AGENDA

Committee of the Whole
AGENDA FOR AUGUST 21, 2023 AT 5:30 PM

Lansing City Hall, Tony Benavides Lansing City Council Chambers
124 W. Michigan Avenue, 10th Floor
To provide input or ask questions on any item that is listed on the agenda,
members of the public may contact the City Council at city.council@lansingmi.gov or (517) 483-4177 prior to the meeting.

Council Member Wood, Chairperson
Council Member Garza, Vice Chairperson

1. Call to Order

2. Roll Call

3. Minutes

A. August 14, 2023

4. Public Comment on Agenda Items (Up to 3 Minutes)

5. Discussion/Action:

B. City Council Internal Auditor Presentation on the City's Long Term Debt Analysis

C. DISCUSSION - Executive Directive 2023-02; Citizen Complaint Oversight Committee (CCOC) and Commission Investigator (CI)

D. DISCUSSION - Outside Counsel Determination for Campaign Finance Act Investigation

6. Other

7. Adjourn

Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City Council Office at 517-483-4177 (TTY 711) 24 hour notice may be needed for certain accommodations. An attempt will be made to grant all reasonable accommodation requests.

DRAFT

MINUTES
Committee of the Whole
Monday, August 14, 2023 @ 5:30 p.m.
Tony Benavides Lansing City Council Chambers

CALL TO ORDER
Council President Wood called the meeting to order at 5:30 p.m.

PRESENT
Council Member Carol Wood
Council Member Jeremy Garza- excused
Councilmember Adam Hussain
Councilmember Peter Spadafore
Councilmember Patricia Spitzley – excused
Councilmember Brian T. Jackson
Councilmember Jeffrey Brown
Councilmember Ryan Kost

OTHERS PRESENT
Sherrie Boak, Council Office Manager
Jim Smiertka, City Attorney
Lisa Hagen-Lawrence, City Attorney
Emily Linden, Internal Auditor
Shelbi Frayer, Chief Strategy Officer
Loretta Stanaway
Andy Kilpatrick, Public Service Director
Dale Schrader
Sharon Civils
Chris Stralkowski, Red Cedar
Kim Coleman, HRCS
Ryan Cabell, Energy Event Center
Mark King
Mike Lynn
Mr. Groebel, Mariott Attorney
Tim Ellis

Minutes
MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE MINUTES FROM JULY 24, 2023.
MOTION CARRIED 6-0.

Public Comment
Mr. Cabell spoke on violence in the City in 2023, particularly the recent incident at Logan Square, sent out his condolences and asked for solutions.

Mr. King spoke on behalf of Mr. Cabell and his business, and asked Council to consider giving Mr. Cabell a fair opportunity to do his business.

Mr. Lynn spoke on the incident at Logan Square, gun violence in the City, and in support of working with Mr. Cabell instead of addressing it with revocation. He offered to work with Mr. Cabell on his events so he can continue with the events at Logan Square.

Presentation Recycling Fees

Council President Wood invited Mr. Kilpatrick to offer a presentation on the recycling fee.

Mr. Kilpatrick acknowledged the invitation and summarized that recycling and yard waste is fee based on property taxes, roughly 38,000 parcels roughly $4 million in revenue. 70% of that fee to recycling expenses and remaining to yard waste. There is curb side recycling which they can do with a fee if people are interested. It is $122 per year/residential and based on expenses. The fee covers the cost of expenses, with any additional goes back to the enterprise fund and they look at it there for the following year. The vehicles include 2 dedicated yard waste trucks, which are manually loaded. They are 2002 and 2004 and will be replaced this year, with the hopes to replace 2 per year.
The cost increase has been about $2 per year, below the cost of inflation. The fee has been in place historically, and with the change in dynamics in recycling, in 2021 the City had a private processor facility opened on Pennsylvania. That agreement came with a 7500 ton minimum. In 2022 the City total tonnage amount dropped to 5500 tons, and the City had research into participation rate, and at least 1/3 are not participating. There are 10 employees that do yard waste and recycling, and rely on seasonal employees. With the shortage in the seasonal, they have used regular full time employees, and so there is an increase in payroll for the full time employees. Overall cost wise, 50% is salary cost and benefits. Mr. Kilpatrick offered to send his bullet points and place on the website.

Council Member Kost asked if there is a plan for unlimited bags, and Mr. Kilpatrick stated there has not been a decision, but if they continued with unlimited it would be in the spring and fall. Council Member Kost asked if there is a balance in the enterprise fund, and Mr. Kilpatrick stated the last audit financial for FY2022 was $2.3 million. Before that the average was $1.27 million. Recycling and commodity prices are in flux, but once that is stable they can figure out what is more set in the commodities. Trash is separate from yard waste and recycling, and yard waste and recycling is combined. Council Member Kost asked if there is a discussion on expanding what can be recycled. Mr. Kilpatrick confirmed the discussion was held, but the City is limited to what the processor can take. There is hopes that with a drop off center that would increase what can be dropped off.

Council Member Hussain asked about the seasonal employees, it is not an issue with lack of posting. Mr. Kilpatrick stated they are finding a lot of places pay more than the City for employees with CDL. Some is also the City hiring process takes longer than the private practice, so there could be things that could be changed. Council Member Hussain asked for HR to be brought in to talk about the hiring process and timeline because he has heard some departments take 8-10 weeks. He then asked Mr. Kilpatrick, regarding the enterprise funds, those funds have not been used anywhere else. Mr. Kilpatrick confirmed to his best knowledge, but he is not finance. Regarding revenue coming in, revenue stays in that enterprise fund. Hours and equipment stay in that enterprise fund. Council Member Hussain asked if the City has investigated routes, scheduling routes, and addressing delays. Mr. Kilpatrick stated they are looking at the routes, and some routes have fewer customers. With snow they look at where trash collectors will be next.

Council President Wood asked what the City is making from sale of commodities. Mr. Kilpatrick stated that changes every month and would have to provide that after the meeting. It is based on materials and percentage of the stream. Council President Wood noted that the City had to supply so much tonnage or City would have to pay them. Mr. Kilpatrick stated the City is paying for 7500 tons to process whether there is 7500 or not.

Council Member Spadafore asked Mr. Kilpatrick why was there a minimum. Mr. Kilpatrick stated it was a private facility and they wouldn't come to the City unless the minimums were met.

Council President Wood asked if it is safe for Council to say to the resident that of the $122, 70% is for recycling, 30% is yard waste, and that pays vehicles, staff and the cost of processing. Mr. Kilpatrick confirmed. Council President Wood asked if we get anything for the yard waste, and Mr. Kilpatrick confirmed they do not.

Council Member Kost asked if there was a discussion with MSU on using compost. Mr. Kilpatrick stated they have done a preliminary, unless get other partners, to cover cost and equipment. A City only option would not be feasible.

Discussion/Action

RESOLUTION – Appointment; Sharon Civils; At Large Member Board of Review; Term to Expire June 30, 2026

Ms. Civils introduced herself and spoke on her interested to serve on the Board of Review. She stated she has resided in the City for over 27 years, retiree from the State of Michigan Information and Technology. Ms. Civils interest for serving on the Board of Review to get a better understanding to assist with her ministry work with seniors on their homes and taxes.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO APPOINT SHARON CIVILS TO THE BOARD OF REVIEW. MOTION CARRIED 6-0.

RESOLUTION – Appointment; Dale Schrader; At Large Member; Board of Water & Light; Term to Expire June 30, 2027

Mr. Schrader spoke on his interest in renewable energy, climate change, energy requirements, and is something he has always been interested in. He spoke briefly on his business in environmental clean up for 20 years, and is currently a President of Walnut Neighborhood, and served on the sustainability board. Regarding the LBWL position, he spoke in support of his experience in environment that would bring good qualities to the Board.

Council President Wood acknowledged Mr. Schrader for the work he has done in the community.

Council Member Jackson asked Mr. Schrader on his opinion on the climate crisis. Mr. Schrader stated he believes it is true, there is a crisis, and we need to do the best we can to reduce and eliminate. He stated he would be a strong voice for the environment. Council Member Jackson stated he has attended BWL meetings and there is a lot of silence. Mr. Schrader stated it is exciting because the world is moving to electric cars and battery plants. The crisis is not exciting but tragic, and BWL has a plan but they need to be held to it. Council Member Jackson asked what his thoughts on the Board is towards addressing the climate crisis. Mr. Schrader stated there are times where there are decisions on how to address power, but will push for renewable energy. Natural gas is not clean energy, but is the lesser of evils, and at the present time you have to use it and it is better than coal. Council Member Jackson asked if he had discussions with local energy groups, and Mr. Schrader stated not everyone but the Mid Michigan Council.

Council Member Kost stepped away at 6:14 p.m. and returned at 6:15 p.m.

Council Member Jackson asked if he can ask the hard questions to the BWL Manager. Mr. Schrader stated that he has spoken before the Board and they are aware of his opposition to some of the topics they have addressed in the past. Council Member Jackson asked if he would be willing to work to get the understanding to ask the hard questions, and Mr. Schrader confirmed he would and offered his assistance to residents if they have questions.

Council Member Hussain asked if he would support the sale to a private company. Mr. Schrader acknowledged he used to think it was a great idea, but at the present time he does not support that.

Council President Wood asked his plan to communicate with the community. Mr. Schrader stated he strongly supports the communication, but not sure of the path he would take. Council President Wood encouraged him to attend the Ward meetings.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO APPOINT DALE SCHRADER TO THE BOARD OF WATER AND LIGHT BOARD OF COMMISSION; TERM TO EXPIRE JUNE 30, 2027. MOTION CARRIED 6-0.

RESOLUTION -Liquor License; CP Lansing- Red Cedar

Council President Wood informed the Committee that this is for a new hotel to open, and it is before this Committee because they were hoping to have it by 8/18/2023 with the MSU students coming back. This will be on the Council agenda tonight as well.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION FOR THE LIQUOR LICENSE FOR CP LANSING- RED CEDAR.

Mr. Groebel confirmed this is for the new Marriott on Michigan Avenue, with the first stage opening later this week and grand opening. There is a conditional liquor license from the State which gives them the ability to sell at the restaurant and the lobby bar. Currently they are awaiting the permanent license transfer and that would need the approval from the City. The City is being managed by Concord Management, and they manage approximately 100 across the country and have the experience and trustworthy.

Council Member Jackson asked if he was aware of the new trend for dry restaurants. Mr. Groebel stated he is not aware of the trend but is aware of hotel lines that do not have liquor licenses. In this case the owner is interested in obtaining one.

Mr. Smiertka noted for the Committee the Social District designation is not included in this resolution but just the liquor license.

MOTION CARRIED 6-0.

DISCUSSION – Board of Public Service Rules of Procedure

Council President Wood explained that the City board rules of procedure come to Council and at that time, Council can review and send back to the boards if there is an issue. The document was then outlined noting the changes reflected membership and addresses situations where they have an issue obtaining quorum. Section 1.1 changes from “five” to “majority”, Section 2.2 changes from “five” to “the majority of current”, Section 2.4 A. changes from “five” to “majority of the voting members…” Section 2.4 C. changes from “five” to “majority”., Section 2.5 B. “five” to “majority” “present “, Section 2.7 changes from “five” to “majority” and Section 3.1 “five” to “majority” and “present” to “seated on the Board”.

MOTION BY COUNCIL MEMBER HUSSAIN TO PLACE ON FILE. MOTION CARRIED 6-0.

DISCUSSION – Diversity, Equity and Inclusion Advisory Board Rules of Procedure

Council Member Hussain asked for a correction to the document to since IX is missing. Mr. Smiertka stated they would make the change.

MOTION BY COUNCIL MEMBER HUSSAIN TO PLACE ON FILE WITH THE CHANGE. MOTION CARRIED 6-0.

RESOLUTION – Set Hearing; Revocation of Cabaret License; Energy Events; 3222 S MLK Jr. Blvd.

Mr. Smiertka explained this was the resolution to set the hearing for revocation of an existing license. A report has been filed with the City Clerk.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO SET THE REVOCATION HEARING FROM AUGUST 24TH AT 1 PM IN THE TONY BENAVIDES LANSING CITY COUNCIL CHAMBERS WITH ELIZABETH O'LEARY SERVING AS THE HEARING OFFICER.

Council Member Jackson spoke in opposition to Ms. O'Leary serving as the hearing officer.
Council President Wood noted that City staff in the past (Nick Tate) has served as a hearing officer in similar cases.

MOTION CARRIED 5-1.

RESOLUTION - Introduction and Set a Public Hearing; Amendment to Chapter 240, Section 240.02, 240.03, 240.04; Clarify role of Human Relations and Community Services (HRCS) Advisory Board

Mr. Smiertka informed the Committee that the following four (4) items were changes provided to the HRCS Advisory Board. These address some duties not allowed to advisory boards, so things were changed to recommend that they do not make decisions but advise.

Council President Wood went through the proposed amendments in Chapter 240, Sections 204.02, 240.03, 240.04.
HRCS was defined;
240.03 (b) was added that speaks to evaluation and examination of the elements of the Basie Human Services being reserved to HRCS. HRCS Advisory Board will make recommendations in connection with evaluation and awarding the grants.;
Formatting changes;
The label of "department" was eliminated throughout the document
Correction on page 3 line 10 removing (a) where it does not exist in 240.04 (7);
240.04 similar language from 240.03 (b) was added;
240.04 (4) has the Board making recommendations;
240.04 (7) has the HRCS Board providing OCA non-conflict of interest forms;

Council Member Kost noted the changes were to "recommendation" and asked why. Mr. Smiertka stated he was asked to review the ordinance in relation to the Charter, and the OCA opinion has been issued. These changes reflect the opinion and the department has made changes as well. The original request he stated was from the department director.

Council Member Jackson asked if this has anything to do with the recent Executive Order that changed redefining the police review process. Mr. Smiertka stated it did not, these changes have been in the works for months.

Council Member Brown asked if these changes were made because the HRCS Board is advisory, if the other City advisory boards were getting amendments to their Rules of Procedure as well. Mr. Smiertka briefly spoke on the Charter 5-106 defining boards. In this situation it is only focused on the HRCS board because he stated again it was a request from the department director, and not initated by the OCA. Council Member Brown again asked what the reason was for the request and Mr. Smiertka stated that would be a question for the director since that who initiated it. They were asked to make the change and did not go beyond the motive of the request. Council Member Brown again asked the purpose. Mr. Smiertka stated that HRCS has administrative functions; and if there is an encroachment by an advisory board that needs to be corrected.

Council President Wood noted that there are four (4) different sections in the Ordinance Chapter 240 and 273 that being proposed to be amended or repealed. Council Member Brown asked if this would change the process for the grants, and again Mr. Smiertka stated the request was brought to OCA from the HRCS Director, and the intent would need to be asked of the director. He suggested that the HRCS Director can speak to the Council on the request before the public hearing.

Council Member Spadafore asked for clarification on if this ordinance was just recently amended, and Council President Wood stated Council did look at something but that was a policy that they worked on with the Internal Auditor at the time on awards of the grants, not changes in the ordinance.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO SET THE PUBLIC HEARING FOR AUGUST 28, 2023. MOTION CARRIED 6-0.

RESOLUTION - Introduction and Set a Public Hearing; Amendment to Chapter 273, Section 273.01 and 273.04; Clarify Role of Human Relations and Community Services (HRCS) Advisory Board

Council President Wood went through the changes in the document.
273.01 change “formulate and carry out” to “evaluate and recommendation”;
Eliminate “examine reports of discrimination or prejudice”;
Change “developing” to “evaluating and recommending”;
Eliminate “conciliate alleged discriminatory practice relating to City Government”;
273.04 (e) change “develop” to “review and evaluate” to be provided to City employees;
273.04 (g) change “Formulate and carry out” to “Evaluate and recommend”;
273.04 (h) eliminated;
273.04 new (h) Change “issue” to “evaluate and recommend”;
273.04 new (i)Change “secure” to “evaluate and recommend”;
273.04 new (j) Change “developing” to “evaluating and recommending”;
273.04 new (k) change “ advise any official or competent authority on” to “provide recommendation on”;

Mr. Smiertka again stated that any questions can be asked of the Director who can attend in person at the public hearing.

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO SET THE PUBLIC HEARING FOR AUGUST 28, 2023. MOTION CARRIED 6-0.

Council President Wood asked for a consensus of the Committee if they want to move through the following two ordinance repeals line by line and hold discussion, or just set the public hearings since it is close to 7 p.m. Committee consensus was to set the public hearings and hold the discussions at the hearings.

RESOLUTION - Introduction and Set a Public Hearing; Repeal Chapter 273, Section 273.06, "Examination of complaints; hearings and studies" to conform with the City Charter 5-106

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO SET THE PUBLIC HEARING FOR AUGUST 28, 2023. MOTION CARRIED 6-0.

RESOLUTION - Introduction and Set a Public Hearing; Repeal Chapter 273, Section 273.08 "Prohibited discrimination by city departments or employees" to conform with the City Charter 5-106

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO SET THE PUBLIC HEARING FOR AUGUST 28, 2023. MOTION CARRIED 6-0.

OTHER

Update by the Administration – South Washington Complex (SWOC) Current City Department(s) Relocations (Temporary and Permanent) & Financial Impact

Ms. Frayer referenced a spreadsheet which outlined the changes for relocations. They are eligible to use for moving costs, and this is current plan is fluid; nothing is locked in. Council Member Spadafore asked if the bonds were included in the contractor costs and Ms. Frayer stated it should be under $500,000 to tear down, and the funds were worked in to relocation.

FISCAL YEAR 2024/2025 BUDGET PRIORITIES

Council President Wood asked each Committee to review at their meetings for adoption by Council before October 1, 2023; at the September 18, 2023 meeting.

Adjourn

The meeting adjourned at 7:01 p.m.
Respectfully Submitted by,
Sherrie Boak, Recording Secretary, Lansing City Council
Approved by the Committee

CITY OF LANSING
INTERNAL AUDITOR
124 W MICHIGAN AVE FL 10
LANSING MI 48933-1605
(517) 483-5158

DATE:	Monday, July 31, 2023
TO:	Council Members
FROM:	Emily Linden, Internal Auditor
RE:	Analysis of City's Long Term Debt Outlook – Annual Report

Research

This annual report was compiled using research and analysis from a review of the 2022 Comprehensive Annual Financial Report (CAFR), prior fiscal years CAFRs, City, Village, and Township Revenue Sharing Program (CVTRS) filings, as well as additional information provided by the Administration.

2022 Comprehensive Annual Financial Report (CAFR)

2022 City, Village, and Township Revenue Sharing Program Filing

Purpose of Report

This report compares the 2022 Comprehensive Annual Financial Report to prior years financial reports to get a better understanding of the City of Lansing's long-term debt trend. This report is intended to be supportive in nature and does not include data after June 30th, 2022.

Executive Summary

Long-Term debt is an important funding source for Local Government entities for infrastructure improvements and other items such as, but not limited to subsidizing economic development. The use of Long-Term debt financing can be used to circumvent short-run pressures to raise taxes or to cut spending to pay for critical and required services or improvements. Thus, debt policy can be a powerful governmental tool, but should be managed judiciously.

After reviewing the Comprehensive Annual Financial Report concerning the Long-Term debt reported, it appears that the City of Lansing's Long-Term debt has been improving over the last five years. Although it has not been a straight upwards trajectory, the long-term debt reported in the Governmental Wide Financial Statements has decreased from 2018 by $13,812,182. The variances have to do with new bonding the City has sold since 2018. **See Long Term Debt Trend Chart.**

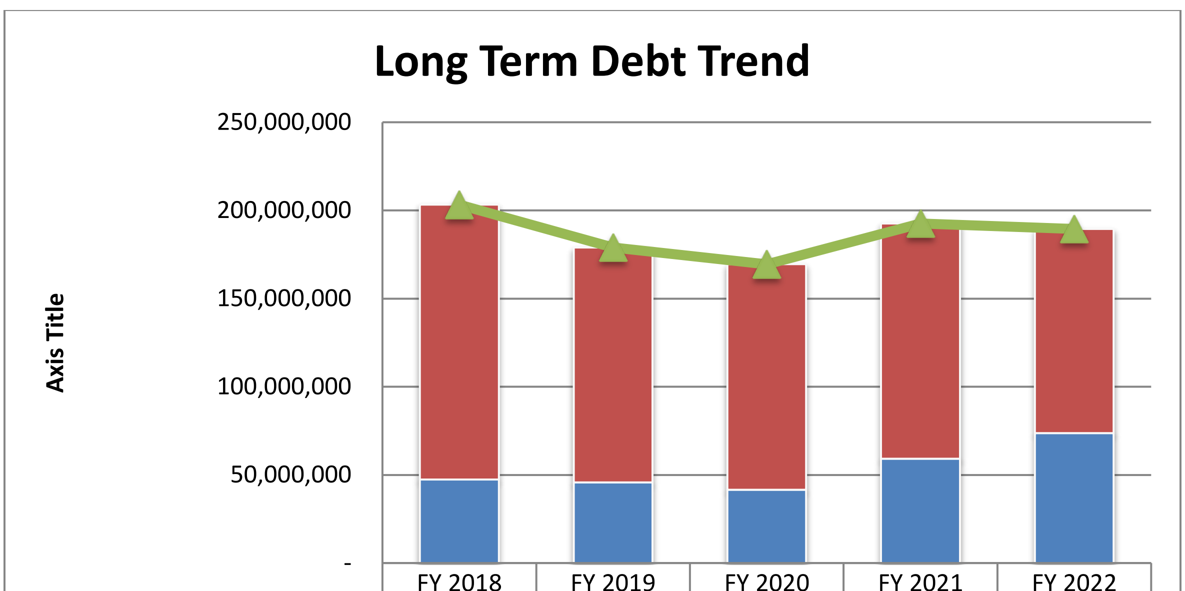
Debt Mix Overview

General obligation bonds – **77% of Governmental & Business-type Activities**
Definition: Government issues general obligation bonds to provide funds for the acquisition and construction of major capital facilities. General obligation bonds are direct obligations and pledge the full faith and credit of the government. These bonds are issued as 10 to 30-year serial bonds with varying amounts of principal maturing each year. **See Governmental & Business-type Activities Debt Mix Chart and Debt Mix Amounts Chart.**

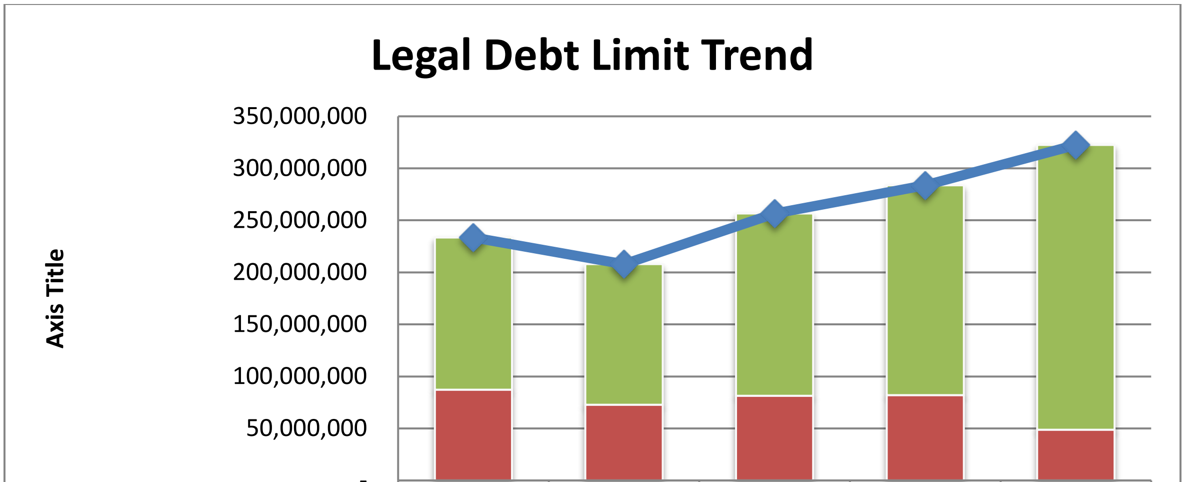
Revenue bonds – 6% of Governmental & Business-type Activities
Definition: Bonds where the income derived from the acquired or constructed assets is pledged to pay debt service. **See Governmental & Business-type Activities Debt Mix Chart and Debt Mix Amounts Chart.**

