

City of Ann Arbor

301 E. Huron St.

Ann Arbor, MI 48104

<http://a2gov.legistar.com/Calendar.aspx>



Meeting Minutes - Final

Monday, October 19, 2020

7:00 PM

This meeting will be broadcast live on CTN Cable Channel 16,

ATT Channel 99, and online at a2gov.org/watchCTN

To speak at public comment call: 877 853 5247 or 888 788 0099

Electronic Meeting

Enter Meeting ID: 974 2352 7921

City Council

Council meets in Caucus at 7:00 p.m. on the Sunday prior to each Regular Session.

CALL TO ORDER

Mayor Christopher Taylor called the electronic meeting of the Ann Arbor City Council to order at 7:02 p.m. in accordance with State and County local health orders.

MOMENT OF SILENCE

Council stood for a moment of silence.

PLEDGE OF ALLEGIANCE

Mayor Taylor led Council in the recitation of the Pledge of Allegiance.

ROLL CALL OF COUNCIL

Councilmember Smith arrived at 7:09 p.m.

Present: 11 - Councilmember Jane Lumm, Councilmember Jack Eaton, Mayor Christopher Taylor, Councilmember Julie Grand, Councilmember Zachary Ackerman, Councilmember Chip Smith, Councilmember Anne Bannister, Councilmember Jeff Hayner, Councilmember Kathy Griswold, Councilmember Elizabeth Nelson and Councilmember Ali Ramlawi

APPROVAL OF AGENDA

A motion was made by Councilmember Ackerman, seconded by Councilmember Bannister, that the Agenda be approved.

AMEND THE AGENDA

A motion was made by Councilmember Bannister, seconded by Councilmember Griswold, that the Agenda be approved with the following changes:

Add DC-0 Resolution in Support of Natural Features Working Group Proposal to UM SEAS

On a roll call, the vote was as follows, with the Mayor declaring the motion carried:

Yeas: 10 - Councilmember Lumm, Councilmember Eaton, Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Nays: 0

Absent: 1 - Councilmember Smith

AC COMMUNICATIONS FROM THE CITY ADMINISTRATOR

City Administrator Tom Crawford updated Council regarding the November 3 election, noting nearly 53,000 ballots have been issued, with about 60% of those ballots already returned.

Mr. Crawford thanked city staff for their work on the election, including staff from Public Works who went above and beyond to get the City's new ballot boxes installed as quickly as possible.

Mr. Crawford presented the following reports for information of Council:

AC-1 [20-1575](#) Council Agenda Response Memo and eComments - October 19, 2020

Received and Filed

AC-2 [20-1605](#) COVID-19 Financial Recovery Report - October 19, 2020

Received and Filed

AC-3 [20-1528](#) City Administrator's Report - October 19, 2020

Received and Filed

INT INTRODUCTIONS

INT-1 [20-1536](#) Proclamation for Co-op Month 2020

Mayor Taylor presented a proclamation honoring Co-Op Month in the City. Julian Tabron was present to accept the proclamation on behalf of the cooperative community.

A copy of the proclamation is on file in the City Clerk's Office.

Received and Filed

INT-2 [20-1548](#) 2020 Domestic Violence Awareness Month proclamation

Mayor Taylor read a proclamation recognizing Domestic Violence Awareness Month in the City of Ann Arbor. Barbara Niess-May, Executive Director of Safe House, was present to accept the proclamation.

A copy of the proclamation is on file in the City Clerk's Office.

Received and Filed

INT-3 [20-1577](#) Proclamation honoring the Honorable Elizabeth Pollard Hines

Sponsors: Taylor

Mayor Taylor read a proclamation honoring Honorable Judge Elizabeth Pollard Hines, retiring judge of the 15th District Court. Michigan Supreme Court Justice Bridget Mary McCormack was present to honor Judge Hines.

A copy of the proclamation is on file in the City Clerk's Office.

Received and Filed

PUBLIC COMMENTARY - RESERVED TIME (3 MINUTES PER SPEAKER)

*** (SPEAKERS ARE NOT PERMITTED TO GRANT THEIR RESERVED TIME TO AN ALTERNATE SPEAKER)**

*** ACCOMMODATIONS CAN BE MADE FOR PERSONS NEEDING ASSISTANCE WHILE ADDRESSING COUNCIL**

1. Elizabeth Collins - Resolution to Approve Settlement Documents in Attorney General v. Gelman Sciences (DC-8)

Elizabeth Collins, 3404 Porter Road, spoke in opposition to the proposed consent judgment. She urged Council to consider Super Fund status for the plume.

2. James D'Amour - Resolution to Approve Settlement Documents in Attorney General v. Gelman Sciences (DC-8)

James D'Amour, resident, urged Council to join Scio Township and Ann Arbor Township in requesting Super Fund status for the Gelman Plume clean-up.

3. Tom Stuhlberg - Resolution to Approve Settlement Documents in Attorney General v. Gelman Sciences (DC-8)

Tom Stuhlberg, resident, spoke in opposition to the proposed Gelman consent judgment, urging Council to consider Super Fund status.

4. Shanah Milkie - Resolution to Approve Settlement Documents in Attorney General v. Gelman Sciences (DC-8)

Shanah Milkie, resident, spoke about the proposed Gelman consent judgment.

5. Zachary Storey - Indigenous People's Day

Zachary Storey, resident, spoke about Indigenous People's Day and thanked the City for its recognition of the day.

CC COMMUNICATIONS FROM COUNCIL**COUNCILMEMBER BANNISTER**

Councilmember Bannister reported the following resolutions that she is planning for November 5, regarding transparency and accountability:

1. Communications -- Release the Privileged and Confidential Legal Opinions in the New Councilmember Orientation Manual. This would include the Conflict of Interest and Ethics Advice (2014) relevant for tonight's discussion about the Gelman Plume CJ4. This would be in keeping with the City Charter Section 18.2, 5.2 and 5.3, which says that all records of the City shall be public and shall be available for inspection at all reasonable times.

