exposed to the weather. These materials are not only unsightly, but the wet materials and furniture become moldy and harbor pests thus demonstrating the need for this prohibition. The proposed amendment will address the nuisance by making it a civil infraction to have upholstered furniture and other materials left on porches and decks. After notice of the violation is given to the property owner, the amendment will allow the City to abate the nuisance if the property owner does not.

The Abandoned Residential Structures ordinance was adopted by the City Commission to direct City inspection and enforcement resources toward the growing number of vacant and blighted residential structures. The program involved monitoring this group of properties with regularity to confirm the condemned houses were not illegally occupied, not left open to casual entry, and to facilitate action by the property owners to bring about repairs to the dwellings to allow for re-occupancy. Since the establishment of this program dozens of properties have been repaired and reoccupied while others have been demolished.

Over the past several years, CP&ED has received community feedback on the City's Abandoned Residential Structures (ARS) program on three fronts: 1) The ARS program does not address blighted and abandoned commercial and industrial properties; 2) The ARS program is too rigid and strict; and 3) the ARS program should differentiate between properties that are substantially blighted and those that are unsightly but need minimum repairs and maintenance.

As a result of this feedback, CP&ED has proposed amendments to this ordinance to focus on the problematic vacant and blighted residential, commercial and industrial structures that need inspection and enforcement. Additionally to combat the overall issue of blight in the City, CP&ED along with the City Attorney's Office has created a new ordinance under Article IV of Chapter 21. In that new article, ARS has experienced a name change to Vacant Blighted Structures. The Article will assess penalties against individuals who maintain a blighted building and also those who cause registered blighted vacant structures to become inhabited. To combat parties such as the "ex-train" and large unruly college parties the City Attorney recommends the adoption of the Nuisance Party amendment found in Article III. The Nuisance Party ordinance will hold accountable those people in control of property where the nuisance party is held and also the persons in attendance. This amendment is based upon a similar City of Big Rapids ordinance. A violation of this ordinance is a misdemeanor. Article II Noise violations will be all reduced to municipal civil infractions.

COMMUNITY RESOURCES CONSULTED

The public outreach on this project began with the neighborhood associations to utilize citizen feedback received at the neighborhood level regarding the current ordinance. Regular updates were then provided to the neighborhood associations on the draft amendments in 2015. A public meeting was held the evening of May 21, 2015 to solicit feedback on the amendments and to determine if there were other observations that should be considered. Planned revisions were suspended until 2018.

Public feedback on the revision started again at the June 12, 2018 AllNeighborhood Meeting and at the July 16, 2018 Oakland Winchell Safety Committee Meeting. Public Safety was also consulted for the amendment to the Noise ordinance. All groups consulted were fine with the proposed amendments.

FISCAL IMPACT

The proposed amendments will result in no negligible fiscal impact. CP&ED intends to bill property owners for ordinance violations per the current cost recovery program in place. Where appropriate, administrative fees and cost for title searches will also be passed on to the property owner, which is also part of the current program.

ALTERNATIVES

The alternative is to make no ordinance changes. However, this would continue to limit the City’s ability to ensure a safe and clean environment for the Citizens of Kalamazoo. Additionally, the updates and addition proposed to the public nuisance’s section would limit City’s ability to act on nuisance violations on private property. Additionally, leaving the ordinances as is would be inconsistent with the over-arching goals set by the City Commission.

ATTACHMENTS:

Type	Description
▣ Ordinances	Chapter 21 Ordinance
▣ Background Material	Chapter 21 Table of Amendments

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND CHAPTER 21 AND REPEAL ARTICLE VIII OF CHAPTER 9
OF THE KALAMAZOO CODE OF ORDINANCES**

THE CITY OF KALAMAZOO ORDAINS:

Section 1. The following provisions of Chapter 21-Noise of the Kalamazoo City Code are amended to read as follows:

CHAPTER 21 NUISANCES

**Article I
In General**

§ 21-1 Findings and declarations of fact; purpose of chapter.

The City Commission finds and declares that the necessity in the public interest for the provisions and prohibitions hereinafter contained in this chapter is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and the peace and quiet of the inhabitants of the City of Kalamazoo.

§ 21-2 Definitions

As used within this chapter, the following terms shall have the meanings indicated:

AMBIENCE

Surrounding or background noise associated with a given environment, usually a composite of sounds from many sources.

ANY PERSON

When referring to persons intended to be protected by the provisions of this chapter, shall mean a reasonable person of normal sensitiveness.

BLIGHTED STRUCTURE OR BUILDING.

Any dwelling, garage, accessory or outbuilding, or any factory, shop, store, office building, warehouse, or any other structure or part of a structure which has one or more of the following:

- (1) Is no longer habitable as a dwelling or useful for the purpose for which it was originally intended because of fire, wind, other natural disaster, or physical deterioration;
- (2) Is partially completed and which is not presently being constructed under an existing, valid building permit issued by or under the authority of the city;
- (3) Is not structurally sound, weather-tight, waterproof or vermin-proof;
- (4) Is not covered by a water-resistant paint or other waterproof covering so as to protect said structure from the adverse effects of the elements or from physical deterioration;
- (5) Causes or tends to cause devaluation of the subject property or other properties in the area; or

(6) Which has any of the following conditions:

- a. Peeling paint.
- b. Sagging and deteriorating roof.
- c. Missing and/or damaged siding.
- d. Broken or deteriorating window.
- e. Unfinished exterior.
- f. Collapsing or collapsed porch or deck.
- g. Cracked and broken foundation/chimney.
- h. The presence of Graffiti.

(7) If a vacant, abandoned and/or condemned building or structure that has been vacant, abandoned and/or condemned for more than 30 days, see 'Vacant Blighted Structures'.

BUILDING MATERIAL.

Any lumber, bricks, concrete, cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, cement, nails, screws, or other materials commonly used in the construction or repair of any buildings or structures.

COMBINATION VEHICLE

Any combination of truck, truck tractor, trailer, semitrailer or pole trailer used upon the highways or streets in the transportation of passengers or property.

COMMERCIAL ZONE

A City zoning district designated to accommodate a variety of commercial uses as well as duplex, multi-family, public, and civic uses.

dB(A)

The sound pressure level in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication ANSI S1.4-1971, for a Type 2 Instrument

DECIBEL

A unit of sound level on a logarithmic scale measured relative to the threshold of audible sound by the human ear, in compliance with American National Standards Institute standard S1.1-1960.

EMERGENCY WORK

Work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or potential danger.

EXHAUST SYSTEM

The system comprised of a combination of components which provides for enclosed flow of exhaust gas from engine parts to the atmosphere.

GROSS VEHICLE WEIGHT RATING

The value specified by the manufacturer as the loaded weight of a vehicle.

GRAFFITI

Writings, markings, etchings, carvings, tagging, slogans, symbols, pictures on public or private property that are illicitly written, spray-painted, or sketched on any structure, fence, wall or other surface visible from a public place or neighboring property.

HARMONIC OR PURE TONES

Sounds which have a specific frequency or pitch associated with them.

IMPULSIVE SOUNDS

Very short duration, although they may be repeated at regular or irregular intervals, such as gun shots or automobile backfire sounds.

JUNK

Any abandoned, discarded, unusable objects or equipment, any object or equipment unused for its originally intended purpose, including, but not limited to, furniture, furniture intended for indoor use which is placed outdoors, stoves, refrigerators, freezers, cans, barrels, implements, parts of motor vehicles, machinery, cloth, rubber, bottles, any metals, boxes, cartons or crates.

JUNK AUTOMOBILE

Includes any motor vehicle that is kept, parked or stored, other than in a completely enclosed building, and is not in operating condition, is not properly licensed or is incapable of performing the transportation function for which it was manufactured. The term "junk vehicle" does not include a motor vehicle ordinarily used, but temporarily out of running condition.

MAINTAINED

Ongoing care and attention, such as weeding, watering or trimming or any other affirmative acts which make it clear that the vegetation is not the result of mere neglect.

MANUFACTURING ZONE

A City zoning district designed to accommodate industrial and manufacturing uses and activities.

MOTOR VEHICLE or VEHICLE

Any vehicle that is self-propelled and includes industrial and construction equipment which are not subject to registration under the Michigan Vehicle Code, being Public Act 300 of 1949. The term does not include special mobile equipment.

MUFFLER

A device for abating the sound of escaping gases of an internal combustion engine.

NOISE

Any sound.

NOXIOUS WEEDS

Refers to poison ivy, poison sumac, poison oak, giant hogweed, nettles and/or ragweed.

NUISANCE PARTY.

A social gathering or party, whether static or mobile, conducted on any public or private property within the City and which, by reason of the conduct of those persons in attendance, results in any one or more of the following conditions or events occurring on public or private property:

- (1) The unlawful sale, furnishing, possession, or consumption of alcoholic beverages;
- (2) Urination or defecation on neighboring public or private property, or on the premises in view of another person;
- (3) Unlawful deposit of trash or litter;
- (4) Destruction of property;
- (5) Unlawful vehicular traffic, or the unlawful stopping, standing or parking of vehicles, obstruction of the free flow of traffic or interference with the ability to render emergency services;
- (6) Unlawful parking of vehicles within the public streets, alleys, or sidewalks, or upon private property;
- (7) Unreasonably loud noise under the circumstances which disturbs the comfort, quiet or repose of one or more members of the neighborhood;
- (8) Conduct or a condition which injures any person;
- (9) Conduct or a condition which endangers the safety of persons or property in the neighborhood;
- (10) Conduct or a condition which results in the indecent exposure of a person, or the display of graphic sexual behavior, whether real or simulated, to a member of the public not attending the social gathering or party;
- (11) Unlawful sale, furnishing, manufacture, use, or possession of a controlled substance as defined by federal or state law.

RESIDENTIAL ZONE

A City zoning district designated to accommodate the development of single and two-family dwelling units, multi-unit housing, mixed residential and commercial uses, and special purpose districts.

RESPONSIBLE PARTY

A person who violates any of the provisions of this chapter, whether as owner, occupant, lessee, agent, operator, servant, or employee shall, except as herein otherwise provided.

SPECIAL MOBILE EQUIPMENT

As defined at MCL 257.62

SPECIAL PURPOSE DISTRICT

A City zoning district designated to accommodate governmental and public service uses such as parks, schools and governmentally owned or controlled land and large institutional uses in campus-like settings such as colleges, hospitals and large religious assemblies.

TOTAL VEHICLE NOISE

Any noise radiating from a vehicle except for vehicle noises exempted by this chapter.

TRASH AND RUBBISH

Any and all forms of debris not herein otherwise classified.

VACANT BLIGHTED STRUCTURES

"Vacant blighted structure" shall be any structure located within the City of Kalamazoo which is vacant and blighted, as defined in this chapter, for more than 30 days, and to which two or more of the following criteria applies:

- (1) Is open to casual entry;
- (2) Has one or more windows boarded;
- (3) Has had any utilities required for occupancy disconnected;
- (4) Is under notice for being in violation of Chapter 9 and/or 17 of the City Code of Ordinances; or;
- (5) Because of disrepair or lack of maintenance, is in a condition that makes it reasonably apparent to the public that the structure is in fact unoccupied.

WEEDS

Weeds are considered as any type of vegetation which is not customarily planted or transplanted or commercially sold for use in gardens or for landscaping.

§ 21-3 General Public Nuisances

- A. The following are declared to be public nuisances; and it shall be unlawful for any person owning, occupying or in control of any, personal property, lot or land either public or private, to allow, maintain or permit a nuisance:
 - (1) Noxious weeds of any height. Any other weeds or grasses which have attained a height of 8 inches or more; unless said vegetation is maintained as part of a garden/landscaped area.
 - (a) This subsection shall not apply to any parcel larger than one acre if, for the first 25 feet from any adjacent property or roadway, the parcel otherwise complies with this section.
 - (b) This subsection shall not apply to any place designated as a park, preserve or open

space by the City.

