



TO: Mayor and Council

FROM: Howard S. Lazarus, City Administrator

CC: Derek Delacourt, Community Services Area Administrator
Nick Hutchinson, City Engineer
Jeff Kahan, City Planner
Robert Pfannes, Interim Police Chief
Missy Stults, Sustainability and Innovations Manager
Robyn Wilkerson, Human Resources and Labor Relations Director

SUBJECT: Council Agenda Responses

DATE: October 1, 2018

CA-4 - Resolution to Accept a Sanitary Sewer Easement at 630 Geddes Ridge Avenue from Bank of Ann Arbor (8 Votes Required)

Question: Regarding CA-4, while I recognize this is a small amount of money, it is very rare for the city to pay for an easement. Can you please provide more information on why this payment is being requested and recommended and how the payment amount is determined? (Councilmember Lumm)

Response: The amount was determined and agreed upon with the property owner based upon a percentage of the assessed value of the property reflecting the easement area. Many easements are obtained through the site plan process for new developments and are a requirement of the site plan which do not involve compensation. This method of calculating compensation is not atypical for easements for new City infrastructure crossing already-developed parcels.

CA-5 – Resolution to Approve an Amendment to the Pharmacy Benefit Management Agreement with Express Scripts Inc. (\$8,597,509.00 for 2018 and \$9,157,472.00 for 2019)

Question: Regarding CA-5 the total cost of the prescription drug benefit is identified in the cover memo, but not the cost the city pays Express Scripts for the management of the program. Can you please provide those amounts for 2018 and 2019? (Councilmember Lumm)

Response: The City of Ann Arbor pays Keenan & Associates for the management of the pharmacy plan. The approval of the Keenan & Associates Amendment was passed by Council on March 19, 2018 for the amount of \$88,000 annually. File #18-0407 / Enactment # R-18-098. Any and all administrative costs are paid to Keenan & Associates, whereas Rx claims are paid to Express Scripts.

CA-6 - Resolution to Approve Purchase Orders to Ultimate Software Group, Inc. for the Annual UltiPro System Software Maintenance and License Agreement for our Retiree Population through October 31, 2020 (\$108,900.00)

Question: Regarding CA-6, I'm a bit confused. Did we pay the \$33K referenced in the cover memo (as renewal amount) last year for this, and if so, what's causing the over 50% year-to-year increase? (Councilmember Lumm)

Response: The expected cost is \$33,000 per year, which is what was paid last year. At this time we are requesting approval through 10/31/2020 (the next renewal date for the UltiPro contract) therefore $\$33,000 / \text{year} \times 3 \text{ years} = \$99,000$. We added a 10% contingency which equals to a total of \$108,900. There is not an expected increase in costs for this through the renewal date of 10/31/2020.

CA-12 - Resolution to Adopt an Updated Traffic Calming Program

Question: Q1. On Attachment A, the staff roles include "Where demonstrated safety concerns are identified by professional engineering staff, decisions about improvements will be made outside of Traffic Calming Program." Can you please elaborate on what that means and specifically, why the decisions and improvements are "outside the Traffic Calming Program"? (The reason I ask is that, as you know, a similar situation occurred on the Bluett Traffic Calming project and adversely impacted neighbors' impressions and feelings about the process when the treatment decision was removed from the citizens and determined by City staff. Ultimately, when resident input was obtained and in conformance with the traffic calming program as it was originally created and designed to address impacted residents' recommendations, staff's recommended Bluett bump-out was eliminated/not recommended/not advanced.) (Councilmember Lumm)

Response: A request for traffic calming may bring to light a condition staff were previously unaware of. Examples of this type of condition could include a documented

crash pattern, non-motorized travel need, sensitive travel population, or a critical sight distance problem. Addressing a safety problem such as those listed previously becomes a work item for Engineering to respond to with either a capital improvement project or a maintenance work item. Staff currently evaluate for safety concerns as part of the traffic calming process and address concerns separately from the community polling process. Staff recommend formally documenting this existing practice in the Traffic Calming Program to set community expectations and provide positive community guidance regarding the practice.

