

STATE BOUNDARY COMMISSION
PUBLIC HEARING
CITY-INITIATED ANNEXATION
City of Ann Arbor Rebuttal

July 26, 2019

The City of Ann Arbor has been asked to respond to the statements made orally at the hearing on June 24, 2019, or submitted in writing to the Boundary Commission. Responses are provided in the pages that follow.





Public Hearing Summary Comments

ANNEXATION PETITION No. 19-AR-1 – Ann Arbor Township

19-AR-1.2) Robert White

a) *“Historically, there was an agreement between the Township and City that Township properties would not be annexed into the City.”*

City of Ann Arbor Response: Staff is not aware of any such agreement. The current agreement with Ann Arbor Township ([signed 1994](#), and [amended 2004](#)) states that the Township will not oppose city-initiated annexations after December 31, 2007, for properties within the ultimate city service area.

b) *“There are no sewer lines available at the properties being considered.”*

City of Ann Arbor Response: Sewer lines are currently available for some properties included in this round of annexation. Sewer lines adjacent to other properties will be constructed in the future.

19-AR-1.3) Nellie Guibert de Bruet

“If the property is annexed, the sidewalk can be extended.”

City of Ann Arbor Response: Provided the city has sufficient right-of-way, the sidewalk can be extended regardless of annexation and is programmed in the capital improvements plan for construction in 2021 as part of the Scio Church Road Resurfacing project.

19-AR-1.4) Renaud Guibert de Bruet

“If the property next door is annexed to the City, will the sidewalk be finished on Scio Church Road?”

City of Ann Arbor Response: See 19-AR-1.3

19-AR-1.5) Rachel Portnoy

a) *“Unsure of the reason for the annexation.”*

City of Ann Arbor Response: The city is annexing township islands, both individual properties and clusters, scattered throughout the city. The city has provided the rationale for annexation, [available on the city webpage](#), and has shared its reasoning with the community at a [public information meeting in August 2018](#), prior to petitioning the State Boundary Commission for annexation. These include the following:

- 1) Eliminate duplication of municipal services, including:



- Police Services
 - Fire Services
- 2) Improve efficiency and clarity of municipal duties concerning:
- Solid Waste Collection
 - Voting (polling locations)
 - Issuance of Building Permits
 - Capital Improvements Planning (e.g., extension of water and sanitary sewer services)
- 3) Promote equity of funding municipal services. City residents are currently funding the following services used by township residents:
- Street Resurfacing and Reconstruction
 - Streetlights
 - Stormwater Facilities
 - City Parks
 - Police Services
 - Fire Services
- 4) Public health – county-wide, [per Washtenaw County Water Resources Commission](#), approximately:
- 18% of septic systems are failing
 - 15% of wells do not have adequate protection against contaminants
 - 14% of wells showed chemical or bacterial contamination

Additionally, the State Boundary Commission staff has recommended that the city complete annexation of township islands in a timely manner.

b) “Not aware of the duplication of services the City references.”

City of Ann Arbor Response: The city currently provides multiple services to township islands, including the following:

- Fire Services
- Police Services
- City Parks
- Streetlights
- Stormwater Facilities
- Street Resurfacing and Reconstruction

Although the emergency response system is improving with regard to identifying whether a parcel is in the township or city, the system may not always be accurate. Because it’s not always possible to identify whether a property is in the township or city, police and fire err on the side caution and respond, duplicating responses from Washtenaw County Sheriff or Pittsfield Township Police and Township Fire services. When an area no longer has township properties within it, city police and fire services



will know the property is a city property and the county and townships will not need to respond.

c) *“Bottom line is the City wants to create more revenue.”*

City of Ann Arbor Response: The city has not identified the creation of additional revenue as a reason for annexation.

d) *“The City of Ann Arbor has a rule that hook-ups should be 200 feet from property line and the State says 200 feet from the structure. There is a discrepancy.”*

City of Ann Arbor Response: The city distance is authorized by state law. See APPENDIX A.

e) *“The city water has PFAS and dioxins. My well has been tested and is clean. I am being forced to pay all this money to hook-up to contaminated water.”*

City of Ann Arbor Response: City of Ann Arbor drinking water and the Huron River do not contain dioxins. City of Ann Arbor drinking water is not contaminated. It meets or exceeds all federal and state regulatory standards. The water treatment plant’s new granular activated carbon filters have reduced levels of PFAS in the drinking water to below or well below the most recent health-based screening levels proposed by the State of Michigan, which are the most stringent in the United States. The city’s drinking water is not impacted by dioxins or 1,4-dioxane. The city is actively monitoring for 1,4-dioxane in case it does impact the Huron River in the future, and will be capable of treatment if required.