- (2) Any trash, garbage, rubbish, debris, waste or similar offensive or unsightly material.
- (3) Any dead trees or shrubbery or any accumulation of dead vegetation, other than a managed compost and other than that which is properly placed for public or privately-contracted collection. This subsection shall not apply to any place designated as a park, preserve or open space by the City.
- (4) Any materials constituting a haven or hiding or nesting place for rats.
- (5) Any unfilled basements, excavations or holes that could be dangerous to children coming upon the property, unless fenced or protected in a manner approved by the City Manager or his duly authorized representative.
- (6) Unenclosed porches and decks visible from the public street or road fronting the property shall not be used as storage. In no case, shall indoor interior furniture, trash, garbage, rubbish or debris be permitted to accumulate on porches or decks.
- (7) Any substance listed below which is either left in an otherwise vacant building, been abandoned, or has been or is being used, possessed, maintained or disposed of in violation of an governing statue, ordinance, regulation, rule or order:
 - (a) Classified as hazardous, toxicant, a pollutant or contaminant by the State of Michigan or the United States; or
 - (b) Named in or covered by the categorical pretreatment standards set by the United States; or
 - (c) Regulated by the Fire Code adopted by Chapter **15** of the Kalamazoo Code; or
 - (d) Required by the City of Kalamazoo to be pretreated under Chapter **28** of the Kalamazoo Code.
- (8) Graffiti.
- (9) Dust emission from industrial or commercial establishments.

It shall be unlawful for any person in charge or control of, or having general supervision of, the management and operation of any factory, mill or other industrial or commercial establishment in the City, to operate such establishment, or allow or permit it to be operated, in such manner that dust of any kind or character shall be emitted therefrom in such quantity or in such manner as to be dangerous, deleterious or harmful to the health and well-being of any person living, working or being in the vicinity thereof, or in such quantity or in such manner as to cause damage or injury to any property located in the vicinity thereof, or in such quantity or in such manner as to be in fact a nuisance.

- B.** Notice. The City Manager, or his or her duly authorized representative, is authorized to notify in writing, by regular mail or in person, the owner or person in control of any land within the City to remove or correct any condition constituting a violation of this Section. An action shall be taken to remove or correct this violation within ten (10) days. In the event that the address of any such person is unknown, it shall be sufficient to post notice on said property.
- C.** Appeal. Any person aggrieved by the terms of notice given pursuant to this section may appeal in writing within ten (10) days of the date of the notice. The appeal shall be first made to the duly authorized representative, and if necessary the City Manager. In determining whether such notice should be confirmed, the City Manager or his or her duly authorized representative shall take into consideration any and all hazards,

nuisances or influences adverse to adjoining property or persons occupying the same and all factors detrimental to the health, safety, peace, morals and welfare of persons within about or adjacent to the premises. If the appeal is regarding the type of vegetation which may or may not constitute a nuisance, the aggrieved party shall be required to provide materials (including photos) which document the types, sizes and characteristics of the vegetation from a botanist, landscape architect or other professional in the field. The City, if necessary, may independently verify same. If the property owner does not abate, the City may abate pursuant to 21-4 or take further legal action and the final decision can be made in a court of law. A property owner may appeal an administrative determination regarding vegetation to the Ad Hoc Weed Committee.

- D. Ad Hoc Weed Committee.** An appeal to the Ad Hoc Weed Committee shall be scheduled within 30 days of the receipt by the City of said request. The property owners within 200 feet of the subject property shall be advised of the hearing, which shall be open to the public.
- (1) Said committee shall determine whether the vegetation at issue constitutes a public nuisance. Said decision shall be mailed (first class) to the person who requested the hearing. If three (3) or more members of the committee determine that the vegetation does constitute a public nuisance, abatement action may be commenced seven (7) calendar days after the decision is mailed. If three (3) or more members of the committee determine that the vegetation does not constitute a public nuisance, no abatement action may be taken unless and until criminal action has been brought and a finding of responsibility obtained for violating this Article.
 - (2) If three (3) or more members of the committee determine that the vegetation at issue is a public nuisance, the committee may allow the owner up to seven (7) calendar days to eliminate that vegetation which constitutes the public nuisance. The determination of whether the vegetation has been brought into compliance with this section shall be made (on or after the eighth day) by a City inspector, who shall communicate his/her determination to the committee's members. The inspector's determination shall stand unless a majority of the committee's members disagree.
 - (3) For the purpose of carrying out the provisions of this subsection, an Ad Hoc Weed Committee shall be created with five (5) members. The members shall include a representative from the Kalamazoo Nature Center, a representative from the City of Kalamazoo Parks and Recreation Department, a representative from the Environmental Concerns Committee, a representative from the City of Kalamazoo Administration, and a registered landscape architect. The Committee shall be chaired by the representative of the Environmental Concerns Committee. The recording secretary will be furnished by the City to receive and distribute all meeting minutes and to perform other relevant functions. A majority of the members of the committee shall constitute a quorum.
- E.** The foregoing notice and hearing requirements shall not apply in the event that the public nuisance constitutes an immediate danger to the public health, safety or welfare or if the public nuisance is located upon public lands. With regard to graffiti, this includes any type of markings that are offensive in nature and/or contain profanity, threats or explicit language.

§ 21-4 Abatement by City.

- A.** If a condition in violation of Article, is not removed or corrected within ten (10) days after mailing or giving personal notice pursuant to § 21-3 B, the City Manager or his or her duly authorized representative is authorized to arrange and pay for the removal of or correcting of such condition, either by a department of the City or by other, and immediately bill the expense thereof to the owner of record. For such purpose, the City Manager or his or her duly authorized representative is hereby authorized and

empowered to enter upon the premises of any such public or private land within the City at reasonable times and under reasonable conditions to accomplish the appropriate corrective action. The abatement may include, but is not limited to, mowing and raking; removing trash, garbage, junk, yard waste and debris; filling dangerous holes or excavations and/or installing barriers; washing, scrubbing and/or painting over graffiti; and removing or relocating dangerous substances.

- B.** If any bill rendered pursuant to Subsection **A** shall remain due and unpaid for a period of thirty (30) days after the bill is mailed, it shall thereafter accrue interest at the rate of six percent (6%) per annum. If the amount due continues to be unpaid the City may assess the same against the property; and such assessment shall constitute a lien upon the property from the date of completion of the work and may be billed as part of the tax applicable to the property.

§ 21-5 Violation; Enforcement; penalty.

- A.** In addition to the penalty imposed for a violation of this chapter, the operation or maintenance of any noise, property, graffiti, dust, vegetation, trash, rubbish, junk, party, and /or automobile which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health, or peace of residents in the area, shall be deemed and is declared to be a nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.
- B.** The City Manager or his or her duly authorized representative shall enforce the provisions of this Chapter and make investigations of complaints of its violation. For such purpose, the City Manager or his or her duly authorized representative shall have authority to enter upon the premises of any public or private land within the City as reasonable times and under reasonable conditions.
- C.** In addition to the employees and officers regularly required to enforce City ordinances generally, the City Manager may assign duties of enforcement of this chapter to personnel trained in noise-control techniques and procedures and equipped with calibrated sound level meters of a standard design.
- D.** Except as otherwise provided, any person that violates this Chapter shall be responsible for a municipal civil infraction subject to a fine of \$200.00 for a first offense. Each day that a violation continues shall be deemed to be a separate violation not to exceed \$500.00 for each subsequent offense.
- E.** In this chapter a person who fails to answer a citation or notice to appear in court for a municipal civil infraction shall be guilty of a misdemeanor. See MCL 600.8727 (10).
- F.** If the responsible party fails to abate the nuisance the City may abate the nuisance pursuant to § **21-4**. Abating the nuisance is not in lieu of, or an alternative to, the civil infraction. Both civil infraction and abatement of the nuisance may be pursued by the City.
- G.** The administrative hearing and abatement remedies provided in this Article are not exclusive. Civil and criminal action may be brought immediately upon violation of this section without the procedures of §§ **21-3 B-C** and **21-4** having first been followed.

Article II Noise

§ 21-6 General prohibition.

- A.** It shall be unlawful for any person to make or cause to be made or continued any excessive or unusually loud noise or any noise, measured or unmeasured, which either disturbs, injures or endangers the comfort, repose, health, peace or safety of any person within the limits of the City.
- B.** The acts enumerated in the following sections of this chapter are declared to be loud, disturbing noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive.

§ 21-7 Noise limitations based on dB(A) criteria.

- A.** Generally. Any noise in excess of the maximum decibel limits according to the regulations set out in this section shall be deemed to be prima facie evidence of a violation of § 21- 6.
- B.** Noise from private property. The maximum decibel limits on noise originating from private property shall be as set forth in the following table. Noise will be measured at the boundaries of the lot. To be in violation, the source or sources of noise must be identifiable in relation to the ambience, and must exceed the limitations established for the zoning districts and times listed below:

<u>Zones</u>	<u>dB(A) Maximum Limitations</u>	
	7:00 a.m. to 10:00 p.m.	10:00 p.m. to 7:00 a.m.
Residential/Special Purpose	50 dB(A)	45 dB(A)
Commercial	55 dB(A)	50 dB(A)
Manufacturing	75 dB(A)	70 dB(A)

The following provisions shall apply to the interpretation and enforcement of this subsection:

- (1) At boundaries between zones, the lower of the dB(A) levels shall be applicable.
 - (2) Harmonic or pure tones and periodic or repetitive impulsive sounds shall be in violation when such sounds are at a sound pressure level of five dB(A) less than those listed above.
 - (3) Construction projects shall be subject to the maximum permissible noise levels specified for industrial districts for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority, or if no time limitation is imposed, then for a reasonable period of time for completion of the project.
 - (4) Noises caused by home or building repair and ground maintenance are excluded from these limits between the hours of 7:00 a.m. and 10:00 p.m., provided they do not exceed 74 dB(A) at the property line or at a distance of 50 feet (15 meters), whichever is furthest from the source of the noise.
 - (5) All railroad rights-of-way shall be considered as industrial districts for the purpose of this subsection and the operation of trains shall be subject to the maximum permissible noise levels for such district. The allowable noise levels at the boundaries of the right-of-way shall be those appropriate within industrial districts, without regard for the zone of the abutting property.
- C.** Noise from motor vehicles:

(1) Prohibitions.

- (a) A motor vehicle, while being operated on a highway or street, shall be equipped with an exhaust system in good working order to prevent excessive or unusual noise and shall be equipped to prevent noise in excess of the limits established in this subsection.
- (b) A motor vehicle shall not be operated or driven on a highway or street if the motor vehicle produces total vehicle noise exceeding one of the following limits:

	Maximum Lawful Speed of Street or Highway		Stationary Run-Up Test
	Greater than 35 mph	Not More than 35 mph	
Motor Vehicle with Gross Weight or Gross Weight Rating of 8500 lbs. or more,	90 dB(A) at 50 feet	86 dB(A) at 50 feet	88 dB(A) at 50 feet
Combination Vehicle with Gross Weight or Gross Vehicle Weight Ratings of 8500 lbs. or more	90 dB(A) at 50 feet	86 dB(A) at 50 feet	88 dB(A) at 50 feet
Motorcycle or Moped	86 dB(A) at 50 feet	82 dB(A) at 50 feet	95 dB(A) at 75 inches
Motor Vehicle or Combination of Vehicles towed by a Motor Vehicle Not Covered Above	82 dB(A) at 50 feet	76 dB(A) at 50 feet	95 dB(A) at 20 inches from end of tailpipe

- (c) A person shall not operate a vehicle on a highway or street if the vehicle has a defect in the exhaust system which affects sound reduction, is not equipped with a muffler or other noise-dissipative device, or is equipped with a cutout, bypass, amplifier or a similar device.
- (d) A person shall not modify, repair, replace or remove a part of an exhaust system, if the act causes the motor vehicle to which the system is attached to produce noise in excess of the levels established by this subsection, or operate a motor vehicle so altered on a street or highway.
- (e) A person, either acting for himself or herself or as the agent of employee of another, shall not sell, install or replace a muffler or exhaust part, if that act causes the motor vehicle to which the muffler or exhaust part is attached to exceed the noise limits established by this subsection.
- (f) Test procedures. Test procedures under this Section shall comply with those established pursuant to MCLA § 257.707e.

