

CITY OF BERKLEY PUBLIC NOTICE
REGULAR CITY COUNCIL MEETING
Monday, December 2, 2019
7:00 P.M. – City Hall
248-658-3300

CALL 38th COUNCIL TO ORDER
APPROVAL OF AGENDA
INVOCATION – REVEREND TAL SULLIVAN
PLEDGE OF ALLEGIANCE
PUBLIC COMMENT
ORDER OF BUSINESS

Consent Agenda

1. **APPROVAL OF THE MINUTES:** Matter of approving the [minutes of the 38th City Council](#) meeting on Monday, November 18, 2019 and special meeting on Monday, November 25, 2019.
2. **ORDINANCE NO. O-16-19:** Matter of considering the [Second Reading of an ordinance](#) to Add New Article XIV, Prohibition of Conversion Therapy, to Chapter 30, Businesses, of the City of Berkley Code of Ordinances and to Prescribe a Penalty for Violations. (Full copy of this ordinance is posted for 10 days at the Berkley City Hall, Library, and Community Center.)
3. **RESOLUTION R-38-19:** Matter of adopting a [resolution recognizing Anthony Turner](#) for achieving the rank of Eagle Scout.
4. **RESOLUTION R-39-19:** Resolution recognizing a [donation from the Berkley Lions Club](#).

Regular Agenda

1. **RECOGNITIONS/PRESENTATIONS:** Matter of any recognitions or presentations from the Consent Agenda.
2. **PRESENTATIONS:** Matter of [receiving a report from Plante & Moran](#) regarding the Audit Results for the Fiscal Year Ended June 30, 2019.
3. **MOTION NO. M-94-19:** Matter to [authorize Hubbell, Roth & Clark \(HRC\)](#) for engineering services related to the 2020 Sidewalk Replacement and Assessment Program at a cost not to exceed \$27,400 from the Sidewalk Fund, account number 470-938-821-000.
4. **MOTION NO. M-95-19:** Matter of [authorizing the execution of an agreement](#) between City of Berkley and Atex Builders, Inc. for the sale of 3339 Cummings Ave. and authorize the City Manager to sign on behalf of the City of Berkley.
5. **RESOLUTION R-40-19:** Matter of adopting a [resolution declaring City of Berkley's](#) participation in the WaterTowns initiative from Clinton River Watershed Council.
6. **PRESENTATIONS:** Matter of offering a Six Month Update on the Coolidge Complete Streets Project to the City Council.
7. **ORDINANCE NO. O-15-19:** Matter of considering the [Second Reading of an ordinance](#) of the City Council of the City of Berkley, Michigan to Add New Article XV, Marihuana Businesses, to Chapter 30, Businesses, of the City of Berkley Code of Ordinances to Adopt Local Licensing Regulations and Operational Standards for Marihuana Businesses. (Full copy of this ordinance is posted for 10 days at the Berkley City Hall, Library, and Community Center.)

8. **ORDINANCE NO. O-14-19:** Matter of considering the [First Reading of a Zoning Ordinance](#) of the City Council of the City of Berkley, Michigan to Amend Sections 138-363, 138-387, 138-417, 138-427, 138-442, 138-457, 138-472, 138-487 and Add New Section 138-528 to Chapter 138 Zoning, to Establish Zoning Requirements for Marihuana Businesses.
9. **RESOLUTION NO. R-41-19:** Matter of [authorizing the amendment](#) of the FY 2019/2020 Operating Budget as presented.

COMMUNICATIONS

10. **CLOSED SESSION:** Matter of considering whether to convene into closed session to consult with the City's attorneys regarding trial or settlement strategy in connection with pending litigation, specifically, Doot v Berkley, Oakland County Circuit Court Case No. 2017-157459-NZ; and Hanover Insurance Group v Berkley, Oakland County Circuit Court Case No. 2017-160247-NZ.

ADJOURN

Note: The City of Berkley will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon four working days notice to the City. Individuals with disabilities requiring auxiliary aids or services should contact the City by writing or calling: Victoria Mitchell, ADA Contact, Berkley City Hall, 3338 Coolidge Highway, Berkley, MI 48072 (1-248-658-3310).

Note: Official minutes of City Council Meetings and supporting documents for Council packets are available for public review in the City Clerk's Office during normal working hours.

THE THIRTY-SIXTH REGULAR MEETING OF THE THIRTY-SEVENTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, NOVEMBER 18, 2019 BY MAYOR TERBRACK

PRESENT: Steve Baker Jack Blanchard
Dennis Hennen Bridget Dean
Eileen Steadman Ross Gavin
Daniel Terbrack

APPROVAL OF AGENDA

Mayor Pro Tem Baker moved to approve the Agenda
Seconded by Councilmember Steadman
Ayes: Blanchard, Dean, Gavin, Hennen, Steadman, Baker, and Terbrack
Nays: None
Motion Approved.

INVOCATION Pastor Adam Groh

CITIZENS COMMENTS:

Steve Seabold, a Berkley resident, thanked the Department of Public Works for the recent snow removal. He stated the workers did a great job especially considering leaves were curbside for collection. He also discussed the potential for a DTI and tri-county transit authority millage in relation to what other millages he felt could come up in the future including a new civic center or the school district. He discussed alternative forms of future funding. He also discussed the Coolidge Complete Streets Project and the idea of taxing bikes.

Consent Agenda

Councilmember Gavin moved to approve the following Consent Agenda, seconded by Councilmember Hennen:

APPROVAL OF THE MINUTES: Matter of approving the minutes of the 37th City Council meeting on Monday, October 21, 2019.

Ayes: Dean, Gavin, Hennen, Steadman, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.

Regular Agenda

RECOGNITIONS/PRESENTATIONS: None

SWEARING-IN CEREMONY: Newly elected members of Council to be given Oaths of Office by the City Clerk:

Mayor Daniel J. Terbrack
Councilmember Bridget Dean
Councilmember Ross Gavin
Councilmember Natalie Price

City Clerk Victoria Mitchell administered the Oath of Office to Mayor Daniel J. Terbrack.

City Clerk Victoria Mitchell administered the Oath of Office to Councilmember Bridget Dean.

City Clerk Victoria Mitchell administered the Oath of Office to Councilmember Ross Gavin.

City Clerk Victoria Mitchell administered the Oath of Office to Councilmember Natalie Price.

COUNCIL MEETING ADJOURNMENT:

Motion by Councilmember Blanchard to adjourn the regular meeting at 7:13 p.m.

Seconded by Councilmember Dean

Ayes: Gavin, Hennen, Steadman, Baker, Blanchard, Dean, and Terbrack.

Nays: None

Motion Approved.

THE FIRST REGULAR MEETING OF THE THIRTY-EIGHTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 7:29 PM ON MONDAY, NOVEMBER 18, 2019 BY MAYOR TERBRACK

PRESENT: Steve Baker Jack Blanchard
 Dennis Hennen Bridget Dean
 Natalie Price Ross Gavin
 Daniel Terbrack

APPROVAL OF AGENDA

Councilmember Gavin moved to approve the Agenda

Seconded by Councilmember Blanchard

Ayes: Blanchard, Dean, Gavin, Hennen, Steadman, Baker, and Terbrack

Nays: None

Motion Approved.

CITIZENS COMMENTS: None

Consent Agenda

Councilmember Dean moved to approve the following Consent Agenda, seconded by Councilmember Hennen:

WARRANT: Matter of approving Warrant No. 1344.

RESOLUTION NO. R-33-19: Matter of recognizing Eileen Steadman for her services as Councilmember for the City of Berkley.

MOTION NO. M-88-19: Matter of approving the 2019-2020 Winter Maintenance Agreement between the Road Commission for Oakland County and the City of Berkley. The City will be reimbursed a total of \$10,897.60, which will be paid in two installments, (50%) \$5,448.80 due in December 2019 and (50%) \$5,448.80 due in March 2020.

MOTION NO. M-89-19: Matter of appointing the Community Engagement Officer, Torri Mathes, as the City of Berkley's representative to the Community Media Network Public Access TV (CMNtv) Board of Trustees for the fiscal year beginning July 1, 2019; and to instruct the City Clerk to send a copy of this motion to the CMNtv Board.

ORDINANCE NO. O-09-19: Matter of considering the second reading of an ordinance of the City Council of the City of Berkley, Michigan to Amend Article XII, Residential Grading & Drainage Standards, to Chapter 26, Buildings and Building Regulations, of the City of Berkley Code of Ordinances to Establish Standards for Residential Grading and Drainage and to Prescribe a Penalty for Violations. (Full copy of this ordinance is posted for 10 days at the Berkley City Hall, Library, and Community Center).

Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.

Regular Agenda

RECOGNITIONS/PRESENTATIONS: Matter of any recognitions or presentations from the Consent Agenda.

Mayor Terbrack read the Resolution honoring Eileen Steadman in its entirety into the record. Mayor Terbrack also spoke regarding the impact Ms. Steadman has made upon him. She received a standing ovation. Others lauding Ms. Steadman included a proclamation and well-wishes by State Rep. Robert Wittenberg and State Sen. Mallory McMorrow; well-wishes and words of her impact during the difficult days from former Mayor Phil O'Dwyer; kind words describing her accomplishments from former Mayor Maryland Stephen; a commemorative, specialized Pewabic Pottery tile and description of her role with the state and local parent-teacher association from Barbara Blanchard; and statements of how much she taught him - especially during difficult times - from former Mayor Pro Tem Dale Goodcourage. Ms. Steadman spoke describing her commitment to the community, school district, Planning Commission and City Council. She also remarked how great all of the people are that she had the opportunity to work with and the top-notch services residents receive. She also spoke of how great the residents are and listed some of the many accolades the City received throughout the years. She wished the City Council best of successes.

Sen. Mallory McMorrow provided a legislative update. She discussed a new bill that is being introduced to end the Municipal Partnership Act, allowing multiple municipalities to work together toward a new transit plan. She discussed the Lead and Copper Rule that was implemented, including the new water testing system. She discussed what it means to test positive now for elevated lead levels. She stated Michigan's rule is the most aggressive in the country. She discussed underground infrastructure. Sen McMorrow discussed an op-ed she wrote that ran in "Crain's Detroit Business" about trying to push the State to becoming more collaborative on incentive programs. She lastly discussed a bipartisan bill package she is working on to expand the State's electric vehicle charging infrastructure. She said she hopes to have a hearing by the end of the year.

MOTION NO. M-90-19: Matter of appointing Mayor Pro Tem from November 2019 until November 2021.

Councilmember Baker moved to nominate Councilmember Dean and approve Motion No. M-90-19

Seconded by Councilmember Gavin

Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack

Nays: None

Motion Approved.

PUBLIC HEARING: Matter of holding a Public Hearing regarding the Community Development Block Grant Program Year 2020 application in the approximate amount of \$36,290 to fund eligible projects.

The public hearing opened at 8:06 p.m.

A representative from HAVEN described the organization's mission, programs, preventative initiatives, and more well-known shelter. Brochures from the organization were given to the City Clerk.

The public hearing closed at 8:10 p.m.

RESOLUTION R-34-19: Matter of adopting the Community Development Block Grant Program Application for the 2020-21 Fiscal Year.

Mayor Pro Tem Dean moved to approve Resolution No. R-34-19

Seconded by Councilmember Blanchard

Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack

Nays: None

Motion Approved.

ORDINANCE NO. O-16-19: Matter of considering First Reading of an ordinance to Add New Article XIV, Prohibition of Conversion Therapy, to Chapter 30, Businesses, of the City of Berkley Code of Ordinances and to Prescribe a Penalty for Violations.

Councilmember Gavin moved to approve Ordinance No. O-16-19

Seconded by Mayor Pro Tem Dean

Ayes: Price, Baker, Blanchard, Dean, Gavin, Hennen, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-91-19: Matter of approving Special Land Use Approval (SU-01-19), to KinderCare – Child Care Facility in Office District – who is proposing to occupy a portion of the first floor of the existing office building at 1695 Twelve Mile Rd, at the southwest corner of Twelve Mile and Brookline.

Councilmember Hennen moved to approve Motion No. M-91-19

Seconded by Councilmember Blanchard

Ayes: Baker, Blanchard, Dean, Gavin, Hennen, Price, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-92-19: Matter of approving the Macomb County Cooperative Bid Program purchase of two (2) 2020 Ford F250 pickup trucks and a 2020 Ford F550 truck chassis at a total cost of \$108,262 from Signature Ford of Owosso, Michigan. This expenditure will be charged to account numbers 101-441-985-000 and 592-536-985-000.

Councilmember Blanchard moved to approve Motion No. M-92-19

Seconded by Councilmember Baker

Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack

Nays: None

Motion Approved.

RESOLUTION NO. R-35-19: Matter of establishing a Master Plan Steering Committee.

Mayor Pro Tem Dean moved to approve Resolution No. R-35-19

Seconded by Councilmember Price

Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack

Nays: None

Motion Approved.

RESOLUTION NO. R-36-19: Matter of ratifying a one-year Tentative Labor Agreement between the City of Berkley and the Michigan Association of Public Employees (MAPE).

Councilmember Gavin moved to approve Resolution No. R-36-19

Seconded by Councilmember Baker

Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack

Nays: None
Motion Approved.

ORDINANCE NO. O-15-19: Matter of considering First Reading of an ordinance of the City Council of the City of Berkley, Michigan to Add New Article XV, Marihuana Businesses, to Chapter 30, Businesses, of the City of Berkley Code of Ordinances to Adopt Local Licensing Regulations and Operational Standards for Marihuana Businesses.

Mayor Pro Tem Dean moved to approve Ordinance No. O-15-19

Seconded by Councilmember Baker

Ayes: Price, Baker, Blanchard, Dean, Gavin, and Terbrack

Nays: Hennen

Motion Approved.

RESOLUTION NO. R-37-19: Matter of designating the time and place of City Council Meetings and its Rules and Order of Procedure.

Councilmember Blanchard moved to approve Resolution No. R-37-19

Seconded by Mayor Pro Tem Dean

Ayes: Price, Baker, Blanchard, Dean, Gavin, Hennen, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-93-19: Matter of approving the 2020 and 2021 City Council Regular Meeting calendar.

Councilmember Gavin moved to approve Motion No. M-93-19

Seconded by Mayor Pro Tem Dean

Ayes: Baker, Blanchard, Dean, Gavin, Hennen, Price, and Terbrack

Nays: None

Motion Approved.

SPECIAL MEETING: Matter of scheduling a Special City Council meeting to be held on Monday, November 25, 2019, at 7 p.m., to consider adopting a resolution to convene in closed session upon adjournment of the Special Meeting to consult with the City's attorneys regarding trial or settlement strategy in connection with pending litigation, specifically, 27799 Woodward, LLC v Berkley, Oakland County Circuit Court Case No. 2017-159355-CZ; Doot v Berkley, Oakland County Circuit Court Case No. 2017-157459-NZ; and Hanover Insurance Group v Berkley, Oakland County Circuit Court Case No. 2017-160247-NZ.

COMMUNICATIONS:

COUNCILMEMBER BLANCHARD: welcomed Councilmember Price. He discussed Thanksgiving Day safety, including that this is a key day for home-cooking fires. He stated unattended cooking is the top factor. Councilmember Blanchard had brochures available for the public on the topic and reviewed other key facts regarding Thanksgiving Day fires. He discussed a recent video he saw on a deep-fried turkey mishap.

COUNCILMEMBER PRICE: thanked everyone who reached out to her following the election and provided insight while catching her up to speed. She said that she looks forward to connecting with department heads as part of her orientation and connecting with residents in a variety of ways. Councilmember Price stated she did attend the most recent Citizens Advisory Committee meeting as chair and stated the Committee provided feedback to City staff on website design companies and volunteer organization portals. She thanked City of Berkley Community Engagement Officer Torri Mathes and Councilmember Blanchard for the completion of the revised Communications Master Plan. She stated the Communications Advisory Committee is accepting applications for her vacated seat.

COUNCILMEMBER BAKER: informed everyone the Technology Advisory Committee (TAC) would be meeting 6:30 p.m. November 20th. He stated that Committee is also reaching out to other groups to see

how they could be of technological help. He stated members will be focusing on some requests from the Historical Committee. Councilmember Baker stated the BHS Robotics team held a fundraiser at Hartfield Lanes last week and it was very successful with 36 lane sponsors. He discussed the many benefits of being on the Robotics Team and said Go Bears Team 247! Councilmember Baker said the Downtown Development Authority (DDA) met on November 13th. He stated the candidate chosen to fill the executive director position accepted a different position and therefore the Authority will resume its search. Councilmember Baker stated the Small Business Saturday shopping experience will take place Saturday, November 30th. He encourages everyone to keep it local and support Berkley businesses. Councilmember Baker congratulated the Historical Committee for all of its work on the Veterans Day Ceremony and display. He stated the City did a great job on the Ceremony. He stated the Berkley Historical Museum will be open during the Berkley Holiday Lights Parade on December 7th. The museum is located right next to the gazebo where Santa will be located. He stated the museum's regular hours are 10 a.m. to 1 p.m. Wednesdays and 2 to 4 p.m. Sundays. Councilmember Baker stated he wouldn't talk a lot about the transit work. He stated Berkley is a leader in the Woodward Avenue Corridor aspects of the regional transit discussions. He stated the City looks forward to partnering with its neighbors as the discussions continue. Councilmember Baker's quote by Abe Lemons was dedicated to Ms. Steadman. "The only problem with retirement is that you never get a day off." He thanked Ms. Steadman for her leadership and efforts in Berkley along with her many other endeavors.

MAYOR PRO TEM DEAN: stated that along with councilmembers Price and Hennen, she attended the Veterans Day Ceremony on November 11th at the gazebo. She said the Historical Committee did do an incredible job with the exhibit and the ceremony was truly moving. She thanked Councilmember Blanchard for his service. Mayor Pro Tem Dean reported on the Parks & Recreation Advisory Board including that Nov. 22nd is a Ninja-themed Parents Night Out, December 9th is the Senior Holiday Luncheon, and vacation camp will be held during the holidays. She said to call or visit Parks & Recreation for more information on any of its programs. On December 14th the Berkley Junior Women's Club will be hosting the Candy Cane Lane Craft Show at the Community Center. Mayor Pro Tem Dean stated she too will be hosting meet-and-greets as a way to continue the great conversations she had with residents while campaigning. She thanked the residents. Mayor Pro Tem Dean thanked Ms. Steadman for her mentorship and guidance. She stated Ms. Steadman's knowledge and guidance is such a gift.

