

OSHTEMO CHARTER TOWNSHIP BOARD
7275 West Main Street
Kalamazoo, MI 49009

September 28th, 2021

Refer to www.oshtemo.org home page for Virtual Meeting Information

REGULAR MEETING
6:00 P.M.
AGENDA

1. Call to Order
2. Roll Call & Remote Location Identification
3. Pledge of Allegiance
4. Public Comment on Non-Regular Session Items

WORK SESSION ITEMS

5. Update from Kalamazoo County & Discussion on Police Protection Increase
6. Discussion on 2022 Employee Holidays
7. Discussion on Township Logo
8. Other Updates & Business

BREAK (Time Permitting) – 7:05 P.M.

REGULAR SESSION ITEMS – 7:15 P.M.

9. Consent Agenda
 - a. Approve Minutes – September 14th, 2021 Regular Meeting
 - b. Receipts & Disbursements Report
 - c. Ordinance 176 Anti-Noise Ordinance Amendment – Second Reading
 - d. Ordinance 585 Subdivision, Site Condominium and Land Division Amendment – Second Reading
 - e. Ordinance 530 State Construction Code Amendment – Second Reading
 - f. Police Protection MOU with KCSO to Add Sergeant Position
 - g. Fire Department Replacement Equipment Purchase
10. Consideration of Development of Michigan Department of Natural Resources Trust Fund 20- 0070: Fruitbelt Trail Agreement
11. Consideration of Section 54.60 Outdoor Lighting Standards Amendment – First Reading
12. Discussion on 2022 Township Budget & Capital Improvement Plan (Continued)
13. Discussion & Consideration of Loan Agreement with Oshtemo DDA
14. Other Township Business & Question Updates
15. Public Comment
16. Board Member Comments
17. Adjournment

**Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8:00 am- 5:00 pm, and on Friday 8:00 am-1:00 pm. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
Clare Buszka	216-5260	cbuszka@oshtemo.org
<u>Trustees</u>		
Cheri L. Bell	372-2275	cbell@oshtemo.org
Kristin Cole	375-4260	kcole@oshtemo.org
Zak Ford	271-5513	zford@oshtemo.org
Kizzy Bradford	375-4260	kbradford@oshtemo.org

Township Department Information		
<u>Assessor:</u>		
Kristine Biddle	216-5225	assessor@oshtemo.org
<u>Fire Chief:</u>		
Mark Barnes	375-0487	mbarnes@oshtemo.org
<u>Ordinance Enf:</u>		
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org
<u>Parks Director:</u>		
Karen High	216-5233	khigh@oshtemo.org
Rental Info	216-5224	oshtemo@oshtemo.org
<u>Planning Director:</u>		
Iris Lubbert	216-5223	ilubbert@oshtemo.org
<u>Public Works:</u>		
Marc Elliott	216-5236	melliott@oshtemo.org

Zoom Instructions for Participants

Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to “**Join via computer**” as well as phone numbers for a conference call option. It will also include the 11-digit Meeting ID.

To join the videoconference:

1. At the start time of the meeting, click on this link to [join via computer](#). You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio works, click on “Join audio by computer.”

You may also join a meeting without the link by going to [join.zoom.us](#) on any browser and entering this **Meeting ID: 815 3060 6747**

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet, or smartphone then you can join via conference call by following instructions below.

To join the conference by phone:

1. On your phone, dial the teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **815 3060 6747#**

Participant controls in the lower-left corner of the Zoom screen:



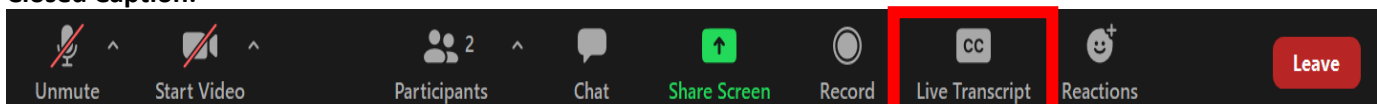
Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- Participants – opens a pop-out screen that includes a “Raise Hand” icon that you may use to raise a virtual hand. **This will be used to indicate that you want to make a public comment.**
- Chat – opens pop-up screen that allows participants to post comments during the meeting.

If you are attending the meeting by phone, to use the “Raise Hand” feature **press *9 on your touchtone keypad.**

Public comments will be handled by the “Raise Hand” method as instructed above within Participant Controls.

Closed Caption:



Turn on Closed Caption:

Using the icons at the bottom of the Zoom screen:

1. Click on the “Live Transcription” button.
2. Then select “Show Subtitle”.

Memo

To: Oshtemo Township Board

From: Sara Feister, HR/Benefits Coordinator

Date: 09/28/21

Re: Juneteenth Holiday

OBJECTIVE:

Board discussion on the new Federal Juneteenth holiday, and Board direction to the Supervisor's Office regarding:

- 1) Board request for further information,
- 2) Board request to review draft amendments to the Township holiday policy, or
- 3) Other Board requests.

BACKGROUND:

On June 17th, 2021, President Biden signed legislation to make Juneteenth a federal holiday, enshrining June 19 as the national day to commemorate the end of slavery in the United States. Board members previously requested discussion on whether to make Juneteenth a paid Township holiday.

The status of the Township holiday benefit is 12 paid holidays. This compares to federal Bureau of Labor Statistics of public sector employees having 11 paid holidays and private sector employees having 8 paid holidays. See attachment #4 for more information.

The financial impact of adding the additional federal holiday is approximately \$8,600. All employees (less the full time, 24-hour Firefighters) would already have been paid \$6,704 normal wages for working on this day. There is a new expense of \$1,913 for the 24-hour Firefighters, to cover their additional overtime holiday pay. 24-hour Firefighters currently receive a lump sum payout of 96 hours annually in December for holiday pay since they work a rotating schedule of holidays. Adding an additional holiday would increase the cash payment to 104 hours. Please note that this either needs to be amended in the CBA or included in the 2022 negotiations

The current Township holiday benefit for employees has an approximate value of \$103,000.

LOCAL MUNICIPALITY DECISIONS:

- 1) Kalamazoo County
 - a. Not adding Juneteenth
 - b. See attachment #3 for additional information

- 2) Kalamazoo Township
 - a. Adding Juneteenth starting in 2022
 - b. Kalamazoo Township has 11 fully paid holidays and 1 floating holiday
- 3) Charter Township of Comstock
 - a. Still in process of presenting to Board
 - b. Per Scott Hess: "Currently we have 11 plus a floating. If we add Juneteenth we will drop the floating and stay with 12 total.
- 4) Charter Township of Texas
 - a. Not adding Juneteenth
 - b. Per Julie VanderWiere: "We offer nine full day holidays and two ½ day holidays. Right now, we pay additional straight time pay if the holiday falls on a weekend and then we do not observe the holiday on that Friday or Monday. We are in the process of asking the board to change this after we surveyed our staff on their preference."

ADDITIONAL INFORMATION PROVIDED IN ATTACHMENTS:

- 1) List of observed holidays extracted from the Employee Handbook (Appendix A)
- 2) List of observed holidays extracted from the CBA (Page 17)
- 3) Kalamazoo County Holiday Schedule
- 4) U.S. Bureau of Labor Statistics Paid Holiday Benefit Survey

APPENDIX A:

HOLIDAYS:

- A. The following holidays will be paid holidays (except on-call firefighters) for full-time and part-time employees working a minimum of twenty (20) hours per week:
1. New Year's Day
 2. Martin Luther King, Jr. Birthday
 3. Presidents' Day
 4. Memorial Day.
 5. Independence Day.
 6. Floating Holiday.
 7. Labor Day
 8. Veterans' Day
 9. Thanksgiving Day
 10. Day after Thanksgiving
 11. One-half (½) day before Christmas*
 12. Christmas Day
 13. One-half (½) day before New Year's Day*
- B. Employees working a minimum of twenty (20) hours per week on a regular basis shall be entitled to receive holiday pay in an amount equal to the percentage of hours they normally work in a forty (40) hour week; i.e., a twenty (20) hour per week employee shall receive fifty percent (50%) of his/her pay for a designated holiday whereas a thirty-two (32) hour per week employee shall receive eighty percent (80%) of his/her pay for a designated holiday, subject to the following provisions:

APPENDIX A

*Revised Paragraph B – Effective 10/13/09
Revised Paragraphs 11 & 13 - Effective 01/29/19*

1. The employee must work his or her regularly scheduled workday prior to the holiday and his or her regularly scheduled workday following the holiday or have an excused absence.
2. If the holiday falls within employee's vacation, he or she shall receive an additional day of pay or be given an extra day off with pay.
3. Floating holiday will be assigned by the Township Administration in January.
4. *Depending how the holidays fall during the work week, the two half days before Christmas and New Years may be combined into one full day off before Christmas by the Township Administration in January.

APPENDIX A

New Paragraph 4 - Effective 01/29/19

The Township reserves the right to select or change any or all insurance carriers provided the level of benefits remains substantially equivalent to what is currently offered.

The Township will provide the Union with at least seven (7) days' notice before changing insurance carriers or plans.

ARTICLE XIV HOLIDAYS

The following are the Township's recognized holidays:

1. New Year's Day
2. Martin Luther King Jr. Birthday
3. Presidents' Day
4. Memorial Day
5. Independence Day
6. Floating Holiday
7. Labor Day
8. Veteran's Day
9. Thanksgiving Day
10. Day after Thanksgiving
11. One-half (½) day before Christmas
12. Christmas Day
13. One-half (½) day before New Year's Day

The Department/Township, with reasonable notice, may combine half-days into a single 24 hour holiday. The floating holiday will coincide with the floating holiday for all other Township employees.

Holiday Pay: 56 hour per week employees will receive 96 hours of holiday pay at the employee's regular base hourly rate of pay (employees in their first calendar year of employment will receive a pro-rata amount of holiday pay) regardless of whether or not they work the holiday. Holiday pay will be paid in the first full pay period in December.

40 hour per week employees will receive 8 hours of holiday pay at the employee's regular base hourly rate of pay (or the employee will receive his/her regular daily salary) and will receive the holiday off.

ARTICLE XV CORRECTIVE ACTION

Maintenance of discipline is essential to the satisfactory operation of the Fire Department. The Township will discipline/discharge only with "just cause".