§ 21-8 Use or operation of radios, phonographs, etc.

No person shall use, operate or permit to be played any radio receiving set, musical instrument, television set, phonograph or other machine or device for the production or reproduction of sound, in such manner as to disturb the quiet, comfort or repose of any person. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be in violation of § 21-6 shall be prima facie evidence of a violation of this section.

§ 21-9 Use of loudspeaker or sound amplifier for commercial purposes.

The installing, using or operating, within the City, of a loudspeaker or sound amplifying equipment, for commercial purposes, in such a manner as to disturb the quiet, comfort or repose of any person is prohibited. The operation of any such equipment or device in such a manner as to be in violation of § 21-6 shall be prima facie evidence of a violation of this section.

§ 21-10 Use of sound trucks.

No sound truck or other vehicle equipped with amplifier or loudspeaker shall be driven upon any street for the purpose of selling, offering for sale or advertising in any fashion before 9:00 a.m. and after 9:00 p.m.

§ 21-11 [Reserved]

§ 21-12 Selling by outcry in residential districts.

The selling of anything by outcry within any area of the City zoned primarily for residential uses is prohibited before 9:00 a.m. and after 8:00 p.m.

§ 21-13 Use of drum or other device to attract attention to show, sale, etc.

No person shall use any drum, bell, buzzer or other instrument or device for the purpose of attracting attention, by the creation of noise, to any performance, show, auction or other sale, or for any other commercial purpose before 9:00 a.m. and after 8:00 p.m.

§ 21-14 Handling of boxes, crates, containers, etc.

The loading, unloading, opening or otherwise handling of boxes, crates, containers, garbage containers or other objects, in such a manner as to disturb the quiet, comfort or repose of any person, before 6:00 am and after 8:00 p.m. is prohibited.

§ 21-15 [Reserved]

§ 21-16 [Reserved]

§ 21-17 Repairing, rebuilding or testing vehicles.

The repairing, rebuilding or testing of any truck, automobile, motorcycle or other motor vehicle within a residential zone of the City, in such a manner as to disturb the quiet, comfort or repose of any person, is prohibited.

§ 21-18 Sounding of vehicle horn or signaling device.

The sounding of any horn or signaling device on any truck, automobile, motorcycle or other motor vehicle on any street or public place of the City, except as a warning signal as provided in the Michigan Vehicle Code, is prohibited.

§ 21-19 Unmuffled exhaust from engine or motor; modifying noise-abatement device on engine or motor.

The discharge, into the open air, of the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom, is prohibited. Modifying any noise-abatement device on any motor vehicle or engine in a manner so that the noise emitted by such vehicle or engine is increased above that emitted by such vehicle or engine as originally manufactured shall be a violation of this section.

§ 21-20 Construction noises.

The performing of any construction or repair work on buildings, structures or projects, or the operating of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other construction-type device, in such a manner as to disturb the quiet, comfort or repose of any person, is prohibited, except in cases of unnecessary hardship. In such cases, a permit shall be obtained from the City Manager in accordance with § 21-23 of this chapter.

§ 21-21 Noise near school, church, court, hospital or nursing home.

No person shall create any excessive noise within the vicinity of any school, institution of learning, church or court while the same is in use, or within the vicinity of any hospital or nursing home, which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed on streets within the vicinity indicating the presence of a school, hospital, court, church or nursing home.

§ 21-22 Exemptions.

The provisions of this Article shall not apply to:

- (1) Law enforcement or governmental agencies when engaged in activities authorized by law.
- (2) Emergency work performed for the safety, welfare and public health of the citizens of the City.
- (3) Warning devices, emitting sound for warning purposes, such as vehicle back-up alarms, as authorized by law.
- (4) Parades, fairs, circuses and other similar public entertainment events, sanctioned sporting events, sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of the above.
- (5) Flights of aircraft which are in all respects conducted in accordance with, or pursuant to, federal law, federal air regulations and air-traffic-control instructions.

§ 21-23 Noise Permits.

- A.** The City Manager shall authorize the issuance of a permit to any person which will allow noise in excess of the noise levels designated in this chapter, when he shall find the following facts to exist:
 - (1) That all of the statements made in the permit application are true;
 - (2) That the control and supervision of the production of such noise will be under responsible and reliable persons;
 - (3) That unnecessary hardships would result if a permit is not issued; and
 - (4) That the public health and safety will not be impaired by the noise permitted.
- B.** Permits may be granted under this article for a period not to exceed 60 days while the hardship continues. Such a permit may be renewed for periods of 60 days while the hardship continues.
- C.** A permit issued under this article shall restrict the noise-creating activity to within the hours of 7:00 a.m. and 10:00 p.m., except in the case of urgent necessity in the interest of public health and safety, in which case a permit may be issued granting permission for such activity between the hours of 10:00 p.m. and 7:00 a.m.
- D.** Upon complaint filed with the City Manager by any person, or upon his own motion, the Manager may suspend the permit of any person granted under this article, for good cause shown. "Good cause" shall include:
 - (1) Any material misrepresentation in the application for a permit or any fraud in its procurement, or failure to carry out any commitment or representation contained in the application or in the rules of this chapter; or
 - (2) Any cause which would have prevented the granting of the permit in the first place.

- E. After the City Manager has suspended a permit, the holder of the permit shall have the right to appeal to the City Commission within 10 days after receiving notice of such suspension. Such appeal shall be made by filing written notice with the City Clerk.

§ 21-24 [Reserved]

Article III

Nuisance Parties

§ 21-25 Nuisance Party prohibited.

Any owner, occupant, tenant, guests or person otherwise having any possessory control, individually or jointly, of any personal or real property who either sponsors, conducts, hosts, invites, or permits a social gathering or party which is or during the course thereof becomes a nuisance party which is either the intentional result of or within the reasonable expectations of the person or persons having such possessory control is hereby deemed to have committed a violation of this Article. In any prosecution for a violation of this section or the section prohibiting persons from attending nuisance parties, proof of specific intent shall not be required as a necessary element, but proof of general criminal intent shall be a necessary element.

§ 21-26 Persons in attendance at Nuisance Parties.

Any person who is in attendance at a nuisance party whether or not such person has any possessory control over the personal or real property, shall be deemed to have committed a violation of this Article.

§ 21-27 A violation of this Article is a misdemeanor punishable by up to 90 days in jail and/or a maximum fine of \$500.

§ 21-28 [Reserved]

§ 21-29 [Reserved]

Article IV

Blight

§ 21-30 Blighted structures or buildings prohibited.

It shall be unlawful for any person to keep or maintain any blighted and/or vacant structure, building, dwelling, garage, outbuilding, factory, shop, store or warehouse in the city.

§ 21-31 Blighted exterior and maintenance requirement of property.

It shall be unlawful for any person to fail to improve and maintain all property under the person's control so as to comply with the following minimum requirements:

- A. All exterior property areas shall be properly maintained in a clean and sanitary condition, free from debris, brush, severed tree limbs, junk, rubbish, physical hazards, rodent harborage and infestation.
- B. All stored firewood shall be in neat, orderly stacks, unless shielded from view from all adjoining properties.
- C. The storage and accumulation of any building material shall only be for a period that is reasonably necessary for the future use of such materials, which shall in no event be longer than 90 days. Building materials must be piled off the ground so as not to

become a suitable environment for rats, rodents or similar vermin.

- D.** In no case shall usable or unusable machinery, building materials, or other items be stored on a permanent basis in a truck trailer or other type of trailer, with or without its wheels.
- E.** Yard or garage sales in which items are for sale to the public shall be no longer than seven calendar days within a 90-day period.
- F.** Scaffolding may remain on a building only for a period that is reasonably necessary for the completion of the construction or maintenance activities for which it is erected, which shall in no event be longer than 90 days or the length of the related building permit, whichever is longer.
- G.** Heavy equipment or machinery in an area zoned residential shall not be stored on a property unless there is a related active building permit on the property.
- H.** In any area zoned for residential purposes, the storage upon any property of junk automobiles, except in a completely enclosed building.

§ 21-32 [Reserved]

§ 21-33 [Reserved]

§ 21-34 [Reserved]

§21-35 Vacant blighted structures

- A. Duty to register-** Every owner of vacant blighted structure shall register that structure by completing and filing with the City a vacant blighted structure registration form. The form shall require the name, address and telephone number of each owner; the date the home became vacant and the reasons for vacancy; plans, if any, to have the structure occupied; and any other information reasonably deemed necessary by the City. The duty to register shall not require notice by the City.
- B.** For purposes of this article, an "owner" shall be any person with a legal or equitable ownership interest in the structure.

§21-36 Right to inspect vacant blighted structures.

The City may access the interior of a vacant blighted structure for the purpose of inspection in regard to health, safety and welfare, if structure meets the definition of vacant blighted structure found in §21-2. If necessary to effectuate this provision, the City may seek an administrative search warrant from a judge or magistrate.

§21-37. Tiered classification of vacant blighted structures.

Each vacant blighted structure will be inspected and evaluated for placement in a monitoring tier.

- (1) Tier One: Vacant with uncorrected exterior and interior violations. Monthly monitoring inspections required. Monthly monitoring of Tier One properties is limited to 24 months. If violations remain unresolved a Municipal Civil Infraction Citation will be issued, or court action pursued

- (2) Tier Two: Vacant with no exterior violations, but uncorrected interior violations. Monitoring inspections required every six months. Monthly monitoring of Tier Two properties is limited to 36 months. If violations remain unresolved a Municipal Civil Infraction Citation will be issued, or court action pursued

§21-38 Monthly or bi-annual administrative fee for vacant blighted structures.

- A. The owner of a vacant blighted structure shall pay vacant blighted structure monthly or bi-annual administrative fee depending on the qualifying tier of monitoring, the amount of which shall be established by City Commission resolution, for the period such structure remains vacant blighted structure.
- B. The City will provide a written invoice of the monthly or bi-annual administrative fee. The amount due for any month during which the status was less than the entire month or less than six months, shall be prorated to reflect the period the structure was a vacant blighted structure.
- C. Payment is due within 30 days from the date of the invoice. If the invoice is not paid, the City shall notify the City Assessor's Office, who will assess the unpaid amount against the property where the vacant blighted structure is located. The City may enforce the lien by placing the unpaid amount on the next tax roll of the City, the collection of which is enforceable in the same manner as delinquent taxes.

§21-39 Vacant blighted structure status change.

The City may alter the Tier status of a vacant blighted structure, under the following circumstances:

- (1) Tier One to Tier Two: If all exterior deficiencies and/or violations are corrected with uncorrected interior violations remaining.
- (2) Removal from Tier One: If all interior and exterior deficiencies and/or violations are corrected.
- (3) Removal from Tier Two: If all interior deficiencies and/or violations are corrected.
- (4) Reclassification to Tier One: If the exterior of a vacant blighted structure that was reclassified from Tier One to Tier Two again falls into disrepair, the structure shall be reclassified to Tier One.
- (5) In order for a change of status to be effective, the work performed on a vacant blighted structure must have the approval of the appropriate city inspector; that is for repairs that do not require a permit; for work that requires a permit to correct the violation, the applicable building/trades inspector responsible for that particular type of work must provide approval.

§21-40 Violation; penalty.

- A. A person who maintains a blighted structure, vacant or occupied, is responsible for municipal civil infraction, the penalty for which is a minimum fine of \$200.00 plus cost as assessed by the court. If a person commits a second or subsequent violation occurring within 6 months of a previous violation for the same blighted structure, the minimum fine shall double from the minimum fine set for the previous violation.

- B.** A person who allows occupancy of a registered vacant blighted structure when violations remain uncorrected, shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00 and /or jail not to exceed 90 days, plus costs as assessed by the court.