Question: Q2. Attachment A also indicates that for step 5, “If greater than 50% of the returned final polling cards support the final plan, the plan moves forward for construction.” As this says “returned cards” does that mean the existing requirement that 60% of the cards in the final polling must be returned no longer exists? (Councilmember Lumm)

Response: The demonstration of sufficient community participation is a critical component of the existing Traffic Calming Program. The 60% requirement referred to in the question (Q2 above) is related to the current program’s Step 9 requirements. Community feedback and staff observation reveals that measuring community participation late in the process (currently, Step 9) can result in significant investment of staff and resident time prior to understanding the broad community interest. The community participation criteria has been shifted to Steps 1 and 2 in an effort to address these concerns. Obtaining a more rigorous measurement of community participation early in the process will help with responsible use of staff time and resources and also set reasonable community expectations. The reduction in the approval threshold to 50% is in response to recommendations made through the Transportation Commission’s Speed Reduction Committee report and also identified in the November 2016 Traffic Calming report to City Council.

Question: Q3. In misc. updates on Attachment A, it sounds like unsuccessful petitions under the prior process (like Bluett) could re-apply at any time under the new process – is that correct? (Councilmember Lumm)

Response: The Program Update allows any petitioner to re-apply for the Traffic Calming Program two-years after the determination that their previous petition was not qualified. Petitioners are allowed to re-apply under the existing Traffic Calming Program; however, adding language about re-application to the Program materials will help raise awareness of this option.

Question: Q4. On attachment C (Qualification Criteria), it states that a total of 10 points is necessary to qualify, but that could be achieved even if there’s less than 50% support for the petition. Does the 50% requirement take precedent even if 10 points are achieved elsewhere? (Councilmember Lumm)

Response: Under the *Qualifying Petition Support* criteria title is a bullet point stating that the 50% support is a minimum requirement, which if not met means the project

would not move forward. The requirement to meet this minimum threshold is based on the removal of the participation criteria from the end of the process. Staff's practice is to notify petitioners that have not met the petition signature requirement and inform them of how many additional signatures would be needed. Petitioners are invited to resubmit the petition after obtaining the required number of signatures.

Question: Q5. On Attachment A, it states under "Miscellaneous Updates" that "City Council has the authority over Traffic Calming Program Updates and Approval". Does that mean approval of traffic calming actions themselves? If not, why not and what is the approval process (and practice) currently with regard to traffic calming actions? (Councilmember Lumm)

Response: The proposed Program Update maintains City Council's existing role in setting policy for the Traffic Calming Program. The proposed Program update does not include City Council approval of individual traffic calming projects. This is consistent with general City practices that City Council is not involved with review and approval of individual projects. Under the proposed Program, staff would move forward with construction for projects that meet the neighborhood support criteria as defined in the Program that City Council approves. Staff will continue to keep City Councilmembers informed throughout the steps of each project.

Existing practice under the current Traffic Calming Program is that City Council approves individual projects that have met the neighborhood support and engagement criteria prior to construction.

Question: Attachment A includes the statement: "Where demonstrated safety concerns are identified by professional engineering staff, decisions about improvements will be made outside of the Traffic Calming Program" (Councilmember Eaton)

Response: Please see above response to Councilmember Lumm's Q1.

Question: What kind of public engagement will be used when safety improvements are made outside of the Traffic Calming Program? (Councilmember Eaton)

Response: Public engagement for projects would be conducted in a manner consistent with the City Administrator's memorandum, dated September 24, 2018, in response to Council Resolution R-18-275.

Question: Will staff be able to implement safety improvements over the objections of neighborhood residents? (Councilmember Eaton)

Response: Safety improvements are made in response to a situation that has undue impact to the safety and welfare of the traveling public. Staff frequently evaluate safety requests and evaluate locations for improvements that range from the installation of high visibility pavement markings to reconstructing an intersection. Staff work to find the most effective solution for the location and implement safety improvements at the direction of the City Engineer. While staff will try to achieve a solution that maintains

public safety and achieves community support, there may be instances where an improvement to protect public safety needs to be made even if not supported by some neighborhood residents.

Question: Will Council approval be sought when making safety improvements outside of the Traffic Calming Program? (Councilmember Eaton)

Response: No, Council does not typically authorize individual capital improvements projects. While Council authorization would be required for any construction contracts over \$25,000, many of the safety improvement projects currently undertaken are smaller projects that are implemented through existing programs such as the Annual Street Resurfacing Program or the Sidewalk Repair Program in order to take advantage of more favorable pricing, or sometimes by City staff. Even if performed separately from these programs, most safety improvements would not meet the \$25,000 threshold to require Council approval.

Question: What is staff's role in implementing traffic calming? The documents seem to offer contradictory information about whether the residents voices will be primary, or whether City staff will be making decisions on the behalf of residents. (Councilmember Bannister)

Response: Staff members roles include:

- Step 1: receiving the qualifying petition; identifying all households and property owners within the project area; corresponding with the petitioner; working with the petitioner to achieve a qualifying petition, if necessary
- Step 2: preparing and distributing program materials to all addressees within the project area; receiving and processing all information provided on the initial questionnaire; confirming response rate criteria is met
- Step 3: preparing materials and maps for the program orientation/workshop that will be staff's first opportunity to work directly with residents in the project area; facilitate the workshop; compile feedback from the workshop to inform design; licensed engineering staff develop a traffic calming plan incorporating the community feedback identified in the questionnaire and workshop
- Step 4: prepare materials and maps for the on-site, walking project meeting; prepare and install temporary markings or vertical elements in-street to help residents visualize proposed devices; facilitate walking meeting, including documentation of resident feedback; provide meeting summary; licensed engineering staff develop a final plan incorporating community feedback.
- Step 5: prepare and distribute final polling mailing; Clerk's office receives responses; prepare and notify residents of polling results; prepare construction documents for projects moving forward to construction.

The traffic calming program is intended to remain a resident driven program. Residents elect to participate in this program, and their feedback informs the design prepared by engineering staff. Consistent with the existing Traffic Calming Program, Engineering

staff will prepare a project design that incorporates the community feedback identified throughout the public engagement process.

B-1 - An Ordinance to Amend Section 2:42.3 of Chapter 28 (Building Sewers for Accessory Dwelling Units) of Title II of the Code of the City of Ann Arbor (Ordinance No. ORD-18-28)

Question: What is the estimated savings for a home owner developing an ADU accomplished by this change? (Councilmember Eaton)

Response: The City has not made any such estimate. Any savings realized would vary from property to property.

C-2 - An Ordinance to Create the Independent Community Police Oversight Commission (City Council: Eaton, Bannister, and Kailasapathy)

C-3 – An Ordinance to Create the Independent Community Police Oversight Commission (City Council: Mayor Taylor)

Question: Q1. Regarding the process to appoint members, the C-2 ordinance provides that for the initial membership, appointments must “exclusively” be from a list provided by the HRC and subsequently, that members must be from a ‘slate of nominations” developed by the Commission and the HRC. While I recognize there are examples where certain groups can provide comments/recommendations on the Mayor’s appointments (and that’s what C-3 does in this case), are there any other examples of appointments to Ann Arbor Boards and Commissions where select groups actually control the list of possible appointments and Mayor and Council can only choose from that list? What is the rationale behind that considering that it’s the Mayor and Council who are elected and accountable? (Councilmember Lumm)

Response: Staff is not aware of any City board or commission with this limitation on Mayor/City Council appointments. As this is not a staff item, the sponsors may be in the best position to explain the rationale.

Question: Q2. The C-2 ordinance stipulates that City Council will consult the Commission in the hiring of a City Administrator. C-3 does not include that provision. Are there any other Boards and Commissions where that consultation by Council on the hiring of the City Administrator is required and if so, which one(s)? (Councilmember Lumm)

Response: Staff is not aware of any City board or commission that consults on the hiring of the City Administrator.

Question: Q4. The C-2 ordinance (but not C-3) establishes a guaranteed, fixed budget for the Commission and states that any unexpended budget remains with the Commission. Do any other Boards and Commissions have a dedicated budget that they control and isn't the normal accounting practice that unspent General Fund dollars for any area return to fund balance at the end of the fiscal year and are not retained by that area – that every GF area starts fresh each fiscal year? (Councilmember Lumm)

Response: No other City board or commission has a dedicated budget or control of any budget. Unspent general fund dollars are normally returned to fund balance at the end of the fiscal year.

Question: Q5. In terms of staff support for the commission, C-3 states that the city will provide the Commission suitable facilities, the services of an administrative liaison and staff liaisons from the City Administrator, Police Chief, and City Attorney. C-3 also states that “within the Commission’s designated budget the Commission may seek additional professional services.” How will this level of support compare with what is provided to other Boards and Commissions? (Councilmember Lumm)

Response: The provision of facilities and an administrative liaison is consistent with most other boards and commissions. Other staff liaisons are assigned on an as-needed basis depending on the board or commission. The City has occasionally retained consulting or facilitation services for the benefit of specific boards or commissions. Board or commission requests for services would typically be handled through the applicable City Service Area through the budget process.

Question: Q6. At our work session, I had mentioned that I wanted to hear from our current Chief about all this. We've heard quite a bit from the other stakeholders, but not from AAPD. I do not care what form – written response now or verbal response at the meeting- but before taking action I would like the Chief's thoughts on the Commission – potential positives and negatives of the commission; if you see any specific issues or challenges; what, if any, changes you think would be improvements to the general proposal; any thoughts you have on the two versions (C-2 and C-3) of the ordinance? (Councilmember Lumm)

Response: Staff will be available to respond at the meeting.

Question: Q7. At the work session, the resolution that was discussed indicated that the training for Commission members would include a modified version of the Citizens Public Safety Academy and a ride-along with an officer. That certainly seems appropriate and relevant training for a Commission member, but it does not appear in either ordinance version – can you please speak to that? (Councilmember Lumm)

Response: As this is not a staff item, the sponsors may be in the best position to explain the rationale. Staff will be available to respond to questions at the meeting.

Question: Q9. The C-2 ordinance prohibits any current/former police officer from ever being a member of the commission, but that language doesn't appear in C-3. Can you please speak to the rationale for not including it in C-3? (Councilmember Lumm)

Response: As this is not a staff item, the sponsors may be in the best position to explain the rationale.

Question: Q10. Is it anticipated that the staff liaisons, including the Police Chief liaison, will be invited to attend Commission meetings? (Councilmember Lumm)

Response: Like all other boards and commissions, the staff liaisons would typically attend meetings. Additionally, as the meetings are generally open to the public, the liaisons would be able to attend.

Question: Q12. Does any other Ann Arbor Board or Commission have the authority to hire city employees as provided for in C-2? Would these city employees report to the Commission or to a regular city service area/department? Can you please explain why C-3 does not also include this hiring authority for the Commission? (Councilmember Lumm)

Response: No City Board or Commission (other than statutory or Charter entities such as the Housing Commission and Pension Office) have the authority to hire City employees as provided for in C-2. All employees would be City employees and would report to the service area in which they were employed. As this is not a staff item, the sponsors may be in the best position to explain the rationale of the ordinance.

Question: Q13. Both versions of the ordinance contain a "preamble". How many other ordinances approved over the last five years or so/ever have contained a "preamble" and which ones were they?

Response: Although City ordinances sometimes contain intent and purpose clauses, an initial limited review given the time to respond has not found any ordinances in the last five years with preambles of this type.

Question: The Hillard Heintze report made recommendations regarding the operation of the police department. How many of those recommendations have been implemented? (Councilmember Eaton)

Response: While there were 8 key recommendations the focus has been on getting the Commission established. All 8 recommendations have had some movement. Examples, CALEA accreditation was rewarded at the end of August. The Task Force has completed its work and made recommendations for the Commission. A downtown beat and the bicycle program has been restored. The Department has begun sponsoring recruits in local academies and expanded its recruiting efforts. A recruiting video was made in conjunction with CTN highlighting officers from Ann Arbor. Soft Skills

De-escalation training has become a regular part of ART as well as managing mental health crisis. We have expanded our communications tools by using Facebook, Twitter, Nextdoor, CTN and a more comprehensive media strategy. An independent traffic stop study was completed and a staffing study is planned for the future.

Question: Please prepare a one-page summary of the differences between these two ordinances. (Councilmember Bannister)

Response: Attached is a summary of major differences between C-2 and C-3.

DC-1 - Resolution to Support the Energy Commission's Resolution of Support for the Michigan House of Representatives' Michigan Energy Freedom Package (House Bill Nos. 5861-5865)

Question: Regarding DC-1, the cover memo and whereas clauses reference "fair value benefits for distributed generation tariffs." Can you please explain what that means and how the legislation changes current practice? (Councilmember Lumm)

Response: Distributed generation, or the generation of electricity at or near where it will be used (aka, onsite generation), is currently disincentivized and sometimes disallowed by the state. The new package of legislation would do a number of things to allow more distributed generation throughout our state, thereby increasing our security, redundancy, and reducing our environmental footprint. Here is a summary of each of the bills:

Energy Freedom Bill Summaries

The Energy Freedom bill package would remove regulatory barriers so that investments in renewable energy can pay off for businesses, farmers, residents, nonprofits, and other energy users. The bills would remove arbitrary generation caps, ensure fair pricing, allow renewable generation during outages, and enable investment in community energy projects.

HB 5865 Net Metering Enhancements

Right now over 2,500 electrical customers in Michigan offset their energy costs by producing their own renewable energy. The current net metering program is subject to an arbitrary cap, and it is estimated that the program will max out within a few years. This bill removes that cap and allows more people to safely become energy independent. Participation will be based solely on meeting the interconnection and equipment requirements, and energy producers will be compensated through a credit on their bill.

HB 5861 Community Renewable Energy Gardens

Not everyone can put up their own solar panels or wind turbines. This bill provides another option for individuals, organizations, businesses, places of worship, utilities, or others to benefit from renewable energy generation by participating in a Community

Renewable Energy Garden. Members would subscribe to the garden and receive a monthly bill credit for energy produced.

HB 5864 Microgrids

Currently, customers who generate renewable energy and connect to the grid are not allowed to produce and use their own power or share it with their neighbors during utility blackouts. This bill would set up protocols for microgrids that can switch off of the main grid to operate in “island mode” during outages. The bill is focused initially on ensuring reliable power for critical facilities such as hospitals, police stations, shelters, and water treatment plants. However, it also provides for studying whether it is in the public interest to authorize microgrids more broadly.

HB 5863 Fair Value Pricing (Small Systems)

This bill ensures that residents, businesses, farmers, or places of worship who invest in generating renewable energy receive a fair price for the energy they produce. The Michigan Public Service Commission would establish the distributed generation value methodology to set the fair value price for systems up to 500KW in generating capacity, ensuring both the generating customer and the utility are fairly compensated. The Fair Value Price methodology accounts for the value of the renewable energy, its delivery, generation capacity, transmission capacity, transmission and distribution line losses, environmental value, and other values that are not always considered in current energy prices. In order to provide enough financial predictability to support investing in new renewable capacity, the generating customer would enter into a contract with the utility and receive this rate as a bill credit for an agreed-upon period of time.

HB 5862 Fair Value Pricing (Large Systems)

This bill would extend fair value pricing to systems capable of producing more than 500KW. The MPSC would establish a methodology similar to that used for smaller systems, but with adjustments to account for the different requirements of integrating large generation systems with the grid. For instance, utilities would have the option to decline net metering for large systems if there is a fair value price or standard offer contract available.

DC-4 - Resolution to Increase the FY19 General Fund Budget of the Ann Arbor Police Department by \$30,000 to Provide for the Independent Community Police Oversight Commission (8 Votes Required)

Question: . Regarding DC-4, I’m a bit confused on the amount. The cover memo references restoring the \$5K that’s been spent out of the original \$25K. Not big deal obviously, but can you please clarify if this is to add \$30K (or \$35K) to the original \$25K budget for commission support? (Councilmember Lumm)

Response: \$30,000.

Question: The Fiscal Year 2019 budget included an appropriation to fund the police oversight task force. Can you provide an itemized accounting of the expenditures made to support the activities of the police oversight task force? (Councilmember Eaton)

Response: Of the \$25,000 allocated in the FY19 Police budget for the task force, the following expenditures have been made:

Overtime Expenses	1,344.58
Contracted Task Force Support	<u>1,212.25</u>
Total	<u>\$2,556.83</u>

Question: Both versions of the police oversight ordinance include the requirement that members of the oversight commission receive training “on topics as the Commission may prescribe such as implicit bias, trauma-informed care, history of policing, multicultural respect, power analysis Department policies and procedures, restorative practices, and social service resources.” What is the estimated cost of this training for the eleven initial members of the oversight commission? (Councilmember Eaton)

Response: There is no reliable way to calculate the costs without first receiving a workplan from the commission.

DC-5 - Resolution to Approve Bylaws of the Independent Community Police Oversight Commission

Question: Regarding DC-5, is this format the standard format with the same articles as is used for other Boards and Commissions? (Councilmember Lumm)

Response: Yes.

Major Differences Between C-2 and C-3

1. Independent versus Advisory

C-2 purports to create a Commission that is “functionally independent” of the City, and references Section 5.17(b) of the City Charter. C-3 references Section 5.17 of the Charter which generally provides that all City Boards and Commissions are advisory.

2. Incident Review

C-2 allows for the Commission to review complaints against officers before or at the same time as the Department investigation. C-3 allows for the Commission to review the incident following the Department’s completion of the internal investigation.

3. Referral of Complaint

C-2 says the complainant has the ability to determine whether or not the Commission turns over the complaint to the Police Department. C-3 requires that the Commission turn over the complaint to the Police Department for investigation pursuant to the collective bargaining agreement. Both allow complaints to be filed anonymously.

4. Budget

C-2 provides the Commission with a budget that is a percentage of the Police Department budget. C-3 does not provide for a budget; rather, there is a supplemental resolution that provides a budget for the Commission but does not bind or limit future Councils.

5. Waiver of Law

C-2 has language that attempts to make the ordinance supersede any other contrary law, resolution, rule, etc. C-3 references other existing laws to ensure compliance.

6. Contracting and Procurement of Professional Services/Outside Counsel

C-2 allows the Commission to procure professional services, including hiring personnel, in accordance with City policies and procedures. Under C-2, the Commission would supervise the personnel it selects. C-3 clarifies that the Commission can make requests to the Council to procure professional services (including outside counsel) and hire personnel in accordance with the City’s contracting/procurement and personnel policies. C-3 further clarifies the Charter authority of Council to retain and define scope of services for outside counsel. Under C-3, the employees – like all other City employees – would report to whatever Department head in which the employee resides.

7. Questioning Officers

C-2 requires that, if an officer does not voluntarily appear before the Commission, the Police Chief must compel the officer to appear. C-3 makes the officer’s appearance voluntary but requires the Police Chief, Deputy Chief, and Professional Standards (i.e., internal affairs) Lieutenant to appear before the Commission.

8. Subpoena Power

C-2 purports to give the Commission subpoena power. C-3 does not authorize the Commission to issue subpoenas, consistent with the Council’s authority and other Boards and Commissions.