2. Metrics -- Form a Citizens Advisory Board to support staff and develop the criteria/checklist to monitor and report on metrics communications across all departments, including road conditions, DDA, etc. We have a growing list of residents who have already volunteered to serve to help key department leaders to provide the data, many of which are already existing and being reported, in the format we can all use to make budget decisions and avoid mistakes.

A third resolution which is still in the planning stages is to direct City staff to begin negotiations to purchase the Brewer Property on Dhu Varren Road, as a future site for affordable housing.

COUNCILMEMBER LUMM

Councilmember Lumm announced that the budget priorities survey is online. She urged all residents to take the survey.

COUNCILMEMBER GRISWOLD

Councilmember Griswold provided an update regarding healthy streets.

COUNCILMEMBER HAYNER

Councilmember Hayner thanked Mayor Taylor for recognizing Co-Op

month.

MC COMMUNICATIONS FROM THE MAYOR

None.

CA CONSENT AGENDA

CONSENT AGENDA ITEMS REMOVED

With unanimous consent of Council, the following Consent Agenda items were removed from the Consent Agenda and placed at the end of same:

CA-1 Resolution to Award a Contract to The Davey Tree Expert Company for Routine Street Tree Pruning (\$674,020.00; ITB-4636)

Passed on consent agenda

A motion was made by Councilmember Nelson, seconded by Councilmember Ramlawi, that the following Consent Agenda Items be approved as presented. On a voice vote, the Mayor declared the motion carried unanimously, thus satisfying the eight-vote requirements of CA-3, CA-6, CA-7, CA-9, and CA-11.

CA-2 20-1433 Enactment No: R-20-398 **Approved**

Resolution to Approve Amendment No. 2 to the General Services Agreement with Utilities Instrumentation Service for Electrical and Instrumentation Services (\$160,000.00)

CA-3 20-1427 Enactment No: R-20-399 **Approved**

Resolution to Approve a Michigan Department of Natural Resources Trust Fund (MNRTF) Grant Development Project Agreement for the Argo Livery Universal Access and Site Improvements Project and Accept and Appropriate Funding (\$300,000.00) (8 Votes Required)

CA-4 20-1437 Enactment No: R-20-400 **Approved**

Resolution to Approve a Service Contract with Aquatic Source, LLC. for On-Call Pool Mechanical Services at the City Pools for an Amount not to exceed \$75,000.00 Annually for FY 21 - 23 with a Two-Year Renewal Option not to Exceed \$75,000.00 Annually for FY 23 - 25

CA-5 20-1505 Enactment No: R-20-401 Approved

Resolution to Approve a Payment in Lieu of Taxes (PILOT) for the Grove at Veridian at 2270 Platt Road

CA-6 20-1456 Enactment No: R-20-402 Approved

Resolution to Approve General Services Agreement with Access, Inc. for the Implementation of a Second Uninterruptable Power Supply (UPS) for the Shared City of Ann Arbor and Washtenaw County Data Center and Appropriate Associated Funds (\$188,550.00) (8 Votes Required)

CA-7 20-1467 Enactment No: R-20-403 Approved

Resolution to Approve a Purchase Order with Dell Marketing L.P. for FY2021 PC Replacement Program and Appropriate Necessary Funding for Computer Tablets, Modems and Antennas Used in all Fire Apparatus for Emergency First Response (\$47,700.00) (8 Votes Required)

CA-8 20-1494 Enactment No: R-20-404 Approved

Resolution to Approve Amendment Number 1 to the Priority Based Budgeting Agreement with Resource Exploration, LLC for Additional Services (\$22,500)

CA-9 20-1529 Enactment No: R-20-405 Approved

Resolution to Grant Two Easements to the Michigan Department of Transportation (MDOT) for Sidewalk Ramp Improvements at Washtenaw and Observatory (8 Votes Required)

CA-10 20-1535 Enactment No: R-20-406 Approved

Resolution to Approve Lane Closure for University of Michigan Football Games for the Abbreviated 2020 Season

CA-11 20-1537 Enactment No: R-20-407 Approved

Resolution to Approve and Accept a Grant from Washtenaw County Government for Assistance of Acquisition of New High-Speed Voting Equipment and Appropriate Funding (\$15,000) (8 Votes Required)

CA-1 20-1286 Enactment No: R-20-408 **Approved**

A motion was made by Councilmember Eaton, seconded by Councilmember Ramlawi, that the Resolution be approved. On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 6 - Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith, Councilmember Nelson and Councilmember Ramlawi

Nays: 5 - Councilmember Lumm, Councilmember Eaton, Councilmember Bannister, Councilmember Hayner and Councilmember Griswold

Resolution to Award a Contract to The Davey Tree Expert Company for Routine Street Tree Pruning (\$674,020.00; ITB-4636)

PH PUBLIC HEARINGS (3 MINUTES PER SPEAKER)

PH-1 **20-1321** An Ordinance to Amend Chapter 55 (Unified Development Code), Rezoning of 12.8 Acres from PL (Public Land) to PUD (Planned Unit Development District), Veridian at County Farm PUD Zoning and Supplemental Regulations, 2270 Platt Road (CPC Recommendation: Approval - 8 Yeas and 0 Nays) (Ordinance No. ORD-20-28)

A public hearing was conducted on the proposed amendment to Chapter 55, rezoning of 12.8 Acres from PL (Public Land) to PUD (Planned Unit Development District), Veridian at County Farm PUD Zoning and Supplemental Regulations, 2270 Platt Road. Notice of public hearing was published October 1, 2020.