Section 2. Article VIII of Chapter 9 of the Kalamazoo City Code is repealed in its entirety

Section 3. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on April ___, 2019. Public notice was given, and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

Bobby J. Hopewell, Mayor

Scott Borling, City Clerk

Chapter 21 Nuisance Ordinance

Article I-In General	Amendments	Reason for Amendment
§21-1 Findings and Declaration of Fact. Purpose of Chapter	The purpose of securing and promoting the public health, comfort, convenience, safety, welfare and peace and quiet of the inhabitants of the City of Kalamazoo.	<u>Consolidation of Nuisance Regulations:</u> Nuisance regulations from: • Chapter 9, Buildings and Building Regulations • Chapter 21, Noise • Chapter 22, Offenses and Crimes Generally Consolidation of these nuisance regulations into the amended Chapter 21 creates uniformity in the Code of Ordinance Chapters and ease of referencing this related subject material.
§ 21-2 Definitions	All Definitions are in one section.	<u>Definitions:</u> Definitions for the entire chapter are in one section for better organization.
§ 21-3 General Public Nuisances	<u>‘Graffiti’:</u> The word ‘graffiti’ will be added to the list of nuisances under Section 22-3, Nuisances General. <u>Graffiti</u> is defined as <i>writings, markings, etchings, carvings, tagging, slogans, symbols, pictures on public or private property that are illicitly written, spray-painted, or sketched on any structure, fence, wall or other surface visible from a public place or neighboring property.</i>	<u>Graffiti:</u> Since 2010, Community Planning and Development (CP&D) inspectors have issued graffiti notices to property owners to indicate that graffiti is considered a nuisance and must be removed. CP&D staff have also distributed helpful graffiti removal information and held community trainings. To assist residents who have received a notice of violation for graffiti on their property, the City of Kalamazoo has acquired and distributed graffiti removal supplies to the core neighborhood associations. However, despite the notices, graffiti removal supplies and educational efforts, CP&D has continued to struggle to address graffiti on private property. The Kalamazoo Code of Ordinances, Chapter 22 (General Nuisances), lists a variety of nuisances, including tall weeds/grass, junk and debris in yards, accumulation of dead vegetation, and havens for pests, but graffiti is not listed as a nuisance. This means that inspectors do not have the same legal recourse with property owners that refuse to remove graffiti from their property.

Chapter 21 Nuisance Ordinance

	<u>Height of noxious weeds or any other weeds or grasses that constitute a nuisance:</u> Noxious weeds or any other weeds or grasses which have attained a height of eight (8) inches or more. <u>Appeal process for any person aggrieved by the terms of a notice for noxious weeds and grass:</u> An appeal to the Ad Hoc Weed Committee shall be conducted within thirty (30) days of the receipt by the City of said request. The property owners within 200 feet of the subject property shall be advised of the hearing, which shall be open to the public.	<u>Noxious Weeds/ Tall Grass:</u> During the review of Chapter 22, it was determined that updates were needed related to the noxious weed and tall grass section. Wording for noxious weeds needs clarification. Additionally, it is proposed that the height that grass is considered a nuisance be reduced from twelve (12) inches to eight (8) inches. The reason for this is that a ten day notice must be sent, and if the owner does not comply after ten days, it takes several additional days to get the information to the mowing contactor. This essentially allows an additional two weeks of growth before the grass is mowed. The city's mowing contractor indicates it is relatively difficult for a normal mower to mow grass at twelve inches or higher and often involves special equipment (at a greater cost). A survey of communities in Michigan indicated that ordinances have various heights anywhere from six inches to twelve inches, with our closest neighbor, the City of Portage, enforcing at eight inches. <u>Appeal Process:</u> Currently the appeal process is 10 days from the date of the notice. The revised language does not have an appeals deadline, but states that if an appeal is filed that the hearing be held within 30 days instead of 14 days as stated in the existing ordinance which was not sufficient to notify surrounding property owners. The amended language also clarifies that all property owners within 200 feet of the subject property for which the appeal it to heard shall receive notice of the public hearing.
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Chapter 21 Nuisance Ordinance

	<u>Composition of the Weed Committee:</u> <u>Weed Committee composition:</u> An Ad Hoc Weed Committee shall be created with five (5) members. The members shall include a representative from the Kalamazoo Nature Center, a representative from the City of Kalamazoo Parks and Recreation Department, a representative from the Environmental Concerns Committee, a representative from the City of Kalamazoo Administration, and a registered landscape architect. The Committee shall be chaired by the representative from the Environmental Concerns Committee. The recording secretary will be furnished by the City to receive and distribute all meeting minutes and to perform other relevant functions. A majority of the members of the committee shall constitute a quorum.	<u>Amendments to the Weed Committee:</u> After meeting with members of Environmental Concerns Committee in 2015 to discuss the structure of the Weed Committee the consensus was to keep the format, but clarify which committee members would assume the role as chair. Additionally, secretarial support services would be provided by the City sending of notice to surrounding property owners and to record meeting minutes. Lastly, quorum of this committee was clarified as a majority of the members.
	<u>Storage of Materials on Unenclosed Porches and Decks:</u> Unenclosed porches and decks visible from the public street or road fronting the property shall not be used as storage. In no case, shall furniture constructed for interior use only, trash, garbage, rubbish or debris be permitted to accumulate on said porch or deck.	<u>Adding Storage on Unenclosed Porches and Decks:</u> The Housing Code was amended significantly in 2015 to reduce overlap with the adopted International Property Maintenance Code (IPMC). The IPMC is a code format that can be applied to residential and commercial structures/properties. However, it was determined after the adoption that the IPMC did not adequately address the unenclosed porch issues that are encountered in Kalamazoo with the numerous student rentals. Upholstered furniture and other materials left on porches and decks exposed to the weather are not only unsightly but the wet materials and furniture will become moldy and harbor pests.

Chapter 21 Nuisance Ordinance

§ 21-4 Abatement by City.	<u>Abatement Procedure for Nuisance Violations:</u> <i>the City Manager or his or her duly authorized representative is authorized and empowered to enter upon the premises of any such public or private land within the City at reasonable times and under reasonable conditions to accomplish the appropriate corrective action. The abatement may include, but is not limited to, mowing and raking; removing trash, garbage, junk, yard waste and debris; filling dangerous holes or excavations and/or installing barriers; washing, scrubbing and/or painting over graffiti; and removing or relocating dangerous substances.</i>	<u>Abatements:</u> Gives the City the ability to address all listed nuisances through abatement if person responsible for the nuisance fails to do so.
§ 21-5 Violation; Enforcement; penalty.	<u>Violations:</u> In addition to the penalty imposed for a violation of this chapter, the operation or maintenance of any noise, property, graffiti, dust, vegetation, trash, rubbish, junk, party, and /or automobile which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health, or peace of residents in the area, shall be deemed and is declared to be a nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. <u>Enforcement:</u> <i>The City Manager or his or her duly authorized representative shall enforce the provisions of this Chapter and make investigations of complaints of its violation. For such purpose, the City Manager or his or her duly authorized representative shall have authority to enter upon the premises of any public or private land within</i>	<u>Violations:</u> Deems that violations of this chapter are nuisances. This will allow the City in some cases to abate nuisances, and also use state statute to address nuisances. <u>Enforcement:</u> Clarifies the City manager is to designate employees to enforce the nuisance chapter.

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	<i>the City as reasonable times and under reasonable conditions.</i> <u>Penalty: Violations are municipal civil infractions.</u> This is a change from all violations being punishable as a misdemeanor offense.	<u>Penalties:</u> Civil infractions are not criminal violations. It is a fine only for the offense. This also allows for Civil orders from the court that force individuals to abate the nuisances.
Article II-Noise	Amendments	Reason for Amendment
§ 21-6- § 21-24	Noise: All violations of this section are Civil infractions.	Only significant changes are repealing excessive noise yelling, and now all violations are municipal civil infractions.
Article III- Nuisance Party	Amendments	Reason for Amendment
§ 21-25-§ 21-29	<u>Nuisance Party:</u> Is defined as a social gathering or party, whether static or mobile, conducted on any public or private property within the City and which, by reason of the conduct of those persons in attendance, results in any one or more of the following conditions or events occurring on public or private property:(1) The unlawful sale, furnishing, possession, or consumption of alcoholic beverages; (2) Urination or defecation on neighboring public or private property, or on the premises in view of another person; (3) Unlawful deposit of trash or litter;(4) Destruction of property; (5) Unlawful vehicular traffic, or the unlawful stopping, standing or parking of vehicles, obstruction of the free flow of traffic or interference with the ability to render emergency services;(6) Unlawful parking of vehicles within the public streets, alleys, or sidewalks, or upon private property;(7)	<u>Nuisance Party:</u> This new article was created based on the City Commission's request that City staff aid in addressing the X-Train nuisance that has predominately affected the City's Northside residents. This section allows the City to prosecute individuals who are involved in these parties and since it is a nuisance may allow the City to tow cars and in extreme situations for chronic offenders forfeit property. Violations are to this section are Misdemeanors punishable by 90 days in court and up to a \$500 fine.

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	Unreasonably loud noise under the circumstances which disturbs the comfort, quiet or repose of one or more members of the neighborhood;(8) Conduct or a condition which injures any person; (9) Conduct or a condition which endangers the safety of persons or property in the neighborhood; (10) Conduct or a condition which results in the indecent exposure of a person, or the display of graphic sexual behavior, whether real or simulated, to a member of the public not attending the social gathering or party; (11) Unlawful sale, furnishing, manufacture, use, or possession of a controlled substance as defined by federal or state law.	
Article VI- Blight	Amendments	Reason for Amendment
<u>§ 21-30-§ 21-31 Blighted Structures In General</u>	<u>Blighted Structures In General:</u> Is defined as any dwelling, garage, accessory or outbuilding, or any factory, shop, store, office building, warehouse, or any other structure or part of a structure which has one or more of the following: (1) Is no longer habitable as a dwelling or useful for the purpose for which it was originally intended because of fire, wind, other natural disaster, or physical deterioration; (2) Is partially completed and which is not presently being constructed under an existing, valid building permit issued by or under the authority of the city; (3) Is not structurally sound, weather-tight, waterproof or vermin-proof; (4) Is not covered by a water resistant paint or other waterproof covering so as to protect said structure from the adverse effects of the	<u>Blighted Structure In General:</u> § 21-30 and § 21-31 were created to address the City Commission’s concern of blighted houses and commercial buildings throughout the City. Violations of these sections are municipal civil infractions. These two sections address all blighted structures, but special considerations have been made to address abandoned, or vacant blighted structures see below.