19-AR-1.6) Austra Leipa

a) *“Where would polling and building permit services be?”*

City of Ann Arbor Response: Building permit services are at City Hall (301 E. Huron Street), first floor, with some of the services also available online: [Construction and Building](#). Specific information about polling, permitting and other services will be communicated upon annexation and is currently available by contacting the [City Clerk’s Office](#).

b) *“City water and sewer are not available to residents of Hampstead Lane and likely will not be available for years.”*

City of Ann Arbor Response: Services will be programmed into the capital improvements plan (CIP) upon community request. No request for services on Hampstead Lane have been received to date.

c) *“The annexation will result in paying higher taxes with no service. There is no benefit.”*



City of Ann Arbor Response: Water and sanitary sewer systems and services are not funded with tax revenues. New residents will start receiving solid waste collection (trash, recyclables and compostables). Many services and benefits are already being provided to township residents. Although township residents may not perceive new benefits from annexation, they will begin making their contribution for the benefits that they already receive. See 19-AR-1.5.a.

19-AR-1.7) Thomas Wieder

a) *"A reasonable estimate would be \$2 million to connect to city services that virtually no one needs."*

City of Ann Arbor Response: City staff are not aware of where this figure comes from, or what those funds would cover.

b) *"The State says hook-ups are to be 200 feet from the structure, but the City has an ordinance that says available hook-up should be 200 feet from the property line."*

City of Ann Arbor Response: The city distance is authorized by state law. See APPENDIX A.

c) *"Some of the proposed areas for annexation are heavily wooded. Creating the sewer lines would damage a lot of these trees."*

City of Ann Arbor Response: Vegetation impacts for utility lead installation from the roadway to the structure will vary by site. Homeowners have the opportunity to work with contractors to minimize natural features disturbance and use alternate construction methods, such as earth boring. City installations of new water and sanitary sewer lines are done within the roadway areas and rarely, if ever, affect trees or other vegetation by the road.

d) *"Not sure of the duplication in services."*

City of Ann Arbor Response: See 19-AR-1.5.b.

19-AR-1.9) Greg Peterson

a) *"The only reason given for the proposal is to eliminate duplication of services."*

City of Ann Arbor Response: See 19-AR-1.5.a.

b) *"Huge trees will be cut down."*

City of Ann Arbor Response: See 19-AR-1.7.c.



19-AR-1.10) Veronica Sanitate

"We have two (2) additional properties vacant with ponds on them. Are those required to have hook-ups?"

City of Ann Arbor Response: The city will not require utility connections on vacant properties. Utility connection requirements and Capital Recovery Charges were communicated to each property owner in personalized letters dated August 3, 2018 (a sample letter is available in the [August 2018 memo to City Council](#)). A [summary of affected properties, utility service availability and associated Capital Recovery Charges](#) is available.

19-AR-1.11) Robert Marans

"The environmental impact to the neighborhood would be catastrophic. We have a lot of trees that shade our property."

City of Ann Arbor Response: See 19-AR-1.7.c.

19-AR-1.13) Tom Gryniowicz

"There is nothing on this land that needs service."

City of Ann Arbor Response: See 19-AR-1.10.

19-AR-1.14) *"Chairperson Beltramini – Will sidewalk improvement be included?"*

Kayla Coleman – If sidewalk improvement is a part of the city capital improvement plan, the annexed properties will be included in the plan."

City of Ann Arbor Response: Filling sidewalk gaps is a priority for the city. Prioritizing sidewalk gaps is a separate process from annexation.

19-AR-1.15) *"Commissioner Carter – There has been a concern about the City requiring hook-ups be within 200 feet of the property line and the State requires it be 200 feet from the structure. Has there been a legal determination?"*

Has there been a legal determination?"

Troy Bofman, City of Ann Arbor Senior Engineer – From our legal staff, we are to follow the City ordinance, so 200 feet from the property line would be considered available."

City of Ann Arbor Response: Spelling correction: Baughman (not Bofman)

The city distance is authorized by state law. See APPENDIX A.

19-AR-1.16) *"Jeffrey Kahan – On December 3, 2018, City Council took action to direct staff to submit this petition to the Boundary Commission. They also amended the City Utility Code to give property owners who are being annexed by the City 10 years to connect to city water and an additional 18 months to connect to sewer."*



City of Ann Arbor Response: Transcription correction: Property owners will not have 18 months in addition to the 10 years from the date of annexation to connect to the city sanitary sewer – the 10 year figure applies only to the municipal water connection requirements, while the 18 month figure applies only to the sanitary sewer connection requirements. Property owners will be sent notice 10 years after the date of annexation, or when the property is sold, requiring them to connect to municipal water within 90 days. Property owners will be sent notice 18 months after the date of annexation requiring them to connect to sanitary sewer within 90 days of the notice being sent. The 18 months for connection to sanitary sewer is the time limit set by state law.

The code previously required that all property owners connect to sanitary sewer and water within 90 days of service availability (e.g., new utility construction; annexation), but was [amended in 2018](#) (18-32 Utility Ordinance Briefed and Approved as Amended 12-3-18.pdf) to provide relief for parcels subject to city-initiated annexation.

19-AR-1.17) *“Chairperson Beltramini – The average cost to the property owner is \$12,000. What is the high and low end of the price spectrum?”*

Troy Bofman- The City charges right around \$12,000.”

City of Ann Arbor Response: Capital Recovery Charges vary based on the size of the meter; \$12,000 is the approximate Capital Recovery Charges due to the city for a typical residential meter. Capital Recovery Charges do not include the cost for a property to actually connect to the utility main. Capital Recovery Charges, tap charges, and meter set fees must be paid to the city when a property physically connects to the city utility lines. Copies of the city’s current fee schedules are available on the city’s [Water Connections webpage](#). In addition, the property owner must hire a licensed plumbing contractor that is registered with the city’s Planning and Development Services Unit to install the service leads to complete the physical connection from the home to the city utility lines, and must obtain approval of permits and connections. Private contractor costs can vary significantly depending on the site conditions. The city does not have estimates for expenses between the homeowner and private contractor, but we advise property owners to obtain at least three estimates for the services.

19-AR-1.18) *“Commissioner Carter – Has the City done an analysis of the monetary impact this annexation will cause?”*

Jeffrey Kahan – The City has not performed any analysis that I am aware of. Currently, the City does provide street resurfacing, streetlights, storm water, parks, police, and fire to the Townships. Other than a duplication in services, there is also the issue of equity. City residents are paying for these services and township residents are not.”

City of Ann Arbor Response: The City has not performed an analysis of overall monetary impact to property owners. However, customized letters were provided to each



property owner that included Capital Recovery Charges, Improvement Charges, and resources to determine other specific costs related to annexation and utility connection.

Some information about tax impact is available. Although the Assessor's Office does not typically provide tax estimates for future annexations due to the timing of the process and number of unknown variables, the estimated City of Ann Arbor tax revenue for the eighty-eight¹ Pittsfield, Scio, and Ann Arbor Township island parcels in the proposed Round 2 Annexation list is approximately \$136,000. The estimate is based on the 2018 taxable values established by the townships while applying the City of Ann Arbor's portion of the tentative 2018 millage rate. Annexation is not a property tax uncapping event – absent any transfers of ownership, the township taxable value from the year of state approval and the Consumer Price Index (CPI) adjustment provide the basis for the city's taxable value for the following year. The estimated amount does not include taxes for other taxing authorities such as the Ann Arbor Public Schools, Ann Arbor District Library, etc. Additional information pertaining to tax revenue:

- 43 of 88 parcels are vacant land.
- Average township taxable value = \$97,750.

Jurisdiction	Total # of Improved Parcels in 2018	Total # of Unimproved Parcels in 2018	Total # of Parcels	Total 2018 Taxable Value /3	Total 2017 Homestead Millage Rate /1 /2
City of Ann Arbor					49.0725
Ann Arbor Township	40	11	51	7,200,072	37.6656
Pittsfield Township	5	5	10	1,200,623	38.7362
Scio Township	0	27	27	200,272	34.9472
	45	43	88	8,600,967	

NOTES:

/1 Due to the 2018 total millage rate not known until November/December 2018, this table uses final 2017 total millage rate for comparison purposes.

/2 The Washtenaw County, Ann Arbor School District, WCC, AAATA, etc., amounts will remain the same for all the properties regardless of whether they are in a township or in the City.

/3 Parcels will not be subject to revaluation if annexed into the City, and will not be revalued until such time as there has been a change-in-ownership.

The municipal (city vs. townships) portion of taxes, based on best information available is as follows:

Ann Arbor Township 2017 millage rate: 5.4181

Scio Township 2017 millage rate: 1.7997

¹ There are now eighty-seven parcels within the annexation petitions submittal. One parcel completed owner-initiated annexation since the time this response was prepared.



Pittsfield Township 2017 millage rate: 6.5472

City of Ann Arbor tentative 2018 millage rate: 15.8885 (including 1.9802 mills for AATA)

19-AR-1.19) *“Commissioner Rice – Why are these particular areas being proposed for annexation at this time?”*

Jeffrey Kahan – There are about 550 parcels we would like to annex eventually. These particular parcels took priority over others because more city improvements are associated with them.”

City of Ann Arbor Response: In addition to availability of city improvements, staff considers the following when prioritizing parcels for city-initiated annexation:

- Availability of city water and sanitary sewer utility services
- Percent of parcels already connected to city water or sanitary sewer utilities within a group of township island parcels
- Percent of parcels requesting city water and sanitary sewer utilities within a group of township island parcels
- Ability of city vehicles to access property (including emergency vehicles)
- Availability of fire hydrants and the need for specialized firefighting equipment
- Road jurisdiction (city, county, or private)
- Condition and age of private wells and septic systems and number of county environmental health complaints
- Number of contiguous parcels affected
- Percent of vacant parcels within a group of township island parcels
- Presence of regulated natural features on potential development sites
- Staff time and effort anticipated to prepare survey drawings and legal descriptions

To make the annexation process manageable, the city is choosing to annex parcels incrementally, rather than all 500+ parcels at once.

ANNEXATION PETITION No. 19-AR-2 – Pittsfield Township

19-AR-2.1) Paul Karmo

“The cost of the sidewalk and sewer improvement is \$41,000. Was not aware of the special assessment.”

City of Ann Arbor Response: See APPENDIX B.

19-AR-2.2) Todd & Donna Tramentin

“The property is undeveloped. It has an uninhabitable building that is just used for storage. Our concern is increased taxes and being forced to hook-up to water and sewer that we have no use for.”



City of Ann Arbor Response: Staff provided clarification to the property owner immediately following the June 24 public hearing that utility connection is not required for this property. This determination was made because the building is uninhabitable and used exclusively for storage.

ANNEXATION PETITION No. 19-AR-3 – Scio Township

19-AR-3.1) Gail Ristow

“Has purchased two (2) connected wooded lots next to home (in the Township of Scio). Created a meditation labyrinth path which is open to the community. I am on a limited income. If the properties are annexed, it would become a hardship to me tax-wise. Frustrated that I may lose these properties due to increased taxes that I cannot afford.”

City of Ann Arbor Response: Vacant properties have a substantially lower tax burden than improved lots. The City Assessor can provide tax estimates upon request. Also see 19-AR-1.18.



Written Comments

ANNEXATION PETITION No. 19-AR-1 – Ann Arbor Township

ANNEXATION PETITION No. 19-AR-2 – Pittsfield Township

ANNEXATION PETITION No. 19-AR-3 – Scio Township

WC.1)

Submitted by: Jeff McNally

Concerning: 2318 Newport Road, Ann Arbor, MI 48103

May 21, 2019

“This is a decision that will potentially cost the property owners \$30,000 - \$50,000 of dollars EACH!”

City of Ann Arbor Response: See 19-AR-1.17.

“Many of the township property owners from this Parcel ID list are retired and thus on a fixed income. I myself am disabled, and on a fixed income.”

City of Ann Arbor Response: Information about the [State of Michigan special assessment deferment program](#) for senior citizens and totally or permanently disabled persons has been previously provided with the [follow-up information from the City of Ann Arbor August 2018 Public Information Meeting](#) about city-initiated annexation.

“In addition, I know that there have been medical and environmental issues regarding water from the city of Ann Arbor, and that PFAS contamination is a serious problem. I do not wish to have those issues become part of a city service that is forced on me. I am a scientist by training, and understand some of the problems with PFAS. There is no reason in the world for me to want to be part of the cities problems with PFAS contamination. My well is working just fine, with no contamination”

City of Ann Arbor Response: There are no known medical or environmental issues associated with the city’s drinking water. Also see 19-AR-1.5.e.

“...this money grab by the city of Ann Arbor...”

City of Ann Arbor Response: See 19-AR-1.5.a.

WC.2)

Submitted by: Alfredo R. Munoz

Concerning: 1463 Bird Rd, Ann Arbor, MI 48103

May 30, 2019



“The neighborhood included in the proposed rezoning is a well established area with mostly elderly people that have resided for decades due in gran part to the fact that this area with mostly an Area of Stability. Yet, the proposed rezoning seeks significant change.”

City of Ann Arbor Response: The city is proposing annexation. Upon annexation the city will assign a zoning designation consistent with existing land use patterns. The rezoning process allows for input from property owners both at the Planning Commission and City Council stages of the process.

“The City of Ann Arbor will force the residents of the annexed parcels to connect to municipal water and sewage within a very short period of time after the annexation is approved.”

City of Ann Arbor Response: See 19-AR-1.16.

“This imposes and undue burden on most of the residents and in some cases will result in life-long residents having to move out of their properties because of their inability to meet the financial stress associated, which amounts to between \$30,000 and \$50,000 per property at least.”

City of Ann Arbor Response: See 19-AR-1.17.

“...but also because the proposed annexation will not bring any benefits whatsoever to the property owners.”

City of Ann Arbor Response: See 19-AR-1.6.c.

WC.3)

Submitted by: Richard & Deborah Mattson

Concerning: 1780 Scio Church Rd, Ann Arbor, MI 48103

June 7, 2019

“One of our neighbors had told us that the property on 1780 Scio Church Rd was not connected to the city sewer system. While we have no direct way of confirming that statement, it is highly likely, were that to be true, that annexation and subsequent connection to city services would make the property more conducive to both its sale and subsequent development.”

City of Ann Arbor Response: Water and sanitary utilities are available for 1780 Scio Church Rd. This property would be required to connect to city utilities following annexation.



WC.4)

Submitted by: Veronica Sanitate & William D. Middleton

Concerning: 2153 Newport Rd, Ann Arbor, MI 48103

June 10, 2019

"...and also the attached lots, which do not have a Parcel ID, but which are slated for annexation in any case. These are Lot 13, -006 and Lot 14, -006, adjacent to Lot 15 on Victoria Circle in Ann Arbor, MI."

City of Ann Arbor Response: The parcel ID for lots 13 and 14 of Jennings's Newport Heights is I -09-18-460-006.

"Will we be required to pay for a sewer link-up from these lots?"

City of Ann Arbor Response: Parcel ID I -09-18-460-006 is vacant. Vacant properties are not required to connect to city utilities. No utility connection charges will be due for this property upon annexation.

"Ultimately, we just wish to know what is going to happen regarding all three lots; when it might happen; do we have any say-so in the matter; what will be the cost to us?"

City of Ann Arbor Response: See above regarding lots 13 and 14 (parcel ID I -09-18-460-006). Parcel I -09-18-460-003 will be required to connect to city utilities following annexation. Connection requirements and Capital Recovery Charges were communicated from the City of Ann Arbor to the property owner in an initial communication dated August 3, 2018.

WC.5)

Submitted by: Valdis and Austra Liepa

Concerning: 654 Hampstead Lane, Ann Arbor, MI 48103

June 24, 2019

"To that end:

- 1. The Township traded Hampstead Lane Sheriff services for City Police services*
- 2. Fire services for Hampstead Lane were traded between the Township and the City*
- 3. The Township traded with the City to plowing our road for the Township plowing some city streets."*

City of Ann Arbor Response: Staff are not familiar with service trade agreements as specified.

"...the City has no future plans to install water and sewer mains on Hampstead Lane."



City of Ann Arbor Response: See 19-AR-1.6.b.

“The result of annexation of the Hampstead Lane homes will be that we will pay the higher City taxes, but we see NO benefits for us to be residents of the City of Ann Arbor, only the City benefits.”

City of Ann Arbor Response: See 19-AR-1.6.c.

WC.6)

Submitted by: KAEPA, LLC

Concerning: 296 W Eisenhower Pkwy, Ann Arbor, MI 48103

June 24, 2019

“Improvement Charges, which we are informed will be in the amount \$41,114.38.

Our objection is as follows:

- 1. The prior owner of this property was not given notice and an opportunity to be heard on the special assessment which we understand occurred in 1988 when the improvements to Eisenhower Parkway were done, nor was the prior owner permitted to participate in the assessment;*
- 2. It does not appear that the Ann Arbor ordinance which is being invoked to justify this charge permits all of the costs included in the charge to be passed on to us;*
- 3. It is confiscatory to charge the cost of what these improvements would be in current dollars, when the improvements are not new but were installed in 1988;*
- 4. This charge is a tax, not a user fee, and as such its imposition violates the Headlee Amendment, because it has not been approved by a referendum.*
- 5. We reserve the right to make other objections based upon additional information which may be forthcoming.”*

City of Ann Arbor Response: See APPENDIX B.

WC.7)

Submitted by: Nellie Guibert de Bruet

Concerning: 1780 Scio Church Rd, Ann Arbor, MI 48103

June 24, 2019

“pleases address our concern over who has the jurisdiction over enforcement connected to the said property?”

City of Ann Arbor Response: The subject property is currently under Ann Arbor Township jurisdiction for enforcement. Upon annexation, this would become City of Ann Arbor jurisdiction. Clarity of jurisdiction and enforcement is one benefit of annexation.



WC.8)

Submitted by: Tramontin Family

Concerning: 3950 Platt Rd, Ann Arbor, MI 48108

Undated

“and the cost of being forced to put in water and sewage”

City of Ann Arbor Response: See 19-AR-2.2.



APPENDIX A

Response Concerning the “200’ Rule”

At the June 24, 2019, public hearing, questions were raised about the City’s legal authority for its connection requirement for sanitary sewer (sewer line within 200’ of property line) versus the connection requirement in the Michigan Public Health Code (sewer line 200’ from nearest part of structure).

First, the State of Michigan does not impose requirements for connection to a municipal water supply system based on proximity of a property or structure to a water utility line. Therefore, the question and answer regarding the difference in the 200 foot measurement apply only to sanitary sewer connections.

Second, as clarification, Chapter 28, Sec. 2:42.2(7)A (sanitary sewer) requires **both** that the City’s utility line be within 200 feet of the property line **and** that the line be available for connection. Thus, if the Public Services Area Administrator determines that the characteristics or combined characteristics of a property (e.g., steep slope or other topographical factors, wetlands, extreme distance) render the utility line unavailable for connection, connection will not be required even if the property line were within 200 feet of the utility line.

Third, state law provides explicitly for municipalities to adopt more stringent requirements for connection to a municipal sanitary sewer system, so the City’s requirement for connection to sanitary sewer is consistent with and authorized by the statute.

The Michigan Public Health Code requires connection to an available public sanitary sewer (MCL 333. 12753(2)), and defines “[a]vailable public sanitary sewer system” to mean:

“[A] public sanitary sewer system located in the right-of-way, easement, highway, street, or public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates.” (MCL 333.12751(c))

Important here is that the Public Health Code explicitly authorizes a municipality to require connection more quickly than 18 months (MCL 333. 12753(4)), and explicitly states that these provisions of the Public Health Code are “not in limitation of the power of a local unit of government to adopt, amend, and enforce ordinances relating to the connection of a structure in which sanitary sewage originates to its public sanitary sewer system.” (MCL 333.12758(2)) Thus, the City’s distance requirement is explicitly validated under the Michigan Public Health Code.

In 1978, looking at the Michigan Public Health Code, the Michigan Attorney General opined in no uncertain terms that a municipality could require a property owner to connect to its public sanitary sewer system where the structure was more than 200 feet from the public sewer



system. (Mich OAG No 5372 (October 2, 1978)). Michigan courts have repeatedly upheld connection requirements imposed by other jurisdictions that were more stringent than the distance requirement in the Public Health Code.² This, as reflected in the cases and the Attorney General Opinion, the Ann Arbor is by no means alone in imposing a more stringent requirement, and the Public Health Code was written to enable requirements such as the City's.

The foregoing answers that the City's requirement—including the difference from state law regarding the 200' measure—is valid, authorized by, and consistent with, the Michigan Public Health Code, and with the City's powers as a Home Rule City.³

A brief review of the history and policies involved may be helpful.

In 1961, state law required connection of a structure to a sewer line if a street or other right-of-way (ROW) with the sewer line in it passed within 200' of the structure. With 1972 PA 288, the state changed the distance requirement to 200' from the sewer line to the nearest point of the structure from which sewage emanates. In addition to stating that "connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest," the Act also was explicit that it was "in addition to and not in limitation of the power of a governmental agency to adopt, amend, and enforce ordinances relating to the connection of a structure ... to its public sanitary sewer system." In 1978 the state consolidated a number of laws into a single Public Health Code. The foregoing provisions of 1972 PA 288 were included in that consolidation, without revision.

The language of the 1972 statute, in particular its purpose statement, probably provides the best information as to why the proximity measure in the Michigan Public Health Code differs from the proximity measure in City Code. 1972 PA 288 emphasized the important public policy purpose of "connection to available public sanitary sewer systems at the earliest, reasonable date," while also making a point that its provisions were in addition to and did not limit local ordinances. In other words, 1972 PA 288 was enacted to set minimum requirements, or to apply if a local government did not have requirements. It never was written to pre-empt or replace local requirements.

² See *Twp of Bedford v Bates*, 62 Mich App 715 (1975); *Renne v Twp of Waterford*, 73 Mich App 685 (1977); and *Newell v Village of Otter Lake*, No 299543 (Mich Ct App Nov 15, 2011).

³ The Home Rule City Act provides that "[e]ach City may provide in its charter ... [f]or the installation and connection of sewers ... on and to property within the City." MCL 117.4b(2). Chapter 3 of the Ann Arbor City Charter incorporates all powers available under Michigan law, including the Home Rule City Act. Chapter 15 of the Charter provides the City has "all the powers granted by law to acquire, construct, own, operate, improve, enlarge, extend, repair, and maintain ... public utilities for supplying water and water treatment, sewage disposal and treatment, ... to the municipality and the inhabitants thereof."



From a review of prior City Code provisions, the City has, for many years, used and relied on the “200’ from property line” measure to plan both the design and the financing of construction of the City’s sanitary sewer system.

For operations and maintenance reasons, the City strives to service customers by public sewers located within the public ROW. Use of the distance is also both consistent and equitable for owners of properties adjacent to streets where City sewer lines are located; adjacent properties with the structure on one set back only a few feet more than the structure on the next, are treated the same. Without the “200’ from property line” requirement, sewers would have to be constructed outside the ROW (i.e., in easements on private property), and/or parallel sewers likely would need to be constructed within the ROW in some areas in order to service both sides of the road. Thus, if the 200’ from property line requirement were changed, the system would be more costly both to build and to maintain, which would increase the costs to each user.

This connection requirement applies equally to existing properties, and to properties newly annexed into the City.

The City’s requirement to connect was first adopted as part of the Plumbing Code provisions of the Building Officials Conference of America, Inc. (BOCA) Basic Building Code (as Sec. 8.1 of Title VIII, Chapter 98 of City Code). The earlier provisions required connection simply if the property abutted a street or other public ROW in which there was a sanitary sewer line. Although the ability to connect to the sewer line appears to have been dropped in the early 1980s, that requirement was reintroduced in 1994 when Ordinance #53-94 was adopted. Ordinance #53-94 repealed and replaced in its entirety Chapter 28 (Sanitary Sewers) to incorporate changes to federal regulations as recommended by National Domestic Sewage Study and USEPA pretreatment implementation review task force.

In 2018, City Council adopted Ordinance #18-32 to amend Sec. 2:42.2(7) to extend to 18 months the time before connection would be required for a property annexed by petition to the State Boundary Commission, or by mutual boundary adjustment resolutions of the City and an adjacent township. The 18 month period is that same as in the Michigan Public Health Code.

Thus, the City Code provisions serve the interest of public health, and of maximizing connections to public sanitary sewer systems—as envisioned and explicitly allowed by the Michigan Legislature in 1972. Unlike the Michigan Public Health Code, the City explicitly does not require a property owner to connect when obstacles to connection make the sewer line unavailable for connection.



APPENDIX B

Response Concerning 296 W Eisenhower Pkwy, Ann Arbor, MI 48103

All of these statement or comments pertain to the property located at 296 W. Eisenhower. The responses, below, to the written comments submitted by Matt Karmo, President of KAEPa, LLC, also respond to the concerns voiced by Paul Karmo.

KAEPa, LLC 296 W. Eisenhower (Matt Karmo, President)

"...Improvement Charges, which we are informed will be in the amount \$41,114.38.

Our objection is as follows:

- 1. The prior owner of this property was not given notice and an opportunity to be heard on the special assessment which we understand occurred in 1988 when the improvements to Eisenhower Parkway were done, nor was the prior owner permitted to participate in the assessment;"*

City of Ann Arbor Response:

When the special assessment district was proposed and later established in 1988 for the Eisenhower Road Project, the owner of the parcel at 296 W. Eisenhower, Colin McKenzie, who was provided notice, submitted a letter to the City of Ann Arbor with objections to the special assessment district, and appeared at the Ann Arbor City Council's first public hearing on the proposed special assessment district on June 8, 1987. A copy of that portion of the City Council minutes is attached, and a copy of Mr. McKenzie's letter is attached.

As shown in the minutes of the May 18, 1987, City Council meeting at which Resolutions Nos. 2 and 3 in the City's special assessment process were approved, the property in question was identified by the two township parcels that would be included in the special assessment district, with their proportionate share of the costs allocated to them. Because they were township properties, the City of Ann Arbor could not levy a special assessment against them; the levy would have to wait until the properties annexed.

Following the June 8, 1987, public hearing, the City Council did not continue the process to establish the special assessment district. However, in early 1988, the City Council started the process again.

The property at 296 W. Eisenhower, owned by Colin McKenzie, was again included as a township parcel for which the levy would have to be deferred until annexation. Copies of the relevant portions of the Ann Arbor City Council minutes for April 18 and May 2,



1988, showing the proposed special assessment district and benefitted township properties, the public hearing, the establishment of the special assessment district, and the special assessment roll, are attached.

In 1992, Mr. McKenzie inquired what the amount of the special assessments would be if the property annexed (referred to as improvement charges when levied against township properties that annexed). A copy of the letter sent to him in response is attached.

The opportunity for the owner of a property in a proposed special assessment district to object to the special assessment district, either as to its purpose and/or as to the dollar amount, with the opportunity to then seek review by the Michigan Tax Tribunal, is when the special assessment district is established. The City does not monitor property sales or send notices to new property owners—either city or township properties—to inform them they are in a special assessment district.

Section 1:279(1) of the Ann Arbor City Code provides that newly annexed township properties will be assessed amounts owed for the property's share of capital improvements for which a special assessment district was established.

(1) A local public improvement charge shall be levied against a property newly annexed to the city to provide the property's fair share of the cost of local public improvements which benefit such property, which costs were financed by special assessment and for which the city was charged a "city's share" as defined in section 1:274 of this chapter; or for which costs the city became otherwise obligated. The local public improvement charge shall be in an amount to be determined by a City Council resolution to cover the property's pro rata share of the adjusted amount which the city paid as a "city's share" or became otherwise obligated to pay, for such local public improvements, adjusted as provided in subsection 1:279(2) to be brought current.

In other words, if a township parcel is benefitted by a capital improvement such as a sidewalk or roadway that was constructed by the City, not township, the property owner is put on notice by the physical presence of the capital improvement benefitting their property, and by the provisions of Section 1:279 of the City Code, that they have to pay their property's share of the improvement at the time of annexation.

Although referred to as charged to the city as the "city's share," that terminology should not be confused with the term "City Share" used in Section 1:274(2), which will be addressed below. The reference to "city's share" in Section 1:279(1) is a reference to the City having covered with city funds the costs of the improvement that benefit a township property.



"2. It does not appear that the Ann Arbor ordinance which is being invoked to justify this charge permits all of the costs included in the charge to be passed on to us;"

City of Ann Arbor Response:

The subject of the stated concern is not clear to the City. However, the costs of an improvement for which a property is responsible are the property's allocated share of the costs of the improvement that benefit the property.

Mr. Karmo may be referring to a table in Section 1:274(2) of the Ann Arbor City Code, which pre-defines, by components of a storm sewer system, those costs of a storm sewer system improvement that will be borne by private properties, with the remainder of the project costs borne by the City (labeled "City Share" in the table). That division of costs, tied to specific, identified components of the storm sewer system, is unique to storm sewers because of the specific benefits the City (e.g., to drain its roads) and/or benefits to the city at large, in addition to benefitting the private properties.

Perhaps Mr. Karmo's concern is premised on a belief that other improvements, such as roads, also should have a pre-defined "City Share," and that the assessment amounts calculated for the properties in the special assessment district (including his) are, therefore, improper. If that is the basis for the statement, it is incorrect, as is the conclusion and expressed concern. Other improvements do not have similar characteristics as the storm sewer system; so a predefined allocation of a "City Share" based on components of those other improvements is neither possible nor appropriate.

Furthermore, Section 1:274 goes on to provide in subsection (3):

In any case where the city council determines that the division of costs under subsection (2) does not accurately reflect the benefit to the city at large and the private benefit, such other division as shall be equitable may be adopted by the city council.

In other words, Section 1:274(3) explicitly allows for a "City Share," when appropriate, for any improvement.

That in fact was done for the Eisenhower Parkway improvement project. The cost allocation to private properties in the special assessment district set out in the April 18, 1988, Resolution 2 (R-231-4-88) adds up to only 66.18% of the project cost, and the first "Whereas" clause of the resolution states that the City Administrator has made a recommendation as to "what part of the cost [of the road improvements] should be paid by special assessment. Thus, per Section 1:279(3) the City Council did not require the private properties to bear all the costs of the improvements. 296 W. Eisenhower's share was listed as 0.31% of the total cost.



“3. It is confiscatory to charge the cost of what these improvements would be in current dollars, when the improvements are not new but were installed in 1988.”

City of Ann Arbor Response:

The City covered the cost of 296 W. Eisenhower’s allocated share of the improvement in 1988, in 1988 dollars. However, the value of those funds that the City has not had to spend on other capital projects is the value of those funds in current dollars. To be properly reimbursed for the funds the City fronted for the benefit of this property in 1988, the City needs to be reimbursed in current dollars.

“4. This charge is a tax, not a user fee, and as such its imposition violates the Headlee Amendment, because it has not been approved by a referendum.”

City of Ann Arbor Response:

The basis for this assertion is not provided, which makes it difficult for the City to respond. Nevertheless, the special assessment—or post-annexation improvement charge—against the property at 296 W. Eisenhower for the 1988 road improvements does not violate the Headlee Amendment. In fact, failure to impose that assessment, thereby requiring other property owners to cover the costs of the improvements that benefit the 296 W. Eisenhower property, would be a quintessential violation of the Headlee Amendment, as explained by the Michigan Supreme Court in *Bolt v. Lansing*, 459 Mich 152 (1998) (Headlee Amendment violated when all properties were required to pay for capital improvements that benefitted only certain properties; non-benefitted properties already had paid special assessments for the same category of capital improvements that benefitted them).

“5. We reserve the right to make other objections based upon additional information which may be forthcoming.”

City of Ann Arbor Response:

No response is required.