The following persons were present to speak in support of the proposed ordinance amendment:

- Amanda Carlisle, Washtenaw Housing Alliance Director*
- Audrey Patino, Avalon Housing*
- An unidentified speaker*
- A City resident*
- Matt Grocoff, Thrive Collaborative partner*
- A teacher at Summers Knoll School*
- An unidentified speaker*

There being no further comment, the Mayor declared the hearing closed.

Held and Closed

PH-2 **20-1469** **Enactment No:** **Held and Closed**

Held and Closed

Resolution to Approve Veridian at County Farm South (Thrive) Site Plan and Development Agreement, 2270 Platt Road (CPC Recommendation: Approval - 8 Yeas and 0 Nays)

A public hearing was conducted on the proposed resolution to approve Veridian at County Farm South (Thrive) Site Plan and Development Agreement, 2270 Platt Road. Notice of public hearing was published October 1, 2020.

There being no one present for comment, the Mayor declared the hearing closed.

PH-3 20-1470 **Enactment No:** **Held and Closed**

Held and Closed

Resolution to Approve Veridian at County Farm North (Avalon) Site Plan and Development Agreement, 2270 Platt Road (CPC Recommendation: Approval - 8 Yeas and 0 Nays)

A public hearing was conducted on the proposed resolution to approve Veridian at County Farm North (Avalon) Site Plan and Development Agreement, 2270 Platt Road. Notice of public hearing was published October 1, 2020.

Wendy Carter-Saxon, with Avalon Housing, spoke in support of the project and the partnership with Thrive.

There being no further comment, the Mayor declared the hearing closed.

A APPROVAL OF COUNCIL MINUTES

A-1 [20-1534](#) Special and Work Sessions of September 14, Special Sessions of September 24 and 30 and Regular Session Meeting Minutes of October 5, 2020

A motion was made by Councilmember Ramlawi, seconded by Councilmember Griswold, that the Special and Work Sessions of September 14, Special Sessions of September 24 and 30 and Regular Session Meeting Minutes of October 5, 2020 be approved as presented. On a voice vote, the Mayor declared the motion carried.

B ORDINANCES - SECOND READING

B-1 [20-1321](#) An Ordinance to Amend Chapter 55 (Unified Development Code), Rezoning of 12.8 Acres from PL (Public Land) to PUD (Planned Unit Development District), Veridian at County Farm PUD Zoning and Supplemental Regulations, 2270 Platt Road (CPC Recommendation: Approval - 8 Yeas and 0 Nays) (Ordinance No. ORD-20-28)

A motion was made by Councilmember Ackerman, seconded by Councilmember Grand, that the Ordinance be adopted on Second Reading. On a voice vote, the Mayor declared the motion carried.

DB-1 20-1469 Enactment No: R-20-409 Approved

A motion was made by Councilmember Ackerman, seconded by Councilmember Grand, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried.

Resolution to Approve Veridian at County Farm South (Thrive) Site Plan and Development Agreement, 2270 Platt Road (CPC Recommendation: Approval - 8 Yeas and 0 Nays)

DB-2 20-1470 Enactment No: R-20-410 Approved

A motion was made by Councilmember Ackerman, seconded by Councilmember Grand, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried.

Resolution to Approve Veridian at County Farm North (Avalon) Site Plan and Development Agreement, 2270 Platt Road (CPC Recommendation: Approval - 8 Yeas and 0 Nays)

C ORDINANCES - FIRST READING

None.

D MOTIONS AND RESOLUTIONS

DC New Business - Council:

DC-0 20-1613 Enactment No: R-20-411 Approved

Sponsors: Bannister

A motion was made by Councilmember Bannister, seconded by Councilmember Griswold, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried.

Resolution in Support of Natural Features Working Group Proposal to UM SEAS

DC-1 20-1479 Enactment No: R-20-412 Approved

Sponsors: Taylor, Grand and Ackerman

A motion was made by Councilmember Grand, seconded by Councilmember Ackerman, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried.

Resolution to Rename Rose White Park Graydon Park in Honor of Graydon Krapohl

DC-2 20-1570 Enactment No:

Sponsors: Lumm and Ramlawi

A motion was made by Councilmember Ramlawi, seconded by Councilmember Lumm, that the Resolution be approved.

Resolution to Extend Approvals of Downtown Street Closures for Restaurant and Retail Use During the Time of Mandated Physical Distancing Contained in the Prior Resolutions R-20-194, R-20-302, and R-20-371, Until November 30, 2020

20-1570 Enactment No:

Amended

Sponsors: Lumm and Ramlawi

Amended

Resolution to Extend Approvals of Downtown Street Closures for Restaurant and Retail Use During the Time of Mandated Physical Distancing Contained in the Prior Resolutions R-20-194, R-20-302, and R-20-371, Until November 30, 2020

A motion was made by Councilmember Ramlawi, seconded by Councilmember Lumm, that a substitute resolution be approved.

The substitute resolution was accepted as friendly by the Body.

20-1570 Enactment No: R-20-413

Approved as Amended

The question being, the motion made by Councilmember Ramlawi, seconded by Councilmember Lumm, that the Resolution be approved as amended. On a voice vote, the Mayor declared the motion carried.

Resolution to Extend Approvals of Downtown Street Closures for Restaurant and Retail Use During the Time of Mandated Physical Distancing Contained in the Prior Resolutions R-20-194, R-20-302, and R-20-371, Until November 30, 2020

DC-3 20-1571 Enactment No:

Sponsors: Lumm

A motion was made by Councilmember Lumm, seconded by Councilmember Eaton, that the Resolution be approved.