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	elements or from physical deterioration; (5) Causes or tends to cause devaluation of the subject property or other properties in the area; or (6) Which has any of the following conditions: a. Peeling paint. b. Sagging and deteriorating roof. c. Missing and/or damaged siding. d. Broken or deteriorating window. e. Unfinished exterior. f. Collapsing or collapsed porch or deck. g. Cracked and broken foundation/chimney. h. The presence of Graffiti. (7) If a vacant, abandoned and/or condemned building or structure that has been vacant, abandoned and/or condemned for more than 30 days, see 'Vacant Blighted Structures'.	
§21-35 - §21-40 <u>Vacant Blighted Structures</u>	<u>Vacant blighted structure:</u> is defined as any structure located within the City of Kalamazoo which is vacant and blighted, as defined in this chapter, for more than 30 days, and to which two or more of the following criteria applies: (1) Is open to casual entry; (2) Has one or more windows boarded; (3) Has had any utilities required for occupancy disconnected; (4) Is under notice for being in violation of Chapter 9 and/or 17 of the City Code of Ordinances; or; (5) Because of disrepair or	<u>Vacant blighted structure:</u> Over the past several years, the Community Planning & Economic Development Department (CP&ED) has received community feedback on the City's Abandoned Residential Structures (ARS) program on three fronts: 1) The ARS program does not address blighted and abandoned commercial and industrial properties; 2) The ARS program is too rigid and strict; and 3) the ARS program should differentiate between properties that are substantially blighted inside and out. As a result of this feedback, CP&ED is proposing changes to Chapter 21. The intent of the changes is

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	lack of maintenance, is in a condition that makes it reasonably apparent to the public that the structure is in fact unoccupied. Summary of Proposed ARS Program Changes: • <u>Name Change:</u> Abandoned Residential Structures (ARS) would be replaced with Vacant Blighted Structures (VBS) to include inspection of vacant and abandoned commercial and industrial buildings. • <u>Revised Criteria:</u> The structure must be vacant and blighted for more than 30 days with two of the following criteria being applicable, where the current ordinance states one of the following criteria must apply. Additionally, the criteria covering indebtedness to the City for more than one year was removed. 1) Is open to casual entry; 2) Has one or more windows boarded; 3) Has had any utilities required for occupancy disconnected. 4) Is a dangerous building, as defined by Article VII of Chapter 9 of the City Code of Ordinances; 5) Is under notice for being in violation of Chapter 17 of the City Code of Ordinances or; 6) Because of disrepair or lack of maintenance, is in a condition that makes it reasonably apparent to the public that the structure is in fact unoccupied.	to more appropriately define the problematic vacant and blighted structures that need inspection and enforcement action by CP&ED. Meetings with Property Owners: After complaints about the program, letters were sent out in 2015 to property owners on the Abandoned Residential Structures list. These owners were encouraged to attend a public meeting to garner feedback on changes to benefit the program not penalize property owners attempt to repair their buildings. From this meeting and meetings with the neighborhood associations we also learned that there were many vacant blight commercial buildings that were not receiving the same scrutiny and vacant blighted residential buildings. Additionally, the threshold to be declared a vacant blighted structure was changed to make sure that structure included in this program met multiple criteria. The first step was to expand the program to cover commercial and industrial building by changing the program to Vacant Blighted Structures (VBS). Second, was to redefine the criteria and identify that two or more of the criteria listed must apply. Lastly a tiered system was proposed to encourage progressive steps of renovations. Therefore, the Tier One and Tier Two System was created.
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	• <u>Removal of New Certificate of Occupancy Requirement:</u> The current ordinance requires the issuance of a new certificate of occupancy prior to re-occupying a vacant and abandoned structure. As permitting process sufficiently covers the requirement of work being inspected prior to the lifting of the vacant and abandoned structures status. The additional step of a new certificate of occupancy will not be necessary and will be removed from the process. • <u>Right to Inspect:</u> The revised language clarifies why the inspections are conducted due to the status as an ARS property and for the health, safety and welfare of the community. Further, administrative search warrants may be utilized to complete required inspections. • <u>New Tiered Classification:</u> Create a tiered monitoring inspection program to reduce monitoring fees for property owners who make repairs to the exterior of their vacant and abandoned structures. ○ Tier One – Structures with interior and exterior violations would continue to be monitored monthly with a \$55/month fee (current process). ○ Tier Two – Structures with only interior violations (no exterior violations) would be monitored bi-	
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	annually with a \$55 fee every six months. ○ Tier Status Change –Vacant blighted structures can change tier status. In order for a change of status to occur the work performed on a vacant blighted structure must have approval of the appropriate city inspector; for repairs that do not require a permit. For work that requires a permit to correct the violation. The applicable building/trades inspector approval will be required. • <u>Time Limits Placed on Monthly Monitoring:</u> Tier One property monitoring limited to 24 months before escalated enforcement. Tier Two monitoring limited to 36 months before escalated enforcement. • <u>Change in Penalties:</u> A person who fails to timely register of vacant blighted structure or who fails to allow an inspection may be found responsible for a municipal civil infraction. A person who allows occupancy of a vacant blighted structure when violations remain uncorrected will still be guilty of a misdemeanor offense which is in the current ordinance.	<u>Penalties:</u> Civil infractions are non-criminal violations fine only offenses. Allows for Civil orders from the court that force individuals to abate the nuisances.
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Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners
FROM: Scott A. Borling, City Clerk
DATE: 3/28/2019
SUBJECT: City Clerk's Report

INFORMATIONAL ITEMS

Attached for your information is a request for City Commission action submitted by Nathan Dannison. This request relates to the proposed Bronson Park and Nazareth Local Historic Districts and is being presented to the Commission in accordance with City Commission Rule #7.

ATTACHMENTS:

Type	Description
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- | | |
|--------------------------|--|
| ☐ | Proposal Nathan Dannison Request/Proposal for City Commission Action |
|--------------------------|--|

Opposition to Proposed Bronson Park Historic District

Summary of Opposition

We, the members of the Kalamazoo Children's Playscape Board and other concerned parties, are asking the City Commission to vote to deny any further attempt at establishing a local historic district in the Bronson Park and Nazareth districts.

The bottom line is the property owners have managed the historic preservation of their buildings and where necessary sought opinions and participation of external partnership, including DTI and the City on possible alternative use of dilapidated buildings. Now we want to pursue our vision for the properties.

Executive Summary of Opposition

The State Historic Preservation Office states that it is important that the process for establishing a local historic district be closely followed when creating a local historic district to ensure a solid legal foundation for the district. In part it also states the primary reason for establishing local historic districts is to manage how change occurs in the designated area. Further it is the responsibility of each municipality to decide which resources are significant to its history and which resources are no longer viable for preservation. While there are many benefits to the city and specific property owners who live in largely residential historic districts, there are also significant responsibilities and regulations that the property owners will have to endure. Only through a shared sense of purpose and respect for neighborhood uniformity can an historical district prosper. Unwilling or unenthusiastic compliance due to ordinances, restrictions, and bureaucratic oversight drains human, fiscal and material resources, let alone good will, that could have gone into meaningful historical preservation. That is why the State Historic Preservation Office encourages the process to create an historic district must start with and be supported in some significant way by the property owners who will have to generate the resources and resolve to shoulder the additional responsibilities. Additionally, the City must uphold its responsibility to balance preservation of buildings with the changes required by the

needs of the people in an ever-evolving city.

In 1831 the founder of our city, Titus Bronson, designated Church Square, four square areas in the heart of the village, for public use which continues to this day. The proposed new local historic districts would strip this original intention and force our organizations to cede authority over our buildings and their usage to a secular government commission or ultimately to a commercial use. This would cost us millions of dollars and endanger our continued existence on Bronson Park and at the campus at Nazareth.

With regard to the historic churches and nonprofit religious institutions this would place a substantial burden on our religious exercise. This new designation would provide no financial or administrative benefit to our churches and non-profits. Furthermore, the uncertainty created by the continued discussion of these plans severely hinders our ability to raise necessary funds for future projects and therefore stresses our finances and harms our organizations.

Since the property owners in the proposed districts have been doing an exemplary job maintaining the historical integrity of their buildings, by its own admission the motivation for the proposed district rests on the wishes of the Historic Preservation Commission to prevent the possible demolition of three structures in the proposed district boundaries, 302 Academy Street buildings owned by First Congregational Church (FCC), Christian Science Church owned by the KIA, and Nazareth Mother House owned by the Congregation of St. Joseph. The intention of the Commission to create two local districts may be masking this specific focus, but it would be the only way for preservationists to delay and possibly impede progress on well thought out and highly supported initiatives underway and any other reasonable changes that might better benefit the City. The current Bronson Park churches and Sisters at Nazareth are known for their care and commitment to the people of Kalamazoo and have conducted their stewardship of historic resources in an exemplary fashion. Only after significant dialogue, research, and prayer

would any of the property owners come to the difficult decision that demolition of a building is necessary.

A study by Byce Engineering has been circulating showing that the sanctuary can be rehabilitated for a little over \$3 million. This estimate contains several inaccuracies, such as a low cost of demolition with no line item for asbestos abatement, and we also question the amount set aside to fix the bowing walls. This amount is simply cost prohibitive for the First Congregational Church. Further, even though this study has been circulating for a while now, the bottom line remains that no buyer has come forward who is willing to put forth the time and expense to fulfill this vision. An analysis of the projected cost for square footage shows that the cost of investment would not be worth the resulting square footage. These costs would greatly impair FCC's ability to fulfill its nonprofit mission. A similar cost benefit analysis has been conducted by the Sisters of Nazareth and the owners of the Christian Science Church.

The Historic District has stated that it rarely uses its "demolition by neglect" powers under the Michigan statute. We can't, however, guarantee that future Historic District Committees and Coordinators would adopt the same approach, or that the current commission won't change its mind. The fact remains that they would still hold that power under state law. They also state that we can simply "stabilize" the building, rather than bring it up to full historic district standards. Stabilization, however, is still a significant expense of both funds and staff time to accomplish. In the end, that would still leave a vacant building on the block, rather than a vibrant children's naturescape that truly contributes to the sense of community around Bronson Park.

The following information will outline why the historical district would be unnecessary at this time and why in the end, the demolition of the said properties will be necessary, historic district or not. The report will also clarify errors in the Study Commission Report and process for seeking historic district designation.

Part 1. The process for seeking two local historic districts has violated good practice and is inherently biased.

At the federal level “Standards for Rehabilitation” used in establishing local historic districts “are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.”

<https://www.nps.gov/tps/standards/rehabilitation/rehab/stand.htm>

At the State level “Educating the public about the historic significance of the proposed district is a primary responsibility of the historic district study committee. The public hearing should not be the first time the public is informed of the study. The committee should include the public in the study process from the beginning, as soon as the decision is made by the local unit of government to undertake the study. Including the public in the process will help to increase their understanding and acceptance of the district designation.”

https://www.michigan.gov/documents/mshda/mshda_shpo_20150930_local_historic_district_manual_501562_7.pdf

One would have to question whether the Historic Preservation Commission has followed proper procedure. FCC has been in conversation with this commission since before purchasing the property at 302 Academy. They were transparent about concerns and communicated them to the Historic Preservation Commission in person several years ago. The first time FCC received news of this new historic district study was in a phone call Nathan Dannison received from Jeff Chamberlain, assistant city manager, less than two weeks prior to public presentation of the proposal. The Historic preservation Coordinator assured FCC **in 2016** that the only historic registry associated with the present building at 302 Academy is the National Registry. This would preclude using **federal** funds for the demolition of the building. However there were no other local restrictions beside the deed **and** platting restrictions put in place in **the 1800s**. It seems inconsistent that the City would proceed to preserve the failing structure of buildings but not the historical importance of the land use itself.

The appointed Historic District Commission may also have over reached its authority by sanctioning a study committee without City Commission knowledge. Section 399.203(1) requires that City Commission create the Historic District Study Committee before any historic district is created, and Section 399.204 requires a historic district commission before the first historic district is established, to administer the districts. If the current historic district study committee was not created by city commission approval, under the state statute the resulting process may be open to challenge. What was the authority granted to the Historic Preservation Committee? Can the City confirm that the study committee was created by the city commission (as required) and not the preservation commission and that the composition of the committee follows best practice by including membership of the property owners that will be affected by the proposal?

Part 2. Errors presented in the Historical District Study

We are concerned by several errors and omissions present in the Historic District Study. Citing only one example, there are various incorrect descriptions regarding the historicity of the structure at 302 Academy St. Contrary to the historic preservation commission's assessment, the windows are, to a one, in need of repairs that far exceed the value of the glass itself. There are very few actual stained-glass windows throughout the building. The windows are actually a mass-machined product commercially called "cathedral glass," not artisanal stained glass, as the report incorrectly indicates. They are framed in wood. No remnants of any portico or rose windows remain behind the upper south cladding – the framing of these windows can be found scattered through the attic and the glass is absent. The pipe organ was gutted over ten years ago far beyond repair and the console was completely destroyed prior to FCC's purchase of the building. These errors lead us to believe that there may be other discrepancies regarding the accuracy of the reports on the other structures.

Furthermore, it deeply concerns the preservationists who have diligently worked for decades on the edifices at 315 and 345 W Michigan Avenue that they may be forced to cede

preservation authority to an organization that appears unfamiliar with the structures themselves. The artisanal stained glass windows at both the First Congregational and First Baptist Churches require expert care and maintenance – this care has been entrusted to these organizations for generations.

Part 3. Consideration of 302 Academy Property

After several tours of the building on 302 Academy and consultation with two separate architectural firms, it was determined that the costs associated with repairing the current damage, making the building accessible and providing the needed upgrades to its infrastructure would be astronomical. It would cost less to simply raze the building and rebuild it from the ground up.