PERSONNEL POLICIES

SECTION 5	EMPLOYEE BENEFITS			
5.03	PAID LEAVE			
Approved by BOC on:	11/04/2020	Effective Date:	11/05/2020	Supersedes: 03/17/2020

A. HOLIDAY LEAVE

Employees are entitled to holiday leave with pay on the following recognized holidays:

- | | | |
|-----|----------------------------|--|
| 1. | New Years' Day | January 1 |
| 2. | Martin Luther King Jr. Day | Third Monday in January |
| 3. | President's Day | Third Monday in February |
| 4. | Memorial Day | Last Monday in May |
| 5. | Independence Day | July 4 |
| 6. | Labor Day | First Monday in September |
| 7. | General Election Day | First Tuesday after November 1 st |
| 8. | Veterans Day | November 11 |
| 9. | Thanksgiving Day | Fourth Thursday in November |
| 10. | Day after Thanksgiving Day | Day after Thanksgiving |
| 11. | Christmas Eve Day | December 24 |
| 12. | Christmas Day | December 25 |
| 13. | New Years' Eve Day | December 31 |

When any holiday above falls on a Sunday, the following Monday shall be observed as the holiday. When any holiday above falls on a Saturday, the preceding Friday shall be observed as the holiday.

When December 25th falls on a Saturday, causing the holiday's observance on Friday, December 24th, then Thursday, December 23rd will be the observance day for the December 24th holiday. When December 24th falls on Sunday, the observance day will then be Friday, December 22nd.

When January 1st falls on a Saturday, causing the holiday's observance on Friday, December 31st, then Thursday, December 30th will be the observance day for the December 31st holiday. When December 31st falls on Sunday, the observance day will then be Friday, December 29th.

Employee Benefits Survey



Paid holidays: Number of days provided

Characteristics	Paid holidays												Mean number of days	Median number of days
	Less than 5 days	5 days	6 days	7 days	8 days	9 days	10 days	11 days	12 days	13 days	14 days	Greater than 14 days		
All workers	7	3	22	13	12	10	13	8	6	3	1	2	8	8
Worker characteristics														
Management, professional, and related	2	1	16	13	13	12	15	10	9	4	2	3	9	9
Management, business, and financial	1	1	14	10	15	12	20	9	9	3	2	3	9	9
Professional and related	3	1	17	14	12	12	12	10	9	4	2	3	9	9
Teachers	6	—	17	—	5	6	12	12	7	6	4	12	10	10
Primary, secondary, and special education school teachers	9	5	26	—	4	4	9	10	—	3	3	13	9	7
Registered nurses	—	1	28	18	19	13	6	6	3	2	1	—	8	8
Service	12	6	26	16	9	6	7	6	6	3	1	2	7	7
Protective service	—	—	—	7	4	12	15	17	18	8	3	1	10	10
Sales and office	12	3	23	12	12	8	14	6	4	2	1	1	8	7
Sales and related	26	5	30	11	10	7	5	3	1	—	—	—	6	6
Office and administrative support	5	2	20	13	14	9	18	7	6	3	1	2	8	8
Natural resources, construction, and maintenance	5	5	30	17	11	8	11	6	3	2	1	1	8	7
Construction, extraction, farming, fishing, and forestry	7	6	30	15	12	8	7	6	3	3	1	2	8	7
Installation, maintenance, and repair	4	4	30	18	10	7	14	7	4	2	1	1	8	7
Production, transportation, and material moving	5	3	23	12	16	10	12	9	4	2	[2]	2	8	8
Production	3	2	21	10	13	13	17	11	5	2	[2]	3	9	9
Transportation and material moving	7	4	25	15	21	7	8	6	3	2	[2]	2	8	7
Full time	4	3	20	13	13	10	14	9	6	3	1	2	8	8
Part time	24	4	32	15	9	4	6	2	2	2	[2]	1	6	6
Union	2	2	14	9	11	8	12	15	13	5	3	5	10	10
Nonunion	8	3	23	14	13	10	13	6	5	2	1	2	8	8
³ Average wage within the following categories:														
Lowest 25 percent	19	7	33	15	9	5	6	2	1	1	[2]	1	6	6
Lowest 10 percent	23	5	37	15	9	3	4	1	1	1	—	—	6	6
Second 25 percent	6	4	24	15	13	9	12	7	5	2	1	2	8	8
Third 25 percent	3	2	19	13	13	10	16	10	7	3	2	3	9	9
Highest 25 percent	2	1	14	12	14	13	16	10	10	4	2	3	9	9
Highest 10 percent	2	1	11	11	14	13	17	9	13	5	1	3	9	9
Establishment characteristics														
Goods-producing industries	3	3	18	12	12	14	17	9	8	2	1	2	9	9
Service-providing industries	8	3	23	14	13	9	12	7	6	3	1	2	8	8
Education and health services	3	3	24	16	9	8	10	7	8	5	3	5	9	8
Educational services	4	3	7	4	5	8	13	11	12	11	8	15	11	11
Elementary and secondary schools	6	4	13	6	4	7	11	11	7	7	6	16	11	10
Junior colleges, colleges, and universities	1	1	1	3	5	8	13	12	18	16	10	13	12	12
Health care and social assistance	3	—	32	21	10	8	8	5	6	2	—	—	8	7
Hospitals	1	2	32	23	12	10	8	5	4	2	—	—	8	7
Public administration	—	—	—	—	2	8	16	28	26	12	4	3	11	11
1 to 99 workers	9	4	26	15	12	9	11	6	3	2	1	1	7	7
1 to 49 workers	9	4	27	16	12	8	11	5	3	2	[2]	1	7	7
50 to 99 workers	9	4	25	13	13	10	10	7	4	2	1	1	8	7
100 workers or more	5	2	18	12	13	10	14	9	8	4	2	3	9	9
100 to 499 workers	7	3	21	12	13	10	13	8	6	3	2	2	8	8
500 workers or more	1	1	14	11	12	10	16	12	11	5	2	4	9	10

Geographic areas														
Northeast	6	2	16	14	11	9	13	10	10	3	1	3	9	9
New England	7	—	13	13	10	9	17	15	8	3	—	2	9	9
Middle Atlantic	6	3	17	14	11	8	12	9	11	3	1	3	9	8
South	9	3	22	13	12	11	12	6	5	3	1	2	8	8
South Atlantic	9	2	24	13	12	11	13	6	6	2	1	1	8	8
East South Central	10	5	21	11	11	9	14	7	5	6	1	2	8	8
West South Central	9	5	21	16	13	12	8	7	4	2	2	2	8	7
Midwest	5	2	26	14	14	9	13	6	4	3	1	3	8	8
East North Central	5	2	25	16	13	8	14	6	4	3	1	3	8	8
West North Central	4	2	30	11	15	9	12	8	4	2	1	2	8	8
West	6	4	21	13	13	9	13	9	6	3	2	2	8	8
Mountain	7	3	25	13	15	7	16	7	4	1	1	1	8	8
Pacific	6	5	19	12	12	9	12	10	6	3	2	2	8	8

¹ Includes workers in private industry and state and local government. See Technical Note for further explanation.

² Less than 0.5.

³ Surveyed occupations are classified into wage categories based on the average wage for the occupation, which may include workers with earnings both above and below the threshold. The categories were formed using percentile estimates generated using wage data for March 2017.

Note: Because of rounding, sums of individual items may not equal totals. Dash indicates no workers in this category or data did not meet publication criteria. For definitions of major plans, key provisions, and related terms, see the "Glossary of Employee Benefit Terms" at www.bls.gov/ncs/ebs/glossary20162017.htm.

Source: Bureau of Labor Statistics, National Compensation Survey.

U.S. BUREAU OF LABOR STATISTICS Office of Compensation and Working Conditions PSB Suite 4160 2 Massachusetts Avenue NE Washington, DC 20212-0001

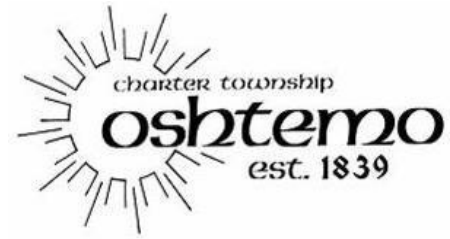
Telephone: 1-202-691-6199 www.bls.gov/EBS [Contact EBS](#)

Memorandum

Date: 7/23/2021 (continued discussion 9/24)

To: Township Board

From: Logo Committee: Dusty Farmer, Libby Heiny-Cogswell, Karen High



Objective:

To select a logo for the Township to be used on the new website and for other materials containing the Township logo moving forward.

Background:

The Logo Committee, a subcommittee of the Website Committee, had multiple discussion with the Township Board on three logo designs. The Township Board reviewed those logos and asked for a couple of changes and requested a refresh of the current Township logo. The Logo Committee then worked with the graphic designer to develop three new options for the Board to discuss.

The Township began work on the new Township website in August. The chosen logo will be implemented in the design of the new website. The design work is hoping to kickoff as soon as possible. In order to incorporate the new logo and color scheme into the website, a decision will need to be made on the logo during this meeting.

Recommendation:

The Logo Committee recommends the Board consider the redesigned logo options to choose the new Township logo.

Attachments:

3 updated logo designs.





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Current Logo:



MEMORANDUM

To: Township Board
From: James Porter 
Date: September 15, 2021
Subject: Proposed Amendment to Ordinance No. 176- Anti-Noise Ordinance

OBJECTIVE:

To amend Township Ordinance No. 176, as amended, (Anti-Noise Ordinance) to ensure consistency in the treatment of “roosters that crow” within the General Township and Zoning Ordinances.

BACKGROUND:

Township Zoning Ordinance Section 57.80-Keeping of Livestock and Honey bees, prohibits in subsection G(3) the keeping of “Roosters that crow.” Township Ordinance No. 176, as amended, under Section 214.003- Anti-noise regulations, currently under “B. Specific violations” subsection 13, provides “Roosters. The keeping of roosters is prohibited except in the Rural Residential and Agricultural Districts.” The proposed amendment to Ordinance 176 will modify the language to refer to “roosters that crow” to mirror the language in the Zoning Ordinance.

INFORMATION PROVIDED:

I have provided the proposed ordinance amendment for the Board’s review and consideration.

