

1. Council Agenda

Documents:

[01-17-17 AGENDA.PDF](#)

2. Council Packet

Documents:

[1-17-17 COUNCIL PACKET.PDF](#)



**CITY OF YPSILANTI  
COUNCIL MEETING AGENDA  
CITY COUNCIL CHAMBERS  
ONE SOUTH HURON STREET, YPSILANTI, MI 48197  
Tuesday, January 17, 2017  
7:00 A.M.**

**I. CALL TO ORDER -**

**II. ROLL CALL -**

Council Member Bashert	P A	Council Member Robb	P A
Mayor Pro-Tem Brown	P A	Council Member Vogt	P A
Council Member Murdock	P A	Mayor Edmonds	P A
Council Member Richardson	P A		

**III. INVOCATION -**

**IV. PLEDGE OF ALLEGIANCE -**

"I pledge allegiance to the flag, of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

**V. INTRODUCTIONS -**

**VI. AUDIENCE PARTICIPATION -**

**VII. REMARKS BY THE MAYOR -**

**VIII. RESOLUTIONS/MOTIONS/DISCUSSIONS -**

1. Resolution No. 2017 -012, approving the City Manager Contract with Darwin McClary.  
**(Postponed January 10, 2017)**

**IX. AUDIENCE PARTICIPATION -**

**X. REMARKS FROM THE MAYOR -**

**Nominations**

**Historic District Commission**

Ann Stevenson **(Reappointment)**  
707 Collegewood  
**Exp. 1/31/2020**

**XI. ADJOURNMENT -**



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**Barr,  
Anhut &  
Associates, P.C.**  
ATTORNEYS AT LAW

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John M. Barr  
Karl A. Barr  
~~~~~

Jesse O'Jack ~ Of Counsel  
William F. Anhut ~ Of Counsel – Retired  
Jane A. Slider ~ Legal Assistant

**REQUEST FOR LEGISLATION**

DATE: January 17, 2017

FROM: John M. Barr, Ypsilanti City Attorney

SUBJECT: City Manager agreement

**SUMMARY/BACKGROUND**

City Council chose Mr. Darwin McClary as city manager dependent on background checks and an agreeable employment agreement. I have negotiated with Mr. McClary and he has agreed to a revised proposed agreement as shown by the attached document.

The essential terms of the agreement are:

1. Salary - \$100,000 per year.
2. Term – 4 years, at will.
3. Notice of resignation – 60 days.
4. Severance pay if terminated without cause 120 days.
  - a. Some council members wanted shorter time.
5. Executive leave time – 30 days first year, starting after 90 days, 36 days second year and thereafter, starting January 1, no roll over
  - a. Mr. McClary would like the sick time coverage part with start of employment
6. Housing incentive – forgivable loan (25% per year) to purchase home in city \$5,000 or \$10,000 depending on location
7. Moving expense – actual, up to \$3,000
8. Auto use reimbursement \$450 per month
  - a. Some council members want a city car or lesser amount
9. Health insurance – city plan, opt out provision
10. Pension/retirement – 9% in defined contribution plan
  - a. No requirement that Mr. McClary contribute
11. Outside employment if approved by city council
12. Arbitration clause
13. No shortened statute of limitation clause as Mr. McClary does not agree



**Barr,  
Anhut &  
Associates, P.C.**  
ATTORNEYS AT LAW

January 17, 2017  
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The background check is complete and apparently, no adverse findings.

ATTACHMENTS: Proposed employment agreement. Resolution to approve agreement,  
subject to background check

RECOMMENDED ACTION:

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DATE RECEIVED: \_\_\_\_\_ AGENDA ITEM NO.

CITY MANAGER COMMENTS:

FOR AGENDA OF: \_\_\_\_\_ FINANCE DIR. APPROVAL

COUNCIL ACTION TAKEN:



RESOLUTION NO. 2017- 012  
January 17, 2017  
**Postponed January 10, 2017**

**RESOLUTION TO APPROVE HIRE DARWIN D.P. McCLARY AS YPSILANTI  
CITY MANAGER AND TO APPROVE HIS EMPLOYMENT CONTRACT**

**IT IS RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI that:**

Mr. Darwin D. P. McClary is hereby hired as City Manager of the City of Ypsilanti and that the attached employment contract and its terms and conditions are hereby approved and the Mayor and City Clerk are authorized to sign said contract for and on behalf of the city, subject to satisfactory completion of all pre-employment conditions and approval by the City Attorney.

OFFERED BY: \_\_\_\_\_

SUPPORTED BY: \_\_\_\_\_

YES:            NO:            ABSENT:            VOTE:

**YPSILANTI CITY MANAGER  
EMPLOYMENT AGREEMENT  
BETWEEN THE CITY OF YPSILANTI AND  
DARWIN D. P. McCLARY**

This agreement is made between the **CITY OF YPSILANTI**, a Michigan municipal corporation, hereinafter referred to as the "CITY" and Darwin McClary of 9293 Pinestead Drive, Commerce, MI 48390, hereinafter referred to as the "EMPLOYEE" (hereinafter collectively referred to as "Parties") for the purposes herein. The parties have negotiated certain terms of the EMPLOYEE's employment with the Employer and have come to certain understandings about the terms and conditions of employment and wish to evidence this in writing.

In consideration of the premises and of the benefits to be derived from the mutual observance of the covenants in this Agreement, the parties agree as follows:

