



TO: Mayor and Council

FROM: Tom Crawford, Interim City Administrator

CC: Derek Delacourt, Community Services Area Administrator
Craig Hupy, Public Services Area Administrator
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Brett Lenart, Planning Manager
Molly Maciejewski, Public Works Manager
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SUBJECT: August 6, 2020 Council Agenda Responses

DATE: July 30, 2020

CA-1 - Resolution to Approve an Agreement with the Washtenaw County Sheriff's Office for Weapons Screening Services in the Ann Arbor Justice Center (NTE \$190,000.00)

Question: Regarding CA-1, how does the \$30.07 "flat fee per hour/per deputy" compare with what we were paying the County in FY20? (Councilmember Lumm)

Response: The contracted rate per officer in FY20 was \$28.57 per hour. This increase in hourly rate is the first since January 2016.

CA-2 – Resolution to Approve Professional Legal Services Agreement with Reiser and Dawid, P.L.L.C. to Provide Legal Representation as Court-appointed Counsel to Indigent Defendants. (\$62,432.16)

Question: Regarding CA-2, I was a bit surprised to see this was a flat rate contract and not based on an hourly rate (as CA-3 is for example). Can you please explain the rationale for that and assuming it was a flat rate agreement previously, do we have any sense of what the flat rate translated into as an hourly rate for the last couple of years? (Councilmember Lumm)

Response: Following a significant overrun in indigent defense costs in 2013, the contract structure was shifted from an hourly-rate contract to a flat-rate one. This was done to provide stability and predictability in expenses and minimize the possibility of a budget overrun.

Attorney input from prior and current contract holders places the number of work hours per week at 40 to 60. Using 50 work hours per week for both attorneys over 50 weeks (number of weeks reduced to 50 to offset for time off & holidays), the estimated hourly rate would be \$50/hour. Please note that work hours include time spent providing legal representation in the courtrooms, time spent outside of the courtrooms consulting with clients, and time spent performing administrative tasks.

Question: Also on CA-2, I recognize this is just a three month agreement, but do we periodically do RFP's for these kinds of legal services? (Councilmember Lumm)

Response: MCL 600.1487 excludes contracts for indigent legal assistance from competitive bidding. Additionally, City policy classifies legal services as professional services for which a bid is not required. Nonetheless, Requests for Proposals were issued in 2014 and 2017.

CA-5 - Resolution to Approve the Purchase of Two Front Loading Refuse Trucks from Bell Equipment Company and to Appropriate Funding from the Fleet Fund Balance (Sourcewell - \$706,814.00) (8 Votes Required)

Question: I noticed it points out the % of repair cost based on total purchase price. Is this a common method of determining when to pull a vehicle from service? IS this used for other fleet considerations, and what is considered excessive? (Councilmember Hayner)

Response: This is one metric that is reviewed when determining replacement. For heavy equipment, the decision for replacement is typically based on the general condition and reliability of the asset with repair costs considered as supporting data. The replacement decision is also weighted by the frequency of use of the vehicle, the critical nature of the service being provided, and other alternatives to provide the service if the heavy asset is unavailable for an extended period of time because of breakdown.

For light vehicles other than those operated by the police department, repair costs are one of six metrics used for evaluating replacements. Since this is not the sole metric used to determine replacement, a specific percentage does not trigger that action. As a general consideration, when an asset reaches 80%, it gets a little more consideration for replacement.

Question: Regarding CA-5, the cover memo indicates the refuse truck replacement was delayed as the City considered if it would continue providing commercial dumpster service, and that that "determination is still pending". What is it expected the determination

will be made? Is it dependent on Council action on the SWRMP? (Councilmember Lumm)

Response: Council action is needed before a determination can be made as to what areas of solid waste service the City will be providing directly. Regardless of the direction provided by City Council for the SWRMP, there is a critical immediate and midterm need for this vehicle.

B-2 — An Ordinance to Amend Title VII (Businesses and Trades) of the Code of the City of Ann Arbor by Adding a New Chapter Which Shall be Designated as Chapter 97 (Short-Term Rentals) (Ordinance No. ORD-20-24)

Question: Many folks have expressed concerns about the use of zoning to regulate STRs. Can you explain more about why we are adding this chapter to our zoning regulations? How would consideration for Special Exception Use for non-owner occupied STRs in residential zones work? Could this be a way of allowing existing STRs to continue to operate? (Councilmember Hayner)

Response: Staff is not utilizing the zoning ordinance to regulate STR's, the current recommendation is based on an interpretation of the existing ordinance and does not require any modification to the UDC. If Council chose to allow non-owner occupied STR operation in residential districts, it can choose to consider modification to the UDC requiring a Special Exception Use, (SEU), approval, that will require a separate process to evaluate and amend the UDC, including review and recommendation by the planning commission. Currently staff is recommending a standalone licensing ordinance. SEU's are traditionally used to allow land uses normally allowed within a zoning district, but may have greater impacts, to receive the appropriate level of consideration and discretionary review. In this instance staff's recommendation is that non-owner/resident occupied STR's are a commercial operation, not residential, therefore would be inappropriate even considered as an SEU. Establishing STR's as a SEU will allow consideration of existing and any new residential property, it would not be limited to only current operations.

Question: It is my understanding that traditional bed and breakfast operations will not be required to register as short-term rentals under this ordinance. Some traditional bed and breakfast operations use online services such as Airbnb to list available rooms. Does the use of such online listing services by those traditional bed and breakfast operations without having a STR license number violate section 7:653(4) of this ordinance? (Councilmember Eaton)

Response: No, Bed and Breakfasts are a different use regulated and approved separately from STR. The method they use to lease rooms, (Airbnb or any other website), does not create a violation. It is not the tool that is regulated, it is the use, Bed & Breakfast vs STR/Commercial.