STATEMENT OF REQUESTED BOARD ACTION:

My recommendation is that the Board adopt the amendment to Ordinance No. 176, Anti-Noise Ordinance, to resolve the inconsistency of terms between the Township Zoning Ordinance Section 57.80 and Section 214.003 of the Township’s General Ordinances.

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. ____

Adopted: _____

Effective: _____

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to amend the Oshtemo Charter Township Anti-Noise Ordinance No. 176, as amended, specifically Section 214.003, to prohibit roosters that crow except within the agricultural district, and to repeal all Ordinances or parts of Ordinances in conflict.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. AMENDMENT OF COMPILED SECTION 214.003, PARAGRAPH B(13). Compiled Section 214.003, Paragraph B(13) is amended to read as follows:

Section 214.003- Anti-noise regulations

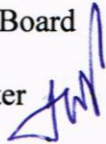
Sec. III

B(13). Roosters. The keeping of roosters that crow is prohibited except in the Agricultural District.

SECTION II. EFFECTIVE DATE. This Ordinance shall take effect upon publication after adoption in accordance with State law. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP

MEMORANDUM

To: Township Board
From: James Porter 
Date: September 15, 2021
Subject: Proposed revision to the Township Subdivision, Site Condominium and Land Division Ordinance (Ordinance No. 585)

OBJECTIVE:

To amend the Township's Subdivision, Site Condominium and Land Division Ordinance, (No. 585) to add a requirement that grading plans be approved for final floor elevations, lowest opening elevations, and abutting grading elevations for all structures.

BACKGROUND:

The Township adopted Ordinance 585 in July 2017 to repeal and replace the Subdivision/Site Condominium Ordinance (No. 467). Recently, some issues have arisen regarding the installation of sidewalks due to discrepancies between the grading plans and the floor elevations of the structures. This additional requirements of this amendment to Ordinance 585 will ensure proper development in accordance with approved plans.

INFORMATION PROVIDED:

I have provided the proposed revision to the Subdivision, Site Condominium and Land Division Ordinance, (No. 585) for the Board's review.

STATEMENT OF REQUESTED BOARD ACTION:

My recommendation is that the Board adopt the proposed revision to the Subdivision, Site Condominium and Land Division Ordinance, (No. 585).

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. _____

Adopted: _____

Effective: _____

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to amend the Oshtemo Charter Township Subdivision, Site Condominium and Land Division Ordinance, Ordinance No. 585, specifically Section 290.007- APPROVAL PROCEDURES, and to repeal all Ordinances or parts of Ordinances in conflict.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. APPROVAL PROCEDURES – COMPILED SECTION 290.007, PARAGRAPH C.2(c). Compiled Section 290.007(C)(2)(c) shall read as follows:

290.007 – Approval Procedures.

Sec. VII

Paragraph (C)(2)(c). Finalized grading plan showing proposed and existing elevations, final floor elevations, lowest opening elevations, and abutting grading elevations for all structures as approved by the Township Engineer.

SECTION II. EFFECTIVE DATE. This Ordinance shall take effect upon publication after adoption in accordance with State law. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP

MEMORANDUM

To: Township Board
From: James Porter
Date: September 15, 2021
Subject: Amendment to Ordinance No. 530- State Construction Code

OBJECTIVE:

To revised the Township's State Construction Code Ordinance No. 530 to harmonize the language with the Amended and Restated Interlocal State Construction Code Enforcement and Administration Agreement.

BACKGROUND:

The Board adopted the Amended and Restated Interlocal State Construction Code Enforcement and Administration Agreement at its meeting of September 14, 2021. Revisions to Ordinance No. 530 are necessary to bring the Township's State Construction Code in line with the terms of the Amended and Restated Interlocal State Construction Code Enforcement and Administration Agreement.

INFORMATION PROVIDED:

I have provided the proposed Ordinance amendment for the Board's review.

STATEMENT OF REQUESTED BOARD ACTION:

My recommendation is to adopt the proposed amendment to Ordinance No. 530- State Construction Code.

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. _____

Adopted: _____

Effective: _____

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to amend the Oshtemo Charter Township State Construction Code Ordinance No. 530, as amended, specifically Section 274.005- Construction board of appeals, and to repeal all Ordinances or parts of Ordinances in conflict.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. AMENDMENT OF COMPILED SECTION V. Compiled Section 274.005 is amended to read as follows:

Section 274.005- Designation of Enforcing Agency

Sec. V.

General. A Construction Board of Appeals is hereby established consisting of not less than five (5) nor more than seven (7) members appointed by the SMBA Board. Members of the Board of Appeals shall be qualified by experience or training to perform the duties of members of the Board of Appeals. The terms of the members of the Board of Appeals shall be two (2) years and until a qualified successor is appointed. Qualified members shall be: A person who is experienced as a major general contractor; or A person who is experienced in residential construction; or A person who is a registered professional engineer or architect; or A person who is experienced in electrical contracting work; or A person who is experienced in mechanical contracting work; or A person who is experienced in plumbing contracting work; or A person deemed by the Authority to otherwise be qualified by training or experience to perform the duties of a member of the Construction Board of Appeals.

A. Authority and Duties of the Construction Board of Appeals. The Construction Board of Appeals shall have such authority, power, rights and duties as are set form in the ordinances adopted by the participating local units as well as such power and authority as is set forth in the Construction

Code Act not inconsistent with the foregoing rights, powers, duties and authority established by local ordinance and the Michigan Construction Code.

- B. The Construction Board of Appeals shall have the following duties:
1. To provide for reasonable interpretation of the provisions of the State Construction Code.
 2. To hear and decide appeals from and review any order, requirement, decision or determination made by the Authority pursuant to the Construction Code Act, the State Construction Code, and/or this Ordinance.
 3. To do acts, make decisions, and make such determinations as are authorized or directed by the Construction Code Act, the State Construction Code, and/or this Ordinance.
 4. To grant a specific variance to a substantive requirement of the State Construction Code if the literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:
 - i. The performance of the particular item or part of the building structure with respect to which the variance is granted shall be adequate for its intended use and shall not substantially deviate from performance required by the State Construction Code provisions for that particular item or part for the health, safety, and welfare of the people of the State.
 - ii. The specific condition justifying the variance shall be neither so general or recurrent in nature as to make an amendment of the applicable State Construction Code provision with respect to the condition reasonably practical or desirable.
- C. The Construction Board of Appeals shall meet at such times as said Board may determine. It may adopt bylaws and rules of procedure covering any matters upon which it may act.
- D. The presence of a simple majority of duly appointed members shall be necessary to constitute a quorum. A quorum shall be at all times present in order for the Construction Board of Appeals to validly transact its business and decide upon any question.

- E. The SMBA Board Secretary shall attend meetings of the Construction Board of Appeals as its Chairperson to organize, facilitate, and record minutes for such meetings as are duly noticed by the Construction Board of Appeals. The Chairperson shall not have the right to vote upon decisions before the Construction Board of Appeals. Accordingly, the Chairperson shall not be counted as a member when determining whether a quorum exists.

SECTION II. EFFECTIVE DATE. This Ordinance shall take effect upon publication after adoption in accordance with State law. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP

MEMORANDUM

To: Township Board
From: James Porter
Date: September 22, 2021
Subject: Police Protection Mutual Letter of Understanding

OBJECTIVE:

To request the Board's review of the proposed Mutual Letter of Understanding regarding the 2020-2023 Police Protection Agreement with the Kalamazoo County Sheriff's Department.

BACKGROUND:

The Township entered into a Police Protection Agreement with Kalamazoo County and the Kalamazoo County Sheriff's (effective January 1, 2020), for the period of January 1, 2020 through December 31, 2023. The Township sought to amend that Agreement in October of 2020 to add additional dedicated officers for the Township. That Amendment was never signed, as the Sheriff's office lacked the manpower necessary to provide additional officers at that time. The Township now seeks to enter into the proposed Mutual Letter of Understanding to obtain some additional officer time for the Township, and provide for payment for those services.

INFORMATION PROVIDED:

I have attached a copy of the proposed Mutual Letter of Understanding for the Board's consideration.

STATEMENT OF REQUESTED BOARD ACTION:

I recommend that the Board authorize the Supervisor to sign this Mutual Letter of Understanding, following agreement to substantially similar terms with the County and Kalamazoo County Sheriff's Department.

MUTUAL LETTER OF UNDERSTANDING

The County of Kalamazoo (hereinafter referred to as “County”), the Sheriff of Kalamazoo County (hereinafter referred to as “Sheriff”) and Oshtemo Charter Township (hereinafter referred to as “Township”) and the County, Sheriff and Township (hereinafter referred to “Parties”) entered into a Police Protection Agreement, effective January 1, 2020, for the period of January 1, 2020 through December 31, 2023 (hereinafter the “Agreement”).

The Parties propose to make minor adjustments to that Agreement, but not formally amend it due to the Parties continued discussions for further services, until such time as the Sheriff has the resources to provide said services. Wishing to advance the cooperation between the Parties, and ensure mutual satisfaction, the Parties hereby agree as follows:

1. During the remaining term of the existing Agreement, the Sheriff will provide the equivalent of one (1) additional full-time sergeant (assigned to the afternoon shift) with the appropriate experience to supervise a deputy.
2. Payment for such services shall be made in accordance with paragraph three of the Agreement.
3. All other terms and conditions of the Agreement shall remain in full force and effect except as modified by this Mutual Letter of Understanding.

[This space is intentionally left blank, signature page follows]

This Mutual Letter of Understanding shall take effect as of the date of last signature of the Parties below. The individuals signing below on behalf of the Parties to the above stated Agreement certified by their signatures that they are duly authorized to sign this Mutual Letter of Understanding on behalf of said Parties.

OSHTEMO CHARTER TOWNSHIP

By: _____

Elizabeth Heiny-Cogswell

Its: Supervisor

Date: _____, 2021

COUNTY OF KALAMAZOO

By: _____

Tracy Hall, County Board of Commissioners

Its: Chairperson

Date: _____, 2021

KALAMAZOO COUNTY SHERIFF

By: _____

Richard D. Fuller, III.

Its: Sheriff

Date: _____, 2021



Memo



To: Libby Heiny-Cogswell, Township Supervisor

From: M. Barnes, Fire Chief

Date: September 24, 2021

Re: Consideration to Authorize to Use Excess Monies to Replace Ventilation Saws.

Objective:

Consideration authorizing the use of unused funds to replace one broken and one aging circular ventilation saw.

Background:

One of the Fire Department's two 19+ year old circular ventilation saws has suddenly become unrepairable. Steensma's is reporting that repair parts are no longer available. Because of age and use, we are anticipating that the second saw is not far behind. Replacement of these saws was not budgeted for this year.

The approved 2021 budget allows for the purchase of a new radio for the planned replacement rescue engine. Since that truck replacement will not happen this year, that allocation of \$5,000 will not be spent this year. Therefore, we are asking to be allowed to use the radio funding to purchase two replacement saws. The cost of replacing the 2 saws will be \$2,334, thanks to a 20% discount from Steensma.

If approved, this event will not create a change to the expenditures in the 2021 budget because of the unused funds for the radio and thus a budget amendment is not needed.

MEMORANDUM

To: Township Board
From: James Porter
Date: September 8, 2021
Subject: Resolution Authorizing Development of Project Agreement for Project TF 20-0070: Fruitbelt Trail

OBJECTIVE:

To request the Board's review and approval of the Resolution Authorizing Development of Project Agreement for Project TF 20-0070: Fruitbelt Trail, and the underlying Natural Resources Trust Fund- Land Acquisition Project Agreement (Project TF 20-0070), entitled, "Fruitbelt Trail Corridor Acquisition".

BACKGROUND:

The Township's Planning Commission approved a Special Use Permit to allow development of the Future Fruitbelt Trail on February 27, 2020. The Board authorized the submission of the application titled, "Land Acquisition for Future Fruitbelt Trail" to the Michigan Natural Resources Trust Fund to acquire 35 acres of land for a future nonmotorized trail from 3664 South 9th Street to the Township's south border on June 9, 2020. The Michigan Department of Natural Resources has now provided the Project Agreement to allow acquisition of the AT&T property with the funds provided by this grant. The Project Agreement must be approved by Board Resolution prior to the closing on the AT&T property, per the terms of the Land Acquisition for Future Fruitbelt Trail Agreement.

INFORMATION PROVIDED:

I have attached the Resolution Authorizing Development of Project Agreement for Project TF 20-0070: Fruitbelt Trail and the Natural Resources Trust Fund- Land Acquisition Project Agreement (Project TF 20-0070), entitled, "Fruitbelt Trail Corridor Acquisition" for the Board's review.

STATEMENT OF REQUESTED BOARD ACTION:

I recommend that the Board adopt the Resolution Authorizing Development of Project Agreement for Project TF 20-0070: Fruitbelt Trail.

CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN

**Resolution Authorizing Development of Project Agreement
For Project TF 20-0070 – Fruitbelt Trail**

September 28, 2021

WHEREAS, Oshtemo Charter Township authorized the submission of the application titled, “Land Acquisition for Future Fruitbelt Trail” to the Michigan Natural Resources Trust Fund to acquire 35 acres of land for a future nonmotorized trail from 3664 South 9th Street to the Township’s south border on June 9, 2020; and

WHEREAS, the Township’s approved Five Year Parks and Recreation Master Plan for 2019-2023 supports the completion of the Future Fruitbelt Trail and the Township’s Planning Commission approved a Special Use Permit to allow development of the Future Fruitbelt Trail on February 27, 2020; and

WHEREAS, the Township Board has authorized the purchase of land to construct the Future Fruitbelt Trail; and

WHEREAS, the Michigan Department of Natural Resources has submitted a Natural Resources Trust Fund- Land Acquisition Project Agreement, Project TF 20-0070 (attached), entitled, “Fruitbelt Trail Corridor Acquisition” (“Agreement”) to the Township Board for its approval.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Oshtemo Charter Township does hereby accept the terms of the Agreement for TF 20-0070 as received from the Michigan Department of Natural Resources (“Department”), and that the Township does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate all funds necessary to complete the project during the project period and to provide TWENTY THOUSAND (\$20,000) DOLLARS to match the grant authorized by the Department.

2. To maintain satisfactory financial accounts, documents, and records to make them available to the Department for auditing at reasonable times.

3. To construct the project and provide such funds, services, and materials as may be necessary to satisfy the terms of said Agreement.

4. To regulate the use of the facility constructed and reserved under the Agreement to assure the use thereof by the public on equal and reasonable terms.

5. To comply with any and all terms of said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution.

A motion was made by _____, seconded by _____, to adopt the foregoing Resolution.

Upon a roll call vote, the following voted "Aye":

The following voted "Nay":

The following were Absent:

The following "Abstained":

The Supervisor declared that the Resolution has been adopted.

DUSTY FARMER, Clerk
Oshtemo Charter Township

CERTIFICATE

I, Dusty Farmer, the duly appointed and acting Clerk of the Township of Oshtemo, I hereby certify that the foregoing constitutes a true and complete copy of an Excerpt of the Minutes of a meeting of the Oshtemo Charter Township Board, held, via permitted ZOOM video conference during COVID-19 public health crises as authorized by PA 254 of 2020, on September 28, 2021, at which meeting --- members were present and voted upon the same as indicated in said Minutes; that said meeting was held in accordance with the Open Meetings Act of the State of Michigan.

DUSTY FARMER, Township Clerk

1. This Agreement shall be administered on behalf of the DEPARTMENT by the Grants Management Section within the Finance and Operations Division. All notices, reports, documents, requests, actions or other communications required between the DEPARTMENT and the GRANTEE shall be submitted through the department's online grant management system, MiRecGrants, which is accessed through www.michigan.gov/dnr-grants, unless otherwise instructed by the DEPARTMENT. Primary points of contact pertaining to this agreement shall be:

GRANTEE CONTACT

Name/Title

Organization

Address

Address

Telephone Number

E-mail Address

DEPARTMENT CONTACT

MNRTF Grant Program Manager

Name/Title

Grants Management/DNR Finance & Operations

Organization

525 W. Allegan Street, Lansing, MI 48933

Address

P.O. Box 30425, Lansing, MI 48909

Address

517-284-7268

Telephone Number

DNR-Grants@michigan.gov

E-mail Address

2. The legal description of the project area, boundary map of the project area, and the land acquisition grant application bearing the number **TF20-0070** uploaded to MiRecGrants are by this reference made part of this Agreement. The Agreement together with the referenced documents in MiRecGrants constitute the entire Agreement between the parties and may be modified only in writing and executed in the same manner as the Agreement is executed.
3. The time period allowed for project completion is from **05/07/2021** through **05/31/2023**, hereinafter referred to as the "project period." Requests by the GRANTEE to extend the project period shall be submitted in MiRecGrants before the expiration of the project period. Extensions to the project period are at the discretion of the DEPARTMENT and may only be extended by an amendment to this Agreement.
4. The grant herein provided is for the acquisition by the GRANTEE of **36.09** acres of land in **Fee Simple** title free of all liens and encumbrances, situated and being in the city/village/township of **Oshtemo**, in the County of **Kalamazoo County, STATE OF MICHIGAN** as described in the uploaded legal description and shown on the uploaded boundary map. As used in this Agreement, the words "project area" shall mean the lands acquired under this Agreement as described in this Section.
5. The project area shall be used for **trailway, habitat conservation and general recreation purposes**, as further described in the GRANTEE'S proposal to the DEPARTMENT and approved by the MNRTF Board. Significant changes in the use of the project area as described in this Section require the prior written authorization of the DEPARTMENT.
6. In order to preserve the financial resources of the State of Michigan and to prevent unjust enrichment of a third party interim owner, if the landowner listed in the project application grants any rights in the real property to an individual or agency other than the GRANTEE, the DEPARTMENT may inspect the terms of the conveyance as a condition to approving the GRANTEE to close.
7. The DEPARTMENT will:
 - a. grant to the GRANTEE a sum of money equal to **Seventy-Five percent (75%)** as reimbursement or as payment

into an escrow account for escrow closing, of the total eligible cost of acquisition of fee simple title free of all liens and encumbrances to the lands in the project area, not to exceed the sum of **Fifty-Eight Thousand dollars (\$58,000.00)**. Acquisition of easements or other rights in land less than fee simple will be considered on a case by case basis at the discretion of the DEPARTMENT.

- b. include the following in the total cost of acquisition eligible for grant funding (based on grant percentage) as provided for in Section 7(a):
 - i. Purchase price of the land, up to the market value, in the project area acquired by the GRANTEE during the project period as provided for in section 9(f) of this Agreement;
 - ii. Reasonable and appropriate costs incurred and paid by the GRANTEE during the project period for recording fees, title insurance, transfer tax, prorated property tax, closing fees and environmental assessments; and
 - iii. Costs incurred and paid by the GRANTEE for appraisal(s) as provided for in Section 9(f) and approved by the DEPARTMENT.

- c. grant funds to the GRANTEE for eligible costs and expenses incurred, as follows:
 - i. Payments will be made on a reimbursement basis or to an escrow account for escrow closing for **Seventy-Five percent (75%)** of the eligible expenses incurred by the GRANTEE up to 90% of the maximum amount allowable under the grant.
 - ii. Reimbursement (or payment to an escrow account for escrow closing) will be made only upon DEPARTMENT review and approval of a complete reimbursement (or escrow closing) request submitted by the GRANTEE on forms provided by the DEPARTMENT that meet all documentation requirements set forth by the DEPARTMENT. A complete reimbursement or escrow closing request must document the total cost of the acquisition and the GRANTEE's compliance with Section 8 of this Agreement and DEPARTMENT acquisition project procedures.
 - iii. The DEPARTMENT shall conduct an audit of the project's financial records upon approval of the final reimbursement request or completion of the escrow closing. The DEPARTMENT may issue an audit report with no deductions or may find some costs ineligible for final audit reimbursement.
 - iv. The final 10% of the grant amount will be released upon completion of a satisfactory audit by the DEPARTMENT and documentation that the GRANTEE has erected proper signage acknowledging MNRTF assistance in compliance with Section 9(q) of this Agreement.

8. Closing Options:

a. FOR REIMBURSEMENT PROJECTS:

The GRANTEE shall be eligible for reimbursement only upon GRANTEE'S completion of all of the following:

- i. Electing to use the grant reimbursement closing process at time of signing this project agreement (See grey box prior to signature section).
- ii. Acquisition by GRANTEE of fee simple title free of all liens and encumbrances of all land in the project area. Acquisition of easements or other rights in land less than fee simple will be considered on a case by case basis at the discretion of the DEPARTMENT.
- iii. Submission of proof of acquisition of marketable record title to the DEPARTMENT in the form of a policy of title insurance ensuring the GRANTEE possesses marketable record title in fee simple, free of all liens and encumbrances to the land in the project area. Said policy is to insure the GRANTEE against loss or damage at least equal to the purchase price of the subject land.
- iv. Proper conveyance to the State of Michigan of all mineral interest to which the State is entitled under this Agreement as outlined in Section 9(m).
- v. Submission of a complete request for reimbursement as set forth in this Agreement.

b. FOR ESCROW CLOSING PROJECTS:

The GRANTEE shall be eligible for grant funding through escrow closing process only upon GRANTEE'S completion of the following:

- i. Electing to use the escrow closing process at time of signing this project agreement (See grey box prior to signature section).
- ii. Securing the services of a reputable title company who will agree to serve as the escrow closing agent.
- iii. Execution of escrow closing agreement by GRANTEE, DEPARTMENT, LANDOWNER/SELLER and title

company (agent).

- iv. Providing Department and title company an approximate desired timeframe for closing.
- v. Sending DEPARTMENT the draft closing packet (reference Land Acquisition Escrow Closing Package Checklist) at least 60 days prior to the desired closing date.
- vi. Coordinating with title company to schedule the exact closing date after DEPARTMENT'S approval of draft closing documents and submitting to DEPARTMENT an updated closing statement from the title company at least 10 days before the desired closing date.
- vii. Submitting local matching funds plus 10% of the eligible grant amount to title company for deposit into escrow account and providing proof of escrowed funds to the DEPARTMENT.

9. The GRANTEE will:

- a. immediately make available all funds needed to pay all necessary costs required to complete the project and to provide **Twenty Thousand dollars (\$20,000.00)** as local match to this project. This sum represents **Twenty-Five percent (25%)** of the total eligible cost of acquisition including incidental costs. Any cost overruns incurred to complete the project called for by this Agreement shall be the sole responsibility of the GRANTEE.
- b. complete the acquisition in compliance with the acquisition project procedures set forth by the DEPARTMENT.
- c. make no written offer or commitment to purchase lands in the project area before execution of this Agreement and before written DEPARTMENT approval as provided for in Section 9. Failure to comply with this requirement shall, at the option of the DEPARTMENT, make the cost of the property an ineligible expense under this Agreement and subject this Agreement to termination by the DEPARTMENT.
- d. provide verification that the site is not a facility as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended, based on the results of due diligence and, if needed, an environmental assessment or, if the site has been determined to be a facility, to provide documentation of due care compliance. The results of the due diligence must be accounted for in the appraisal(s).
- e. complete a 40-year title review on the property. The results of the title review must be accounted for in the appraisal(s).
- f. obtain an appraisal of the real estate within the project area in accordance with standards established by the DEPARTMENT to determine the market value thereof; two appraisals meeting these standards being required for properties valued at \$750,000 or more. Failure to complete the appraisal(s) in this manner shall make the cost of said appraisal(s) an ineligible expense under this Agreement.
- g. submit the appraisal(s) to the DEPARTMENT for approval no later than 120 days after the date of execution of this Agreement. No written offer or commitment to purchase land in the project area shall be transmitted by the GRANTEE until after approval has been given in writing by the DEPARTMENT.
- h. perform, or to directly contract for the performance of, all appraisal(s), appraisal review(s), title review, closing and acquisition of all lands in the project area.
- i. eliminate all pre-existing non-recreation uses of the project area within 90 days of the date of acquisition, unless otherwise approved by the DEPARTMENT in writing.
- j. remove existing structures or make ready for an appropriate use in a reasonable time frame after completion of the acquisition.
- k. complete acquisition of the entire project area before **05/31/2023**. Failure to acquire the project area by **05/31/2023** shall constitute a breach of this Agreement and subject the GRANTEE to the remedies provided by law and set forth in Section 23 of this Agreement.
- l. provide the DEPARTMENT all documents and information as specified in Sections 8a or 8b of this Agreement. If utilizing reimbursement process, documents must be submitted within 60 days after the transaction is closed. If utilizing escrow closing process, documents must be submitted no later than 60 days prior to desired closing. Failure to submit the required documents and information for review shall constitute a material breach of this Agreement. Proof of payment to seller (such as cancelled check, wire confirmation, etc.), recorded warranty deed, recorded mineral royalty deed and recorded Declaration and Notice must be submitted to the DEPARTMENT within 60 days after closing. The final 10% of eligible grant amount will be released upon satisfactory audit review and approval by the DEPARTMENT.
- m. for parcels over 5 acres, execute, acknowledge and deliver to the DEPARTMENT a deed conveying to the State of Michigan a perpetual nonparticipating royalty equal to 1/6 of the gross proceeds of sale of all oil and/or gas and other minerals produced and saved in any combination from the mineral rights in, on or under the lands in the project area.
- n. retain all rights acquired by the GRANTEE in coal, oil, gas, sand, gravel or any other minerals in, on or under the lands in the project area in perpetuity.
- o. not develop any rights acquired by the GRANTEE in coal, oil, gas, sand, gravel or any other minerals in, on or under the lands in the project area in a manner that diminishes the usefulness of the project area for its intended purposes.

In addition, GRANTEE agrees not to develop, or allow others to develop, any such minerals from sites adjacent to the project area in a manner that diminishes the usefulness of the project area for its intended purposes.

- p. maintain satisfactory financial accounts, records, and documents and to make them available to the DEPARTMENT for auditing upon request. Such accounts, records, and documents shall be retained by the GRANTEE for not less than three years following submittal of the final audit reimbursement request.
 - q. erect and maintain a sign or other acknowledgement as approved by the DEPARTMENT on the property which designates this project as one having been acquired with the assistance of the MNRTF. The size, color, and design of this sign shall be in accordance with DEPARTMENT specifications.
 - r. conduct a dedication/ribbon-cutting ceremony as soon as possible after the project is completed and the MNRTF sign is erected within the project area. At least 30 days prior to the dedication/ribbon-cutting ceremony, the DEPARTMENT must be notified in writing of the date, time, and location of the dedication/ribbon-cutting ceremony. GRANTEE shall provide notice of ceremony in the local media. Use of the grant program logo and a brief description of the program are strongly encouraged in public recreation brochures produced by the GRANTEE. At the discretion of the DEPARTMENT, the requirement to conduct a dedication/ribbon-cutting ceremony may be waived.
 - s. provide the DEPARTMENT for approval, a complete tariff schedule containing all charges to be assessed against the public utilizing the project area and/or any facilities constructed thereon, and to provide the DEPARTMENT for approval, all amendments thereto before the effective date of such amendments. Any tariff schedule proposed shall provide solely for sufficient revenues to cover the costs of operating, maintaining and/or developing the premises and/or any facilities provided thereon. Preferential membership or annual permit systems are prohibited at this site. Differences in admission and other fees may be instituted on the basis of residence. Nonresident fees shall not exceed twice that charged residents. If no resident fees are charged, nonresident fees may not exceed the rate charged residents at other comparable state and local public recreation facilities.
 - t. separately account for any revenues received from the project area which exceed the demonstrated operating costs and to reserve such surplus revenues for the future maintenance and/or expansion of the GRANTEE'S park and outdoor recreation program.
 - u. furnish the DEPARTMENT, upon request, detailed statements covering the annual operation of project area and/or facilities, including income and expenses and such other information the DEPARTMENT might reasonably require.
 - v. adopt such ordinances and/or resolutions as shall be required to effectuate the provisions of this Agreement; certified copies of all such ordinances and/or resolutions adopted for such purposes shall be forwarded to the DEPARTMENT before the effective date thereof.
 - w. maintain the premises in such condition as to comply with all federal, state, and local laws which may be applicable and to make any and all payments required to pay any and all taxes, fees, or assessments legally imposed against the project area.
 - x. make the project area and any facilities located thereon, as well as the land and water access ways to them, open to the public within 90 days of the date of acquisition and keep them open to the public at all times on equal and reasonable terms. No individual shall be denied ingress or egress thereto or the use thereof because of sex, race, color, religion, national origin, residence, age, height, weight, familial status, marital status or disability.
 - y. make the project area and any future facilities provided thereon available for public outdoor recreation in perpetuity and in accordance with uses described in this Agreement and APPENDIX C, to regulate the use thereof and to provide for the maintenance thereof to the satisfaction of the DEPARTMENT, and to appropriate such moneys and/or provide such services as shall be necessary to provide such adequate maintenance.
10. The GRANTEE shall acquire fee simple title, free of all liens, encumbrances, or restrictions on future use to the lands in the project area. The fee simple title acquired shall not be subject to (1) any possibility of reversion or right of entry for condition broken or any other executory limitation which may result in defeasance of title or (2) to any reservations or prior conveyance of coal, oil, gas, sand, gravel or any other mineral interests.
 11. The GRANTEE shall not allow any encumbrance, lien, security interest, mortgage or any evidence of indebtedness to attach to or be perfected against the project area.
 12. The project area and any facilities located thereon shall not be wholly or partially conveyed, either in fee, easement or otherwise, or leased for a term of years, or for any other period, nor shall there be any whole or partial transfer of title, ownership, or right of ownership or control without the written approval and consent of the DEPARTMENT.
 13. The assistance provided to the GRANTEE as a result of this Agreement is intended to have a lasting effect on the supply of outdoor recreation, scenic beauty sites, and recreation facilities beyond the financial contribution alone and permanently commits the project area to Michigan's outdoor recreation estate, therefore:
 - a. The GRANTEE agrees that lands in the project area are being acquired with MNRTF assistance and shall be

maintained in public outdoor recreation use in perpetuity. No portion of the project area shall be converted to other than public outdoor recreation use without the approval of the DEPARTMENT. The DEPARTMENT shall approve such conversion only upon such conditions as it deems necessary to assure the substitution by GRANTEE of other outdoor recreation properties of equal or greater market value and of reasonably equivalent usefulness and location. Such substituted land shall become part of the project area and will be subject to all the provisions of this Agreement.

- b. Approval of a conversion shall be at the sole discretion of the DEPARTMENT.
- c. Before completion of the project, the GRANTEE and the DEPARTMENT may mutually agree to alter the project area through an amendment to this Agreement to provide the most satisfactory public outdoor recreation area.

14. Should title to the lands in the project area or any portion thereof be acquired from the GRANTEE by any other entity through exercise of the power of eminent domain, the GRANTEE agrees that the proceeds awarded to the GRANTEE shall be used to replace the lands affected with outdoor recreation properties of equal or greater market value, and of reasonably equivalent usefulness and location. The DEPARTMENT shall approve such replacement only upon such conditions as it deems necessary to assure the substitution with other outdoor recreation properties of equal or greater market value and of reasonably equivalent usefulness and location. Such replacement land shall be subject to all the provisions of this Agreement.

15. The GRANTEE acknowledges that:

- a. The GRANTEE has examined the project area and has found the property safe for public use or actions will be taken by the GRANTEE to make the property safe for public use no later than 90 days after the date of acquisition; and
- b. The GRANTEE is solely responsible for development, operation, and maintenance of the project area, and that responsibility for actions taken to develop, operate, or maintain the project area is solely that of the GRANTEE; and
- c. The DEPARTMENT'S involvement in the premises is limited solely to the making of a grant to assist the GRANTEE in acquiring the premises.
- d. The GRANTEE acknowledges that the DEPARTMENT is not responsible for any tax liability assessed on the property after closing by the GRANTEE. Further, the eligible amount of tax pro-rated at time of closing will be determined by the DEPARTMENT.

16. Before the DEPARTMENT will give approval to make a written offer to purchase the property included in this project, the GRANTEE must provide documentation to the DEPARTMENT that indicates either:

- a. It is reasonable for the GRANTEE to conclude, based on the advice of an environmental consultant, as appropriate, that no portion of the project area is a facility as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended;

or

- b. If any portion of the project area is a facility, documentation that Department of Environment, Great Lakes and Energy-approved response actions have been or will be taken to make the site safe for its intended use within the project period, and that implementation and long-term maintenance of response actions will not hinder public outdoor recreation use and/or the resource protection values of the project area.

17. If the DEPARTMENT determines that, based on contamination, the project area will not be made safe for the planned recreation use within the project period, or another date established by the DEPARTMENT in writing, or if the DEPARTMENT determines that the presence of contamination will reduce the overall usefulness of the property for public recreation and resource protection, the grant may be cancelled by the DEPARTMENT with no reimbursement made to the GRANTEE.

18. The GRANTEE shall acquire and maintain, or cause to be acquired or maintained, insurance which will protect the GRANTEE from claims which may arise out of or result from the GRANTEE'S operations under this Agreement, whether performed by the GRANTEE, a subcontractor or anyone directly or indirectly employed by the GRANTEE, or anyone for whose acts may hold them liable. Such insurance shall be with companies authorized to do business in the State of Michigan in such amounts and against such risks as are ordinarily carried by similar entities, including but not limited to public liability insurance, worker's compensation insurance or a program of self-insurance complying with the requirements of Michigan law. The GRANTEE shall provide evidence of such insurance to the DEPARTMENT at its request.

19. Nothing in this Agreement shall be construed to impose any obligation upon the DEPARTMENT to operate, maintain or provide funding for the operation and/or maintenance of any recreational facilities in the project area.
20. The GRANTEE hereby represents that it will defend any suit brought against either party which involves title, ownership, or any other rights, whether specific or general, including any appurtenant riparian rights, to and in the project area and any lands connected with or affected by this project.
21. The GRANTEE is responsible for the use and occupancy of the premises, the project area and the facilities thereon. The GRANTEE is responsible for the safety of all individuals who are invitees or licensees of the premises. The GRANTEE will defend all claims resulting from the use and occupancy of the premises, the project area and the facilities thereon. The DEPARTMENT is not responsible for the use and occupancy of the premises, the project area and the facilities thereon.
22. Failure by the GRANTEE to comply with any of the provisions of this Agreement shall constitute a material breach of this Agreement.
23. Upon breach of the Agreement by the GRANTEE, the DEPARTMENT, in addition to any other remedy provided by law and this Agreement, may:
 - a. Terminate this Agreement; and/or
 - b. Withhold and/or cancel future payments to the GRANTEE on any or all current recreation grant projects until the violation is resolved to the satisfaction of the DEPARTMENT; and/or
 - c. Withhold action on all pending and future grant applications submitted by the GRANTEE under the Michigan Natural Resources Trust Fund, the Land and Water Conservation Fund and the Recreation Passport Grant Program; and/or
 - d. Require repayment of grant funds already paid to GRANTEE; and/or
 - e. Seek specific performance of the Agreement terms.
24. This Agreement may be canceled by the DEPARTMENT, upon 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the GRANTEE, or upon mutual Agreement by the DEPARTMENT and GRANTEE. The DEPARTMENT may honor requests for just and equitable compensation to the GRANTEE for all satisfactory and eligible work completed under this Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the DEPARTMENT and the DEPARTMENT will no longer be liable to pay the GRANTEE for any further charges to the grant.
25. The GRANTEE agrees that the benefit to be derived by the State of Michigan from the full compliance by the GRANTEE with the terms of this Agreement is the preservation, protection and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State of Michigan by way of assistance under the terms of this Agreement. The GRANTEE agrees that after final audit reimbursement has been made to the GRANTEE, repayment by the GRANTEE of grant funds received would be inadequate compensation to the State for any breach of this Agreement. The GRANTEE further agrees therefore, that the appropriate remedy in the event of a breach by the GRANTEE of this Agreement after final audit reimbursement has been made shall be the specific performance of this Agreement.
26. The GRANTEE agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. The GRANTEE further agrees that any subcontract shall contain non-discrimination provisions which are not less stringent than this provision and binding upon any and all subcontractors. A breach of this covenant shall be regarded as a material breach of this Agreement.
27. The GRANTEE may not assign or transfer any interest in this Agreement without prior written authorization of the DEPARTMENT.
28. The rights of the DEPARTMENT under this Agreement shall continue in perpetuity.

If this Agreement is approved by Resolution, a true copy must be attached to this Agreement. A sample Resolution is on the next page.



September 15, 2021

Mtg Date: September 28, 2021
To: Oshtemo Charter Township Board
From: Iris Lubbert, AICP, Planning Director
Subject: First Reading: Section 54.60 Outdoor Lighting Standards

Objective:

Consideration of an amendment to Section 54.60 Outdoor Lighting Standards for First Reading.

Background:

Section 54.60 regulates outdoor lighting standards which includes specific parameters for both wall mounted and pole mounted lights. The section that regulates wall mounted lighting allows wall lights to 1. illuminate a walkway or entrance into the building or 2. decoratively illuminate the façade.

Recently the Zoning Board of Appeals reviewed a variance request from Section 54.60 for a commercial site to use pole lighting standards for wall mounted lights illuminating the loading docks on the back of a building. The argument presented was primarily that the site needed that level of lighting on the rear of the building and a pole light at this location would create an unnecessary and dangerous obstacle for trucks to maneuver around. After discussion the Zoning Board of Appeals unanimously voted to approve the variance request and to send a request to the Planning Commission to consider an amendment to the ordinance to better address lighting for loading docks.

Staff presented the Zoning Board of Appeals request along with a drafted amendment to the Planning Commission at their regular August 12th meeting. After discussion and revisions, the Planning Commission unanimously motioned to forward the amendment to a Public Hearing. A Public Hearing for the proposed text was held on September 9th, 2021. During the Public Hearing no public comment was received. The Planning Commission unanimously motioned to forward the proposed amendment to the Township Board for consideration with a recommendation of approval.

Proposal:

The proposed amendment to Section 54.60 would allow wall lights to be treated like pole lights when used to illuminate loading docks.

Attachments: Proposed 54.60 Text Amendment Document - proposed changes are shown in red

54.60 Outdoor Lighting Standards

B. Pole-Mounted Lighting

1. All pole-mounted luminaires shall be affixed horizontally and angled parallel to the ground.
2. No more than two luminaires shall be allowed per pole.
3. Luminaire height of 15 feet or less shall not exceed 12,000 lumens per luminaire and shall be spaced a minimum of 30 feet apart.
4. Luminaire height greater than 15 feet and not exceeding 25 feet shall not exceed 20,000 lumens per luminaire and shall be spaced a minimum of 40 feet apart.
5. Luminaire height exceeding 25 feet shall be subject to approval by the reviewing body. The applicant must prove, to the reviewing body's satisfaction, that pole heights exceeding 25 feet are needed to ensure public health, safety, and welfare. If permitted, such lighting shall not exceed 40,000 lumens per luminaire and shall be spaced a minimum of 50 feet apart.

C. Building-Mounted Lighting

1. Pedestrian walkways and doorways
 - a. Mounted height shall not exceed 14-feet in height.
 - b. Each luminaire shall not exceed 8,000 lumens and shall be spaced so the lighting for pedestrian walkways does not exceed 2.0 foot-candles and entryways do not exceed 6.0 foot-candles.
2. Luminaires used for the sole purpose of illuminating a building façade:
 - a. May be up to 1.5 foot-candles averaged over the building façade.
 - b. Shall be located on the building.
 - c. Light generated from said fixtures shall be downward directed and appropriately shielded so that no light is emitted beyond the building façade.
 - d. Shall strictly adhere to the reduced lighting clause outlined in 54.60(A)(7).
3. Luminaires used for illuminating loading and unloading operations for any commercial, industrial, or other use shall be regulated using the same standards as B. Pole-Mounted Lighting of this Section.
4. Architectural features. The use of architectural features on the building, such as a canopy, which prevent the projection of light beyond the architectural feature may satisfy the intent of this Section and allow the use of noncut-off fixtures, subject to the approval of the reviewing body.

OSHTEMO CHARTER TOWNSHIP PLANNING COMMISSION

RECOMMENDATION OF THE OSHTEMO CHARTER TOWNSHIP PLANNING
COMMISSION RESULTING FROM A PUBLIC HEARING CONDUCTED ON
September 9, 2021

The Oshtemo Charter Township Planning Commission hereby recommends APPROVAL of the following additions and amendments to the Township Zoning Ordinance:

The amendment to Article 54, Section 54.60(C), OUTDOOR LIGHTING STANDARDS of the Township Zoning Ordinance, to read, in summary, as follows:

B. Pole-Mounted Lighting

1. All pole-mounted luminaires shall be affixed horizontally and angled parallel to the ground.
2. No more than two luminaires shall be allowed per pole.
3. Luminaire height of 15 feet or less shall not exceed 12,000 lumens per luminaire and shall be spaced a minimum of 30 feet apart.
4. Luminaire height greater than 15 feet and not exceeding 25 feet shall not exceed 20,000 lumens per luminaire and shall be spaced a minimum of 40 feet apart.
5. Luminaire height exceeding 25 feet shall be subject to approval by the reviewing body. The applicant must prove, to the reviewing body's satisfaction, that pole heights exceeding 25 feet are needed to ensure public health, safety, and welfare. If permitted, such lighting shall not exceed 40,000 lumens per luminaire and shall be spaced a minimum of 50 feet apart.

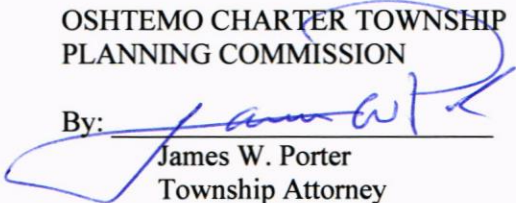
C. Building-Mounted Lighting

1. Pedestrian walkways and doorways
 - a. Mounted height shall not exceed 14-feet in height.
 - b. Each luminaire shall not exceed 8,000 lumens and shall be spaced so the lighting for pedestrian walkways does not exceed 2.0 foot-candles and entryways do not exceed 6.0 foot-candles.
2. Luminaires used for the sole purpose of illuminating a building façade:
 - a. May be up to 1.5 foot-candles averaged over the building façade.
 - b. Shall be located on the building.
 - c. Light generated from said fixtures shall be downward directed and appropriately shielded so that no light is emitted beyond the building façade.
 - d. Shall strictly adhere to the reduced lighting clause outlined in 54.60(A)(7).
3. Luminaires used for illuminating loading and unloading operations for any commercial, industrial, or other use shall be regulated using the same standards as B. Pole-Mounted Lighting of this Section.
4. Architectural features. The use of architectural features on the building, such as a canopy, which prevent the projection of light beyond the architectural feature may satisfy the intent of this Section and allow the use of noncut-off fixtures, subject to the approval of the reviewing body.

OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION

Date: September 14, 2021

By: _____


James W. Porter
Township Attorney

Final Action by Oshtemo Charter Township Board

_____ APPROVED _____

_____ DENIED _____

_____ REFERRED BACK TO PLANNING COMMISSION

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. ____

Adopted: _____

Effective: _____

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to amend the Oshtemo Charter Township Zoning Ordinance No. Article 54, lighting, Section 54.60: Outdoor Lighting Standards. This Ordinance repeals all Ordinances or parts of Ordinances in conflict.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. AMENDMENT OF ZONING ORDINANCE ARTICLE 54, LIGHTING, Section 54.60: OUTDOOR LIGHTING STANDARDS, PARAGRAPH C. Compiled Article 54, Section 54.60(C) is hereby amended to read as follows:

ARTICLE 54: LIGHTING

54.60 OUTDOOR LIGHTING STANDARDS

B. Pole-Mounted Lighting

1. All pole-mounted luminaires shall be affixed horizontally and angled parallel to the ground.
2. No more than two luminaires shall be allowed per pole.
3. Luminaire height of 15 feet or less shall not exceed 12,000 lumens per luminaire and shall be spaced a minimum of 30 feet apart.
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5. Luminaire height exceeding 25 feet shall be subject to approval by the reviewing body. The applicant must prove, to the reviewing body's satisfaction, that pole heights exceeding 25 feet are needed to ensure public health, safety, and welfare. If permitted, such lighting shall not exceed 40,000 lumens per luminaire and shall be spaced a minimum of 50 feet apart.

C. Building-Mounted Lighting

1. Pedestrian walkways and doorways
 - a. Mounted height shall not exceed 14-feet in height.

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2. Luminaires used for the sole purpose of illuminating a building façade:
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 - b. Shall be located on the building.
 - c. Light generated from said fixtures shall be downward directed and appropriately shielded so that no light is emitted beyond the building façade.
 - d. Shall strictly adhere to the reduced lighting clause outlined in 54.60(A)(7).
3. Luminaires used for illuminating loading and unloading operations for any commercial, industrial, or other use shall be regulated using the same standards as B. Pole-Mounted Lighting of this Section.
- 3.4. Architectural features. The use of architectural features on the building, such as a canopy, which prevent the projection of light beyond the architectural feature may satisfy the intent of this Section and allow the use of noncut-off fixtures, subject to the approval of the reviewing body.

SECTION II. EFFECTIVE DATE. All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed. This Ordinance shall take effect upon publication after adoption in accordance with State law.

DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. ____

Adopted: _____

Effective: _____

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to amend the Oshtemo Charter Township Zoning Ordinance No. Article 54, lighting, Section 54.60: Outdoor Lighting Standards. This Ordinance repeals all Ordinances or parts of Ordinances in conflict.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. AMENDMENT OF ZONING ORDINANCE ARTICLE 54, LIGHTING, Section 54.60: OUTDOOR LIGHTING STANDARDS, PARAGRAPH C. Compiled Article 54, Section 54.60(C) is hereby amended to read as follows:

ARTICLE 54: LIGHTING

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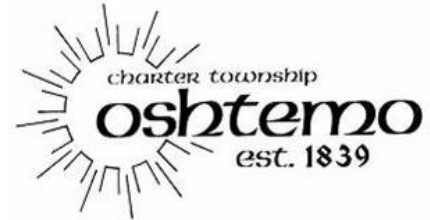
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SECTION II. EFFECTIVE DATE. All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed. This Ordinance shall take effect upon publication after adoption in accordance with State law.

DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP



Memorandum

Date: 24 September 2021
To: Township Board
From: Libby Heiny-Cogswell, Supervisor
Josh Owens, Assistant Supervisor
Subject: Oshtemo Charter Township – 2022 Annual Budget & Capital Improvement Plan

Objective

Township Board continuing work on the draft 2022 budget and the 2022 Capital Improvement Plan with 2023 through 2027 Illustrative Capital Improvement Plan.

Background

The 2022 Budget is under development with Staff and the Township Board. Work began in June at public meetings and will continue into October. The draft budget is compiled and provided to the Board to review, ask questions, and provide feedback by October 4th, 2021. At the Board meeting October 12th, the Board will then consider sending the draft budget out for the formal public comment period.

The draft Capital Improvement Plan is provided also for review, questions, and feedback by October 4, 2021. At the Board meeting October 12th, the Board will consider adopting the Capital Improvement Plan.

Discussion at the Board meeting next week is time to discuss the draft budget and CIP as well.

The draft budget and CIP are nearing compilation and will be emailed to the Board members.

MEMORANDUM

To: Township Board
From: James Porter
Date: September 21, 2021
Subject: Lawful Expenditures- Loan to the Downtown Development Authority

Recently the DDA requested a loan from the Township to pay for the 2022 installation of sidewalks on the Northside of Stadium Drive. The DDA is requesting a loan of \$600,000 to construct the sidewalks in 2022, with a plan to repay the Township for the loan at the rate of \$200,000 per year, plus interest. It is my understanding that the loan repayment would begin after December tax receipts are collected in late 2022 or early 2023. The issue is whether this loan would be a lawful expenditure of the Township.

First, we must begin with the fact that the authority granted to a township is contained wholly within Michigan's Constitution and statutes. A charter township and may only do what it is authorized to do by these laws. The Michigan Constitution grants a Township only those powers which are fairly implied, and are not otherwise prohibited, by the 1963 Constitution (Article VII, Section 34). The Michigan Constitution prohibits municipalities, such as the Township, from loaning its credit for private purposes, or even a public purpose, except as provided by law (Article VII, Section 26 through Article IX, Section 18 of the Michigan Constitution).

Where it would be lawful for a township to spend money on an activity, or service, itself, a township may contract with another entity to provide that activity, or service, lawfully. Determining whether an expenditure is lawful requires an analysis of the following series of questions:

1. Is the expenditure authorized by statute?
2. Does expenditure serve a public purpose?
3. Is the township receiving a specific benefit (i.e. value for value) for the money expended?
4. Is the township exceeding its budget?

Certainly, the Township is authorized by statute to construct sidewalks. The construction of sidewalks serves a public purpose. The Township will receive a specific benefit for the money loaned- repayment with interest. Accordingly, if the Township amends its budget in order to account for the loan, so that it is not "exceeding its budget" this loan can be provided lawfully.

My recommendation would be that the loan come from the general fund- similar to other revolving loan monies, and that the attached contracts be entered into by the DDA and Township to memorialize the terms of said loan.

PROMISSORY NOTE
FOR THE CONSTRUCTION OF SIDEWALKS WITHIN THE OSHTEMO
CHARTER TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY

This Promissory Note (“Note”) is made on _____, 2021, between **the Oshtemo Charter Township Downtown Development Authority**, a Michigan public corporation, located at 7275 West Main Street, Kalamazoo, Michigan 49009 (“DDA” or “Borrower”), and **Oshtemo Charter Township**, a Michigan Municipal Corporation, located at 7275 West Main Street, Kalamazoo, Michigan 49009 (“Township” or “Creditor”).

The DDA and the Township are each a “Party” to this Note, may be jointly referred to as the “Parties”, and agree to the following terms and conditions:

1. Loan Amount and Interest.

For value received, DDA promises to pay to the Township, the principal amount of six hundred thousand dollars (\$600,000.00), along with interest (computed on the basis of a 360-day year for the actual number of days elapsed) on the unpaid principal balance at a rate per annum of ____ percentage (__%) until maturity and ____ percentage (__%) **after maturity**.

2. Repayment of Loan Principal and Interest.

The principal of this note shall be paid in installments of two hundred thousand dollars (\$200,000.00) each, beginning _____[date], and on the _____ day of each succeeding year until _____, 2024, when the remaining unpaid principal balance shall be paid in full.

Accrued interest shall be paid on _____[date], and on the _____ day of each succeeding _____ until the principal balance is paid in full.

If any installment of interest is not paid when due, DDA will immediately pay to the Township a late charge of one thousand dollars (\$1,000,00). This amount is in addition to the Township’s other rights and remedies for default in payment of an installment of interest when due.

3. Expenses.

DDA shall reimburse the Township for all out-of-pocket expenses that the Township incurs in connection with making the loan evidenced by this note and any renewals, extensions, or modifications and with taking any security for it, including, without limitation, attorney fees, expenses, and other administrative costs.

4. Prepayments.

Borrower-DDA may prepay all or part of the principal of this note at any time. Any partial prepayment will be applied to the installment or installments last falling due under this note, and a partial prepayment shall not affect the amount or time of payment of succeeding required installments.

5. Security.

This note and all obligations of DDA under it are secured by a security agreement dated _____, 2021 (“Security Agreement”) given by Borrower to the Township as Creditor that secure any present or future guaranty of all or part of the indebtedness evidenced by this note. The Township shall have all of the rights and powers set forth in the Security Agreement and in any other written agreements that have been or in the future are given to the Township by Borrower, as though they were fully set forth in this note. As additional security for the payment of the DDA’s obligations under this note, the DDA grants to the Township a security interest in all tangible and intangible property of the DDA now, or in the future, in the possession of the Township.

6. Default and Acceleration.

Each of the following shall be an event of default under this note:

- a. a default in the payment of any installment of principal or interest under this note or of any late charge or out-of-pocket expense that Borrower at any time owes to the holder of this note or in the payment of any other indebtedness or obligation that Borrower now or in the future owes to the holder, as and when it shall be or become due and payable;
- b. a default in the performance of any other obligation to Creditor under this note, the Security Agreement, or any other agreement that has been or in the future is entered into between Borrower and the Township for this loan, and if, in the case of a default that is capable of being cured, the default continues for thirty (30) days after the Township has given written notice of the default to Borrower;

On the occurrence of any event of default, all or any part of the indebtedness and all or any part of all other indebtedness evidenced by this Note and obligation then owing by Borrower to the Township, shall result in the Township’s continued retention of all tax revenue collected by the Township on behalf of the DDA and held by the Township until the debt, and any interest, is paid.

7. Place and Application of Payments.

Each payment on this Note shall be made to the Township at its address as set forth above. Any payment on this Note shall be applied in the following order: first to

any expenses (including expenses of collection) then due and payable to Township under this Note, second to any unpaid late charges, third to any applicable prepayment premium, fourth to any accrued and unpaid interest, and fifth to the unpaid principal balance.

8. Setoff.

The holder of this note shall have the right at any time to set off any indebtedness that Creditor then owes to Borrower against any indebtedness evidenced by this note that is then due and payable.

9. Remedies.

The Township shall have all rights and remedies provided by law and by agreement of any Borrower. DDA shall reimburse the Township for all expenses, including reasonable attorney fees and legal expenses, that the Township pays or incurs in protecting and enforcing the rights of and obligations to it under any provision of this Note or the Security Agreement.

10. Waivers.

No delay by the Township of this Note shall be a waiver of the exercise of any right or remedy. No single or partial exercise by the Township of any right or remedy shall preclude any other or future exercise of that or any other right or remedy. No waiver by the Township of any default or of any provision of this Note shall be effective unless it is in writing and signed by the Township. No waiver of any right or remedy on one occasion shall be a waiver of that right or remedy on any future occasion.

Borrower waives demand for payment, presentment, notice of dishonor, and protest of this Note; waives all defenses based on suretyship or impairment of collateral; and consents to any extension or postponement of time of its payment, to any substitution, exchange, or release of all or any part of any security given to secure this Note, to the addition of any party, and to the release, discharge, waiver, modification, or suspension of any rights and remedies against any person who may be liable for the indebtedness evidenced by this Note.

11. Applicable Law and Jurisdiction.

This note shall be governed by and interpreted according to the laws of the State of Michigan. Borrower irrevocably agrees and consents that any action against Borrower to collect or enforce this Note may be brought in any state or federal court that has subject-matter jurisdiction and is located in, or whose district includes, Kalamazoo County, Michigan, and that any such court shall have personal jurisdiction over Borrower for purposes of such action.

12. Authority.

Each of the persons signing below acknowledge that they have been authorized by their respective Party to act on that Party's behalf in the execution of this Note. In this Note, "maturity" means the time when the entire remaining unpaid principal balance shall be or shall become due and payable for any reason, including acceleration as provided in paragraph 6.

BORROWER
OSHTEMO CHARTER TOWNSHIP
DOWNTOWN DEVELOPMENT
AUTHORITY

By: _____
Grant Taylor
Its: Chairperson

Date: _____

CREDITOR
OSHTEMO CHARTER TOWNSHIP

By: _____
Libby Heiny-Cogswell
Its: Supervisor

Date: _____

SECURITY AGREEMENT

This Security Agreement (“Agreement”) is made on _____, 2021, between the **Oshtemo Charter Township Downtown Development Authority**, a Michigan public corporation, located at 7275 West Main Street, Kalamazoo, Michigan 49009 (“DDA”), and **Oshtemo Charter Township**, a Michigan Municipal Corporation, located at 7275 West Main Street, Kalamazoo, Michigan 49009 (“Township”). The DDA and the Township are each a “Party” to this Agreement and may be jointly referred to as the “Parties”.

1. ***Grant of Security Interest.*** DDA grants to the Township a continuing security interest in all tax revenue collected by the Township on behalf of the DDA and held by the Township.

2. ***Indebtedness Secured.*** The foregoing security interest is given to secure payment and performance of loan repayment the construction of sidewalks on Stadium Drive, as addressed in the Promissory Note dated _____, executed between the Parties.

3. ***Warranties, Representations, and Agreements.*** DDA warrants and represents to Township and agrees as follows:

(a) DDA is a Michigan public corporation and is organized and validly existing in good standing under the laws of the State of Michigan; DDA has full power and authority to enter into and perform its obligations under this agreement; the execution, delivery, and performance of this agreement have been duly authorized by all necessary action of DDA’s board of directors and will not violate DDA’s articles of incorporation or bylaws ; and this agreement is the valid and binding obligation of DDA, enforceable in accordance with its terms.

(b) All information that the DDA has furnished or in the future furnishes to the Township concerning the DDA, including, without limitation, all financial statements are and will be correct and complete.

(c) DDA’s exact legal name is set forth in the first paragraph of this Agreement.

(d) DDA’s address set forth on the face of this Agreement is the location of DDA’s sole place of business.

4. ***Agreements of DDA.*** DDA agrees that

(a) DDA will not cause or permit any lien, security interest, or encumbrance to be placed on any DDA tax receipts, except in favor of the Township.

(b) DDA will furnish the Township with information regarding the status of its financial accounts if requested by the Township.

(c) DDA will execute the “Promissory Note to Construct Sidewalks Within the Downtown Development Authority” dated _____ (“Promissory Note”) and any other documents that Secured Party considers necessary to perfect, to continue perfection of, or to maintain first priority of the Township’s security interest.

5. *Events of Default and Acceleration.* Any part or all of the indebtedness shall, at the option of the Township, become immediately due and payable without notice or demand on the occurrence of any of the following events of default:

(a) If default occurs in the payment or performance of any of the indebtedness, when and as it shall be due and payable, and if the default continues for thirty (30) days after the Township has given written notice of it to DDA.

(b) If default occurs in the performance of any obligation of DDA to the Township under this Agreement or under the Promissory Note, or other instrument at any time evidencing any indebtedness, or under any other loan agreement, or other agreement that now or later secures or relates to any indebtedness or obligation now or later owing by DDA to the Township.

(c) If any warranty, representation, or statement made to the Township by DDA or by any guarantor of all or part of the indebtedness (Guarantor) in this agreement or in any security document, or otherwise, was false in any material respect when made or furnished.

(d) If DDA becomes insolvent or makes an assignment for the benefit of creditors.

6. *Township’s Rights and Remedies.* The Township shall have all rights and remedies of a secured party under applicable laws. Without limiting these rights and remedies:

(a) If all or any part of the indebtedness is not paid at maturity, on demand by the Township, the Township may seize any DDA collateral in its possession. Any notification required to be given by the Township to the DDA regarding any seizure of collateral shall be considered reasonable if mailed at least five (5) days before the seizure.

(b) The proceeds of any seizure of collateral shall be applied first to expenses that the Township incurs in retaking, holding, preparing for disposition, processing, and disposing of the collateral and to the Township’s attorney fees and expenses, as provided in paragraph 7, and then to the indebtedness, and DDA shall be liable for any deficiency remaining.

All rights and remedies of the Township shall be cumulative and may be exercised from time to time.

7. *Expenses.* DDA shall reimburse the Township on demand for all attorney fees, legal expenses, and other expenses that the Township incurs in protecting and enforcing its

rights under this agreement. This includes fees and expenses incurred in trying to take possession of collateral from DDA, a trustee or receiver in bankruptcy, or any other person. The Township may apply any proceeds of collection or disposition of collateral to the Township's reasonable attorney fees, legal expenses, and other expenses.

8. Amendments and Waivers. No provision of this agreement may be modified or waived except by a written agreement signed by the Township. The Township will continue to have all of its rights under this Agreement even if it does not fully and promptly exercise them on all occasions.

9. Notices. Any notice to DDA or to the Township shall be deemed to be given if and when mailed, with postage prepaid, to the address of DDA or the Township appearing on the first page of this Agreement, or if and when delivered personally.

10. Other. In this Agreement, maturity of any of the indebtedness means the time when that indebtedness has become due and payable, for any reason (including, for example, acceleration due to default or bankruptcy).

11. Binding Effect. This Agreement shall be binding on and inure to the benefit of DDA and the Township.

12. Application of Payments. To the extent that the security interest granted by this Agreement secures the unpaid purchase price of, or a loan or loans made by the Township, payments received by the Township shall be applied first, to any indebtedness or obligations owing by DDA that are not secured by the security interest granted by this Agreement and, second, to any part of the Indebtedness due to the Township pursuant to the Promissory Note. Payments applied to purchase-money obligations shall be applied in the order in which those obligations were incurred.

DDA and the Township have executed this Security Agreement to be effective on the date listed on the first page hereof.

DEBTOR
OSHTEMO CHARTER TOWNSHIP
DOWNTOWN DEVELOPMENT
AUTHORITY

By: _____
Grant Taylor
Its: Chairperson

Date: _____

SECURED PARTY
OSHTEMO CHARTER TOWNSHIP

By: _____
Libby Heiny-Cogswell
Its: Supervisor

Date: _____