1. Revised Council Agenda

   Documents:

   01-17-17 AGENDA.PDF

2. Revised Council Packet

   Documents:

   1-17-17 COUNCIL PACKET.PDF

**(Revised 1/17/17)**

**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)**

2. Resolution No. 2017-014, setting date to consider the appeal of Depot Town Alternative Health.

3. Resolution No. 2017-016, approving, denying, or take under advisement the appeal of Depot Town Alternative Health.

**IX. AUDIENCE PARTICIPATION –**

**X. REMARKS FROM THE MAYOR –**

**Nominations**

**Historic District Commission**

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

**XI. ADJOURNMENT -**

**(Revised 1/17/17)**

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**XI. ADJOURNMENT -**

**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
~~~~~~~

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

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

RECOMMENDED ACTION:

---

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

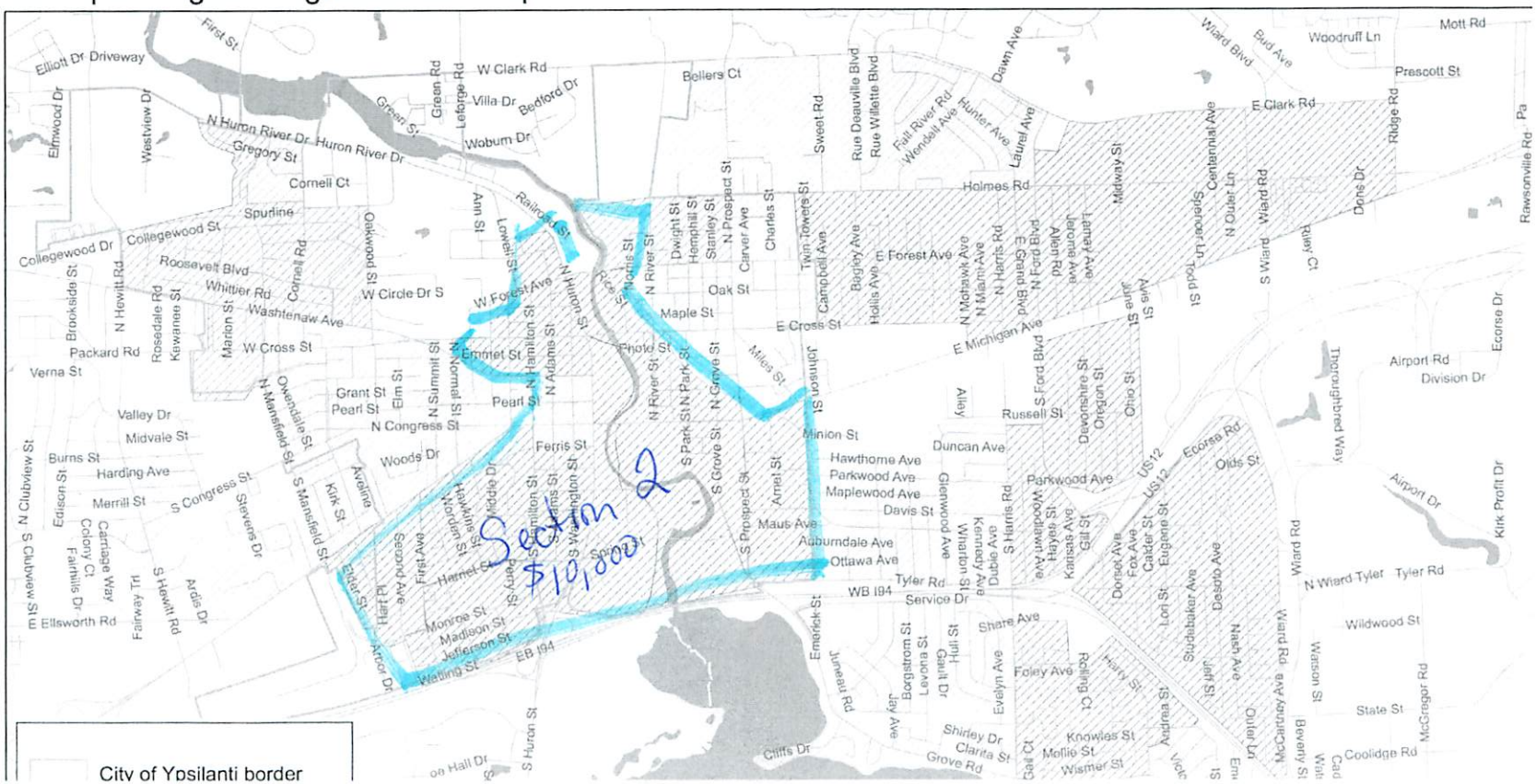
APPROVED AS TO FORM:
John M. Barr City Attorney _____

# Eastern Michigan University

## Map

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

Live Ypsi - eligible neighborhoods map



**Barr,**
**Anhut &**
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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: September 18, 2012

FROM: John M. Barr, Ypsilanti City Attorney

SUBJECT: Date and time for Appeal of Medical Marijuana denial

SUMMARY/BACKGROUND

City staff inspected the Depot Town Alternative Health marijuana dispensary at 35 East Cross Street, Ypsilanti, MI on December 22nd and found significant violations of the enabling ordinance. The business applied for a license renewal and the City Manager denied the renewal based on the violations.

The business has now filed an appeal of the denial to City Council, pursuant to the ordinance. The ordinance requires that City Council "...consider the appeal within 30 days of receipt of the appeal." City Code section 22-210. The appeal was received by the City Clerk on December 13, 2017.

Please set a date and time to consider the appeal.

ATTACHMENTS: Proposed Resolution

RECOMMENDED ACTION: Adoption of resolution

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DATE RECEIVED:_____ AGENDA ITEM NO.

CITY MANAGER COMMENTS:

FOR AGENDA OF:_____ FINANCE DIR. APPROVAL

COUNCIL ACTION TAKEN:
~~~~~~~

RESOLUTION NO. 2017- 014
January 17, 2017

**RESOLUTION TO SET DATE TO CONSIDER APPEAL OF DEPOT TOWN ALTERNATIVE HEALTH CARE, INC.**

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

City Council will consider the appeal of Depot Town Alternative Health Care, Inc.

On _____the ____ day of _____, 2017 at __O'clock __M.

OFFERED BY: _____

SUPPORTED BY: _____

YES: NO: ABSENT: VOTE:

**City of Ypsilanti**
Office of the City Manager

January 5, 2017

Mr. Jeffrey Cifor
President
Depot Town Alternative Health Care, Inc.
7502 Tuttle Hill Road
Ypsilanti, MI 48197

Re: Non-Renewal of Medical Marijuana Dispensary License

Dear Licensee,

On December 23, 2015, the Ypsilanti City Clerk issued a Medical Marijuana Dispensary License to Depot Town Alternative Health Care, Inc., a Michigan nonprofit corporation (the licensee) pursuant to Ypsilanti City Ordinance Number 1145 for the premises at 35 East Cross Street, Ypsilanti, MI 48197 (the premises). This license is required to be renewed annually and would otherwise expire on December 31, 2016. On or about November 20, 2016, the licensee applied for renewal. This application is denied and the license is now expired.

An inspection of the premises was conducted by the City on December 22, 2016. During this inspection officials from the City observed several violations of state law, local ordinance, and building codes. Particularly, this includes but is not limited to requirements that all medical marijuana is to be contained within the main building in an enclosed, locked facility; medical marijuana dispensaries are to maintain a log book or database identifying by date the amount of medical marijuana on the premises for each qualifying patient or caregiver; and compliance with City building and fire codes. Inspection reports and findings are attached hereto.

Because you have failed to meet the conditions established by Ordinance No. 1145, the application to renew City of Ypsilanti Medical Marijuana Dispensary License No. 2016-05 is denied and the license is now expired. Licensee shall immediately close the facility and discontinue all operation. Licensee may file an appeal to this decision within 30 days of the date of this notice with the City Clerk.

Regards,

Frances McMullan

Frances McMullan
Interim City Manager

cc: City Clerk
Ypsilanti Police Department
City Attorney
City of Ypsilanti Building Manager

# Depot Town Alternative Health

## 35 East Cross

An inspection of the business was conducted on December 22, 2016 and the current violations were observed.

1) In the lobby area south west corner of the floor there is an electrical outlet that is not properly secured to the floor. This must be repaired and replaced with the proper floor outlet. (Permit required) 1 thru 5 license electrical contractor. (605.1)
2) The electrical core going thru the wall from the TV in the lobby. Must have a proper outlet installed, No electrical core shall go thru walls.
3) Remove all electrical cords and adapters through the building and install proper electrical outlets.
4) In the restroom, the wall light must be installed with the proper electrical wire, not with lamp core. A correctly installed lamp must be installed by a license electrician.
5) All open breaker cutouts must be covered with blank covers or be in use with a breaker in the opening.
6) The basement stairs must be kept clear of all storage on the steps for emergency access and egress. (702.1 & 702.2)
7) The basement must be kept clean and organized with access from front to back, remove all combustible material not being used, boxes and trash.(308.1)

**SECTION 308**

**RUBBISH AND GARBAGE**

**308.1 Accumulation of rubbish or garbage.** All *exterior property* and *premises*, and the interior of every *structure*, shall be free from any accumulation of *rubbish* or *garbage*.

**SECTION 702**

**MEANS OF EGRESS**

**[F] 702.1 General.** A safe, continuous, and unobstructed path of travel must be provided from any point in a building or *structure* to the *public way*. Means of egress must comply with the Fire Code adopted by the City of Ypsilanti.

Inspection Report – December 22, 2016

Depot Town Dispensary

35 E. Cross

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On December 22, 2016 at approximately 12:45 pm, the inspection team of Chief Tony DeGuisti, Frank Daniels, John Roe, and I arrived at Depot Town Dispensary. As a client was entering the rear door the inspection team followed and announced we were there for annual inspections. We were told we needed to wait in the lobby until a manager could be found. From the lobby Chief DeGuisti asked the receptionist if we were able to enter and conduct the inspection. The receptionist replied that today is not a good day for an inspection and that it would be the managers call if we could enter. After waiting approximately 5 minutes, I entered the main area and asked for the manager. The guy behind the counter said he was the manager and that he did not know about the inspection. No less than 3 "patients" arrived and checked out at the counter while we waited. No id's or patient cards were checked before the "patients" were given entry to the counter area.

I informed him that we were able to inspect by Ordinance up to 4 times a year. I told him at this time if he did not invite us through for an inspection that we would seek to revoke the license immediately.

During the conversation with the manager I observed 4 people, appearing to be employees, 2 with burgundy employee shirts on and two not in a uniform shirt carry blue large plastic tubs out the rear door.

The manager said we could inspect and allowed Tony, Frank, and John in the door. Tony told the manager that all the medibles and tincture solutions and oils needed to be removed as they are not allowed by City Ordinance. The manager removed the items from the shelf at that time. Tony asked the manager to show us the locked supply for each caregiver. The manager said he did not have a locked supply but instead led us to a small room with a shelving unit and more blue plastic containers labeled by strain. The manager was unable to quantify how much marijuana was in any of the containers, where the marijuana was from, which "caregiver" the marijuana belonged to, or a log for the daily supply of each "caregiver". When the manager was asked why this was not being done, he replied that he was unaware it needed to be done.

I asked the manager for copies of patient cards and he said they were unavailable. I also observed another shelving unit located behind the counter in the hallway was empty on the top three shelves and had large containers of marijuana on the bottom two shelves.

Attached is the report from John Roe regarding the building code violations.

To Whom it May Concern,

This is a request to appeal the decision to not renew our Dispensary License. We are very Apologetic for the issues brought up by the inspection on December 22nd for the location at 35 e cross Ypsilanti mi. We have reverted All policies and procedures to reflect the original laws and policies set forth by Ypsilanti prior to the state law enacted on December 20th.
We are requesting a full appeal of the inspection and verdict.
Our prior history with the city of Ypsilanti has been spotless for violations and we have gone to great lengths to better the area in and around Ypsilanti and Depot town.
Please feel free to contact me with any questions or concerns.

Chad Seward
General Manager
Depot town Alternative Health.
35 E. Cross
Ypsilanti Mi 48197

248-470-6014

1-13-17

Dennis M. Hayes
attorney at law 120 N. Fourth Ave., Ann Arbor, Michigan 48104 (734) 995-4646 fax (734) 995-2910 email: dennismh@earthlink.net

January 10, 2017

Frances McMullan
Interim City Manager
one south huron street
Ypsilanti Mi 48197

Re: Depot Town Termination of License

Dear Ms McMullan

Please be advised that I represent Depot Town regarding your notice of the nonrenewal of their Dispensary License. I've read your letter of January 5, 2017 and understand they were ordered to remove their marijuana edibles and oils from their displays as it was a violation of the City's Ordinance. The purpose of this letter is to advice you that the displays were compliant with a recently passed state law Act No. 283, Public Acts of 2016; Approved by the Governor September 21, 2016 Filed with the Secretary of State, September 21, 2016 EFFECTIVE December 20, 2016

The Act permits caregivers to possess and supply their patients with "medibles" or other products made from oils of their medical marijuana plants. The bill also permits the possession of cannabis oils and other liquid extracts. The bill as you can see went into effect on December 20, 2016 and they were thus permitted to be distributed and presumably displayed at their dispensary according to my reading of the bill. They indicated that they were advised that it was a violation of the City's ordinance but my preliminary review of it doesn't mention anything about them. Could you please send me a copy of that portion of ordinance so I might compare it to the state law. Thank you.

You should also be aware that the bill closes with the following language:

"This amendatory act is curative and applies retroactively as to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of "weight" as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense. Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provisions at the time of enforcement."

The bill was passed in September with an effective date of 12/20/2016 and when I discussed it with my clients I advised them that would be legally permitted to display, distribute And deliver "medibles" and oils after that date. Since one of your inspectors, Tony, had them removed per the City Ordinance I thought it would be appropriate to bring the new state law to you attention.

You've been given a copy of the bill for your perusal and it's available to your counsel on line.

I understand that Depot Town has arranged for another inspection and is correcting the other items that were brought to their attention. If I can assist them in any way I'm available if you'd like to discuss it.

Sincerely,

Dennis M Hayes
Attorney for Depot Town

CC: City Attorney

**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: September 18, 2012

FROM: John M. Barr, Ypsilanti City Attorney

SUBJECT: Date and time for Appeal of Medical Marijuana denial

SUMMARY/BACKGROUND

City staff inspected the Depot Town Alternative Health marijuana dispensary at 35 East Cross Street, Ypsilanti, MI on December 22nd and found significant violations of the enabling ordinance. The business applied for a license renewal and the City Manager denied the renewal based on the violations.

The business has now filed an appeal of the denial to City Council, pursuant to the ordinance. The ordinance requires that City Council "...consider the appeal within 30 days of receipt of the appeal." City Code section 22-210. The appeal was received by the City Clerk on December 13, 2017.

The Appellant is agreeable to having council consider the matter today. Council has not considered a similar appeal. The following is a suggested agenda:

1. The Mayor announces the appeal.
2. City attorney and staff make brief statement of facts and recommendation.
3. Appellant's attorney makes statement of position and any argument.
4. City attorney responds.
5. Council asks questions and discusses the matter.
6. Council takes action to either a) grant the appeal, b) deny the appeal, or c) take the matter under advisement until the next meeting on January 24, 2017

ATTACHMENTS: Proposed Resolutions

RECOMMENDED ACTION: Adoption of one of three proposed resolutions
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DATE RECEIVED:_____ AGENDA ITEM NO.

CITY MANAGER COMMENTS:

FOR AGENDA OF:_____ FINANCE DIR. APPROVAL

COUNCIL ACTION TAKEN:

RESOLUTION NO. 2017- 016
January 17, 2017

RESOLUTION TO APPROVE THE APPEAL OF
DEPOT TOWN ALTERNATIVE HEALTH CARE, INC.
OF NON-RENEWAL OF LICENSE

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

This resolution concerns the appeal of the City denial of a license renewal of Depot Town Alternative Health Care, Inc., Appellant.

Upon agreement of all parties the matter was considered by Ypsilanti City Council this day.

After review of all the documents, including the Letter of Non-Renewal of Medical Marijuana Dispensary License with attachments of building code violations and Inspection Report, and review of the Appeal request of January 13, 2017 and the letter of attorney Dennis Hayes, and the statements and arguments,

It is determined that the facts set out in the letter of Non-Renewal are accurate, relevant significant and serious and are in violation of the ordinance, and the Appellant has corrected all the violations and there is a question of the application of law, and this is the first violation of the Appellant.

Now therefore, after consideration of all the facts, statements, arguments and materials, City Council is satisfied that since the violations have been corrected and the interests of justice will be served if the Appeal is granted;

THE APPEAL IS GRANTED and the city manager is directed to issue the license renewal.

OFFERED BY: _____

SUPPORTED BY: _____

YES: NO: ABSENT: VOTE:

RESOLUTION NO. 2017- 016
January 17, 2017

RESOLUTION TO DENY THE APPEAL OF
DEPOT TOWN ALTERNATIVE HEALTH CARE, INC.
OF NON-RENEWAL OF LICENSE

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

This resolution concerns the appeal of the City denial of a license renewal of Depot Town Alternative Health Care, Inc., Appellant.

Upon agreement of all parties the matter was considered by Ypsilanti City Council this day.

After review of all the documents, including the Letter of Non-Renewal of Medical Marijuana Dispensary License with attachments of building code violations and Inspection Report, and review of the Appeal request of January 13, 2017 and the letter of attorney Dennis Hayes, and the statements and arguments,

It is determined that the facts set out in the letter of Non-Renewal are accurate, relevant significant and serious and are in violation of the ordinance, and the Appeal is Denied.

OFFERED BY: _____

SUPPORTED BY: _____

YES: NO: ABSENT: VOTE:

RESOLUTION NO. 2017- 016
January, 17 2017

RESOLUTION TO TAKE UNDER ADVISEMENT THE APPEAL OF
DEPOT TOWN ALTERNATIVE HEALTH CARE, INC.
OF NON-RENEWAL OF LICENSE

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

This resolution concerns the appeal of the City denial of a license renewal of Depot Town Alternative Health Care, Inc., Appellant.

Upon agreement of all parties the matter was considered by Ypsilanti City Council this day.

After review of all the documents, including the Letter of Non-Renewal of Medical Marijuana Dispensary License with attachments of building code violations and Inspection Report, and review of the Appeal request of January 13, 2017 and the letter of attorney Dennis Hayes, and the statements and arguments,

The appeal is taken under advisement and Ypsilanti City Council will make a determination at the regular council meeting on January 24, 2017.

OFFERED BY: _____

SUPPORTED BY: _____

YES: NO: ABSENT: VOTE:

Resolution No. 2017-015
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: