

Ann Arbor City Council Regular Session: June 3, 2024
Email Redactions List Pursuant to Council Resolution R-09-386

Sent Time	TO	From	CC	Redactions	Reason for Redaction
8:49 PM	Dharma Akmon	Mike		Personal Contact Information	Privacy

From: [Taylor, Christopher \(Mayor\)](#)
To: [Watson, Chris](#); [Dohoney Jr., Milton](#); [Kaur, Atleen](#); [Beaudry, Jacqueline](#)
Cc: [Higgins, Sara](#)
Subject: Re: Absent for tonight's meeting
Date: Monday, June 3, 2024 7:22:07 PM

Get Well

Christopher Taylor (he/him)
Mayor of the City of Ann Arbor
301 East Huron Street
Ann Arbor, Michigan 48104
734-794-6161

From: Watson, Chris <CWatson@a2gov.org>
Sent: Monday, June 3, 2024 5:16 PM
To: Dohoney Jr., Milton <MDohoney@a2gov.org>; Taylor, Christopher (Mayor) <CTaylor@a2gov.org>; Kaur, Atleen <AKaur@a2gov.org>; Beaudry, Jacqueline <JBeaudry@a2gov.org>
Cc: Higgins, Sara <SHiggins@a2gov.org>
Subject: Absent for tonight's meeting

Hi all,

I will have to miss tonight's city council meeting due to illness.

Hope you have a good meeting!

Sincerely,

Chris

Chris Watson | Ward Two City Council Member
City of Ann Arbor
301 E. Huron Street
Ann Arbor, MI 48107-8647

From: [Beaudry, Jacqueline](#)
To: [City Council](#)
Cc: [Kaur, Atleen](#); [Wilhelm, Tim](#); [Dohoney Jr., Milton](#)
Subject: FW: substitute resolution and agreement for item CA-13
Date: Monday, June 3, 2024 8:41:50 PM
Attachments: [ROW License Agreement Pheenix - quarterly 5-31-24 clean updated.docx](#)
[ROW License Agreement Pheenix - quarterly 5-31-24 redline updated.docx](#)
[Memo and Resolution for Pheenix ROW License Agreement - revised for quarter clean.docx](#)
[Memo and Resolution for Pheenix ROW License Agreement - revised for quarter redline.docx](#)

Jacqueline Beaudry, City Clerk (she/her/hers)

President, Michigan Association of Municipal Clerks

2019 Michigan City Clerk of the Year

Ann Arbor City Clerk's Office | Guy C. Larcom City Hall | 301 E. Huron, 2nd Floor · Ann Arbor · MI · 48104

734.794.6140 (O) · 734.994.8296 (F) | Internal Extension 41401

jbeaudry@a2gov.org | www.a2gov.org



ANN ARBOR BICENTENNIAL
1824-2024

From: Akmon, Dharma <DAkmon@a2gov.org>
Sent: Monday, June 3, 2024 5:01 PM
To: Beaudry, Jacqueline <JBeaudry@a2gov.org>
Cc: Taylor, Christopher (Mayor) <CTaylor@a2gov.org>; Kaur, Atleen <AKaur@a2gov.org>; Wilhelm, Tim <TWilhelm@a2gov.org>
Subject: substitute resolution and agreement for item CA-13

Ms Beaudry,

I plan to move to introduce the attached substitute resolution and agreement for item CA-13 tonight.

Thank you,
Dharma

--

Dharma Akmon

Councilmember, Ward 4

View and sign up for my newsletter at <https://www.dharmafora2.com/news>

**RIGHT-OF-WAY LICENSE AGREEMENT
WITH PHEENIX USH LLC
FOR DOCKLESS ELECTRIC MICROMOBILITY DEVICE VENDOR**

This Right-of Way License Agreement (the “Agreement”) is made and entered into on this 1st of July 2024 (the “Effective Date”) by and between the City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron Street, Ann Arbor, Michigan 48104 (“City”) and Pheenix USH LLC, a Delaware limited liability company, with offices at 8605 Santa Monica Blvd, #20388, West Hollywood, California 90069 (“Licensee”) (City and Licensee each being a “Party” or collectively being the “Parties”).

WHEREAS Licensee has acquired certain Spin-branded dockless electric micromobility devices, including motorized e-scooters and e-bikes (“Micromobility Devices” or “Devices”) which had been deposited and deployed in the City of Ann Arbor by Skinny Labs, Inc. d/b/a Spin pursuant to various Right-of-Way License Agreements, and Licensee proposes to deposit and deploy these Devices in City-owned or used and regulated rights-of-way (“ROW”), for purposes of holding them out for rent or shared use;

WHEREAS the City, and the public it represents, has both regulatory and proprietary interests in its ROW;

WHEREAS the City has and exercises discretion in enforcing its interests in its ROW;

WHEREAS the City is willing to allow Licensee’s Micromobility Devices to be used and left in the ROW subject to Licensee’s agreement to and compliance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants of the Parties hereto, the City and Licensee hereby enter into this Agreement, subject to the following terms and conditions:

Section 1. Term. Unless earlier lawfully terminated, this Agreement shall commence on July 1, 2024 and expire on June 30, 2025, or when the City adopts an ordinance superseding it, whichever occurs first. This Agreement may be extended for up to two 1-year periods at the City Administrator’s discretion.

Licensee’s insurance and indemnity obligations under this Agreement shall survive expiration or termination of this Agreement.

Section 2. License. Subject to this Agreement’s terms and conditions, City grants Licensee a temporary, non-exclusive license to leave, park, or deposit (“Park”) no more than 550 combined e-bicycles, e-bikes, e-scooters, skateboards, or other small, wheeled vehicles that are not “motor vehicles” under the Michigan Vehicle Code (“Micromobility Devices”) in the ROW (the “License”). The licensed Micromobility Devices shall include at least 100 e-bicycles, and of the 550 Micromobility Devices, 250 may be licensed and

managed by the University of Michigan and 300 may be licensed and managed by the City.

Nothing in this Agreement shall be construed to grant Licensee any other rights or interests in the ROW. The License shall not be deemed or construed to create an easement, lease, fee, or any other interest, in the ROW, shall be personal to Licensee, and shall not run with the land. Licensee shall not record this Agreement or any memorandum of it. City may terminate this Agreement, as provided under its terms, without the need for court action or court order and shall not be deemed to breach the peace as a result of such termination or other exercise of self-help under this Agreement.

Section 3. Consideration. As consideration for the License and reimbursement for City's costs and expenses associated with this Agreement and the License, and in addition to any other monetary obligation it has to the City, Licensee shall pay City: (1) \$1 per day per Micromobility Device permitted by the License when operating only e-scooters, for a total of \$91,250 (based on having 250 Micromobility Devices operating in the City for 365 days), or (2) \$0.20 per day per Micromobility Device permitted by the License when also operating e-bikes, for a total of \$21,900 (based on having 250 e-scooters and 50 e-bikes operating in the City for 365 days) and, (3) any other of the City's actual direct costs paid or payable in accordance with the established accounting procedures generally used by the City and which the City uses in billing third parties for reimbursable projects ("Costs") arising from this Agreement or from Licensee's failure to comply with it. If a fee share agreement is in place with a third party (e.g. the University), the Licensee will be expected to remit payment accordingly at the direction of the City.

Additionally, Licensee will permit all City employees with an active a2gov.org email address to take five (5) free thirty (30) minute trips on a Micromobility Device each day. Licensee will neither restrict nor log the reason for such trips. City employees are responsible for paying the standard fee for additional trips per day or time over the thirty (30) minute limit per trip. To administer this program, City will provide Licensee each week with a list of active email accounts for City employees. Licensee will use such list of active email accounts for verification purposes only. Licensee is prohibited from using the list of email accounts for sale and/or marketing purposes. Notwithstanding the foregoing, Licensee may communicate with City employees regarding trips within the application.

Licensee shall, upon the City's request, provide the City with any documents or data appropriate for the City to calculate its entitlement under this section.

City may invoice Licensee for its due monetary obligations under this Agreement at intervals as City deems appropriate. Licensee shall pay such invoices within 14 days.

Section 4. Parking. Licensee shall use reasonable efforts to ensure that Micromobility Devices not in current use are parked upright, in an orderly manner, on a paved surface.

Licensee shall also use reasonable efforts to ensure that Micromobility Devices are Parked in accordance with all applicable laws, including the City's Code of Ordinances

and the state laws it incorporates by reference, including the Michigan Vehicle and Uniform Traffic Codes, as amended. Notwithstanding the foregoing, Micromobility Devices may also be Parked in sidewalk extension areas, as long as such Micromobility Devices do not obstruct the portion of the sidewalk for pedestrian travel, any ADA ramp or access point, fire hydrant, call box, or other emergency facility, or utility pole or box.

City shall provide Licensee with a parking location for Licensee's E-Cargo Vehicle (which is considered a Micromobility Device) in the Ann Ashley Parking Structure, or a reasonably equivalent location, with City's approval of such equivalent location, to facilitate Micromobility Device battery swapping and rebalancing operations using the E-Cargo Vehicle.

Licensee represents and warrants that it knows the foregoing laws.

Section 5. Operation. Licensee shall use reasonable efforts to ensure that its Micromobility Devices are operated in accordance with all applicable laws, including the City's Code of Ordinances and the state laws it incorporates by reference, including the Michigan Vehicle and Uniform Traffic Codes, as amended.

Licensee represents and warrants that it knows the foregoing laws.

Section 6. Deployment Locations. Licensee shall share Micromobility Device deployment locations with City on at least a weekly basis or upon reasonable request; City may request removal of any deployment location by notice to Licensee and Licensee shall remove such deployment locations within forty-eight (48) hours. City acknowledges that deployment locations are proprietary information of Licensee and shall not be shared publicly or with third parties without Licensee's prior written consent unless legally required to do so (e.g., FOIA request or lawful subpoena, etc).

In collaboration with City, Licensee will locate fifty (50) Micromobility Devices where City employees start trips.

Section 7. Abandonment. Licensee shall promptly recover and take custody of all abandoned Micromobility Devices.

Section 8. Markings. Licensee shall ensure that each Micromobility Devices is conspicuously marked with Licensee's unique branding, a unique serial number, and Licensee's contact information, including a 24-hour toll-free phone number and e-mail address. Licensee shall not apply any other markings to any Micromobility Device.

Section 9. Maintenance. Licensee shall maintain Micromobility Devices in a good and safe working manner and in accordance with all applicable laws, including the laws that permit their operation, and shall promptly remove from the ROW any Micromobility Devices not so maintained.

Section 10. Data Sharing. Licensee shall, upon request, provide City all data related to Micromobility Device use in the General Bike Share Feed Specifications (“GBFS”) format. Aggregated reports on system use, compliance, operations—including but not limited to parking complaints, crashes, damaged or lost Micromobility Devices—shall be provided by Licensee to City upon request. Licensee shall make available to City any information from private entities related to requests for Micromobility Devices not to be used or parked at a private location upon request.

Section 11. Insurance and Indemnity. To the fullest extent lawful, Licensee shall defend, hold harmless, and indemnify the City and its officers, affiliated entities, fiduciaries, employees, agents and contractors from and of all claims, damages, losses, expenses, including attorney fees, or suits of any nature that arise from, are related to, or that the City may be subjected to, by reason or on account of this Agreement, the License granted under it, or the Micromobility Devices, except to the extent due to the negligence or willful misconduct of City or its agents and employees.

Licensee’s contracts with users of the Micromobility Devices shall obligate users to release the City and its officers, affiliated entities, fiduciaries, employees, agents and contractors from the same claims, damages, losses, expenses, including attorney fees, and suits for which Licensee is obligated to indemnify, defend and hold the City harmless. Said contracts shall also obligate users of the Micromobility Devices to comply with all other terms of this Agreement.

Throughout the duration of this Agreement, and through any applicable period of repose or limitation, Licensee shall maintain commercial general liability insurance, with no exclusions or limiting endorsements, in the amount of at least \$10,000,000 for each occurrence of bodily injury liability or property damage liability, or both combined, \$10,000,000 general aggregate, \$10,000,000 personal and advertising injury, and \$10,000,000 products and completed operations aggregate, along with any other insurance required by law, including \$1,000,000 in motor vehicle liability insurance, including Michigan no-fault coverages, and worker’s compensation insurance. All such insurance shall be issued by insurers authorized to do business in Michigan and who carry and maintain a minimum rating assigned by AM Best & Company’s Key Rating Guide of “A-” and a minimum Financial Size Category of “V.” The foregoing required insurance shall be primary as respects to any other insurance the City may have, including its self-insured retentions, which shall not be required to contribute and shall be considered excess only. For itself and any of its insurers, Licensee waives any right of recovery against City for any damages covered by Licensee’s insurance. City shall be named an additional insured on all insurance coverages required by this Agreement and shall, without qualification, be entitled to 30-days’ written notice of any cancellation or non-renewal of the same. Licensee shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the insurance policies, coverages, and endorsements required herein. Licensee shall add registration@mycoitracking.com to its safe sender’s list so that it will receive necessary communication from myCOI. When requested, Licensee shall provide the same documentation for its subcontractor(s) (if any).

Section 12. Local Representatives. Licensee shall designate one or more representatives who, as needed, can address any issues related to this Agreement in the City, in person, at any time, and who has authority to act on behalf of Licensee.

Section 13. Damage to City Property. To the fullest extent lawful, Licensee shall be liable to, and shall promptly reimburse, the City for any damage to City property related to or arising from the Micromobility Devices, except to the extent due to the negligence or willful misconduct of City or its agents and employees.

Section 14. Education. Licensee shall, to City's satisfaction, develop materials to instruct users of its Micromobility Devices of all applicable laws, and provisions of this Agreement, that relate to operation, and parking of these Micromobility Devices. Licensee shall not allow any use of its Micromobility Devices by third parties unless they have first reviewed these materials.

Section 15. Compliance with Laws. Licensee shall comply with all applicable laws, this Agreement, and City policies, and guarantees its employees, agents, and contractors, including independent contractors, do the same.

Section 16. Seized Micromobility Devices. The City may seize and impound any Micromobility Device that is operated, deployed, abandoned, or parked in breach of this Agreement, with or without issuing a ticket or citation. Unless City's continued possession of such Micromobility Device is necessary for evidentiary or investigatory purposes, Licensee may recover possession of any seized or impounded Micromobility Device upon Licensee's payment to the City of \$150 plus an additional \$15 per day of impoundment. Such amounts are partial reimbursement to the City for its Costs related to seizure and storage of the Micromobility Device(s), and which amounts shall be due and owing from Licensee to City even if Licensee elects not to recover possession. City shall not be liable for damages to Licensee for City's seizure or impoundment, or both, of any Micromobility Device(s). Licensee's failure to pay amounts due to the City for seizure, impoundment, and storage costs and recover possession of any Micromobility Device(s) within 90 days after the City provides Licensee written notice of impoundment and fees due and owing shall be an abandonment and forfeiture of all of Licensee's ownership rights, interests, and claims to the Micromobility Device(s) to the City, and the City may sell, transfer, or otherwise dispose of the Micromobility Device(s) in its sole discretion.

Section 17. Termination by City. Upon 3-days' written notice to Licensee, the City may terminate this Agreement, and the license for which it provides, following any breach of it by Licensee, or if City finds, in its sole discretion, that Licensee's use of the license granted under this Agreement threatens the safety and health of the City's residents and visitors. The City's rights of termination are in addition to all other rights and remedies which it may have at law or in equity.

Section 18. Notices. All notices or other correspondence or communications required by or related to this Agreement shall be in writing sent by email, and regular U.S. mail, postage prepaid, or delivered by courier to the following:

City: City of Ann Arbor
Attention: John Fournier
Deputy City Administrator
301 E. Huron Street
Ann Arbor, Michigan 48107
jfournier@a2gov.org

With a Copy to: City of Ann Arbor
Attention: Atleen Kaur
City Attorney
301 E. Huron Street
Ann Arbor, Michigan 48107
akaur@a2gov.org

Licensee: Pheenix USH LLC
Attention: Government Partnerships
8605 Santa Monica Blvd, #20388
West Hollywood, CA 90069

With a Copy to: Pheenix USH LLC
Attention: Jimmy Gilman
8605 Santa Monica Blvd, #20388
West Hollywood, CA 90069
jimmy.gilman@spin.pm

All such notices, or other correspondence or communications are effective upon transmittal or delivery. The Parties may change recipients with 10-days' written notice to all Parties.

