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ADMITTED TO PRACTICE IN MICHIGAN,  
FLORIDA and FEDERAL COURTS

March 21, 2018

**Via Email: [building@a2gov.org](mailto:building@a2gov.org), and Certified Mail**

City of Ann Arbor  
Planning & Development Services  
Attn: Brett Lenart, Planning Manager  
100 North Fifth Avenue  
P.O. Box 8647  
Ann Arbor, Michigan 48107-8647

RE: Fraternity & Sorority Special Exception Use Standards  
Proposed Amendments

Dear Mr. Lenart,

We write on behalf of several national Greek organizations, each of whom is a property owner and operates a fraternity house in the City of Ann Arbor. By way of introduction, Stephen R. Bernstein is General Counsel to one of those organizations, and a longtime member of a local Zoning Board of Appeals. Micah Kamrass is an attorney with Manley Burke, LPA, based in Cincinnati, Ohio, which has the nation's largest Fraternal Law practice and represents numerous international fraternities and sororities.

The purpose of this letter is to express strong and unequivocal opposition to the following proposed zoning ordinance amendment:

“ Section 5:1: Definitions:

(21) **Fraternity or sorority house.** A building used by a college fraternity or sorority as a principal place of residence for its members. The fraternity or sorority shall have an affiliation with the University of Michigan, or a postsecondary college or university that operates campus facilities in the City. Affiliation shall be established by recognition or membership of the resident fraternity or sorority in an association or council recognized by the college or university.”

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Respectfully, the proposed amendment is discriminatory, unconstitutionally vague, and constitutes an unlawful delegation of municipal authority to the University of Michigan, or other post secondary college or universities that operate campus facilities in the City. It is also unreasonable interference in our clients' business interests.

If this proposal is enacted, our clients are prepared to challenge it through all legal channels. It is our opinion that our clients would prevail in litigation, and that Michigan courts will declare such an amendment unconstitutional and void.

The proposed amendment apparently leaves complete authority to the University of Michigan to establish rules and standards for "affiliation". While this letter is not intended to suggest that the University of Michigan has or intends to exercise its consensual authority over recognized organizations in an unfair or arbitrary manner, we have too frequently found this to be the case at universities across the country. As you may be aware, there is an emerging body of case law defining "due process", and "fair hearing" standards which must be applied in disciplinary proceedings against individuals and student organizations.

There is currently considerable discussion and litigation in the Greek world about the relationship between those organizations and universities. Many Greek organizations, concerned about the arbitrary and unfair manner in which universities have "adjudicated" student/student organization discipline and recognition issues, have opted to operate as off-campus, independent fraternal organizations, not seeking affiliation or recognition. Courts across the country, including the United States Supreme Court, have consistently recognized the legal right of Greek organizations to operate, and the right of students at public universities to affiliate, with those organizations without fear of disciplinary action or other discriminatory treatment. The proposed amendment violates those First Amendment rights.

Respectfully, the proposed amendment is unconstitutional because it effectively delegates authority legally vested in a municipality; i.e., property uses and variances to the university. Likewise, the Amendment, as drafted is so vague that it provides no guidance to property owners, nor any sufficient standard for a zoning board to follow in determining whether a special exception permit should be granted to a new applicant, or revoked as to any existing user. There is a long line of federal cases where statutes are voided for vagueness. That the proposed change would not retroactively apply to existing houses in the City, but would be applicable to new fraternity or sorority applications is of no consolation to our clients.

We would be remiss not to note that the proposed Amendment comes in close conjunction with significantly more restrictive recruitment rules recently imposed by the University of Michigan. Frankly, these circumstances suggest a concerted, if not March 21, 2018

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conspiratorial endeavor by the City and University to slowly eliminate fraternity housing. Besides the various concerns already mentioned, our clients could suffer millions of dollars in financial loss and damage by passage of this amendment.

Finally, the current proposed actions of the University and the City seem to be a return to bygone and long abandoned practices regarding the relationship of the University of Michigan to its students. This consideration is best summarized by the following letter to the editor, published in the Michigan Daily on May 5, 2002:

"...In loco parentis - the concept that colleges and universities have the authority and responsibility to serve as parental figures for their students - has been one of the most contentious issues in education over the past 40 years. In the early '70s, much of the authority that public universities had exercised over their students was scaled-back or eliminated. Students benefited tremendously from these reforms, as they were able to develop and grow on their own terms, freed from the puritanical and rigid oversight of university regulations and authority figures. Students were allowed to organize their own extracurricular activities and social lives without the paternalistic influence of university administrators and they independently developed without the domineering forces of supervisors.

While in loco parentis has undergone a resurgence since the implementation of a nation-wide drinking age of 21 and an expanded definition of university liability it has been relatively limited when compared to the '50s and early '60s. However, our current excessively litigious society has created an environment where universities could once again intrude in students affairs.

One particularly dangerous incursion of in loco parentis could be its effect on the universities counseling and psychological Services. The growth of in loco parentis could restrict the confidentiality that is imperative in a healthy doctor-patient relationship since it could require physicians to divulge sensitive information to parents. Student privacy is crucial to a successful mental health service. Many individuals require that their families do not know they are receiving mental health treatment. Students should be allowed to continue with their therapy without worrying about their family's approval of their activities.

The presence of university administrators and officials in students' lives stifles the very growth that universities should seek to foster. The finest graduates of universities are created through the independence that allows individuals to create their own values and ideologies. They question and struggle against the prevailing sentiments of their epoch and authority. In loco parentis creates an

atmosphere where the university dictates students values and prohibits opposition. The passive individuals who are the standard product of an

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education of in loco parentis are ill-served for the rigors and responsibilities of life and participation in a democratic society.”

Thank you for your consideration. Please know that there is a significant group of property owners in the City of Ann Arbor vehemently opposed to this amendment, and who will be monitoring this situation for the purpose of protecting their legal rights.

Very truly yours

*s/Stephen R. Bernstein*

Stephen R. Bernstein

*s/Micah E. Kamrass*

Micah E. Kamrass

Manley Burke, LPA

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Cincinnati, Ohio, 45202

Srb/dpb