Question: Q2. While I understand we do not know for sure, what is our sense (directional number) of how many non-owner occupied STR's currently exist/operate in

residential areas where under the new ordinance, they would be prohibited? (Councilmember Lumm)

Response: Staff does not know this number, but, speculate that these may be the more frequently utilized than owner or long-term tenant occupied short term rentals. Here is a map to those units that were rented most frequently during over the 2018-2019 term researched:

<https://www.a2gov.org/departments/planning/Documents/Planning/Locations%20Rented%20Over%20150%20Days%2010-2-19.pdf> With this presumption and potential expansion over the past year, the number may be between 100-300 short term rentals.

Question: Q3. Similarly, what is our sense of how many non-owner occupied STR's currently exist/operate in mixed-use districts? (Councilmember Lumm)

Response: Staff doesn't have specific data here either, but would speculate that this is a small proportion of all such units, based on the presence of residential structures in such districts exist with less frequency.

Question: Q4. Although I am not advocating for this, if the city were to consider grandfathering those non-owner occupied STR's that currently exist/operate in residential areas and prohibit new ones, I'm assuming we could do that – correct? What proof would we require that the property was in fact operating as a non-owner occupied STR? Would it be possible to grandfather some, but not all existing non-owner occupied STR's, based on specific criteria (such as demonstrated "significant" investment within last X years or some other criteria)? (Councilmember Lumm)

Response: In possible consideration of this question staff is working on options to demonstrate that the use was in existence prior to the potential 30-day limitation. Possible items include, proof of leasing through an STR platform, identification as an STR during the rental certification process, an affidavit asserting use for less than 30 days prior to the adoption of an ordinance and other possible mechanisms.

Staff continues to recommend against grandfathering. Grandfathering or designation as an existing non-conforming use is normally reserved for when a use is completely eliminated or prohibited from a zoning district. Staff is recommending that non-owner-occupied rentals be prohibited for less than 30 days in residential districts, not eliminated in whole. Staff is only recommending what we believe is a reasonable time period based on the primary use of these districts as residential. Owners are still able to lease these properties for a period of 31 days or more, staff continues to recommend that this is a reasonable length of time to ensure that properties in residential districts are available for residents/tenants and not occupied by guests/tourists.

Question: Q5. Presumably, if the ordinance passes, Ann Arbor would not be the first city to prohibit certain uses/locations for non-owner occupied STR's - or the first city to encounter opposition from the in-place non-owner occupied STR property owners. How have other cities handled the issue? (Councilmember Lumm)

Response: It is likely that other communities have encountered the issue, but the response would be very specific to the legislative approach enacted. For example, the City of Muskegon has approached short term rentals in a similar manner as being considered here, strictly through business licensing. Madison, Wisconsin did establish a zoning framework, however, under their state-specific zoning enabling laws.

DB-1 - Resolution to Approve Liberty Townhomes Site Plan and Development Agreement, 2658 W. Liberty St. (CPC Recommendation: Approval - 9 Years and 0 Nays)

Question: There were two presentations of this topic, am I seeing correctly that the staff continues to recommend denying this project despite the modifications to the entrance plans? Can you direct me to the formula for determining Parks contribution? There is mention that these are “market rate” rents but that those are becoming “rare” is that because there is so little new construction, or because what new construction there is priced above market rate? (Councilmember Hayner)

Response: No, both staff and the Planning Commission recommend approval at this time as detailed in the July 7th Planning Staff Report and action by the Planning Commission.

The formula used to determine a voluntary parks contribution can be found here: <https://www.a2gov.org/departments/planning/Documents/DevelopmentReview/Developer%20Contributions%20for%20Parks%20and%20Open%20Space%20Guide.pdf>

The staff report language on market rate units becoming more rare should have been more clear to highlight that new apartment developments have been more frequent in the downtown and campus areas, which can result in higher rent rates. This proposed development has the potential to meet a more general (e.g. less luxury-oriented) rent target.

Question: Regarding DB-1, p. 2 of the July 7 staff report includes a statement that, “Transportation Engineering continues to remind the Planning Commission that residents must turn west, away from downtown and nearby shopping and services, without a convenient way to return to easterly travel. Nearby side streets may be used to turnaround.” That sounds problematic, and certainly not a desirable situation – are there not any alternatives to address this situation? (Councilmember Lumm)

Response: The Liberty Townhomes Site Plan driveway meets requirements of code. The applicant’s engineering team has overcome the technical challenge of limited sight distance with an alternative design by creating a right-turn only condition for personal vehicles. Any land use on this site would face the same challenge, however, the proposed development is a lower intensity trip generator than other land uses (e.g. single-family detached dwellings, commercial land uses) and proposes fewer dwelling units than the maximum allowed under the current zoning designation. The transportation analysis

shows that 13 trips during the AM peak hour and 7 trips during the PM peak hour will be exiting the site. These very low trip volumes may be further reduced by non-personal vehicle trips and are not anticipated to have a significant impact on adjacent intersections, despite the routing of trips in this manner to improve safety.

Question: Also on DB-1, have any comments or objections been received on this proposal since the May 20 resident information meeting? Have the residents in the “nearby side streets” been informed of this likely “turnaround” situation? (Councilmember Lumm)

Response: No comments have been received by the Planning office. No additional or specific communication to any groups has been sent by the Planning office following the Planning Commission meeting. (Public hearing notices were mailed to all residents within 300 feet, and nearby registered neighborhood associations prior to the first public hearing held by Planning Commission. Meeting agenda information was emailed to all subscribers prior to both Planning Commission meetings.) The Clerk’s Office mailed notices to all residents within 300 feet of the site advertising this public hearing held by City Council.