Section 19. Modification. This Agreement shall not be amended, modified, or canceled without the written consent of the Parties.

Section 20. Headings; Construction of Agreement. The headings of each section of this Agreement are for reference only.

Section 21. Severability of Provisions. Except with respect to any indemnity, defense, hold harmless or insurance obligations of Licensee, or as otherwise specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any severable provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid

provision(s) that it cannot be presumed that the Parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.

Section 22. Assignment. Licensee shall not assign, delegate, or transfer any right or obligation under this Agreement without City's prior written approval. Any assignment, delegation or transfer made or attempted without such approval shall be void.

Section 23. Further Acts. The Parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

Section 24. Binding Effect. This Agreement shall be binding upon the Parties and upon any successors in interest.

Section 25. Controlling Law. This Agreement shall be construed and governed in accordance with the laws of the State of Michigan without giving effect to Michigan's choice or conflict of law provisions. Any lawsuit arising out of or related to this Agreement, the license it grants, or the Micromobility Devices shall be filed in either the courts of Washtenaw County, Michigan, or in the United States District Court for the Eastern District of Michigan, to the general personal jurisdiction of which Licensee submits.

Section 26. Additional Remedies. If Licensee breaches any provision of this Agreement, the City may, in its discretion, cure the breach, in which case Licensee shall be liable to City for City's Costs arising from the cure. The remedies available to the Parties under this Agreement are cumulative, in addition to any given by law or equity, and, to the fullest extent lawful, may be enforced successively or concurrently. Any amounts due from Licensee but not timely paid by Licensee shall accrue interest at twelve percent (12%) per annum starting from the date when due, and such interest the Parties agree is not a penalty.

Section 27. Waiver. No consent or waiver, express or implied, by any Party to this Agreement or any breach or default by any other Party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any Party to complain of any act or failure to act or to declare any of the other Parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. The Parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the Parties reserve the right to exercise any and all of their rights and remedies under this Agreement irrespective of any waiver granted.

Section 28. Representations. The Parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with

its terms. Licensee represents and warrants that it is the sole owner of the Micromobility Devices.

Section 29. Conflicts of Interest. Licensee represents and warrants that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Licensee or its contractors under this Agreement.

Section 30. No Partnership. The Parties are not joint venturers or partners and do not have an employer-employee or master-servant relationship. City shall not be vicariously liable for Licensee or any of the riders of its Micromobility Devices.

Section 31. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes all prior agreements and understanding of the Parties with respect to its subject matter. Nothing in this Agreement shall be construed to limit City's regulatory authority or waive any immunity to which the City is entitled by law.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement to be effective on the Effective Date.

PHEENIX USH, LLC

CITY OF ANN ARBOR

By: _____
Name: Brit Moller
Its: Head of Public Policy

By: _____
Milton Dohoney Jr.
Its: City Administrator

Approved as to substance:

Sue F. McCormick, Interim Public
Services Area Administrator

Approved as to form:

Atleen Kaur, City Attorney

**RIGHT-OF-WAY LICENSE AGREEMENT
WITH PHEENIX USH LLC
FOR DOCKLESS ELECTRIC MICROMOBILITY DEVICE VENDOR**

This Right-of Way License Agreement (the “Agreement”) is made and entered into on this 1st of July 2024 (the “Effective Date”) by and between the City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron Street, Ann Arbor, Michigan 48104 (“City”) and Pheenix USH LLC, a Delaware limited liability company, with offices at 8605 Santa Monica Blvd, #20388, West Hollywood, California 90069 (“Licensee”) (City and Licensee each being a “Party” or collectively being the “Parties”).

WHEREAS Licensee has acquired certain Spin-branded dockless electric micromobility devices, including motorized e-scooters and e-bikes (“Micromobility Devices” or “Devices”) which had been deposited and deployed in the City of Ann Arbor by Skinny Labs, Inc. d/b/a Spin pursuant to various Right-of-Way License Agreements, and Licensee proposes to deposit and deploy these Devices in City-owned or used and regulated rights-of-way (“ROW”), for purposes of holding them out for rent or shared use;

WHEREAS the City, and the public it represents, has both regulatory and proprietary interests in its ROW;

WHEREAS the City has and exercises discretion in enforcing its interests in its ROW;

WHEREAS the City is willing to allow Licensee’s Micromobility Devices to be used and left in the ROW subject to Licensee’s agreement to and compliance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants of the Parties hereto, the City and Licensee hereby enter into this Agreement, subject to the following terms and conditions:

Section 1. Term. Unless earlier lawfully terminated, this Agreement shall commence on July 1, 2024 and expire on ~~September 30, 2025~~ June 30, 2024, or when the City adopts an ordinance superseding it, whichever occurs first. This Agreement may be extended for up to ~~three two 3-months 1-year~~ periods at the City Administrator’s discretion.

Licensee’s insurance and indemnity obligations under this Agreement shall survive expiration or termination of this Agreement.

Section 2. License. Subject to this Agreement’s terms and conditions, City grants Licensee a temporary, non-exclusive license to leave, park, or deposit (“Park”) no more than 550 combined e-bicycles, e-bikes, e-scooters, skateboards, or other small, wheeled vehicles that are not “motor vehicles” under the Michigan Vehicle Code (“Micromobility Devices”) in the ROW (the “License”). The licensed Micromobility Devices shall include at least 100 e-bicycles, and of the 550 Micromobility Devices, 250 may be licensed and

managed by the University of Michigan and 300 may be licensed and managed by the City.

Nothing in this Agreement shall be construed to grant Licensee any other rights or interests in the ROW. The License shall not be deemed or construed to create an easement, lease, fee, or any other interest, in the ROW, shall be personal to Licensee, and shall not run with the land. Licensee shall not record this Agreement or any memorandum of it. City may terminate this Agreement, as provided under its terms, without the need for court action or court order and shall not be deemed to breach the peace as a result of such termination or other exercise of self-help under this Agreement.

Section 3. Consideration. As consideration for the License and reimbursement for City's costs and expenses associated with this Agreement and the License, and in addition to any other monetary obligation it has to the City, Licensee shall pay City: (1) \$1 per day per Micromobility Device permitted by the License when operating only e-scooters, for a total of ~~\$\$22,500~~ ~~91,250~~ (based on having 250 Micromobility Devices operating in the City for ~~90~~ ~~365~~ days), or (2) \$0.20 per day per Micromobility Device permitted by the License when also operating e-bikes, for a total of ~~\$5,400~~ ~~21,900~~ (based on having 250 e-scooters and 50 e-bikes operating in the City for ~~90~~ ~~365~~ days) and, (3) any other of the City's actual direct costs paid or payable in accordance with the established accounting procedures generally used by the City and which the City uses in billing third parties for reimbursable projects ("Costs") arising from this Agreement or from Licensee's failure to comply with it. If a fee share agreement is in place with a third party (e.g. the University), the Licensee will be expected to remit payment accordingly at the direction of the City.

Additionally, Licensee will permit all City employees with an active a2gov.org email address to take five (5) free thirty (30) minute trips on a Micromobility Device each day. Licensee will neither restrict nor log the reason for such trips. City employees are responsible for paying the standard fee for additional trips per day or time over the thirty (30) minute limit per trip. To administer this program, City will provide Licensee each week with a list of active email accounts for City employees. Licensee will use such list of active email accounts for verification purposes only. Licensee is prohibited from using the list of email accounts for sale and/or marketing purposes. Notwithstanding the foregoing, Licensee may communicate with City employees regarding trips within the application.

Licensee shall, upon the City's request, provide the City with any documents or data appropriate for the City to calculate its entitlement under this section.

City may invoice Licensee for its due monetary obligations under this Agreement at intervals as City deems appropriate. Licensee shall pay such invoices within 14 days.

Section 4. Parking. Licensee shall use reasonable efforts to ensure that Micromobility Devices not in current use are parked upright, in an orderly manner, on a paved surface.