COUNCILMEMBER HENNEN: stated that during its last meeting, the Zoning Board of Appeals (ZBA) denied a request to allow a home addition to be built 5 feet closer to the sidewalk than allowed by code. The ZBA will meet again 7 p.m. December 9th in Council Chambers. He stated the Board already has two cases slated for the agenda. Councilmember Hennen stated one member of the Tree Board, Kathy Karlis, spent about 100 hours entering data from a 1995 tree survey that was done of public trees in the City. He stated it turned out some useful information, including at the time the trees were 66 percent Maples. He stated this is one of the reasons Maples are not for sale as to not create a monoculture. He stated the Tree Board has been researching ways to conduct a new tree survey along with grant opportunities if the Council would like for members to move forward. Councilmember Hennen had a message for any resident who ordered a tree in the summer. He said the trees will be delivered and planted after they have gone dormant and the ground is frozen, most likely in December. He said residents will receive instruction and if they have further questions, they may contact the Department of Public Works. He stated the Tree Board does not have a December meeting and will meet again on January 13th. Councilmember Hennen said congratulations to all of the newly elected members of Council and thanked Ms. Steadman for all of her service, help and commitment to the community.

COUNCILMEMBER GAVIN: let everyone know the Planning Commission met and discussed KinderCare, which was before Council that night, as well as marijuana establishments in the City and the Master Plan Steering Committee. The next Planning Commission meeting will take place 7 p.m. November 26th in Council Chambers. The next Coolidge Task Force meeting will take place on December 5th in the Public Safety Conference Room. Councilmember Gavin stated the Environmental Advisory Committee held a successful electronics recycling day. He said they saw about 30 cars per hour and is still waiting on Southeastern Oakland County Resource Recovery Authority to find out the tonnage that was kept from going into landfills. He thanked all of the volunteers and participants. Councilmember

Gavin said he would like to echo his colleagues' comments by welcoming Councilmember Price and honoring Ms. Steadman. He thanked Ms. Steadman for her dedication and the work she so selflessly gave to the City.

CITY MANAGER BAUMGARTEN: mirrored the comments made by Council and the Mayor regarding Ms. Steadman. He said he would like to thank her as well. He stated back when he started as city manager and became a new resident of the City, she offered a warm welcome. He stated he will miss working with her. Mr. Baumgarten stated counts are taking place on Coolidge including recounts on traffic volumes and speeds. He stated the City does have a good amount of other data that he will be presenting to Council during the December 2nd City Council meeting. He stated he is still looking for a date to host a public, community meeting on the subject. Mr. Baumgarten drew everyone's attention to Facebook or YouTube where a new video featuring the city clerk is available. The Inside Berkley video focuses on the election and Census. He wished Council and members of the community a happy Thanksgiving Day from staff and administration.

CLERK MITCHELL: thanked everyone involved in the November 5th Election. She said there was a great turnout at near 30 percent. She thanked all of the voters, everyone at City Hall and all other City departments.

CITY ATTORNEY STARAN: stated that Sen. McMorrow gave a very thorough update earlier. He said one additional state legislative item he has been monitoring is proposed legislation introduced in the House this year that would amend the Michigan Zoning & Enabling Act to largely preempt and limit local authority to regulate short-term rentals of residential premises. He stated his understanding is that proposed legislation has stalled and is unlikely to be acted on this term. He stated it did seem earlier in the year that there would be another limitation on our local authority.

MAYOR TERBRACK: congratulated the Clerk on her first successful election with the City of Berkley. He reiterated his thanks to Ms. Steadman for her years of service. Mayor Terbrack said he is humbled to be re-elected and that at the completion of this term, he will have served the City of Berkley for 14 years. He said it is an honor to serve the residents of this community and to have another two years left to do that. He also welcomed Councilmember Price and let her know that she has three liaison committee commitments. He said she will be serving as liaison to the Library Board, Beautification Advisory Committee and the Citizens Advisory Committee. He stated winter arrived much earlier than anticipated and it is important to reiterate that we all need to be good neighbors and help one another clean the sidewalks. He stated we are a walkable community and the City ordinance does state there is 12 hours to clear the sidewalks. Mayor Terbrack lastly apologized for his facial hair and let everyone know it was his contribution to Movember. He let everyone know it is Men's Health Awareness Month. He reminds all men to get regular checkups for physical and mental maladies.

COUNCIL MEETING ADJOURNMENT:

Motion by Mayor Pro Tem Dean to adjourn the regular meeting at 9:58 p.m.

Seconded by Councilmember Hennen

Ayes: Dean, Gavin, Hennen, Steadman, Baker, Blanchard, and Terbrack.

Nays: None

Motion Approved.

**THE SPECIAL MEETING OF THE THIRTY-EIGHTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN
WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, NOVEMBER 25, 2019 BY MAYOR TERBRACK**

PRESENT: Steven W. Baker, Councilmember
Jack Blanchard, Councilmember
Bridget Dean, Mayor Pro Tem
Ross Gavin, Councilmember
Dennis S. Hennen, Councilmember
Natalie Price, Councilmember
Daniel J. Terbrack, Mayor

ALSO PRESENT: Matthew C. Baumgarten, City Manager
John D. Staran, City Attorney
Laurel McGiffert, Legal Counsel from Plunkett Cooney
Victoria Mitchell, City Clerk (left at 7:05 p.m.)

APPROVAL OF THE AGENDA

Moved by Councilmember Baker to approve the agenda.
Seconded by Councilmember Dean
Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack
Nays: None
Motion Approved.

CITIZENS COMMENTS: None

Regular Agenda

CLOSED SESSION: Consider whether to meet in closed session to consult with the City's attorneys regarding trial or settlement strategy in connection with specific pending litigation, namely, 27799 Woodward LLC v City of Berkley, Oakland County Circuit Court Case No. 2017-159355-CB is scheduled for MONDAY, NOVEMBER 25, 2019, at 7:00 P.M. at the City Hall, Council Chambers, 3338 Coolidge Highway, Berkley, MI 48072 (248) 658-3300.

Moved by Councilmember Gavin to move into closed session at 7:04 p.m.
Seconded by Councilmember Baker.
Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.

Called to order by Mayor Terbrack to reconvene into open session at 8:11 p.m.
Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack
Nays: None
Motion Approved.

ADJOURNMENT:

Moved by Councilmember Price to adjourn the Special Meeting at 8:12 p.m.
Seconded by Councilmember Blanchard.
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack
Nays: None
Motion Approved.

AN ORDINANCE

of the City Council of the City of Berkley, Michigan
to Add New Article XIV, Prohibition of Conversion Therapy, to Chapter 30, Businesses,
of the City of Berkley Code of Ordinances and to Prescribe a Penalty for Violations

THE CITY OF BERKLEY ORDAINS:

SECTION 1: New Article XIV shall be added to Chapter 30 of the Berkley City Code, as follows:

ARTICLE XIV. – PROHIBITION OF CONVERSION THERAPY

Sec. 30-800. – Preamble.

- (a) Being lesbian, gay, bisexual, transgender, or queer or questioning (LGBTQ) is not a disease, disorder, illness, deficiency, or shortcoming; and
- (b) There is a long history of discrimination against LGBTQ people in this country and state under which LGBTQ people have been subjected to violence and threats of violence, denied services of businesses, prevented from obtaining housing, forced from their homes, fired from their jobs, and denied job opportunities; and
- (c) Portrayals of LGBTQ adults and youth as mentally ill, abnormal, or disordered due to their sexual orientation or gender identity are untrue and dehumanizing; and
- (d) It is now generally accepted in the medical and mental health professions, and elsewhere, that LGBTQ status is not abnormal or disordered, but instead a normal and positive variation of humanity; and
- (e) Research studies and other available evidence show that conversion therapy or other treatment practices that attempt to change a young person's sexual orientation or gender identity pose a significant risk of serious emotional and physical harm to youth who undergo them, such as anxiety, depression, hopelessness, social withdrawal, illegal drug use, and suicide; and
- (f) LGBTQ youth in particular experience the harmful effects of stigma and discrimination when they are forced or coerced into undergoing "conversion," "reparative," or "reorientation" therapy because as minors they cannot effectively refuse or prevent conversion therapy wanted by parents or other authorities; and
- (g) The city has a compelling interest in protecting the physical and psychological well-being of LGBTQ minors by protecting them from conversion therapy in the city and limiting the risk of harm caused by exposure to conversion therapy.

Sec. 30-801. – Findings.

Medical, mental health, and child welfare experts have denounced conversion therapy as ineffective, unreliable, and unsafe for people, including LGBTQ minors, who undergo such treatment. Conversion therapies are based on the discredited premise that being LGBTQ is a mental disorder that can be cured or corrected. LGBTQ people should be free from ineffective conversion treatments that harm mental health and wellbeing. Due to the serious and dangerous harm caused to minors subjected to conversion therapy, the city finds and declares that a compelling interest exists in protecting the health and psychological well-being of minors by protecting them, including LGBTQ minors, from conversion therapy in the city and by limiting the risk of serious harm to LGBTQ minors caused by exposure to conversion therapy.

Sec. 30-802. – Purpose.

This article is an exercise of police power of the city for the public health, safety and welfare, and its provisions shall be liberally construed to accomplish that purpose. The purpose of this article is to protect the health and well-being of LGBTQ minors from being exposed to the harm caused by conversion therapy.

Sec. 30-803. – Definitions.

The following words and terms when used in this article shall have the following meanings:

City manager means the City Manager for the City of Berkley or his/her designee.

Conversation therapy means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender. Conversion therapy shall not include counseling that provides support and assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

Gender expression means a person's expression of gender identity through appearance and behavior, including how an individual believes that he or she is perceived by others.

Gender identity means a person's sense of oneself as a man, woman, or something else. When a person's gender identity or gender expression and sex assigned at birth are not congruent, the individual may identify along the transgender spectrum.

Licensed mental health professional means licensed mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social worker associates, psychiatrists, psychologists, psychotherapists, and certified chemical dependency professionals counselors, interns, or trainees.

Minor means any person under 18 years of age.

Sexual orientation means a component of identity that includes a person's sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this interaction. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities. Individuals may identify as lesbian, gay, heterosexual, bisexual, queer, pansexual, or asexual, among others.

Sec. 30-804. – Prohibited practices.

- (a) It shall be unlawful for a licensed mental health professional to provide conversion therapy to a minor, regardless of whether the licensed mental health professional receives compensation in exchange for such services or not.
- (b) Notwithstanding subsection (a), above, this Article does not prohibit licensed mental health providers from engaging in expressive speech or religious counseling with minors if the licensed mental health professional: (i) Is the parent, family member, or legal guardian of the minor; (ii) Is acting in a pastoral or religious capacity as a member of the clergy or as a religious counselor; or (iii) Does not purport to be operating pursuant to a professional license when so acting in a parental, familial, pastoral or religious capacity.

Sec. 30-805. – Powers and duties.

The city manager or the manager's designee is authorized to:

- (1) Perform all tasks and responsibilities necessary and proper to enforce and carry out the provisions and purposes of this article.
- (2) Receive, investigate, and make determinations on complaints of violations of this article.
- (3) Enforce such rules and regulations as deemed necessary and proper for the administration and enforcement of this article.

Sec. 30-806. – Enforcement.

- (a) Complaints. Complaints of violations may be filed with the city manager containing the following information and any additional information the city manager may prescribe by rules and regulations:
 - (1) The name and address of the licensed mental health professional responsible for the violation;
 - (2) The date and approximate time of the violation;
 - (3) The address or location where the violation was observed;
 - (4) A statement setting forth the facts supporting the charge of violation;

- (5) The name and address of the person reporting the violation, as well as the name and address of the involved minor; and
 - (6) The declaration that the information on the complaint of violation is accurate and truthful made under penalty of perjury.
- (b) Incomplete complaints. The city manager shall review each complaint for completeness. If the city manager deems any complaint filed under this section to be incomplete, the city manager shall accept such complaint on a conditional basis and shall notify the complaining party by mail, telephone, or email with respect to any deficiencies found. If the deficiencies are not corrected within the timeframe reasonably established by the city manager, the city manager will dismiss the complaint and not send any notice to the respondent provider.
- (c) Investigation and notices. If the city manager deems a complaint to be complete, the city manager shall investigate the violations alleged and issue:
 - (1) Advisory letter. After the city manager has completed the investigation, the city manager may, as the city manager deems appropriate, issue an advisory letter notifying the licensed mental health professional that provision of conversion therapy is prohibited and immediate compliance is required, and explaining that the violation is a municipal civil infraction subject to the penalties stated in this article; or
 - (2) Municipal Civil Infraction. If the city manager determines that the licensed mental health professional has violated this article, the city manager may authorize the issuance of a municipal civil infraction citation. For purposes of this article, the city manager is deemed to be an "authorized city official" for purposes of issuing municipal civil infraction citations under this article and in accordance with Berkley City Code Chapter 82, Article IX. A violation of this article shall be a municipal civil infraction punishable by a civil fine in an amount up to \$500.00 per offense.

Sec. 30-807. – Confidentiality; records.

Except in accordance with a judicial order or as otherwise provided by law, the city manager, and those working under the city manager's supervision, shall not divulge the name, address, or other identifying information of the person reporting the violation or the involved minor. Notwithstanding anything to the contrary, any authorized agent of the city has the right to access and the right to examine any pertinent records collected under this article. Complaints, completed forms, responses, and other documentation furnished to or prepared by the city shall be preserved in accordance with the city's record retention policy.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 4: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on First Reading at a Regular City Council Meeting on November 18, 2019.

Passed on Second Reading at a Regular City Council Meeting on December 2, 2019.

Daniel J. Terbrack
Mayor

Attest: _____
Victoria Mitchell
City Clerk

A RESOLUTION**Of the council of the City of Berkley, Michigan**
Recognizing Anthony Turner for achieving the rank of Eagle Scout

- WHEREAS,** Anthony Turner is a student at Berkley High School where he has excelled academically as a Honor Roll Student, a member of National Honor Society, and a member of the French National Honor Society, and
- WHEREAS,** Anthony Turner is also active in extracurricular activities where he has been a member of the Marching Band, lettered in Varsity Cross Country, elected President of the Cards Club, and served as a student member of the Berkley Tree Board, and
- WHEREAS,** Anthony Turner will be graduating from Berkley High School in June of 2020 and will attend university to gain his four year Fisheries Biologist Degree; and
- WHEREAS,** Anthony Turner has been active in scouting since he was six years old, having held the ranks of Tiger, Wolf, Bear, Webelo, Scout, Tenderfoot, Second Class, First Class, Star, and Life and has served as his Troop's Assistant Patrol Leader and Librarian; and
- WHEREAS,** Anthony Turner, to attain the rank of Eagle Scout, worked with the Royal Oak Nature Society at Cummingston Park to build three cedar benches at the entrance of the Park that serve as a gathering point for those preparing nature walks guided by members of the Nature Society; and
- WHEREAS,** On June 20, 2019 Anthony Turner passed his Eagle Board of Review. Over the course of his scouting career Anthony Turner has camped for forty-one nights, hiked seventy miles, biked one hundred and fifty miles and earned twenty-seven merit badges, including the Medal of Merit for Life Saving; and

Now, Therefore, the City of Berkley Resolves:

Section 1: *That the City Council does hereby recognize and congratulate*

Anthony Turner

For his achievement in attaining the rank of Eagle Scout and we express our pride in his accomplishments as a role model for others.

Introduced and passed at a Regular City Council Meeting on Monday, December 2, 2019

Daniel J. Terbrack, Mayor

Attest:

Victoria Mitchell, City Clerk

A RESOLUTION

of the Council of the City of Berkley, Michigan
accepting a donation from the Berkley Lions Club

WHEREAS, The City of Berkley, Parks & Recreation Department and Friends of the Berkley Library are accepting a donation from Berkley Lions Club; and

WHEREAS, The Berkley Lions Club has embodied the mission of the Lions clubs to empower volunteers to serve their communities, meet humanitarian needs, encourage peace and promote international understanding; and

WHEREAS, The Berkley Lions Club has volunteered and donated to several community events and organization for years, the current member organization wanted to donate significant funds to be used for the Berkley Public Library and Berkley Parks & Recreation; and

WHEREAS, The funds donated to the two departments will be used in a multitude of ways to benefit senior, child and adult programs and spaces; and

NOW, THEREFORE, THE CITY OF BERKLEY RESOLVES:

SECTION 1: That the City Council of the City of Berkley accepts the generous donations made by the Berkley Lions Club to the Friends of the Berkley Library and Berkley Parks & Recreation; and

SECTION 2: The Parks & Recreation Department and Friends of the Berkley Library plan to use the donations to enhance their departments; and

SECTION 3: That the City and Berkley is grateful for community organizations like the Lions Club who donate their time and funding to improve the lives of all residents and those who come to Berkley for programs and events.

Introduced and Passed at a Regular City Council Meeting on Monday, December 2, 2019.

Daniel J. Terbrack
Mayor

Attest:

Victoria Mitchell
City Clerk

November 15, 2019

To the Honorable Mayor and
Members of City Council
City of Berkley, Michigan

We have audited the financial statements of the City of Berkley, Michigan (the "City") as of and for the year ended June 30, 2019 and have issued our report thereon dated November 15, 2019. Professional standards require that we provide you with the following information related to our audit, which is divided into the following sections:

Section I - Internal Control Related Matters Identified in an Audit

Section II - Required Communications with Those Charged with Governance

Section III – Legislative and Informational Items

Section I includes any deficiencies we observed in the City's accounting principles or internal control that we believe are significant. Current auditing standards require us to formally communicate annually matters we note about the City's accounting policies and internal control.

Section II includes information that current auditing standards require independent auditors to communicate to those individuals charged with governance. We will report this information annually to the City Council.

Section III contains updated legislative and informational items that we believe will be of interest to you.

We would like to take this opportunity to thank the City's staff for the cooperation and courtesy extended to us during our audit. Their assistance and professionalism are invaluable.

This report is intended solely for the use of the City and management of the City and is not intended to be and should not be used by anyone other than these specified parties.

We welcome any questions you may have regarding the following communications, and we would be willing to discuss any of these or other questions that you might have at your convenience.

Very truly yours,

Plante & Moran, PLLC



Lisa Plonka



Keith Szymanski

Section I - Internal Control Related Matters Identified in an Audit

In planning and performing our audit of the financial statements of the City as of and for the year ended June 30, 2019, in accordance with auditing standards generally accepted in the United States of America, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses, and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis.

A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis.

We consider the following deficiencies in the City's internal control to be material weaknesses:

- As part of the audit engagement, we provided assistance in identifying certain adjustments to the accounting records. Prior to these adjustments, the financial statements would have been considered materially misstated. We were pleased to assist in this process given our expertise and the turnover in the finance department over the last year. We bring this to your attention since it meets the above definition of a matter to be communicated.
- The City did not update the nonresidential flow surcharge rates within the water and sewer billing system in accordance with board resolution R-20-18, which established the water and sewer billing rates for fiscal year 2018-2019. This resulted in overcharges totaling \$35,820. Future oversights of this nature could result in material misstatement to the financial statements. It is our understanding that the City intends to provide a credit to customers subject to this fee on an upcoming bill and that the City plans to implement additional controls to ensure the rates approved by council are what get charged to customers.

Section II - Required Communications with Those Charged with Governance

Our Responsibility Under U.S. Generally Accepted Auditing Standards

As stated in our engagement letter dated June 18, 2019, our responsibility, as described by professional standards, is to express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities. Our responsibility is to plan and perform the audit to obtain reasonable, but not absolute, assurance that the financial statements are free of material misstatement.

As part of our audit, we considered the internal control of the City. Such considerations were solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures specifically to identify such matters.

Planned Scope and Timing of the Audit

We performed the audit according to the planned scope and timing previously communicated to Mayor Terbrack in our discussion about planning matters on August 27, 2019 and in our letter about planning matters sent to the City Council that same day.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by the City are described in Note 1 to the financial statements.

The City implemented GASB Statement No. 88, *Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements*, during the year. As a result, all long-term debt disclosed in Note 6 to the financial statements is now classified as a direct borrowing or other debt.

We noted no transactions entered into by the City during the year for which there is a lack of authoritative guidance or consensus.

There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected.

Section II - Required Communications with Those Charged with Governance (Continued)

The most sensitive estimates affecting the financial statements are the net pension and other postemployment benefit liabilities. The net pension and other postemployment benefit liabilities recorded in the financial statements are based on actuarial calculations. The actuaries' calculations are based on numerous significant estimates, including future rate of return on investments, future healthcare costs, employee eligibility rates, life expectancies, and projected salary increases. We evaluated the key factors and assumptions used to develop these estimates in determining that they are reasonable in relation to the financial statements taken as a whole.

The disclosures in the financial statements are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Disagreements with Management

For the purpose of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Corrected and Uncorrected Misstatement

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements, including adjustments to long-term debt, capital assets, capital outlay expenditures, capital assets, prepaid assets, pension and OPEB liabilities, deferred inflows and deferred outflows related to pension and OPEB, unavailable tax revenue, and compensated absence liabilities.

Significant Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, business conditions affecting the City, and business plans and strategies that may affect the risks of material misstatement, with management each year prior to our retention as the City's auditors. However, these discussions occurred in the normal course of our professional relationship, and our responses were not a condition of our retention.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated November 15, 2019.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the City's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Section II - Required Communications with Those Charged with Governance (Continued)

Other Information in Documents Containing Audited Financial Statements

Our responsibility for other information in documents containing the City's financial statements and report does not extend beyond the financial statements. We do not have an obligation to determine whether or not such other information is properly stated. However, we read the introductory and statistical sections of the CAFR, and nothing came to our attention that caused us to believe that such information, or its manner of presentation, is materially inconsistent with the information or manner of its presentation appearing in the financial statements.

Section III - Legislative and Informational Items

Updated Uniform Chart of Accounts

In April 2017, the State released an updated Uniform Chart of Accounts. Originally, local units of government were expected to comply with the changes beginning with June 30, 2018 year ends. However, on June 4, 2018, the State extended the deadline for compliance to “sometime in 2019.” On September 18, 2019, the State issued a memo that sets an implementation date for fiscal years ending on September 20, 2021 and thereafter. In the coming months, the State has committed to releasing various tools to help local units with implementation. On October 31, 2019, FAQs were released, along with clarification on what accounts should be used when implementing GASB 84. A significant revision will be issued December 31, 2019, which will incorporate feedback that the Treasury has received. This revision will include significant changes to the expenditure accounts 700-999, which will now mirror the old approach that allowed for various numbers within certain ranges. Going forward, the Treasury will issue the following three documents for any future revisions: a revised chart of accounts, a marked up version of the chart showing the changes, and summary of the revisions report. In addition, the FAQ will be a live document that will be updated as questions arise. Local units can sign up for alerts at this link: https://public.govdelivery.com/accounts/MITREAS/subscriber/new?qsp=MITREAS_1.

Legacy Costs

Legacy costs and the challenge of funding them continue to be topics of discussion. GASB pronouncements of late have placed even more focus on the net long-term liability arising from these benefit promises by requiring governmental financial statements to now reflect the net pension and OPEB liabilities. For many governments, these net liabilities are significant. In addition, Public Act 202 of 2017 has brought further focus on the funding level of these plans.

The following are the funding levels per the funding valuations for the last two years for the City's two pension plans:

Valuation Year	MERS Pension	Public Safety Pension
2018	54%	76%
2017	57%	82%

The City was not required to obtain a recent funding valuation for the OPEB plan. The funding level as of the June 30, 2019 measurement date was 28 percent.

Maintaining or even improving the funded status of the plans is dependent upon a number of factors, including the City's contribution policies, its amortization policy for funding the unfunded actuarial accrued liability, its benefit levels, and the ability to make future changes to the plan.

That said, the challenge here is significant. We are happy to assist you in thinking through alternative ways to manage this liability.

Section III - Legislative and Informational Items (Continued)

Legacy Cost Reporting

Public Act 530 of 2016

On December 31, 2016, the governor signed Public Act 530 of 2016, which amends Public Act 314 of 1965, also known as Public Employee Retirement System Investment Act (PERSIA). This act was effective on March 29, 2017.

Under the prior act, communities were required to publish a summary annual report setting forth key information related to pension and retiree healthcare plans. The amendment requires that this summary annual report also be submitted to the Michigan Department of Treasury within 30 days of publication.

In addition, for any system (either pension or retiree health care) that is not funded at a level of at least 60 percent, the community must now post a report to its website indicating steps that are being undertaken to address the liability. In addition, this report must be submitted to the Department of Treasury within a reasonable time frame.

The legislation calls for the Department of Treasury to accumulate all of the reports and publish a summary of funding levels throughout the state.

Public Act 202 of 2017

On January 5, 2018, the Michigan Department of Treasury released initial reporting requirements under Public Act 202 of 2017 (the "Act"), which was a primary component of the Act. These reporting requirements apply to all local units of government that offer or provide defined benefit pension and/or defined benefit OPEB retirement benefits.

Local units began reporting funded ratios and contributions in accordance with these uniform assumptions, starting with their fiscal year 2019 if their audited financial statements were based on an actuarial valuation issued after December 31, 2018. If their fiscal year 2019 audited financial statements were based on an actuarial valuation issued prior to December 31, 2018, the local units will begin reporting on these uniform assumptions starting with their fiscal year 2020.

On October 21, 2019, the Michigan Department of Treasury released the updated uniform assumptions to be used for fiscal year 2020. Beginning with fiscal year 2020 reporting, all local governments must utilize the updated fiscal year 2020 uniform assumptions. Each year moving forward, the annual uniform assumptions will be updated and are expected to be utilized within Form 5572, where indicated, for that fiscal year. Local governments may utilize roll-forward procedures in nonvaluation years utilizing any updates to the uniform assumptions to calculate the data.

This means that the local unit may potentially need three calculations: a funding valuation (if the local unit chooses to have different assumptions for funding purposes), a valuation that complies with GAAP to be used for financial statement reporting, and a calculation that complies with the State's new uniform assumptions.

The releases by the Department of Treasury includes the letter titled "Public Act 202: Selection of the Uniform Assumptions" and "Public Act 202: Selection of the Uniform Assumptions for Fiscal Year 2020," Numbered Letter 2018-1, Form 5572, detailed instructions for completion of Form 5572, and a listing of frequently asked questions. All documents can be located at http://www.michigan.gov/treasury/0,4679,7-121-1751_51556_84499---,00.html.

Section III - Legislative and Informational Items (Continued)

Form 5572 is due annually for both pension and OPEB plans provided by an employer no later than six months after the end of your fiscal year.

In addition to submitting this new form to the Department of Treasury, a local unit must also post this information on its website, or in a public place if the local unit does not have a website. The governing body of a local unit will also need to receive a copy of this form, in accordance with the Act, but the Act does not require approval by the governing body before submission to the Treasury.

Public Act 202 defines that a local unit of government is in “underfunded status” if any of the following apply:

1. OPEB - Total plan assets are less than 40 percent of total plan liabilities according to the most recent annual report, and, for primary units of government*, the annual required contribution for all of the retirement health systems of the local unit is greater than 12 percent of the local unit of government’s governmental funds operations revenue.
2. Retirement Pension Plans - Total plan assets are less than 60 percent of plan total liabilities according to the most recent annual report, and, for primary units of government, the annual required contribution for all of the retirement pension systems of the local unit is greater than 10 percent of the local unit of government’s governmental funds operations revenue.

*Primary units of government are cities, villages, townships, and counties.

If, after submission of Form 5572, the Treasury determines your community to have underfunded status, you will have the opportunity to file a “waiver” under Section 6 of the Act. The waiver needs to provide a plan for how the underfunding is being addressed. This waiver will then be submitted to the Treasury.

In the event that a local unit has underfunded plans and does not submit a waiver or the waiver is not approved, the Treasury will perform an internal review. The local unit will also need to submit a corrective action plan to the newly created Municipal Stability Board (under Section 7 of the Act). The local unit will be responsible for creating the corrective action plan.

For governments with OPEB plans, Section 4(l)(a)(i)(ii) of Public Act 202 of 2017 requires the local unit to pay retiree insurance premiums for the year, as well as the normal costs for the new employees hired after June 30, 2018. The actuary will likely need to calculate this number in order for governments to comply. In addition, if your community must essentially prefund this additional cost, those communities without a qualifying OPEB trust will need to consider where these contributions will go.

Questions should be directed via email to the Treasury offices at LocalRetirementReporting@michigan.gov or by visiting their website at www.Michigan.gov/LocalRetirementReporting.

Section III - Legislative and Informational Items (Continued)

Revenue Sharing

The fiscal year 2020 governor's budget recommendation includes \$1.4 billion for revenue sharing broken down as follows:

Description	Final 2019 Budget	Final 2020 Budget
Constitutionally required payments	\$835.3 M	\$886.5 M
CVTRS	243.0 M	262.8 M
CVTRS - One-time payments	5.8 M	0 M
County revenue sharing	177.2 M	184.8 M
County incentive program	43.3 M	43.3 M
County one-time payments	1.0 M	0 M
Fiscally distressed community grants	2.5 M	5.0 M
Supplemental CVTRS	6.2 M	0 M
Total	\$1,314.3 M	\$1,382.4 M

For the third year in a row, local units will experience an increase in 2020 based on the governor's budget recommendation, as the constitutional payment budget has been increased by \$68.1 million over the 2019 budget act appropriated amount. The FY 2020 budget also includes the "City, Village, and Township Revenue Sharing" (CVTRS) appropriation that was established in FY 2015, and that number increased to \$262.8 million. Each community's overall increase will vary, as each has a different mix of constitutional and CVTRS.

In order to receive the CVTRS payments in FY 2020, qualified local units will once again need to comply with the same best practices as they did last year, as follows:

- A citizen's guide to local finances with disclosure of unfunded liabilities
- Performance dashboard
- Debt service report
- Two-year budget projection

The amount budgeted for distressed CVTRS has been increased from \$2.5 million in 2019 to \$5 million in 2020. The governor's recommendation has removed \$6.2 million for "supplemental CVTRS" payments in FY 2020.

Public Act 57 Consolidation of Tax Increment Authorities

Public Act 57 of 2018, otherwise known as The Recodified Tax Increment Financing Act (PA 57) went into effect on January 1, 2019. PA 57 consolidated the ability to create and operate tax increment authorities (other than brownfield redevelopment authorities) into a single statute. All previously created authorities will remain; however, the following acts were repealed, and the corresponding authorities will now operate under PA 57:

- Downtown Development Authority Act (PA 197 of 1975)
- Tax Increment Finance Authority Act (PA 450 of 1980)
- Local Development Finance Authority Act (PA 281 of 1986)
- Nonprofit Street Railway Act (PA 35 of 1867)
- Corridor Improvement Authority Act (PA 280 of 2005)
- Water Resource Improvement Tax Increment Finance Authority Act (PA 94 of 2008)
- Neighborhood Improvement Authority Act (PA 61 of 2007)

Section III - Legislative and Informational Items (Continued)

Note that the above acts were repealed and recodified into PA 57. The acts listed below were repealed; however, they were not recodified:

- Historical Neighborhood Tax Increment Finance Authority Act (PA 530 of 2004)
- Private Investment Infrastructure Funding Act (PA 250 of 2010)

Any obligation, or refunding of an obligation, that was issued by an authority or by the municipality that created the authority, under a statute that was repealed by Public Act 57, will continue in effect under its original terms under the corresponding part of PA 57.

Transparency and Reporting Requirements

1. By April 1, 2019, each authority was required to submit its currently adopted development plan or tax increment finance plan to the Department of Treasury.
2. Annually, after January 1, 2019, each authority must submit a comprehensive annual report to the Treasury, the governing bodies of its related municipality, and each taxing unit levying taxes that are captured by the authority. This report must contain detailed information on the capture and use of tax increment revenue and is due concurrent with the authority's audit report due date (typically six months after the fiscal year end).
3. Within 180 days after the authority's fiscal year end, subsequent to January 1, 2019, the municipality that created the authority must give public access (either on its website or at a physical location within the municipality) to the following documents:
 - Minutes of all authority board meetings
 - Current authority staff contact information
 - Authority's approved budgets and annual audits
 - Currently adopted development and/or tax increment financing plans
 - Current contracts with descriptions
 - Annual synopsis of the authority's activity, which includes the following:
 - For any tax increment revenue not expended within five years of receipt, include the reasoning for accumulating the funds, their expected uses, and a time frame of when they will be expended.
 - For any tax increment revenue not expended within 10 years of receipt, include the amount of those funds, along with a written explanation for the reason the funds have not been expended.
 - For the immediately preceding fiscal year, a list of the authority's accomplishments, projects, investments, events, and promotional campaigns
4. The authority must hold, at a minimum, two informational meetings each year and give a 14-day advance notice to the public and to the governing body of each taxing unit. These meetings may be held in conjunction with other public meetings of the authority or municipality.

Any authority not in compliance with the above reporting requirements will receive a notice from the Department of Treasury. If the authority is still in noncompliance status after 60 days from receipt of the notice, the authority will be prohibited from capturing tax increment revenue in excess of the amounts needed to pay bonded indebtedness and other obligations of the authority during this period of noncompliance.

Section III - Legislative and Informational Items (Continued)

Additional Information

To view Public Act 57 of 2018, regarding the consolidation of tax increment authorities and additional reporting requirements, visit the State of Michigan's website: [http://www.legislature.mi.gov/\(S\(nhboq4doz1h4bwbqb0gcxqim\)\)/mileg.aspx?page=GetObject&objectname=mcl-Act-57-of-2018](http://www.legislature.mi.gov/(S(nhboq4doz1h4bwbqb0gcxqim))/mileg.aspx?page=GetObject&objectname=mcl-Act-57-of-2018).

Cybersecurity

It is every organization's nightmare - discovering your network and member data have been compromised. Whether sensitive taxpayer/employee records are disclosed, credit and debit card information is stolen, IT systems are out of service, or any other cybersecurity incident, the threat is all too real. In the current online environment, cybersecurity should be of critical concern for all governmental entities. The increasing use of mobile devices and mobile platforms (tablets, iPads, etc.) amplifies and creates new vulnerabilities. Hackers are becoming more sophisticated and better at targeting their attacks. In a large percentage of cases, it takes victims weeks to discover an intrusion and, often, the tip-off comes from an external, rather than internal, source.

However you crunch the numbers, the cost of a breach is painfully high. According to the 2015 Cost of Data Breach Study by the Ponemon Institute, the average cost of a data breach increased 23 percent since 2013 to \$3.8 million. Compounding this is the significant damage done to an organization's reputation and brand when a breach occurs. This damage often creates mistrust in the minds of donors, members, employees, and partners. If there is a silver lining, it is that nearly all breaches are due to factors within an organization's control - weak infrastructure, poor end-user judgment, third-party vendor vulnerabilities, and technology advances, such as mobile and cloud use. Therefore, with proper strategies, organizations that successfully control these factors can minimize the potential for breaches.

The first step in protecting the City is to assume it is only a matter of time until the City is attacked. The second step is to ensure you have good controls in place to quickly detect a breach and ideally prevent falling prey to it. During this process, we recommend you consider performing the following activities:

- Conduct an IT risk assessment to determine where the weak spots are.
- Secure and test your network devices to ensure controls are operating as designed.
- Test and strengthen user awareness to prevent inadvertent sharing of sensitive information.
- Conduct due diligence with vendor-supported services to ensure key vendors have adequate controls to protect the City.

Plante & Moran, PLLC has experts in cybersecurity who have worked with a variety of governmental organizations to ensure their information technology and cyber systems are properly designed to minimize risk. We would be happy to set up a consultation to discuss the City's system and related risks.

Section III - Legislative and Informational Items (Continued)

Upcoming Accounting Standards Requiring Preparation

GASB Statement No. 84 - Fiduciary Activities

This new pronouncement will be effective for reporting periods beginning after December 15, 2018. This statement provides criteria for state and local governments to use to identify whether an activity is fiduciary and should be reported as a fiduciary fund type in its financial statements. In addition, once identified as a fiduciary activity, GASB 84 also provides specific reporting requirements.

This statement has the potential to significantly impact what governments report currently as a fiduciary activity. Upon adoption, we anticipate that some governments' fiduciary activities will need to move to governmental funds, while other activities (such as defined contribution plans) that never before were considered fiduciary will now be reported as such. It is also possible that certain pension and OPEB fiduciary funds will no longer be reported in a local unit's financial statements.

Given the potential to have a major impact on many governments, not only to its external financial statements, but also to its accounting system requirements and budget document, we encourage you to start analyzing the impact of this standard now. The first step to implementation is identifying the type of activities that should be analyzed and then running those activities through the lens of this standard.

GASB Statement No. 87 - Leases

This new accounting pronouncement will be effective for reporting periods beginning after December 15, 2019. This statement requires recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources.

We recommend beginning to accumulate information related to all significant lease agreements now in order to more efficiently implement this new standard once it becomes effective.

Plante & Moran, PLLC will be providing trainings and other resources to our clients over the coming months in order to help prepare for the implementation of all these new standards. In the interim, please reach out to your engagement team for assistance in getting started.

November 15, 2019

To Mr. Mark Pollock
City of Berkley, Michigan
3338 Coolidge Highway
Berkley, MI 48072

Dear Mr. Pollock:

Enclosed are your annual financial reports and letters of required communication for the year ended June 30, 2019.

We will electronically forward your financial statements and letters of required communication to the State of Michigan, Department of Treasury.

The State of Michigan requires auditors to prepare the auditing procedures report, which will be submitted with the audited financial statements to the State at the time we electronically file the report. Please be aware that, to the extent any exceptions have been reported, the State of Michigan may request that you file a corrective action plan.

Other filing requirements:

Michigan Department of Treasury:

F-65 - The Michigan Department of Treasury requires Form F-65 to be completed and submitted within six months after the close of your government's fiscal year. Local units are required to submit the F-65 using the electronic online format on the State of Michigan website. The State is no longer accepting Excel or hard copy submissions. Upon submission you may receive error messages that will need to be addressed. Local units will now file the F-65, audit reports, and the qualifying statements in the same location using only one login (user ID and password). The form can be filed at the following link: <https://treas-secure.state.mi.us/LAFDeform/TL41W71.aspx>.

Qualifying Statement - Communities are required to submit a filing once a year with the Michigan Department of Treasury. This filing will serve as a preapproval for future debt issues. The current filing is due within six months of the government's year end and is good for one year thereafter. The annual qualifying statement must be submitted electronically using the Department of Treasury's website.

Tax Increment Financing Authorities Subject to PA 57 of 2018 (Such as TIFA, DDA, LDFA, CIA, NIA, and WRA) - Under PA 57 of 2018, there are new TIF reporting requirements. More information about both the public reporting requirements under Section 910 and the treasury reporting requirements under Section 911, which are due 180 days after the end of the authority's fiscal year (starting with FY2019), are available on the Michigan Department of Treasury's website here: https://www.michigan.gov/treasury/0,4679,7-121-1751_2194_90562---,00.html.

Legacy Cost Reporting - In accordance with PA 314 of 1965, as amended, an investment fiduciary of a public employee retirement system is required to publish a summary annual report. The summary annual report requires, among other items, system's assets and liabilities and changes in net plan assets on a plan-year basis and system's funded ratio of valuation assets to actuarial accrued liabilities on a plan-year basis. PA 530 of 2016 amended this act to require the summary annual report to include the actuarial assumed rate of healthcare inflation. Also, this summary annual report is required to be sent to the Michigan Department of Treasury within 30 days of publication. The Michigan Department of Treasury will post an executive summary of each summary annual report sent to them.

In addition, any public employee retirement system not at least 60 percent funded shall post an information report on the system's website outlining steps, if any, the system may be taking to decrease the system's unfunded actuarial accrued liability.

In addition, PA 202 of 2017 has additional reporting requirements. Information regarding filing can be located at http://www.michigan.gov/treasury/0,4679,7-121-1751_51556_84499---,00.html. The due date for completion of Form 5572 is no later the six months after the end of your fiscal year. In addition to submitting this new form to the Department of Treasury, local units must also post this information on their website. The governing body of a local unit will also need to receive a copy of this form, in accordance with the act, but the act does not require approval by the governing body before submission to the Treasury.

Michigan Department of Transportation (MDOT):

The government's Act 51 Highway report is due 120 days after year end. The Act 51 report can be electronically submitted through the MDOT ADARS (Act 51 Distribution and Reporting System) site. Instructions can be found at: http://www.michigan.gov/documents/mdot/mdot_act51_street_financial_report_guide_359394_7.pdf.

The Michigan Department of Transportation has granted an automatic 60-day extension to cities and villages that are required to file the Act 51 report. The updated policy will extend the Act 51 report deadline to be due within six months of your fiscal year end date, which will align with the due date for the audited financial statements. This extension does not apply to counties. Counties are required to submit the Act 51 report to MDOT by May 1, every year, regardless of your fiscal year end.

Securities and Exchange Commission:

Please be advised that, because you have issued bonds after July 1, 1995, you may be required to submit information, including your annual financial statements, to the Municipal Securities Rulemaking Board (MSRB). Submissions must be made electronically in PDF format to the Electronic Municipal Market Access (EMMA) system (www.emma.msrb.org). In addition, you are obligated to provide continuing disclosure documents to a State Information Depository (SID) if required by applicable state law or by an outstanding continuing disclosure agreement in effect prior to July 1, 2009. The SID for Michigan is:

Municipal Advisory Council of Michigan
Buhl Building - 535 Griswold, Suite 1850
Detroit, MI 48226-3699

To Mr. Mark Pollock
City of Berkley, Michigan

November 15, 2019

In addition to the report submission requirement, it is also likely that your bond documents (either the bond awarding resolution or the bond official statement) may have committed you to make additional nonfinancial disclosures (such as population, taxable valuation, millage rates, and other demographic data). As a result, there may be additional information required to be sent to the above repositories (which will also have a due date - often 180 days after year end). Please contact your bond financial advisors to determine if these disclosure requirements apply to you. If you, your bond counsel, or financial advisors need assistance in supplying the appropriate information, please contact us.

Thank you for the opportunity to serve as your auditors. Please contact us if you have any questions regarding these filing requirements.

Very truly yours,

Plante & Moran, PLLC

December 2, 2019 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember _____ to authorize Hubbell, Roth & Clark (HRC) for engineering services related to the 2020 Sidewalk Replacement and Assessment Program at a total cost not to exceed \$27,400.


Ayes:

Nays:

Justification:

1. The maintenance and upkeep of the sidewalk within the public right-of-way is the responsibility of each abutting property owner.
2. The City of Berkley last initiated a Sidewalk Replacement and Assessment Program approximately 15 years ago.
3. HRC previously completed a sidewalk condition survey in one of the five sections of the City (Section 5-Friday's). Among other data gathered, priority sidewalk areas were identified in this survey.
4. The City has allocated \$250,000 in construction funds for sidewalks in FY 2019-2020. These startup funds will be utilized to pay the awarded contractor as the City is responsible to front all costs.
5. Based on the funding currently available, the City and HRC are proposing to address the *immediate* priority sidewalk deficiencies in Section 5. *Immediate* sidewalk areas are those existing walkways with 2" or more of vertical displacement.
6. Property owners with *immediate* repair areas will be notified in writing and given the opportunity to resolve the issue on their own. Otherwise the sidewalk repairs will be made as part of the 2020 Sidewalk Replacement Program and the property owner will be assessed per bid prices received from the awarded contractor.
7. HRC will assist the City with resident outreach, including mailings. Hubbell, Roth & Clark will also compile and finalize sidewalks quantities ahead of preparing detailed bid documents and specifications. HRC will review public bid results and make a contractor recommendation to the City.
8. Resident outreach will begin in winter 2019 with public letting planned for February 2020. Sidewalk construction is expected to start in the summer of 2020.
9. Funding has been allocated in the following account: 470-938-821-000 (Engineering-Sidewalks).

Transmittal Memo

To: Matthew Baumgarten, City Manager (via email)
From: Derrick Schueller, DPW Director 
Cc: Mark Pollock, Finance Director (via email)
Date: November 25, 2019
Subject: 2020 Sidewalk Replacement & Assessment Program
Approval of Engineering Services with Hubbell, Roth and Clark (HRC)

As you know, the maintenance and upkeep of the sidewalk within the public right-of-way is the responsibility of each abutting property owner. In the past the City has undertaken sidewalk replacement programs in order to address deficiencies along the public walkways. The last City assessment program for sidewalks was approximately 15 years ago.

HRC has already completed a field survey of the sidewalks in one of the five City sections. Data from Section 5 (Fridays section) was compiled and priority sidewalk repair areas have been identified.

The City is planning to initiate the next sidewalk replacement program in 2020. Prior to actual construction, HRC will need to assist the City with several tasks. This includes residential outreach, including mailings, and the preparation of bid documents and specifications. Please see attached detailed proposal from HRC for professional services at an amount not-to-exceed \$27,400. Note funding was previously allocated in the Sidewalk Fund, account number 470-938-821-000 (Engineering).

To go along with engineering, the City has also assigned \$250,000 in construction funds for the initial year of the program. Based on this funding limit, HRC is proposing to address the *immediate* priority sidewalk work in Section 5. *Immediate* sidewalk repair areas are defined by HRC as those walkways with 2" or more of vertical displacement.

Resident outreach and mailings will begin this winter with public letting expected in February 2020. Contractor award is targeted for March 2020 with sidewalk construction anticipated in the summer of 2020.

Feel free to contact our office with any questions or concerns.

November 7, 2019

City of Berkley
3238 Bacon Avenue
Berkley, MI 48072-1100

Attn: Mr. Matthew Baumgarten, City Manager
Mr. Derrick Schueller, Director of Public Works
Ms. Erin Schlutow, Community Development Director

Re: Proposal for Professional Engineering Services
2020 Sidewalk Replacement Program

HRC Job No. 20190847.86

Dear Ladies and Gentlemen:

Thank you for the opportunity to allow Hubbell, Roth & Clark, Inc. (HRC) to submit this proposal for professional engineering services for the 2020 Sidewalk Replacement Program. The scope includes replacement of both private sidewalk flags (whether they are the result of tree root disturbance or not) and City-owned flags within the section of the City described herein. It is our understanding that the City's desire is to embark on first-year's project in Spring/Summer, 2020 consisting of the replacement of the *immediate* (2" or more in vertical displacement) concrete sidewalk flags within the City's "Friday" section, bordered by Greenfield and Coolidge to the west and east, respectively, and 11 Mile Road and Catalpa to the south and north, respectively (see attached map). Thus, it would be advantageous to prepare the bid documents and make them available for bidders by early February, 2020 (when the best unit prices are typically received because contractors are scheduling work for the upcoming construction season). If there are any *major* category priorities adjacent to the *immediate* priorities, the scope will include to address those at the same time. It is also our understanding that the City has a construction budget of \$250,000 for this initial project and will therefore proceed based on a "worst-first" approach, and as funds allow. Engineering costs are not included in this budget and will be paid separately. Finally, we recognize that the City's stance is that any City-owned tree (within the public right-of-way) that impacts a private sidewalk flag will be the responsibility of the individual property owner to replace, including root removal, and not the City's.

HRC has performed numerous similar sidewalk replacement Programs for metro Detroit communities including Bloomfield Township, the Villages of Lake Orion and Grosse Pointe Shores, and the Cities of Rochester, Southfield, South Lyon, Farmington, as well as the City of Berkley.

Tasks Completed to Date:

At the request of the City, our office previously conducted a walking sidewalk inspection survey and condition evaluation of the "Friday" (southwest) section of the City, including the section's City-owned facilities/parks. An iPad was utilized to record the field data, including GPS coordinates, addresses, and site photos summarized in inspection reports for each data point. Each data point was assigned a priority ranking as determined by conditions observed in the field, pedestrian utilization, and potential safety concerns posed by current and potential future deterioration (e.g., immediate, major, medium, minor, and no priority (areas not included in the survey)). Safety was the most important factor in the priority ranking. Repair methods were proposed for each priority ranking assigned to each data point. See the table below for a breakdown of the repair types assumed per priority category. Construction costs were estimated based on these repair method percentages.

Delhi Township 2101 Aurelius Rd. Suite 2A Holt, MI 48842 517-694-7760	Detroit 535 Griswold St. Buhl Building, Ste 1650 Detroit, MI 48226 313-965-3330	Grand Rapids 801 Broadway NW Suite 215 Grand Rapids, MI 49504 616-454-4286	Howell 105 W. Grand River Howell, MI 48843 517-552-9199	Jackson 401 S. Mechanic St. Suite B Jackson, MI 49201 517-292-1295	Kalamazoo 834 King Highway Suite 107 Kalamazoo, MI 49001 269-665-2005	Lansing 215 S. Washington SQ Suite D Lansing, MI 48933 517-292-1488
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Priority Ranking	Percentage (%) Of Repair Method		
	<i>Full Replacement</i>	<i>Mud Jacking/Grinding</i>	<i>Preventative Maintenance</i>
Immediate	100%	0%	0%
Major	30%	70%	0%
Medium	75%	25%	0%
Minor	0%	0%	100%

The area of sidewalk for each repair method was then determined and used to develop a preliminary estimate of cost for the "Friday" section based on similar remediation work in nearby communities. Our sidewalk inspection survey and condition evaluation of the "Friday" section resulted in the conclusion that approximately 294 sidewalk flags, or 7,173 sft, exhibit at least 2" in vertical displacement, and meet the 'immediate' priority ranking for repairs. Of this quantity, 247 flags, or 6,326 sft, are privately-owned sidewalks while 47 flags, or 847 sft are City-owned sidewalks. We estimated the associated total construction cost of replacement to be approximately **\$260,000**, including contingencies. As stated earlier, engineering costs are not included in this budget. Of this amount, approximately **\$225,000** is for the privately-owned sidewalks while **\$35,000** is for the City-owned sidewalks. With this, the next step was to determine who was responsible for the repairs and what the procedure would be for how they would be repaired and how they would be funded.

Procedure for Repair of Sidewalks

Based on the discussions at our meeting in late summer, it is our understanding that the City's intent will be to first provide the property owner (whom have *immediate* sidewalk flag(s) concerns) the opportunity to resolve the sidewalk issue on their own. Each property owner will also be given the opportunity to be placed on a list that the City will utilize for bidding out the sidewalk repairs to local contractors in hopes of receiving price quotes in accordance with economies of scale.

Under Article IV - Sidewalks, of the City's Code of Ordinances, Sections 103-163 through 106-165 depict the procedure for which property owners are to follow when the City determines that a sidewalk is unsafe for use. The property owner is first notified by the City and has 60 days after receipt of notice to make arrangements and repair the sidewalk(s). If the owner fails to repair the sidewalk within this time frame, the Director of Public Works or his designee shall repair the sidewalk(s) and invoice the property owner for the full amount of the repair and if not paid within another 60 days, the cost would be collected as a single lot assessment. It must also be noted that the Ordinance states that the City Manager or his designee may dispense with notice and time limit if, in their opinion, the unsafe sidewalk condition requires immediate repair.

Once the 60-day period is over, if a property owner did not have their sidewalk flag(s) replaced, the City will automatically add the work to the proposed City Sidewalk Replacement Program. HRC will assist the City with quantifying the total amount of sidewalk replacements at that time and prepare a bid package for prospective bidders.

After discussion with the City DPW, it is our understanding that the City's intent is to initiate the 60-day notice period in early December and terminate it in early February. Within this time frame, the bid documents will be prepared, and the project put out for public bids with the assumption that all the immediate areas would be included in the contract (i.e., no residents resolve the sidewalk issues on their own). The bid documents would require that the contractor awarded the project will need to hold their unit prices for 120 days until such time the final quantity of sidewalk replacements is known. At the end of the initial 60-day notification period, the City will allow each resident another 60 days to have the repairs completed if they informed the City within the initial period that they intend to do so on their own. This additional period would be granted since the concrete work could not be done until weather conditions allow in the spring. Once it is determined how many, if any, of the residents will not be taking part in the City's project, the Proposal quantities would be modified.

Scope of Design Engineering Services:

1. HRC will assist the City in the preparation of a notice to those property owners exhibiting 'immediate' sidewalk issues. HRC will also assist the City with a resident outreach program to inform your residents of project details, scheduling, and project related updates and will handle all field/design inquiries, resident concerns, phone calls, and subsequent notices, as required. We envision this to be a combination of website updates, email distribution list (if available), flyers for City Hall, and info for newsletters and local publication. Public hearings are not included in HRC's scope of services.
2. HRC will provide design documents, including typical sections, details, and project quantities.
3. HRC will provide the specifications, assist in the bidding process, tabulate the bids, make recommendation of award and prepare the Contract Documents for execution by the selected Contractor.

Schedule/Duration:

<u>Completion Date</u>	<u>Work Task</u>
December 02, 2019	Council Consideration of HRC Scope of Services Proposal – Council Meeting
December, 2019	Preparation of Property Owner Notice
December, 2019 - February, 2020	Resident Outreach Program
January, 2020	Finalize/Quantify List of Sidewalk Replacements
February, 2020	Completion of Design and Bid Documents
February, 2020	Project Documents Available to Bidders
February, 2020	Project Bid Letting
March, 2020	Award of Project by Council
April, 2020	Pre-Construction Meeting
May, 2020	Start of Construction
August, 2020	Completion of Construction (weather permitting)

Design Engineering Fees:

Based on the City's construction budget of \$250,000, the estimated engineering costs are as follows. The assumption is that the City would award sidewalk replacement up to this amount which may entail having to reduce the scope as previously specified (\$225,000 for the privately-owned sidewalks and \$35,000 for the City-owned sidewalks).

Task 1 – Preparation of Property Owner Notice and Resident Outreach Program	\$ 8,841.52
Task 2 – Finalize/Quantify List of Sidewalk Replacements	\$ 3,996.20
Task 3 – Completion of Design and Bid Documents	\$ 7,556.24
Task 4 – Bidding Assistance	\$ 1,804.96
Task 5 – Project Management and Meetings	<u>\$ 5,199.12</u>

Total Not-to-Exceed Fee **\$ 27,398.04**

Fees will be invoiced monthly and shall be based on our cost times a 2.9 multiplier in accordance with our current agreement with the City.

Clarifications:

1. Construction Engineering services are not included in this proposal and will be outlined after the bid opening. HRC will provide an additional proposal to include: construction engineering, construction

administration, survey layout, materials testing, progress meetings and full-time construction observation, as required.

2. Public hearings are not included in HRC's scope of services.
3. The design and contract inclusion of ADA-compliant sidewalk ramps will not be included in the scope of the project.
4. Survey of the City's remaining four (4) sections will not be conducted at this time nor is the cost included in this Proposal.

Summary:

The total fee for undertaking the work as described in this proposal will be provided on a time and materials basis with a **not-to-exceed budget of \$27,398.04**. A cost breakdown of these costs is included in the attached sheet. Please note this total project budget does not include irrigation system improvements, tree wells or vegetation design.

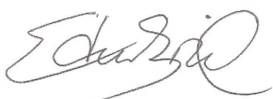
We are prepared and staffed to commence work on the proposed project immediately upon your authorization to proceed. If you have any questions regarding this Proposal, or require any additional information, please do not hesitate to call. If this proposal is deemed acceptable to the City, please sign and return one copy to this office and retain one for your files. Thank you for the opportunity to serve the City on this project.

Very truly yours,

HUBBELL, ROTH & CLARK, INC.



Roland Alix, P.E.
Vice President



Edward Zmich
Manager

pc: HRC; File
Attached: "Friday" Map, HRC Proposed Budget

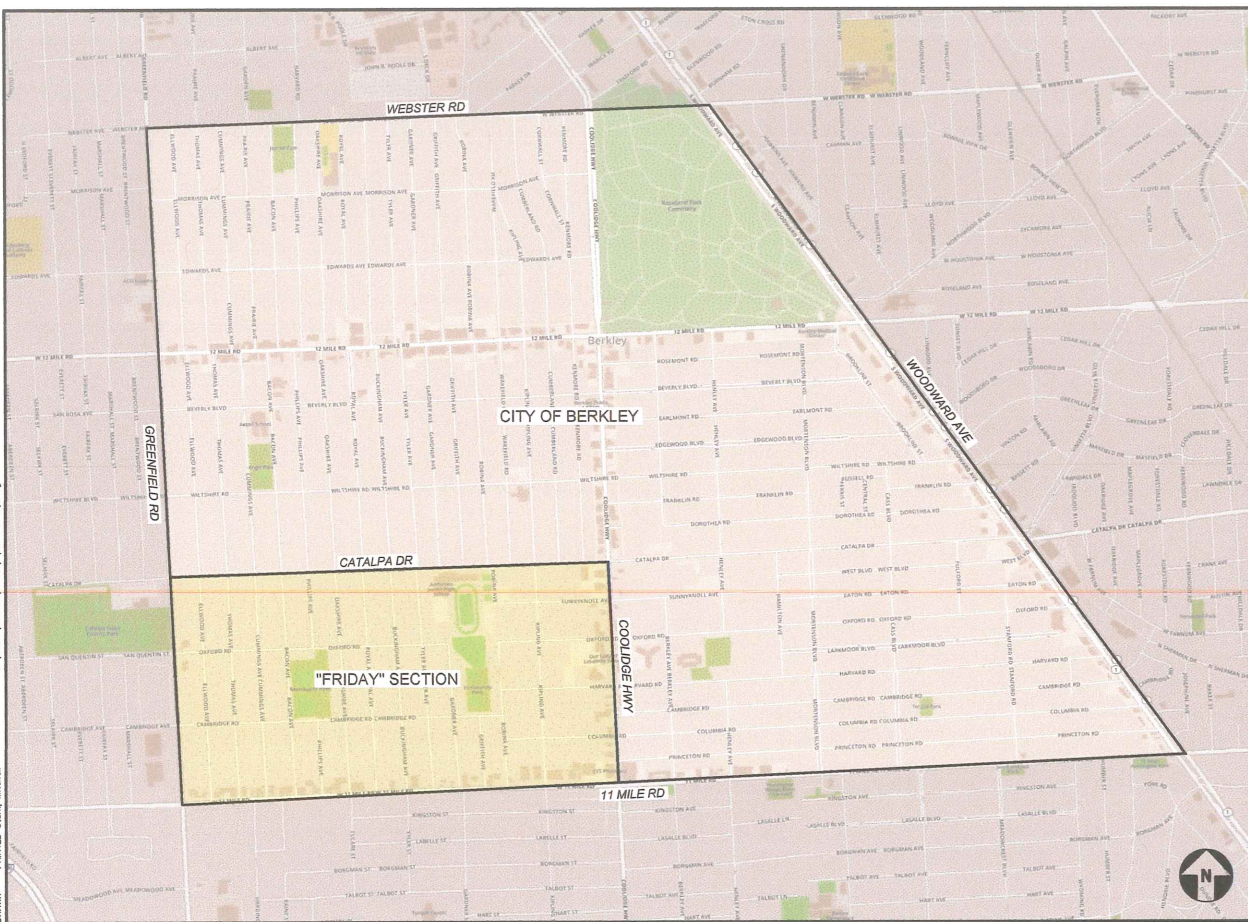
Accepted By: CITY OF BERKLEY

Signature: _____

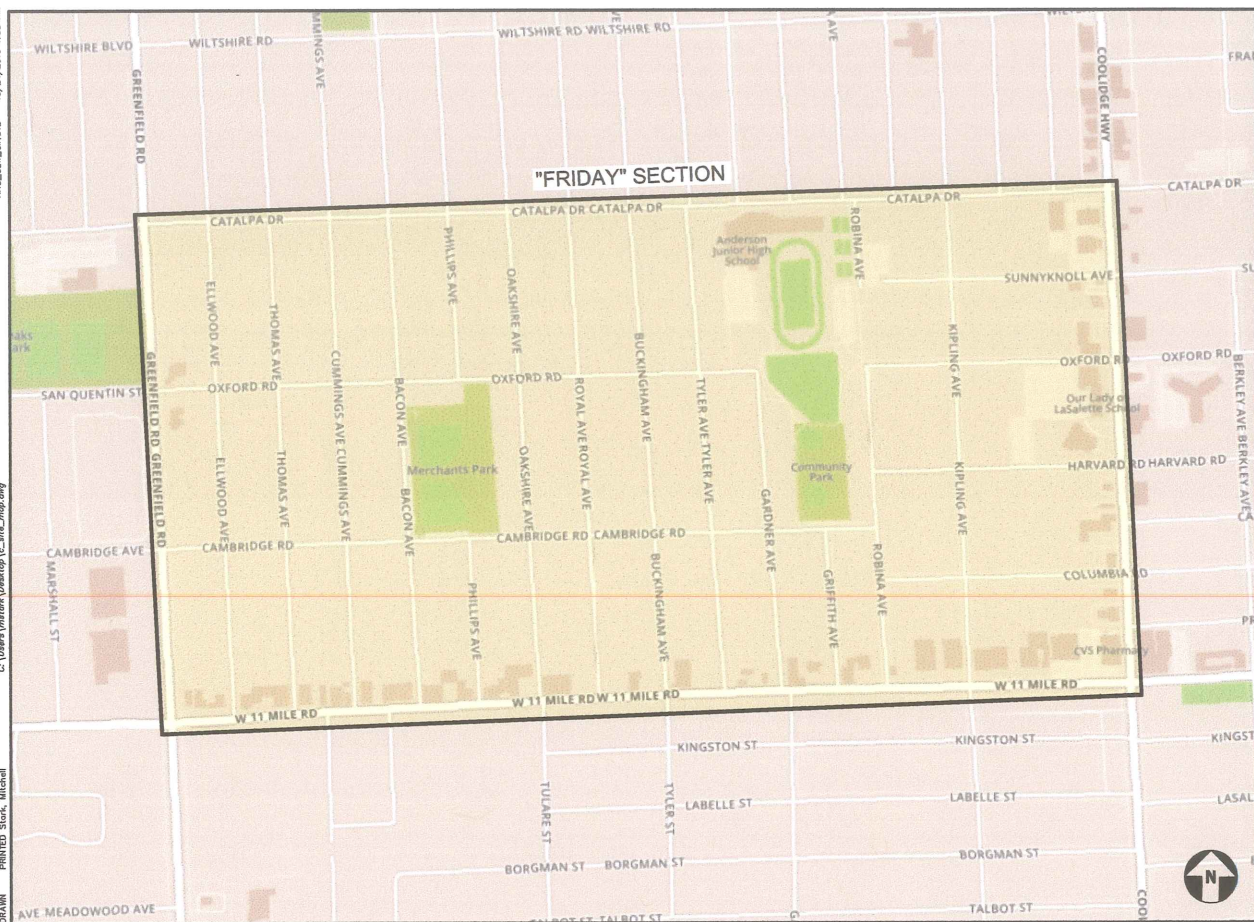
Written Name: _____

Title: _____

Dated: _____



PREPARED FOR:  BERKLEY	
PREPARED BY:  HUBBELL, ROTH & CLARK, INC. CONSULTING ENGINEERS SINCE 1918 555 HULET DRIVE BLOOMFIELD HILLS, MICH. P.O. BOX 824 48305-0824	
KEY MAP  11 MILE RD	
PROJECT NAME: CITY OF BERKLEY 2020 SIDEWALK REPLACEMENT PROGRAM	
SHEET NAME: LOCATION MAP	
HRC JOB NO. 20190847.66	FIGURE NO. C-1
DATE 10-24-19	



PREPARED FOR:

BE

BERKLEY

PREPARED BY:



HRC
HUBBELL, ROTH & CLARK, INC.
CONSULTING ENGINEERS SINCE 1915

P.O. BOX 82
48005-0082

555 HULET DRIVE
BLOOMFIELD HILLS, MICH.

KEY MAP



PROJECT NAME:

CITY OF BERKLEY

2020 SIDEWALK
REPLACEMENT
PROGRAM

SHEET NAME:

"FRIDAY" SECTION

HRC JOB NO.
20190847.86

DATE
10-24-19

FIGURE NO.

C-2

PROJECT FEE/MANHOURLY TABLE

JOB NUMBER: **20190847**
 PROJECT NAME: **2020 Sidewalk Replacement Program**
 PRINCIPAL: **Roland Alix**
 PROJECT MANAGER: **Eddie Zmich**
 DATE: **October 25, 2019**

		HRC STAFF POSITION																	
		PRINCIPAL		MANAGER		GRADUATE ENGINEER		ADMINISTRATIVE SUPPORT		DESIGNER		GRADUATE ENGINEER - GIS		TOTAL					
		RATE	\$	145.00	RATE	\$	146.16	RATE	\$	92.80	RATE	\$	66.12	RATE	\$	127.31	RATE	\$	84.10
TASK		HRS	FEE	HRS	FEE	HRS	FEE	HRS	FEE	HRS	FEE	HRS	FEE	HRS	FEE	HRS	FEE	HRS	FEE
1	Preparation of Property Owner Notice and Resident Outreach Program																		
	Management of Property Owner Database			6	\$876.96	12	\$1,113.60	12	\$793.44					12	\$1,009.20	42	\$3,793.20		
	Property Owner Notice Mailings			4	\$584.64	6	\$556.80	16	\$1,057.92					8	\$672.80	34	\$2,872.16		
	Resident Outreach			8	\$1,169.28	8	\$742.40	4	\$264.48							20	\$2,176.16		
2	Finalize/Quantify List of Sidewalk Replacements																		
	GIS Data Review			4	\$584.64	2	\$185.60							12	\$1,009.20	18	\$1,779.44		
	Quantity List Preparation			2	\$292.32	8	\$742.40					4	\$509.24	8	\$672.80	22	\$2,216.76		
3	Completion of Design and Bid Documents																		
	Design Drawings			4	\$584.64	16	\$1,484.80					12	\$1,527.72			32	\$3,597.16		
	Specifications			6	\$876.96	4	\$371.20									10	\$1,248.16		
	Finalize Docs & Prepare Bid Package	2	\$290.00	8	\$1,169.28	8	\$742.40					4	\$509.24			22	\$2,710.92		
4	Bidding Assistance																		
	Pre-Bid Meeting			2	\$292.32	2	\$185.60									4	\$477.92		
	Questions During Bidding			2	\$292.32	4	\$371.20									6	\$663.52		
	Bid Tab & Recommendations			2	\$292.32	4	\$371.20									6	\$663.52		
5	Project Management and Meetings																		
	Administration	4	\$580.00	8	\$1,169.28											12	\$1,749.28		
	Engineering Award Council Meeting			3	\$438.48											3	\$438.48		
	60% & 90% Design Review Mtgs	2	\$290.00	4	\$584.64	4	\$371.20									10	\$1,245.84		
	60% & 90% Cost Estimates			4	\$584.64	8	\$742.40									12	\$1,327.04		
	Construction Award Council Meeting			3	\$438.48											3	\$438.48		
TOTAL NOT-TO-EXCEED FEE																256	\$27,398.04		

December 2, 2019 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember _____ to authorize the execution of an agreement between City of Berkley and Atex Builders, Inc. for the sale of 3339 Cummings Ave. and authorize the City Manager to sign on behalf of the City of Berkley.

Ayes:

Nays:



Office of the
City Manager

Memo

To: Mayor Terbrack and City Council
From: Matthew Baumgarten, City Manager
Date: December 2, 2019
Subject: Purchase of 3339 Cummings


Mr. Mayor and Members of City Council,

As you may recall the property at 3339 Cummings has been zoned as Parking (P1) since the mid-eighties. There is an existing home on the property which predates the change in zoning. The property was purchased with the intent of being redeveloped as residential. The owner has applied twice to rezone the property from Parking to residential and was denied in both instances.

I have discussed the prospect of purchasing all or a portion of this land with the owner as part of an overall strategy to improve the off-street parking availability in western portion of the Twelve Mile business district. 3339 Cummings, when added to parcels 25-18-103-006 and 25-18-103-029 could be used to create a parking lot to support several local businesses and lower the instances of on-street parking on Thomas and Cummings Avenues.

As such I negotiated a sale price with the property owner, Atex Builders Inc., for the property minus any monies owed to the City (taxes, utilities, etc.) at the time of the sale. Per the City Ordinance, the City Council has to approve a purchase of this amount. Funds for this purchase will come from General Fund as this was not a budgeted expense.

I have added this map with the surrounding uses below. The subject parcel is outlined in red:

	Twelve Mile Business District Gatekeepers / Church / Teachable Moments	
Future Green Lantern Pizzeria Residential Homes		Zelman's Treasures Residential Homes
	Residential Homes	

11/26/2019

**OFFER TO PURCHASE/
PURCHASE AGREEMENT**

The City of Berkley ("Purchaser"), a Michigan municipal corporation, of 3338 Coolidge Highway, Berkley, Michigan 48072, agrees to purchase from Atex Builders LLC, a Michigan limited liability company ("Seller"), of 3339 Cummings Avenue, Berkley, Michigan 48072-1191, the following real property (the "Property"), upon the following terms and conditions:

1. Property Description. The real property consisting of a 0.18 acre parcel located in the City of Berkley, Oakland County, Michigan, Parcel I.D. No. 04-25-18-103-030, commonly known as 3339 Cummings Avenue, Berkley, MI 48072 and more particularly described as:

T1N, R11E, SEC 18 BERKLEY SCHOOL PARK S 20 FT OF LOT 113, ALSO
ALL OF LOT 114

together with all appurtenances, drains and sewers, and oil, gas, and mineral rights, and subject to existing building and use restrictions, rights-of-way and easements of record, and zoning ordinances.

2. Purchase Price. Purchaser shall have the right to purchase the Property for One Hundred-Sixty Thousand Dollars (\$160,000.00), payable by cash, cashier's or certified check or electronic transfer of funds at closing in consideration and exchange for a warranty deed from Seller conveying good and marketable title to Purchaser.

3. Earnest Money Deposit. Purchaser shall, upon Seller's acceptance of the Offer to Purchase, deposit with the title insurance company One Thousand Dollars (\$1,000.00) to be held in escrow as an earnest money deposit that shall be applied against the purchase price at closing.

4. Evidence of Title. As evidence of title, Seller shall furnish to Purchaser, as soon as possible after Purchaser exercises the option, a commitment for title insurance issued by a title insurance company acceptable to Purchaser, wherein the title insurance company agrees to issue a standard ALTA owner's title insurance policy in an amount not less than the purchase price, insuring title to be in good and marketable condition free and clear of any liens, encumbrances,

encroachments, leases or rights of parties in possession of any kind or nature to the date of closing, subject only to existing building and use restrictions, rights-of-way and easements of record, and zoning ordinances. Upon closing, Seller shall pay for and order a title insurance policy consistent with the commitment, which Seller shall have updated to the date of closing.

5. Survey. Purchaser may, at its own expense, order and prepare a survey of the Property's boundaries.

6. Defective Title. If, based on Purchaser's review of the title insurance commitment and survey, Purchaser is dissatisfied with the title or survey, Seller shall have thirty (30) days from the date Purchaser notifies Seller, in writing, of the particular defects claimed, either to: (1) remedy the defects, or (2) obtain a commitment for title insurance insuring title, in a manner satisfactory to Purchaser, against the defects claimed. If Seller remedies the defects or, alternatively, obtains the necessary title insurance commitment within the time specified, Purchaser shall complete the sale in accordance with the provisions stated herein. If Seller does not remedy the defects within the time specified, Purchaser may waive the defects and close subject to them, although Purchaser may set-off against the purchase price the balance due on any mortgage, land contract, lien or other encumbrance on the Property. Alternatively, if Purchaser chooses to not so waive, or if, in Purchaser's sole discretion, the survey indicates the Property is not suitable for Purchaser's intended use or improvements, Purchaser may demand and be entitled to a refund of the entire earnest money deposit, and this agreement shall be considered nullified.

7. Condition of the Property. Seller shall not, through act or omission, cause or permit waste to occur or jeopardize or lessen Seller's interest in the Property from the date of this agreement through the date of closing.

8. Seller's Representation Regarding Environmental Condition of Property. Seller represents and warrants to Purchaser that to the best of Seller's knowledge, after due diligence and appropriate inquiry, and except as may be revealed in any environmental study to be performed by Purchasers: (1) No toxic or hazardous substances have been generated, treated,

stored, deposited or disposed of on the Property except in compliance with all applicable federal, state and local laws or regulations, and (2) Neither Seller nor prior owners, occupants or users have caused or permitted the release of any toxic or hazardous substances on or from the Property. Seller's representations and warranty shall survive the closing.

9. Inspection Period. Purchaser shall have the right within sixty (60) days after the Effective Date (such period being referred to herein as the "Inspection Period"), at Purchaser's own expense, to conduct such tests, studies and examinations of the Property as Purchaser deems advisable, to investigate applicable laws, ordinances and codes, and to do all other things as Purchaser deems necessary, in its sole discretion, to satisfy itself that the Property is suitable for Purchaser's intended use; provided, however, that Purchaser shall not conduct any soil borings or other invasive testing of the Property without the prior written consent of Seller (collectively, the "Inspections"). Seller agrees that Purchaser, its officers, employees, agents, invitees and contractors ("Purchaser's Representatives") shall have reasonable access to the Property to conduct the Inspections, all at Purchaser's sole cost, risk, and expense. Purchaser shall indemnify, defend and hold Seller harmless from any claim, loss, cost, expense, liability, damage, loss or injury, including reasonable attorneys' fees, arising out of or related to any Inspections. In the event any such Inspections disturb any portion of the Property the Purchaser shall, at its sole cost and expense, promptly restore the Property to its prior condition. These obligations shall survive the Closing or the termination of this Offer. If Purchaser is not satisfied with the results of its Inspections, Purchaser shall have the right to terminate this Offer upon notice to Seller thereof within the Inspection Period, whereupon this Offer shall terminate, the earnest money deposit shall be returned to the Purchaser, and subject to any obligations which expressly survive termination of this Offer, neither party shall have any further obligation to the other. If Purchaser fails to submit written notification to Seller of its election to terminate this Offer within the Inspection Period, Purchaser shall be deemed to be satisfied with the condition of the Property and the other matters relating thereto shall be deemed satisfied or otherwise waived by Purchaser.

10. Taxes and Assessments. Seller shall pay all taxes, special assessments and utility and capital charges which have become a lien on the Property prior. Current taxes, if any, shall be prorated and adjusted to the date of closing on a "due date" basis.

11. Transfer Tax and Recording Fees. Seller shall be responsible for any transfer tax due on the Seller's conveyance of the Property to Purchaser, as well as any fees for the recording of documents other than the warranty deed to Purchaser, the fee for which shall be paid by Purchaser.

12. Preparation of Closing Documents. Seller shall be responsible for preparing, executing and delivering, in a form satisfactory to Purchaser and the title insurance company, all closing documents, including the deed, closing statement, transferor's certificate of non-foreign status as required under the Internal Revenue Code, and any other documents necessary for closing.

13. Closing Time and Location. Unless this agreement is otherwise terminated due to default or Purchaser's dissatisfaction with the title to the Property, pursuant to paragraph 6 of this agreement, closing shall take place within fourteen (14) days after all conditions precedent to closing, as set forth herein, have been met to Purchaser's satisfaction. Closing shall take place at a location mutually acceptable to Seller and Purchaser.

14. Broker's Commission. Seller shall be solely responsible for payment of any real estate broker's commission.

15. Default. In the event of default by Purchaser, Seller may, as Seller's sole remedy, declare forfeiture and retain the earnest money deposit as liquidated damages in full termination of this agreement. In the event of default by Seller, Purchaser may, at Purchaser's option, elect to specifically enforce the terms hereof, or demand, and be entitled to, an immediate refund of Purchaser's entire earnest money deposit in full termination of this Agreement.

16. Land Division. Seller intends to convey to Purchaser the right to make any and all land divisions allowable under the Michigan Land Division Act.


17. City Council Approval. Seller acknowledges that this Offer to Purchase and Purchase Agreement is contingent on and subject to formal approval by the Berkley City Council before it will be binding on the City.

18. Entire Agreement. This instrument constitutes the entire agreement between Purchaser and Seller and shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors and assigns.

SELLER:

ATEX BUILDERS LLC,
a Michigan limited liability company

Date: 11/26/, 2019

By: 
Grant Dryovage, Sole Member

PURCHASER:

CITY OF BERKLEY

Date: _____, 2019

By: _____
Matthew Baumgarten, City Manager

A RESOLUTION
of the Council of the City of Berkley, Michigan
declaring the City of Berkley's participation in
the WaterTowns® initiative

WHEREAS, WaterTowns® is a water-oriented community development initiative designed to assist towns and cities within the Clinton River Watershed to leverage the assets of the Clinton River and Lake St. Clair and to protect and improve water quality; and

WHEREAS, The WaterTowns® initiative is managed by the Clinton River Watershed Council, an organization dedicated to protecting, enhancing, and celebrating the Clinton River, its watershed, and Lake St. Clair; and

WHEREAS, The City of Berkley recognizes the recreational and economic potential of its water resources; and

WHEREAS, The City of Berkley desires to incorporate environmental best management practices as an integral part in community planning and development; and

WHEREAS, The City of Berkley is located within the Clinton River Watershed, and is a member of the Clinton River Watershed Council; and

WHEREAS, There is no financial commitment required to participate in the WaterTowns® initiative; and

WHEREAS, The City of Berkley desires to collaborate with the Clinton River Watershed Council to develop and implement a local WaterTowns® strategy; and

NOW, THEREFORE, THE CITY OF BERKLEY RESOLVES:

That the City of Berkley Mayor and Council declare the City of Berkley a participant in the WaterTowns® initiative.

Introduced and passed at a regular City Council meeting on Monday, December 2, 2019.

Daniel J. Terbrack, Mayor

Attest:

Victoria E. Mitchell, City Clerk



Office of the
City Manager

Memo

To: Mayor Terbrack and City Council

From: Matthew Baumgarten, City Manager

Date: December 2, 2019

Subject: Resolution Joining WaterTowns™ Initiative from the Clinton River Watershed Council

Mr. Mayor and Members of City Council,

The resolution for your consideration this evening would be to formally join the Watertown initiative Clinton River Watershed Council. This is the only requirement to join this initiative. Representatives from Clinton River Watershed Council have been meeting with City staff as well as Mark Richardson (Environmental Advisory Committee Chair), and Council Member Ross Gavin (EAC Liaison) to discuss the potential benefits of the joining their WaterTowns™ initiative which focuses on the incorporation of green infrastructure into our storm water management strategy for public property.

In short, Berkley falls within the Clinton River watershed and the goals of the CRWC align with Berkley's own effort to remain a regional leader in addressing storm water issues. The resolution reflects the City of Berkley's support for the Clinton River and its tributaries as valuable community assets and the City of Berkley's commitment to collaborate with residents, businesses, neighboring cities, non-profit organizations, and other stakeholders to advance watershed management, the blue economy, tourism, and green infrastructure.

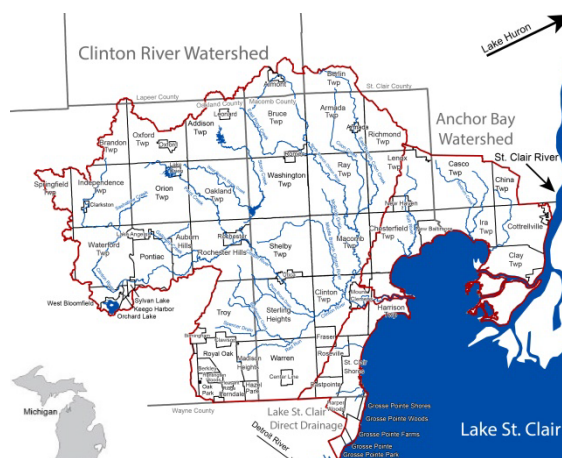
Background Provided by CRWC:

Through the WaterTowns™ initiative, the Clinton River Watershed Council (CRWC) provides community development support to municipal governments with the goal of leveraging the "placemaking" potential of the Clinton River and Lake St. Clair. CRWC has worked for many years with partners such as SEMCOG, Macomb County, Oakland County, and the Lake St. Clair Tourism Initiative to advance watershed management, the blue economy, tourism, and green infrastructure. WaterTowns™ unifies these efforts under one umbrella program.

Through a partnership with the Lawrence Tech Great Lakes Stormwater Management Institute, CRWC has studied the Green Infrastructure potential in nine WaterTowns™ communities. Each community studied was presented with an a la carte menu of GI choices with graphic renderings and cost estimates associated with each idea. The purpose for breaking down each design was so that the community could sort out which costs would be achievable over a period of time and to budget appropriately for installation and match dollars for potential grants when they become available.

Thank you for your Consideration on this,

-Matt Baumgarten



AN ORDINANCE

**of the City Council of the City of Berkley, Michigan
to Add New Article XV, Marihuana Businesses, to Chapter 30, Businesses,
of the City of Berkley Code of Ordinances to Adopt Local Licensing Regulations and
Operational Standards for Marihuana Businesses.**

THE CITY OF BERKLEY ORDAINS:

SECTION 1: New Article XV shall be added to Chapter 30 of the Berkley City Code, as follows:

ARTICLE XV. – MARIHUANA BUSINESSES

Sec. 30-900. – Purpose.

The purpose of this Article is to exercise the City of Berkley’s regulatory authority to locally license and regulate Marihuana Businesses, including Marihuana Retail Establishments, Marihuana Provisioning Centers, Marihuana Microbusinesses, Marihuana Grower Facilities, Marihuana Safety Compliance Facilities, Marihuana Secure Transporters, Marihuana Processor Facilities, Designated Consumption Establishments, Marihuana Event Organizers, and Temporary Marihuana Events to the extent permissible under state and federal laws and regulations, and to protect and promote the public health, safety, and welfare of the City and its residents.

Sec. 30-901. – Definitions.

Except as expressly defined differently, words and phrases in this Article shall have the same meanings ascribed to them as in the Michigan Medical Marihuana Act, Michigan Medical Marihuana Facilities Licensing Act, Marihuana Tracking Act, Michigan Regulation and Taxation of Marihuana Act, Michigan Zoning Enabling Act, and the administrative rules and regulations promulgated by the State of Michigan and the Michigan Department of Licensing and Regulatory Affairs, as amended.

- (1) “Applicant” means an individual, person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity or other business entity who applies for a license to operate a marihuana business in the City.
- (2) “City” means the City of Berkley, Michigan.
- (3) “Cultivate” means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.
- (4) “Co-Locate” or “Co-Location” means any combination of growers, processors, and/or marihuana retail establishments that may operate as separate marihuana businesses at the same physical location.

- (5) “Industrial hemp” means a plant of the genus cannabis and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis, or per volume or weight of marihuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus cannabis regardless of moisture content.
- (6) “LARA” means the Michigan Department of Licensing and Regulatory Affairs.
- (7) “Marihuana” means all parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. Marihuana does not include: (i) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination; (ii) industrial hemp; or (iii) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.
- (8) “Marihuana accessories” means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.
- (9) “Marihuana concentrate” means the resin extracted from any part of the plant of the genus cannabis.
- (10) “Marihuana Business” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana provisioning center, marihuana secure transporter, or any other type of marihuana establishment or facility licensed by LARA.
- (11) “Marihuana grower” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (12) “Marihuana-infused Product” means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused Product shall not be considered a food for purpose of the Food Law, MCL 289.1101 to 289.8111.
- (13) “Marihuana Tracking Act” or “MTA” means Public Act 282 of 2016, MCL 333.27901, et seq., as amended and all future amendments.

- (14) “Marihuana Microbusiness” means a person licensed to cultivate not more than 150 marihuana plants, process and package marihuana, and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a Marihuana safety compliance facility, but not to other marihuana establishments.
- (15) “Marihuana processor” means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
- (16) “Marihuana Provisioning Center” means a licensee that is a commercial entity located in the city that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients’ registered primary caregivers.
- (17) “Marihuana retailer” means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.
- (18) “Marihuana safety compliance facility” means a person licensed to test marihuana, including certification for potency and the presence of contaminants.
- (19) “Marihuana secure transporter” means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
- (20) “Michigan Medical Marihuana Act”, or “MMMA” means the initiated law of 2008, MCL 333.26421, et seq., as amended and all future amendments.
- (21) “Michigan Medical Marihuana Facilities Licensing Act”, or “MMFLA” means Public Act 281 of 2016, MCL 333.26421, et seq., as amended and all future amendments.
- (22) “Michigan Regulation and Taxation of Marihuana Act” or “MRTMA” means, the initiated law of 2018, MCL 333.27951, et. seq., as amended and all future amendments.
- (23) “Person” means an individual, partnership, corporation, limited liability company, trust, or other legal entity.
- (24) “Primary Caregiver” or “Registered Primary Caregiver” means a person who is at least 21 years old and who has agreed to assist with a registered qualifying patient’s medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in Section 9a of Chapter X of the Code of Criminal Procedure, 1927 PA 175, MCL 770.9a.

- (25) “Process” or “Processing” means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.
- (26) “Qualifying Patient” or “Registered Qualifying Patient” means a person who has been diagnosed by a physician as having a debilitating medical condition and who has a valid registry identification card issues by LARA or an equivalent approval lawfully issued under the laws of another State or other entity of the United States which identifies the person as a registered qualifying patient.
- (27) “School” means and includes buildings and grounds used for school purposes to provide instruction to children and youth in grades pre-kindergarten through 12 by a public, private, denominational, or parochial school.
- (28) “Stakeholder” means, with respect to a trust, the trustee and beneficiaries; with respect to a limited liability company, all members and managers; with respect to a corporation, whether profit or non-profit, all stockholders, directors, corporate officers or persons with equivalent titles; and with respect to a partnership or limited liability partnership, all partners and investors.
- (29) “State” means the State of Michigan.
- (30) “State license” means a license issued by LARA that allows a person to operate a marihuana business.

Sec. 30-902. – Operation without city license prohibited.

- (a) A Marihuana Business in the City must be licensed by the State and by the City pursuant to this Article. No person shall operate a Marihuana Business in the City without first obtaining a license to do so from the City. A Marihuana Business operating without a City license under this Article or without a State license is declared to be a public nuisance.

~~(b) — The duration of each City license for a proposed location shall be one (1) year.~~

Sec. 30-903. – License application.

- (a) Applications for a City license shall be submitted to the City’s Community Development Director on an application form to be provided by the City accompanied by a fee in the amount of \$5,000.00 per each license sought. The applicant shall submit one printed and one electronic copy of the completed application and supporting information to the Community Development Department. For a co-located facility, an applicant may apply for multiple licenses using one application that explicitly details the operation of the co-located facility. Each license sought will require an additional application fee of \$5,000.00 per license.
- (b) A complete application shall be made under oath and shall contain all of the following:

- (1) The applicants' and any stakeholders' names, dates of birth, mailing address, email address, and phone numbers, including emergency contact information, and a copy of a government-issued photo identification card of the applicant and stakeholders.
- (2) For a privately held corporation, all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- (3) For a partnership or limited liability partnership, all partners and their spouses.
- (4) For a limited partnership and a limited liability limited partnership, all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.
- (5) For a limited liability company, all members and managers, not including a member holding direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.
- (6) If the applicant is not an individual, the articles of incorporation or organization, Internal Revenue Service SS-4 EIN confirmation letter, and the operating agreement or bylaws of the applicant, if a limited liability company or corporation.
- (7) The name and address of the proposed Marihuana Business and any additional contact information deemed necessary by the Community Development Director.
- (8) For the applicant and every stakeholder affirmation that each is at least 21 years of age.
- (9) Written consent authorizing the City's Public Safety Department to perform a criminal background check to ascertain whether the applicant and stakeholders have any convictions involving dishonesty, theft, fraud, or controlled substances.
- (10) The name, date of birth, address, copy of photo identification, and email address for any operator or employee if other than the applicant.
- (11) An affirmation whether the applicant or operator has ever had a business license revoked or suspended, and if revoked or suspended, then the reason for such revocation or suspension.
- (12) For the applicant or for each stakeholder a resume that includes any prior experience with a Marihuana business.

- (13) With respect to Marihuana Retail establishments, a description of any drug and alcohol awareness programs that will be provided or arranged for by the applicant and made available for the public.
- (14) A written description of the training and education that the applicant will provide to employees of the Marihuana Business.
- (15) A copy of the proposed business plan for the Marihuana business, including, but not limited to:
 - a. the ownership structure of the business, including percentage ownership of each person or entity; and
 - b. planned worker training programs; and
 - c. financial structure and financing of the proposed Marihuana Business; and
 - d. short and long-term goals and objectives; and
 - e. if co-location of marihuana businesses is proposed, provide an explanation of the integration of such businesses, including a drawing showing the relationship between the businesses being co-located, including floor area and the separation provided between such facilities, including identification of any points of entry, ingress or egress, and controls at each location; and
 - f. any community outreach/education plans and strategies; and
 - g. any charitable plans and strategies.
 - h. plan outlining what supply chains will be used to provide product for the Marihuana Business, accompanied by any tentative supply agreements with State certified suppliers
- (16) One of the following: (a) proof of ownership of the premises wherein the Marihuana Business will be operated; or (b) written consent from the property owner to use the premises for a marihuana business requiring licensure under this Article, together with a copy of any lease for the premises.
- (17) A description of the security plan for the Marihuana Business, including, but not limited to, any lighting, alarms, barriers, recording/monitoring devices, and/or security guard arrangements proposed for the facility and premises. The security plan must contain the specification details of each item of security equipment.
- (18) A scaled floor plan of the Marihuana Business, as well as a scale diagram illustrating the property upon which the Marihuana Business will be operated, including all available parking spaces, and specifying which parking spaces, if any, are handicapped-accessible.

- (19) Any proposed elevation drawings, and photographs or other depiction of materials to be visible on the exterior of the proposed Marihuana Business.
- (20) A scaled location area map of the Marihuana Business and surrounding area identifying the relative locations and distances to surrounding property boundaries and buildings.
- (21) A sanitation plan designed to protect against any marihuana being ingested on the premises by any person or animal, indicating how the waste and byproduct will be stored and disposed of, and how any marihuana will be rendered unusable upon disposal.
- (22) A proposed recordkeeping plan that will track payment method, amount of payment, time of sale, product quantity, and other product descriptors.
- (23) An affirmation that neither the applicant nor any stakeholder is in default to the City and that the applicant or stakeholder has not failed to pay any past-due property taxes, special assessments, fines, fee or other financial obligation to the City.
- (24) A copy of the applicant's notice of prequalification status issued by the Michigan Marihuana Regulatory Agency of LARA pursuant to Rule 7 of the Adult-Use Marihuana Establishments Emergency Rules filed with the Michigan Secretary of State on July 3, 2019.
- (25) An estimate of the number and type of jobs that the Marihuana Business is expected to create, the compensation expected to be paid for such jobs, and the projected annual budget and revenue of the Marihuana Business.
- (26) A signed acknowledgment that the applicant is aware and understands that all matters related to marihuana, growing, cultivation, possession, dispensing, testing, safety compliance, transporting, distribution, and use are currently subject to state and federal laws, rules, and regulations, and that the approval or granting of a license hereunder will not exonerate or excuse the applicant from abiding by the provisions and requirements and penalties associated therewith.
- (27) Proof of insurance covering the business and naming the City of Berkley, its elected and appointed officials, employees, and agents, as additional insured parties, primary and non-contributory available for the payment of any damages arising out of an act or omission of the applicant or its stakeholders, agents, employees, or subcontractors, in the amount of:
 - a. at least Two Million Dollars (\$2,000,000) for property damage;
 - b. at least Two Million Dollars (\$2,000,000) for injury to one (1) person; and
 - c. at least Two Million Dollars (\$2,000,000) for injury to two (2) or more person resulting from the same occurrence. The insurance policy

underwriter must have a minimum A.M. Best Company insurance ranking of B+, consistent with state law. The policy shall provide that the City shall be notified by the insurance carrier thirty (30) days in advance of any cancellation or reduction in coverages.

- (28) Any other information requested by the City considered to be relevant to the processing or consideration of the application.
- (c) Upon receipt of a completed Application and application fee, the Community Development Director shall refer a copy of the Application to appropriate City departments for their review.
- (d) An Application shall not be eligible to be considered for approval, until:
 - (1) The Public Safety and Community Development Departments have inspected the proposed location for compliance with all laws for which they are charged with enforcement and for compliance with the requirements of this Article.
 - (2) The Community Development Department verifies the proposed location of the marihuana business complies with the zoning code.
 - (3) The Community Development Department confirms the proposed marihuana business meets applicable codes and this Article.
 - (4) The City Treasurer confirms the applicant and each stakeholder and the proposed location of the Business are not in default to the City.
 - (5) The Department of Public Safety determines the applicant meets the requirements of this Article with respect to the background check and security plan.

Sec. 30-904. – License application evaluation.

- (a) The City will accept applications for a license(s) for a Marihuana Business over a fourteen (14) day period, as established by the City Manager after the effective date of this Article. At the end of the fourteen(14) day period, all properly submitted and complete Applications shall be subject to examination and review by the City. The City may, in its discretion, elect to issue or not issue licenses for any of the Marihuana Business types or issue licenses in any combination thereof, but in no instance shall issue more licenses than are permitted pursuant to the terms of this Article and State law.
- (b) The City shall review all submitted applications for completeness. If an Application is found to be incomplete, it will not be further considered until made complete. The Community Development Department shall send a letter to the applicant explaining the omitted information or defect in the application. The applicant shall have two (2) weeks from the date of the letter to correct the defect or provide the required information to the City. If the correction or additional information is not provided within two (2) weeks of the letter, the application will be deemed abandoned and will no longer be considered.

(c) Application evaluation criteria shall include:

- (1) The content and sufficiency of the information contained in the application.
- (2) Whether the proposed plan has received approval from the Public Safety Department, Community Development Department, and all other appropriate departments.
- (3) Whether the proposed facility will revitalize or redevelop property that has been vacant or unused for an extended period of time.
- (4) Planned outreach on behalf of the proposed Business, and whether the applicant or its stakeholders have made, or plan to make, significant physical improvements to the building housing the Marihuana Business, including plans to control traffic, noise, and odor effects on the surrounding area.
- (5) Whether the applicant or any of its stakeholders have a record of acts detrimental to the public health, security, safety, morals, good order, or general welfare prior to the date of the application; and whether the applicant or any of its stakeholders have ever been convicted of operating an illegal business enterprise of any kind.
- (6) Whether the applicant has reasonably and tangibly demonstrated it possesses adequate resources and experience to implement the submitted business plan.
- (7) Whether the proposed location in the City in relation to its proximity to other locations for Marihuana Businesses represents a reasonable and harmonious dispersion of Marihuana Businesses.
- (8) The proximity of the business to a school.
- (9) Whether adequate off street parking is provided or available.
- (10) Whether the size and nature of the use in relationship to previously approved and issued Marihuana Business licenses is reasonable.
- (11) Whether the applicant has business experience previously in the City and demonstrates that the applicant has sufficient business experience to operate the proposed Marihuana Business.
- (12) Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.
- (13) Whether the proposed plan incorporates infrastructure that adequately addresses stormwater drainage.
- (14) Whether the proposed plan incorporates odor control systems to prevent odor dispersion to neighboring properties.

- (15) Whether an applicant has applied for a co-location of equivalent licenses at one location.
- (16) Other criteria as indicated important for consideration by any appropriate department of the City administration.
- (d) The City may engage professional expert consultant assistance in performing any of the duties and responsibilities under this Article.
- (e) The City shall use a point-based merit system, which shall be approved, and may be modified from time to time, by City Council resolution to provide objective review and selection. The merit system shall incorporate the evaluation criteria outlined within this article, and may include additional criteria intended to select licensees that provide the best outcome for the community as determined by the City.
 - (1) In the event of a tie among applicants through the merit system which would result in more approvals than available licenses, the tie will be resolved through a blind lottery drawing to determine which applicant will receive recommendation for approval.
 - (2) Any application receiving less than seventy (70) per cent of possible points outlined within the point-based merit system shall be automatically denied license approval.
 - (3) Applications and evaluation points yielded from a point-based merit system shall be considered for up to one hundred eighty (180) days following the publication of merit point system scores. ~~close of the application period.~~ The effective applications and points shall be used to recommend license approval should prior recommendations be declined or fail to receive license. Applications within the process may receive a one time extension not to exceed three (3) months, approved by the City Manager with proper display of good cause shown.
- (f) Within ninety (90) days of receiving the last completed application, the City Manager shall recommend applications for site plan approval to the Planning Commission. The City Manager may only recommend a number of applications for consideration equal to or less than the number of remaining licenses available for issuance. All other applicants shall be sent a written notice of rejection setting forth specific reasons why the City Manager did not recommend their application for City Council approval.
- (g) Upon receiving site plan approval from the Planning Commission, applicants shall move forward for final license approval from the City Council as recommended by the City Manager.
- (g) Upon submittal of the City Manager's recommended applications to the City Council, the City shall publish and provide public notice of the City Council meeting when the City Council will consider the license applications. Notice shall be given not less than fourteen (14) days prior to the City Council meeting. All written feedback shall be presented to the City Council.

- (h) The public notice shall be published in a newspaper of general circulation and posted at City Hall. The notice shall be sent by mail or personal delivery to the owners and occupants of property within 300 feet of the proposed marihuana business site. The public notice must include at minimum the following:
 - (1) Proposed location of the marihuana business; and
 - (2) Name of the applicant(s) or organization; and
 - (3) Intended marihuana business use; and
 - (4) Information pertaining to methods of accepting public feedback; and
 - (5) Location, date, and time of the meeting in which City Council will consider license approval.
- (i) All Marihuana Business licenses shall be effective for one (1) year following its original issuance date. Annual renewal of the license shall follow the process as outlined within this Article.

Sec. 30-905. – License limit.

- (a) The City Council finds and determines that it is in the public interest and serves a public purpose to limit the maximum number of licenses that the City may issue to three (3) Marihuana Business locations, with the acceptable uses as follows:
 - (1) Adult Use Marihuana Retail establishments;
 - (2) Medical Marihuana Provisioning Center establishments;
- (b) The City Council finds and determines that it is in the public interest and serves a public purpose to prohibit the following marihuana business uses from receiving a license from the City:
 - (1) Adult Use and Medical Marihuana Secured Transporter establishments; and
 - (2) Designated Consumption Establishments; and
 - (3) Marihuana Event Organizer; and
 - (4) Temporary Marihuana Events; and
 - (5) Adult Use and Medical Marihuana Growing Facility establishments; and
 - (6) Adult Use and Medical Marihuana Processing establishments, and
 - (7) Adult Use and Medical Marihuana Safety Compliance facilities; and
 - (8) Adult Use Marihuana Microbusiness establishments.

- (c) Should a license for a Marihuana Business become available due to expiration, revocation, or non-renewal, the City Manager shall set an application period and receive Applications for a license(s) for a Marihuana Business over a fourteen (14) day period. At the end of the fourteen (14) day period, all properly submitted and complete Applications shall be subject to examination and review by the City. The City may elect to issue or not issue licenses for any of the permitted uses or issue licenses in any combination thereof, but in no instance shall issue more licenses than are permitted pursuant to the terms of this Article.

Sec. 30-906. – Marihuana facility co-location and stacking.

Separate Marihuana Business uses, under common ownership, and with proper licensing issued by LARA for each use, shall be permitted to operate at the same location with license approval from City. Co-locating establishments must have license approval for each Marihuana Business type and use.

Sec. 30-907. – License renewal application

- (a) Application for License Renewal shall be made in writing to the Community Development Director at least thirty (30) days prior to the expiration of an existing license.
- (b) An Application for a License Renewal shall be made under oath on forms provided by the City.
- (c) An Application for a license renewal shall be accompanied by a renewal fee in an amount of Five Thousand Dollars (\$5,000), of which half will be returned if the license is not renewed. The renewal fee is established to defray the costs of the administration of this Article.
- (d) Upon receipt of a completed Application for a License Renewal meeting the requirements of this Article and the license renewal fee, the Community Development Director shall refer a copy of the Renewal Application to appropriate City departments and officials for review,
- (e) An Application for a license renewal shall be not be considered for approval unless:
 - (1) The Fire Inspector has inspected the proposed location for compliance with all laws for which they are charged with enforcement within the past calendar year;
 - (2) The Community Development Department has confirmed that the location complies with the zoning code and this Article, at the time a license is granted;
 - (3) The Building Official has confirmed that the Marihuana Business meets the City building code requirements;

- (4) The City Treasurer has confirmed that the applicant and each stakeholder of the applicant and the location of the Marihuana Business are not currently in default to the City;
 - (5) The Department of Public Safety has reviewed the Application and determined that the applicant has satisfied the requirements of this Article with respect to the background check and security plan;
 - (6) The applicant possesses the necessary state licenses or approvals, including those issued pursuant to the MMFLA;
 - (7) The applicant has operated the Marihuana Business in accordance with the conditions and requirements of this Article;
 - (8) The Marihuana Business has not been determined to be a public nuisance; and
 - (9) The applicant is operating the Marihuana Business in accordance with applicable federal, state, and local laws and regulations.
- (f) If written approval is given by each individual, department, or entity identified in Subsection (e), and the Renewal Application is found to be compliant with this Article by the Community Development Director, the Community Development Department shall issue a license renewal to the applicant. If no renewal license is issued, half of the renewal fee shall be returned. The renewal shall be deemed approved if the City has not issued formal notice of denial within sixty (60) days of the filing date of the application, unless the applicant is advised of non-compliance with this Article or incompleteness of information or any required inspection during such period.

Sec. 30-908. – Transfer of ownership, licenses generally.

- (a) Licensees shall report any change in the required information to the Community Development Department within ten (10) business days of the change. Failure to do so may result in suspension or revocation of the license.
- (b) A license approval shall not be effective, and no Marihuana Business may operate, unless the Marihuana Business has obtained a State License and the site of the proposed use and proposed structure for the Marihuana Business is properly zoned for such use, and the proposed site plan has received approval from the Planning Commission.
- (c) Licensees may transfer a license issued under this Article to a different location upon receiving written approval from the City and LARA or the board pursuant to the MMFLA and rules promulgated by LARA. In order to request City approval to transfer a permit location, the licensee must make a written request by submitting a transfer application to the Community Development Director, indicating the current license location and the proposed license location, along with any proposed development to the site. Upon receiving the written request, the Community Development Director shall refer a copy of the written request to all appropriate departments and officials including but not limited to the Department of Public Safety, the Treasury Department, the

Building Official, and the Fire Inspector. All location transfers shall be subject to review using the merit point system in effect at the time of submission. No permit location transfer shall be approved unless the newly proposed location garners at least seventy (70) per cent of the points available under the effective merit point system, each such City department or official gives written approval, following any necessary inspections, that the proposed new location meets the standards identified in this Article, MRTMA, MMMA, MMFLA, and LARA.

- (d) Licensees may transfer a license issued under this Article to a different individual or entity upon receiving written approval from the City and LARA. In order to request City approval to transfer a permit to a different individual or entity, the licensee must make a written request by submitting a transfer application to the Community Development Director, indicating the current licensee, the proposed licensee, and all required information needed to demonstrate proper qualifications as determined by the City. The City shall grant the request so long as LARA authorizes the transfer pursuant to the MRTMA, MMFLA, MMMA, and rules promulgated by LARA, and the proposed licensee meets all requirements outlined in this Article. The City reserves the right to decline any transfer of license which occurs within the first year of its original issuance.
- (e) With submission of a complete transfer application, the proposed licensee shall pay a nonrefundable application fee of Two Thousand Five Hundred Dollars (\$2,500.00) for ownership transfer or Five Thousand Dollars (\$5,000.00) for location transfer, as a means to offset costs associated with review of the proposed licensee's qualifications for marihuana business operation or the development of a new location.

Sec. 30-909. – Minimum operational standards of marihuana business.

Except as may conflict with State law or regulation the following minimum standards apply to all Marihuana Businesses:

- (1) The entire parcel where the Marihuana Business will be located must be properly zoned for that type of use, and the Marihuana Business operations must be entirely contained within the building.
- (2) The Marihuana Business shall be operated in compliance with the MMMA, the MMFLA, the MTA, MRTMA, and the State's administrative rules. Any violation of such laws or rules shall be deemed a violation of this Article.
- (3) On-premises consumption of marihuana shall be prohibited at any Marihuana Business except testing standards as outlined by LARA.
- (4) In addition to security requirements pursuant to State laws and regulations and any other applicable City Ordinances, the Marihuana Business shall continuously monitor the entire premises, interior and exterior, with surveillance systems that include security cameras operating twenty-four (24) hours a day, seven (7) days a week. The video recordings shall be maintained in a secure, off-site location for a period of one hundred eighty (180) days.

- (5) The Marihuana Business shall be contained within a lockable Facility, including all interior doors, all windows and points of entry and exits with commercial grade non-residential locks and with an alarm system monitored. Marihuana shall not be permitted to be stored in trailers or sheds or other accessory structures to the principal building. Storage shall further be in accordance with the MRTMA, MMMA, MMFLA, MTA, and promulgated rules as amended.
- (6) A locking safe or secure locking cabinet system permanently affixed to the permitted premises that shall store any marihuana and all cash remaining in the Facility overnight shall be used. For Marihuana-infused products that must be kept refrigerated or frozen, the Facility may lock the refrigerated container or freezer in a manner authorized by the MRTMA and promulgated rules as amended in place of the use of a safe so long as the container is affixed to the building structure.
- (7) No Marihuana Business shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property where the Marihuana Business is operated; or any other nuisance adverse to the public health, safety and welfare of the residents of the City.
- (8) All activity related to the provisioning, transferring, testing, or transportation of all marihuana shall be done indoors and fully compliant with State law so that it is not visible to the public.
- (9) All Marihuana Businesses shall maintain an inventory and record keeping system and/or database identifying the amount of Marihuana on the premises in accordance with the MRTMA, the MTA and the rules and regulations, as amended from time to time. This log shall be available to law enforcement personnel at anytime.
- (10) All Marijuana located on premise shall be inventoried and tagged with unique RFID tag as required by MTA and promogulated rules as amended from time to time.
- (11) The State License and the City license required by this Article shall be conspicuously displayed on the premises of a Marihuana Business.
- (12) All Marihuana Facilities shall apply for and obtain from the City, or other applicable government authority, all necessary building, mechanical, electrical, plumbing, sign, fence, soil erosion and City zoning compliance permits.
- (13) Floors, walls, and ceilings shall be constructed in such a manner that they may be kept adequately cleaned and in good repair.
- (14) There shall be adequate screening or other protection against the entry of pests. Waste shall be disposed of so as to minimize the development of odor and

minimize the potential for waste development and minimize the potential for waste becoming an attractant, harborage or breeding place for pests.

- (15) Venting of marihuana odors into the areas surrounding the Marihuana Business is prohibited and deemed and declared to be a public nuisance. All facility ventilation methods shall comply with the MRTMA and administrative rules promulgated, as amended from time to time.
- (16) Waste shall be properly removed and the operating systems for waste disposal shall be maintained in an adequate manner so that they do not constitute a source of contamination in areas where Marihuana is exposed. Disposal systems for spent water and spent soil shall be approved by the City and byproduct materials, soils, plant materials, and other materials shall be stored indoors until pickup for disposal and shall not be left outdoors for disposal pickup for longer than six (6) hours. Disposal of marihuana or marihuana waste or byproducts by on-site burning or introduction into the sewer system is prohibited.
- (17) The interior and exterior of all buildings, fixtures and other accessories shall be maintained in a presentable and sanitary condition.
- (18) Marihuana Businesses shall provide its occupants with adequate and accessible restroom facilities that are maintained in a sanitary condition and good repair.
- (19) Marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- (20) Marihuana Businesses shall be free from infestation by insects, rodents, birds, or vermin or any kind.
- (21) All Marihuana shall be packaged and labeled as provided by MRTMA, MTA, and promulgated rules as amended.
- (22) The premises shall be open for inspection during hours of operation and as such other times as anyone is present on the premises.
- (23) No other accessory uses are permitted within the same facility other than those associated with the retailing of marihuana.
- (24) Advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors is prohibited.

Sec. 30-910. – Additional operational standards for marihuana retail establishments.

Except as may conflict with state law or regulation, the following minimum standards for Marihuana Retail establishments shall apply:

- (1) Marihuana Retail and Medical Marihuana Provisioning Center establishments may be open to the public only between 8:00 AM to 10:00 PM.

- (2) Unless permitted by the MRTMA, public or common areas of the Marihuana Retail establishment must be separated from restricted or non-public areas of the retail establishment by a permanent barrier. Unless permitted by the MMMA, MMFLA, or the MRTMA, no Marihuana may be stored, displayed, or transferred in an area accessible to the general public.
- (3) All Marihuana storage areas within Marihuana Retail and Medical Marihuana Provisioning Center establishments must be separated from any customer/patient areas by a permanent barrier. Unless permitted by the MMMA, MMFLA, or MRTMA, no Marihuana is permitted to be stored in an area accessible by the general public or registered customers/patients. Marihuana may be displayed in a sales area only if permitted by the MRTMA.
- (4) Drive-thru windows on the premises of a Marihuana business establishment shall not be permitted.

Sec. 30-911. – License revocation, suspension and denial; basis for action; appeal.

- (a) Any City license issued under this Article may be revoked or suspended by the City after written notice and an administrative hearing if a City official finds and determines that grounds for revocation or suspension exist. Any grounds for revocation or suspension must be provided to the licensee at least ten (10) days prior to the date of the hearing by first class mail to the address given on the License Application or any address provided to the Community Development Department in writing subsequent to the filing of an application.
- (b) A license applied for or issued may be denied, revoked or suspended on any of the following grounds:
 - (1) A violation of any provision of this Article, including, but not limited to, the failure to provide the information required by this Article;
 - (2) Any conviction of a felony or any misdemeanor involving controlled substances, theft or dishonesty by the licensee, stakeholder, or any person holding an ownership interest in the license;
 - (3) Commission of fraud or misrepresentation or the making of a false statement by the applicant, licensee, or any stakeholder of the applicant or licensee while engaging in any activity for which this Article requires a license;
 - (4) Failure to obtain site plan approval from the Planning Commission;
 - (5) Failure to obtain or maintain a license or renewed license from the City pursuant to this Article;
 - (6) Failure of the licensee or the Marihuana Business to obtain or maintain a State license or approval pursuant to the MRTMA, MMMA, or MMFLA;

- (7) The Marihuana Business is determined by the City to have become a public nuisance or otherwise is operating in a manner detrimental to the public health, safety or welfare;
 - (8) Any default in the payment of any charges, taxes, or fees, to the City if not cured upon forty-five (45) days following notice sent by electronic means or mail to the address of the Marihuana Business;
 - (9) Violation of any State law applicable to Marihuana Businesses.
- (c) Appeal of denial of an Application, or revocation or suspension of a license: the Community Development Department shall notify an applicant of the reason(s) for denial of an Application for a license or license renewal or for revocation or suspension of a license or any adverse decision under this Article and provide the applicant with the opportunity to be heard. Any applicant aggrieved by the denial or revocation or suspension of a license or adverse decision under this Article may appeal to the City Council, who shall appoint a hearing officer to hear and evaluate the appeal and make a report and recommendation to the City Council. Such appeal shall be taken by filing with the Community Development Department, within fourteen (14) days after notice of the action complained of has been mailed to the applicant's last known address on the records of the Community Development Department, a written statement setting forth fully the grounds for the appeal. The City Council shall review the report and recommendation of the hearing officer and make a decision on the matter.
- (d) Following the denial of a license and any subsequent appeal during the recommendation and issuance process, the City may move to recommend the application with the next highest number of merit points as determined in the application process.

Sec. 30-912. – Penalties; temporary suspension of a license.

- (a) The City may require an applicant or licensee of a Marihuana Business to produce documents, records, or any other material pertinent to the investigation of an Application or alleged violation of this Article. Failure to provide the required material may be grounds for application denial, or license revocation.
- (b) Any person in violation of any provision of this Article, including the operation of a Marihuana Business without a license shall be responsible for a misdemeanor and shall be subject to a civil fine and costs. Increased civil fines may be imposed for a repeat violation. As used in this Section “repeat violation” shall mean a second or any subsequent infraction of the same requirement or provision committed by a person or Facility within any twenty-four (24) month period. Unless otherwise specifically provided in this Article, the penalty schedule is as follows:
 - (1) Seven Hundred Fifty Dollars (\$750), plus costs, for the first violation;
 - (2) One Thousand Dollars (\$1,000), plus costs, for a repeat violation;

- (3) Three Thousand Dollars (\$3,000), plus costs per day, plus costs for any violation that continues for more than one day.
- (c) The City may temporarily suspend a Marihuana Business license without a prior hearing if the City finds that public safety or welfare requires emergency action affecting the public health, safety, or welfare. The City shall cause the temporary suspension by issuing a suspension notice in connection with institution of proceedings for notice and a hearing.
- (d) If the City temporarily suspends a license without a prior hearing, the licensee is entitled to a hearing within thirty (30) days after the suspension notice has been served on the licensee or posted on the licensed premises. The hearing shall be limited to the issues cited in the suspension notice.
- (e) If the City does not hold a hearing within thirty (30) days after the date the suspension was served on the licensee or posted on the licensed premises, then the suspended license shall be automatically reinstated and the suspension vacated.
- (f) The penalty provisions herein are not intended to foreclose any other remedy or sanction that might be available to, or imposed by the City, including criminal prosecution.

Sec. 30-913. – Disclaimer.

- (a) Nothing in this Article shall be construed to authorize any person to engage in conduct that endangers others or causes a public nuisance, or to allow use, possession or control of marihuana for unlawful purposes or allow any other activity relating to cultivation, growing, distribution or consumption of marihuana that is otherwise illegal.
- (b) Except as may be required by law or regulation, it is not the intent of this Article to diminish, abrogate, or restrict the protections for individual use of marihuana found in the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act and the Michigan Regulation and Taxation of Marihuana Act.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 4: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on First Reading at a Regular City Council Meeting on November 18, 2019.

Passed on Second Reading at a Regular City Council Meeting on December 2, 2019.

Dan Terbrack
Mayor

Attest: _____
Victoria Mitchell
City Clerk

AN ORDINANCE

of the City Council of the City of Berkley, Michigan to Amend Sections 138-363, 138-387, 138-417, 138-427, 138-442, 138-457, 138-472, 138-487 and Add New Section 138-528 to Chapter 138 Zoning, to Establish Zoning Requirements for Marihuana Businesses.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Section 138-363 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-363. – Principal uses permitted.

Principal uses permitted in the Industrial District are as follows:

(1)-(3) *No Change.*

(4) **Marihuana Retailers and Medical Marihuana Provisioning Centers.**

SECTION 2: Section 138-387 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-387. – Principal uses permitted.

Principal uses permitted in the Local Business District are as follows:

(1)-(15) *No change.*

(16) **Marihuana Retailers and Medical Marihuana Provisioning Centers.**

SECTION 3: Section 138-417 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-417. – Principal uses permitted.

Principal uses permitted in the Downtown District are as follows:

(1)-(10) *No change.*

(11) **Marihuana Retailers and Medical Marihuana Provisioning Centers.**

SECTION 4: Section 138-427 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-427. – Principal uses permitted.

Principal uses permitted in the Gateway District are as follows:

(1)-(15) *No change.*

(16) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 5: Section 138-442 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-442. – Principal uses permitted.

Principal uses permitted in the Coolidge District are as follows:

(1)-(15) *No change.*

(16) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 6: Section 138-457 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-457. – Principal uses permitted.

Principal uses permitted in the Twelve Mile District are as follows:

(1)-(15) *No change.*

(16) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 7: Section 138-487 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-487. – Principal uses permitted.

Principal uses permitted in the Eleven Mile District are as follows:

(1)-(21) *No change.*

(22) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 8: Section 138-528 of Chapter 138 of the Berkley Code of Ordinances, shall be added, as follows:

Sec. 138-528. – Marihuana Business regulations.

- (a) A Marihuana Business must front on a major thoroughfare with the primary ingress/egress onto a major thoroughfare.
- (b) The Marihuana Business must have all applicable state and local licenses and approvals to operate.
- (c) The property where the Marihuana Business will be located must be entirely within the boundaries of the City, and must not be within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12.

- (d) Notwithstanding any other provision in the zoning ordinance, a Marihuana Business must operate within a fully enclosed building.
- (e) Pursuant to Article XV of Chapter 30 of the Berkley City Code, all Marihuana Business license approvals are subject to the following:
 - (1) Public notice requirements as outlined in Sec. 30-904; and
 - (2) Site plan approval from the Planning Commission must be obtained prior to receiving license approval from the City Council. Failure to do so will result in license denial as outlined in Sec. 30-911.

SECTION 9: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 10: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 11: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on First Reading at a Regular City Council Meeting on December 2, 2019.

Dan Terbrack
Mayor

Attest:

Victoria Mitchell
City Clerk



Community Development
3338 Coolidge Hwy
Berkley, MI 48072
(248) 658-3320

MEMORANDUM

To: Berkley City Council
From: Erin Schlutow, Community Development Director
Subject: **Marihuana Zoning Ordinance Amendment**
Date: November 27, 2019

Dear City Council:

City Administration is pleased to present the attached Zoning Ordinance amendments that would permit marihuana businesses in the Industrial, Gateway, Downtown, Local Business, Twelve Mile, Coolidge Woodward and Eleven Mile Districts.

The attached draft incorporates the feedback we have received from the Planning Commission at the October 22, 2019 meeting, as well as input from City Council. Within this updated draft you will notice the added Public Notice requirements to better engage with the community and elimination of uses other than Medical Provisioning Centers and Adult-Use Retailers.

At the November 26, 2019 Planning Commission meeting, City staff made a presentation that demonstrated the application, review, and approval process from submission of application materials to site plan approval and final marihuana licensing.

The Planning Commission also held the required public hearing and heard public comments from several residents and local business owners. Most of the comments received were focused on the Merit Point System, which will be adopted by City Council by way of resolution at a later date.

The Planning Commission unanimously recommended approval of the Zoning Ordinance amendment that would permit Medical Provisioning Centers and Adult-Use Retailers in the City of Berkley.

Thank you.

A RESOLUTION
OF THE CITY COUNCIL OF THE CITY OF BERKLEY, MICHIGAN
AUTHORIZING AMENDMENT OF THE FY 2019/20 OPERATING
BUDGET AS PRESENTED

WHEREAS; from time to time it becomes necessary to amend the City operating budget in response to events not known at the time of budget adoption; and

WHEREAS; amendments to the budget are required by Public Act 2 of 1968 as amended when it becomes necessary to amend the operating budget; and

WHEREAS; it is the intent of the Mayor and City Council to amend the City Operating Budget in accordance with Public Act 2 of 1968 as amended;

NOW THEREFORE BE IT RESOLVED;

SECTION 1: That the City Manager is hereby authorized and directed to cause the FY 2019/2020 Operating Budget to be amended as outlined in the memorandum from the Finance Director to the City Manager dated November 25, 2019.

Introduced and passed at a Regular City Council Meeting on Monday, December 2, 2019.

Daniel J. Terbrack, Mayor

Attest:

Victoria Mitchell
City Clerk

City of Berkley

Finance Department

To: Matt Baumgarten, City Manager

From: Mark Pollock, Finance Director

Subject: Budget Amendments

Date: November 25, 2019

Attached are the proposed Budget Amendments for the fiscal year ending 6/30/2020 for City Council approval. This round of budget amendments are mostly the result of additional carryover projects from last fiscal year. Now that the fiscal year-end audit has been completed, we are able to focus on the budgeted amounts that need amendment for the 2019-2020 fiscal year.

The largest General Fund budget amendments proposed are for unexpected repairs to the pump ladder for \$17,300. According to Chief Koehn, the expansion of the fire station needs a plymovent exhaust system which was not in the original budget. There were also a few unexpected issues with the building that caused the estimated additional costs of \$33,600. The largest amendment is for the fire truck that was already purchased, but has not yet been received. The auditors agreed that the book entry would be for a prepaid fire truck and the expense will be posted during this fiscal year. That budget amendment adds \$998,300 to the current fiscal year deficit.

After these budget amendments are made, the fund balance is budgeted to go down \$2,359,055 and the projected year-end fund balance is budgeted to be \$4,289,895.

Derrick confirmed that there were carryovers from last year's road repairs and catch basin cleaning activities which leads to the request to amend road supplies, contractual services, and equipment rental line items. Major Street budget amendments add up to an additional \$110,000 and would reduce the budgeted surplus to \$80,038. Major Street fund balance is budgeted to be \$1,767,439 at the end of the current fiscal year. Local Street fund balance is budgeted to have a deficit of \$163,020. This would leave \$889,494 at the end of the fiscal year.

As I mentioned with our last recommended budget amendments, the commitment continues to be to complete capital projects and purchase capital items while continuing to maintain the equipment, roads, and water and sewer infrastructure through structured maintenance and replacement programs. With this amended budget for the 2019-2020 fiscal year and the forecast 2020-2021 budget, City Council has committed to a plan to maintain and replace aging assets while avoiding the added cost of short and long-term debt. The City Council is also committed to reducing long-term legacy costs by continuing to contribute to trust assets which will continue to move Berkley toward full funding of those remaining legacy costs.

2019-2020 Budget Amendments Effective 10-31-2019

2019-2020 Budget Amendments					
General Fund		2019-2020		Increase/(Decrease)	2019-2020
Department	Account Name	Original Budget	Description	Amendment Amt	Amended Budget
<u>Treasury</u>			2019-2020		
101-215-709-000	Overtime	\$ 300.00	Extra OT when City Clerk left	\$ 200.00	\$ 500.00
<u>Public Safety</u>					
101-310-758-006	Fire Open House	\$ 4,600.00	Extra Items on Open House	\$ 740.00	\$ 5,340.00
101-310-939-001	Fire Truck Maintenance	\$ 20,000.00	Pump Ladder Emergency Repair	\$ 17,300.00	\$ 37,300.00
101-310-976-000	Building Maintenance	\$ 288,500.00	Unexpected Cost Overruns-Fire Station	\$ 33,600.00	\$ 322,100.00
101-310-991-001	Fire Truck	\$ -	Fire Truck was adjusted to Prepaid Exp	\$ 998,300.00	\$ 998,300.00
<u>Building Department</u>					
101-371-724-000	Unemployment	\$ -	Prev Year Payments Reimb	\$ 1,025.00	\$ 1,025.00
<u>Public Works Garage</u>					
101-442-709-000	Overtime	\$ 10,000.00	Mechanic is working extra OT	\$ 8,000.00	\$ 18,000.00
<u>Benefits-MERS Retirees</u>					
101-954-718-100	MERS-Service Credit Purchase	\$ -	2 Employee Service Purchase	\$ 29,700.00	\$ 29,700.00
	Genral Fund Totals	\$ 323,400.00		\$ 1,088,865.00	\$ 1,412,265.00
GF Fund Balance 7/1/2019	\$ 6,648,950.15		Beginning Budget Deficit 2019-2020	\$ (1,270,190.00)	
Budgeted GF FB 6/30/2020	\$ 4,289,895.15		Amended Budget Deficit 2019-2020	\$ (2,359,055.00)	
<u>Major Streets</u>					
<u>Department</u>					
<u>Street Maintenance Oper</u>					
202-464-782-000	Road Supplies	\$ 7,000.00	Carry over Projects from 2018-2019	\$ 7,000.00	\$ 14,000.00
202-464-818-000	Contractual Services	\$ 100,000.00	Carry over Projects from 2018-2019	\$ 100,000.00	\$ 200,000.00
<u>Catch Basins</u>					
202-469-940-000	Equipment Rental	\$ 3,000.00	Carry over Projects from 2018-2019	\$ 3,000.00	\$ 6,000.00
	Major Streets Total	\$ 110,000.00		\$ 110,000.00	\$ 220,000.00
Major St FB 7/1/2019	\$ 1,687,400.62		Beginning Budget Surplus 2019-2020	\$ 190,038.00	
Budgeted MS FB 6/30/2020	\$ 1,767,438.62		Amended Budget Surplus 2019-2020	\$ 80,038.00	
<u>Local Streets</u>					
<u>Department</u>					
<u>Street Maintenance Oper</u>					
203-464-782-000	Road Supplies	\$ 5,000.00	Carry over Projects from 2018-2019	\$ 5,000.00	\$ 10,000.00
203-464-818-000	Contractual Services	\$ 165,000.00	Carry over Projects from 2018-2019	\$ 35,000.00	\$ 200,000.00
<u>Catch Basins</u>					
203-469-818-000	Contractual Services	\$ 1,500.00	Carry over Projects from 2018-2019	\$ 1,500.00	\$ 3,000.00
203-469-940-000	Equipment Rental	\$ 6,000.00	Carry over Projects from 2018-2019	\$ 5,000.00	\$ 11,000.00
	Local Streets Total	\$ 177,500.00		\$ 46,500.00	\$ 224,000.00
Local St FB 7/1/2019	\$ 1,052,513.66		Beginning Budget Deficit 2019-2020	\$ (116,520.00)	
Budgeted LS FB 6/30/2020	\$ 889,493.66		Amended Budget Deficit 2019-2020	\$ (163,020.00)	