



Legislation Text

File #: 19-0021, **Version:** 1

An Ordinance to Amend Sections 1:240D, 1:240E and 1:240F of Chapter 9 (City Seal and Flag) of Title I of the Code of the City of Ann Arbor (Ordinance No. ORD-19-02)

The City's flag and seal are symbols of, and have value to, the City. Persons unaffiliated with the City have, in the past, sold items bearing the City seal for their own profit. Further, vendors and potential vendors to the City, and other third-parties, use these symbols for things like proposals or bids to the City, usually without any City permission.

Federal trademark law does not entitle the City to protect these important symbols. Accordingly, last July, the City Council adopted an ordinance, No. 18-17, protecting the City's flag and seal.

Since that ordinance's adoption, concerns have been raised by the ACLU and others that the ordinance's prohibitions are overly broad-i.e., they inappropriately restrict more than is necessary to accomplish the City's goals-and that its provisions allowing the Mayor to permit certain prohibited uses is inappropriate.

These amendments address those concerns by: (1) narrowing the prohibitions to uses for obtaining something of value by suggesting City support, and (2) striking the permitting provisions. The amendments also expressly permit the City to obtain an injunction to bar unlawful use of the flag and/or seal.

Prepared by: Matthew R. Rechten, Senior Assistant City Attorney
ORDINANCE NO. ORD-19-02

First Reading:	January 7, 2019	Approved:	January 22, 2019
Public Hearing:	January 22, 2019	Published:	January 24, 2019
		Effective:	February 3, 2019

CITY SEAL AND FLAG

AN ORDINANCE TO AMEND SECTIONS 1:240D, 1:240E AND 1:240F OF CHAPTER 9 (City Seal and Flag) OF TITLE I OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor ordains:

Section 1. That Sections 1:240D, 1:240E and 1:240F of Chapter 9 of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:240D. - Other approved uses.

~~(1) The Mayor may approve other uses of the city seal or city flag by any person for the following purposes, provided that such use promotes the interests of the city and is not detrimental to the~~

~~image of the city:~~

~~(a) In an encyclopedia, dictionary, book, journal, pamphlet, periodical, magazine or newspaper incident to a description or history of the city seal;~~

~~(b) In a library, museum or educational facility incident to descriptions or exhibits relating to the city seal or the city; or,~~

~~(c) In a theatrical, motion picture, television, or similar production exhibited for a historical, educational or other non-commercial purpose.~~

~~(2) Before any person may use the city seal or city flag pursuant to this section, the using person must:~~

~~(d) Agree that the proposed use of the city seal or city flag shall conform to the permitted uses set forth in the preceding subsection;~~

~~(e) Submit samples of all documents, goods, and other materials upon which the city seal is to be used sufficient to demonstrate that the proposed use of the city seal or city flag is a faithful reproduction and has not been altered in any manner;~~

~~(f) Acknowledge the right of the city, at all reasonable times, to inspect any item upon which the city seal is used to ensure that the city seal or city flag is being used appropriately in an unadulterated form; and,~~

~~(g) Execute an agreement approved by the City Attorney containing such terms as he may require.~~

~~(3) Any approval for use of the city seal or city flag under this section shall not be assignable or transferable.~~

~~(4) Any approval to use the city seal or city flag under this section shall be limited to only the event or item for which the approval is granted.~~

~~(5) If a person who is authorized to use the city seal or city flag pursuant to this section breaches any provisions of any agreement for its use, the City Attorney shall serve written notice of such breach upon the person with a demand to take appropriate and immediate affirmative action to cure such breach. Any failure to cure the breach to the city's satisfaction shall be grounds for the city's termination of permission to use the city seal or city flag and the City Attorney shall pursue all steps reasonably necessary to restrain the improper use of the city seal or city flag.~~

~~(6) The city may revoke a person's previously authorized use of the city seal or city flag under this chapter upon finding false or inaccurate information was submitted by the person to the city or that~~

~~the person violated any provision of this chapter.~~

~~The city seal or city flag may be used in any other way that is constitutionally- or otherwise legally-protected.~~

1:240E. - Prohibited uses.

~~The use of the city seal or city flag by any person for the following, or for any use not expressly approved or authorized by this chapter, is prohibited:~~

- ~~(1) In support or opposition of any candidate for elective office, referendum, initiative, or ballot measure or in any candidate or committee campaign literature;~~
- ~~(2) Except expressly provided by this chapter, in connection with any advertisement or promotion for any product, business, organization or service whether offered for sale, profit, or without charge;~~
- ~~(3) On any written or printed materials that are not official city publications, including proposals or other materials that are submitted to the city for any purpose; or~~
- ~~(4) On any written or printed material designed, calculated, intended or likely to confuse, deceive or mislead the public or cause the reader of such written or printed material to believe it to be an official city publication, including circulating or distributing any such written or printed material or to suggest or assert any city support or endorsement of any product, goods or services.~~

~~Except as otherwise expressly allowed in this chapter, no person may knowingly:~~

- ~~(1) Display the city flag or city seal in, or in connection with, any advertisement, poster, circular, book, pamphlet, website, web application, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of obtaining anything of value by confusing, deceiving or misleading anyone into a false impression of city action, support, approval, official sanction, sponsorship, or endorsement; or~~
- ~~(2) Sell, or purchase for resale, any article that displays the city seal or city flag in a manner that gives the false impression of city action, support, approval, official sanction, sponsorship, or endorsement.~~

1:240F - Offense and Remedies.

Each violation of any provision of this chapter shall be a civil infraction, punishable by a civil fine of not more than \$10,000.00, and shall entitle the City to have it enjoined.

Section 2. This Ordinance shall take effect on the tenth day following legal publication.

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan at its regular session of January 22, 2019.

(Date)

Jacqueline Beaudry, Ann Arbor City Clerk

Christopher Taylor, Mayor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's Webpage on January 24, 2019.

Jacqueline Beaudry, Ann Arbor City Clerk

Sponsored by: Mayor Taylor