Licensee shall also use reasonable efforts to ensure that Micromobility Devices are Parked in accordance with all applicable laws, including the City's Code of Ordinances

and the state laws it incorporates by reference, including the Michigan Vehicle and Uniform Traffic Codes, as amended. Notwithstanding the foregoing, Micromobility Devices may also be Parked in sidewalk extension areas, as long as such Micromobility Devices do not obstruct the portion of the sidewalk for pedestrian travel, any ADA ramp or access point, fire hydrant, call box, or other emergency facility, or utility pole or box.

City shall provide Licensee with a parking location for Licensee's E-Cargo Vehicle (which is considered a Micromobility Device) in the Ann Ashley Parking Structure, or a reasonably equivalent location, with City's approval of such equivalent location, to facilitate Micromobility Device battery swapping and rebalancing operations using the E-Cargo Vehicle.

Licensee represents and warrants that it knows the foregoing laws.

Section 5. Operation. Licensee shall use reasonable efforts to ensure that its Micromobility Devices are operated in accordance with all applicable laws, including the City's Code of Ordinances and the state laws it incorporates by reference, including the Michigan Vehicle and Uniform Traffic Codes, as amended.

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In collaboration with City, Licensee will locate fifty (50) Micromobility Devices where City employees start trips.

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Section 11. Insurance and Indemnity. To the fullest extent lawful, Licensee shall defend, hold harmless, and indemnify the City and its officers, affiliated entities, fiduciaries, employees, agents and contractors from and of all claims, damages, losses, expenses, including attorney fees, or suits of any nature that arise from, are related to, or that the City may be subjected to, by reason or on account of this Agreement, the License granted under it, or the Micromobility Devices, except to the extent due to the negligence or willful misconduct of City or its agents and employees.

Licensee’s contracts with users of the Micromobility Devices shall obligate users to release the City and its officers, affiliated entities, fiduciaries, employees, agents and contractors from the same claims, damages, losses, expenses, including attorney fees, and suits for which Licensee is obligated to indemnify, defend and hold the City harmless. Said contracts shall also obligate users of the Micromobility Devices to comply with all other terms of this Agreement.

Throughout the duration of this Agreement, and through any applicable period of repose or limitation, Licensee shall maintain commercial general liability insurance, with no exclusions or limiting endorsements, in the amount of at least \$10,000,000 for each occurrence of bodily injury liability or property damage liability, or both combined, \$10,000,000 general aggregate, \$10,000,000 personal and advertising injury, and \$10,000,000 products and completed operations aggregate, along with any other insurance required by law, including \$1,000,000 in motor vehicle liability insurance, including Michigan no-fault coverages, and worker’s compensation insurance. All such insurance shall be issued by insurers authorized to do business in Michigan and who carry and maintain a minimum rating assigned by AM Best & Company’s Key Rating Guide of “A-” and a minimum Financial Size Category of “V.” The foregoing required insurance shall be primary as respects to any other insurance the City may have, including its self-insured retentions, which shall not be required to contribute and shall be considered excess only. For itself and any of its insurers, Licensee waives any right of recovery against City for any damages covered by Licensee’s insurance. City shall be named an additional insured on all insurance coverages required by this Agreement and shall, without qualification, be entitled to 30-days’ written notice of any cancellation or non-renewal of the same. Licensee shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the insurance policies, coverages, and endorsements required herein. Licensee shall add registration@mycoitracking.com to its safe sender’s list so that it will receive necessary communication from myCOI. When requested, Licensee shall provide the same documentation for its subcontractor(s) (if any).

Section 12. Local Representatives. Licensee shall designate one or more representatives who, as needed, can address any issues related to this Agreement in the City, in person, at any time, and who has authority to act on behalf of Licensee.

Section 13. Damage to City Property. To the fullest extent lawful, Licensee shall be liable to, and shall promptly reimburse, the City for any damage to City property related to or arising from the Micromobility Devices, except to the extent due to the negligence or willful misconduct of City or its agents and employees.

Section 14. Education. Licensee shall, to City's satisfaction, develop materials to instruct users of its Micromobility Devices of all applicable laws, and provisions of this Agreement, that relate to operation, and parking of these Micromobility Devices. Licensee shall not allow any use of its Micromobility Devices by third parties unless they have first reviewed these materials.

Section 15. Compliance with Laws. Licensee shall comply with all applicable laws, this Agreement, and City policies, and guarantees its employees, agents, and contractors, including independent contractors, do the same.

Section 16. Seized Micromobility Devices. The City may seize and impound any Micromobility Device that is operated, deployed, abandoned, or parked in breach of this Agreement, with or without issuing a ticket or citation. Unless City's continued possession of such Micromobility Device is necessary for evidentiary or investigatory purposes, Licensee may recover possession of any seized or impounded Micromobility Device upon Licensee's payment to the City of \$150 plus an additional \$15 per day of impoundment. Such amounts are partial reimbursement to the City for its Costs related to seizure and storage of the Micromobility Device(s), and which amounts shall be due and owing from Licensee to City even if Licensee elects not to recover possession. City shall not be liable for damages to Licensee for City's seizure or impoundment, or both, of any Micromobility Device(s). Licensee's failure to pay amounts due to the City for seizure, impoundment, and storage costs and recover possession of any Micromobility Device(s) within 90 days after the City provides Licensee written notice of impoundment and fees due and owing shall be an abandonment and forfeiture of all of Licensee's ownership rights, interests, and claims to the Micromobility Device(s) to the City, and the City may sell, transfer, or otherwise dispose of the Micromobility Device(s) in its sole discretion.

Section 17. Termination by City. Upon 3-days' written notice to Licensee, the City may terminate this Agreement, and the license for which it provides, following any breach of it by Licensee, or if City finds, in its sole discretion, that Licensee's use of the license granted under this Agreement threatens the safety and health of the City's residents and visitors. The City's rights of termination are in addition to all other rights and remedies which it may have at law or in equity.

Section 18. Notices. All notices or other correspondence or communications required by or related to this Agreement shall be in writing sent by email, and regular U.S. mail, postage prepaid, or delivered by courier to the following:

City: City of Ann Arbor
Attention: John Fournier
Deputy City Administrator
301 E. Huron Street
Ann Arbor, Michigan 48107
jfournier@a2gov.org

With a Copy to: City of Ann Arbor
Attention: Atleen Kaur
City Attorney
301 E. Huron Street
Ann Arbor, Michigan 48107
akaur@a2gov.org

Licensee: Pheenix USH LLC
Attention: Government Partnerships
8605 Santa Monica Blvd, #20388
West Hollywood, CA 90069

With a Copy to: Pheenix USH LLC
Attention: Jimmy Gilman
8605 Santa Monica Blvd, #20388
West Hollywood, CA 90069
jimmy.gilman@spin.pm

All such notices, or other correspondence or communications are effective upon transmittal or delivery. The Parties may change recipients with 10-days' written notice to all Parties.

Section 19. Modification. This Agreement shall not be amended, modified, or canceled without the written consent of the Parties.

Section 20. Headings; Construction of Agreement. The headings of each section of this Agreement are for reference only.

Section 21. Severability of Provisions. Except with respect to any indemnity, defense, hold harmless or insurance obligations of Licensee, or as otherwise specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any severable provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid

provision(s) that it cannot be presumed that the Parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.

Section 22. Assignment. Licensee shall not assign, delegate, or transfer any right or obligation under this Agreement without City's prior written approval. Any assignment, delegation or transfer made or attempted without such approval shall be void.

Section 23. Further Acts. The Parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

Section 24. Binding Effect. This Agreement shall be binding upon the Parties and upon any successors in interest.

Section 25. Controlling Law. This Agreement shall be construed and governed in accordance with the laws of the State of Michigan without giving effect to Michigan's choice or conflict of law provisions. Any lawsuit arising out of or related to this Agreement, the license it grants, or the Micromobility Devices shall be filed in either the courts of Washtenaw County, Michigan, or in the United States District Court for the Eastern District of Michigan, to the general personal jurisdiction of which Licensee submits.

Section 26. Additional Remedies. If Licensee breaches any provision of this Agreement, the City may, in its discretion, cure the breach, in which case Licensee shall be liable to City for City's Costs arising from the cure. The remedies available to the Parties under this Agreement are cumulative, in addition to any given by law or equity, and, to the fullest extent lawful, may be enforced successively or concurrently. Any amounts due from Licensee but not timely paid by Licensee shall accrue interest at twelve percent (12%) per annum starting from the date when due, and such interest the Parties agree is not a penalty.

Section 27. Waiver. No consent or waiver, express or implied, by any Party to this Agreement or any breach or default by any other Party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any Party to complain of any act or failure to act or to declare any of the other Parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. The Parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the Parties reserve the right to exercise any and all of their rights and remedies under this Agreement irrespective of any waiver granted.

Section 28. Representations. The Parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with

its terms. Licensee represents and warrants that it is the sole owner of the Micromobility Devices.

Section 29. Conflicts of Interest. Licensee represents and warrants that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Licensee or its contractors under this Agreement.

Section 30. No Partnership. The Parties are not joint venturers or partners and do not have an employer-employee or master-servant relationship. City shall not be vicariously liable for Licensee or any of the riders of its Micromobility Devices.

Section 31. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes all prior agreements and understanding of the Parties with respect to its subject matter. Nothing in this Agreement shall be construed to limit City's regulatory authority or waive any immunity to which the City is entitled by law.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement to be effective on the Effective Date.

PHEENIX USH, LLC

CITY OF ANN ARBOR

By: _____
Name: Brit Moller
Its: Head of Public Policy

By: _____
Milton Dohoney Jr.
Its: City Administrator

Approved as to substance:

Sue F. McCormick, Interim Public
Services Area Administrator

Approved as to form:

Atleen Kaur, City Attorney

..Title

Resolution to Approve a Right-of-Way License Agreement with Pheenix USH LLC for the Operation of Dockless Electric Micromobility Devices in the City of Ann Arbor

..Memorandum

Attached for your review and consideration for approval is a resolution to approve a Right-of-Way License Agreement with Pheenix USH LLC for the Operation of Dockless Electric Micromobility Devices in the City of Ann Arbor.

Skinny Labs. Inc. d/b/a Spin previously negotiated Right-of-Way License Agreements in good faith with the City of Ann Arbor to operate e-scooters and e-bikes in our community. Spin e-scooters have been in operation in Ann Arbor since April 2019 and e-bikes have been in operation since April 2023.

In September 2023, Spin was acquired by Bird Global, Inc. and became a wholly-owned subsidiary of Bird Rides, Inc., but it continued to operate as a separate entity under the Spin name and brand. In December 2023, Bird Global, Inc., and several of its related affiliates, including Skinny Labs, Inc. d/b/a Spin, filed voluntary petitions for Chapter 11 debtor-in-possession bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of Florida to facilitate a comprehensive financial restructuring plan.

Pursuant to a March 8, 2024 Order entered by the Bankruptcy Court substantially all of Spin's assets were purchased by Bird Scooter Acquisition Corp., which in turn transferred them to Pheenix USH LLC under an Asset Purchase Agreement.

Thus, Pheenix USH LLC has acquired the Spin-branded e-scooters and e-bikes which Skinny Labs, Inc. d/b/a Spin had deployed in Ann Arbor, and it desires to continue to deploy these same devices and operate a dockless electric micromobility service in Ann Arbor.

This License Agreement substantially similar to the agreements with Spin and would authorize Pheenix to continue a micromobility service in Ann Arbor for a sixth year with the opportunity to administratively extend the License for up to two additional one-year periods (not to exceed three years in total). The number of devices would remain unchanged from the current levels: 450 e-scooters and 100 e-bikes.

Budget/Fiscal Impact: This License Agreement, which is consistent with the past License Agreement with Spin, will charge Spin \$0.20/e-scooter or e-bike/day to operate in Ann Arbor. Just over half of the vehicles are licensed by the City of Ann Arbor (300); the remainder are licensed by the University of Michigan (250). Therefore, this License Agreement would result in an anticipated payment of ~\$21,900/year to the Major Streets fund (300 vehicles x \$0.20 fee x 365 days).

..Staff

Prepared by: Raymond Hess, Transportation Manager
Reviewed by: Sue F. McCormick, Interim Public Services Area Administrator
Approved by: Milton Dohoney, City Administrator

..Body

Whereas, Providing mobility options to Ann Arbor residents is an important and necessary function of this government to help foster the continued adoption of active transportation opportunities;

Whereas, The A2Zero Carbon Neutrality Plan and the Moving Together Towards Vision Zero Transportation Plan both call for electric and shared mobility such as e-scooters and e-bikes to achieve our sustainability and mobility goals;

Whereas, E-scooter and e-bike share service gives people a healthy, affordable option for making short trips and can expand the reach of transit service;

Whereas, Encouraging multi-modal transportation through non-motorized options is a necessary and important tool for reducing vehicle miles traveled on our roads and increasing the viability of our City;

Whereas, While encouraging multi-modal transportation, it is critically important to make every reasonable effort to ensure the proper and safe operation of e-scooters and e-bikes on the public right-of-way;

Whereas, The City has entered into several agreements with Spin in the past five years, R-19-180, R-20-184, R-21-226, and R-23-099, and the proposed Right-of-Way License Agreement with Pheenix USH LLC is substantially similar to the previous Spin agreements; and

Whereas, It is also a necessary function of local government to permit use of the public right-of-way to ensure that all commercial uses are not obstructive and contribute positively to the public's wellbeing;

RESOLVED, That City Council approve the Right-of-Way License Agreement with Pheenix USH LLC for the Operation of Dockless Electric Micromobility Devices in the City of Ann Arbor;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute said agreement after approval as to substance by the City Administrator and approval as to form by the City Attorney;

RESOLVED, That the City Administrator be authorized to extend said agreement for up to three (3) additional quarterly periods at the City Administrator's discretion; and

RESOLVED, That the City Administrator be authorized to take necessary administrative actions to implement this resolution.

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Whereas, E-scooter and e-bike share service gives people a healthy, affordable option for making short trips and can expand the reach of transit service;

Whereas, Encouraging multi-modal transportation through non-motorized options is a necessary and important tool for reducing vehicle miles traveled on our roads and increasing the viability of our City;

Whereas, While encouraging multi-modal transportation, it is critically important to make every reasonable effort to ensure the proper and safe operation of e-scooters and e-bikes on the public right-of-way;

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RESOLVED, That the Mayor and City Clerk be authorized and directed to execute said agreement after approval as to substance by the City Administrator and approval as to form by the City Attorney;

RESOLVED, That the City Administrator be authorized to extend said agreement for up to ~~threetwo~~ (32) additional ~~quarterly one-year (1)~~ periods at the City Administrator's discretion; and

RESOLVED, That the City Administrator be authorized to take necessary administrative actions to implement this resolution.

From: [REDACTED]
To: [Akmon, Dharma](#)
Subject: CA-9
Date: Monday, June 3, 2024 8:49:40 PM

You don't often get email from [REDACTED]. [Learn why this is important](#)

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Thank you for your vote on CA9.

Mike

From: [Disch, Lisa](#)
To: [Beaudry, Jacqueline](#)
Subject: 732 Packard Amendment--to add a findings section
Date: Monday, June 3, 2024 8:57:47 PM
Attachments: [Jun 3 732 Packard Ordinance Council Amendment REV1.docx](#)

Ms. Beaudry,

Please circulate this to Council as an Amendment to B-1

Lisa

Lisa Disch | Ward One City Council Representative

City of Ann Arbor
301 E. Huron Street
Ann Arbor, MI 48107-8647

ldisch@a2gov.org | Watch City Council Live At:
<https://www.a2gov.org/departments/communications/ctn/Pages/watch.aspx>

ORDINANCE NO. ORD-24-11

First Reading: May 6, 2024
Public Hearing: June 3, 2024

Approved:
Published:
Effective:

732 PACKARD PUD ZONING DISTRICT AND SUPPLEMENTAL REGULATIONS

An Ordinance to Amend the Zoning Map, Being a Part of Section 5.10.2 of Chapter 55 of Title V of the Code of the City of Ann Arbor (732 Packard PUD Zoning District and Supplemental Regulations)

The City of Ann Arbor ordains:

Section 1. THE ZONING MAP, which, by Section 5.10.2 of Chapter 55 of Title V of the Code of the City of Ann Arbor is made a part of said Chapter 55, shall be so amended as to designate the zoning classification of property described as follows:

BEGINNING at the Southeasterly Corner of Lot 4, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records; thence S51°18'08"W 198.00 feet along the Southeasterly line of said Lot 4; thence N39°03'51"W 36.80 feet along the Southwesterly line of said Lot 4, thence N12°15'03"W 56.33 feet; thence S88°43'13"W 70.89 feet; thence N01°23'37"W 269.88 feet along the West line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR" and its' extension thereof, also being the East line of South State Street (66 feet wide); thence S89°13'35"E 36.07 feet; thence N50°56'09"E 35.98 feet; thence S39°03'51"E 322.28 feet along the Northeasterly line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", also being the Southwesterly line of Packard Street (66 feet wide) to the POINT OF BEGINNING.

Being part of Lots 1, 3, & 4 and all of Lot 2, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records.

Being part of the NW 1/4 of Section 33, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan and containing 1.27 acres of land, more or less.

in the City of Ann Arbor, Washtenaw County, Michigan as PUD (Planned Unit Development District) in accordance with the attached 732 Packard PUD Supplemental Regulations, which are hereby adopted and incorporated herein.

Section 2. Findings

The basis for City Council's approval of this ordinance is as follows:

The PUD satisfies the standards for PUD zoning district review in Section 5.29.11.F of Chapter 55 of Title V of the Code of the City of Ann Arbor given the following:

1. The use, physical characteristics, design features, or amenities proposed have beneficial effects for the City, in terms of public health, safety, welfare, aesthetics, or convenience. In this case, the beneficial effects that warrant this rezoning to PUD include reduced carbon emissions, reduced urban sprawl and vehicular traffic, increased housing density, greater housing affordability, and neighborhood park improvements, which are described more fully in the Supplemental Regulations.
2. The beneficial effects cannot be achieved under any other zoning classification because other zoning classifications do not require the beneficial effects that are provided by the PUD zoning district (such as the requirement of a LEED Silver building and integrated solar power to help reduce carbon emissions) either at all or to the degree required in the PUD district.
3. The use proposed does not have a detrimental effect on public utilities or surrounding properties for the following reasons:
 - a. City Council agrees with the conclusion of the City's engineers' analysis of the PUD use for impacts to public water and sanitary sewer systems, which determined that these public utilities have adequate capacity to serve the district with no detrimental effect on surrounding properties.
 - b. The PUD district is required to comply with all City stormwater ordinances, which ensures that stormwater from the project meets all existing City requirements. As a majority of properties in the district do not currently have stormwater control measures, the installation of a system consistent with current regulations will result in a net improvement of water run-off in the area.
 - c. The proposed development in the PUD zoning district, being subject to the applicable standards of the Unified Development Code, does not introduce any effects related to stormwater management, drainage, soil erosion, sedimentation control, outdoor lighting, or other applicable development standards that are not already possible given uses in the current underlying zoning.
 - d. City Council agrees with the conclusion of the City's traffic engineers' analysis that the multimodal transportation study provided by the developer for potential impacts of development in the proposed PUD zoning district found no unmitigated detrimental effects on surrounding property, with some improvements leading to additional safety and

efficiencies in the public streets when compared with the existing zoning designation and uses.

- e. The permitted uses for the proposed PUD zoning district are identical as the uses allowed in the underlying as well as surrounding C1A/R zoning designation (with the minor exception of Temporary Outdoor Activities in the PUD district). As such, the rezoning to PUD continues to be consistent with surrounding uses and does not have a detrimental effect on surrounding properties.
4. The use or uses proposed are consistent with the City's Comprehensive Plan and policies adopted in that they follow the overarching goals of the City's Comprehensive Plan and City policies, which encourages more dense development with a particular emphasis on more housing overall and a wider range of housing types, encouraging more sustainable developments, living arrangements with less or no reliance on personal vehicles, and reduced vehicle miles travelled. Also, given the underlying C1 A/R zoning designation of the site and surrounding area, the required standards regarding design and massing of the PUD zoning are consistent with the goals and strategies of the Land Use Element of the Comprehensive Plan that emphasize the orderly transitions between higher densities or commercial (and mixed) uses and residential neighborhoods. The City has determined that any departure from the Comprehensive Plan is justified by the beneficial effects provided by the PUD zoning district as listed in the Supplemental Regulations.
5. The PUD zoning district exceeds the residential density of the underlying zoning district by more than 25%, and is subject to the standard that at least 15% of the total dwelling units are required to be Affordable Housing Dwelling Units or a payment in lieu shall be provided. Here the PUD requires that 16% of the residential floor area will be dedicated to affordable housing dwelling units or a payment in-lieu contribution of \$6,620,604 will be made to the City's Affordable Housing Fund.
6. The Supplemental Regulations include findings regarding the benefits of the PUD, as well as specific enforceable requirements and standards which satisfy the requirement for analysis and justification sufficient to determine what the purported benefit is, how the special benefit will be provided, and performance standards by which the special benefit will be evaluated.
7. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation within and to the district is provided. Front setbacks measured from back of curb as well as from the lot line ensure sufficient amenity and walking zones, electric vehicle charging stations are included at a higher rate than normally required, and alternative methods of transportation are encouraged with bicycle parking requirements that are beyond that required by the underlying zoning designation, including the inclusion of specific requirements for both cargo bicycles and e-bikes.
8. Disturbance of natural features, historical features, and historically significant

architectural features are limited to the minimum necessary to allow a reasonable use of the land. There are minimal natural features on site, including two landmark trees, and the zoning ordinance requires mitigation of those trees. There are no historical or historically significant features. The benefits, listed above, by the zoning district to the community are substantially greater the impact to the very minimal natural features on the site.

City Council hereby incorporates the Planning Staff report by reference in these findings, and has based its decision on the complete City record of review, including but not limited to, City Staff review, the Planning Commission review, public hearings and communications, and City Council's deliberation of the PUD zoning ordinance.

Section 3. This ordinance shall take effect and be in force on and after ten days from legal publication.

**732 Packard – 5 Corners – Planned Unit Development
SUPPLEMENTAL REGULATIONS**

SECTION 1: PURPOSE

It is the purpose of the City Council in adopting these regulations to provide for the coordinated and unified development of 12 parcels in harmonious integration with the surrounding neighborhood and presenting a unified development.

These regulations guiding redevelopment in the district will provide for a more efficient use of the property through the redevelopment of parcels within walking distance to the University of Michigan Central Campus and the City's core and near-core business and entertainment districts. The redevelopment will provide an opportunity to make available convenient, modern and sustainable housing in a manner that reduces the need for individual vehicular transportation. Furthermore, these regulations will create a district that is compatible with the surrounding districts and land uses. These regulations will arrange development in the district in an innovative and efficient manner that advances the City's land use plans and policies, and which revitalizes the neighborhood and the City as a whole.

SECTION 2: APPLICABILITY

The provisions of these regulations shall apply to the land described as follows:

BEGINNING at the Southeasterly Corner of Lot 4, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records; thence S51°18'08"W 198.00 feet along the Southeasterly line of said Lot 4; thence N39°03'51"W 36.80 feet along the Southwesterly line of said Lot 4, thence N12°15'03"W 56.33 feet; thence S88°43'13"W 70.89 feet; thence N01°23'37"W 269.88 feet along the West line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR" and its' extension thereof, also being the East line of South State Street (66 feet wide); thence S89°13'35"E 36.07 feet; thence N50°56'09"E 35.98 feet; thence S39°03'51"E 322.28 feet along the Northeasterly line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", also being the Southwesterly line of Packard Street (66 feet wide) to the POINT OF BEGINNING.

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Being part of the NW 1/4 of Section 33, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan and containing 1.27 acres of land, more or less.

Further, the provisions of these regulations shall be adopted and incorporated into the 732 Packard Street Planned Unit Development Zoning District (the "PUD"). These regulations, however, are intended to supplement only those provisions in the City Codes that may be modified as a part of a planned unit development and shall not be construed to replace or modify other provisions or regulations in the City Code.

SECTION 3: FINDINGS

Following public hearings, the City Planning Commission and City Council find the following beneficial effects in terms of public health, safety, welfare, aesthetics, or convenience, regulated in these Supplemental Regulations, warrant the zoning; could not be achieved under any other zoning classification and are not otherwise required; do not have detrimental effects; provide adequate justification for departures from approved plans and policies; provide affordable housing with the increase in density from the underlying zoning and comprehensive plan recommendation; provide safe transportation circulation and encourage and support the use of alternative modes of transportation; and limit disturbance of existing natural, historical, and architecturally significant features to the minimum necessary to allow a reasonable use of the land:

A. Carbon Neutrality-A2 Zero.

- 1) **LEED Standards.** Development of the PUD will contribute to the City's goal of achieving carbon neutrality (A2Zero). The structure to be located on the Property will be constructed and developed in accordance with LEED standards.
- 2) **Integrated Solar Power.** The PUD integrates solar panels into the building at the roof level, aiming to produce a portion of its energy needs with photovoltaic panels, further reducing the Project's carbon footprint and energy use from off-site sources, reducing the environmental and economic harms associated with fossil fuel energy within the community, and supporting A2Zero.
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 - C. **Housing Affordability.** The PUD requires 16% of its residential floor area dedicated to affordable housing dwelling units, which is one percent more than the standard for approval for PUD Zoning Districts.
 - D. **Neighborhood Park Improvements.** The PUD provides improvements to adjacent Forsythe Park.

SECTION 4: PUD REGULATIONS

The standards and regulations provided below shall regulate development in the 732 Packard PUD district using the terms, definitions, interpretations, and applicability set forth in Chapter 55, Unified Development Code. All of the standards and regulations provided in the UDC shall also apply unless specifically provided in these Supplemental Regulations.

- A. **Permitted Uses.** The permitted uses shall be as provided in Section 5.15 of the Unified Development Code for the C1A/R district, plus Temporary Outdoor Activities use as defined in the Unified Development Code. Only residential uses shall be permitted above the third story.
- B. **Development Standards**
 - 1) **Height:** The minimum building height shall be six stories. The maximum building height shall be 15 stories and 200 feet.
 - 2) **Building Coverage and Open Space:** The maximum building coverage shall be 70%. The minimum open space shall be 20%.
 - 3) **Setbacks:** The minimum setback from any front lot line shall be 5 feet, provided there is at least 16 feet between the back of curb and building. The minimum side or rear setback shall be 5 feet.

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- 1) **Vehicle**: The maximum number of vehicle parking spaces shall be 82.
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- 1) **LEED Silver**. The building shall achieve the Silver level of the U.S. Green Building Council Leadership in Energy and Environmental Development (LEED) Certification for new construction, version 4.0 or newer. Proof of registration is required at the time of building permit issuance and documentation of certification shall be provided within two years of issuance of the final certificate of occupancy. If the project fails to provide written certification of compliance within two years of issuance of the final certificate of occupancy, penalty and/or enforcement provision specified in the development agreement shall apply.
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- F. Affordable Housing.** A minimum of 16% of the residential floor area in the district shall be dedicated to Affordable Housing for Lower Income Households as defined in Chapter 55 of Ann Arbor City Code, which shall be made available

for lease or sale to eligible households consistent with City ordinances, policies and regulations regarding affordable housing, and under such negotiated terms reasonably acceptable to the City and the Property owner. Payment of a cash contribution in lieu of affordable housing may be made at the sole discretion of the City Council in the amount established by Council resolution at the time of site plan approval.

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- 1) **Residential Front Doors.** A minimum of six dwelling units shall be provided at street-level with direct front door access to Packard Street.
- 2) **Retail Activity.** A minimum of 2,000 square feet of street-level retail space shall be made available with a minimum interior height of 15 feet.
- 3) **Outdoor Activities.** A minimum of 4,000 square feet shall be provided and made available for temporary outdoor activities.

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From: [Beaudry, Jacqueline](#)
To: [City Council](#)
Cc: [Lenart, Brett](#); [Kaur, Atleen](#); [Dohoney Jr., Milton](#)
Subject: FW: 732 Packard Amendment--to add a findings section
Date: Monday, June 3, 2024 9:02:33 PM
Attachments: [Jun 3 732 Packard Ordinance Council Amendment REV1.docx](#)

Jacqueline Beaudry, City Clerk (she/her/hers)

President, Michigan Association of Municipal Clerks
2019 Michigan City Clerk of the Year

Ann Arbor City Clerk's Office | Guy C. Larcom City Hall | 301 E. Huron, 2nd Floor · Ann Arbor · MI · 48104
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ANN ARBOR BICENTENNIAL
1824-2024

From: Disch, Lisa <LDisch@a2gov.org>
Sent: Monday, June 3, 2024 8:58 PM
To: Beaudry, Jacqueline <JBeaudry@a2gov.org>
Subject: 732 Packard Amendment--to add a findings section

Ms. Beaudry,

Please circulate this to Council as an Amendment to B-1

Lisa

Lisa Disch | Ward One City Council Representative

City of Ann Arbor

301 E. Huron Street

Ann Arbor, MI 48107-8647

ldisch@a2gov.org | Watch City Council Live At:
<https://www.a2gov.org/departments/communications/ctn/Pages/watch.aspx>

ORDINANCE NO. ORD-24-11

First Reading: May 6, 2024
Public Hearing: June 3, 2024

Approved:
Published:
Effective:

732 PACKARD PUD ZONING DISTRICT AND SUPPLEMENTAL REGULATIONS

An Ordinance to Amend the Zoning Map, Being a Part of Section 5.10.2 of Chapter 55 of Title V of the Code of the City of Ann Arbor (732 Packard PUD Zoning District and Supplemental Regulations)

The City of Ann Arbor ordains:

Section 1. THE ZONING MAP, which, by Section 5.10.2 of Chapter 55 of Title V of the Code of the City of Ann Arbor is made a part of said Chapter 55, shall be so amended as to designate the zoning classification of property described as follows:

BEGINNING at the Southeasterly Corner of Lot 4, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records; thence S51°18'08"W 198.00 feet along the Southeasterly line of said Lot 4; thence N39°03'51"W 36.80 feet along the Southwesterly line of said Lot 4, thence N12°15'03"W 56.33 feet; thence S88°43'13"W 70.89 feet; thence N01°23'37"W 269.88 feet along the West line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR" and its' extension thereof, also being the East line of South State Street (66 feet wide); thence S89°13'35"E 36.07 feet; thence N50°56'09"E 35.98 feet; thence S39°03'51"E 322.28 feet along the Northeasterly line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", also being the Southwesterly line of Packard Street (66 feet wide) to the POINT OF BEGINNING.

Being part of Lots 1, 3, & 4 and all of Lot 2, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records.

Being part of the NW 1/4 of Section 33, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan and containing 1.27 acres of land, more or less.

in the City of Ann Arbor, Washtenaw County, Michigan as PUD (Planned Unit Development District) in accordance with the attached 732 Packard PUD Supplemental Regulations, which are hereby adopted and incorporated herein.

Section 2. Findings

The basis for City Council's approval of this ordinance is as follows:

The PUD satisfies the standards for PUD zoning district review in Section 5.29.11.F of Chapter 55 of Title V of the Code of the City of Ann Arbor given the following:

1. The use, physical characteristics, design features, or amenities proposed have beneficial effects for the City, in terms of public health, safety, welfare, aesthetics, or convenience. In this case, the beneficial effects that warrant this rezoning to PUD include reduced carbon emissions, reduced urban sprawl and vehicular traffic, increased housing density, greater housing affordability, and neighborhood park improvements, which are described more fully in the Supplemental Regulations.
2. The beneficial effects cannot be achieved under any other zoning classification because other zoning classifications do not require the beneficial effects that are provided by the PUD zoning district (such as the requirement of a LEED Silver building and integrated solar power to help reduce carbon emissions) either at all or to the degree required in the PUD district.
3. The use proposed does not have a detrimental effect on public utilities or surrounding properties for the following reasons:
 - a. City Council agrees with the conclusion of the City's engineers' analysis of the PUD use for impacts to public water and sanitary sewer systems, which determined that these public utilities have adequate capacity to serve the district with no detrimental effect on surrounding properties.
 - b. The PUD district is required to comply with all City stormwater ordinances, which ensures that stormwater from the project meets all existing City requirements. As a majority of properties in the district do not currently have stormwater control measures, the installation of a system consistent with current regulations will result in a net improvement of water run-off in the area.
 - c. The proposed development in the PUD zoning district, being subject to the applicable standards of the Unified Development Code, does not introduce any effects related to stormwater management, drainage, soil erosion, sedimentation control, outdoor lighting, or other applicable development standards that are not already possible given uses in the current underlying zoning.
 - d. City Council agrees with the conclusion of the City's traffic engineers' analysis that the multimodal transportation study provided by the developer for potential impacts of development in the proposed PUD zoning district found no unmitigated detrimental effects on surrounding property, with some improvements leading to additional safety and

efficiencies in the public streets when compared with the existing zoning designation and uses.

- e. The permitted uses for the proposed PUD zoning district are identical as the uses allowed in the underlying as well as surrounding C1A/R zoning designation (with the minor exception of Temporary Outdoor Activities in the PUD district). As such, the rezoning to PUD continues to be consistent with surrounding uses and does not have a detrimental effect on surrounding properties.
4. The use or uses proposed are consistent with the City's Comprehensive Plan and policies adopted in that they follow the overarching goals of the City's Comprehensive Plan and City policies, which encourages more dense development with a particular emphasis on more housing overall and a wider range of housing types, encouraging more sustainable developments, living arrangements with less or no reliance on personal vehicles, and reduced vehicle miles travelled. Also, given the underlying C1 A/R zoning designation of the site and surrounding area, the required standards regarding design and massing of the PUD zoning are consistent with the goals and strategies of the Land Use Element of the Comprehensive Plan that emphasize the orderly transitions between higher densities or commercial (and mixed) uses and residential neighborhoods. The City has determined that any departure from the Comprehensive Plan is justified by the beneficial effects provided by the PUD zoning district as listed in the Supplemental Regulations.
5. The PUD zoning district exceeds the residential density of the underlying zoning district by more than 25%, and is subject to the standard that at least 15% of the total dwelling units are required to be Affordable Housing Dwelling Units or a payment in lieu shall be provided. Here the PUD requires that 16% of the residential floor area will be dedicated to affordable housing dwelling units or a payment in-lieu contribution of \$6,620,604 will be made to the City's Affordable Housing Fund.
6. The Supplemental Regulations include findings regarding the benefits of the PUD, as well as specific enforceable requirements and standards which satisfy the requirement for analysis and justification sufficient to determine what the purported benefit is, how the special benefit will be provided, and performance standards by which the special benefit will be evaluated.
7. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation within and to the district is provided. Front setbacks measured from back of curb as well as from the lot line ensure sufficient amenity and walking zones, electric vehicle charging stations are included at a higher rate than normally required, and alternative methods of transportation are encouraged with bicycle parking requirements that are beyond that required by the underlying zoning designation, including the inclusion of specific requirements for both cargo bicycles and e-bikes.
8. Disturbance of natural features, historical features, and historically significant

architectural features are limited to the minimum necessary to allow a reasonable use of the land. There are minimal natural features on site, including two landmark trees, and the zoning ordinance requires mitigation of those trees. There are no historical or historically significant features. The benefits, listed above, by the zoning district to the community are substantially greater the impact to the very minimal natural features on the site.

City Council hereby incorporates the Planning Staff report by reference in these findings, and has based its decision on the complete City record of review, including but not limited to, City Staff review, the Planning Commission review, public hearings and communications, and City Council's deliberation of the PUD zoning ordinance.

Section 3. This ordinance shall take effect and be in force on and after ten days from legal publication.

**732 Packard – 5 Corners – Planned Unit Development
SUPPLEMENTAL REGULATIONS**

SECTION 1: PURPOSE

It is the purpose of the City Council in adopting these regulations to provide for the coordinated and unified development of 12 parcels in harmonious integration with the surrounding neighborhood and presenting a unified development.

These regulations guiding redevelopment in the district will provide for a more efficient use of the property through the redevelopment of parcels within walking distance to the University of Michigan Central Campus and the City's core and near-core business and entertainment districts. The redevelopment will provide an opportunity to make available convenient, modern and sustainable housing in a manner that reduces the need for individual vehicular transportation. Furthermore, these regulations will create a district that is compatible with the surrounding districts and land uses. These regulations will arrange development in the district in an innovative and efficient manner that advances the City's land use plans and policies, and which revitalizes the neighborhood and the City as a whole.

SECTION 2: APPLICABILITY

The provisions of these regulations shall apply to the land described as follows:

BEGINNING at the Southeasterly Corner of Lot 4, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records; thence S51°18'08"W 198.00 feet along the Southeasterly line of said Lot 4; thence N39°03'51"W 36.80 feet along the Southwesterly line of said Lot 4, thence N12°15'03"W 56.33 feet; thence S88°43'13"W 70.89 feet; thence N01°23'37"W 269.88 feet along the West line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR" and its' extension thereof, also being the East line of South State Street (66 feet wide); thence S89°13'35"E 36.07 feet; thence N50°56'09"E 35.98 feet; thence S39°03'51"E 322.28 feet along the Northeasterly line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", also being the Southwesterly line of Packard Street (66 feet wide) to the POINT OF BEGINNING.

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Further, the provisions of these regulations shall be adopted and incorporated into the 732 Packard Street Planned Unit Development Zoning District (the "PUD"). These regulations, however, are intended to supplement only those provisions in the City Codes that may be modified as a part of a planned unit development and shall not be construed to replace or modify other provisions or regulations in the City Code.

SECTION 3: FINDINGS

Following public hearings, the City Planning Commission and City Council find the following beneficial effects in terms of public health, safety, welfare, aesthetics, or convenience, regulated in these Supplemental Regulations, warrant the zoning; could not be achieved under any other zoning classification and are not otherwise required; do not have detrimental effects; provide adequate justification for departures from approved plans and policies; provide affordable housing with the increase in density from the underlying zoning and comprehensive plan recommendation; provide safe transportation circulation and encourage and support the use of alternative modes of transportation; and limit disturbance of existing natural, historical, and architecturally significant features to the minimum necessary to allow a reasonable use of the land:

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From: [Radina, Travis](#)
To: [Beaudry, Jacqueline](#)
Subject: Amendment to DC-2
Date: Monday, June 3, 2024 9:23:51 PM

RESOLVED, Copies of this resolution be transmitted to the Governor, **the Chairpersons of the Michigan House and Michigan Senate Appropriations Committees**, and all Washtenaw County members of the Michigan Legislature.

--

Travis Radina
Mayor Pro Tem | Councilmember, Ward 3
(he|him|his)

City of Ann Arbor
301 E. Huron St.
Ann Arbor, MI 48104
<https://www.a2gov.org/>
Cell: 734.219.6551

From: [Beaudry, Jacqueline](#)
To: [City Council](#)
Cc: [Kaur, Atleen](#); [Dohoney Jr., Milton](#)
Subject: FW: Amendment to DC-2
Date: Monday, June 3, 2024 9:24:25 PM

Jacqueline Beaudry, City Clerk (she/her/hers)

President, Michigan Association of Municipal Clerks

2019 Michigan City Clerk of the Year

Ann Arbor City Clerk's Office | Guy C. Larcom City Hall | 301 E. Huron, 2nd Floor · Ann Arbor · MI · 48104

734.794.6140 (O) · 734.994.8296 (F) | Internal Extension 41401

jbeaudry@a2gov.org | www.a2gov.org



ANN ARBOR BICENTENNIAL

1824-2024

From: Radina, Travis <TRadina@a2gov.org>
Sent: Monday, June 3, 2024 9:24 PM
To: Beaudry, Jacqueline <JBeaudry@a2gov.org>
Subject: Amendment to DC-2

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Travis Radina

Mayor Pro Tem | Councilmember, Ward 3

(he|him|his)

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