Installment purchase agreements - 13% of Governmental & Business-type Activities
Definition: The City enters into installment purchase agreements for equipment and related capital assets. **See Governmental & Business-type Activities Debt Mix Chart and Debt Mix Amounts Chart.**

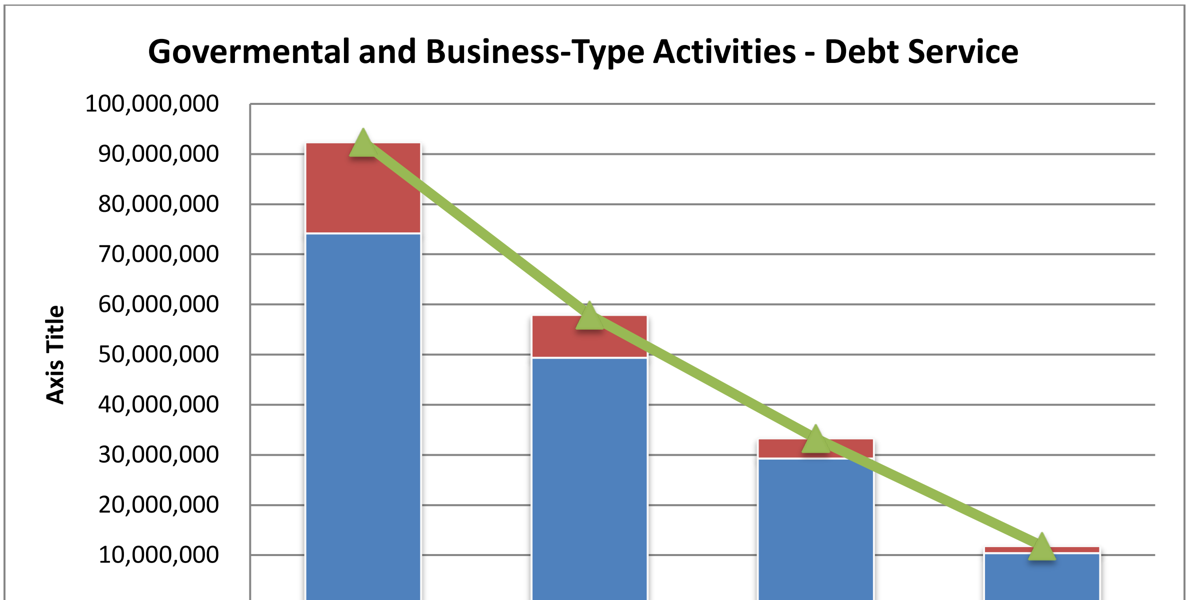
Loans payable - 4% of Governmental & Business-type Activities
Definition: The City has entered into loan agreements with the certain State agencies for program purposes. **See Governmental & Business-type Activities Debt Mix Chart and Debt Mix Amounts Chart.**



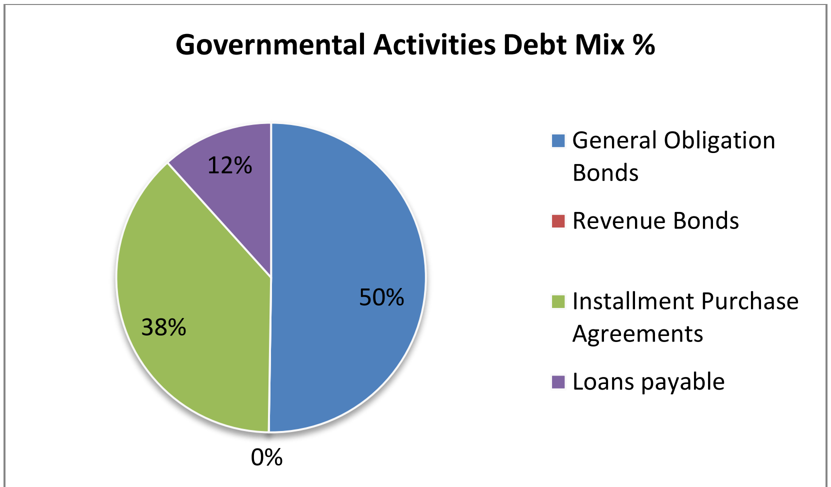
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Business-Type Activities	155,876,426	133,226,972	127,937,093	133,226,972	115,802,283
Governmental Activities	47,341,836	45,721,172	41,490,530	59,260,970	73,603,797
Totals	203,218,262	178,948,144	169,427,623	192,487,942	189,406,080

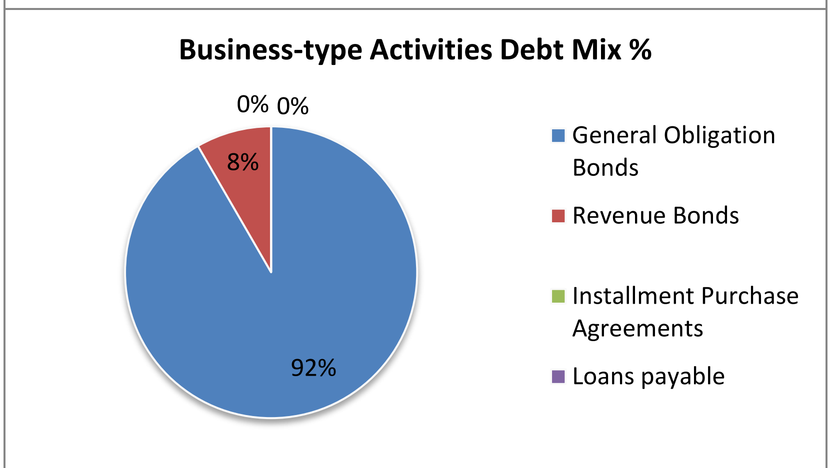


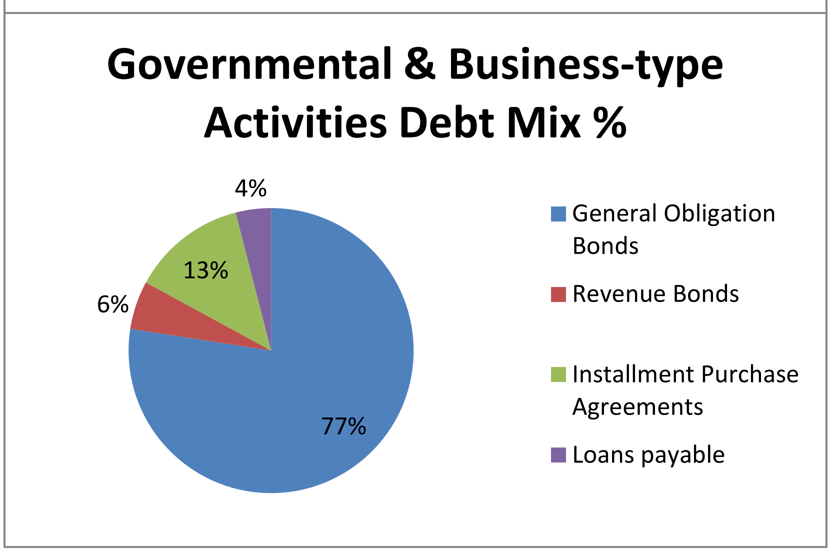
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Legal Debt Margin	146,310,451	135,181,019	175,163,719	201,787,194	273,683,203
Debt Application to Limit	87,295,949	72,669,623	81,532,491	81,956,344	48,804,421
Debt Limitation	233,606,400	207,850,642	256,696,210	283,743,538	322,487,624



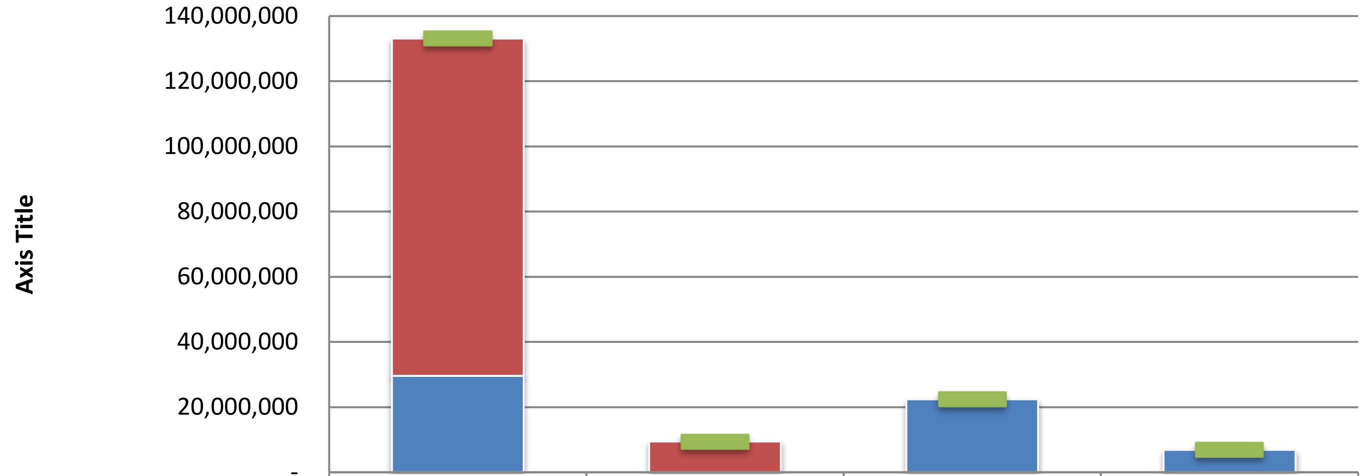
	FY 2023-2027	FY 2028-2032	FY 2033-2037	FY 2038-2042
Interest	18,167,959	8,548,703	3,971,186	1,400,276
Principal	74,193,428	49,383,482	29,307,470	10,434,137
Total	92,361,387	57,932,185	33,278,656	11,834,413


Governmental Activities Debt Mix %
12%
50%
38%
0%
General Obligation Bonds
Revenue Bonds
Installment Purchase Agreements
Loans payable


Business-type Activities Debt Mix %
0% 0%
8%
92%
General Obligation Bonds
Revenue Bonds
Installment Purchase Agreements
Loans payable


Governmental & Business-type Activities Debt Mix %
4%
13%
6%
77%
General Obligation Bonds
Revenue Bonds
Installment Purchase Agreements
Loans payable

Debt Mix - Amounts



	General Obligation Bonds	Revenue Bonds	Installment Purchase Agreements	Loans payable
Business-type Activities	103,495,891	9,425,000	-	-
Governmental Activities	29,629,300	-	22,457,000	6,886,326
Totals	133,125,191	9,425,000	22,457,000	6,886,326

Notes

1. General Obligation Bonds: The government issues general obligation bonds to provide funds for the acquisition and construction of major capital facilities. General obligation bonds are direct obligations and pledge the full faith and credit of the government. These bonds are issued as 10 to 30-year serial bonds with varying amounts of principal maturing each year.
   a. Total Governmental Activities General Obligation Bonds amount due within one year: $1,206,300
   b. Total Business-type Activities General Obligation Bonds amount due within one year: $10,609,780
   c. Combined Total amount due within one year: $11,816,080

2. Revenue Bonds: The City issues bonds where the income derived from the acquired or constructed assets is pledged to pay debt service. The purpose of these noted bonds was for sewer capital improvement projects.
   a. Total Business-type Activities revenue bonds amount due within one year: $1,550,000
   b. Pledged Revenue: The City has pledged future sewer customer revenues, net of specified operating expenses, to repay $9,425,000 in sewer revenue and refunding bonds issued in 2013. Proceeds from the bonds provided financing for the construction for various sewer infrastructure projects. The bonds are payable solely from sewer customer net revenues and are payable through 2028. Annual principal and interest payments on the bonds are expected to require less than 14% of net revenues. The total principal and interest paid for the current year and total customer net revenues were $2,008,188 and $26,372,944, respectively. (CAFR page 76)

3. Installment Purchase Agreements: The City has entered into installment purchase agreements for equipment and related capital assets.
   a. Total amount due within one year: $1,409,000

4. Loans Payable: The government has entered into loan agreements with the certain State agencies for program purposes.
   a. Total amount due within one year: $793,620

5. Lansing Charter Note: Article 7 – Section 7-302: ".1 The net bonded indebtedness for general obligations of the City shall not exceed 10 percent of the assessed value of all the real and personal property in the City."

6. 2023 Public Safety Bonds: This report reviews data through June 30, 2022 meaning the recent sale of the public safety bonds are not included. In July 2023 the City of Lansing announced the successful sale of $175 of General Obligation Unlimited Tax Bonds to fund the development of the new public safety campus that will house the headquarters of the Lansing Police Department, Lansing Fire Department, 54-A District Court, temporary lock-up facility, a new fire station, fire training area, and improvements to several existing facilities.

Appendices A - Government Wide Financials to Long-Term Debt Notes to Financial Statements

Government Wide Financials:	**CAFR FY 2022 Page 27-28**			
	Governmental Activities	Business-type Activities	Totals	
Long-term liabilities:				
Current portion of compensated absences	1,146,442	68,559	1,215,001	-
Current portion of long-term debt	4,056,034	12,159,780	16,215,814	
Noncurrent protion of compensated absences	9,816,316	814,674	10,630,990	
Noncurrent protion of long-term debt	58,585,005	102,759,270	161,344,275	
Totals	**73,603,797**	**115,802,283**	**189,406,080**	

Notes Long-Term Debt:	**CAFR FY 2022 Page 80**		
	Governmental Activities	Business-type Activities	Totals
General Obligation Bonds	29,629,300	103,495,891	133,125,191
Revenue Bonds	-	9,425,000	9,425,000
Installment Purchase Agreements	22,457,000	-	22,457,000
Loans payable	6,886,326	-	6,886,326
Totals	**58,972,626**	**112,920,891**	**171,893,517**

Notes Deferred Amounts for Long-Term Debt:	**CAFR FY 2022 Page 23**		
	Governmental Activities	Business-type Activities	Totals
For issuance discounts	-	(144,942)	(144,942)
For issuance premiums	586,222	2,143,101	2,729,323
Compensated absences	10,962,758	883,233	11,845,991
Accrued workers compensation	3,082,191	-	3,082,191
Accrued tax settlement	-	-	-
Deferred Amounts Total	**14,631,171**	**2,881,392**	**17,512,563**
Totals (+) Deferred Amounts	**73,603,797**	**115,802,283**	**189,406,080**

Appendices B - Government Activities Long-Term Debt to Prior Year CAFR Long-Term Debt

Source - CAFR FY 2022 Page 74-76								Source - CAFR FY 2021 Page 87-88			Source - FY 2022 Page 74-76	
Item#	Long-Term Debt Name	Type	Fund Description	Fund #	Interest Rate	Original Amount	Amount	Interest Rate	Original Amount	Amount	Additions	Reductions
G5	2013 Refunding Bonds - Limited Tax General Obligation Energy Efficiency Refunding Bonds	General Obligation Bonds	General Fund	101	2.40%	5,645,000	-	2.40%	5,645,000	655,000		655,000
G6	2010 Recovery Zone Economic Development Bonds	General Obligation Bonds	Fleet Maintenance	643	3.40-7.25%	3,200,000	-	3.40-7.25%	3,200,000	-		
G8	2015 Lansing Center Refunding	General Obligation Bonds	2015 Refunding Bond	307	2.00-3.00%	1,770,000	-	2.00-3.00%	1,770,000	310,000		310,000
G15	2018 Michigan Transporation Fund Bonds	General Obligation Bonds	Major Streets Fund	202	3.50%	1,665,000	-	3.50%	1,665,000	570,000		570,000
G16	2019 General Obligation Refunding - Limited Tax	General Obligation Bonds	Major Streets Fund	202	3.00-4.00%	6,938,699	5,829,300	3.00-4.00%	6,938,699	6,390,300		561,000
G17	2021 Capital Improvement Bonds, Series 2021	General Obligation Bonds	LBRA		2.15%	4,490,000	4,185,000				4,185,000	
G10	2014 Lease Purchase Agreement - Recycling Trucks	Installment Purchase Agreement	Fleet Maintenance	643	1.96%	1,550,855	314,953	1.96%	1,550,855	105,620		105,620
G11	2015 Ballpark Improvements Installments Purchase	Installment Purchase Agreement	General Fund	234	3.00%	13,500,000	9,915,120	3.00%	13,500,000	9,051,115		838,657
G12	2021 Installment Purchase Agreement (LTGO)	Installment Purchase Agreement	General Fund		2.14%	10,569,000	10,300,000				10,300,000	
G16	2021 Installment Purchase Agreement (LTGO)	Installment Purchase Agreement	General Fund		1.81%	12,500,000	12,157,000				12,157,000	
G15	2020 IPA Fire Truck	Loans payable	Other Capital Projects		1.52%	5,900,000	5,125,000	1.40%	1,390,000	1,293,775		127,846
G13	HUD Section 108 Loan	Loans payable	Other Capital Projects	410	1.52%	5,900,000	5,125,000	1.40%	5,900,000	5,515,000		390,000
G14	2014 SIB Loan	Loans payable	Major Streets Fund	202	3.00%	1,828,428	595,397	3.00%	1,828,428	851,686		241,580
						75,456,982	**53,546,770**		**43,387,982**	**24,742,496**	**26,642,000**	**3,799,703**

Ending Balance FY 2021	**24,742,496**
Plus Additions	**26,642,000**
Minus Reductions	**3,799,703**
Ending Balance FY 2022	**47,584,793**

Appendices C - Business-type Activities Long-Term Debt to Prior CAFR Long-Term Debt

Source - CAFR FY 2022 Page 75-89								Source - CAFR FY 2021 Page 75-89			Source - FY 2022 Page 75-89	
Item#	Long-Term Debt Name	Type	Fund Description	Fund#	Interest Rate	Original Amount	Balance June 30, 2022	Interest Rate	Original Amount	Balance June 30, 2021	Additions	Reductions
B1	2009 Building Authority Refunding Bonds	General Obligations Bonds	Municipal Parking	513	6.25-6.85%	8,161,691	1,141,733	6.25-6.85%	8,161,691	1,905,641		763,908
B4	2014 Building Authority Refunding Bonds	General Obligations Bonds	Municipal Parking	513	4.75%	7,245,000	-	4.75%	7,245,000	-		
	2020 Building Authority Refunding Bonds	General Obligations Bonds	Municipal Parking	513	0.621%-2.793%	8,735,000	8,535,000	0.621-2.793%	8,735,000	8,635,000		100,000
B9	2000 Limited Tax Sewer Bond - 5005-12	General Obligations Bonds	Sewage Disposal	590	2.50%	9,447,830	-	2.50%	9,447,830	-		
B10	2001 Limited Tax Sewer Bond - 5005-13	General Obligations Bonds	Sewage Disposal	590	2.50%	10,573,046	-	2.50%	10,573,046	648,046		648,046
B11	2002 Limited Tax Sewer Bond - 5005-14	General Obligations Bonds	Sewage Disposal	590	2.50%	12,381,131	1,501,131	2.50%	12,381,131	2,226,131		725,000
B12	2003 Limited Tax Sewer Bond - 5005-15	General Obligations Bonds	Sewage Disposal	590	2.50%	10,145,688	1,835,688	2.50%	10,145,688	2,420,688		585,000
B13	2004 Limited Tax Sewer Bond - 5005-16	General Obligations Bonds	Sewage Disposal	590	2.13%	3,842,649	882,649	2.13%	3,842,649	1,092,649		210,000
B14	2005 Limited Tax Sewer Bond - 5005-17	General Obligations Bonds	Sewage Disposal	590	2.13%	8,003,778	1,813,778	2.13%	8,003,778	2,248,778		435,000
B15	2005 Limited Tax Sewer Bond - 5005-18	General Obligations Bonds	Sewage Disposal	590	1.63%	13,389,371	3,389,371	1.63%	13,389,371	4,069,371		680,000
B16	2006 Limited Tax Sewer Bond - 5005-19	General Obligations Bonds	Sewage Disposal	590	1.63%	18,216,346	5,861,346	1.63%	18,216,346	6,811,346		950,000
B17	2007 Limited Tax Sewer Bond - 5005-20	General Obligations Bonds	Sewage Disposal	590	1.63%	24,244,726	8,884,726	1.63%	24,244,726	10,109,726		1,225,000
B18	2008 Limited Tax Sewer Bond - 5005-21	General Obligations Bonds	Sewage Disposal	590	2.50%	27,494,933	12,590,453	2.50%	27,494,933	13,995,453		1,405,000
B19	2008 Limited Tax Sewer Bond - 5005-22	General Obligations Bonds	Sewage Disposal	590	2.50%	14,455,604	8,065,604	2.50%	14,455,604	8,765,604		700,000
B21	2010 Limited Tax Sewer Bond - 5411-01	General Obligations Bonds	Sewage Disposal	590	2.50%	8,548,000	5,123,000	2.50%	8,548,000	5,538,000		415,000
B22	2015 Limited Tax Sewer Bond - 5211-01	General Obligations Bonds	Sewage Disposal	590	2.50%	3,372,405	2,372,405	2.50%	3,372,405	2,527,405		155,000
B23	2015 Limited Tax Sewer Bond - 5211-02	General Obligations Bonds	Sewage Disposal	590	2.50%	1,977,487	1,520,065	2.50%	1,977,487	1,620,065		100,000
B24	2016 Limited Tax Sewer Bond - 5581-01	General Obligations Bonds	Sewage Disposal	590	2.50%	1,309,872	2,946,310	2.50%	1,309,872	2,811,310		135,000
B25	2015 Building Authority Refunding Bonds	General Obligations Bonds	Municipal Parking	585	2.00-3.00%	6,765,000	-	2.00-3.00%	6,765,000	1,185,000		1,185,000
B26	2017 Building Authority Refunding - Limited Tax	General Obligations Bonds	Municipal Parking	585	3.305%-4.075%	10,805,000	10,805,000	3.31-4.08%	10,805,000	10,805,000		
B29	2019 General Obligation Refunding - Limited Tax	General Obligations Bonds	Sewage Disposal	590	3.00-4.00%	7,681,301	5,600,700	3.00-4.00%	7,681,301	6,139,700		539,000
B27	2013 Sewer Revenue and Refunding Bond	Revenue Bonds	Sewage Disposal	590	2.40%	21,765,000	9,425,000	2.40%	21,765,000	10,975,000		1,550,000
B33	2020 CIB & Refunding Bonds - Municpal Parking	General Obligations Bonds	Municipal Parking	585	3.00-5.00%	9,405,000	8,690,000	3.00-5.00%	9,405,000	9,235,000		545,000
B31	2019 Limited Tax Sewer Bond - 5005-23	General Obligations Bonds	Sewage Disposal	590	2.00%	9,395,000	8,097,827	2.00%	8,241,804	7,856,804	241,023	
B32	2019 Limited Tax Sewer Bond - 5672-01	General Obligations Bonds	Sewage Disposal	590	2.00%	56,280	4,109,105	2.00%	56,280	4,514,105		405,000
	add in any new lines					**257,417,138**	**113,190,891**		**256,207,662**	**121,621,717**	**241,023**	**13,455,954**

Note - B7 Removed from CVTRS 2020 No Principal Remaining

Note - B8 Removed from CVTRS 2020 No Principal Remaining

Note - B31 & B32 Per Finance, Principal Diff Then Debt Schedule Because On Amount Drawn

Ending Balance FY 2019	**121,621,717**
Plus Additions	**241,023**
Minus Reductions	**13,455,954**
Ending Balance FY 2020	**108,406,786**

Appendices D - Debt Service Requirements to Maturity for all installment debt

Year Ending June 30	General Obligation Bonds					
	Source - FY 2022 CAFR Page 79			Source - FY 2022 CAFR Page 79		
	Governmental Activities			Business-Type Activities		
	Principal	Interest	Total	Principal	Interest	Total
2023	1,206,300	788,326	1,994,626	10,609,780	3,630,665	14,240,445
2024	1,254,250	712,338	1,966,588	10,547,534	3,072,899	13,620,433
2025	1,304,750	674,612	1,979,362	9,525,938	2,113,795	11,639,733
2026	1,355,250	635,515	1,990,765	9,546,177	1,918,388	11,464,565
2027	1,410,750	594,875	2,005,625	8,878,621	1,687,072	10,565,693
2028-2032	6,260,050	2,261,668	8,521,718	30,506,184	5,568,026	36,074,210
2033-2037	4,647,950	1,520,224	6,168,174	17,062,520	2,331,632	19,394,152
2038-2042	3,615,000	1,105,199	4,720,199	6,819,137	295,077	7,114,214
2043-2047	4,395,000	688,290	5,083,290	-	-	-
2048-2051	4,180,000	181,731	4,361,731	-	-	-
	29,629,300	**9,162,778**	**38,792,078**	**103,495,891**	**20,617,554**	**124,113,445**

Year Ending June 30	Revenue Bonds					
	Source - FY 2022 CAFR Page 79			Source - FY 2022 CAFR Page 79		
	Governmental Activities			Business-Type Activities		
	Principal	Interest	Total	Principal	Interest	Total
2023	-	-	-	1,550,000	380,688	1,930,688
2024	-	-	-	1,575,000	303,188	1,878,188
2025	-	-	-	1,575,000	224,438	1,799,438
2026	-	-	-	1,575,000	145,688	1,720,688
2027	-	-	-	1,575,000	98,438	1,673,438
2028-2032	-	-	-	1,575,000	49,218	1,624,218
2033-2037	-	-	-	-	-	-
2038-2042	-	-	-	-	-	-
2043-2047						
2048-2051						
	-	**-**	**-**	**9,425,000**	**1,201,658**	**10,626,658**

Year Ending June 30	Direct Borrowings and Direct Placement					
	Source - FY 2022 CAFR Page 79			Source - FY 2022 CAFR Page 79		
	Governmental Activities			Business-Type Activities		
	Principal	Interest	Total	Principal	Interest	Total
2023	2,202,620	262,514	2,465,134	-	-	-
2024	2,249,446	272,949	2,522,395	-	-	-
2025	2,077,747	242,299	2,320,046	-	-	-
2026	2,064,183	216,891	2,281,074	-	-	-
2027	2,110,082	192,381	2,302,463	-	-	-
2028-2032	11,042,248	669,791	11,712,039	-	-	-
2033-2034	7,597,000	119,330	7,716,330	-	-	-
	29,343,326	**1,976,155**	**31,319,481**	**-**	**-**	**-**
Totals	**58,972,626**	**11,138,933**	**70,111,559**	**112,920,891**	**21,819,212**	**134,740,103**

Details applicable to the Component Units long-term obligations are readily available in their separate issued financial statements and are not duplicated here in accordance with GASB 61.

Appendices E - Legal Debt Margin and Limit

Legal Debt Margin	Source - FY 2022 CAFR Page 184	Source - FY 2021 CAFR Page 205	Source - FY 2020 CAFR Page 199	Source - FY 2019 CAFR Page 205	Source - FY 2018 CAFR Page 183
	FY 2022	**FY 2021**	**FY 2020**	**FY 2019**	**FY 2018**
Assessed value, real and personal property	3,224,876,243	2,837,435,376	2,566,962,100	2,078,506,415	2,336,064,001
Assess value equivalents	-	-	-	-	-
Total valuation	**3,224,876,243**	**2,837,435,376**	**2,566,962,100**	**2,078,506,415**	**2,336,064,001**
Total valuation (Times) 10% = Debt Limitation ***	**322,487,624**	**283,743,538**	**256,696,210**	**207,850,642**	**233,606,400**
Debt Applicable to Debt Limit					
Add - Total City Bonded Debt	135,709,572	171,029,541	147,452,402	143,854,842	168,137,606
Add - City Share - Drain Commission-County Issued	24,445,465	20,973,873	989,065	1,013,220	1,141,503
Add - City Share - Joint Building Authority-County Issued	-	-	-	-	1,098,540
Add - Brownfield Redevelopment Authority	-	-	-	-	-
Add - City Share - TIF Supported Bonds	26,955,000	26,955,000	59,382,491	27,860,758	26,348,459
Add - Lansing Board of Water and Light	-	-	627,240,000	615,255,000	312,175,000
Less - Michigan Transportation (MTF) Bonds	-	(570,000)	(1,125,000)	(1,665,000)	-
Less - Lansing Board of Water and Light	-	-	(627,240,000)	(615,255,000)	(312,175,000)
Less - Sewage Disposal Revenue Bonds	(9,425,000)	(10,975,000)	(12,525,000)	(14,075,000)	(15,625,000)
Less - Pollution Abatement (CSO Project) Bonds	(64,715,151)	(76,093,197)	(92,391,402)	(83,305,977)	(91,565,116)
Less - Share of County-issued bonds	(24,445,465)	(20,973,873)	(989,065)	(1,013,220)	(2,240,043)
Less - Brownfield Redevelopment Authority Bonds - New Breakout FY 2020	(39,720,000)	(28,390,000)	(19,260,000)	**NA**	**NA**
Total net debt application to limit	**48,804,421**	**81,956,344**	**81,533,491**	**72,669,623**	**87,295,949**
Debt Limitation (Less) Total net debt application to limit = Legal debt margin	**273,683,203**	**201,787,194**	**175,162,719**	**135,181,019**	**146,310,451**
Total net debt application to limit (Divided by) Debt Limitation = Total net debt application to the limit as a percentage of debt limit	**15.13%**	**28.88%**	**31.76%**	**34.96%**	**37.37%**

*** Per Michigan Constitution - Article VII - Section 21 & The Home Rule City Act - Section 4(a) "... the net indebtedness incurred for all public purpose may be as much as but shall not exceed the greater of the following: (a) Ten percent of the assessed value of all real and personal property in the city. (b) Fifteen percent of the assessed value of all the real and personal property in the city if that portion of the total amount of indebtedness incurred which exceeds 10% is or has been used solely for the construction or renovation of hospital facilities."

Appendices F - Component Units Long-Term Debt

Conponent Units	Source - FY 2022 CAFR Page 78			
	Balance July 1, 2021	Additions	Deletions	Balance June 30, 2022
Brownfield Redevelopment Authority				
Revenue Bonds	$ 28,390,000	$ 11,330,000	$ -	$ 39,720,000
Direct borrowings and direct payment - Loan Payable	$ 476,820	$ -	$ -	$ 476,820
	$ 28,866,820	$ 11,330,000	$ -	$ 40,196,820
Tax Increment Financing Authority				
General obligation bonds	$ 28,315,000	$ -	$ (50,000)	$ 28,265,000
Direct borrowings and direct placements - Lease contract	$ 11,029,889	$ -	$ (1,020,309)	$ 10,009,580
	$ 39,344,889	$ -	$ (1,070,309)	$ 38,274,580
Add accreted interest on lease contract	$ 8,255,052	$ -	$ (4,139,171)	$ 4,115,881
Less unamortized discount on general obligation bonds	$ (60,384)	$ -	$ 60,384	$ -
Total Component Units	**$ 76,406,377**	**$ 11,330,000**	**$ (5,149,096)**	**$ 82,587,281**

Details applicable to the Component Units long-term obligations are readily available in their separate issued financial statements and are not duplicated here in accordance with GASB 61.

Brownfield Redevlopment Authority - Detail	Source - FY 2022 LBRA Audit - Page 21
	Balance June 30, 2022
Revenue Bonds	
$9,660,000 Limited Obligation Tax Increment Revenue Bonds Series 2020-1A, due in annual installments of $210,000 to $530,000 beginning in June 2023 and through June 2050, with interest ranging from 3.590% to $4.800%, payable annually.	9,660,000
$9,600,000 Limited Obligation Tax Increment Revenue Bonds Series 2020-1B, due in annual installments of $205,000 to $525,000 beginning in June 2023 and through June 2050, with interest ranging from 3.590% to $4.800%, payable annually.	9,600,000
$9,1300,000 Limited Obligation Tax Increment Revenue Bonds Series 2020-2, due in annual installments of$210,000 to $425,000 beginning in June 2023 and through June 2050, with interest ranging from 3.450% to 4.650%, payable annually.	9,130,000
$10,065,000 Limited Obligation Tax Increment Revenue Bonds Series 2021A, due in annual installments of$35,000 to $960,000 beginning in June 2024 and through June 2051, with interest ranging from 3.650% to 4.900%, payable annually.	10,065,000
$1,265,000 Limited Obligation Tax Increment Revenue Bonds Series 2021B, due in annual installments of$35,000 to $165,000 beginning in June 2026 and through June 2035, with interest at 5.000%, payable annually.	$1,265,000
	39,720,000
Direct borrowing and direct payment - Loan Payable	
$500,000 Revitalization Revolving Loan, due in annual installments of $25,011 to $48,913 beginning in December 2022 and through December 2033, with interest of 1.50%, payable annually. No interest accrues before the date of the first payment.	$476,820

Tax Increment Financing Authority - Detail	Source - FY 2022 TIFA Audit - Page 20	
	Balance June 30, 2020	
General Obligation Bonds		**Item#**
$16,150,000 2017 refunding bonds due in amounts ranging from $435,000 through $1,640,000 plus interest ranging from 3.305% to 4.075% through 2040 (limited tax, general obligation).	16,150,000	TIFA - 1
$7,730,000 2019 refunding bonds due in amounts ranging from $865,000 through $1,335,000 plus interest ranging from 3.050% to 3.680% through 2031 (limited tax, general obligation).	7,730,000	TIFA - 2
$4,485,000 2020 refunding bonds due in amounts ranging from $50,000 through $540,000 plus interest ranging from 0.841% to 2.793% through 2039 (limited tax, general obligation).	4,385,000	TIFA - 3
	28,265,000	
Direct borrowing and direct placements - Lease contract		
$49,660,000 1994 lease contract due in annual installments ranging from $134,245 to $2,265,220 through 2035. Interest is charged semi-annually at 3.35%. Any unpaid interest in a given year is accreted.	10,009,580	

Appendices G - Chart Data

Source - FY 2022 CAFR Page 79			
Debt Service - Governmental Activities	Principal	Interest	Total
FY 2023-2027	17,235,378	4,592,700	21,828,078
FY 2028-2032	17,302,298	2,931,459	20,233,757
FY 2033-2037	12,244,950	1,639,554	13,884,504
FY 2038-2042	3,615,000	1,105,199	4,720,199

Source - CAFR FY 2022 Page 79			
Debt Service Business-Type Activities	Principal	Interest	Total
FY 2023-2027	56,958,050	13,575,259	70,533,309
FY 2028-2032	32,081,184	5,617,244	37,698,428
FY 2033-2037	17,062,520	2,331,632	19,394,152
FY 2038-2042	6,819,137	295,077	7,114,214

Source - CAFR FY 2022 Page 79			
Debt Service Gov & Bus Type Activities	Principal	Interest	Total
FY 2023-2027	74,193,428	18,167,959	92,361,387
FY 2028-2032	49,383,482	8,548,703	57,932,185
FY 2033-2037	29,307,470	3,971,186	33,278,656
FY 2038-2042	10,434,137	1,400,276	11,834,413

Source - CAFR FY 2022 Page 80			
Long-Term Debt:	Governmental Activities	Business-type Activities	Totals
General Obligation Bonds	29,629,300	103,495,891	133,125,191
Revenue Bonds	-	9,425,000	9,425,000
Installment Purchase Agreements	22,457,000	-	22,457,000
Loans payable	6,886,326	-	6,886,326
Totals	58,972,626	112,920,891	171,893,517

Long-Term Debt Reported CAFRs	Governmental Activities	Business-Type Activities	Totals	**Source**
FY 2018	47,341,836	155,876,426	203,218,262	**CAFR FY 2018 Page 90**
FY 2019	45,721,172	133,226,972	178,948,144	**CAFR FY 2019 Page 91**
FY 2020	41,490,530	127,937,093	169,427,623	**CAFR FY 2020 Page 87**
FY 2021	59,260,970	133,226,972	192,487,942	**CAFR FY 2021 Page 90**
FY 2022	73,603,797	115,802,283	189,406,080	**CAFR FY 2022 Page 77**

Legal Debt Limit Reported CAFRs	Debt Limitation	Debt Application to Limit	Legal Debt Margin	**Source**
FY 2018	233,606,400	87,295,949	146,310,451	**Source - FY 2018 CAFR Page 201**
FY 2019	207,850,642	72,669,623	135,181,019	**Source - FY 2019 CAFR Page 205**
FY 2020	256,696,210	81,532,491	175,163,719	**Source - FY 2020 CAFR Page 199**
FY 2021	283,743,538	81,956,344	201,787,194	**Source - FY 2021 CAFR Page 205**
FY 2022	322,487,624	48,804,421	273,683,203	**Source - FY 2022 CAFR Page 184**

Chris Swope
Lansing City Clerk

July 10, 2023

Lansing City Council Members

10th Floor City Hall

Lansing, MI 48933

Dear Council President and Council Members:

This is to notify you that my office received on June 23, 2023 Mayor Schor's Executive Directive 2023-02 regarding Citizen Complaint Oversight Committee (CCOC) And Commission Investigator (CI). The directive is attached.

Sincerely,

Chris Swope

Chris Swope, MMC/MiPMC

Lansing City Clerk

124 West Michigan Avenue – 9th Floor – Lansing, Michigan 48933
Phone: (517) 483-4131 – Fax: (517) 377-0068
www.lansingmi.gov/clerk - city.clerk@lansingmi.gov

Andy Schor
Mayor

City Hall - 9th Floor
124 W Michigan Avenue
Lansing, MI 48933-1694
PH: 517.483.4141 - FAX: 517.483.6066
Lansing.Mayor@lansingmi.gov

JUN23'23 11AMCLERK

OFFICE OF THE MAYOR
CITY OF LANSING, MICHIGAN

TO: COUNCIL PRESIDENT, COUNCIL VICE PRESIDENT, MEMBERS OF LANSING CITY COUNCIL; ALL OFFICERS, EMPLOYEES, AGENCIES, BOARDS, AUTHORITIES, AND DEPARTMENTS OF THE CITY OF LANSING

RE: EXECUTIVE DIRECTIVE: CITIZEN COMPLAINT OVERSIGHT COMMITTEE (CCOC) AND COMMISSION INVESTIGATOR (CI) – 2023-02

Executive Directive 2023-02

The City of Lansing remains committed to fair and bias-free treatment of all people, as expressed in Executive Directive 2020-3.

In response to concerns raised within the Lansing community after the death of George Floyd on May 25, 2020, that were consistent with concerns that were voiced throughout the nation, we took immediate action by launching a series of community-wide discussions to identify issues to formulate relevant action. We listened to and empowered people and organizations to help the City gain a better understanding of the disparities that exist so that we could work together to develop a strategy to achieve sustainable change.

We then took immediate action by implementing numerous police reforms, hiring the city's first Diversity, Equity and Inclusion (DEI) Officer, learning from local, state and national collaborative partners, and providing City Department Directors with DEI training. Moreover, I appointed community leaders and grassroots advocates to the Mayor's Racial Justice and Equity Alliance (MRJEA) to examine policies, practices and biases to gain a deeper understanding of how to eradicate racism and violence in Lansing through the fair and equitable treatment of all.

After being appointed, members of the MRJEA commenced their work right away, and on December 22, 2020, I issued Executive Directive 2020-3, which set forth a detailed framework for MRJEA's development of a Racial Justice and Equity Report.

Over the course of approximately eight (8) months, the MRJEA worked to combine their input, ideas, suggestions and experiences with their additional research and ideas to create a detailed report. which I approved on August 11, 2021. The report contains key issues and recommended strategies and action that the MRJEA believes will lead to positive change. We have accomplished numerous goals, as outlined in the MRJEA plan, and continue to build the structure to fulfill other goals of the plan.

One recommended important goal that was expressed by the community and supported by MRJEA committee members is for the City to establish a Citizen Oversight Commission, with the authority to ensure that complaints lodged against the City of Lansing Police are received, monitored and investigated in a manner that respects the rights of citizens and results in transparency and accountability.

Currently, Article 5, Chapter 1 of the City Charter grants the Board of Police Commissioners (Board), in part, the power to approve rules and regulations for the conduct of the members of the Department, in consultation with the Chief of Police and the Mayor. The City Charter also grants the Board the power to hire investigators, administer oaths and require the production of evidence.

The duties and responsibilities of the "Commission Investigator" are set forth within the Lansing Police Department Manual, Section 200.01: Administrative Supervision of Commission Investigator (CI). The same duties and responsibilities of the CI are also set forth within the HRCS and HR policy manuals.

The CI's primary role is with the Board of Police Commissioners (Board), which body has been empowered to conduct and oversee citizens' complaints against police officers. The CI's office, however, is located within the Department of Human Relations and Community Services and the CI reports to the Director of said department, with the HRCS Director and the Chair of the Board conferring as needed to ensure that the CI's administrative assignments don't interfere with the CI's ability to complete the investigation of citizen complaints.

Lansing City Ordinance, Section 270.01 provides that the City of Lansing's Board of Police Commission Investigator, in part, assists the Commission in the performance of its duties and has been granted full access to all records and documents of the Police Department, including internal affairs records and documents. The CI, who is not an employee of the police department, serves as a liaison between the City and the Lansing community and said CI is equipped with the authority to access certain internal documents, including confidential documents (pursuant to Michigan law), that aid in processing citizens' complaints.

Thus, the purpose of this Executive Directive is to establish the Citizen Complaint Oversight Committee (CCOC) within the Board to replace the current Board of Police Commission's Citizen Oversight Subcommittee. The newly-established CCOC aims to strengthen guidelines for the Board's existing citizen complaint review process and ensures that the CI is empowered to conduct a full and comprehensive investigation of citizen complaints, as allowed by law. Further, this Executive Directive provides a process whereby the CI is fully equipped to take the lead in assisting the Board of Police Commissioners in providing oversight of citizens' complaints, on behalf of the citizens of Lansing, with the authority to interface with the community to share pertinent findings and information, as allowed by law to be disclosed.

Therefore, pursuant to the direction and mandate given to me by the People of the City of Lansing, as expressed in State Law, City Charter, and City Ordinances, I, Andy Schor, Mayor of the City of Lansing hereby issue the following Executive Directive:

<u>Executive Directive 2023-02</u>

Citizen Complaint Oversight Committee (CCOC) Structure:

A. The newly-named CCOC replaces the current Citizen Complaint Subcommittee within the Board of Police Commissioners.
B. The CCOC shall be comprised of four (4) members of the Board of Police Commissioners (Board), with one member being appointed by the Board's Chair to lead the committee.
C. The CCOC, as members of the Board, shall maintain the powers and authority as empowered under Article 5, Chapter 1 of the City Charter.
D. The Office of City Attorney (OCA) shall provide a training/overview for the CCOC at least once per year, with the first training/overview being conducted within 30 days of the issuance of this Executive Directive.
E. The CCOC may also participate in other trainings that are authorized by the Board or recommended by OCA.
F. The CCOC shall regularly educate the public on their rights and the citizen complaint process.
G. The CCOC will ensure that the complaint process is easily accessed and available in English and other major languages.

Commission Investigator (CI) - Role, Responsibilities and Process:

A. The Commission Investigator (CI) will continue to be located in the Department of Human Relations and Community Services (HRCS), per Lansing Ordinance, Chapter 270.01, with daily activities being supervised by the HRCS Director, excluding those duties that are specifically authorized or reserved by the Board of Police Commissioners.
B. The CI shall participate in the annual training/overview provided to the CCOC by the OCA and other trainings authorized by the Board or the OCA.
C. The CI shall perform the administrative duties for the operation of the CCOC, including ensuring appropriate training, management, and the facilitation of meetings.
D. The CI is responsible for reviewing Internal Affairs Investigations to ensure that a complete, concise and fair investigation was conducted.
E. The CI shall be responsible for investigating citizen complaints on behalf of the CCOC when criminal investigations are closed.
F. The CI shall maintain all powers granted under the City Charter that include, in part, the power to administer oaths, and require the production of evidence.
G. The CI shall be authorized to access a wide range of records, reports, and all relevant files, including Internal Investigation records and documents maintained by the Police Department, by providing reasonable notice to the Chief of Police. Information and reports shall be released, with LEIN and CJIS information being redacted, pursuant to state laws.
H. The CI shall also be notified of police-involved critical incidents and the CI shall be listed as a contact in LPD Manual 600.39, page 9, Administrative Contacts.
I. In the course of an investigation, the CI may review Internal Affairs records that are maintained by the Police Department.
J. Acting under Lansing City Charter Section 4-102.1, the following policy establishes the procedure to be followed when the Commission Investigator makes a request to review Lansing Police Department Internal Affairs ("IA") records regarding a citizen complaint of alleged police misconduct:
    a. To conduct a full and comprehensive investigation of citizen complaints, the Commission Investigator shall be entitled to receive all records of closed investigations stemming from a citizen complaint, as allowed by law.
    b. An involuntary or compelled statement (wherein an officer receives a *Garrity* warning) made by a law enforcement officer during an investigation is confidential under MCL 15.395. However, a law enforcement officer may consent to his/her compelled statement to be released to the Commission Investigator. The request for consent to release a compelled statement may be made at the time the statement is given to IA, or by the Commission Investigator after the IA investigation is complete, or both.

K. When an officer does not provide a voluntary statement, the CI shall note this information within the investigation report.
L. A dedicated City of Lansing webpage will be provided for the CI to share information with the public about community forums scheduled to educate the community about the CCOC. The web page will also provide information permitted by law to be shared with the public regarding citizen complaints.

This structure and process as set forth herein shall be evaluated over the next six months (pilot phase) by the Board and HRCS Director to achieve utmost transparency, efficiency, and effectiveness. Necessary changes will be made to the pilot process, as required, to transition this plan into a City Ordinance in 2023.

6-22-23

Andy Schor
Mayor

Date

Questions from Council on Executive Directive 2023-02

- Under the Boards and Commissions, per Charter Article 5, they develop their own rules on implementation of their committees. Since this is not an ordinance or reorganization, why did this not come through the Board of Police Commissioners as making an amendment to their rules.

- Charter language under 5-105 speaks to board organizations, along with 5-301 which speaks specifically to the Board of Police Commissioners, and what does this document address with the formal process.

- In the LPD Commission rules there is already a committee set up, so in reading this directive, they are adding another member to it. Why an Executive Directive instead of a recommendation to the LPD Board of Commissions to change their rules.

- The MRJEA, in their report presented in August of 2021, recommended the creation of a Citizen Oversight Commission with disciplinary and decision-making authority. They argued that the current model, complete with a Complaint Investigator that investigates police complaints for the Police Board of Commissioners before a recommendation is made to the Chief of Police (the only one contractually able to discipline), is not sufficient. They recommended changes to the Charter and employer contracts. With that:
  - What exactly has been added in terms of capacity and power of CCOC, beyond growing the number of its participants? Is this real change that leads to accountability, transparency, and credibility, or perceived?
  - Considering charter, ordinances, and CBA's, is there anything that prohibits the formation of a separate CCOC from the Board of Commissioners right now, one that does not consist of citizens appointed by the mayor, if it is still only a body that recommends to the Police Chief?

- What is wrong with the past subcommittee with the LPD Board of Commissioners.

- Why is the mayor proposing a new one.

- How are these new subcommittee members being picked.

- What are the DEI officer limitations.

- What was the outcome of the community wide discussions.

- What are the MRJEA goals.

- What is wrong with the current citizen oversight committee.

- Does this Executive Directive comply with the Charter and current ordinances.

- Is there anything in the Charter or ordinances that could prohibit this.

- Who will chair this new Committee (CCOC)

- Does the Mayor have the power to do this.

- Citizen Complaint Oversight Committee states “newly-names CCOC replaces the current Citizen Complaint Subcommittee” -would this be the existing members of the commissioners, and no new public.

- Is this directive a modification of the existing rules.

- How does this enhance to add transparency and accountability in the process.

TO: City Council

FROM: James D. Smiertka, City Attorney

DATE: August 9, 2023

SUBJECT: Executive Directive 2023-02 Questions for Law

The following are the answers to the questions posed by Council as to Executive Directive 2023-02 from the Law Department addressing the questions with legal concerns. It is our understanding that the administration has the rest of the questions.

1. Does this ED comply with the charter and current ordinances?

Yes. 5-301.4 of the charter states, "[t]he Board, in its rules, shall establish a procedure for receiving and resolving any complaint concerning the operation of the department." The citizen complaint review subcommittee and the commission investigator exist to allow an avenue for the review of citizen complaints. However, the Board of Police Commissioners (BOPC) has no actual authority to discipline any member of the department or make any policy decisions for the department. The other sections of 5-301 make clear that the functions of the board are to be done in consultation with the Chief of Police and the Mayor. In this case the mayor has communicated his wishes to the board in the form of an Executive Directive. The Mayor has the power, under 4-102.1 to issue executive directives. "The Mayor shall exercise supervision and coordination over the several departments of government, and see that the laws, ordinances, and regulations of the City are enforced." Furthermore, 4-102.11 states, "[t]he Mayor shall be responsible for reducing any unlawful discrimination and increasing mutual understanding among the residents of the community." The stated purpose of the proposed changes is to increase community accountability and transparency. There is nothing improper or illegal about the executive directive or the Mayor requesting that the Board of Police commissioners adapt their rules based on the findings of MRJEA.

2. Is there anything in the Charter or ordinances that could prohibit this?

   No.

3. Does the Mayor have the power to do this?

Yes. The board acts in consultation with the Mayor and Chief of Police. It is an advisory board and has no decision-making authority of its own. As an advisory board, the BOPC advises the Mayor and Chief of Police. Ultimate policy making authority resides with the Mayor and Chief.

4. Is there anything that prohibits the formation of a separate COCC from the Board of Commissioners?

Yes. The charter states, 5-301.4, "[t]he Board, in its rules, shall establish a procedure for receiving and resolving any complaint concerning the operation of the Department." Furthermore, 5-301.3 states, "[t]he Board, shall approve rules and regulations for the conduct of the members of the Department, in consultation with the Chief of Police and the Mayor." The charter is clear that policy is set by the Mayor and Chief of Police and approved by the BOPC. BOPC is an advisory board and has no decision-making authority.

The following is for informational purposes and includes historical information and practices

First Draft Submitted on 11-8-05

Minutes
Committee of the Whole
Council Conference Room, Tenth Floor, City Hall
Thursday, August 4, 2005
1:30 a.m.

Call to Order

Meeting was called to order at 1:30 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman – Arrived at 2:10 p.m.
Councilmember Larry Meyer – Excused Absence
Councilmember Randy Williams
Councilmember Geneva Smith, Member

OTHERS PRESENT

Terese Horn, Council Staff
Paul Novak, City Attorney
Greg Koessel, Internal Auditor
Angela Bennett, Finance
Tom Lambert, State Journal
Glenn Kirk, Finance Director
Dean Johnson, Public Service Dept.

Approval of Minutes

None.

PUBLIC COMMENT

None.

ACTION/DISCUSSION

Update on the Compensation Buyout for Executive Severance Packages

Ms. Cunningham explained the Executive Plan that is provided as part of the contract to Department Directors.

Councilmember Jeffries questioned the portion of the Teamster Contract which was approved by Council with changes that effectuated the ability to move from a defined contribution to the defined benefit and asked if this was made available to Executives. It was confirmed that this was part of the policy approved by Council.

Councilmember Jeffries stated that it was his understanding that the Executive Plan was to mirror the Teamster Contract. He questioned how the Mayor is able to pick and choose what is pulled out or change other aspects without getting Council approval.

Mr. Wiener reviewed the payout of compensatory times in comparison with the different classifications. He explained that even within the different bargaining groups there are differences with compensatory time and how much can be accrued. Some of the Deputy Directors are covered from the non-bargaining rules.

Councilmember Jeffries questioned if there is concern about the excessiveness of these buyouts and what it could mean as part of the budget.

The Committee requested that there be a freeze on the buyouts until there is clarification on what was passed by policy and what part is under legislative authority.

Mr. Wiener stated that it would not be fair to eliminate it just for Executives.

Ms. Cunningham commented that the difference in the Executives pay is in knowing that when you accept a position like this you may not be here long enough to be eligible for retirement. This is not the same for union employees, who are unaffected by whose in the Administration; they are protected by their contract. She stated that the compensation package had a bearing on whether she accepted her position or not.

Councilmember Allen stated that when she worked for the State she worked a number of hours for which she was not compensated. In looking at the pay level our Executives receive, she questioned why they receive additional compensation.

There was discussion with respect to the Executive buyout and their position as at-will employees and if there is a reason that this is viewed differently than those of a regular status.

Councilmember Wood commented on the perception of the public if the Administration changes, and what will be spent on Executive Buyouts. Council must be cognizant of what is being spent toward buyouts and where the money is coming from.

Councilmember Jeffries stated that there needs to be clarification on what the policy is and what Council's position on the policy is.

Councilmember Williams remarked that the issue is more than just the Executive Plan and the Departmental contracts that have not been approved by Council. The rest addresses the bargaining unit which is approved by the Council, and includes compensatory time, vacation time, and sick time. Councilmember Williams suggested that an outside law firm be hired to review the Personnel plan, and to review and provide Council with a comparative look at other municipalities and/or corporations.

Councilmember Bauer voiced concern about the money that would be spent if the Administration still does not agree, and Council is unable to have an active voice in the decision.

Councilmember Williams commented that the Administration has to be held accountable too, and Council should have an active role in that.

Councilmember Bauer stated that Department Heads are being paid at a higher level because they have higher responsibility and the question is should they still receive compensatory time as well.

Councilmember Jeffries asked that in terms of the contract, is this City policy. If no, the City Council should have the authority to not fund it. If the funds are there they should be frozen until it is determined what policy Council believes should be funded. If this was offered and was not approved for funding, then Council should have the option of not paying it.

Mr. Novak stated that some of the information that Council is looking at could be compiled by Internal Audit or by the Personnel Director instead of hiring an outside law firm. With respect to what Council can or can not do, he believes this is a conflict of interest for him to provide any legal advice because he is also a Department Director, therefore, the advice should come from someone else. The cleanest way to do this is to have an outside attorney to unilaterally give a recommendation.

COUNCILMEMBER WILLIAMS MADE A MOTION FOR COUNCIL TO HIRE AN OUTSIDE ATTORNEY TO PROVIDE AN OPINION ON WHETHER THE COUNCIL HAS TO GIVE APPROVAL FOR THE FUNDING OF THE EXECUTIVE BUYOUTS AND ORDER INTERNAL AUDIT TO REVIEW THE POLICY FOR THE EXECUTIVE BUYOUT IN COMPARISON OF OTHER MUNICIPALITIES TO THE CITY OF LANSING ALONG WITH OVERALL EMPLOYEES.

Councilmember Jeffries suggested that we look at firms that have experience in municipality issues.

Councilmember Wood suggested that everyone have an opportunity to bring in suggestions of whom they would like to hire along with an estimate of cost.

Councilmember Bauer suggested contacting the Michigan Municipal League.

ON THE MOTION: 7-0.

Minutes
Committee of the Whole
City Council Conference Room
10th Floor, City Hall
Thursday, September 29, 2005
1:30 p.m.

Called To Order

The Meeting was called to order at 1:38 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Larry Meyer
Councilmember Randy Williams – Arrived at 2:33
Councilmember Carol Wood

Others Present

Terese Horn, Council Staff
Dave Wiener, Mayor's Office
Arnie Yerxa, Internal Audit
Don Kulhanek, Law
John Pollard, Citizen
Angela Bennett, Finance
Calvin Jones, BWL
Thomas Morgan, The Lansing City Pulse
Darnell Oldham, Citizen
Sandra Shafley, Citizen

Councilmember Wood stated she has a number of concerns when talking about Council's roll but now we have already moved the employees. What happened to charging off for services? You cannot charge the person who was part of the TRI that would be duplication. When are we going to know what is happening. How does this affect the budget? The Administration is not talking with Council before the fact, we have to ask the questions after the fact just to get an answer. President Allen indicated that the Mr. Wiener had talked with her. Councilmember Wood stated that the only way the rest of the Council receives the information is when we ask questions. What does this mean in the TRI plan? Repeatedly, we have asked what this means as far as lay-offs to the big picture.

Mr. Wiener indicated that the unions are aware of the changes and have not made any complaints to the changes.

Councilmember Jeffries would like to have Mr. Novak at the Committee to address why he believes these changes can happen. He asked if these changes would go forward if the Consolidation does not get approved. Mr. Wiener stated that these changes would continue. Councilmember Jeffries also pointed out the time that Council spent in understanding these positions as it relates to services. This is why we requested a business plan, to see how there could be reductions and still provide the services to the citizens.

Councilmember Williams commented about how Council has been backed into a corner and forced to vote on an issue. This happens over and over again.

Councilmember Leeman recommended that the Committee on Public Service have Mr. Berridge in to report on what is going on with personnel in Public Service and Mr. Jemerson as to whether things are being done. The Public Service Committee will report back to the Committee of the Whole.

There was discussion with respect to Council's roll and what they are approving when they pass the budget or vote down Executive Orders and whether the Administration can make changes without Council approval. Councilmember Williams respectfully requested that if there is information given to the Council President, to please provide that to the rest of Council.

Discussion on the Process to Follow in the Selection of Obtaining Outside Legal Counsel for the Council

Mr. Roberts provided a little history on this process. He reviewed the meeting he attended where questions were raised on what the Mayor could do with respect to the compensatory time. He understood that from the first meeting that the Law Department would take it to an outside Counsel for review. He was requested by Mr. Novak to make contact with attorneys with expertise in this area and determine if there was any conflict of interest with their firm. He learned that Councilmember Allen had a firm that she was interested in contacting, as well as Councilmember Jeffries had called and talked with him about a firm. It then came back to him that there wasn't going to be a consensus with whomever he would bring back as a recommendation. Then they were informed by the Mayor that he was also interested in this matter. He then spoke to a Labor attorney that he investigated. He provided a number of questions existing in the contract. He believes that these may be some of the questions of Council. He has been requested that after he has a determination of his questions, to bring them forward to the Council. If the Council would still like another outside attorney, we could consider other firms.

Mr. Roberts reported on his contact with the White Firm. He stated that because the Mayor requested this information as well, he assumed that Council's request for an outside opinion was off the table. He further reported on other firms that he had contacted regarding their expertise in the compensatory time issue. However, he was not comfortable with these firms.

In response to the question of Councilmember Jeffries as to whether Mr. White is capable of making a recommendation on the compensatory time issue, he replied, yes.

Council President Allen gave an explanation of how the firm she recommended came about. She indicated that the firm must have called Jack Roberts and she understood that they may be a little aggressive. Mr. Roberts added that that was not the only reason; there were a number of reasons he did not recommend that firm. One, reason Mr. Roberts believes was that there is potential of a conflict of interest because they represent GM.

Mr. Roberts stated that Mr. White's firm is capable and has a fair rate for services. He suggested that he be permitted to get the opinion from the outside legal Counsel that has already been hired and if there are still questions, and then Council could obtain an outside legal counsel at that time.

Councilmember Williams requested that Council move forward with the process that we started. He also commented that he was not particularly comfortable with the choice that Law Department made with Mr. Dennis Dubay.

Mr. Roberts reviewed questions that he presented to the Firm. There were questions about the appropriation and the affect that this would have if Council appropriated funds for the comp time as it relates to the retirement benefit.

COUNCILMEMBER WILLIAMS MADE A MOTION TO OBTAIN THE WHITE FIRM IMMEDIATELY, IN ORDER TO GET AN OPINION AS SOON AS POSSIBLE.

Mr. Roberts suggested that he be allowed to approach this in an appropriate way.

Councilmember Meyer agreed that questions should be framed and then interview prospective candidates. A specific question should be framed to the firm. He questioned why the Foster Firm was not included in this. He requested that the Foster Firm be included. Then a contract would be implemented.

Councilmember Jeffries suggested that the interview process is not necessary; as we should be able to rely on the Law Department's expertise on recommendations for firms. He also wanted the question raised if there were any limits of the authority on entering into a contract and is the authority to hire and what the limits are.

Mr. Roberts stated that he thought that the reason that Council wanted to go to an outside attorney was because of the conflict of the City Attorney's Office.

Councilmember Bauer commented about if we are hiring of an outside firm it is a big decision. She questioned hiring the White Firm because they were the ones that were hired as part of Early Retirement. She wanted to be sure that the people would not feel there is an issue with the firm because of that.

Councilmember Meyer stated that the practice in his office for outside management is that they always interview more that one after they frame the question. Should we frame question, interview, and make retention?

Councilmember Wood commented about Mr. Roberts already investigating firms. However, she would like to know the cost for their services after the question is framed. She recommended an amendment to the motion to include that the question be framed and find out what the costs would be.

There was a round table discussion on the process to use to hire an outside attorney.

FRIENDLY AMENDMENT: TO INCLUDE THAT QUESTIONS BE FORMED AND RECEIVE THE COSTS AND ASK THAT AN OPINION COME BACK, 3-4 FAILED. (Leeman, Meyer, Bauer, and Allen)

Meyer requested that the Council have them come in and interview three attorneys, frame the questions, find out the estimate and come up with a limit to not to exceed.

COUNCILMEMBER MEYER MADE A MOTION TO HAVE THE LAW DEPARTMENT BRING BEFORE THE COUNCIL THREE FIRMS FOR NEXT COMMITTEE, PRESENT FRAMED QUESTIONS AND HOLD INTERVIEW PROCESS ON THURSDAY. MOTION CARRIED, 5-1. (Wood) (Jeffries on phone)

The focus is whether or not there is money to do this and if there is an obligation that Council has to meet because the Mayor did such.

Monday a brief meeting will be held to determine the framed questions.

End of the Year Revenues and Expenditures

PENDING UNTIL OCTOBER.

Overview by Law on A&D Development Co V. Charter Township of Delta

Mr. Hulhanek briefed the Committee on the law suit. This suit pertains to the corner part of 99 acres in the agreement. The City feels that the Township was informed and agreed to sewer work and obtained the fees that they are entitled to. They filed a lawsuit to make the contract null and void.

Minutes
Committee of the Whole
City Council Conference Room, 10th Floor, City Hall
Monday, October 3, 2005
6:00 p.m.

Called To Order

The Meeting was called to order at 6:08 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Larry Meyer
Councilmember Geneva Smith
Councilmember Randy Williams
Councilmember Carol Wood – Excused Absence

Others Present

Terese Horn, Council Staff
Charlene Decker, Citizen
Jack Roberts, Law Dept.
Christine Timmon, Citizen

Public Comment

Charlene Decker requested Council to hold a hand held vote at committees and Council so that the public can see how Councilmembers vote. She also spoke about problems with the CSO restoration.

Christine Timmon spoke about the Public Access. Channel 16 & 30

Councilmember Bauer questioned when a vote could be by the show of hands. Mr. Roberts stated that he would think that a hand count could be hand call if Council requests.

DISCUSSION/ACTION

CSO Restoration

Councilmember Bauer briefed the Committee on the goal to get restoration for CSO with sod. There have been some changes for the procedure on including a sod option. She indicated that they would like to wait a year before implemented.

PENDING UNTIL COW ON OCTOBER 13, 2005.

Frame Questions for Outside Legal Counsel

If haven't appropriated the money how could the Mayor implement. Mr. Roberts stated that this was included in his question of 1 and 3. He reviewed all questions posed to be presented to the outside legal counsel. He stated that this is why he made the questions broad enough for the outside counsel to be able to make a conclusion.

Councilmember Allen questioned if a firm should be obtained if they have an issue pending with the City. Mr. Roberts stated if firm has any cases pending against the City and if so, is there a way you could make arrangements so that the attorney handling this matter would be able to freely handle this case. Mr. Roberts stated that there could be questions about bias one way or another.

Councilmember Bauer questioned if the comp time is a fringe benefit or not. Mr. Roberts stated that this is a good technical question. He stated that the comp time language is in the Personnel Rules not with the fringe benefits. He thought that when Mr. Hollister took out some of the rules that this was a carry over from other contracts.

Councilmember Bauer questioned what authority does Council have over comp time allocation.

Mr. Roberts read some questioned already presented that includes the comp time issue.

Councilmember Bauer asked how that the questions recited by Mr. Roberts to the attorney that Council hires. Mr. Roberts stated that he had already sent these out to a labor attorney. He recommended that as long as the City has retained the labor attorney to pose questions to him and if not happy with the answers than to propose to hire another outside Firm.

Mr. Roberts stated that he is expecting answers to the questions he posed to the Labor attorney any day. Council could than proceed if necessary to hire a different legal counsel.

Foster & Swift and the White Firm are two of the firms that he will be recommended.

Councilmember Meyer questioned if there is not a direct appropriation, could the funds still be paid. There was discussion on questions to direct with respect to benefits within a contract employee.

Councilmember Meyer question that if they could budget with that much specifics. He recommended that the opinion from the other attorney should come first before obtaining the attorney.

Mr. Roberts referred to the firm of Hogins because they have three law suits against the City. He explained when the budget is passed they have so much allotted for outside legal counsel. At that time, they did not expect that there would be issues that would have to be answered by outside legal counsel and therefore hadn't budgeted for that consideration.

There was discussion about where we could get the money for an outside legal counsel. Councilmember Meyer questioned what the plan was to balance the Council's deficit.

Mr. Roberts stated that if this is paid out of their outside legal counsel at the end of the year and it is needed, that Council could pay it back or appropriate additional funds for Law.

There was discussion as to how the question of outside legal counsel came to this point. Mr. Roberts explained the background on these circumstances.

Adjourn

The meeting was adjourned at 6:48 p.m.
Respectfully Submitted,
Terese Horn
Administrative Secretary

Minutes
Committee of the Whole
City Council Conference Room
Thursday, October 6, 2005
1:30 p.m.

Called To Order

The Meeting was called to order at 1:32 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Larry Meyer exited at 4:40 p.m
Councilmember Geneva Smith exits at 5:00 p.m.
Councilmember Randy Williams
Councilmember Carol Wood

Others Present

Terese Horn, Council Staff
Diana Bitely, Council Staff
Don Kulhanek, City Attorney
Arnie Yerxa, Internal Auditor
Eric Hart, LEPFA
Tom Dickson, Lugnuts
Darnell, Oldham, Citizen
Karl Dorshimer, EDC
Sandra Shafley, Citizen
Dale Brzezinski, Laborers 998

Councilmember Williams commented that there steady state is going to rise because of this agreement. If a new management company came in to manage the same team, this group may not be able to market the stadium as well.

Councilmember Jeffries requested if it was possible to get all parties to sit down and see what could be agreed.

Mr. Nesbaum stated that the only thing that he could comment on is that the agreement has a lot of the word for word language as many other contracts. He provided an overview on the process they used at South Bend when there was a change of ownership. The financial wherewithal, experience, and sitting down talking with them face to face and agreed on the assignment which went through the whole process.

Councilmember Wood stated that her concern is how the City intends make up the reduced revenues especially when the City has not made the special events which were part of the first performa. She indicated she believe the City must have a plan in place before to make any changes in the current agreement.

Councilmember Jeffries stated he would vote to move this out of Committee but he wasn't sure at this point whether he would support this on the floor on Monday night.

ON THE MOTION: 6-2. (Williams, Wood)

Outside Legal Counsel - Karen Schneider of White, Schneider, Young, and Chiodini

Mr. Roberts provided a summary on the venture to obtain outside legal counsel and the questions were provided to the firm and should be ready to make a presentation on how they could address the questions. Representation would be for the City and representation for the City and not a particular body within the City, Mayor nor Council.

Ms. Schneider introduced Tom Birerly and is someone that would also provide services to the City if they were selected as the firm to represent the City. She provided an overview on the background and experience of their firm. He firm is unique because they provide services to both types of employment and labor enterprises. This makes their knowledge larger. She reviewed their packet of services provided and letter on their background.

Councilmembers presented questions for the firm for their response.

$185 per hour and attempted to be sensitive to the thought that the City may like to have a number not to excess. This is included in the packet of information. Ms. Schneider stated that their normal rate is higher than what is quoted to the City. She stated that they try to work within the time frame that the City provides. The affirmed that they would work with the City's deadline that is reasonable to both.

Mr. Roberts stated that the time frame of 10 to 14 days is a reasonable time frame to provide the information requested.

Ferris PILOT Deferred Payments

Councilmember Bauer indicated that she would like to rescue herself because she sits on the Board of Directors of the Dart Bank. She will also ask to be rescued on this matter on Monday.

Mr. Roberts reported on the basis to be rescued.

Councilmember Wood requested information on Ferris portfolio and what would be left in their portfolio. She also questioned the statement made Monday night during the public hearing concerning City commented about using additional homes money. Dorothy Boone indicated that Rental Rehab funds have been made available for renovating units for occupancy. She stated that she didn't believe that it would be at a minimum amount of $40,000.

Councilmember Wood questioned why this information was not given to Council before now. Ms. Boone explained the difference between CDBG and Home compliance. She apologized that she did not get all the information to Council in a timely manner. She also stated that there will be special attention to law enforcement in surrounding area, and the City will work with Lansing Neighborhood Council and LISC to try to enhance the marketability of surrounding area. The contributing factor to the present marketability of those properties is due to the surrounding area. Therefore, they committed to enhancing the properties surrounding

Councilmember Wood would like to see an additional resolution that Council could address the concerns of these issues of difficult properties. She would like Council to develop a strategy of what Council is guaranteeing to the neighborhood.

Councilmember Jeffries is concerned about hearing today part of the problem is the failure of the neighborhood. He questioned how we plan with respect to the use of CDBG monies. Is there a plan or reasoning as to what goes into a decision or plans for geographic area? Why would we want to invest that amount of money if we think that the plan will not be able to work in the area? Ms. Boone explained it was her understanding that there areas were marketed to go in and turn the area around. The problem is that the area is not coming back as quickly as they may have liked. She recommended that it is too early to give up on this.

Councilmember Jeffries commented about the Mary Ave. project and the potential problems for this area.

Ms. Boone stated that they have been working with LISC to develop a plan and a target area for focus.

MSHDA personnel agreed to provide reports on the Mary Ave. project. The agreed to check for the information and provide it to Council

COUNCILMEMBER LEEMAN MADE A MOTION TO APPROVE THE FERRIS PILOT AGREEMENTS AND TO SUBMIT A COMMITTEE REPORT APPROVING THE ORDINANCES.

COUNCILMEMBER WOOD MOVED A FRIENDLY AMENDMENT TO ADD A CAVEAT THAT AN ADDITIONAL RESOLUTION BE PASSED ON COUNCIL'S INTENT TO WORK IN PARTNERSHIP WITH THE ADMINISTRATION AND MSHDA TO DEVELOP STRATEGIES THAT WOULD BENEFIT THE AFFECTED NEIGHBORHOODS INVOLVED IN THE DEFERMENT OF THE FERRIS PILOT PAYMENTS.

There was discussion with respect to whether some of the houses could be sold as single family homeowners. At this point it could not be sold until 10 years after the original purchase and it is the hope that those who are renting would be compliant and eligible to purchase the property.

Mark McDaniel from Great Lakes Capital Fund stated that they are in the long hull and now have a financial plan as well as a commitment to the neighborhood.

Mr. Ballard stated that if they need to, they are committed to making these properties profitable in the long run. In a short run, they may have to reduce monthly lease payment.

Councilmember Jeffries stated the importance to have in the extra resolution that outlines the underlying problems and that they have been recognized and the City's goal with rationale. He would like to have this resolution on prior to the Ferris PILOT ordinance amendments.

ON THE MOTION, MOTION CARRIED, 7-0. (Bauer rescues)

<u>Outside Legal Counsel – Steve Weyning with Kelly Cawthorne</u>

Mr. Roberts introduced Mr. Weyning. A bio was distributed to the Committee. He stated that Steve has received the issues and understands that he would sit in place of the City attorney and the client would be really the City of Lansing and no particular body within the City.

Mr. Weyning provided background and experience of law.

TRI – Funding & Positions

Mr. Wiener reported on the TRI Funding and position status. A report was submitted to the Committee with the information and reviewed by Mr. Wiener. Ms. Bennett reported that this indicates what they have been able to save. The funded positions are positions in the budget that was funded. There were also positions that were unfunded that he no money in the budget.

Councilmember Meyer exited at 4:40 p.m.

There was explanation of how they are reviewing each Department to determine what positions are critical of being posted.

Councilmember Wood requested a report on the number of postings that have been posted. She reviewed language in the budget that requested information from Finance.

COUNCILMEMBER LEEMAN ENCOURAGES THE LABOR UNION AND ADMINISTRATION TO COME TO AN AGREEMENT AS SOON AS POSSIBLE.

Nancy Cunningham indicated that the Administration has not been insensitive to the Council's along and the Administration's desire is to come to an agreement as soon as possible.

Councilmember Leeman requested that there be a motion that request Administration and Labor meet to negotiate the labor contract within 10 day. Motion failed, 4-3. (Leeman, Jeffries, Wood, Williams-yea) (Smith, Allen, Bauer-nay)

Foster Swift, Collins and Smith, P.C.

Stephen Schultz and Anne Seuryneck introduced themselves to Councilmembers. Mr. Schultz has experience as a City Attorney for Fenton and his expertise is Labor Law. Looking at the question presented to him, he indicated that it is a mixed question. He stated that they deal with Charters all of the time and would be skilled to work on the issues. They agreed to meet whatever Council's deadline is.

Councilmember asked a number of questions which they answered. When questioned about the hourly rate Mr. Schultz indicated his rate is $225 and Ms. Seuryneck is $190. This is the same rate that they charge the BWL and it lower than any other municipality.

Councilmember Smith exits at 5:00 p.m.

Budget Policies and Priorities

Pending until Monday at 5 p.m.

Committee Reports

D&P - Councilmember Bauer had Mr. Ruff provide a presentation on the proposed development on Wayne Street. She reported on the other issues that will be on the Council agenda.

Public Services – Councilmember Bauer reported on the actions taken by the Committee. There was discussion about the establishment of the Heart of Michigan, Trails, and Greenways and this matter was pulled and referred for the IGR Committee's review.

General Services – Councilmember Wood reported on the Committee actions that will be before Council on Monday night.

Other

COUNCILMEMBER WILLIAMS MADE A MOTION TO RESCHEDULE THE COUNCIL MEETING SCHEDULED FOR MONDAY, OCTOBER 31, 2005, TO THURSDAY, NOVEMBER 3, 2005, AT 1:30 P.M., MOTION CARRIED, 6-0

Pending

5) Budget Request

i. Monthly mileage reimbursement Reports
ii. Vacancy Factor/Funded and Unfilled Positions Detailed List by Department
iii. Vacant and Unfunded Position and Position Eliminations
iv. Employee Displacement Program
v. Encumbrances

Proposed Resolution by Amtrak/awaiting contact by Council President with the State.

Minutes
Committee of the Whole
City Council Conference Room, 10th Floor, City Hall
Monday, October 10, 2005
5:00 p.m.

Called To Order

The Meeting was called to order at 5:00 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Larry Meyer
Councilmember Randy Williams arrives at 6:40 p.m.
Councilmember Carol Wood

Others Present

Terese Horn, Council Staff
Charlene Decker, Citizen
Jack Roberts, Law Dept.
Angela Bennett, Finance
Arnie Yerxa, Internal Audit
Dave Wiener, Mayor's Office

Coordination for BTS Area: The Administration should coordinate a task force with representatives of groups from the surrounding area of the BTS site/new Pattengill Middle School including, but not limited to, the Lansing School District, Lansing Catholic Central, Michigan Department of Transportation, and Neighborhood Groups in order to be pro-active in resolving the impact on traffic issues, sidewalks, and skywalks.

South Side Community Center: The Administration should continue to work with the Ad Hoc Committee on the Development of the South Side Community Center and the residents of South Lansing on the development of a South Side Community Center and continue to seek and support funding for developing, operating, and maintaining the South Side Community Center.

Team Concept: The Administration should review and bring back to Council possibilities for providing services on a team basis so that workers develop ownership of their areas.

Councilmembers consensus.

There was a discussion as to Budget Policies and Priorities as passed on October 18, 2004 and Councilmember reached consensus as to what needed to be part of the 2005 resolution.

COUNCILMEMBER BAUER MADE A MOTION TO MOVE THE BUDGET POLICIES AND PRIORITIES RESOLUTION FOR PASSAGE FOR THIS EVENING COUNCIL MEETING. CARRIED, 6-0.

Councilmember Williams arrived at 6:40 p.m.

Outside Legal Counsel

COUNCILMEMBER LEEMAN MADE A MOTION TO OBTAIN THE WHITE FIRM FOR OUTSIDE LEGAL COUNSEL. (at 5:00 p.m)

It was the consensus of the Committee members present that this matter be held until more of the members are in attendance. Councilmember Leeman withdrew his motion.

COUNCILMEMBER BAUER MADE A MOTION TO HIRE FOSTER, SWIFT, AND COLLINS AS THE OUTSIDE LEGAL COUNSEL.

COUNCILMEMBER WILLIAMS MADE A MOTION TO MAKE AN AMENDMENT TO INCLUDE THAT FOSTER SWIFT AND COLLINS REPRESENT CITY COUNCIL NOT THE CITY OF LANSING.

There was a round table discussion with respect to whether or not the outside legal counsel should be hired representing the City Council or the City. It was questioned how the Council would pay for this service if the outside legal counsel were representing only the City Council. Mr. Roberts indicated that he would expect that it come from their fund.

Councilmember Meyer stated the question must be flushed out how it will be appropriately and it can be handled in Ways & Means. The proposed the language of the questions should be prepared so it is clear that their intention is to seek independent counsel.

ON THE AMENDMENT: MOTION CARRIED, 5-3.

ON BAUER MOTION: MOTION CARRIED, 7-1

Adjourn

The meeting was adjourned at 7:10 p.m.
Respectfully Submitted,
Terese Horn
Administrative Secretary
Lansing City Council
Approved by the Committee on ____________________.

DRAFT

Minutes
Committee of the Whole
City Council Conference Room
Thursday, October 13, 2005
1:30 p.m.

Called To Order

The Meeting was called to order at 1:37 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer -- arrived at 1:50 p.m.
Councilmember Brian Jeffries -- exited at 2:35 p.m.
Councilmember Harold Leeman
Councilmember Larry Meyer
Councilmember Geneva Smith
Councilmember Randy Williams --exited at 4:00 p.m.
Councilmember Carol Wood -- exited at 3:09 p.m.

Others Present

Terese Horn, Council Staff
Gary Andrews, Citizen
Jack Roberts, City Attorney
Arnie Yerxa, Internal Auditor
Calvin Jones, BWL
Darnell Oldham, Citizen
Angela Bennett, Finance
Don Kulhanek, Law Dept.
Jill Rhode, Finance
Mr. Thomas Morgan, Lansing City Pulse
Stephen O. Schultz, Attorney
Anne M. Seurynck, Attorney

Approval of Minutes

No Minutes Submitted.

Public Comment

Gary Andrews spoke about the Cable Advisory Board's inability to constitute a quorum, and on comments made about him during meetings. He also remarked about art that was housed at Lansing Civic Center.

Dave O'Leary spoke in support of Mr. Hassler to the appointment of the BWL.

Discussion on Outside Legal Counsel – Confirmation of Questions

Councilmember Bauer expressed opposition to having legal counsel scheduled to meet with the Committee today at 2 p.m. She stressed, as of yet, the Committee had not reviewed questions to be confirmed nor established the parameters on how this should be handled. She expressed concern about the amount of time being required of the firm before the Committee was ready to proceed.

Mr. Roberts reiterated his statement from the last meeting about this issue explaining that legal counsel would be representing the City not just a particular body of the City, and he commented about restating such before every interview. He provided a summary of his memorandum and explanation about the correct interpretation of the Charter with respect to the issue of obtaining outside legal counsel. He expressed his objection to Council hiring outside legal counsel to represent only this body and not the City as a whole. He stated he made sure that the attorneys knew that we were looking for a level playing field; not representing the Mayor or Council. He stressed the firms were clearly informed that they were suppose to investigate from the City's point of view, not by any particular entity. He explained that under the Rules of Professional Conduct, it is required that an organization would be represented as a whole without bias toward one branch of the government or another. He stated that he felt it necessary to put his recommendation in written form to make clear for the record that if Council goes ahead with this, it is against his advice.

Councilmember Williams explained his request to have the attorneys at the meeting was for the purpose of discussing the means for the attorneys to obtain specific information from Council and determine whom they should report to. He explained he would feel more comfortable making it clear that the attorneys only report back to the Committee of the Whole (COW) as a body not to a specific Councilmember and that all members reframe from contacting the attorneys unless an attorney contacts a particular member to provide clarification, but no more. Also, to have the attorneys sit down and talk with Council so they could get a perspective on the questions asked by Council.

Mr. Roberts further explained that the other problem he has with the attorneys representing just this body is that Council has not identified funds for payment of services. He explained that if Council goes forward with attaining outside legal counsel, City Council would have to pass, as with any action, a resolution supporting hiring legal counsel and indicating that funds were identified for payment of services.

Councilmember Bauer agreed with Mr. Williams' proposed process, and indicated she would support his suggestion of having the firm report only to the full Council. It would be unfair for other members having to pay for one member's consultation. There should be no questions provided to the attorneys unless Council votes on them.

Councilmember Meyer commented that with respect for the monies needed, Council will need to vote on a transfer. Therefore, it needs to go to W&M Committee.

Council President Allen reported on the money in the Council accounts and the viability of using any of those accounts.

Mr. Roberts stated that if the Council would be willing to have a conference with outside legal counsel as a representative of the City of Lansing, it would be the proper way to handle it. He would not have any problem with Councilmember Williams' focus to have them report to Committee of the Whole.

Council President Allen urged the Council and Administration to come together on this matter.

Councilmember Leeman commented about the opinion provided by Law with respect to Council hiring outside legal counsel. He also remarked about the opinion of the outside legal firm contacted by Law and relayed to Council.

Mr. Roberts reported that the opinion provided from an outside legal firm was on fringe benefits. He provided a summary of the opinion and explained that as it relates to something that the Mayor had contracted, the Mayor could change fringe benefits prospectively and put a limit on it, but he could not impair a right that had already been accrued and invested. He offered an example to give a better understanding of his statement. He explained that when this matter was approached as a concern, the Mayor placed a freeze on accruing comp time for Department Directors as the result of the contractual ramifications. Therefore, there has not been any comp time accrued since the time of the Mayor's action.

Councilmember Wood again explained her concern and attempt to understand what Administration stated before, during, and after the budget that there was no money appropriated for any of the severance packages if Department Directors were to leave. She commented about the wording of question #3 stating "for payments otherwise would be made or become insufficient" this was never budgeted. She was concerned about these questions not clearly addressing the issue that no money was appropriated as told that by the Administration. She asked that the question reflect what she just said.

COUNCILMEMBER WOOD MADE A MOTION TO CHANGE THE WORDING OF THE QUESTION ABOUT "OBLIGATION" TO REFLECT "WHAT IS COUNCIL'S OBLIGATION?"

Mr. Jeffries presented scenarios on the type of issues that Council needs answers. A budget line item that Council would not fund or for an amount not funded to an amount that would equate to a certain level of service he asked what would be the obligation of Council's appropriation authority under the Charter. The Mayor has his authority to do things with regards to employees and employees' compensation and benefits. He wanted to know the result if the Council does not fund something. He questioned what if the Mayor decides to hired someone and pay them an exorbitant amount of compensation which Council decides that they would only appropriate a portion of what he was getting paid in compensation. Does the employee have a contractual authority to still get that pay even though Council had not appropriated it? Could the Council set policy in terms of comp time that Council does not want to pay in excess of 80 hours or whatever? He expressed that those questions were specifically addressed in the questions by the Committee. He questioned the attorneys if these concerns were addressed in the questions. In the appropriation process, how does that impact it. He also reiterated the comment by Councilmember Wood that Council was told that there was nothing in the budget right now to pay for any of these benefits. Therefore, this would not be going back to cut something that had been appropriated for these benefits.

Councilmember Meyer questioned the contract law obligation. Councilmember Jeffries responded that anyone can sign any contract they want but does that obligate the City to pay it?

Mr. Shultz and Ms. Seuryck came forward to the table for clarification on the questions for Council.

Council President Allen asked the attorneys after listening to Council's discussion, if they were clear on the discussion and what Council would like to get resolved?

Mr. Shultz remarked that it was reasonably clear before they came to the Committee the first time. The issue is the balance between the Mayor's authority to contract with employees and Council's authority to set the budget based on the budget message that they get from the Mayor. He stated that it is typical that Council sets the budget at the beginning of the year, makes appropriations, and expend pursuant to that appropriation. If there isn't enough money, you have to find where the money is coming from. You have the Uniform Budget Accounting Act, the Charter, and the Home Rule Act that put the general process in place. However, what they need is to look in detail at the inter play of the provisions of the Charter dealing with the budget and the provisions of the Charter dealing with personnel functions. He did indicate that there appears to be different layers of personnel functions, whether its collective bargaining, non-organized employees, or Department Heads vs. rank and file. There are several layers of codes in the Charter and ordinance that has to be determined on how they play together. In the last analysis, it may come down to whether or not you have to have an appropriation to spend the money and whether or not the Mayor has the ability to make transfers subject to approval to balance things out. He indicated he and Anne looked at that prior to their interview and saw that as the primary issue.

Councilmember Jeffries asked for assurance that they understand and saw that encompass in the questions. Mr. Shultz confirmed that they see that as a critical issue.

Mr. Shultz and Ms. Seuryck assured the Committee that they would find how certain aspects of the Charter has been satisfied or if they haven't been satisfied. If there is an ambiguity, they will recommend that either the hole be plugged or figure out a way to fix it. He stated that the way that something is fixed will be the Council's decision. It is not up to them to do the legislating. If they see something that needs clarification, they will identify it, and then it will be up to the Council and Mayor and City Attorney to settle it.

Mr. Schultz responded to Councilmember Meyer that he understood the discussion he had with Councilmember Jeffries about contract law for the Mayor. He further stated that this arises in a lot of contexts. It arises under many different laws.

Mr. Roberts commented about the problem still pending of the Council hiring a firm not as the City's legal counsel but as the Council's legal counsel. He informed the attorneys that he made an opinion that currently they could not do that. However, he stated that Council made a motion to hire you and identify the funds. He reported on the Law Department's process when hiring an outside firm for the City that they do it by a contract. They have done this a number of occasions with their firm and it works out nicely. It is his opinion that if Council were going to go though with this motion, before a contract could be provided, it would require a resolution. He just wanted the attorney's to know that there is a process that needs to be completed before Council is in a position to say you are hired.

Councilmember Jeffries offered his apology for asking them before the Committee prior to everything being done, but before today, Council didn't know a resolution was necessary.

There was discussion with respect to identifying funds for services and taking the necessary actions on Monday at Council.

It was the consensus of the Committee to have the attorney back in two weeks at the Committee for them to provide their draft and then one week after that for the final opinion.

COUNCILMEMBER JEFFRIES MADE A MOTION TO SUBMIT A RESOLUTION EXPLAINING COUNCIL ACTIONS AND THAT A FUND HAS BEEN IDENTIFIED TO SUPPORT PAYMENT OF THE SERVICES RENDERED BY THE OUTSIDE LEGAL COUNSEL AND THAT THE FIRM WILL REPRESENT ONLY THE COUNCIL.

Councilmember Meyer instructed counsel to provide the final answer to the four questions and if ambiguity arises or they need to speak with the Council, they would then notify the President and she would organize a meeting between the firm and the full Council. Nothing is to be done outside an open meeting. He stated that he wants counsel crystal clear that this is how it is to be done.

Minutes
Committee of the Whole
City Council Conference Room, 10th Floor, City Hall
Monday, October 17, 2005
6:30 p.m.

Called To Order

The Meeting was called to order at 6:30 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Larry Meyer
Councilmember Randy Williams
Councilmember Carol Wood

Others Present

Terese Horn, Council Staff
Charlene Decker, Citizen
Jack Roberts, Law Dept.
Arnie Yerxa, Internal Audit
Dave Wiener, Law Dept.
Paul Novak, Law Dept.
Rob South, WKAR
Tom Edmiston, Great Lakes Capital Bank
Steve Lathom, MSHDA

Ms. Boone requested if possible to support the proposed Ferris resolution without the HOME monies and continue to review the concerns brought forth by Councilmembers.

Mr. Edmiston reported that MSHDA also looks for the municipality's match dollars. Therefore, he would like to ask that this be on a short term basis.

It was the consensus of the Committee to support the proposed resolution as revised.

Councilmember Meyer wants to get to the point where the Council can get a well balanced decision on their competence.

It was the consensus of the Committee in order for Council to get a comfort level of Ferris' competence, that the Committee on Ways and Means coordinates a meeting with Ferris Board of Directors and have a report presented from Ferris on the financing and management of property projects.

There was discussion with respect to whether or not it is needed to specify the reason the City is holding HOME monies.

COUNCILMEMBER WILLIAM MADE A MOTION TO HOLD HOME MONEY OR ANY FUNDS COVERED WITH THE EXCLUSION OF THE HOME OWNERSHIP DOLLARS. MOTION CARRIED, 7-1(Smith)

COUNCILMEMBER WOOD MADE A MOTION TO APPROVE THE RESOLUTION AS AMENDED. MOTION CARRIED, 7-1. (Smith)

Outside Legal Counsel

Mr. Roberts explained the Law Department's objections to hire outside legal counsel. He explained that he provided another memo explaining that this is an improper act because it is not consistent with the Charter. This resolution would be acted on in violation of the City Charter. The Committee reviewed the proposed resolution before them.

COUNCILMEMBER WOOD MADE A MOTION TO SUPPORT THE PROPOSED RESOLUTION WITH THE AMENDMENT TO REFLECT $4,000 INSTEAD OF THE $4,500 AS DECLARED IN THE PROPOSED RESOLUTION. MOTION CARRIED, 7-1. (Smith)

Other

Appointment of Phil Joseph

Minutes
Committee of the Whole
City Council Conference Room, 10th Floor, City Hall
Thursday, October 27, 2005
1:30 p.m.

Called To Order

The Meeting was called to order at 1:37 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith – Excused Absence
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Larry Meyer – Excused Absence
Councilmember Randy Williams
Councilmember Carol Wood

Others Present

Terese Horn, Council Staff
Jack Roberts, Law Dept.
Arnie Yerxa, Internal Audit
Dave Wiener, Mayor's Office
Paul Novak, City Attorney
Helen Franse-Hornlein, Personnel Dept.
Nancy Cunningham, Personnel Director
Kitty Lipsky, Finance Employee
Thomas Morgan, City Pulse

Mr. Wiener reported that the City had not completed their negotiation. Therefore, the need to extend the current Franchise agreement until the new one is in place. The present agreement expires on October 28th.

COUNCILMEMBER WOOD MADE A MOTION TO SUPPORT THE RESOLUTION APPROVING THE EXTENSION OF A NON-EXCLUSIVE CABLE FRANCHISE WITH COMCAST FOR ONE YEAR OR UNTIL SUCH TIME AN AGREEMENT IS APPROVED. MOTION CARRIED, 6-0.

Councilmember Wood requested an update on the proposed legislation in the House that could affect the current negotiations.

Mr. Wiener provided the Committee with a brief status of the work by the Ad Hoc Franchise Committee. He agreed to provide an update to Council on the Ad Hoc Committee along with the proposed legislation.

Letter & Proposed Resolution Regarding Outside Legal Counsel

Mr. Wiener reported on the proposed resolution by the Administration with respect to Mayor's Veto. The only difference is that the outside legal counsel will represent the City not just the Council. They agreed to hire the same firm, ask the same questions, and follow the same process that Council has elected to follow.

Councilmember Williams questioned Mr. Roberts as to whether his opinion could be wrong. Mr. Roberts stated that his function as a City Attorney is to give the Council the best legal advice as he reads the law and stands by his interpretation. Councilmember Williams questioned whether establishing a contract for the outside counsel legal would be a conflict for him as it is with the City Attorney. Mr. Roberts stated that his office deals with many contracts and does not believe it should have any impact.

COUNCILMEMBER WOOD MADE A MOTION TO APPROVE THE RESOLUTION WITH AN AMENDMENT THAT COUNSEL WOULD PROVIDE REPRESENTATION FOR COUNCIL AND NOT THE ADMINISTRATION.

Councilmember Allen commented that her problem with the Council's resolution was the process and not the act of hiring outside legal counsel for review of the buy-out. She expressed her opposition to high payoffs. She stated that she will be changing her vote and will support the Council override of the Mayor's veto.

COUNCILMEMBER WOOD WITHDREW HER MOTION.

COUNCILMEMBER WOOD MADE A MOTION TO VOTE THE RESOLUTION PREPARED BY THE MAYOR DOWN AND TO HAVE THE SAME RESOLUTION AVAILABLE THAT COUNCIL SUBMITTED THE PREVIOUS WEEK WITH RESPECT TO HIRING OUTSIDE LEGAL COUNSEL IN CASE IT IS NEEDED.

There were questions as to whether this was the proper motion.

COUNCILMEMBER WOOD WITHDREW HER MOTION.

COUNCILMEMBER JEFFRIES MADE A MOTION TO SUPPORT THE RESOLUTION PROPOSED BY THE MAYOR TO HIRE OUTSIDE LEGAL COUNSEL ON BEHALF OF THE CITY AND NOT JUST COUNCIL. MOTION FAILED, 6-0.

COUNCILMEMBER WOOD MADE A MOTION TO RECONSIDER THE VOTE AND TO OVERRIDE THE VETO OF THE COUNCIL RESOLUTION TO HIRE OUTSIDE LEGAL COUNSEL AND TO PROVIDE A COMMITTEE REPORT INDICATING SUCH. MOTION CARRIED, 6-0.

Other

Letter to Tina Gallante

Councilmember Williams questioned Councilmember Allen on the letter that was sent to Tina Gallante concerning her employment. He commented what happened in the Personnel meeting is not reflected in the letter which was sent to Tina. Councilmember Williams paraphrased the motion made by the Committee and explained the motive of the motion. He stated that this letter tells her to come back to work or else. He requested that Nancy Cunningham and Paul Novak attend the meeting for questions regarding this matter. He stated that two letters be sent out as originally directed by the Personnel Committee. One should be a letter of apology, and another letter requesting that Ms. Gallante to return to work with the understanding that Council will make every effort to make her feel comfortable.

Councilmember Allen stated that Paul Novak authorized Ms. Cunningham to send out the letter. She stated that she misunderstood the intent of the letter.

Councilmember Jeffries read the motion of the minutes of the Personnel meeting. He reiterated that this letter went way over what the Committee intended.

Councilmember Allen stated that she did not see the letter before the letter went out.

Minutes
Committee of the Whole
City Council Conference Room
Thursday, November 3, 2005
3:00 p.m.

Called To Order

The Meeting was called to order at 3:50 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Geneva Smith
Councilmember Randy Williams
Councilmember Carol Wood

Others Present

Terese Horn, Council Staff
Jack Roberts, City Attorney
Jill Rhode, Finance
Darnell Oldham, Citizen
David Wiener, Mayor's Office
Kitty Lipsky, Finance
Steve Shuck, UAW
Scott Dedic, UAW
Eric Hart, LEPFA
Scott Keith, LEPFA

Ms. Lipsky spoke on behalf of the contract employees and stated that what they are going through now isn't right. She stated that they do have a contract in place right now and the sprit of the contract needs to be followed. She commented that she has questioned supervisors and union and no one is able to give her answers about job security. She stated that whatever is said today better be clear enough to back up what they told her on the phone. She explained that she nor the union was told that the seven people told that they were going to get laid off now would not get laid off.

Outside Legal Council Letter

The Committee reviewed the proposed letter for the Council President to sign for retaining outside legal counsel.

COUNCILMEMBER WOOD MADE A MOTION TO SUPPORT THE PREPARED LETTER TO BE SIGNED BY COUNCIL PRESIDENT SANDY ALLEN TO BE SUBMITTED TO MR. SCHULTS FOR RETAING THE FOSTER SWIFT COLLINS AND SMITH FIRM FOR COUNCIL'S OUTSIDE LEGAL COUNSEL AND MAKE SURE THAT HE HAS AN UNDERSTANDING OF THE JOB. MOTION CARRIED, 7-0.

Mr. Roberts referred to the letter approved by Committee which stated that Terese Horn would be the contact person for the outside legal counsel. He reported that Terese had provided him with copies of Committee minutes starting in April continuing to September in preparation for the counsels' investigation. Also, there were certain things requested in the minutes, one of which was copies of the contracts. Mr. Roberts also had some other requested documents and asked if he should provide them all to Terese. The Committee indicated that he should provide Terese with the documents and she would submit them to the attorneys.

Mr. Schults, representative of Foster Swift Collins and Smith, appeared before the Committee at their request.

Mr. Roberts clarified that he needs in inform Mr. Schultz that the City Attorney's Office gave an opinion Council that states they do not have the authority to contract an attorney on behalf of the Council and any contract would need to be on behalf of the City. The Mayor has also provided a letter to Council stating that he would not give his authorization to contract for outside legal counsel.

Mr. Schultz stated that he understands the letter given to him on behalf of Council and the restrictions that go with it and that he would meet the two-week time limit. He stated that the biggest impediment would be getting the documents that he and Mr. Roberts spoke about a few weeks ago.

Mr. Roberts informed Mr. Schultz that he had given documents they discussed to Terese Horn as a packet and she will provide any documents you may requested. He reviewed the date sequence of the copy of Committee of the Whole minutes regarding this issue. The packet of information was provided to Mr. Schultz. He agreed to work through Terese with respect to obtaining any more documents.

Councilmember Jeffries questioned if Mr. Schultz had the list of documents that he was requesting with him. Mr. Schultz stated that he did not have it with him but he assured Council that there is no controversy in his mind in order to address the questions. He thought that the minutes and contracts would provide the remaining documents needed to provide the opinion, and if not, he would contact Terese and work through it.

The Draft minutes that were included in the packet from Mr. Roberts were replaced with the approved minutes of August 18th.

Subsequent to this meeting, the Firm was contacted later that afternoon by Terese informing the secretary that the contracts were ready for pick-up. She was informed that they would pick it up the next morning.

There was comment made about the check for services. Mr. Schultz stated that he has worked with a handshake before and feels that it will work out in the end.

Building Authority Bonds and Funds for the Lansing Center

Ms. Rhode reported on the bonds that could be refinanced for another three years that could pay for the additional $4,000,000 needed to fund improvements at the Lansing Center. In reviewing this, that they found that there was a couple of other issues that be beneficial to be refinanced. One of them was the 1995 Lansing Building Authority bonds for a public area along the River Walk outside of the Lansing Center in 1995. The other issue is the 1998 Public Safety bonds for a shooting range. The savings for these two issues would be $450,000, of which, $390,000 from the Lansing Building Authority bonds and about $64,000 for Public Safety. The resolution is authorizing three things: refinancing of the Lansing Building Authority bonds, shooting range bonds, and additional money for the Lansing Center. She stated that they could obtain the money for the additional $4,000,000 for the Lansing Center by extending the debt service an additional three years and keep the payments about the same as what they are now. The current debt service was to end in 2019 and this would extend it to 2022. The new funding for the additional money for the Lansing Center has to have a 45-day referendum period before they could sell the bonds.

Minutes
Committee of the Whole
City Council Conference Room
Thursday, November 17, 2005
1:30 p.m.

Called To Order

The Meeting was called to order at 1:35 p.m.

Roll Call

Council President Sandy Allen
Council Vice President Geneva Smith (exists at 3:30 p.m.)
Councilmember Joan Bauer
Councilmember Brian Jeffries
Councilmember Harold Leeman
Councilmember Randy Williams
Councilmember Carol Wood

Others Present

Terese Horn, Council Staff
Jack Roberts, City Attorney Office
Darnell Oldham, Citizen
David Wiener, Mayor's Office
Kitty Lipsky, Finance employee
Angie Bennett, Finance Dept.
Glenn Kirk, Finance Director
Karen Klein, Finance employee
Paul Novak, City Attorney
Nancy Cunningham, Personnel Director
Michael Cole, Citizen
Denise Packer, LPD employee

MOTION TO TRANSFER FUNDS TO BALANCE THE 2004-2005 BUDGET. MOTION CARRIED, 5-0.

Snow Plow Policy

Administration submitted a memorandum on the retirement of Dave Berridge and the announcement of the Interim Director as Bill Bergman and Victor Rose who will be serve as an interim position for Jim Campfield.

Mr. Bergman addressed the Committee and questioned what Council's goal was.

Councilmember Bauer asked the City Attorney what power Council has in proposing or modifying a policy. Mr. Novak clarified that if there was anything proposed and which increase the amount of money necessary to provide the services, it would need supplemental appropriation as did with the seven positions. There needs to be some support from Administration in cooperation of the objective of the Council.

Councilmember Bauer requested that this be referred to the Public Services Committee or leave as is as it appears to be one that the new Administration is planning to review anyway.

Councilmember Leeman questioned the number of trucks and what is the newest. Mr. Berridge stated the newest is 2005 truck and they should be ready for use this winter.

Councilmember Williams questioned whether you would use less salt if we use the underbody blade. Victor Rose indicated yes but it would let more time.

There was a discussion and questions by Councilmember concerning the equipment we have and are currently using.

Councilmember Bauer recommended that an Ad Hoc Committee be developed to meet and develop specific recommendations for the new Administration.

COUNCILMEMBER BAUER MADE A MOTION TO SET UP AN AD HOC COMMITTEE ON SNOW REMOVAL TO REVIEW THE PUBLIC SERVICE PROCEDURE WITHIN THE NEXT TWO MONTHS. MOTION CARRIED, 6-0.

Councilmember Allen appointed Brian Jeffries as chair, members Harold Leeman, Randy Williams and Carol Wood.

Opinion from Outside Legal Counsel

Mr. Schultz recommend as City Council's Attorney that Council may consider first going into closed session to review the material and then deciding how Council may want to proceed. Open Meetings act provides for close session to review a confidential written legal opinion and takes six votes.

COUNCILMEMBER JEFFRIES MOVED TO GO INTO A CLOSED SESSION TO REVIEW A CONFIDENTIAL OPINION FROM THE OUTSIDE LEGAL COUNSEL. MOTION DENIED 5-1. (ALLEN, BAUER, JEFFRIES, WILLIAMS, WOOD, yeas) (LEEMAN, nay)

Mr. Schultz summarized the opinion submit by Foster, Swift, Collins & Smith, P.C. The first question they were asked to review was the City Attorney's Opinion, No. 99-06 and whether it was correct. They believe it was correct but that it didn't go far enough. It did not take into effect other provisions within the Charter that granted this Council authority in terms of compensation and fringe benefits that City employees are entitled too. In article 2 section 2-104.1 of the Charter states "The City shall by ordinance, determine the compensation or the procedure for determining the compensation of all officers and employees of the City." Compensation is set by ordinance or the procedure for setting compensation is set by ordinance. It is not the Mayor's unfettered digression to set compensation but rather the Council is mandated to adopt an ordinance that defines the procedure that is going to be followed or if Council wishes set the compensation. This means that as long that the authority was delegated to the Personnel Director through the Mayor by ordinance through Council; therefore the Mayor and Personnel Director has the authority. This is only to affect non-union – or non-bargaining. This was done several years ago by Council and they relegated their authority to the Mayor.

Where Mr. Schultz's take issue with the Opinion No. 99-06 from the City Attorney is that it doesn't go far enough to recognize that the Council could choose to amend that ordinance. Council set limits, to establish terms and conditions to provide guidelines; to provide direction to the Administration in terms and how those terms and conditions of employment compensation, fringe benefits and the likelihood should, or could, or shall be administered. It is really this Council who has supreme authority to determine what the compensation level should be or Council can delegate to the Administration.

Councilmember Allen clarified that as it is now the situation of the contracts between the Mayor and Directors is that he has the right to follow through with those contracts. This is the Council's decision if they would like to change the ordinance from this point forward.

Mr. Schultz indicated that was a fair statement. There is difference between those rights and benefits that someone claims they have earned in the past and what this Council or Administration may want to do on a go forward basis. There is always a difference in terms with the rules that would apply looking backwards or moving forward. You certain end up with greater questions and it is always the change of litigation with request to the ordinance that is currently on the books.

Part II – Mr. Schultz provided the summary of the opinion. Can the Mayor and/or the Personnel Director do that without an appropriation? If there are not monies available you need to be mindful of an appropriation. And if there are not monies available you need to make a supplemental appropriation or if meets the Charter requirement of 15 percent or $5,000 whichever is less. Mid-year you have changes with compensation beyond the annual amount it would seem that it would be necessary that you need to come back to Council for approvable.

The current contracts are all pre-dated this current fiscal budget and many have been around for many years prior to the appropriations made with this budget year. Those contracts were in place and there were certain contingent liability in those contracts but there were no specific liabilities at that time. What you get in is a conflict between a couple different issues of the law or issues of Charter. You have a Charter provision you can not spend money without an appropriation, if one of those contingent liability were to occur and there is not money appropriate deal with it then technically it can't be paid. Of course the failure to pay would probably lead to civil suit. Then it would become a question of the Courts to sort out to whether those obligations are due and owing. Mr. Schultz stated Council had not asked them to opine on whether those obligations were due and owing.

Councilmember Wood state we also asked about remedies and if there were any. It seen there is one and that is to change the ordinance, she would ask that Ways & Means or Council review the ordinance as soon as possible and make those changes due to the changes in Administrations. She then questioned the appropriation and that we have been told that money has not been appropriated $600,000 and how will this obligation be paid for.

Mr. Wiener stated that it was his understanding that in the past when this has been invoked that the funds have come from a General Fund Fringe Benefit account which is a very large General Administration Account of funds. They have not come from a specific account where the funds would be designated.

Ms. Rhode confirmed that the Fringe is a very large amount. She stated that some of the categories will be over, some will be under, and questioned whether the account can absorb this, possibility. Ms. Rhode stated can she guarantee it, not at this point. We did set aside $1million for the Target Retirement and have use approximately $800,000 and some thing so far there is some still available and it will depend who else leave during the fiscal year during normal retirement. She stated it is absolutely too early to say what we are going to spend on fringes.

Mr. Wiener stated that they just received a preliminary report from the Internal Auditor stated that there may be another $3 million in the Fringe account but that is not known for sure. Especially when you factor in the UAW contract is in this account and that has not been settled and that is will make a difference to that account.

Councilmember Wood commented about the frustration about being able to pull out money when it is convenience to the Administration. When we wanted to put funds aside for police officers it wasn't there, now that it is close to paying out contract amount, she finds it very amusing that it may be found.

Councilmember Jeffries commented he was going to explain what his understanding was and that was we asked specific was there money for this particular purpose and we talked about the $600,000 and we asked specific about this because we brought this up during the budget process in May and the answer was no there has been no money appropriate and that came from Glenn Kirk. This is a question this Council is going to have to deal with unless we do nothing and whatever happens just happens.

Mr. Schultz stated Council has the ability amend the ordinance right now. There is an Executive Management Plan in place and the Personnel Director has a number of producers in place and that he would not recommend going in a knocking away at it but we should work with the Personnel Director and devise a plan. The Council has the authority to do so by Charter.

Councilmember Jeffries asked how the Administration accepted this opinion. Mr. Wiener stated he would want to consult with other members of the Administration. Personally he sees this as a comprehensive review of the Charter and the ordinances.

Council President Allen stated she believes the consensus from Council is we want to move on making the changes and we will ask the Ways & Means Committee to begin on this as soon as possible.

Councilmember Wood asked that the Finance Department prepare a break-down of the General Fringe Account for the Ways & Means Committee on Monday.

COUNCILMEMBER BAUER MADE A MOTION FOR THE W&M CHAIR TO HAVE THE AUTHORITY TO CONTACT MR. SCHULTZ IF IT IS A DIRE ESSENTIAL IN THE REVIEW OF THE ORDINANCE. MOTION CARRIED, 6-0.

Councilmember Leeman asked whether the City Attorney's office will work with Council on the ordinance changes. Mr. Novak indicated he was fairly sure that would happen.

Department of Law

MEMORANDUM

To: COUNCIL PRESIDENT SANDY ALLEN and MEMBERS OF THE LANSING CITY COUNCIL

From: JOHN M. ROBERTS JR., CHIEF DEPUTY CITY ATTORNEY

Subject: COUNCIL'S REPRESENTATION BY OUTSIDE ATTORNEY

Date: October 13, 2005

At the October 10, 2005 City Council Committee of the Whole, the Council indicated its intent to hire outside legal counsel to represent the City Council rather than the City itself. The representation involves issues established by a majority of the Council that may have impact upon the fringe benefit compensation payable to department heads upon termination of City employment. The City Attorney, and as one of the department heads, previously indicated that outside legal counsel could be hired for this purpose because of his direct conflict.

At this meeting, I objected to the concept of the City Council having its own separate representation in a matter that affects the entire City and involves interpretation of City Charter and ordinances. I indicated that the representation should be of the City of Lansing, a Michigan municipal corporation.

As a Lansing city attorney, I feel it is my duty to renew this objection and do so by this letter for a number of reasons. I also feel that it is my responsibility to provide Council with this letter as an opinion required under City Charter 2-304.6.

The City Charter provides that the City Attorney represents the City of Lansing.

> 4-304 Law Department.
>
> .1 The City Attorney may be appointed by the Mayor and confirmed by the City Council. The City Attorney shall be the administrative head of the Department of Law and shall be responsible to the Mayor and the City Council to see that the legal affairs of the City are properly managed.
>
> * * *
>
> .6 No board or officer shall employ or retain special counsel in any matter relating to the affairs of the City without first securing the

approval of such employment or retainer by the City Council. The City Council shall act only after requesting the City Attorney's written opinion.

It was acknowledged in the August 24, 1978 Charter wrap-up that "the City Attorney, unlike any other department head, is made responsible to both the Mayor and City Council for the legal affairs of the City. Every other department has been made directly responsible to the Mayor."

The City Attorney is the attorney for the City, as Michigan municipal corporation, and within his duties provides legal advice to the Mayor and Council. The City Attorney owes his allegiance to the City to use his best independent professional judgment on behalf of the organization when reviewing matters and issues affecting it. This judgment is not to be skewed towards the Mayor or the Council. However, it must be acknowledged that a major theme of the 1978 Charter was to strengthen the role of the Mayor in administration and the day to day operation of the City. By requiring outside legal counsel to represent the City Council in this matter, the independence to the City of this legal duty of representation is compromised.

I believe this proposed action should not be taken for a number of reasons.

1. The City Charter provides that the City Attorney represents the City.

2. The City Attorney's office would perform this task, but for the City Attorney's determination of a direct conflict in the possible ramifications of the opinion requested. He has, therefore, proposed the hiring of an outside attorney to act as a special assistant city attorney regarding issues directly affecting this compensation.

3. The outside attorney's purpose and function is to investigate all the circumstances surrounding the issue, including an independent determination of what the actual facts of the matter are, especially where there may be a difference of opinion on what are the pertinent facts between the City Council and the administration.

4. To make the outside attorney the Council's attorney both destroys this independence and may slant his factfinding responsibility.

Finally, it is my opinion that if Council proposes to hire an outside legal attorney to directly represent the City Council over this objection, action must be taken by a duly enacted resolution of Council.

Respectfully submitted,

John M. Roberts Jr.

John M. Roberts Jr.
Chief Deputy City Attorney

Department of Law

MEMORANDUM

To: COUNCIL PRESIDENT SANDY ALLEN and
MEMBERS OF THE LANSING CITY COUNCIL

From: JOHN M. ROBERTS ~~JR., CHIEF~~ DEPUTY CITY ATTORNEY

Subject: COUNCIL'S REPRESENTATION BY OUTSIDE ATTORNEY

Date: October 17, 2005

In point of clarification, the last paragraph of my October 13, 2005 memorandum to you regarding outside legal counsel should not be construed as an opinion that the action you propose to take will comply with the City Charter simply if you act by resolution. The intent of the last paragraph is rather to indicate that any action Council proposes to take in this regard must be done by resolution.

For the reasons contained in the opinion, City Council's proposed action to hire an outside law firm, to represent the Council rather than the City regarding the issues identified, is contrary to the expressed mandates of the City Charter.

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RESOLVED BY THE COMMITTEE OF THE WHOLE
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

WHEREAS, during attempts to balance the FY 2005-06 budget, the City Council raised a number of questions regarding Executive Buy-Outs and/or Severance packages given to Department Heads; and

WHEREAS, City Attorney Paul Novak recused himself; and

WHEREAS, The Committee of the Whole met on October 6, 2005 and interviewed law firms in consideration of obtaining outside legal representation; and

WHEREAS, the Committee of the Whole met on October 10, 2005 and voted to hire Foster, Swift, Collins, and Smith, P.C., Attorneys at Law;

NOW, THEREFORE, BE IT RESOLVED, the Lansing City Council approves the hiring of Foster, Swift, Collins, and Smith, P.C., as a Special Assistant City Attorney on behalf of the City, to provide the scope of services laid out in the Committee of the Whole for a cost not to exceed $4,000.

Approved for placement on the Council agenda

Paul F. Novak, City Attorney
October ___, 2005

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OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: MAYOR VIRG BERNERO

From: JOHN M. ROBERTS JR., Interim City Attorney

Subject: ACCRUED LEAVE BALANCE PAYOUTS

Date: February 2, 2006

ISSUE

You have requested this office's opinion as to whether the payment of the accrued leave balances to the retired Executive Management Plan employees is a binding legal obligation of the City and, if so, whether the payment of the obligation should be made from the City's current general fund fringe benefits account.

ANSWER

The answer to both questions is "yes."

ANALYSIS

The scope of this opinion includes first the contractual issue of whether the Executive Management Plan employees (department heads) have an enforceable contract right to the promised payment of their accrued leave time balances, and then the issue of whether payment of these leave balances may property be made from the FY06 general fund fringe benefits account.

I. Department Head Contracts

It is important to briefly describe the contracts. Each of the contracts is between the City and the individual department head. Each includes compensation in the form of salary and other benefits as contained in Personnel Rules for Executive Management Plan Employees and Fringe Benefit Package, both of which are attached to the contract. Each contract provides that the department head's employment is "at will." By operation of the provisions in the combined contract documents, the City, as the employer, agrees to pay the employee at departure for unused accrued time to a maximum number of hours as follows:

Unused Accrued Compensatory Time	100% up to a maximum of 240 hours
Unused Accrued Vacation Time	100% up to a maximum of 400 hours
Unused Accrued Personal Leave	100% up to a maximum of 16 hours
Unused Accrued Sick Leave	100% up to a maximum of 1,440 hours

The contracts with the department heads have been entered into in compliance with the City's charter, ordinances and Executive Management Plan personnel rules. The Charter provides the authority for the City to establish by ordinance "compensation or the procedure for determining the compensation for all officers and employees of the City." Charter 2-104.1. "Compensation" is a generic term incorporating within its meaning not only salaries but also fringe benefits. City Attorney Opinion No. 93-08.

Pursuant to the Charter, the Council in 1985 enacted an ordinance that provides for the method by which compensation for officers and employees is to be established by the administration. Ordinance 286.05 states:

> The agency responsible for personnel and training shall establish and maintain a classification plan for all employment positions covered by this chapter, unless otherwise provided by a collective bargaining agreement or as may be excluded pursuant to Section 286.01. The agency responsible for personnel and training shall periodically review all such classifications. <u>The Mayor shall have exclusive authority to make all classification and reclassification decisions concerning employees covered by the executive pay plan.</u> [1] (Emphasis added.)

As observed in the November 17, 2005 Foster Swift opinion letter to Sandy Allen, Council President, pursuant to this ordinance the Executive Management Plan personnel rules and accompanying fringe benefits were established by then Mayor Hollister in consultation with the Personnel Director. These fringe benefits are included in the support documents attached to, and made a part of, the department head contracts. It is noteworthy that the authority of the Mayor to set the compensation for this group of employees is made through specific language in Ordinance

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[1] "Executive pay plan" is the former name given to what is now called the "executive management plan."

Section 286.05: "The Mayor shall have exclusive authority to make all classifications and reclassification decisions concerning employees covered by the executive pay plan."

It is the determination of this office that the department head contracts, including fringe benefits, were made in compliance with the applicable authority cited above and, therefore, are legal and binding on the City.

It is further the opinion of this office that the department heads who recently separated from the City are, thus, contractually entitled to payment for the unused accrued leave time fringe benefits that each earned during his or her City employment. These accrued contract rights are property rights and any refusal of the City to pay them would violate the United States Constitution. "A person's right not to be deprived of property without due process of law is a fundamental tenent of federal constitutional law." *Boddie v Connecticut*, 401 US 371, 379 (1971). "Property interests . . . are not created by the Constitution . . . [r]ather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents v Roth*, 408 US 564, 569 (1972).[2] This opinion is consistent with the attached October 4, 2005 opinion provided to me by Dennis B. DuBay, and this office adopts Mr. DuBay's conclusions and authority as its own.

II. Budget Appropriation

Generally stated, the City Council being the legislative branch has no administrative or executive control over contracts. However, it may exercise supervision over compensation under Charter Section 2-104.1 and somewhat remotely through the provisions of the Charter at Article 7 and the provisions of the Uniform Budgeting and Accounting Act, MCL 141.421 (UBAA).

Section 4-102.5 of the Charter provides that the "Mayor shall be responsible for the development and preparation of the budget." At Section 7-101, the Charter requires the Mayor to submit a budget proposal to the City Council.

Pursuant to Charter 7-105, the ". . . Council shall, by resolution, adopt a budget for the ensuing fiscal year and make an appropriation of the money needed therefore. . . The adoption of the budget resolution shall constitute appropriations of the amounts specified from the funds indicated. . ."

Further, at Charter 7-107.1, "[n]o money shall be drawn from the Treasury of the City except in accordance with an appropriation for that purpose or except as provided in this Section."

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[2]The legal respect given such contract rights is also evidenced by the United States and Michigan Constitutional provisions that prohibit the state from enacting any law that impairs existing contractual obligations. US Const, art I, § 10, and Const 1963, art 1, § 10.

Also, Charter 7-107.3 states "[w]henever an agency of the City reports to the Finance Director that the funds appropriated for a particular purpose will be exhausted before the close of the fiscal year, and the agency has an unencumbered appropriation balance, the Mayor may authorize additional spending for that purpose within the total appropriation for the agency, but the additional expenditure may not exceed fifteen (15) percent of the Council's appropriation being added to, or five thousand dollars ($5,000), whichever is less. The Finance Director shall report the transfer to the City Clerk for transmission to the City Council at the next regular meeting of the City Council."

The UBAA establishes a uniform budgeting system for local units of government. *Detroit City Council v Stecher*, 430 Mich 74, 83 (1988).

The UBAA, which supersedes the Charter of a City, provides at Section 16, in part, as follows:

> (1) . . . the legislative body of each local unit shall pass a general appropriation act for all funds. . . (In Lansing this is the budget.)
>
> (2) The general appropriations act shall set forth the amounts appropriated by the legislative body to defray the expenditures and meet the liabilities of the\local unit for the ensuing year. . .

Simply stated, the UBAA provides in part that the City set up accounts from which it is to pay the obligations of the City that become due during the fiscal year.

While it is the function of the Finance Department during the budget process to request these accounts be funded based upon anticipated expenditures and past experience, the UBAA and the Charter also provide a way to supplementally fund the account or make transfers.

Regarding the City's obligations to the department heads for the retirement payout of their accrued leave balances, there is ample evidence that before Council approved the FY06 budget, it had requested and received copies of all the department heads' contracts. It cannot be said that the Council was unaware of the potential payouts.

For the purpose of the instant obligations of the City to the departing department heads, the fringe benefit account is the account from which such payments have been historically and customarily made. It is, in fact, the same account from which in prior years the same contracted leave balance payouts were made to department heads from the Hollister administration. It is also the account from which the payment of accrued leave balances is made for all other City employees who retire, including elected officials and City Council staff employees.

City Council has made a point that when the appropriation amount for the FY06 fringe benefit account was being considered during the budget process, the Finance Department may have failed to fully consider the affect on the account if all the Executive Management Plan employees retired in this fiscal year. Apparently, there was a dispute between the former administration and the Council as to whether Finance properly estimated the funds that would be needed to pay all the department heads that could retire during FY06.

This dispute is, frankly, of no import and has no bearing on whether such payments may be made from the fringe benefit account. This is true for a number of reasons.

First, the funding of the account does not alter the fact that payment of the leave balances to the retired members of this employee group is a valid enforceable contractual obligation of the City. Stated differently, the City cannot avoid its legitimate contract obligations by saying it failed to allocate the funds necessary to pay its existing obligations.

Second, the Finance Department indicates there are sufficient funds in the account at this time to make these payments. Also, it is currently the Finance Department's projection that the account will likely be sufficient to pay all the expenditures budgeted from the account without necessitating any supplemental appropriation. While unencumbered funds are in the appropriate account, they may be expended for liabilities that are to be paid from the account.

Third, the potential Executive Management Plan leave payouts, like the payouts of leave balances of all other retiring employees, was not a separate line item in the FY06 budget. Rather, this contractual obligation was included in the undifferentiated general fund fringe benefits account – just as it has historically, customarily, and uniformly been done.

Fourth, there was no specific discussion or actual consideration put forth during the budget process by either the Council or the administration to remove the Executive Management Plan leave balance payment obligation from inclusion in the fringe benefit account. The potential payout of the leave balances for the department heads remained part of the fringe benefit account, just as are the potential payouts for all other employees who retire during the fiscal year.

Therefore, it is the opinion of this office that payment of the leave balance payouts may properly be made from the general fund fringe benefit account

CONCLUSION

In summary, the City, just like any other party to a contract, must fulfill its obligation and payment from the historical and customary account for the payments is appropriate.

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RICHARD J. THOMA
(1904 - 2001)

*Also admitted in West Virginia
†Also admitted in Massachusetts and New York

October 4, 2005

Via Facsimile (517-483-4081)
and First Class Mail

John M. Roberts, Jr.
Chief Deputy City Attorney
City of Lansing
124 W. Michigan Avenue
Fifth Floor, City Hall
Lansing, MI 48933

CONFIDENTIAL COMMUNICATION
SUBJECT TO ATTORNEY/CLIENT PRIVILEGE

Dear Mr. Roberts:

Please accept this correspondence in response to your September 16, 2005 request for our legal opinion with respect to the Mayor's ability to effectuate changes to the personnel policies and benefits which are currently provided to the City's Executive Management staff. For your convenience, we reiterate and treat each of the questions posed in the order in which they are set forth in your correspondence. We first, however, briefly state the operative facts.

Background

Each of the involved City Department Heads and the City are parties to a written employment agreement. Aside from minor inconsequential differences, the employment agreements contain identical substantive terms. The employment agreements incorporate the "Personnel Rules for Executive Management Plan Employees" and the "Fringe Benefit Package." The employment agreements provide for, among other things, the following City payments for accrued paid time:

Unused Accrued Compensatory Time	100% up to a maximum of 240 hours
Unused Accrued Vacation Time	100% up to a maximum of 400 hours
Unused Accrued Personal Leave	100% up to a maximum of 16 hours
Unused Accrued Sick Leave	100% up to a maximum of 1,440 hours

The employment contracts also provide that the employee and the City "expressly agree that any modification or amendment to the Personnel Rules and/or Fringe Benefit Package, upon the Council's and Mayor's approval, as applicable, and notice to the Employee, shall become a part of this Agreement" (see Paragraph 3 of the Employment Agreements).

1. *What is the Mayor's authority to unilaterally change an established compensatory time (comp time) benefit, either retroactively or prospectively, for a department head where the benefit is among other benefits incorporated into the department head's written "at-will" contract as an attachment thereto?*

Based upon the "amendment proviso" set forth above, it is our opinion that the City ("upon the Council's and Mayor's approval, as applicable, and notice to the Employee") may amend the employment agreements prospectively, e.g., to prohibit the future "banking" or accumulation of time beyond the amount to the employee's credit at the time of the amendment and/or to set the accumulation maximum as the amount to each employee's credit at the time of the amendment.

It is also our opinion, however, that the City may not "retroactively amend" the employment agreements to eliminate accrued contract benefits. Each staff member accepted the employment terms offered by the City and completed all contract requirements for the promised payment at termination (continued employment, accrual of time and accumulation of the time). It is our view that each staff member holds an enforceable contract right to payment under the contract.

While an employer may reserve the right to amend a policy or, as here, a contract, such right, absent a clear and express reservation (which is not present here) does not extend to a retroactive amendment voiding what courts refer to as deferred compensation or an "accrued" and/or vested right. *Dumas v Auto Club*, 473 NW2d 653, 661 (1991); *In re Certified Question*, 432 Mich 438, 443 NW2d 112 (1989). In *Couch v Difco Laboratories, Inc.*, 44 Mich App 49; 205

NW2d 24 (1972), the Circuit Court held that benefits accruing under the employer's profit sharing plan "constituted part of the salary of the plaintiff . . . and gave rise to an enforceable contract." The Court of Appeals, while disagreeing on the validity of a forfeiture provision, also held:

> We agree with the judge that, even though the establishment of the plan was a voluntary act on the part of Difco and it made all the contributions to the trust established under the plan, Couch enjoyed enforceable rights under the plan.
> 44 Mich. App. 46.
>
> * * *
>
> By establishing the profit sharing plan Difco offered to make certain payments for the benefit of its salaried employees who continued to render services to Difco. Couch, by performing the desired services, accepted that offer and, therefore, has enforceable rights under the plan. (FN3) Those enforceable rights are, however, subject to the valid provisions of the plan.
> 44 Mich. App. 47.

Similarly, in *Briney v Kelsey Hayes*, unpublished opinion per curium of the Michigan Court of Appeals, issued August 21, 2001 (Docket No. 218621), the Court held that the lower court properly allowed a jury to consider whether or not the company's change in its vacation policy deprived the employees of an accrued benefit. The court stated:

> The question is whether plaintiff can maintain claims for breach of contract where Kelsey-Hayes unilaterally altered the vacation policy. There appears to be no dispute that an employer can unilaterally change a written policy if it gives affected employees reasonable notice of the policy change. However, written policy statements can give rise to contractual obligations. Indeed, courts have found the existence of contract rights in employers' policies when the policies created contract rights regarding deferred compensation. *Id.* at 4. (citations omitted).
>
> * * *
>
> [A] written policy statement can form the basis of a contract is [sic] some cases, such as here where it is alleged that the policy resulted in an employee accruing benefits. Hence it was for the jury to decide whether the former vacation policy constituted a contract with regard to accrued vacation time. *Id.* at 5.

In the instant case, there is no doubt that the compensatory time benefit contained within the Personnel Rules creates a form of deferred compensation. In fact, on page 9 of those rules, under the section entitled "General Guidelines," the City specifically acknowledges that compensatory time is an accrued benefit.

In sum, the City is not prohibited from making amendments to the compensatory time benefit set forth in the Personnel Rules and incorporated into the employment contracts as long as the City provides notice to the affected employees. However, any amendments that are made must be prospective and must not affect the employees' right to payment for whatever compensatory time they have accrued through the date of the amendment. In other words, if a Department Head has earned two hundred (200) hours of compensatory time, he/she must be paid that amount in a lump sum upon his/her termination as set forth on page 9 of the Personnel Rules. regardless of whether the City amends the Personnel Rules to eliminate the compensatory time policy in its entirety or to reduce the amount of time an employee can earn.

2. *What is the Mayor's authority to unilaterally change other fringe benefits under the department head's contracts, such as personal leave, sick leave and vacation?*

As stated above, the employment contracts at issue in this case specifically reserve to the Mayor (and Council, as applicable) the right to unilaterally amend the benefits set for in the Executive Management Plan Fringe Benefits package, which includes the personal leave, sick leave, and vacation policies. The same analysis set forth above applies to these benefits. If the employees have accrued personal leave, sick leave and/or vacation benefit, they are entitled to receive these benefits.

3. *What is the Mayor's authority to unilaterally change during employment but before termination the compensation paid for the accrued unused leave balances upon termination, i.e., up to a maximum of: 240 hours of comp time; 1440 hours of sick leave; 400 hours of vacation; and 16 hours of personal leave?*

The Mayor may unilaterally change the maximum number of hours or the rate at which an employee may accrue comp time, sick leave, vacation or personal leave but again the amendments must be prospective and not have any impact on the accrued time already earned by the employees.

4. *What is the Mayor's authority to unilaterally change inclusion of up to 80 hours of unused comp time as an addition to a department heads final average compensation for pension purposes, as provided in the Lansing Employees' Retirement System Ordinance?*

The City's Retirement System Ordinance is a duly adopted Ordinance which must be amended by City Council rather than the Mayor.

If you have any questions, or we can be of further assistance, please do not hesitate to contact me.

Very truly yours,

KELLER THOMA
A Professional Corporation

Dennis B. DuBay

Dennis B. DuBay met

DBD/met

LANSING MICHIGAN

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: MAYOR VIRG BERNERO

From: MARGO VROMAN, Deputy City Attorney

Subject: CITY'S OBLIGATION TO PAY A CONTRACT THAT WAS ENTERED INTO ILLEGALLY

Date: February 2, 2006

BACKGROUND

On November 3, 2005 Chief Deputy City Attorney Jack Roberts issued a formal opinion outlining the effect of Council's decision to retain the services of an attorney to represent only its interests in a legal matter involving the City's payout of benefits to departing department heads.

In that opinion it was pointed out that Lansing's City Charter requires the City Attorney, and all authorized "special" attorneys, to represent the interests of the entire City of Lansing and not just one particular branch of government. Mr. Roberts informed the Mayor and Council that retaining the services of an outside law firm to represent only City Council would be contrary to Charter mandates and public policy and would, therefore, make such a contract illegal and unenforceable. This information was also conveyed to the attorney from Foster Swift, which was the law firm Council chose to retain.

As such, the only question to be resolved at this time is whether there is a legal obligation to pay for services rendered by Foster Swift as the result of the illegal contract.

ISSUE

Is there a legal obligation to pay a contract that was entered into illegally?

ANSWER

No.

ANALYSIS

Contracts which violate the law are illegal and are considered void ab initio; meaning they are invalid from the moment they are allegedly created. Since no contract exists in such a circumstance, none can be enforced.

For example, in *Trump Mfg Co v Buchanan*, 116 Mich 113; 74 NW 466 (1898), a village council passed a resolution accepting a manufacturer's sales proposal with the proviso that the manufacturer furnish its product immediately but council would pay for it in one year with five- percent interest. A copy of this resolution was sent to the manufacturer, and the product was delivered. A year later, when the manufacturer sought payment, the council held a meeting and resolved that it was not bound by the contract. The manufacturer filed a lawsuit to collect the outstanding debt. The trial court held that under its charter, the council did not have authority to enter into a contract for future payment and therefore the contract was not enforceable against the village. The appellate court affirmed this ruling and stated that the village's charter clearly prohibited the council from entering into contracts payable in future years and, therefore, there was no contract that could be enforced.

This legal doctrine should not be new to Council since the Court of Appeals has ruled in a previous decision involving an ultra vires act[1] of Council (*McKane v City of Lansing*, 244 Mich App 462; 625 NW2d 796 (2001)) that when its actions exceed its authority, and are taken in contravention of Charter requirements, they are void and unenforceable.

The law on this issue is well settled and consistently holds that an agreement is unenforceable when one of the parties has no authority to enter into it. *Michigan Mun Liab & Prop Pool v Muskegon County Bd of Rd Commr's*, 235 Mich App 183; 597 NW2d 187(1999).

Since it has already been determined that Council was without legal authority to hire legal counsel to represent itself, its actions in retaining Foster Swift were ultra vires and the purported contract with the firm is unenforceable.

I. <u>The Doctrine of Quantum Meruit Does Not Apply in This Instance</u>

In some instances courts have applied the doctrine of quantum meruit to require a party to pay for goods or services it has received under an illegal contract where it retained and enjoyed the benefits of the bargain without protest. *Webb v Wakefield Twp*, 239 Mich 521; 215 NW 43 (1927)

However, where a contract violates strong established public policies quantum meruit will not be given to aid or encourage unprofessional conduct infringing the integrity of judicial proceedings. *Dupree v Malpractice Research, Inc.*, 179 Mich App 254; 445 NW2d 498 (1989)

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[1] The term "ultra vires" is defined as acting outside the scope of authority. See, *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984); *Senghas v L'Anse Creuse Public Schools*, 368 Mich 557, 560;118 NW2d 975 (1962).

In the situation presented here, it can easily be argued that it would be against public policy to reward those who knowingly violate the City's Charter and participate in the destructive practice of creating an adversarial relationship between the executive and legislative branches of government where one does not exist.

In *McCurdy v Shiawassee County*, 154 Mich 550; 118 NW 625 (1908), the Court held that when the contracting party is presumed to have knowledge of the illegality of the transaction it is not unfair to deny them compensation, especially when it would be against public policy to do otherwise.

In a more recent case, a corporation that provided ambulance service to the city of Lincoln Park sought to recover payment on the grounds of breach of an express contract and quantum meruit. The court of appeals affirmed the lower court's dismissal of the case even though the corporation asserted that the police chief obligated the city to pay for the contract and that they were entitled to compensation under quantum meruit. The court held that the corporation failed to show that the chief of police had authority to bind the city; the agreement between the corporation and the police chief was void under the statute of frauds, and that recovery in quantum meruit was barred because the alleged express contract covered the same subject-matter. *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655; 173 NW2d 236 (1969)

In addition to the discussion above, there is also a provision in the City Charter (4-304.4), which requires that all contracts be approved by the City Attorney. The contract at issue with Foster Swift was not approved by the City Attorney. As such, the violation of this Charter requirement also renders the contract voidable.

CONCLUSION

Because City Council was without authority to contract for legal counsel to represent its interests alone, the resulting agreement with Foster Swift was void ab initio. The firm was given actual notice of the illegality of its agreement with Council and willingly chose to perform legal services, which were also contrary to public policy. As such, there is no legal requirement to pay this contract.

IX A 1 a

OFFICE OF THE MAYOR
9th Floor, City Hall
124 W. Michigan Avenue
Lansing, Michigan 48933-1694
(517) 483-4141 (Voice)
(517) 483-4479 (TDD)
(517) 483-6066 (Fax)

An Open Letter to the City Council and the Citizens of Lansing
November 3, 2005

Subject: The City Council Override of the Mayor's Veto

As the Mayor of the City of Lansing, it is my responsibility to protect the integrity of our City's Charter. To that end, I am submitting the following statement concerning my veto of Council Resolution 482 regarding hiring an outside attorney.

Let me be absolutely clear about my position. I do not oppose Council intention to hire an attorney to review the issues they want examined. In fact, I proposed an alternative resolution identical to Council's, with the exception that the outside attorney would be hired by the City and not the Council. This is the legal way to bring outside counsel on board and garner the answers to the exact questions the Council has raised.

It is the legal opinion of the Lansing City Attorney that the Council's current action is in violation of the City Charter. If the Council's resolution to hire an outside attorney reporting only to the Council was allowed to go forward, it would set a precedent that whenever there is a disagreement between the Council and the Mayor, Council could go outside the process established by the Charter and hire its own attorney.

My resolution calls for the outside attorney to represent the City, not just the Council. This is what is legally prescribed in the Charter. The City Charter was written to maintain the rule of law and not the vicissitudes of current politics. It is imperative that we uphold that rule of law and not let passing circumstances alter our Charter without vetting those changes through the proper, legal channels.

Some have tried to portray the issue as whether or not directors get paid a specific severance package. Others have questions whether the Mayor has the authority to establish compensation packages for the directors he/she hires.

The real issue at hand is how the Mayor and Council resolve a questions regarding the interpretation of the City Charter.

In the Council's discussion on overriding my veto, it was argued that hiring an outside attorney for the Council would assure an independent and unbiased opinion. I would argue the opposite. If the outside attorney represents only the City Council and not the City as a whole, there is a greater likelihood that the opinion would be biased and that the attorney will not be independent of any special interest.

As Mayor I will not set a precedent and leave a legacy for future Mayors and Councils that creates a permanent rift and conflict between the two branches of government.

Concern has been expressed that the public sees this debate as a fight over directors getting a large payout and not the interpretation of the Charter which we have been debating. And there have been comments that it is politically dangerous to oppose the Council's resolution.

I will not be pressured by public perception to be silent on this issue. I will do what I believe is the right thing regardless of the political consequence. I will keep my eye on the critical issue: the interpretation of the City Charter and the protection of the appropriate relationship between future Mayors and Councils.

Therefore, if Council chooses to override my veto, I will not sign a contract with an outside attorney under their resolution. Nor will I authorize the transfer of funds or the payment of city funds.

Finally, I reiterate, that I support the hiring of an outside attorney provided that it is done under the dictates of the City Charter. I support the review of the questions that Council has asked. I will abide by the decision reached by the attorney. But I will not knowingly violate the City Charter and create a precedent for the foreseeable future that undermines the relationship between future mayors and city councils.

Sincerely,

Tony Benavides

Tony Benavides
Mayor

attachments: Mayor's Notice of Veto
Opinion of Jack Roberts, October 13, 2005
Clarification of Opinion of Jack Roberts, October 17, 2005
Alternative Resolution proposed by Mayor

LANSING CITY CLERK'S OFFICE

DEBBIE MINER, CITY CLERK

October 20, 2005

TO: Council President Allen and Councilmembers
FROM: Debbie Miner, City Clerk
DATE: October 20, 2005
SUBJECT: Mayoral Veto

This is to notify you that my office received, at 4:44 P.M. this afternoon, the attached notice of Mayoral veto of Resolution #482, adopted on October 17, 2005, which called for the hiring of an outside legal law firm to represent the City Council. Chapter 3, Section 3-305 of the City Charter which states that such notice must be filed in the office of the City Clerk before five o'clock in the afternoon on the third working day following adoption of the ordinance or resolution being voted.

Sincerely,

D Miner

Debbie Miner
City Clerk
City of Lansing

Attached: Mayor's Veto Letter

OFFICE OF THE MAYOR

9th Floor, City Hall
124 W. Michigan Avenue
Lansing, Michigan 48933-1694
(517) 483-4141 (Voice)
(517) 483-4479 (TDD)
(517) 483-6066 (Fax)

RECEIVED
05 OCT 20 ... 4:44
LANSING CITY CLERK

Tony Benavides, Mayor

NOTICE OF VETO

Pursuant to Section 3-305 of the Charter of the City of Lansing, I hereby veto and suspend the operation of Resolution No. 482 of October 17, 2005 providing for the Lansing City Council to hire and contract with an outside law firm to provide legal services directly to the Council in a matter involving City affairs. (Copy of the Resolution is attached.)

I am vetoing this resolution because it proposes to violate the City Charter relating to legal representation of the City. By this resolution, the City Council proposes to hire its own attorney to review a City legal matter relating to the fundamental operation of Lansing City government. The City Council has insisted on taking this action over the expressed objection of the Law Department and the opinion of the Chief Deputy City Attorney that Council's separate representation on a matter of City legal affairs violates Sction 4-304 of the City Charter. I can not allow the Council to knowingly violate the charter.

This veto should not be considered as reluctance on my part to have the issues reviewed by an outside law firm. Rather, it is simply my determination that it is devisive and not in the City's best interest to have divided representation, especially when the issues reviewed involve basic City operations intended to benefit the whole City and ultimately may affect the administration, the City Council and City employees. This is especially true when the matter involves an established City practice and requires unbiased independent judgment. I would support Council's actions if the outside law firm, like the City Attorney, would be hired to represent the City, rather than a particular branch of government.

Date: October 20, 2005

Tony Benavides, Mayor

"Equal Opportunity Employer"

RESOLVED BY THE COMMITTEE OF THE WHOLE
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

WHEREAS, during attempts to balance the FY 2005-06 budget, the City Council raised a number of questions regarding Executive Buy-Outs and/or Severance packages given to Department Heads; and

WHEREAS, City Attorney Paul Novak recused himself; and

WHEREAS, The Committee of the Whole met on October 6, 2005 and interviewed law firms in consideration of obtaining outside legal representation; and

WHEREAS, The Committee of the Whole met on October 10, 2005 and voted to hire Foster, Swift, Collins, and Smith, P.C., Attorneys at law; and

NOW, THEREFORE, BE IT RESOLVED, the Lansing City Council contracts Foster, Swift, Collins, and Smith, P.C., to provide the scope of services laid out in the Committee of the Whole for a cost not to exceed $4,000.

BE IT FURTHER RESOLVED the City Council has identified funds for payment of services to be rendered by Foster, Swift, Collins, and Smith, P.C.

Approved for Placement on the Council Agenda

Paul F. Novak, City Attorney
October 17, 2005

BY THE COMMITTEE ON WAYS AND MEANS
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

That the following FY 2006 transfer be approved:

$4,000 from Council Miscellaneous Operating	101.112101.741000.0
$4,000 to Council Contractual Services	101.112101.743000.0

(Retain outside legal counsel.)

Approved for Placement on the City Council agenda:

Paul Novak, City Attorney
October 17, 2005

Opinion
Law

FOSTER,
SWIFT,
COLLINS &
SMITH, P.C.
Attorneys at Law

Writer's Direct Phone: (517) 371-8152 Fax: (517) 371-8200 Reply To: Lansing

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FX: 248.851.7504

GRAND RAPIDS:
Suite 200
1700 East Beltline, N.E.
Grand Rapids, MI 49525-2076
PH: 616.726.2200
FX: 616.726.2299

November 17, 2005

ATTORNEY-CLIENT PRIVILEGED/CONFIDENTIAL

Sandy Allen, Council President
Lansing City Council
Tenth Floor City Hall
124 W. Michigan Avenue
Lansing, MI 48933

Dear Ms. Allen:

Re: City Council Authority Regarding Department Head Compensation and Fringe Benefits

The Lansing City Council has asked our legal opinion on the following four questions:

1. Is the Lansing City Attorney's Opinion, No. 99-06, correct regarding the Mayor's authority to contract with City of Lansing department heads and setting their compensation, including fringe benefits, without City Council ratification?

2. If the answer to issue #1 is in the affirmative, to what extent is the Mayor limited in his mid-fiscal year department head contracting authority by the fiscal year budget appropriations made for projected personnel costs and fringe benefits?

3. What is the City Council's obligation with respect to payment to department heads' contracted compensation, including fringe benefits, when the budgeted account from which the payments would otherwise be made are or become insufficient?

4. If the answer to issue #1 is in the negative, how is it incorrect?

To assist us in examining these questions, we were provided with numerous documents. In preparing this opinion, we examined the following materials:

A. Minutes of the Official Proceedings of the City Council and the Committee of the Whole for various meetings occurring on and after March 3, 2005.

B. Copies of department head contracts.

C. An August 11, 2005 Memorandum from John M. Roberts, Jr. to Mayor Benevides regarding "Executive Plan Compensatory Time" and including as an attachment, Opinion No. 99-06.

In addition, we examined relevant provisions in the City Charter and Code of Ordinances. Based upon our review of these materials, applicable Michigan statutes, and the decisions of Michigan courts, we have the following opinions with respect to the questions presented.

With regard to Question Nos. 1 and 4, City Attorney Opinion No. 99-06 concludes that the Mayor may unilaterally adopt changes to personnel rules, including compensation and fringe benefits, applicable to executive and mayoral staff employees "without prior approval from or submission to the City Council." (City Att'y Op. No. 99-06, p. 1) This conclusion is based upon a claim of broad authority granted the Mayor and the City's Personnel Director by the City Charter.

We have reviewed the Opinion in detail and have examined the Charter provisions relied upon by the then City Attorney. With all due respect, we believe the City Attorney's Opinion overlooks other provisions of the City Charter, the Code of Ordinances, and employee rules and regulations that are relevant to the Council's and the Mayor's authority. As a result, the City Attorney's Opinion overstates the authority of the Mayor to unilaterally modify compensation and fringe benefits for executive level employees in all cases. For the reasons set forth below, it is our opinion that, under current ordinances and policies, the Mayor must consult with the Personnel Director and adhere to existing provisions of the Personnel Department's classification plan when modifying compensation and fringe benefits for executive level employees. Importantly, however, the City Council has the supreme authority reserved to it under the Charter to establish or limit the terms of employment that the Mayor may grant to officers and employees of the City.

The City Attorney's Opinion relied in part on the authority conferred on the Mayor by the City Charter to "exercise supervision and coordination over the several departments of government." (Art. 4, § 4-102.1) The City Attorney reasoned at that time that the ability of the Mayor to unilaterally change the terms and conditions of employment for executive employees "flows directly from the Mayor's authority to supervise and coordinate the several departments of City government." (City Att'y Op. No. 99-06, p. 2) The Opinion fails to support this statement with other authority, however. Of particular concern should be the provision in Article 2 of the City Charter that states:

> The City shall by ordinance, determine the compensation or the procedure for determining the compensation of all officers and employees of the City. (Art. 2, § 2-104.1, emphasis added.)

Only the City Council can adopt an ordinance. Thus, this provision of the Charter mandates, by use of the word "shall," that City Council set the compensation or the procedure for compensating City officers and employees. Clearly, this specific Charter provision controls over those general provisions cited in Opinion No. 99-06.

Further, even under the current ordinance, if City Council intended to leave the matter of determining executive compensation solely in the hands of the Mayor, as suggested by Opinion No. 99-06, it would have enacted an ordinance to that effect. Instead, the Council adopted an ordinance providing that "[t]he agency responsible for personnel and training shall establish and maintain a classification plan for all employment positions." (LCO 1998, § 286.05) Pursuant to this ordinance, the Personnel Department established an Executive Management Plan ("EMP") classification, which includes all department heads and managerial employees. The Personnel Department then promulgated, and the Mayor approved, Personnel Rules for Executive Management Plan Employees ("EMP Rules"). The EMP Rules specifically provide that they "may be amended, changed or terminated at any time upon recommendation of the Mayor." (EMP Rules, p. 1, emphasis added.) The EMP Rules also state that fringe benefits "shall be in accordance with provisions provided to other city employees, as determined by the Mayor in consultation with the Personnel Director," and that subsequent increases in compensation for EMP employees "shall be determined by the Mayor, in consultation with the Personnel Director, in accordance with provisions at the same level and date provided to other city employees." (EMP Rules, p. 14, emphasis added.)

Reading the current Code of Ordinances and the EMP Rules together, it is evident that the City Council intended to give the Personnel Department primary responsibility for establishing and maintaining a classification plan, while giving the Mayor special authority over that portion of the plan covering executive employees. It is also evident, however, that the Council intended to place limits, however minor at present, on the Mayor's authority to unilaterally change the terms and conditions of employment contained in the EMP classification. The City Council specifically required the Mayor to consult with the Personnel Director and to adhere to the existing provisions of the Personnel Department's classification plan.

Based upon the current ordinance adopted by the City Council, the EMP and the EMP Rules, we believe that Opinion No. 99-06 overstates the Mayor's authority. Though we agree that in the absence of City Council action to amend the current ordinance, the Mayor, in consultation with the Personnel Director, may establish fringe benefits "in accordance with provisions provided to other city employees . . . ." and increase executive employees' compensation, those acts are subject to the Council's ultimate authority to adopt an ordinance to "determine the compensation or the procedure for determining the compensation of all offices" of the City. Thus, the City Council could exercise its authority to set the compensation of City officers, if it so chose. Such exercise would be in the form of an amendment to Section 286.01 et seq of the Code of Ordinances to establish those terms or limits on employee compensation or benefits that Council determined to be in the best interests of the City.

Question Nos. 2 and 3 present an issue involving several principles of law. First, if the Mayor and the Personnel Director act unilaterally to increase compensation or fringe benefits for EMP employees, provisions in the Charter generally prohibit the Mayor from authorizing the expenditure of funds in excess of existing appropriations for compensation and fringe benefits. If the Mayor increases executive compensation or fringe benefits beyond the annual amount appropriated by Council for that purpose, the City Council may, but is under no obligation to, appropriate additional funds to pay such additional compensation or fringe benefits.

The City Charter prohibits any money from being "drawn from the Treasury of the City except in accordance with an appropriation for that purpose." (Art. 7, § 7-107.1) The Charter does provide a method for obtaining additional funds in cases where "funds appropriated for a particular purpose will be exhausted before the close of the fiscal year," but "the additional expenditure may not exceed 15 percent of the Council's appropriation being added to or $5,000.00, whichever is less." (Art. 7, § 7-107.3, emphasis added.)

Thus, in the absence of Council action, the maximum amount the Mayor may authorize for additional spending for a particular purpose is $5,000.00. If additional spending is proposed that exceeds this maximum amount, the Mayor is prohibited from unilaterally authorizing such an expenditure. The Mayor must seek the City Council's approval for a supplemental appropriation.

Regarding supplemental appropriations, the City Charter states:

> At any time during the fiscal year, the City Council may consider appropriations which modify the previously adopted annual appropriation to...provide for the expenditures of revenues in excess of those in the budget... (Art. 7, § 7-108.1(b), emphasis added.)

While this language permits the Council to hear requests for supplemental appropriations, it is clear that the Council is under no obligation to approve, or even to consider, such supplemental appropriations.

Thus, if the Mayor seeks to amend or increase compensation or benefits for City employees mid-year, such change can only be made if it is consistent with the ordinance, EMP and EMP Rules described above and if funds are available under the then existing appropriation or a supplemental appropriation is made by City Council. We must note, however, that this conclusion may not resolve the City's obligations in the current employment context, in which your questions were framed.

With respect to the department head contracts, each predate the current fiscal year. Each contains contingent obligations that may become effective upon termination. If funds have not been appropriated by the current City Council to pay those contingent obligations, however, the City is without authority to pay them. If City Council then refuses to appropriate sufficient funds to pay those certain contingent obligations, an employee who claims entitlement would be left to file a legal claim for compensation claiming that a contractual right or promise has been breached. Such a claim would involve not only a defense related to the possible unauthorized expenditure of City funds, but claims based on principles of contract and employment law. The possible outcome of any such dispute is outside the scope of the questions you have asked us to address, however.

In summary, we believe that City Council may set the terms for compensation and benefits for department heads and other City employees not covered by a collective bargaining agreement by ordinance if it chooses to do so. Based on an ordinance adopted by a previous Council, however, compensation decisions are currently left to the Mayor and Personnel Director. Further, to the extent that appropriations are insufficient, the Mayor may not make mid-fiscal year adjustments to compensation or benefits without first determining if sufficient appropriated funds exist or without obtaining a supplemental appropriation from City Council.

We appreciate the opportunity to address these issues. Should you have additional questions or if there is any portion of this letter that is unclear, please contact Anne Seurynck or the undersigned at any time.

Sincerely,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Stephen O. Schultz

Stephen O. Schultz

SOS:jab:jkc

S:\144\Lansing City Council\CompensationOpLtr.DOC

November 3, 2005

Stephen O. Schultz
Anne M. Seurynck
Foster Swift Collins and Smith, P.C.
Attorneys at Law
313 S. Washington Square
Lansing, Michigan 48933-2193

Subject: Letter of Agreement

Dear Mr. Schultz and Ms. Seurynck:

It was our pleasure to have you before the Lansing City Council Committee of the Whole on October 13, 2005. As you know, the Council voted in committee to hire the firm of Foster Swift Collins and Smith, P.C. as outside legal counsel for City Council. Furthermore, it was agreed that the Committee on Ways and Means would review and identify funds for payment of services and report it out for Council's consideration and adoption.

The Council adopted resolutions transferring funds for payment of services and hiring the firm of Foster Swift Collins and Smith, P.C. These votes were taken at the regular City Council meeting on October 17, 2005.

As you may be aware, the Mayor vetoed Council's resolution regarding hiring outside legal counsel on Thursday, October 20, 2005. At the City Council meeting of November 3, 2005, the Lansing City Council adopted a resolution overriding the Mayor's veto.

As a result, the Council is ready to continue with hiring the firm to obtain a legal opinion on the questions laid out in the memorandum from Jack Roberts and as discussed at the October 13th meeting and confirmed below:

1. Is the Lansing City Attorney's opinion, No. 99-06, correct regarding the Mayor's authority to contract with City of Lansing department heads and setting their compensation, including fringe benefits, without City Council ratification?

2. If the answer to issue #1 is in the affirmative, to what extent is the Mayor limited in his mid-fiscal year department head contracting authority by the fiscal year budget appropriations made for projected personnel costs and fringe benefits?

3. What is the City Council's obligation with respect to payment to department heads' contracted compensation, including fringe benefits, when the budgeted account from which the payment would otherwise be made are or become insufficient.

4. If the answer to issue #1 is in the negative, how is it incorrect?

It is our understanding that this opinion will be reported to Council within two weeks and unless otherwise authorized will not exceed $4000.

We are aware that you may need City documents in order to complete your findings. We would request that you contact Terese Horn, Interim Legislative Assistant, at 483-4179 about any information you may need. She will see that any requested materials are provided for you. As stated in the meeting which you attended, we will be more than willing to call a special Committee of Whole meeting at any time in order to answer questions. All communications with Councilmembers shall be done by means of the full body of Council.

Respectfully,

Sandy Allen
Council President
Lansing City Council

TO: Foster Swift Collins and Smith, Attorney at Law: Attorney Stephen O. Schultz and Anne M. Seurynck

From: City of Lansing City Council

The Lansing City Council assigns you to prepare the following:

Description of work: An opinion on the obligation of the Lansing City Council with respect to the financial support for a contract between the Mayor and City Department Heads with consideration to the specifics laid out below and as confirmed in the Committee of the Whole meeting on October 13, 2005:

1. Is the Lansing City Attorney's opinion, No. 99-06, correct regarding the Mayor's authority to contract with City of Lansing department heads and setting their compensation, including fringe benefits, without City Council ratification?

2. If the answer to issue #1 is in the affirmative, to what extent is the Mayor limited in his mid-fiscal year department head contracting authority by the fiscal year budget appropriations made for projected personnel costs and fringe benefits?

3. What is the City Council's obligation with respect to payment to department heads' contracted compensation, including fringe benefits, when the budgeted account from which the payment would otherwise be made are or become insufficient.

4. If the answer to issue #1 is in the negative, how is it incorrect?

Due date: November 17, 2005

Fee: Not to exceed $4,000.

The City of Lansing City Council agrees to pay you for services rendered as agreed not to exceed the amount of $4,000 upon our acceptance of your written opinion. Signature of Authority for this document for City Council is the Council President Sandy Allen.

Signed____________________________________

Please signify your approval of this agreement by completing the form below and returning one copy to the Lansing City Council for Council's files.

TO: Foster Swift Collins and Smith P.C., Attorneys at Law: Attorney Stephen O. Schultz and Anne M. Seurynck

Foster Swift Collins and Smith P. C., Attorney at Law, agree to perform the work listed above, and accept the terms of this agreement as stated above.

Signature ____________________________ SSN or Federal Tax ID ____________________
(Vendor) (Required by IRS)

Specialties of Approved Outside Counsel

1. Barnes & Thornburg – **Washington D.C. Government Relations**
2. Butzel Long **– Business, Commercial**
3. Church Wyble PC, a division of Grewal Law P.C. **for the case *City of Lansing v. Purdue Pharma L.P., et al.***
4. Clark Hill PLC – **General Practice, Civil Defense, Pension**
5. Cummings, McClorey, Davis & Acho P.L.C. **- General Civil Defense, Sewer Claims**
6. Dickinson Wright PLLC – **General Practice, Business, Commercial, Bond**
7. Dykema Gossett PLLC **- General Practice, Business, Commercial, Bond, Labor**
8. Fahey Schultz Burzych Rhodes PLC – Stacy L. Hissong – **Drain Specialist, Municipal law**
9. Foster Swift Collins & Smith, P.C. - **General Practice, Workers' Comp, Business, Civil Defense**
10. Fraser Trebilcock Davis & Dunlap, P.C. - **General Practice, Civil Defense**
11. Hausfeld LLP **for the case *In Re Rail Freight Fuel Surcharge Antitrust Litigation* (No. II), USDC for the District of Columbia MDL Docket No. 2925, Misc. No. 20-8 (BAH)**
12. Honigman Miller Schwartz and Cohn LLP **- General Practice, Business, Civil Defense**
13. Keller Thoma, P.C. – **Labor Law, Benefit Law, Employment Law**
14. Loomis, Ewert, Parsley, Davis & Gotting, P.C. - **General Practice, Commercial, Business**
15. McGinty, Hitch, Person, Yeadon & Anderson, P.C. – **Municipal Law**
16. Melvin S. McWilliams, PC – **General Practice**
17. Miller, Canfield, Paddock & Stone, PLC - **General Practice, Civil Defense, Business, Commercial**
18. Oade Stroud & Kleiman, PC - **General Practice, Business, Commercial (BWL)**
19. Plunkett & Cooney, P.C. **- Civil Litigation – Police Defense, Appellate Practice**
20. Rosati, Schultz, Joppich & Amtsbuechler, P.C. - **General Practice, Civil Defense, Police Defense**
21. Sam Bernstein Law Firm PLLC **for the case *City of Lansing v. Purdue Pharma L.P., et al.***
22. Secrest Wardle – **General Civil Litigation and Police Defense**
23. Shifman Law – **Labor, Benefit law**

24. Spiegel & McDiarmid LLP – **Energy, Telecommunications, Transportation, Infrastructure Industries**

25. Teresa Bingman - **General Practice**

26. Thompson Hine LLP – Sandra Brown **for the limited purpose of assisting and representing the BWL with railroad contract issues related to the cessation of BWL's coal delivery contract due to closure of BWL's coal plants**

27. Varnum Riddering Schmidt & Howlett LLP - **General Practice, Civil Defense, Business, Commercial**

28. VanOverbeke, Michaud & Timmony, P.C. **– Limited to Retirement Board**

29. Velo Law – **limited to existing debt collection matters**

30. Warner, Norcross, and Judd LLP – **Labor, Benefits. General practice, Civil Defense**

31. Weitz & Luxenberg, P.C. **for the case *City of Lansing v. Purdue Pharma L.P., et al.***

32. Winters & Associates, PC – **limited to existing debt collection matters**

30. Willingham & Coté PC - **General Practice, Civil Defense, Business, Commercial**

Department of Law

MEMORANDUM

"Equal Opportunity Employer"

TO: MAYOR TONY BENAVIDES

FROM: JOHN M. ROBERTS, JR., Chief Deputy City Attorney

DATE: November 3, 2005

RE: OPINION RE: EFFECT OF COUNCIL RESOLUTION 482, IF COUNCILOVERRIDES YOUR VETO

ISSUE

You have requested my opinion concerning the effect of the City Council Resolution No. 482, to hire its own outside attorney, in the event Council overrides your veto. You have asked for this opinion in the context of my previous advice and opinions that Council action to hire its own attorney regarding an affair of the City, rather than to hire the attorney on behalf of the City itself, violates the Lansing City Charter.

ANSWER

Consistent with the oral opinion that I provided to the Council at its October 13, 2005 Committee of the Whole, and prior opinions of this office, the City Council is without authority under the Lansing City Charter to hire its own attorney, and therefore, its resolution attempting to do so is void.

ANALYSIS:

I. CHARTER

A. General Charter Authority

The City is governed by its Charter. A charter is the organic law of a city and even ordinances in conflict with it or violating the mandates of the charter are void. Bivens v Grand Rapids, 443 Mich 391; 505 NW2d 239 (1993); Sykes v Battle Creek, 288 Mich 660;l 286 NW 117 (1939); Quandt v Schwass, 286 Mich 433; 282 NW 206 (1938). When language of a charter provision is clear and unambiguous, it is controlling. Detroit Fire Fighters Ass'n v Detroit, 127 Mich App 673; 339 NW2d 230 (1983). Hence, it is presumed that the framers of a charter, and the people who ratified it, intended that a charter provision be construed as it reads. Id. Moreover, charter provisions are construed strictly to restrain attempts to evade them. Lee v Taylor, 63 Mich App 221; 234 NW2d 483 (1975); Barrows v Engel, 186 Mich 540; 152 NW 950 (1915); 4 McQuillin, Municipal Corporations (3d ed); § 12.198, pp 97-98.

Succinctly stated:

> "the charter or statute by virtue of which a municipal corporation is organized and created is its organic law and the corporation can do no act nor make any contract not authorized by that charter or statute. All acts beyond the scope of the powers granted are invalid." 2A, McQuilling, Municipal Corporations (3d Ed), § 9.22, p 234.

The Michigan Attorney General has opined in OAG, 1976, No 4983, p 520 (June 25, 1976) that municipal authority to hire legal counsel is specifically governed by a city's charter and unless the charter expressly grants the authority to a municipal body to hire its own attorney, such authority does not exist. The opinion says:

Municipal charters generally include provision controlling the circumstances under which legal counsel may be retained, and unless the authority is expressly granted boards and commission have no such authority. See City of Flint v Board of Hospital Managers, 377 Mich 681; 142 NW2d 5 (1966):

> "'As a general rule, however, the power to employ counsel is not deemed to be incidental to such boards, and does not exist, except as it is expressly conferred, or results by necessary implication from the powers granted.' Annotation, 2 ALR 1212. See 10 McQuillin, Municipal Corporations (3d ed), § 29.12, pp 204-209. See, also, O'Reilly v Town of Scituate, 325 Mass 154 (102 NW2d 439)."

* * *

Some municipal charters preclude the appointment of special legal counsel and others authorize such appointment under certain circumstances such as are discussed in McQuillin, supra, at § 29.12:

> "Contracts for outside legal services are sometimes sustained where there is a vacancy in the office of city attorney; *or where the city attorney is ill, disqualified, absent, or unavailable*; or where the legal official of the corporation refuses to appear and perform the necessary services; *or where he has, or represents, adverse interests;* or in case of an emergency . But if an applicable statute, the charter, or an ordinance forbids the appointment of other counsel, a contract for extra services is void." [footnotes omitted; Emphasis supplied in original]

B. Lansing City Charter

For the reasons stated in my October 13, and October 17, 2005 memoranda to the City Council, it is my opinion that a clear reading of the language of the Lansing City Charter does not provide for or specifically authorize the City Council to hire its own attorney.

In this matter, the City Attorney has recused himself because of a possibility that he, as a department head, could be personally affected by the outcome of the opinion requested. The recusal, however, is not a recusal of the City Attorney's responsibility to the City under the Charter or a recusal of the Law Department function under the Charter. Instead, it is the opposite. The recusal has resulted in a need for the appointment of a special city attorney to perform the function of the City Attorney in his place. Just as the Charter requires the City Attorney to represent the City, rather than the Council, the Mayor or the department heads, so too is the appointed attorney required to represent the City and not a part of it.

This same conclusion was previously reached by former City Attorney James D. Smiertka as an Addendum to Lansing City Attorney Opinion No. 97-18 (August 4, 1997). The opinion dealt with the issue of whether the City Council could avoid veto power by calling its action a motion rather than a resolution. The question of Council's authority to hire an outside attorney to dispute the City Attorney's opinion on that issue through a court action was also addressed as follows:

> **Addendum - Request for Special Counsel**
>
> With respect to Council's request for an opinion under Charter Section 4-304.6 as to whether it can engage the services of an attorney to advise it on the Stormwater veto; it is the opinion of the City Attorney that Council is without such power given the lack of express authority in the Charter. The City Charter has established a law department and given it the responsibility to handle the legal affairs of the City. Section 4-301.1 entrusts the City attorney with the responsibility of seeing that the legal affairs of the City are properly managed and Section 4-304.3 states that the City Attorney shall advise the officers and agencies of the City on matters relating to their official duties. *See 1975 Opinion Attorney General 520.*

My opinion agrees with and follows this precedent.

C. Michigan Rule of Professional Conduct

The fact that the City Attorney represents the City is also necessary to comply with the Michigan Rules of Professional Conduct (MRPC). The MRPC are the rules by which all Michigan attorneys practice law, which, if not complied with, can lead to attorney discipline.

When a lawyer represents a corporation, unincorporated association or governmental agency, the lawyer represents the organization rather than the individual members. MRPC 1.13(a), (d) and (e) state:

> "(a) A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders, or other constituents."
>
> . . .
>
> (d) In dealing with an organization's directors, officers, employees, members shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer believes that such explanation is necessary to avoid misunderstandings on their part.
>
> (e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders."

In the course of the lawyer's representation of the city, the lawyer is obligated to competently represent the client. MRPC 1.1 requires "A lawyer shall provide competent representation to a client." In so doing, the lawyer, for example, cannot draft a proposed contract that would be in violation of the Charter, unconstitutional or unenforceable. The lawyer's goal must be to accomplish the client's request in a way that would be legal and, in the lawyer's opinion, enforceable. If the lawyer cannot do so, the lawyer's obligation is to advise the city council that a contract would likely be held unenforceable. MRPC 1.2(c).

MRPC 1.4(b) provides:

> "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

In the matter presented, the City Council intends to hire an outside law firm to represent the City Council regarding an issue that affects the entire City and that potentially may affect the relationship between the Mayor and Council and how City functions are performed. This patently is an issue that relates to "the affairs of the City." For this reason, the advice sought requires that the review be unbiased and impartial as to both the Mayor and Council. This duty is within the Law Department's Charter functions. This means any legal review must have the City as the client for the opinion to be accepted as fair by all interested parties, be they the Council, the Mayor, City employees or the public. That outside counsel must review this issue with the City as the client is mandated by Charter Section 4-304.1 and 4-304.3. It is, therefore, my opinion that for the Council to hire its own attorney at this time would be a violation of the Charter, and MRPC. Therefore, what is proposed is an unenforceable contract. MRPC 1.13(d) requires the City Attorney to clarify for the City Council that the lawyer's client is the city as an entity, and not the Council as a separate body. This I have done.

While the Lansing City Charter specifically provides that the City Attorney may represent multiple clients, the guiding principle in the Charter is that it is only in "affairs of the City" and, thus, only in those instances when the representation will not adversely affect the primary representation of the organization of the City. Such representation of the City by outside counsel in the matter at hand is acceptable to the City Attorney's office and, in fact, was originally initiated by the City Attorney. With this in mind the Law Department remains committed to its offer of outside legal representation so long as it comports with the Charter with the City of Lansing as the client

II EFFECT OF RESOLUTION 482.

A. Limitations on Council Powers.

In a prior City Attorney opinion, CAO No. 96-11 (May 1, 1996), this office advised on what legally happens if Council exceeds the authority it is granted under the Charter.

> "... as to the powers of a City Council, the general rule is that strict construction must be applied in construing statutes granting powers to a city council. A local legislative body is possessed of but special powers, limited by constitutional statutory and charter provisions and all acts by its (sic) in excess of its powers are simply nugatory. It cannot by ordinance acquire powers expressly withheld by the City Charter, nor extend its power beyond the limits prescribed by the

> charter. Neither can it abrogate or impair power conferred on it by law. 4 McQuillian, Mun Corp (3d Ed), §13.03.

What is said in the opinion about an attempt to extend powers by ordinance is equally true of an attempt to do so by a resolution. As further pointed out in Section I.A. of this opinion, action that would be taken by the Council in violation of the Charter is void.

B. City Council May Not Contract

Since the inception of the 1978 Lansing City Charter, the City Attorney's office has consistently given the legal opinion that the authority to contract involving the City is vested in the Mayor.[1] As stated in CAO No. 96-11 (May 1, 1996),

> "Contract authority is lodged in the Mayor under the strong-Mayor form of government in Lansing, subject to law and regulation, and the City Council has no authority to either award or terminate the contract with Kolt and Serkaian. This conclusion is not new from this office. A similar conclusion was reached in 1979 by a previous City Attorney (See attached 5/31/89 City Attorney Opinion.)"

Although the proposed contract in this instance is not one involving the purchasing ordinance, the same principle applies. However, the CAO No. 79-64 (May 31, 1979) does not limit the opinion to certain types of contracts.

> "Several sections of the new City Charter make it clear that the negotiation, approval and specific terms of individual City contracts

[1]The exception to this general rule is that City Council may contract with its own staff, Lansing City Charter Section 3-207.3 and council members may spend their own community promotion accounts. Ordinance Section 206.1

is primarily an administrative matter and that the City Council as a legislative body may not interfere with the Mayor or his administration in the letting of contracts. See Section 3-101, 3-207.1 and 3-207.2 of the City Charter."

Also in accord are CAO 81-55 (October 29, 1981) and CAO 96-20 (September 19, 1996).

This office reaffirms its prior opinion that the Mayor, as the chief executive officer of the City is the person ultimately responsible for entering into City Contracts and not the City Council.

In the very first opinion of former City Attorney James D. Smiertka, addressing the affect of Resolution No. 201, commonly known as the Early Retirement resolution, the City Attorney indicated that an attempt to carry out, by resolution, action that conflicts with the requirement of the City Charter is a nullity and ultra vires. As such, the doctrine of ultra vires precludes the City from engaging in the act.

> "A City's action is ineffectual where legislative purposes were sought to be carried out by resolution. Rollingwood, supra, at page 264; see Shcrier v Kalamazoo, 380 Mich 626, p 636 (1968), where the Court held that the City Commissioner's failure to comply with the City's Charter requirements for the adoption of ordinances was declared a nullity. Indeed, the action of implementing Resolution 201 is ultra vires. The doctrine of ultra vires precludes a municipal corporation from engaging in a course of conduct where it specifically lacks authority. Parker v West Bloomfield, 60 Mich App 583 (1985).

CAO 94-1 (1/28/94)

As pointed out in part I. of this opinion, the attempt of the Council to hire its own attorney by Resolution No. 482 is contrary to the City Charter and, therefore, is void and unenforceable. This conclusion is also consistent with prior City Attorney opinions and the opinion of the Attorney General.

CONCLUSION

You are, as Mayor, the only City officer who can sign a contract to hire outside legal representation called for in Resolution No. 482 and you may refuse to do so on the basis that the resolution countervails the City Charter and, as such, is void.

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