Resolution Regarding Water Rate Structure

20-1571 Enactment No:

Resolution Regarding Water Rate Structure

Councilmember Ramlawi proposed the following substitute resolution:

*Resolution Regarding Water Rate Structure**Body*

Whereas, Effective July 1, 2018, Ann Arbor's water rates were re-structured including establishing a new multi-family customer class, adding a fourth volume-based tier to single-family residential rates and eliminating the sub-classifications in the Non-Residential customer class; and

Whereas, The decision in 2018 to re-structure water rates was not unanimous and there continues to be strong concern regarding the re-structuring both among Council Members and in the community; and

Whereas, The re-structuring was revenue-neutral in total, but shifted approximately \$1.7M annually in cost to single-family residential customers and substantially increased the cost premiums paid by higher volume single-family residential water users including customers with large families; and

Whereas, The primary beneficiaries of the cost shifting to single-family residential customers were landlords, commercial customers, and the University of Michigan, and it is not clear whether the lower rates to landlords have been passed on to tenants; and

Whereas, Within the residential customer class, the per gallon rate is now 8 times higher for Tier 4 usage than Tier 1 usage, and prior to the July 2018 re-structuring, the range from high to low was 3.8 times. In FY19, after the re-structuring was implemented, Tier 4 accounted for 25% of the residential revenue collected, but only 6% of the usage; and

Whereas, In December 2018, council adopted a resolution to obtain a "second opinion" on the restructuring, and in March 2019, Arcadis Inc. presented to council feasible and legal water rate structure tiering alternatives for residential (four alternatives) and non-residential customers (two alternatives) that were revenue neutral to the city; and

Whereas, Arcadis concurred with the addition of the multi-family customer class, but indicated that Ann Arbor's high to low range of rates within the

residential customer class were much wider than are typically used and “may warrant additional consideration”; and

Whereas, On June 1, 2020, City Council approved a resolution directing City Staff to review the rate structure alternatives presented by Arcadis and present to Council a recommended structure that is feasible, legal and addresses Council’s concerns regarding:(1) the wide range of per gallon charges in Ann Arbor’s residential customer class,(2) the lack of tiering or any mechanism in the commercial customer class rate structure to incentivize conservation and to reflect the system costs associated with peaking,(3) the validity of the cost of service study results given the actual usage experience subsequent to the re-structuring; and

Whereas, City Staff continue to support the water rate structure adopted in 2018; and

Whereas, Arcadis Residential Option 4 would revert to three residential tiers (same as before the re-structuring) and re-sets the tiers on a logical basis (Tier 1 = average indoor use; Tier 2 = average outdoor use; Tier 3 = above average outdoor use); and

Whereas, The high-to-low range of residential per gallon rates under Arcadis Residential Option 4 would be a more reasonable 4.1 times - close to the 3.8 times prior to the re-structuring - and in their pros and cons Arcadis indicated no substantive cons and several pros in Residential Option 4 including:

- Is cost based and meets the cost of service objective*
- Is a tier design that’s correlated with customer usage*
- Maintains a strong conservation signal/incentive*
- Eliminates the high 4th Tier rate*

Whereas, A fundamental premise underlying the re-structuring proposal was that volume peaking drives costs, yet the re-structuring proposal was internally inconsistent in its application of that logic. The re-structuring expanded volume-based price tiering for single-family residential, but eliminated the sub-classifications in the non-residential customer class where the peaking impact on the system (on both a percentage and absolute basis) was even greater; and

Whereas, City Council believes adopting Arcadis Residential Option 4.

RESOLVED, That City Council directs the City Administrator to implement the Arcadis Residential Option 4 structure with the next change in City of Ann Arbor water rates;

RESOLVED, That City Council directs the City Administrator to report to Council as soon as it is known what the specific residential and commercial rates would be under Arcadis Residential Option 4

20-1571 Enactment No: Amended

A motion was made by Councilmember Ramlawi, seconded by Councilmember Hayner, that the Resolution be amended as follows:

Consider substitute resolution.

On a roll call, the vote was as follows with the Mayor declaring the motion defeated:

Yeas: 4 - Mayor Taylor, Councilmember Grand, Councilmember Nelson and Councilmember Ramlawi

Nays: 7 - Councilmember Lumm, Councilmember Eaton, Councilmember Ackerman, Councilmember Smith, Councilmember Bannister, Councilmember Hayner and Councilmember Griswold

Resolution Regarding Water Rate Structure

20-1571 Enactment No: Approved

The question being, the motion that was originally made by Councilmember Lumm, seconded by Councilmember Eaton, that the Resolution be approved. On a roll call, the vote was as follows with the Mayor declaring the motion defeated:

Yeas: 4 - Councilmember Lumm, Councilmember Eaton, Councilmember Bannister and Councilmember Griswold

Nays: 7 - Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith, Councilmember Hayner, Councilmember Nelson and Councilmember Ramlawi

Resolution Regarding Water Rate Structure

DC-4 20-1573 Enactment No: R-20-414 Approved

Sponsors: Ackerman and Bannister

A motion was made by Councilmember Hayner, seconded by Councilmember Nelson, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried, unanimously, thus satisfying the eight-vote requirement.

Resolution to Restate the Duties and Membership of the Housing and Human Services Advisory Board

DC-5 20-1574 Enactment No: R-20-415 Approved

Sponsors: Taylor

A motion was made by Councilmember Smith, seconded by Councilmember Grand, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried unanimously, thus satisfying the eight-vote requirement.

Resolution to Approve an Amendment to an Agreement with DTE Gas Company at 841 Broadway for the Allen Creek Railroad Berm Opening Project (8 Votes Required)

DC-6 20-1584 Enactment No: R-20-416 Approved

Sponsors: Taylor

A motion was made by Councilmember Hayner, seconded by Councilmember Nelson, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried.

Resolution to Approve the Employment Agreement for City Administrator Tom Crawford

DC-7 20-1603 Enactment No:

Sponsors: Hayner and Bannister

A motion was made by Councilmember Hayner, seconded by Councilmember Bannister, that the Resolution be approved.

Resolution to Begin Filling Seats on the Council of the Commons

20-1603 Enactment No: **Amended**

Sponsors: Hayner and Bannister

A motion was made by Councilmember Eaton, seconded by Councilmember Lumm, that the Resolution be amended. On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 8 - Councilmember Lumm, Councilmember Eaton, Mayor Taylor, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Nays: 3 - Councilmember Grand, Councilmember Ackerman and Councilmember Smith

Resolution to Begin Filling Seats on the Council of the Commons

Amend Resolution as follows:

First RESOLVED:

Insert Councilmember Ramlawi and Councilmember Hayner

RESOLVED, The two City Council members selected to serve on the Council of the Commons shall be:

1. _____
2. _____

20-1603 Enactment No: R-20-417 **Approved as Amended**

The question being, the motion made by Councilmember Hayner, seconded by Councilmember Bannister, that the Resolution be approved as amended. On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 9 - Councilmember Lumm, Councilmember Eaton, Mayor Taylor, Councilmember Ackerman, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Nays: 2 - Councilmember Grand and Councilmember Smith

Resolution to Begin Filling Seats on the Council of the Commons

DC-8 20-1549 Enactment No:

A motion was made by Councilmember Hayner, seconded by Councilmember Ramlawi, that the Resolution be approved.

Resolution to Approve Settlement Documents in Attorney General v Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE

20-1549 Enactment No:**Amended**

A motion was made by Councilmember Lumm, seconded by Councilmember Ackerman, that the Resolution be amended as follows:

Second Resolved Clause:

RESOLVED, That City Council authorizes and directs the City Attorney and the City's Outside Counsel, Fredrick Dindoffer, to advise the court of City Council's approval of the Fourth Amended and Restated Consent Judgment, including Attachments A through L, WITH SAID APPROVAL CONDITIONED ON THE FOLLOWING AMENDMENTS BEING MADE, to recommend that the court provide an opportunity for public comment to the court, and to take whatever steps the court requires to assist the court in its decision regarding entry of the Fourth Amended and Restated Consent Judgment;

(1) That Section V.A.3.e.ii of the Fourth Amended and Restated Consent Judgment be amended as follows:

ii. Subject to V.A.3.g., below, Defendant shall install an additional groundwater extraction well (the "Parklake Well") and associated infrastructure in the parcel owned by the City of Ann Arbor bounded by Parklake Avenue and Jackson Road as designated on Attachment G (the "City of Ann Arbor-owned parcel"), AND IN ROAD RIGHTS-OF-WAY AS NEEDED. The exact location of the Parklake Well within the City of Ann Arbor-owned parcel will be based on an evaluation of relevant geologic conditions, water quality, and other relevant factors, including access. Terms of access to the City of Ann Arbor-owned parcel AND ROAD RIGHTS-OF-WAY shall be governed by an access or license agreement between Defendant and the City of Ann Arbor AND OTHER UNIT(S) OF GOVERNMENT HAVING JURISDICTION OVER ROAD RIGHTS-OF-WAY TO BE USED, and Defendant's obligation to install and operate the Parklake Well shall be conditioned on negotiation of a mutually acceptable agreement with the City of Ann Arbor.

(2) That Section V.A.3.g of the Fourth Amended and Restated Consent Judgment be amended as follows:

g. Prerequisites for Parklake Well. Notwithstanding anything else in this Consent Judgment, Defendant shall not be obligated to install and operate the Parklake Well unless and until EGLE issues Defendant an NPDES permit with effluent limitations, discharge

limits (other than volume) and other conditions no more restrictive than those included in Defendant's NPDES Permit No. MI-0048453 dated October 1, 2014 ("2014 NPDES Permit") that authorizes discharge of groundwater extracted by the Parklake Well [to First Sister Lake]AT THE GELMAN PROPERTY, OR AT ANOTHER LOCATION APPROVED BY EGLE, AS PROVIDED IN SECTION V.A.8.G, following treatment with ozone/hydrogen peroxide technology.

(3) That Section V.A.8.g of the Fourth Amended and Restated Consent Judgment be amended as follows:

g. [Surface Water] Discharge to First Sister Lake]FROM THE PARKLAKE WELL. TREATED [Groundwater] GROUNDWATER extracted from the Parklake Well may be discharged [to First Sister Lake]AT THE GELMAN PROPERTY, OR AT ANOTHER LOCATION APPROVED BY EGLE, PROVIDED THE OTHER LOCATION IS NOT A DISCHARGE TO FIRST SISTER LAKE, AND DOES NOT INCLUDE EITHER A CONVEYANCE PIPELINE ACROSS OR A DISCHARGE TO ANY LOCATION WITHIN THE DOLPH PARK BOUNDARIES WITHOUT APPROVAL BY THE CITY OF (I) THE LOCATION OF THE DISCHARGE AND (II) THE LOCATION AND MANNER OF CONSTRUCTION OF THE CONVEYANCE PIPELINE FROM THE MOBILE TREATMENT UNIT TO THE POINT OF DISCHARGE, conditioned on EGLE's issuance of an NPDES permit with effluent limitations, discharge limits (other than volume), and other conditions no more restrictive than those included in Defendant's 2014 NPDES Permit that authorizes discharge of groundwater [to First Sister Lake]From The Parklake Well following treatment with ozone/hydrogen peroxide technology. Defendant shall submit a protocol to EGLE and the appropriate local authority(ies) for their review and approval, a protocol under which the Parklake Well shall be temporarily shut down during storm events or [high water levels in First Sister Lake]OTHER CONDITIONS as necessary to avoid flooding OR OTHER ADVERSE IMPACT ON FLORA AND FAUNA. Defendant shall not be under any obligation to operate the Parklake Well unless the protocol for temporary shutdown is approved by all necessary authorities. Following approval of the protocol, Defendant shall operate the Parklake Well in accordance with the approved protocol.

(4) That Section VII.D.2 of the Fourth Amended and Restated Consent Judgment be amended as follows:

2. An NPDES Permit that authorizes the discharge of TREATED groundwater [to First Sister Lake] AS PROVIDED IN SECTION V.A.8.G in connection with operation of the Parklake Well following

treatment with ozone/hydrogen peroxide technology that has effluent limitations, discharge limits (other than volume), and other conditions no more restrictive than those included in Defendant's 2014 NPDES Permit.

Fourth Resolved Clause:

RESOLVED, That City Council authorizes and directs the Mayor, City Clerk, City Attorney and the City's Outside Counsel, Fredrick Dindoffer, to execute the Settlement Agreement between Gelman Sciences, Inc., and the City, as revised on October 15, 2020, WITH SAID AUTHORIZATION AND DIRECTION CONDITIONED ON THE FOLLOWING AMENDMENT BEING MADE;

That Paragraph V.A of the Settlement Agreement between Gelman Sciences, Inc., and the City, as revised on October 15, 2020, be amended as follows:

A. Access. Pursuant to license and access agreements that will be attached as Exhibit 4, when finalized after engineering design and good faith negotiations between the City and Gelman are completed, the City shall, at no cost to Gelman, provide Gelman with access to the Parklake Parcel and City rights-of-way to locate, install, operate and maintain the Parklake Extraction Well (including one or more soil borings to determine proper location for the Parklake Extraction Well) described in Section V.A.3.e.ii and f.ii of the Consent Judgment and to locate, operate, and maintain the Mobile Treatment Unit, and related infrastructure, for purposes of treating the groundwater extracted by the Parklake Extraction Well AND CONVEYANCE OF THE TREATED GROUNDWATER before discharge [to the First Sister Lake]pursuant to an NPDES permit, including all reasonably necessary rights of ingress and egress. The City will not charge Gelman annual license fees, but will charge and Gelman agrees to pay the City's applicable license application and review fees, which cover necessary Engineering review, and will obtain and pay for all other permits required for installation and operation of the Parklake Extraction Well and Mobile Treatment Unit.

On a roll call, the vote was as follows with the Mayor declaring the motion carried:

- Yeas:** 6 - Councilmember Lumm, Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith and Councilmember Hayner
- Nays:** 5 - Councilmember Eaton, Councilmember Bannister, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution to Approve Settlement Documents in Attorney General v Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE

20-1549 Enactment No:

Amended

A motion was made by Councilmember Lumm, seconded by Councilmember Hayner, that the Resolution be amended as following:

Amend Third RESOLVED Clause:

RESOLVED, That City Council authorizes and directs the City Attorney and the City's Outside Counsel, Fredrick Dindoffer, to execute and take all other steps necessary for entry by the court of the Stipulated Order that, among other things, dismisses the Intervenors as parties, imposes obligations on EGLE, and reserves continuing rights for the Local Government Intervenors, WITH SAID AUTHORIZATION AND DIRECTION CONDITIONED ON THE FOLLOWING AMENDMENT BEING MADE;

That a new Paragraph 8 be added to Section A of the Stipulated Order to read as follows, and that existing Paragraphs 8 and 9 of Section A be renumbered as Paragraphs 9 and 10:

8. Financial Assurance Mechanism ("FAM") Requirements. If EGLE is required to make a decision under Section XX.C, including but not limited to a determination as to the adequacy of the amount of the FAM submitted by the Defendant, approval of Defendant's periodic calculation of long-term cleanup costs, approval of a conversion of the form of the FAM, or a determination that Defendant is no longer required to maintain a FAM:

- a. EGLE shall notify and consult with the Local Governments and consider in good faith their comments and concerns with respect to the determination being made by EGLE; and**
- b. Any Local Government may invoke dispute resolution under Paragraph B of this Order if it disagrees with EGLE's determination, and may fully participate in any dispute resolution process invoked by Defendant under Consent Judgment Section XVI related to a determination by EGLE's under Section XX.C.**

All CAPS indicate new language.

On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 6 - Councilmember Lumm, Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith and Councilmember Hayner

Nays: 5 - Councilmember Eaton, Councilmember Bannister, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution to Approve Settlement Documents in Attorney General v Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE

20-1549 Enactment No: **Amended**

A motion was made by Councilmember Lumm, seconded by Councilmember Hayner, that the Resolution be amended as follows:

Amend Fourth RESOLVED Clause:

RESOLVED, That City Council authorizes and directs the Mayor, City Clerk, City Attorney and the City's Outside Counsel, Fredrick Dindoffer, to execute the Settlement Agreement between Gelman Sciences, Inc., and the City, as revised on October 15, 2020, WITH SAID AUTHORIZATION AND DIRECTION CONDITIONED ON THE FOLLOWING AMENDMENT BEING MADE;

(1) That Paragraph V.E of the Settlement Agreement between Gelman Sciences, Inc., and the City, as revised on October 15, 2020, be amended to delete the \$1,000,000.00 penalty as follows:

E. Solicitation of USEPA. If the City, contrary to Paragraph V.C, above, solicits USEPA and/or the Governor to ask USEPA to take a role with regard to the Gelman Sciences Site and/or to have the Site listed on the National Priorities List, the City's Continuing Rights shall terminate as provided in the Order of Dismissal, [and, to the extent the Contingent Payment described in Section VI.B of the 2006 City Settlement Agreement is ever triggered, the Contingent Payment shall be reduced by One Million Dollars (\$1,000,000.00) and the reduced amount shall be used to determine the Escalator Payment/Amount under Paragraph VI.B.3.]

ALL CAPS indicate new language.

[Brackets] indicate deleted language.

On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 6 - Councilmember Lumm, Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith and Councilmember Hayner

Nays: 5 - Councilmember Eaton, Councilmember Bannister, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution to Approve Settlement Documents in Attorney General v Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE

20-1549 Enactment No: **Amended**

A motion was made by Councilmember Hayner, seconded by Councilmember Ramlawi, that the Resolution be amended as follows:

Replace 4th RESOLVED Clause with the following:

RESOLVED, That City Council authorizes and directs the Mayor, City Clerk, City Attorney and the City's Outside Counsel, Fredrick Dindoffer, to execute the Settlement Agreement between Gelman Sciences, Inc., and the City, as revised on October 15, 2020, with said authorization and direction conditioned on the following amendment being made;

(1) That Paragraph V.E of the Settlement Agreement between Gelman Sciences, Inc., and the City, as revised on October 15, 2020, be deleted.

On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 3 - Councilmember Lumm, Councilmember Ackerman and Councilmember Hayner

Nays: 8 - Councilmember Eaton, Mayor Taylor, Councilmember Grand, Councilmember Smith, Councilmember Bannister, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution to Approve Settlement Documents in Attorney General v Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE

20-1549 Enactment No: **Amended**

A motion was made by Councilmember Hayner, seconded by Councilmember Lumm, that the Resolution be amended as follows:

Amend 3rd RESOLVED as follows:

RESOLVED, That City Council authorizes and directs the City Attorney and the City's outside counsel, Fredrick Dindoffer, to execute and take all other steps necessary for entry by the court of the Stipulated Order that, among other things, dismisses the intervenors as parties, imposes obligations on EGLE, and reserves continuing rights for the Local Government Intervenors, with said authorization and direction conditioned on the following amendment being made;

(1) That section C be removed from the Order in its entirety.

On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 6 - Councilmember Lumm, Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith and Councilmember Hayner

Nays: 5 - Councilmember Eaton, Councilmember Bannister, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution to Approve Settlement Documents in Attorney General v Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE

20-1549 Enactment No: **Approved as Amended**

The question being, the motion made by Councilmember Hayner, seconded by Councilmember Ramlawi, that the Resolution be approved as amended. On a roll call, the vote was as follows with the Mayor declaring the motion defeated:

Yeas: 4 - Councilmember Lumm, Mayor Taylor, Councilmember Grand and Councilmember Ackerman

Nays: 7 - Councilmember Eaton, Councilmember Smith, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution to Approve Settlement Documents in Attorney General v Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE

19-1887 Enactment No: Take from the table

Sponsors: Griswold, Hayner, Bannister, Eaton and Ramlawi

A motion was made by Councilmember Eaton, seconded by Councilmember Ramlawi, that the Resolution be taken from the table. On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 7 - Councilmember Lumm, Councilmember Eaton, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Nays: 4 - Mayor Taylor, Councilmember Grand, Councilmember Ackerman and Councilmember Smith

Resolution Supporting the Environmental Protection Agency's Active Involvement with the Gelman Site and Encouraging its Listing of the same as a "Superfund" Site

19-1887 Enactment No:

A motion was made by Councilmember Smith, seconded by Councilmember Grand, that the Resolution be postponed until the second meeting in December.

Resolution Supporting the Environmental Protection Agency's Active Involvement with the Gelman Site and Encouraging its Listing of the same as a "Superfund" Site

19-1887 Enactment No: Postponed Indefinitely

A motion was made by Councilmember Grand, seconded by Councilmember Smith, that the Resolution be postponed indefinitely. On a roll call, the vote was as follows with the Mayor declaring the motion defeated:

Yeas: 2 - Councilmember Grand and Councilmember Smith

Nays: 9 - Councilmember Lumm, Councilmember Eaton, Mayor Taylor, Councilmember Ackerman, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution Supporting the Environmental Protection Agency's Active

Involvement with the Gelman Site and Encouraging its Listing of the same as a “Superfund” Site

19-1887 Enactment No: **Amended**

A motion was made by Councilmember Smith, seconded by Councilmember Lumm, that the motion to postpone be further amended to change the date of postponement to November 5, 2020. On a roll call, the vote was as follows with the Mayor declaring the motion carried:

Yeas: 9 - Councilmember Lumm, Councilmember Eaton, Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith, Councilmember Bannister, Councilmember Hayner and Councilmember Nelson

Nays: 2 - Councilmember Griswold and Councilmember Ramlawi

Resolution Supporting the Environmental Protection Agency’s Active Involvement with the Gelman Site and Encouraging its Listing of the same as a “Superfund” Site

19-1887 Enactment No: **Postponed**

The question being, a motion by Councilmember Smith, seconded by Councilmember Grand, that the Resolution be postponed until November 5, 2020. On a roll call, the vote was as follows with the Mayor declaring the motion defeated:

Yeas: 5 - Councilmember Lumm, Mayor Taylor, Councilmember Grand, Councilmember Ackerman and Councilmember Smith

Nays: 6 - Councilmember Eaton, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold, Councilmember Nelson and Councilmember Ramlawi

Resolution Supporting the Environmental Protection Agency’s Active Involvement with the Gelman Site and Encouraging its Listing of the same as a “Superfund” Site

19-1887 Enactment No: R-20-425 **Approved**

A motion was made by Councilmember Eaton, seconded by Councilmember Ramlawi, that the Resolution be approved. On a roll call, the vote was as follows with the Mayor declaring the motion defeated:

Yeas: 5 - Councilmember Eaton, Councilmember Bannister, Councilmember Hayner, Councilmember Griswold and Councilmember Nelson

Nays: 6 - Councilmember Lumm, Mayor Taylor, Councilmember Grand, Councilmember Ackerman, Councilmember Smith and Councilmember Ramlawi

Resolution Supporting the Environmental Protection Agency's Active Involvement with the Gelman Site and Encouraging its Listing of the same as a "Superfund" Site

DB New Business - Boards and Commissions:

DS New Business - Staff:

E COMMUNICATIONS FROM THE CITY ATTORNEY

City Attorney Stephen K. Postema spoke about the election.

F & G CLERK'S REPORT OF COMMUNICATIONS, PETITIONS AND REFERRALS

F The following communications were referred as indicated:

Passed on consent agenda

A motion was made by Councilmember Smith, seconded by Councilmember Grand, that the Clerk's Report of Communications, Petitions and Referrals be approved as presented. On a voice vote, the Mayor declared the motion carried.

F-1 [20-1543](#) Transportation Commission Consideration of 9/21/20 Resolution to End the Healthy Streets Initiative Outside of Downtown

F-2 [20-1556](#) October 5, 2020 City Environmental Commission Resolution on the Fourth Consent Judgement Negotiated for Groundwater Remediation of the Gelman 1,4-Dioxane Plume

F-3 [20-1557](#) Resignation of Deanna Lernihan from the Transportation Commission Effective October 22, 2020

F-4 [20-1572](#) Communication from City Attorney Stephen Postema Regarding the Dissolution of the DDA (Privilege Waived per City Council on October 5, 2020)

G **The following minutes were received for filing:**

G-1 [20-1212](#) Minutes of the July 8, 2020 Design Review Board Meeting

G-2 [20-1340](#) August 18, 2020 City Planning Commission Meeting Minutes

G-3 [20-1377](#) Transportation Commission August 2020 Meeting Minutes

G-4 [20-1440](#) Council Policy Agenda Committee minutes for February 25, 2020

G-5 [20-1447](#) The City of Ann Arbor Employees' Retirement System Board Meeting Minutes of August 20, 2020.

G-6 [20-1448](#) The Retiree Health Care Benefit Plan & Trust Board Meeting Minutes of August 20, 2020.

G-7 [20-1449](#) Airport Advisory Committee Minutes - July 15, 2020

G-8 [20-1460](#) ICOPCA August 25th Meeting Minutes

G-9 [20-1465](#) LDFA Board Meeting Minutes - August 27, 2020

G-10 [20-1492](#) Greenbelt Advisory Commission Minutes of September 3, 2020

G-11 [20-1530](#) Insurance Board Meeting Minutes - September 24, 2020

G-12 [20-1133](#) Council Rules Committee Meeting Minutes from June 23, 2020

PUBLIC COMMENT - GENERAL (3 MINUTES EACH)

Tom Stuhlberg, resident, spoke about development in the City.

Ralph McKee, resident, expressed concerns about the Gelman settlement process.

Linda Berauer, Third Street, thanked the members of Council who voted against the Gelman consent judgment.

COMMUNICATIONS FROM COUNCIL

COUNCILMEMBER LUMM

Councilmember Lumm urged her colleagues to be more collegial in their debates.

COUNCILMEMBER RAMLAWI

Councilmember Ramlawi spoke about the Gelman debate and vote. He stated he may bring the item back for reconsideration.

COUNCILMEMBER GRISWOLD

Councilmember Griswold thanked community members for their advocacy regarding the Gelman site.

COUNCILMEMBER SMITH

Councilmember Smith spoke about the conversation around the Council table and urged his colleagues to be professional in their behavior.

COUNCILMEMBER GRAND

Councilmember Grand spoke about relationships at the Council table.

COUNCILMEMBER HAYNER

Councilmember Hayner spoke about the lack of decorum at the Council table. He stated it is becoming hostile.

CLOSED SESSION UNDER THE MICHIGAN OPEN MEETINGS ACT, INCLUDING BUT NOT LIMITED TO, LABOR NEGOTIATIONS STRATEGY, PURCHASE OR LEASE OF REAL PROPERTY, PENDING LITIGATION AND ATTORNEY/CLIENT PRIVILEGED COMMUNICATIONS SET FORTH OR INCORPORATED IN MCLA 15.268 (C), (D) (E), AND (H).

None.

ADJOURNMENT

A motion was made by Councilmember Ramlawi, seconded by Councilmember Griswold, that the meeting adjourn. On a voice vote, the Mayor declared the motion carried and the meeting adjourned at 2:33 a.m.

COMMUNITY TELEVISION NETWORK (CTN) COMCAST CHANNEL 16, AT&T CHANNEL 99:

**LIVE: MONDAY, OCTOBER 19, 2020 @ 7:00 P.M.
REPLAY: FRIDAY, OCTOBER 23, 2020 @ 8:00 P.M.**

REPLAYS SUBJECT TO CHANGE WITHOUT NOTICE

Community Television Network live televised public meetings are also available to watch online live and on-demand from CTN's website, www.a2gov.org/watchctn <<http://www.a2gov.org/watchctn>>, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>).

Cable: Comcast Cable channel 16 or AT&T UVerse Channel 99

Videos are also available for a nominal fee by contacting CTN at (734) 794-6150.

All persons are encouraged to participate in public meetings. Citizens requiring translation or sign language services or other reasonable accommodations may contact the City Clerk's office at 734.794.6140; via e-mail to: cityclerk@a2gov.org; or by written request addressed and mailed or delivered to:

City Clerk's Office
301 E. Huron St.
Ann Arbor, MI 48104

Requests made with less than two business days' notice may not be able to be accommodated.

A hard copy of this Council packet can be viewed at the front counter of the City Clerk's Office.