Time line of actions to consider use of property on 302 Academy

🌈 **July / August, 2014** - Meetings were held between members of several congregations, including St. Luke's, FCC, and First Baptist to discuss purchasing the River building and repurposing it into a Free Clinic / Retreat Center / Youth Hostel / Parking Ramp. It was determined at the time that \$350,000 was far too much to pay for the structure, given its condition. Architects from Saint Luke's and FCC complete preliminary walk-throughs. Estimates for needed structural repairs and ADA upgrades range from 1.5 million to 4 million.

🌈 **September / October, 2014** - Information is shared by structural engineers from the River Church that the eastern wall of the sanctuary is 14 inches off center at the roof, the western wall is 11 inches. This throws earlier repair estimates off. It is also discovered that the internal structural members are wood, rather than steel, which reduces possible uses. The interested parties shifted their focus to rehabilitating and repurposing the historic First Baptist Church, beginning the journey that would ultimately result in the Kalamazoo Nonprofit Advocacy Coalition (KNAC).

- ✚ **September 2015** - Contact is made with Pete Eldridge, who explained that the city did not have a transition plan for the building but had received an inquiry from a possible commercial developer.
- ✚ **December 2015 / January 2016** - First Baptist Church and the First United Methodist Church are approached by realtor Jeremy Veenstra and a commercial developer with requests to lift the deed restrictions on the building. It is revealed to leadership at First Baptist Church that the proposed development is a five to seven story “rental apartment complex” immediately adjacent to the East Wall of the First Congregational Church. The revenue from this residential apartment complex would be used to “rehabilitate” the sanctuary at 302 into a commercial venue. Leadership from First Congregational express their dismay at this proposal - as it would result in the complete occlusion of the eastern clerestory windows in our sanctuary, drastically reducing the light in the sanctuary and preventing us from working on the brick edifice of our east wall. This would imperil the continued existence of the First Congregational Church by forcing our members to worship elsewhere. It would also drastically change the character of historic Church Square. FCC requests that the historic platting and deed restrictions remain in place.
- ✚ **April / May 2016** - It’s determined by the leadership of FCC that the best course of action to preserve historic Church Square and the two adjacent churches (FCC and First Baptist Church) is for FCC to purchase the building.
- ✚ **July 2016** - Public Townhall meetings are held and ideas are solicited for the possible re-use of the building. Preservation of the historic sanctuary is foremost in people’s concerns. At the recommendation of the City of Kalamazoo, DKI is invited to participate. FCC’s concerns regarding the condition of the sanctuary are brought to the attention of the Historic Preservation Committee.
- ✚ **August 7, 2016** - FCC formally votes to purchase 302 Academy St.
- ✚ **August 2016** - Public Invitation to Submit Development Vision Proposals is distributed, along with proposed restrictions. This represents the first time **FCC considers the possibility of broadening the use** restrictions include “non-church” uses. The invitation

is sent to a list of over fifty local parties, including WMU, various commercial developers, and the City of Kalamazoo.

✚ **September 2016** - Steve Diesler from DKI requests six months in order to organize funding partnerships for the redevelopment of the property. They estimate \$4 million in redevelopment costs. The church council agrees to this request.

✚ **December 2016** - FCC requests an update from DKI on their progress - no progress has been made.

✚ **March 2017** - DKI has made no progress. They request an opportunity to make a presentation to the church.

✚ **May 2017** - Additional townhalls are held to solicit feedback about the use of the building as the original six-month timeline with DKI has expired.

✚ **Sunday, May 21 2017** - Andrew Haan from DKI attends the congregational meeting and requests an additional twelve months to seek redevelopment partners, and agrees to an option agreement on behalf of DKI (Downtown Kalamazoo Tomorrow).

This option agreement would have put DKI in the role of facilitator of a sale of the property. DKI was to pay \$10,000 for the right to play that role for a year. The \$10,000 in a rough way represented FCC's carrying costs for that period. Everyone understood that DTI/DKI would not be the purchaser or re-developer of the property. This option agreement gave FCC significant control over saying yes or no to uses of the property and built in a process for eventual approval of the sale of the property to a developer.

The Option Agreement was never signed by Andrew Haan, and no money was ever paid by anyone to FCC in connection with the Option Agreement.

✚ **April 2018** – A year passes without DKI returning a signed purchase agreement.

Independent of Andrew Haan, 302 was shown to several entities - including several other churches, a museum, a commercial developer, and Western Michigan University as a potential site for a business incubator (as per the original vision set forth by DKI/DTI)

✚ **May 2018** - The City of Kalamazoo is provided with an option to sign the same purchase agreement as DKI, with a six-month time limit, and declines.

✚ **August 2018** - The Congregation votes to authorize the Church Council to create a new board of directors to develop a plan to raze the property and build a Natural Play and Learning Center, in partnership with the Kalamazoo Nature Center.

In summary, the proposed historic district is *not necessary*. The vibrant historic churches around Bronson Park are well adapted to address the concerns regarding their own edifices. First Congregational Church is an excellent example of this. We have diligently preserved our church for nearly a century without the oversight of a secular government commission, and we have become exceedingly good at it, as have our brothers and sisters at Saint Luke's Episcopal Church, the First United Methodist Church, First Presbyterian Church, First Baptist Church and others. These buildings are unique, they face unique concerns, and we believe the individuals who use and own these buildings are the best suited to deal with these concerns.

In order to stay vibrant, we need to respect our shared history. However, we also need to learn how to evolve. The proposed district will limit our ability to shape our future together. We want to preserve the usefulness of the buildings - and the restrictions imposed by this new historic district would clearly inhibit these goals. They would represent a complete reversal of the intentions of our city's founder when he originally dedicated Church Square.

Part 4. The demolition of the buildings in question

Public Act 169 (1970) of the State of Michigan, -regulates the establishment of historic districts within the state. §399.205 6: (6) states

“Work within a historic district shall be permitted through the issuance of a notice to proceed by the commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the commission to be necessary to substantially improve or correct any of the following conditions:

(a) *The resource constitutes a hazard to the safety of the public or the structure's occupants.*

This is certainly the case with the properties being highlighted in the proposal. Research suggests that a single vacant property, like 302 Academy, could cost the City \$43,000 a year due to costs associated with crime, and arson (Dovey, R., January 2017, <https://nextcity.org/daily/entry/cost-of-blight-report-vacant-buildings>)

(b) *The resource is a deterrent to a major improvement program that will be of substantial benefit to the community*

This is certainly the case with the properties being highlighted in the proposal. Planned reuse of 302 Academy property into a Children's nature Playscape in Downtown Kalamazoo presents many benefits to the community. Our newly adopted "Imagine Kalamazoo" strategic plan identified six priorities encouraging development in the downtown area. Number 5 is creating a healthy Living District that would improve the health and well-being of greater downtown Kalamazoo. The proposed playscape and other natural uses of Bronson Park improve physical and mental health of all, but especially young children. There are 18 childcare/preschool locations within a roughly 10-block radius of the planned nature Playscape, over 1500 children ages 2 to 10 years are serviced by these agencies. Most of these children come from underserved families who live in locations where there is little to no natural play areas. Additionally, there are several economic benefits to developing a playscape in an urban setting. Parks spur development of communities as corporations and parents seek to work and live in high-quality locations. Visitor spending increases as the nature scape would draw individuals and families to the center city who might not otherwise have a reason to visit Bronson Park area. Supporting natural parks demonstrates proactive environmental education and sustainable conservation efforts in land management (national Recreation and Park Association, 2018, Economic Impact of Local Parks).

(c) *Retaining the resource will cause undue financial hardship to the owner when a government action, an act of God, or other events beyond the owner's control created the*

hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.

This is certainly the case with the properties being highlighted in the proposal. Much has been presented in this report and others, about the cost of maintaining unsalvageable buildings that no longer serve a purpose by churches or non-profits.

(d) Retaining the resource is not in the best interest of the majority

This is certainly the case with the properties being highlighted in the proposal. None of the property owners in the proposed Historic District are supportive of this proposal, nor are the 1000+ constituents of the church and non profit agencies. Leadership of said property owners have spent time and financial resources to consider the best of use of their property. Each organization has discussed options with their members and with City development officials. Only a small minority of preservationists who have no ties to the property and therefore will have no burden for maintenance of the historic properties have spoken in favor on the proposal.

Part 5. Historic designation of the properties may actually jeopardize the health of existing historical buildings.

The local historic district ordinance is a land use regulatory tool which becomes a part of the zoning ordinance. It enables the community to say that resources in a specific, designated area are of such importance to the community overall that work in the district must meet established standards and guidelines. This must be of such significance to outweigh the importance of modernization.

https://www.michigan.gov/documents/mshda/mshda_shpo_20150930_local_historic_district_manual_501562_7.pdf

And, we would add, outweigh the importance of restoration of more important buildings. The North wall of the First Baptist Church has not been accessible since 1871, and appears from the inside to be in need of attention.

The continued existence of the failing walls at 302 Academy Street imperil the oldest public structure in our city. Plans are in development for the preservation of the sanctuary at the First Baptist Church that necessitate the removal of these walls. Again, preserving 302 Academy Street by endangering the two other, living historic churches on the block is unacceptable.

Part 6. The argument presented by residential owners in historical districts does not compare to areas zoned for business.

Completely different land use dynamics in business vs residential zoned districts make comparison of the effects and outcomes of Historic District Overlays, prescribed by PA 169 of 1970, very different as well.

The stabilizing effect of stringent zoning regulations on residential use in elderly neighborhoods can, by and large, be of benefit to the residents of such overlay districts, by maintaining the sometimes quaint or period but always uniform appearance of the area, thereby supporting the common enjoyment and quality of residential use, and, importantly, supporting property values (and incidentally taxable values.)

Aside from the two main branches of land use in zoning - residential and business - we are considering the third of the third and fourth smaller branches of the land use tree. These are the *not-strictly-business* and the *not-strictly-residential* uses of land.

Many of you as elected officials have come up in government through the rigorous boot camp of zoning and planning where you learned that foundational to the justification for the phenomenon of government, is *mitigation of conflict* by pre-ordained regulation. Zoning is a, if not THE, most intense rule making arena, effecting the everyday life of citizens. Many of the rules have been established by common law long ago and have only to be refined to meet the

new conflicts of an evolving world. And, a part of that refinement is the recent addition of overlay-districts to the tool box used to address land use conflict in older, densely occupied districts. In the case of *Historic District* Overlays, they are primarily used to stabilize older residential neighborhoods. As residential structures age, the activities of one's neighbors become more critical to the enjoyment of one's home, one's residence, one's reprieve from the commotion and competition of industry and the market places of business. Yet, the privileges of ownership have, in the past, curtailed the options an individual or a family has in effecting the way in which neighboring land is used, and cared for.

Until, in the early 1900s, in stepped tuberculosis and the perception that sunlight (considered for a time to be the requisite element in curing the disease) was a universal basic need much like air and water, which led to the first laws that allowed the regulation (by districts) of land use, for the common good of people within the zoned district. The acceptance of that premise by the courts (reflecting the rational if not general acceptance by citizens) opened the door for zoning laws and the idea that, at least where people live and sleep, there are and should be basic courtesies among neighbors regarding living conditions. After a century of trial and error in discovering and refining these behavioral boundaries, we have come to the situation where some residents have desired to go beyond the minimal requirements, and require that, in the face of deterioration, all neighbors should keep neighborhood pride holding its own against the ravages of time.

The moniker of *Historic District* might well be replaced by *Cooperative Residential District*.

This entirely rational arrangement has little corresponding benefit in the very heart of the Central Business District, of a thriving and already historically conscientious city, where the statutory provisions simply add viscosity to the efforts of compliant land owners to look as good as they can **to the public**. Both businesses and institutions need to portray themselves as legitimate actors in the commerce of ideas and goods and services, in whatever way **appeals to the public** in the light of that day.

Unlike the individual and core family private land owner-occupants, or unlike landlords, both seeking to offer or live in stable quality neighborhoods; government and religious institutions in the City of Kalamazoo, at this time, are not dealing with structural deterioration in the same way. The former is susceptible to simple negligence by neighbors, some with little incentive to do anything but exist in their homes, to the neglect of any responsibility toward their neighbors.

Meanwhile the land use activity in the business districts is just that – all business. The success of that professional activity is tied to **public** respect and **public** involvement in that land use. Neither businesses nor institutions can afford to let their property deteriorate as has happened at 302 Academy, or someone will buy them up and make better use of the valuable land in the valuable Central Business District of the City. **Let that proceed.** There were very few potential buyers of that land (302 Academy) and none even initiated negotiations; land already incumbered by plat restrictions going back 184 years (1835) and the 153 year old (1866) deed restriction essentially limiting the use of that particular land to a use associated with, not profit motive business, and not even a governmental use but limiting that land use to that of a religious institution. The City of Kalamazoo is fortunate that **a robust and uniquely qualified institution stepped up** to perform a similar oversight buy-out in this microcosm of a one block area in the geographic and cultural heart of the CBD. Work that similar forces of the marketplace play in other parts of that CBD. The City and the rest of the CBD should be assisting, rather than hindering, in ridding the Bronson Park area of this long neglected un-salvaged and unsalvageable blight.

Part 7. **Playscape proposal** 4/23/2017

It is our belief that the vacant property at 302 Academy St. could be repurposed as a natural playscape for children. Natural Play Centers, or playscapes, are currently being deployed in many U.S. and Canadian cities for the benefit and joy of their community. The design designation by the Natural Learning Initiative and the National Wildlife Foundation is, “Natural Play and Learning Places.” They define such locations as, “A designated, managed location in

an existing or modified outdoor environment where children of all abilities play and learn by engaging with and manipulating diverse natural elements, materials, organisms, and habitats, through sensory, fine motor, and gross motor experiences.” There are extensive design documents and case studies available online. For a great overview of the nature of playscapes and their role in urban renewal, please visit <http://www.nwf.org/what-we-do/kids-and-nature/programs/nature-play-spacesguide.aspx>

At present, there is not enough space in Bronson Park dedicated solely to self-directed play and education of children. Children who attempt to practice their right to play in Bronson Park have risk of being chastised for walking on the grass, running on the sidewalks, and romping in the flower beds. They need a space to play!

FCC has proposed that the current building on 302 Academy be carefully razed, and the lot redeveloped under the guidance of the Kalamazoo Nature Center, another jewel in the crown of greater Kalamazoo, and other community partners. Hopefully, it would feature accessible trails, native Michigan flora, a zero-depth water feature that reflects our Kalamazoo River, earthen berms, logs to balance on, and many other natural features. The playscape could be securely and attractively fenced with visible policies noting that it is exclusively for the use of minor children accompanied by their parents or guardians. Educational programming could also be provided by the Kalamazoo Nature Center.

The lot is presently deed-restricted for “church use” only. The proposed non-profit land use to be carried on there under the ownership of First Congregational Church, and in cooperation with other churches around the Park and throughout the city is aligned with the original land restrictions as well as being a permitted use in the Central Business District and therefore a use consistent with the Cities Master Land Use Plan. It would be for the benefit of all children regardless of their religious affiliation or non-affiliation.

Children’s health is in danger due to increased sedentary lifestyles. Children in our city often do not have access to “wilderness” spaces in which to play and learn. Genuine nature play and

learning spaces contain mainly natural materials such as plants (trees, shrubs, vines, ground covers), stones, water, dirt piles, fallen trees, hollowed-out logs, and a multitude of other natural elements designed to encourage hands-on manipulation and discovery. It is a place where children can not only experience physical activity and play – but also learn about the seasons, the natural world, and the role that humans play in our local ecology. The playscape would be staffed by trained volunteer educators to provide natural-science education for the children who engage with the space.

In Conclusion

We request the City Commission vote to deny any further attempt at establishing a local historic district in the Bronson Park and Nazareth districts.

We oppose the district because of the significant burden that the extra staff time and expense will cost the churches and nonprofits within an historic district to maintain compliance with the historic district standards. Specifically, with respect to First Congregational, this district would result in a crushing expense to rehabilitate the 302 Academy sanctuary. This building has been on the market for several years, with no feasible offers.

Removing the 302 Academy building would allow FCC and First Baptist to much more efficiently maintain our own historic buildings. The 302 Academy building simply does not represent sufficient historic value to merit its prohibitive cost of rehabilitation at the expense of the two others, more historically significant, churches on the block. We assert that the cost of saving this building is greatly outweighed by the benefits of freeing up that space in order to focus on the preservation of FCC and the First Baptist Church. We strongly assert that providing a community use in this space is far more important than the preservation of a façade.

Until the historic district proposal is terminated, FCC will incur ongoing costs to carry the property. We cannot move forward in a meaningful way so long as this proposal remains a possibility. FCC would greatly appreciate a prompt resolution to the matter, so that we can move forward with our vision to create a community space.

Finally, as far as a potential confrontation between church and state - we are not there yet. At this point it is a discussion between partners in this City's advancement into the future. The city government and the churches involved, (on Gull Road and around Bronson Park) both desire to nourish nothing less significant than Civilization in these trying times. Think no less of us, your compatriots in this grand purpose, because we see civilized behavior as not just a personal choice but a choice that may be pleasing to a divine conscientiousness guiding humankind toward compassion and peace. In our negotiations with you, we claim no dispensation for having faith, only for having our mutual best interests at stake. And we mean it.



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: Clyde J. Robinson, City Attorney

PREPARED BY: Clyde J. Robinson, City Attorney

DATE: 3/14/2019

SUBJECT: Freedom of Information Act Policy

RECOMMENDATION

It is recommended that the City Commission amend City Commission Policy 45.1 addressing Freedom of Information Act Procedures and Guidelines.

BACKGROUND

In 2015 the City Commission, as required by an amendment to the Michigan Freedom of Information Act (FOIA), adopted written Procedures and Guidelines, along with a Written Public Summary of those Procedures and Guidelines. In the closing days of the past legislative session the FOIA was amended requiring that the Procedures and Guidelines and the accompanying Public Summary be updated to incorporate the new legislation.

Public Act 523 of 2018 made two changes to FOIA in an effort to assist public bodies in complying with the Act. The first change was to require that a requestor provide their complete name, address and contact information (telephone number or email address), or if the requestor is an entity, that the complete name, address and contact information of the entity's agent be provided to the public body. This amendment was in response to a FOIA request sent to nearly every local government clerk in Michigan (including the City of Kalamazoo) by a person identified only as "Emily" and a New York organization known as the "United Impact Group" filed approximately 21 months after the 2016 election seeking copies of every ballot cast in that election. Under federal law the ballots were to be disposed of 22 months after the election. The costs to respond to the request were significant given the copying costs. Therefore, the requestors were asked by nearly every municipal clerk to provide a deposit, as permitted by FOIA, before work commenced on fulfilling the request.

When the deposits were not paid, this uncovered the second issue that was addressed by PA 523. Because FOIA did not address the circumstance when a deposit was not paid, nor how long a requestor was permitted to delay payment of a deposit, amendatory language was added that now requires a requestor to pay a required deposit within 48 days after the deposit notice is sent by the public body or the request will be considered abandoned.

COMMUNITY RESOURCES CONSULTED

No community resources were consulted; however, the change in the City FOIA is consistent with recent changes to State law.

FISCAL IMPACT

No direct impact to the City, though the changes will require timely payment of requested deposits, or the request will be deemed abandoned, before the City must fulfill a request for a large amount of public records.

ALTERNATIVES

None.

ATTACHMENTS:

	Type	Description
▣	Aerial Photo	FOIA public summary
▣	Aerial Photo	FOIA procedures & guidelines

CITY OF KALAMAZOO WRITTEN PUBLIC SUMMARY OF FOIA PROCEDURES & GUIDELINES

Consistent with Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is the City of Kalamazoo Written Public Summary of its FOIA Procedures and Guidelines

1. How do I submit a FOIA request to the City of Kalamazoo?

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City of Kalamazoo must be submitted in writing.
- Unless the person claims to be indigent, a request must include the complete name of the requestor, their address in a form that complies with U.S. Postal Service standards, and either a working telephone number or valid email address.
- A request made on behalf of an organization or entity must include the complete name of an individual who is acting as an agent of the organization or entity, the agent's address which complies with U.S. Postal Service standards, and either a working telephone number or valid email address for the agent.
- A request must sufficiently describe a public record so as to enable the City to find it.
- No specific form to submit a written request is required. Requests may be filed electronically through the City's website at www.kalamazoo-city.org/foia. Additionally a printable FOIA Request form is also available for your use and convenience on the City's website.
- Written requests can be made in person by delivery to any City office in person or by mail.
- Requests can also be made by facsimile by calling 269-337-8922 for non-Public Safety records and 269-552-3193 for Public Safety records.
- A request may also be submitted by e-mail. To ensure a prompt response, e-mail requests should contain the term "FOIA" or "FOIA Request" in the subject line and be sent to FOIA@kalamazoo-city.org

Note: If you are serving a sentence of imprisonment in a local, state or federal correctional facility you are not entitled to submit a request for a public record.

2. What kind of response can I expect to my request?

- Within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile or e-mail the request is deemed to have been received on the following business day. The City will respond to your request in one of the following ways:
 - Grant the request.
 - Issue a written notice denying the request.
 - Grant the request in part and issue a written notice denying in part the request.

- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.
- If the request is granted, or granted in part, the City will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available. If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the City will require a deposit before processing the request.

3. What are the City's fee deposit requirements?

- If the City has made a good faith calculation that the total fee for processing the request exceeds \$50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit it will provide you a non-binding best efforts estimate of how long it will take to process the request following receipt by the City of your deposit.
- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when all of the following conditions exist:
 - the final fee for the prior written request is not more than 105% of the estimated fee;
 - the public records made available contained the information sought in the prior written request and remain in the City's possession;
 - the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
 - 90 days have passed since the City notified the individual in writing that the public records were available for pickup or mailing;
 - the individual is unable to show proof of prior payment to the City; and
 - the City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The City will not require the 100% estimated fee deposit if any of the following apply:
 - the person making the request is able to show proof of prior payment in full to the City;
 - the City is subsequently paid in full for all applicable prior written requests; or

- 365 days have passed since the person made the request for which full payment was not remitted to the City.
- If a required deposit is not received in full by the City within 48 days after sending a Notice of Deposit to the person making the request, and there is not an appeal of the deposit amount, the FOIA Coordinator will consider the request to have been abandoned and the City will not fulfill the request.

4. How does the City calculate FOIA processing fees?

- A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.
- The Michigan FOIA statute permits the City to assess and collect a fee for six designated processing components. The City may charge for the following costs associated with processing a request:
 - Labor costs associated with searching for, locating and examining a requested public record.
 - Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
 - The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media.
 - The cost of duplication or publication, not including labor, of paper copies of public records.
 - Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
 - The cost to mail or send a public record to a requestor.
- Labor Costs
 - Labor costs for searching, locating and examining a requested public record and labor costs for the review of a record to separate and delete information exempt from disclosure from information which is disclosed is estimated and charged in 15 minute increments with all partial time increments rounded down.
 - Labor costs for the duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or

through the Internet or other electronic means when asked for by the requestor, will be charged in 6 minute increments, with all partial time increments rounded down.

- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- Non-paper Physical Media
 - The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
 - This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- Paper Copies
 - Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets will reflect the actual cost of reproduction.
 - The City may provide records using double-sided printing, if cost-saving and available.
- Mailing Costs
 - The cost to mail public records will use a reasonably economical and justified means.
 - The City may charge for the least expensive form of postal delivery confirmation.
 - No cost will be made for expedited shipping or insurance unless requested.

5. How do I qualify for a reduction of the processing fees?

- The City may waive or reduce the fee associated with a request when City determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.
- The City will waive the first \$20.00 of the processing fee for a request if you submit an affidavit stating that you are:
 - indigent and receiving specific public assistance; or

- if not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.
- You are not eligible to receive the \$20.00 waiver if you:
 - have previously received discounted copies of public records from the City twice during the calendar year; or
 - are requesting information on behalf of other persons who are offering or providing payment to you to make the request.
- An affidavit is sworn statement. For your convenience the City has provided an Affidavit of Indigency form for the waiver of FOIA fees on its website.
- The City will waive the first \$20.00 of the processing fee for an nonprofit organization which meets all of the following conditions:
 - the organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act;
 - the request is made directly on behalf of the organization or its clients;
 - the request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code; and
 - the request is accompanied by documentation of the organization's designation by the State

6. How may I challenge the denial of a public record or an excessive fee?

○ Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may file an appeal of the denial with the Office of the Mayor through the City Clerk or City Attorney. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons you are seeking a reversal of the denial.

Within 10 business days of receiving the appeal the Mayor will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reversing the disclosure denial in part and uphold the disclosure denial in part

Whether or not you submitted an appeal of a denial to the Mayor, you may file a civil action in Kalamazoo County Circuit Court within 180 days after the City's final determination to deny your request. Should you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously in

refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1000.00

○ Appeal of an Excessive FOIA Processing Fee

If you believe that the fee charged by the City to process your FOIA request exceeds the amount permitted by state law, you must first submit a written appeal for a fee reduction to the Office of the Mayor through the City Clerk or City Attorney. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Mayor will respond in writing by:

- waiving the fee;
- reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Mayor will respond to the written appeal.

Within 45 days after receiving notice of the Mayor's determination of the processing fee appeal, you may commence a civil action in Kalamazoo County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.00.

Need more details or information?

This is only a summary of the City of Kalamazoo's FOIA Procedures and Guidelines. For more details and information, copies of the City of Kalamazoo's FOIA Procedures and Guidelines are available at no charge at any City office and on the City's website, www.kalamazoocity.org/foia.

Subject: FREEDOM OF INFORMATION
PROCEDURES & GUIDELINES

DATE: June 1, 2015 **No.** 45.1
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PURPOSE: To establish procedures and guidelines governing the release of public records, pursuant to Public Act 442 of 1976.

SCOPE: This policy establishes a process and procedures for the release of public documents, establishes a policy to recover costs associated with requests, and establishes a procedure for appeals.

POLICY:

Preamble: Statement of Principles

It is the policy of the City of Kalamazoo that all persons, except those who are serving a sentence of imprisonment, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The City of Kalamazoo's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The City of Kalamazoo acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Kalamazoo acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of Kalamazoo will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Kalamazoo's policy is to disclose public records consistent with and in compliance with State law.

Section 1: General Policies

The City Commission acting pursuant to the authority at MCL 15.236 designates the City Attorney as the FOIA Coordinator. He or she is authorized designate other City staff to act on his or her behalf to accept and process written requests for the City's public records and approve denials.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

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The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. The FOIA Coordinator or other City staff is not obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

A copy of all written requests for public records received by the City shall be maintained for a period of at least one year. The retention of such requests shall be the responsibility of the FOIA Coordinator or, in the event that the records were released without review by the FOIA Coordinator, by the City Department which accepted and processed the request.

The Mayor is designated by the City Commission as the head of the public body for the purpose of responding to appeals of a denial of all or portion of a public record and appeals of processing fees. In the event of the absence or disability of the Mayor, the Vice Mayor shall act in the place of the Mayor.

Any subpoena from any court, attorney, or any other person which requests the production of any City record shall immediately be forwarded to the Office of City Attorney and falls outside the scope of this Policy.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by City of Kalamazoo must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

A person making a request, other than an individual who submits an affidavit of indigency, must provide their complete name, a mailing address that complies with U.S. Postal Service standards, and contact information that includes a valid e-mail address and/or a valid phone number.

A request made by a person who is not an individual must provide the complete name, a mailing address that complies with U.S. Postal Service standards and contact information that includes a valid e-mail address and/or a valid phone number of the person's agent who must be an individual.

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or other otherwise provided to him or her in lieu of paper copies. The City will comply with the request

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only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City of Kalamazoo on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

The FOIA Coordinator may implement administrative rules permitting verbal requests for public records in designated instances. Verbal requests for public records not available on the City's website are not considered to fall within the scope of the FOIA statute; shall only be responded to where the record in question will be made available or released in its entirety; and when waiver of the requirement of a written request and release of the record, in the particular instance, serves the best interests of the requesting party, the general public and the City. In the event that the public record sought by a verbal request will not be released its entirety, the requesting party shall be advised to file a written request.

Any request to review and/or receive copies of any portion of a personnel file maintained or possessed by the City must be made in writing. This policy does not affect the right of current or former City employees to review or receive copies of documents from their own personnel files.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The City will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

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The FOIA Coordinator, or such other individuals as he or she may designate, shall have exclusive authority to deny any FOIA request, either entirely or in part.

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines along with its Written Public Summary shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the City's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the City, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the City will require a good-faith deposit before processing the request.

In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the office of the Mayor or seek judicial review in the Kalamazoo County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator or his or her designee.

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If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Section 4: Fee Deposits

If the fee estimate to provide the requested public records is expected to exceed \$50.00 based on a good-faith calculation by the City, the requestor will be asked to provide a deposit not exceeding on-half of the total estimated fee.

If a request for public records is from a person who has not fully paid the City for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- the final fee for the prior written request is not more than 105% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain in the City's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to the City; and
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- the person making the request is able to show proof of prior payment in full to the City;
- the City is subsequently paid in full for the applicable prior written request; or

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- 365 days have passed since the person made the request for which full payment was not remitted to the City.

If a required fee deposit amount is not received in full by the City within 48 days after notice that a fee deposit is required has been sent to the requestor, and no appeal of the deposit amount has been filed, then the request will be considered abandoned and the City will not fulfill the request.

Section 5: Calculation of Fees

Consistent with the authority granted by statute, it is the intent of the City to charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record so that its general fund and departmental budgets are not unduly burden by the costs associated with processing FOIA requests.

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to the City:

- The particular request incurs costs greater than incurred from the typical or usual FOIA request received by the City.
- Volume or size of the public record requested
- Whether the amount of time spent to search for, examine, review or separate exempt from non-exempt information in the record requested exceeds 15 minutes.
- Whether public records from more than one City department or various City offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record, if the failure to charge a fee results in unreasonably high costs to the City.

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- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed, if the failure to charge a fee results in unreasonably high costs to the City.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means when asked for by the requestor.
- The actual cost of mailing or sending a public record, including the least expensive form of postal delivery confirmation; as well as the cost of expedited shipping or insurance when such is asked for by the requestor.

Labor costs will be calculated based on the following requirements:

- Labor costs directly associated with searching for, locating and examining a requested public record and labor costs associated with a review of a record to separate and delete information exempt from disclosure from information which is disclosed will be estimated and charged in 15 minute increments with all partial time increments rounded down.
- Labor costs associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means when asked for by the requestor, will be charged in 6 minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

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The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - The late response was willful and intentional.
 - The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information
 - The written request included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy" or a recognizable

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misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.

- Fully note the charge reduction in the Detailed Itemization of Costs Form

Section 6: Waiver of Fees

Absent a waiver by the FOIA Coordinator in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records. The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public.

In determining whether the general public is primarily benefited, the FOIA Coordinator shall consider the following factors, none of which shall be determinative:

- whether the public record being disclosed serves the public policy purposes set forth at Section 1 of the FOIA;
- whether the release primarily serves a private or commercial purpose;
- whether the release implicates the rights of third persons;
- whether waiver of the fee is in the best interest of the City; and
- the manner in which similar requests have been treated.

The City will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the City twice during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

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The affidavit shall be a sworn statement made under the penalty of perjury. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

The City will waive the first \$20.00 of the processing fee for a request from a nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:

- is made directly on behalf of the organization or its clients;
- is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931; and
- is accompanied by documentation of its designation by the State.

Section 7: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial directed to the Office of the Mayor and filed with either the City Clerk or City Attorney. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. Upon receipt a copy of the appeal and a written report and recommendation from the City Attorney shall be distributed to all members of the City Commission.

Within 10 business days of receiving the appeal the Mayor will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reversing the disclosure denial in part and upholding the disclosure denial in part.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Mayor may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.

Any exemption to the release of requested public records shall be narrowly construed and the burden shall be upon the FOIA Coordinator to demonstrate that the denial of information is justified and should be upheld.

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The Mayor shall provide a copy of his or her written response to the appeal to the other members of the City Commission, and file a copy with the City Clerk for public inspection.

Whether or not a requestor submitted an appeal of a denial to the Mayor, he or she may file a civil action in Kalamazoo County Circuit Court within 180 days after the City's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the City arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000.

Section 8: Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee or the good faith deposit charged by the City to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction directed to the Office of the Mayor and filed with either the City Clerk or City Attorney. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Mayor will respond in writing by:

- waiving the fee;
- reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- upholding the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Mayor will respond to the written appeal.

The Mayor shall provide a copy of his or her written response to the appeal to the other members of the City Commission, and file a copy with the City Clerk for public inspection.

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Within 45 days after receiving notice of the Mayor's determination of a fee appeal, a requestor may commence a civil action in Kalamazoo County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the City required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements.

If the court determines that City has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.

Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Commission or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Commission or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Commission or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Commission of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

Section 10: Appendix of City of Kalamazoo FOIA Forms

The FOIA Coordinator is authorized to develop those forms necessary or convenient to process FOIA requests, including, but not limited to the following:

- Request Form
- Denial Form
- Waiver of Fee Form
- Detailed Itemization of Fees Form
- Appeal Form

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- Certification Form

EFFECTIVE DATE: _____

Bobby J. Hopewell, Mayor

Attydocs\sarah\CCPolicies



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, and City Commissioners

FROM: Scott A. Borling, City Clerk

DATE: 3/29/2019

SUBJECT: Resolution Addressing the Proposed Creation of Two New Local Historic Districts

INFORMATIONAL ITEMS

As requested by City Commissioners during the March 18th business meeting, attached for your consideration and discussion is **A RESOLUTION ADDRESSING THE PROPOSED CREATION OF TWO NEW LOCAL HISTORIC DISTRICTS**. If adopted, this resolution would direct the Historic Preservation Commission to "suspend and undertake no further action toward the possible establishment of a either a Bronson Park or Nazareth Campus Local Historic District."

ATTACHMENTS:

Type	Description
□	Resolution Historic District Resolution

CITY OF KALAMAZOO, MICHIGAN

RESOLUTION NO. _____

**A RESOLUTION ADDRESSING THE PROPOSED CREATION OF TWO LOCAL
HISTORIC DISTRICTS**

Minutes of a regular meeting of the City Commission of the City held on April 1, 2019, at 7:00 o'clock p.m., local time, at City Hall, 241 W. South St, Kalamazoo, MI

PRESENT, Commissioners:

ABSENT, Commissioners:

WHEREAS, the Historic Preservation Commission has, consistent with its City Commission-assigned role and responsibilities, prepared preliminary study reports regarding the possible creation of two Local Historic Districts; one for Bronson Park and surrounding downtown properties, and the other for the former Nazareth College campus on Gull Road; and

In both cases, the City Commission has received comments from affected property owners objecting to the inclusion of their property in a local historic district as being an onerous burden and ill-advised as it regards property owned by non-profit or ecclesiastical corporations, and

Additionally, the City Commission has received comments from individuals expressing concerns over the possibility that church buildings which contribute to the historic fabric of Kalamazoo may be demolished without review by the Historic District Commission for resources located in a Local Historic District; and

As the City Commission has the ultimate control over the establishment and regulation of historic districts pursuant to State law, therefore:

BE IT RESOLVED, the Historic Preservation Commission is directed to suspend and undertake no further action toward the possible establishment of either a Bronson Park or Nazareth Campus Local Historic District.

The above resolution was offered by _____ and supported by _____.

AYES, Commissioners:

NAYS, Commissioners:

ABSTAIN, Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____, 2019. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

Scott Borling, City Clerk