**1. EFFECTIVE DATE.** The Parties acknowledge and agree that EMPLOYEE's start date shall be \_\_\_\_\_, 2017.

**2. DUTIES.** The CITY agrees to employ the EMPLOYEE as the City Manager of the CITY to perform all duties specified by Article IV, Section 4.03 of the Ypsilanti City Charter and by ordinances, and to perform such other proper duties as assigned by City Council. The EMPLOYEE agrees to carry out his duties in an efficient and conscientious manner, and to exercise his discretion and judgment in the best interests of the CITY at all times.

**3. LENGTH OF EMPLOYMENT, TERMINATION, AND SEVERANCE PAY.** This employment agreement as City Manager is contingent upon the EMPLOYEE's acceptance of the appointment, the EMPLOYEE's approval and acceptance of this employment agreement document, approval by City Council of the EMPLOYEE's appointment to City Manager and this employment agreement document, and satisfactory completion of all pre-employment aspects of this appointment, including a drug screen, background checks, driver's record check and any other pre-employment verifications deemed necessary by City Council.

Subject to the terms and conditions of this employment agreement, and notwithstanding any City personnel regulation or representation to the contrary, the EMPLOYEE shall be an "Employee-at-will" and nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the employment of the EMPLOYEE at any time except as such right to terminate employment is limited within this document or by the City Charter.

a. The Parties agree that EMPLOYEE shall remain in the employ of the CITY for a minimum of four (4) years unless this agreement is terminated prior to that date as provided herein.

b. In the event the EMPLOYEE is terminated with/for cause, the CITY shall have no further obligation to pay any amount under this agreement and the EMPLOYEE shall not be entitled to any further compensation, including but not limited to

severance pay or additional salary but will be entitled to receive pay for his vested executive leave time as of the time of his termination.

c. For purposes of this Agreement, the termination of EMPLOYEE's employment shall be deemed to have been with/for cause only:

- i. if termination of his employment shall have been the result of EMPLOYEE's willful engaging in dishonest or fraudulent actions resulting or intended to result directly or indirectly in any demonstrable material harm to the City, or
- ii. if there has been a willful and continued failure by the EMPLOYEE during his employment (except by reason of incapacity due to physical or mental illness) to comply with the provisions of this Agreement, and the EMPLOYEE shall have either failed to remedy such alleged breach within ten (10) days from his receipt of written notice from the City demanding that he remedy such alleged breach or shall have failed to take all reasonable steps to that end during such ten-day period and thereafter; or
- iii. if there has been a breach of fiduciary duty involving personal profit to the EMPLOYEE;

d. In the event the EMPLOYEE resigns his employment, he must give sixty (60) days prior written notice to the CITY. Furthermore, the EMPLOYEE shall not be entitled to any severance pay. Failure to give the required notice shall forfeit any vested executive leave time pay out. In the event that timely notice is given by EMPLOYEE, EMPLOYEE shall be entitled to any vested executive leave time payout.

e. In the event the EMPLOYEE is terminated without cause, the CITY shall pay to the EMPLOYEE a lump-sum severance in amount equal to one hundred twenty (120) days salary plus vested executive leave time payout.

**4. BASE SALARY.** Unless otherwise mutually agreed by the Parties, the CITY shall pay a salary not less than one hundred thousand dollars (\$100,000.00) per year, payable bi-weekly in installments at the same time as other EMPLOYEES of the City are paid. Any and all adjustments to salary shall be made only by City Council, salary shall be reviewed annually, and may be made by budget authorization.

**5. RESIDENCE ALLOWANCE.** The CITY desires that the EMPLOYEE reside with the City of Ypsilanti but recognizes that the EMPLOYEE is not required to do so.

5.1 Moving expenses. The Parties agree that, if during his employment with the CITY the EMPLOYEE elects to purchase a home within the city, the CITY shall reimburse the EMPLOYEE for actual moving expenses up to three thousand dollars (\$3,000.00) upon submission by the EMPLOYEE of paid receipts for such expenses.

5.2 Housing loan. The CITY shall also provide a forgivable loan to the EMPLOYEE to apply to a home purchased in the city in the amount of \$5,000 for purchase of a home

in section 1 of the city or \$10,000 for the purchase of a home in section 2 of the city. The sections of the city, 1 or 2, are shown on the attached map.

5.2.1 The loan will be forgiven 25% for each year the EMPLOYEE remains in the employ of the city and resides in the home.

5.2.2 The loan will be immediately due and payable if EMPLOYEE no longer resides in the city or leaves the employ of the city prior to four years from the date of the loan.

**6. PROFESSIONAL DEVELOPMENT.** Employer agrees to budget for and to pay the professional dues, subscriptions, travel, and subsistence expenses of EMPLOYEE for professional participation and travel, meetings and occasions adequate to continue his professional development. Participation can include, but not be limited to the National League of Cities, International City County Management Association, Michigan Municipal League, Michigan Municipal Executives and such other national, regional, state and local governmental and community groups and their committees for which EMPLOYEE serves as a member, or when participation is beneficial to the CITY, as well as associated short courses, institutes and seminars.

**7. INDEMNIFICATION/REIMBURSEMENT.** The CITY shall defend, save harmless and indemnify the EMPLOYEE against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE's duties/responsibilities as City Manager, provided the EMPLOYEE acted both in good faith and within the scope of his duties/responsibilities as City Manager, and further provided the EMPLOYEE fully cooperates with the CITY in its defense of the claim, demand or other legal action. The CITY may, in its discretion, compromise and settle any claim or suit and pay the amount of any settlement or judgment rendered thereon. Indemnification shall not be provided to the EMPLOYEE by the CITY if the claim, demand or other legal action results from the willful misconduct or willful insubordination of the EMPLOYEE or if the claim, demand or legal action involves any proceeding where the EMPLOYEE is the plaintiff or an adverse party to the CITY. In addition, the City shall pay or reimburse the EMPLOYEE for all normal and reasonable expenses, including travel expenses, incurred by the EMPLOYEE during his employment or after separation of employment in connection with the EMPLOYEE's responsibilities to the City.

**8. EXECUTIVE LEAVE.** In lieu of vacation, sick, and personal leave time only, the EMPLOYEE shall be credited with thirty (30) days of executive leave 90 days after his first day of work and shall be credited with an additional thirty (36) days of executive leave on January 2 of each year of employment thereafter to be used at the sole discretion of the EMPLOYEE. Executive leave shall terminate on the first of EMPLOYEE'S end of employment or December 31 of each year and not roll over from one year to the next. It is agreed that the EMPLOYEE shall not use more than ten (10) consecutive work days at a time except for illness or another emergency. In the last year worked, executive leave will be paid out on a pro rata basis for time not used but accumulated that year.

**9. AUTOMOBILE ALLOWANCE.** The CITY agrees to pay to the EMPLOYEE, in addition to other salary and benefits herein provided, the sum of four hundred fifty dollars (\$450.00) monthly as an automobile allowance to be used to purchase, lease, or own,

operate, and maintain a vehicle. The EMPLOYEE shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase or lease, operation, maintenance, repair and regular replacement of said vehicle. If the CITY requires any additional insurance to protect against its own liability, the CITY shall pay any additional cost for such insurance or shall arrange for such coverage through its own insurance carrier at the CITY's cost.

**10. COMPENSATION TIME.** The job of City Manager is an executive position and requires more than forty (40) hours per week. The normal business hours for the CITY are from 8AM to 5PM. No overtime pay is expected and none will be paid, and the EMPLOYEE will not accrue any "comp" time. The parties understand and agree that the EMPLOYEE shall manage his own time and may need to use some time during the regular business day for personal business.

**11. INSURANCE.**

The CITY will offer the EMPLOYEE all insurance coverages provided to Non-Union employees, under the terms and agreements of such individual insurance plans, including any opt-out payments. This coverage shall be effective upon the first day of employment. EMPLOYEE is covered by his spouse's insurance and is electing to opt-out of city insurance and will be paid the standard city opt out stipend.

For the avoidance of doubt, the CITY reserves the right to alter, modify, or terminate any or all of its insurance plans and other benefits provided to Non-Union employees during the course of this contract and EMPLOYEE may not rely on any specific coverage or term of such plans or benefits being maintained by the CITY solely for EMPLOYEE's benefit.

**12. RETIREMENT.** The CITY agrees to pay an amount equal to nine percent (9%) of the EMPLOYEE's base salary into a MERS 401(a) defined contribution account for the EMPLOYEE for retirement purposes, payable in bi-weekly installments at the same time as payroll is processed. The EMPLOYEE shall be 100% vested in such program on the first day of employment

**13. PREMIUMS PAID WHILE ON LEAVE.** The CITY shall pay all premiums for health, life, disability, dental and vision insurance benefits that the EMPLOYEE is receiving while the EMPLOYEE is on any paid leave or disability leave.

**14. BEREAVEMENT.** The CITY agrees the EMPLOYEE shall be allowed four (4) working days as paid funeral leave for the death in the immediate family as immediate family is defined in the CITY's employee handbook.

**15. HOLIDAYS.** The EMPLOYEE shall receive paid holidays in accordance with those uniformly provided for the CITY's full-time department heads.

**16. PERFORMANCE EVALUATION.**

a. City Council shall evaluate the performance of the EMPLOYEE annually on a list of prioritized and attainable goals that are mutually agreed upon by the Parties.

b. This review and evaluation shall be in accordance with specific criteria developed and mutually agreed upon by the Parties. Further, the Evaluation Committee shall provide the EMPLOYEE with a summary of written statements and findings of the City Council and provide an adequate opportunity for the EMPLOYEE to discuss his evaluation with the City Council.

**17. ETHICAL COMMITMENTS.** EMPLOYEE will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, the EMPLOYEE shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. The CITY shall support EMPLOYEE in keeping these commitments by refraining from any order, direction, or request that would require EMPLOYEE to violate the ICMA Code of Ethics. Specifically, neither the City Council nor any individual member thereof shall request EMPLOYEE to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality, and merit.

**18. OUTSIDE ACTIVITIES.** The employment provided for by this agreement shall be the EMPLOYEE's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the CITY and the community, the EMPLOYEE may elect to accept limited teaching, consulting, or other business opportunities, with prior approval of the City Council, with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with his responsibilities under this agreement.

**19. BONDING.** The CITY shall bear the full cost of any fidelity or other bonds required of the EMPLOYEE under any law or ordinance.

**20. ARBITRATION.** The EMPLOYEE agrees that any dispute, matter or controversy involving claims for monetary damages and/or employment related matters including, but not limited to, any and all claims relating to termination of employment and discrimination shall be arbitrated pursuant to the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, as amended by AAA from time to time. This paragraph expressly includes, but is not limited to, claims arising under State or Federal common law, statute, regulation or constitution such as: the Civil Rights Act of 1871, 42 U.S.C. §1983; the Civil Rights Act of 1866, 42 U.S.C. §1981; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000 *et seq.*; the Equal Pay Act, 29 U.S.C. §206(d); the EMPLOYEE Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001 *et seq.*; the Americans With Disabilities Act, 42 U.S.C. §12101 *et seq.*; the Family Medical Leave Act, 29 U.S.C. §2611; Age Discrimination in Employment Act or the Older Workers' Benefit Protection Act; the Elliott-Larsen Civil Rights Act, MCLA. §37.2101 *et seq.*; the

Whistleblowers' Protection Act, MCLA. §15.361 *et seq.*; the Michigan Persons With Disabilities Act, MCLA. §§37.1101 *et seq.*; the Payment of Wages and Fringe Benefits Act, MCLA. §408.471 *et seq.* THE EMPLOYEE IS AWARE THAT HE OR SHE IS CHOOSING TO ARBITRATE THESE CLAIMS AND IS WAIVING THE RIGHT TO ADJUDICATE THESE CLAIMS IN A JUDICIAL FORUM AND IS WAIVING ANY RIGHT TO JURY TRIAL.

The EMPLOYEE and Employer agree that, in addition to the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, the following will apply to any arbitration arising under the terms of this agreement:

- A.** Any arbitration shall take place at the office of the Employer in the City of Ypsilanti, Michigan.
- B.** In the disposition of the substance of the dispute, the arbitrator shall be governed by the City's Charter, Personal Policies and rules, except as modified by this Agreement, and otherwise by the laws of the state of Michigan which shall govern the interpretation of the Employer's Personnel Policy.
- C.** The decision of the arbitrator, when made in accordance with his or her jurisdiction and authority, shall be final and shall bar any suit, action, or proceeding instituted in any Court, or before any administrative tribunal. Judgment on any award by the arbitrator may be entered in any court of competent jurisdiction

**21. Forum and Law.** This contract shall be governed by the law of the State of Michigan, and all jurisdiction and venue shall be exclusively in Washtenaw County, Michigan.

**22. NOTICES.** Notices required pursuant to this agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

- a. CITY: City Clerk  
City of Ypsilanti  
One South Huron Street  
Ypsilanti, MI 48197
- b. EMPLOYEE: Darwin D. P. McClary  
9293 Pinestead Drive  
Commerce, MI 48390-1348

Notice shall be deemed given as of the date of personal service or as of two (2) days after the date of deposit of such written notice with the United States Postal Service as evidenced by postmark.

**23. INTERPRETATION OF CONTRACT.**

- a. This Agreement constitutes the entire understanding between the City and the EMPLOYEE. There are no oral understandings, terms or conditions and no party has relied on any representation, express or implied, not contained in this Agreement.

b. This Agreement may be changed only by a written amendment signed by both parties.

c. The Parties restate and incorporate all other provisions of the City's personnel rules, policies and procedures not inconsistent herewith and agree that all such rules, policies and provisions remain in effect. If there is any conflict between the provisions of this Employment Agreement and the rules, policies and provisions of the personnel policies of the CITY, the provisions of this Employment Agreement shall control.

d. This agreement is binding upon and inures to the benefit of the heirs and personal representatives of the EMPLOYEE.

e. If any provision or any portion of this agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this agreement shall not be affected and shall remain in full force and effect.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Darwin D. P. McClary

**CITY OF YPSILANTI**

BY: \_\_\_\_\_  
Amanda Edmonds, Mayor

BY: \_\_\_\_\_  
Andrew Hellenga, Interim City Clerk

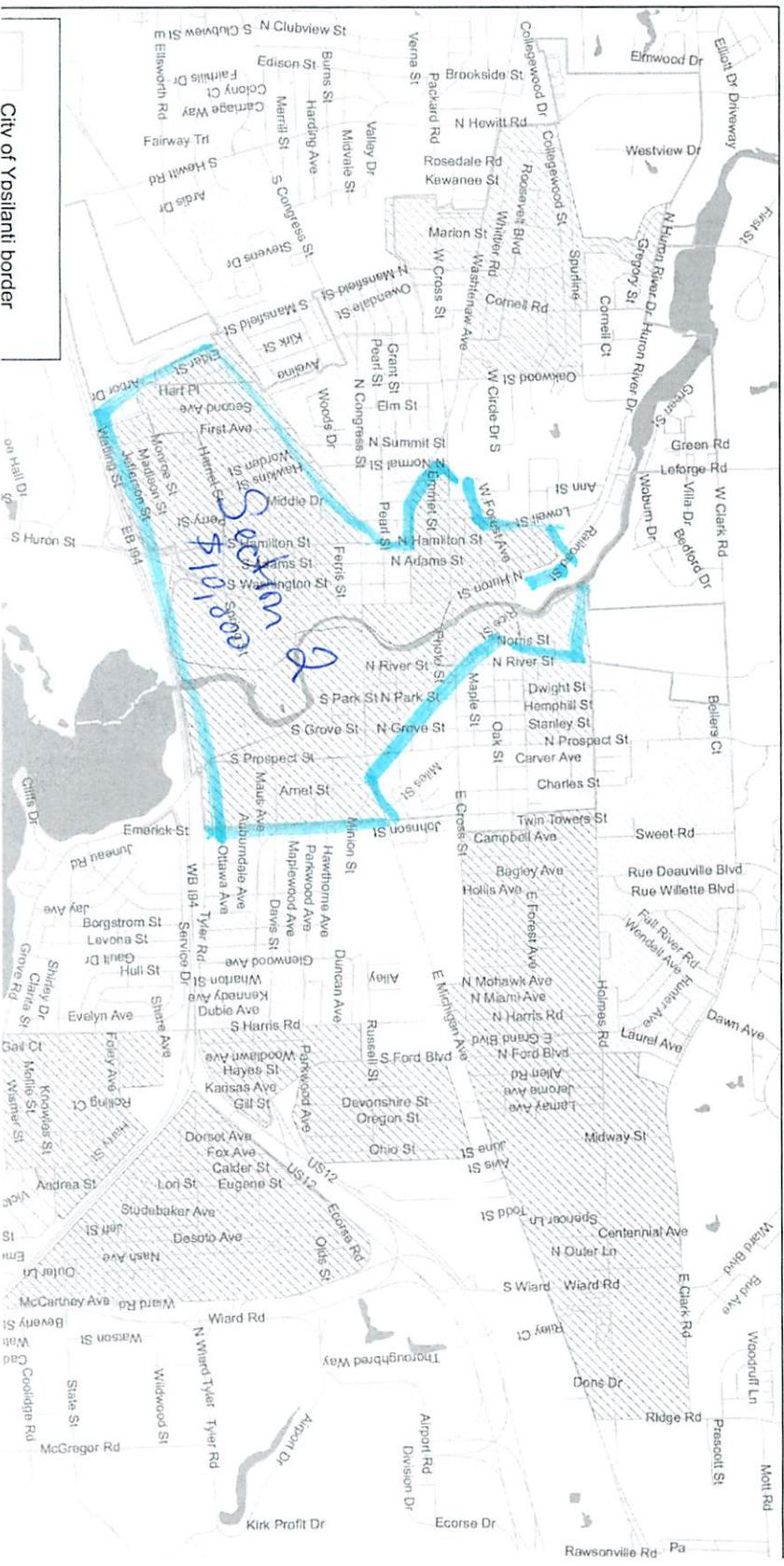
APPROVED AS TO FORM:  
John M. Barr City Attorney \_\_\_\_\_

# Eastern Michigan University

## Map

The third round of funding can be applied to properties located anywhere within the City limits of Ypsilanti or approved parts of Ypsilanti Township.

Live Ypsi - eligible neighborhoods map





Resolution No. 2017-014  
January 17, 2017

**RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:**

That the City Council Meeting be adjourned, on call, by the Mayor or two (2) members of Council.

OFFERED BY: \_\_\_\_\_

SUPPORTED BY: \_\_\_\_\_

YES:      NO:      ABSENT:      VOTE: