

**CITY OF MADISON HEIGHTS
300 W. 13 MILE ROAD
REGULAR COUNCIL MEETING AGENDA
NOVEMBER 11, 2019
7:30 P.M.**

CALL TO ORDER

ROLL CALL

INVOCATION BY COUNCILWOMAN SCOTT

PLEDGE OF ALLEGIANCE

MINUTES:

1. Special City Council meeting minutes of 10-28-19
2. Regular City Council meeting minutes of 10-28-19

KIMBERLY CLARK – RESIGNATION FROM THE ARTS BOARD

**EMILY J. ROHRBACH – RESIGNATION FROM THE PARKS AND RECREATION
ADVISORY BOARD**

ADJOURNMENT OF THE THIRTY-SECOND COUNCIL

OATH OF OFFICE TO THE THIRTY-THIRD COUNCIL

ROLL CALL

ELECTION OF MAYOR PRO-TEM

APPROVAL OF AGENDA:

1. Additions
2. Deletions

PRESENTATIONS

A – PUBLIC HEARINGS:

ITEMS ON AGENDA OF INTEREST TO PARTIES IN THE AUDIENCE

B - MEETING OPEN TO THE PUBLIC:

C – COMMUNICATIONS:

D – REPORTS:

E - ITEMS FOR FUTURE PUBLIC HEARINGS:

F - BID AWARDS/PURCHASES:

G - ORDINANCES:

1. Ordinance No. 2145 – Seizure and Forfeiture of Proceeds of Crimes, First Reading

H - UNFINISHED BUSINESS:

APPOINTMENTS:

Community Development Block Grant – Review Committee

(3-year term)

- a. Vacant term (alternate) expires 08-31-21
- b. Vacant term (alternate) expires 08-31-21

Construction Board of Appeals

(2-year term)

- a. Vacant term expires 08-31-21
- b. Vacant term expires 08-31-21

Crime Commission

(3-year term – **Mayor’s Appointment**)

- a. Vacant Alternate term expires 08-31-22

Elected Officials Compensation Commission

(7-year term – **Mayor’s Appointment**)

- a. Vacant term expires 08-31-25
- b. Vacant term expires 08-31-26

Historical Commission

(3-year term)

- a. Vacant term expires 02-28-20
- b. Vacant term expires 02-28-20
- c. Vacant term expires 02-28-21
- d. Vacant term (alternate) expires 02-28-22

Information Technology Advisory Committee

(3-year term)

- a. Vacant term (alternate) expires 02-28-22

Zoning Board of Appeals

- a. Vacant term (alternate) expires 02-28-22

COUNCIL APPOINTMENTS:

Council Boards and Commissions – Two year terms to expire 11-08-21

<u>Board/Commission</u>	<u>Currently Serving</u>
1. Active Adult Advisory Commission Council Representative Council Alternate	 Margene Scott David Soltis
2. Arts Board Council Representative Council Alternate	 Mark Bliss Margene Scott
3. City-School Liaison Committee 1 Council Representative 1 Council Alternate	 Roslyn Grafstein/David Soltis Robert Gettings
4. Crime Commission Council Representative Council Alternate	 Roslyn Grafstein David Soltis
5. Election Commission Council Representative <i>(No Councilperson running for office shall be a member)</i>	 David Soltis
6. Environmental Citizens Committee Council Representative Council Alternate	 Roslyn Grafstein Mark Bliss
7. Friends of Madison Heights Youth Council Representative Council Alternate	 Margene Scott Mark Bliss
8. Historical Commission Council Representative Council Alternate	 Margene Scott Robert Corbett
9. Information Technology Advisory Committee Council Representative Council Alternate	 Mark Bliss Robert Corbett

Council Boards and Commissions – Two year terms to expire 11-08-21

<u>Board/Commission</u>	<u>Currently Serving</u>
10. Library Advisory Board Council Representative Council Alternate	Robert Corbett Mark Bliss
11. Madison Heights Community Coalition Council Representative	Margene Scott
12. Multicultural Relations Advisory Board Council Representative Council Alternate	David Soltis Robert Gettings
13. Parks & Recreation Advisory Board Council Representative Council Alternate	Robert Corbett Mark Bliss
14. Planning Commission – Mayor’s Appointment Council Representative	Mark Bliss
15. Southeast Michigan Council of Governments (SEMCOG) Council Representative Council Alternate	Margene Scott Mark Bliss
16. Youth Assistance Council Representative	Roslyn Grafstein
17. Zoning Board of Appeals Council Representative	Robert Corbett

I - EXECUTIVE SESSION:

1. Labor Negotiations which are exempt from disclosure as provided for under Section 8 of the Open Meetings Act

ADJOURNMENT

NOTICE: Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk (248) 583-0826 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.

DATE: November 07, 2019

TO: City Council

FROM: Melissa R. Marsh, City Manager

SUBJECT: Agenda Comments for the Regular Council Meeting of Monday, November 11, 2019

The following are my comments for items appearing on the agenda of the Regular Council Meeting of Monday, November 11, 2019.

COUNCILMEMBER-ELECT – RESIGNATION FROM CITY BOARD:

NUMBER 1: KIMBERLY CLARK – LETTER OF RESIGNATION FROM THE ARTS BOARD

Council is requested to accept the resignation of Kimberly Clark from the Arts Board and declare this seat vacant. The term of this position expires on August 31, 2022.

NUMBER 2: EMILY J. ROHRBACH – LETTER OF RESIGNATION FROM THE PARKS AND RECREATION ADVISORY BOARD

Council is requested to accept the resignation of Emily Rohrbach from the Parks and Recreation Advisory Board and declare this seat vacant. The term of this position expires on February 28, 2021.

ADJOURNMENT OF THE THIRTY-SECOND COUNCIL

The final official actions of the Thirty-Second Council are to approve the October 28, 2019 Regular Meeting Minutes.

OATH OF OFFICE TO THE THIRTY-THIRD COUNCIL

Judge Keith Hunt is scheduled to administer the oath of office to our newly elected Mayor and Councilmembers.

ELECTION OF MAYOR PRO-TEM

G - ORDINANCES:

NUMBER 1: ORDINANCE NO. 2145 – SEIZURE AND FORFEITURE OF PROCEEDS OF CRIMES, FIRST READING

Ordinance 2145 amendment adds two new articles to provide for a local process for forfeiting the proceeds of crimes. The proposed Ordinance

Amendment establishes the lawful procedures for the police to seize and forfeit property that are the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime consistent with state law.

Under state law, seizure and forfeiture of the proceeds of crimes are divided into two (2) categories. One is related to seizure and forfeiture where controlled substances violations are involved, and the other category is for all other crimes other than controlled substances violations. Seizure and forfeiture property involving controlled substances violations fall under the state's Public Health Code, Act 368 of 1978. Seizure and forfeiture for most other types of crimes falls under the state's Omnibus Forfeiture Act, Act 236 of 1961. Because there are a separate sets of state laws pertaining to each category of seizure and forfeiture of property, we have substantially mirrored state law and included two (2) separate new Articles XI and XII to cover each category.

Both newly proposed Articles add language to make the proposed Ordinance more suitable for local City use. Each section of the proposed Ordinance includes a cross reference to the corresponding state law and each section is numbered in a corresponding fashion to mirror the state law references.

The Staff, City Attorney's Office and I recommend Council adopt Ordinance 2145 Seizure and Forfeiture of Proceeds of Crimes, on First Reading.

Special Council Meeting
Madison Heights City Council
Madison Heights, Michigan
October 28, 2019

A Special Meeting of the Madison Heights City Council was held on Monday, October 28, 2019, at 7:00 p.m. in the Executive Conference Room of City Hall at 300 W. Thirteen Mile Road, Madison Heights, Michigan.

Present: Mayor Pro Tem Bliss, Councilmembers Corbett, Gettings, Grafstein, Scott and Soltis. City Manager Marsh, Assistant City Attorney Sherman, and City Clerk Printz.

Absent: Mayor Hartwell

CM-19-333. Meeting Open to the Public.

Mayor Pro Tem Bliss opened the Meeting Open to the Public. No member of the public appeared for comment.

CM-19-334. Closed Meeting – To Discuss Pending Litigation – Ditech Financial v. Madison Heights.

Mayor Pro Tem Bliss requested a motion to move to a Closed Meeting at 7:03 p.m.

Motion by Councilman Corbett, seconded by Councilwoman Scott, to move to a Closed Meeting to discuss Pending Litigation – *Ditech Financial v. Madison Heights* which is exempt from disclosure as provided for under Section 8 of the Open Meetings Act.

Roll Call Vote:

Yeas: Corbett, Gettings, Grafstein, Scott, Soltis, Bliss

Nays: None

Absent: Hartwell

Motion Carried.

CM-19-335. Adjournment.

There being no further business, the meeting was adjourned at 7:12 p.m.

Mark Bliss
Mayor Pro Tem

Cheryl Printz
City Clerk

Regular Meeting
Madison Heights City Council
Madison Heights, Michigan
October 28, 2019

A Regular Meeting of the Madison Heights City Council was held on Monday, October 28, 2019 at 7:30 p.m. in the Municipal Building at 300 West Thirteen Mile Road, Madison Heights, Michigan.

Present: Mayor Hartwell, Mayor Pro Tem Bliss. Councilmembers: Corbett, Gettings, Grafstein, Scott and Soltis. City Manager Marsh, City Attorney Sherman, and City Clerk Printz

Absent: None.

An invocation was led by Councilor Grafstein and was followed by the Pledge of Allegiance to the Flag.

CM-19-336. Addition to the Agenda

Motion by Councilman Corbett, seconded by Councilor Grafstein, to add D-3, City Attorney - Litigation - *Ditech Financial v. Madison Heights* to tonight's agenda.

Yeas: Corbett, Gettings, Grafstein, Scott, Soltis, Hartwell
Nays: None
Motion Carried

CM-19-337. Presentation - MDOT and Oakland County Corridor Partners - I-75 Modernization Project - Segment 3.

Colin Forbes, Deputy Region Engineer for the Michigan Department of Transportation and David Nachman, Chief Executive Officer for the Oakland Corridor Partners made a presentation about the history and scope of Segment 3 of the I-75 Modernization Project. Mr. Forbes and Mr. Nachman answered questions from Council pertaining to: the possibility of deterring entrance to neighborhoods from exiting traffic, scheduled bridge replacements and removals, a pedestrian bridge, removal of existing trees and replacement due to construction, tunnel boring vibration and noise levels, level of communication with residents and the suggestion of digital town hall meetings, and project financing and costs.

CM-19-338. Special Approval 19-06, Cypress Partners - 30021, 30031, and 30071 Dequindre Rd.

City Manager Marsh reviewed the proposed Special Approval 19-06.

A public hearing was held at 8:19 p.m. to hear comments pertaining to Special Approval 19-06, Cypress Partners - 30021, 30031, and 30071 Dequindre Rd., to allow for operation of a senior living facility.

Cheryl Charpentier, 30139 Manor, stated that she was under the impression that from the Planning Commission meeting that Cypress would come with another presentation and contact the residents directly. All she was able to get was floor plans and elevations, but no specifics. She expressed concerns about the abutting parking lot and screening concerns as well as privacy of neighborhood resident's yards from those on the 2nd and 3rd floors being able to look down at them. CED Director Hicks stated that there is a proposed concrete screening wall and landscaping plan.

Mike O'Neil, 1820 Greenbrier, stated that he concurred with Ms. Charpentier's comments. He asked if the height restrictions would be different from an O-1 Office and Residential zoning designation. He stated he was concerned about the height of the proposed building or any other future development. CED Director Hicks replied that the proposed structure is three stories and there is a 40 foot maximum height if the parcels are rezoned.

There being no further comments, the public hearing was closed at 8:27 p.m.

Motion by Councilman Corbett, seconded by Councilman Gettings:

WHEREAS, a Special Approval Board application has been received from Cypress Partners requesting a senior living facility in an O-1 Office district;

WHEREAS, a public hearing was published in the Madison Park News on October 9, 2019 and notices were mailed to property owners within 500 feet of the aforementioned property; and,

WHEREAS, a report has been received from the Community Development Department stating:

LOCATION: 30021, 30031, and 30071 Dequindre Rd.

REQUEST: Special Approval to allow for accessory dwelling units under Section 10.315(5) of the Zoning Ordinance.

EXISTING ZONING: R-2 Single-Family (pending request to rezone to O-1 Office)

EXISTING USE: Single-Family

STAFF ANALYSIS:

1. Special Approval is required to allow an independent senior living facility in an O-1 Office District. Applicant is proposing a new senior living facility with some low-mod income units and some market-rate units as well as common areas for use by the residents.
2. The site has R-2 Single-Family Residential District on two (2) sides to the north and west. There is an R-3 Single-Family Residential District to the south. To the east is the City of Warren.
3. Hours of Operation: 24/7
4. The Site Plan Review Committee has reviewed the plan and all review comments have been addressed. Should City Council approve this request, the following conditions are recommended:
 - a. Applicant must receive appropriate variances from the Zoning Board of Appeals (ZBA):
 - i. Section 10.315(5)(c) states that residential uses are not permitted on the first floor of a building in an O-1 district. The applicant is proposing residential uses on the first floor and this will require a variance from the ZBA.
 - ii. Section 10.505(11)(j) requires that the applicant provide two (2) parking spaces per dwelling unit. Per this ordinance, 266 parking spaces are required. The applicant is proposing 133 parking spaces. A variance is required from the ZBA.
 - b. Property must be rezoned from R-2 Single-Family Residential to O-1 Office to be in full compliance with the City of Madison Heights Master Plan.
 - c. All three parcels must be combined after all appropriate approvals are received and prior to the commencement of construction.

NOW, THEREFORE, BE IT RESOLVED, that the Madison Heights City Council, acting as Special Approval Board in accordance with Section 10.329(5) of the Code of Ordinances, hereby approves accessory dwelling units under Section 10.315(5) of the Zoning Ordinance in an O-1 Office district at 30021, 30031, and 30071 Dequindre with the following conditions:

- a. Applicant must receive appropriate variances from the Zoning Board of Appeals (ZBA):
 - i. Section 10.315(5)(c) states that residential uses are not permitted on the first floor of a building in an O-1 district. The applicant is proposing residential uses on the first floor and this will require a variance from the ZBA.
 - ii. Section 10.505(11)(j) requires that the applicant provide two (2) parking spaces per dwelling unit. Per this ordinance, 266 parking spaces are required. The applicant is proposing 133 parking spaces. A variance is required from the ZBA.
- b. Property must be rezoned from R-2 Single-Family Residential to O-1 Office to be in full compliance with the City of Madison Heights Master Plan.
- c. All three parcels must be combined after all appropriate approvals are received and prior to the commencement of construction.
- d. Applicant must receive approval from the Community and Economic Development Department of revised screening for increased privacy of the abutting neighborhood.

In response to Councilman Corbett's questions, CED Director Hicks stated that there is a landscape plan which includes a six foot masonry wall and trees along west, north and south lot lines. The trees are 12 foot when planted and are expected to grow between 24-30 feet tall. Cypress Partners representative, Jeff Buck, estimated that the height looking down from a window on the third floor would be approximately 26 to 27 feet from the ground.

In response to Councilwoman Scott's questions, Mr. Buck stated that transportation is available for residents and typically, residents do not have a car or only have one. All of their other properties have sufficient parking based on this model. Assistant City Attorney Sherman advised that should Council approve the Special Approval, as a condition, the applicant would still have to receive a parking variance from the Zoning Board of Appeals.

In response to Councilman Gettings' question, CED Director Hicks stated that the minimum landscaping requirements have been met, but there may be a possibility for larger trees.

In response to Mayor Pro Tem Bliss's question, Mr. Buck stated Cypress Partners did reach out to all adjacent property owners in writing, but they did not receive any calls in response. Ms. Charpentier commented that those that

lived across from the adjacent properties did not receive any notifications. She also stated that she would prefer a berm over a concrete wall.

Mr. O'Neil asked if there has been a traffic study and whether there is expected to be an increase in EMS calls? CED Director Hicks stated that a traffic study will be turned in before the ZBA meeting.

Yeas: Gettings, Grafstein, Scott, Soltis, Corbett, Hartwell
Nays: None
Motion Carried

CM-19-339. Ordinance No. 2143 - Public Hearing and Second Reading for Rezoning Request No. 1079 - Rezone 30021, 30031, and 30071 Dequindre Rd. from R-2 Single-Family to O-1 Office.

Mayor Hartwell opened a public hearing on Ordinance No. 2143, Rezoning Request No. 1079 to rezone 30021, 30031, and 30071 Dequindre Rd. At 8:59 p.m.

Seeing no one wishing to speak, Mayor Hartwell closed the public hearing at 8:59 p.m.

Motion by Councilman Corbett, seconded by Councilman Gettings, to adopt Ordinance No. 2143, Rezoning Request No. 1079 - Rezone 30021, 30031, and 30071 Dequindre Rd., from R-2 Single-Family to O-1 Office, on Second Reading as follows:

ORDINANCE 2143

AN ORDINANCE TO AMEND ORDINANCE NUMBER 571, BEING AN ORDINANCE CODIFYING AND ADOPTING A NEW CODE OF ORDINANCES FOR THE CITY OF MADISON HEIGHTS BY AMENDING THE ZONING MAP IN CONNECTION THEREWITH.

THE CITY OF MADISON HEIGHTS ORDAINS:

SECTION 1. That the Zoning Map in connection with the Zoning Ordinance of the City of Madison Heights shall be amended so that the zoning on the following described property, to-wit:

T1N, R11E, SEC 12 PART OF NE 1/4 BEG AT E 1/4 COR, TH N 88-39-00 W 401.53 FT, TH N 00-14-00 E 130.50 FT, TH S 88-39-00 E 403.76 FT, TH S 01-13-00 W 130.50 FT TO BEG 1.20 A

T1N, R11E, SEC 12, PART OF NE 1/4 BEG AT PT DIST N 01-13-00 E 130.50 FT FROM E 1/4 COR, TH N 88-39-00 W 401.76 FT, TH N 00-14-00 E 130.50 FT, TH S 88-39-00 E 403.99 FT, TH S 01-13-00 W 130.50 FT TO BEG 1.20 A

T1N, R11E, SEC 12, PART OF NE 1/4 BEG AT PT, DIST N 01-13-00 E 261 FT & N 88-46-24 W 60 FT FROM E 1/4 COR, TH N, 88-46-24 W 343.15 FT, TH N 00-13-01 E 260.04 FT, TH S 88-46-25 E 347.68 FT, TH S 01-13-00 W 260 FT TO BEG 2.06 A 9-22-03 FR 028

shall be changed from R-2 Residential to O-1 Office.

SECTION 2. All ordinances or parts of ordinances in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. This ordinance shall take effect ten (10) days after its adoption and upon publication.

Yeas: Grafstein, Scott, Soltis, Corbett, Gettings, Hartwell

Nays: None

Motion Carried

CM-19-340. Meeting Open to the Public.

Friends of the Madison Heights Area Senior Citizens Representative, Gloria Moore, 27368 Dartmouth, stated their monthly meeting will be on November 19th at Clark's Fabrication and Design located at 1444 E. 11 Mile at 7:00 p.m. All are welcome.

CM-19-341. Oakland County Animal Control Contract.

Motion by Councilwoman Scott, seconded by Councilor Grafstein, to approve the interlocal agreement with the Oakland County Animal Control and the City of Madison Heights and authorize the Mayor and City Clerk to sign on behalf of the City.

Yeas: Scott, Soltis, Corbett, Gettings, Grafstein, Hartwell

Nays: None

Motion Carried

CM-19-342. Resolution in Support to Participate in the Redevelopment Ready Communities (RRC) Program.

Motion by Councilman Corbett, seconded by Councilor Grafstein, to adopt the Resolution in Support to Participate in the Redevelopment Ready Communities (RRC) Program, as follows:

A RESOLUTION IN SUPPORT OF PARTICIPATION IN THE REDEVELOPMENT
READY COMMUNITIES PROGRAM.

WHEREAS, the Michigan Economic Development Corporation (MEDC) has established the statewide Redevelopment Ready Communities (RRC) Program to empower communities to shape their future and maximize economic potential, and

WHEREAS, RRC is a program that provides technical assistance to and certifies Michigan communities who actively engage stakeholders and ensure best practices; and

WHEREAS, the City of Madison Heights believes that the RRC can provide assistance regarding best practices for redevelopment; and

WHEREAS, the City of Madison Heights understands the benefit and purpose of the RRC program's assets for redevelopment of the City of Madison Heights.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City of Madison Heights is willing to participate in the MEDC Redevelopment Ready Communities Program, including increased interaction and partnership with the MEDC, Oakland County and other stakeholders in the development review process.
2. It is the intention of the City of Madison Heights to utilize the RRC Best Practices and evaluation processes and communications with our stakeholders.
3. The City of Madison Heights hereby commits to the RRC Best Practices and evaluation process with the intent to enhance our processes and communications with our stakeholders, and the City Administration is hereby authorized to proceed toward implementation of the recommendations necessary to receive RRC Certification from the MEDC.

Yeas: Soltis, Corbett, Gettings, Grafstein, Scott, Hartwell

Nays: None

Motion Carried

CM-19-343. Pending Litigation – Ditech Financial v Madison Heights.

Motion by Councilman Corbett, seconded by Councilwoman Scott, to approve the recommendation of the City Attorney regarding *Ditech Financial v Madison Heights*.

Yeas: Corbett, Gettings, Grafstein, Scott, Soltis, Hartwell
Nays: None
Motion Carried

CM-19-344. Minutes.

Motion by Mayor Pro Tem Bliss, seconded by Councilman Corbett, to adopt the Regular City Council Meeting minutes of October 14, 2019, as corrected

Yeas: Gettings, Grafstein, Soltis, Scott, Bliss, Corbett, Hartwell
Nays: None
Motion Carried

CM-19-345. Mayor and Council - Comments.

Councilman Corbett stated that he has office hours at the Library on Fridays from 1 p.m. to 3 p.m. and invited the public to stop by. A week from tomorrow is the City Election, there is still time for a absentee ballot and please remember to vote.

Mayor Pro Tem Bliss requested a wider range of city building/parks to be rented to residents, such as the park shelter during the winter.

Councilman Gettings reminded everyone to vote on November 5th. There is a City proposal on the ballot to review. He stated the Tree Lighting is on November 26th at 6:00 p.m.

Assistant City Attorney Sherman had no comments.

City Manager Marsh had no comments.

City Clerk Printz stated that City General Election will be held a week from Tuesday, on November 5, 2019. The polls will be open from 7:00 a.m. to 8:00 p.m. so please come out and vote. Applications for absentee ballots are available at the Clerk's office. All voting precincts will be open.

Councilor Grafstein stated that she is happy about the Redevelopment Ready Community resolution. This is a good program that will complement our marketing strategy. She echoed Mayor Pro Tem Bliss' comments on increasing

the number of facilities available to rent, and stated the Civic Center Park Shelter is a great facility. Please remember to vote.

Councilwoman Scott commented on her fall in front of city hall on the handicap entrance. She stated that DPS has reviewed the entrance and were extremely responsive addressing the issue. She stated that when you come to city hall you will be listened to and staff is responsive. The entrance is better marked and identified. She also encouraged others to use the official handicap entrance in the back of city hall, where there is an elevator. She stated that this is her last council meeting and she wanted to thank everyone for making her years on Council a wonderful experience. It is so important to vote and study those that are running and to vote for those candidates that align with your values. She thanked her husband, Jack, noting he has put up with this for twenty-six years, and she thanked him for all of his support and appreciates everything he has done. She stated that she will thank everyone at the retirement party, and noted that Madison Heights is an extraordinary city. She thanked the department heads and staff. She concluded her comments by encouraging everyone to attend the Citizens Academy and applauded her colleagues. She noted that she has always voted with her heart and what she thought was best for the community.

Councilman Soltis stated that he is really going to miss Margene. She had great guidance and always told the truth and did the right thing. He commented that the City made a mistake on the MAC building as it pertains to the medical marijuana licensing distance measurements and he stated he wanted to acknowledge the mistake.

Mayor Hartwell stated that it would be hard not to acknowledge the impact Margene Scott has had on the city. Her work has been influential and she will continue to have significant impact in the City of Madison Heights.

CM-19-346. Adjournment.

There being no further business, the meeting was adjourned at 9:23 p.m.

Brian C. Hartwell
Mayor

Cheryl E. Printz
City Clerk

**CITY OF MADISON HEIGHTS
ELECTRONIC COUNCIL AGENDA REQUEST FORM**

SUBMITTED TO: _____

SUBMITTED BY: _____ DATE: _____

FOR CONSIDERATION AT THE COUNCIL MEETING OF: _____

ACTION REQUESTED

PRESENTATION _____	FUTURE PUBLIC HEARING _____
PUBLIC HEARING – SPECIAL APPROVAL _____	BID AWARDS / PURCHASES _____
PUBLIC HEARING – OTHER _____	ORDINANCE - FIRST _____
COMMUNICATION _____	ORDINANCE - SECOND _____
REPORT _____	OLD BUSINESS _____

DESCRIPTION OF ITEM

IF ORDINANCE, CITE TITLE/CHAPTER SECTIONS

POLICY CONSIDERATION

FINANCIAL IMPACT

No Impact _____	Fee Waiver Proposed _____
Budgeted Fund Name(s) _____	Department Name _____
Appropriated in Acct. No. _____	Budget Amount _____
Amount Available in Acct. _____	
Second Account Number _____	Budget Amount _____
Amount Available in 2 nd Acct. _____	Revenue Generated _____
Other Comments _____	

REVIEW CHECKLIST

DEPARTMENT _____ DATE _____

DEPARTMENT _____ DATE _____

CITY MANAGER _____ DATE _____

ITEM #

Sherman & Sherman, P.C.

Larry H. Sherman
Jeffrey A. Sherman
Niccolas J. Grochowski

30700 Telegraph Road, Suite 3420
Bingham Farms, MI 48025
(248) 540-3366 Telephone
(248) 540-5959 Fax

November 1, 2019

Mayor Brian Hartwell and
Members of the City Council
City of Madison Heights
300 West Thirteen Mile Road
Madison Heights, MI 48071

Re: Proposed Ordinance Amendment Regarding Forfeiture of Proceeds of Crimes

Dear Mayor Hartwell and Members of Council:

The police department has requested that a local ordinance be enacted to provide for a local process for forfeiting the proceeds of crimes. Thus, attached for your consideration is a proposed Ordinance Amendment that adds two (2) new Articles XI and XII to Chapter 17 of the Madison Heights Code of Ordinances.

As Council is aware, approximately one year ago, the City reinstated the police department's Special Investigations Unit (SIU) to engage in undercover law enforcement activities focused specifically on crimes committed within the City. The City's SIU has been extremely successful since their resumption of duties. As a result of the SIU's investigations and arrests, there has been a corresponding increase in lawfully seized property, that are proceeds of crimes and are subject to forfeiture to the City. The seized property, once legally forfeited, is then able to be used or sold, and the proceeds earmarked specifically to fund law enforcement purposes. These funds are very useful to fund specific needs of the police department that the City might not otherwise be able to fund. Based on several deficiencies noted by the police department regarding current state forfeiture laws, they have requested this proposed Ordinance Amendment to fill those deficiencies and to simplify their forfeiture efforts from a local City level.

The attached proposed Ordinance Amendment adds two (2) brand new Articles to Chapter 17 of the Code of Ordinances. The proposed Ordinance Amendment basically establishes the lawful procedures for the police to seize and forfeit property that are the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime consistent with state law. Under state law, seizure and forfeiture of the proceeds of crimes are divided into two (2) categories. One is related to seizure and forfeiture where controlled substances violations are

Mayor Brian Hartwell and
Members of the City Council
City of Madison Heights
November 1, 2019
Page 2

involved, and the other category is for all other crimes other than controlled substances violations. Seizure and forfeiture property involving controlled substances violations fall under the state's Public Health Code, Act 368 of 1978. Seizure and forfeiture for most other types of crimes falls under the state's Omnibus Forfeiture Act, Act 236 of 1961. Because there are a separate sets of state laws pertaining to each category of seizure and forfeiture of property, we have substantially mirrored state law and included two (2) separate new Articles XI and XII to cover each category.

Both newly proposed Articles add language to cover the deficiencies noted by the police department in the current state law and is further revised to make the proposed Ordinance more suitable for local City use. Each section of the proposed Ordinance includes a cross reference to the corresponding state law and each section is numbered in a corresponding fashion to mirror the state law references.

The Police Department, Staff and the City Attorney's Office respectfully recommend that Council consider adopting the proposed Ordinance Amendment. Should you have any further questions or concerns regarding this proposed Amendment, please do not hesitate to contact me.

Very truly yours,

SHERMAN & SHERMAN, P.C.

Niccolas J. Grochowski
Assistant City Attorney

ORDINANCE NO. 2145

**CITY OF MADISON HEIGHTS,
OAKLAND COUNTY, MICHIGAN**

AMENDMENT TO THE CODE OF ORDINANCES

An Ordinance to amend Ordinance No. 571, being an Ordinance codifying and adopting a new Code of Ordinances for the City of Madison Heights by adding a new Article XI to Chapter 17 of the Code of Ordinances, City of Madison Heights, Michigan, to provide for the seizure and forfeiture of personal and real property that are the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime and by adding a new Article XII to Chapter 17 of the Code of Ordinances, City of Madison Heights, Michigan, to provide for the seizure and forfeiture of personal and real property subject to lawful seizure from controlled substance violations.

THE CITY OF MADISON HEIGHTS ORDAINS:

SECTION 1A. Amendment.

That a new Article XI, be added to Chapter 17 to the Code of Ordinances, City of Madison Heights, Michigan, to read as follows:

ARTICLE XI. – SEIZURE AND FORFEITURE OF PROCEEDS OF CRIMES

Sec. 17-201. – Definitions.

As used in this Article:

- (a) “Crime” means committing, attempting to commit, conspiring to commit, or soliciting another person to commit any criminal offense in connection with which the forfeiture of property is sought.
- (b) “Instrumentality of a crime” means any property, other than real property, the use of which contributes directly and materially to the commission of a crime.
- (c) “Person” means an individual, corporation, limited liability company, partnership, or other business entity, or an unincorporated or voluntary association.
- (d) “Proceeds of a crime” means any property obtained through the commission of a crime, including any appreciation in the value of the property.
- (e) “Security interest” means any interest in real or personal property that secures payment or performance of an obligation.

(f) “Substituted proceeds of a crime” means any property obtained or any gain realized by the sale or exchange of proceeds of a crime.

(g) “Willful blindness” means the intentional disregard of objective fact that would lead a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose.

State law reference - MCL 600.4701

Sec. 17-202. – Property subject to seizure and forfeiture.

- (1) Except as otherwise provided in this article, the following property is subject to seizure by, and forfeiture to the City under this article:
 - (a) All personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.
 - (b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime, except real property that is the primary residence of the spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.
- (2) Property is not subject to seizure or forfeiture if either of the following circumstances exists:
 - (a) The owner of the property did not have prior knowledge of, or consent to the commission of, the crime, if the lack of prior knowledge is not the result of the owner’s willful blindness.
 - (b) Upon learning of the commission of the crime, the owner of the property served written and timely notice of the commission of the crime upon an appropriate law enforcement agency and served a written and timely notice to quit upon the person who committed the crime.
- (3) The forfeiture of property encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of, the crime.
- (4) The forfeiture of property encumbered by an unpaid balance on a land contract is subject to the interest of the land contract vendor, if the vendor did not have prior knowledge of, or consent to the commission of, the crime.
- (5) The forfeiture of the substituted proceeds of a crime is limited to the value of the proceeds of the crime in addition to both of the following:

- (a) The amount by which any restitution or damages owed to the victim of the crime exceeds the value of the proceeds of the crime.
- (b) The amount by which any reasonable expenses of the forfeiture proceedings and sale, including, but not limited to, expenses for maintaining custody of the property, as well as advertising and prosecution costs, exceeds the value of the proceeds of the crime.

State law reference - MCL 600.4702

Sec. 17-203. – Seizure of property.

- (1) Personal property subject to forfeiture under this article may be seized pursuant to an order of seizure issued by the court having jurisdiction over the property upon a showing of probable cause that the property is subject to forfeiture.
- (2) Personal property subject to forfeiture under this article may be seized without process under any of the following circumstances:
 - (a) The property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime and the seizure is incident to a lawful arrest.
 - (b) The seizure is pursuant to a valid search warrant.
 - (c) The seizure is pursuant to an inspection under a valid administrative inspection warrant.
 - (d) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
 - (e) Exigent circumstances exist that preclude the obtaining of a court order, and there is probable cause to believe that the property is subject to forfeiture under this Article.
 - (f) The property is the subject of a prior judgment in favor of the City in a forfeiture proceeding.
- (3) The city attorney may apply ex parte for an order authorizing the filing of a lien notice against real property subject to forfeiture under this article. The application shall be supported by a sworn affidavit setting forth probable cause for a forfeiture action pursuant to this article. An order authorizing the filing of a lien notice may be issued upon a showing of probable cause to believe that the property is subject to forfeiture under this article.

- (4) Property that belongs to the victim of a crime shall promptly be returned to the victim, except in the following circumstances:
 - (a) The property is contraband.
 - (b) The ownership of the property is disputed until the dispute is resolved.
 - (c) The property is required to be retained as evidence under section 4(4) of the Crime Victim's Rights Act, 1985 PA 87, MCL 780.754.
- (5) Personal property seized under this article is not subject to any other action to recover personal property, but is considered to be in the custody of the seizing agency subject only to subsection (4) and sections 17-205 to 17-207 or to an order and judgment of the court having jurisdiction over the forfeiture proceedings. Except as provided in subsection (6), when property is seized under this chapter, the seizing agency may do either or both of the following:
 - (a) Place the property under seal.
 - (b) Remove the property to a place designated by the court.
- (6) The seizing agency may deposit money seized under this article into an interest-bearing account in a financial institution. As used in this subsection, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.
- (7) Title to all property subject to forfeiture under this article vests in the City upon the commission of the conduct giving rise to forfeiture, together with the proceeds of the property after the property vests under this subsection. Any subsequent property transfer that occurs before the final disposition of the forfeiture proceeding is void against the City unless the transferee claims and establishes all of the following:
 - (a) The transferee has an interest of record in the property.
 - (b) The transferee purchased the property in good faith and for fair value.
 - (c) The property interest was acquired without notice of the forfeiture proceeding or the facts that gave rise to the proceeding.

State law reference - MCL 600.4703

Sec. 17-204. – Notice of seizure and intent to forfeit and dispose of property.

- (1) Within 28 days after personal property is seized or a lien notice is filed against real property, the seizing agency or, if the property is real property, the city attorney shall give notice of the seizure of the property and the intent to forfeit and dispose of the property according to this article to each of the following persons:
 - (a) If charges have been filed against a person for a crime, the person charged.
 - (b) Each person with a known ownership interest in the property.
 - (c) Each mortgagee, person holding a security interest, or person having a lien that appears on the certificate of title or is on file with the secretary of state or appropriate register of deeds, if the property is real property, a mobile home, motor vehicle, watercraft, or other personal property.
 - (d) Each holder of a preferred ship mortgage of record in the appropriate public office pursuant to 46 USC 30101, 31301-31343, if the property is a watercraft more than 28 feet long or a watercraft that has a capacity of 5 net tons or more.
 - (e) Each person whose security interest is recorded with the appropriate public office pursuant to the Federal Aviation Act of 1958, Public Law 85-726, if the property is an aircraft, aircraft engine, or aircraft propeller, or a part of an aircraft, aircraft engine, or aircraft propeller.
 - (f) Each person with a known security interest in the property.
 - (g) Each victim of the crime.
- (2) The notice required under subsection (1) shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for 10 successive publishing days. Proof of written notice or publication shall be filed with the court having jurisdiction over the seizure or forfeiture.
- (3) If personal property was seized, the seizing agency shall immediately notify the city attorney of the seizure of the property and the intent to forfeit and dispose of the property according to this article.
- (4) An attorney for a person described in subsection (1)(a) shall be afforded a period of 56 days within which to examine money seized under this Article. This 56-day period shall begin to run after notice is given under subsection (1) but before the money is deposited into a financial institution.

Sec. 17-205. – Motion to return property or discharge lien.

- (1) A person who did not have prior knowledge of, or consent to the commission of, the crime, or a transferee under section 17-203 (7), may move the court having jurisdiction to return the property or discharge the lien on the grounds that the property was illegally seized, that the property is not subject to forfeiture under this article, or that the person has an ownership or security interest in the property and did not have prior knowledge of, or consent to the commission of, the crime, or acquired an ownership or security interest by a transfer that is not void under section 17-203(7). The court shall hear the motion within 28 days after the motion is filed.
- (2) At the hearing on the motion filed under subsection (1), the city attorney, shall establish the following:
 - (a) Probable cause to believe that the property is subject to forfeiture under this article and that the person filing the motion had prior knowledge of, or consented to the commission of, the crime, or acquired his or her interest by a transfer that is void under section 17-203(7). Prior written notice of illegal use of the property to the interest holder constitutes prima facie evidence of knowledge of the crime.
 - (b) If the person filing the motion claims the property was illegally seized, that the property was properly seized.
- (3) If the city attorney fails to sustain his or her burden of proof under subsection (2), the court shall order the return of the property, including any interest earned on money deposited in a financial institution as defined in section 17-203(6), or the discharge of the lien.
- (4) If a motor vehicle is seized under section 17-203, the owner of the vehicle may move the court having jurisdiction over the forfeiture proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner. The court shall hear the motion within 7 days after the motion is filed. If the owner of the vehicle establishes at the hearing that he or she holds the legal title of the vehicle and that it is necessary for him or her or his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner. If the court orders the return of the vehicle to the owner, the court shall order the seizing agency to file a lien against the vehicle and the owner to post a bond in an amount equal to the value of the vehicle.
- (5) The testimony of a person at a hearing held under this section is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this section does not waive the person's constitutional right against self-incrimination.

State law reference - MCL 600.4705

Sec. 17-206. – Return of property or discharge of lien.

- (1) Except as otherwise provided by law, personal property seized under section 17-203 shall be returned to the owner, or a lien filed against real property under section 17-203, within 7 days after the occurrence of any of the following:
 - (a) A warrant is not issued against a person for the commission of a crime within 28 days after the property is seized or, if the property is real property, within 28 days after the lien is filed.
 - (b) All charges against the consenting legal owner relating to the commission of a crime are dismissed.
 - (c) The consenting legal owner charged with committing a crime is acquitted of the crime.
 - (d) In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime.
 - (e) Entry of a court order under this article for the return of the property or the discharge of the lien.
- (2) Before the expiration of period of time prescribed under section (1)(a), the city attorney may petition the court ex parte for not more than an additional 28 days to complete its investigation and issue charges or return the property. The court shall grant an extension under this subsection to the extent necessary upon determining that there is good cause shown for the extension.

State law reference - MCL 600.4706

Sec. 17-206a. – Notice of return of seized property or discharge of lien to certain persons.

- (1) Within 7 days after personal property is returned to the owner, or a lien filed against real property or a motor vehicle is discharged pursuant to section 17-206, the seizing agency, or if the property is real property, the city attorney who gave notice of the seizure of the property and the intent to forfeit and dispose of the property pursuant to section 17-204, shall give notice to the persons who received notice pursuant to section 17-204 that the property has been returned to the owner or that the lien has been discharged pursuant to section 17-206.

- (2) The notice required under subsection (1) shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for 10 successive publishing days.

State law reference - MCL 600.4706a

Sec. 17-207. – Forfeiture proceedings.

- (1) If property subject to forfeiture under this Article has a total value of less than \$100,000.00, within 28 days after the conviction of a person of a crime, the city shall give notice of the seizure of the property or, if a lien has been filed, the filing of the lien, and the intent to begin proceedings to forfeit and dispose of the property according to this article to each of the persons to whom notice is required to be given under section 17-204. Notice shall be given in the same manner as required under section 17-204.
- (2) Within 28 days after receipt of the notice or of the date of the first publication of the notice under subsection (1), a person claiming an interest in property subject to the notice may file a claim with the city expressing his or her interest in the property and any objection to forfeiture. The objection shall be written, verified, and signed by the claimant, and include a description of the property interest asserted. The verification shall be notarized and include a certification stating that the undersigned has examined the claim and answer and believes it to be, to the best of his or her knowledge, true and complete.
- (3) Except in the case of real property, if no claim is filed within the 28-day period as described in subsection (2), the city shall declare the property forfeited and shall dispose of the property according to section 17-208.
- (4) If a claim is filed within the 28-day period as described in subsection (2), the city shall transmit the claim with a list and description of the property to the city attorney. The city attorney shall institute a civil action for forfeiture within 28 days after the expiration of the 28-day period.
- (5) If property subject to forfeiture under this article has a total value of more than \$100,000.00 or is real property, the city attorney, shall institute a civil action for forfeiture within 28 days after the conviction of a person of a crime.
- (6) At the forfeiture proceeding, the plaintiff shall prove all the following by a preponderance of the evidence:
 - (a) That the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

- (b) If a person, other than the person convicted of the crime, claims an ownership or security interest in the property, that the person claiming the interest in the property had prior knowledge of, or consented to the commission of, the crime.
 - (c) If a person, other than the person convicted of the crime, claims an ownership or security interest in the property under section 17-203(7), that the transfer occurred subsequent to the criminal conduct that gave rise to forfeiture.
- (7) If the plaintiff carries the burden of proof described in subsection (6)(c), the burden of proof shifts to the claimant to prove by a preponderance of the evidence that the transfer was not void under section 17-203(7).
- (8) If the plaintiff fails to meet the burden of proof under subsection (6), the property shall be returned to the owner within 7 days after the court issues a dispositive order.

State law reference - MCL 600.4707

Sec. 17-208. – Sale of property.

- (1) When property is forfeited under this article, the city may sell the property that is not required to be destroyed by law and that is not harmful to the public and may dispose of the proceeds and any money, including any interest earned on money deposited in a financial institution as described in section 17-203(6), negotiable instrument, security, or other thing of value that is forfeited under this article in the following order of priority:
- (a) Pay any outstanding security interest of a secured party who did not have prior knowledge of, or consent to the commission of, the crime, or did not acquire his or her interest as the result of a transfer that is void under section 17-203(7).
 - (b) Satisfy any order of restitution in the prosecution for the crime.
 - (c) Pay the claim of each person who shows that he or she is a victim of the crime to the extent that the claim is not covered by an order of restitution.
 - (d) Pay any outstanding lien against the property that has been imposed by a governmental unit.
 - (e) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, as well as reasonable prosecution and court costs.

- (f) The balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the city.
- (2) In the course of selling real property under subsection (1), the court that enters an order of forfeiture, on motion of the city, may appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:
- (a) List the forfeited real property for sale.
 - (b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.
 - (c) Accept offers to purchase the forfeited real property.
 - (d) Execute instruments transferring title to the forfeited real property.
- (3) If any property included in the order of forfeiture under this article cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court may order forfeiture of any other reachable property of the owner up to the value of the property that is unreachable as described in this subsection. This subsection only applies against an owner that is also the person convicted of the crime underlying the forfeiture action.

State law reference - MCL 600.4708

Sec. 17-209. – Jurisdiction.

The forfeiture action and related proceedings provided for in this article shall be brought in the district court pursuant to that court's equity jurisdiction.

State law reference - MCL 600.4709

Sec. 17-210. – Report of seizure and forfeiture activities.

- (1) The city shall report all seizure and forfeiture activities under this chapter to the department of state police as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.
- (2) The city is subject to audit as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.

State law reference - MCL 600.4710

Sec. 17-211 to 17-220. - Reserved.

SECTION 1B. Amendment.

That a new Article XII, be added to Chapter 17 to the Code of Ordinances, City of Madison Heights, Michigan, to read as follows:

ARTICLE XII. –FORFEITURE OF PROPERTY - CONTROLLED SUBSTANCE VIOLATIONS

Sec. 17-221. – Property subject to forfeiture; burden of proof; "imitation controlled substance" defined.

- (1) The following property is subject to forfeiture:
 - (a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.
 - (b) A raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, or other drug in violation of this article; or a raw material, product, or equipment of any kind that is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of MCL 333.7341.
 - (c) Property that is used, or intended for use, as a container for property described in subdivision (a) or (b).
 - (d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):
 - (i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article.

- (ii) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.
 - (iii) A conveyance is not subject to forfeiture for a violation of section MCL 333.7403(2)(c) or (d), MCL 333.7404, or MCL 333.7341(4).
 - (iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.
- (e) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this article.
- (f) Anything of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.
- (g) Any other drug paraphernalia not described in subdivision (b) or (c).
- (2) The plaintiff in a forfeiture action under this article has the burden of proving a violation of this article by clear and convincing evidence. This subsection applies to forfeiture proceedings commenced under this article on or after the effective date of the amendatory act that added this subsection.
- (3) As used in this section, "imitation controlled substance" means that term as defined in MCL 333.7341.

State law reference - MCL 333.7521

Sec. 17-221a. – Civil asset forfeiture; conditions, requirements, and limitations.

- (1) Except as otherwise provided in this section, property may be seized as provided in section 17-222 for a violation of this article, but is not subject to forfeiture under section 17-221 or disposition under section 17-224 unless a criminal proceeding involving or

relating to the property has been completed and the defendant pleads guilty to or is convicted of a violation of this article.

- (2) A criminal conviction or guilty plea under subsection (1) is not required if 1 or more of the following apply:
 - (a) No person claims any interest in the property as provided under section 17-223 or the owner of the property withdraws his or her claim in the property.
 - (b) The owner of the property waives the criminal conviction or plea requirement under subsection (1) and elects to proceed with the civil forfeiture proceeding.
 - (c) A criminal charge has been filed and 1 or both of the following apply:
 - (i) The defendant is outside this state and cannot reasonably be extradited or brought back to the state for prosecution.
 - (ii) Reasonable efforts have been made by law enforcement authorities to locate and arrest the defendant, but the defendant has not been located.
- (3) If a person withdraws his or her claim under subsection (2)(a), the city attorney must review the seizure of the property and approve the forfeiture of the property before the property may be forfeited.
- (4) Subsection (1) does not prohibit the immediate destruction of property that may not be lawfully possessed by any person or that is dangerous to the health or safety of the public regardless of whether the person is convicted of a violation of this article.
- (5) This section applies to forfeiture proceedings that are initiated on or after the effective date of this amendatory act.
- (6) This section does not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeds \$50,000.00, excluding the value of contraband.

State law reference - MCL 333.7521a

Sec. 17-222. – Property subject to forfeiture; seizure; process; seizure without process.

Property that is subject to forfeiture under this article or pursuant to section 17-221 may be seized upon process issued by the court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

- (a) Incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.

- (b) The property is the subject of a prior judgment in favor of this state in an injunction or forfeiture proceeding under this article.
- (c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
- (d) There is probable cause to believe that the property was used or is intended to be used in violation of this article.

State law reference - MCL 333.7522

Sec. 17-223. – Seizure under section 17-222; forfeiture proceedings; procedure.

- (1) Subject to section 17-221a, if property is seized under section 17-222, forfeiture proceedings must be instituted promptly. If the property is seized without process under section 17-222, and the total value of the property seized does not exceed \$50,000.00, the following procedure must be used:
 - (a) The local unit of government that seized the property shall notify the owner of the property that the property has been seized and, if charges have been filed against a person for a crime, the person charged, and that the local unit of government intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice must be published on the local unit of government's public website and in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.
 - (b) Unless all criminal proceedings involving or relating to the property have been completed, the seizing agency shall immediately notify the city of the seizure of the property and the intention to forfeit and dispose of the property.
 - (c) Any person claiming an interest in property that is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a written claim signed by the claimant with the local unit of government expressing his or her interest in the property and any objection to forfeiture. A claim or an objection under this subsection must be written, verified, and signed by the claimant, and include a detailed description of the property and the property interest asserted. The verification must include a certification under the penalty of perjury stating that the undersigned has examined the claim and believes it to be, to the best of the claimant's knowledge, true and complete. A written claim under this subsection must be made on the form developed by the state court administrative office as required under

subsection (2). Upon the filing of the claim, the local unit of government shall transmit the claim with a list and description of the property seized to the city attorney. The city attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period.

- (d) If no claim is filed within the 20-day period as described in subdivision (c), the local unit of government shall declare the property forfeited and shall dispose of the property as provided under section 17-224.
- (2) Any person asserting an ownership interest in seized property under subsection (1)(c) shall use the state court administrative office official form for properly asserting an ownership interest in seized property.
 - (3) Property taken or detained under this article is not subject to an action to recover personal property, but is deemed to be in the custody of the seizing agency subject only to this section or an order and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the seizing agency may do any of the following:
 - (a) Place the property under seal.
 - (b) Remove the property to a place designated by the court.
 - (c) Require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
 - (d) Deposit money seized under this article into an interest-bearing account in a financial institution. As used in this subdivision, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.
 - (4) Title to real property forfeited under this article must be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.
 - (5) An attorney for a person who is charged with a crime involving or related to money seized under this article must be afforded a period of 60 days within which to examine that money. This 60-day period begins to run after notice is given under subsection (1)(a) but before the money is deposited into a financial institution under subsection (3)(d). If city attorney fails to sustain his or her burden of proof in forfeiture proceedings under this article, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (3)(d).

Sec. 17-223a. – Stay of civil forfeiture during pending criminal proceedings; forfeiture hearing; burden of proof; return of property.

- (1) If section 17-221a applies to a forfeiture case under this article, the seized property is subject to forfeiture under section 17-221, and a person has filed a claim as provided under section 17-223, a civil forfeiture action under this act must be stayed during the pendency of the applicable criminal proceedings. The civil forfeiture action must proceed after the defendant is convicted of, or enters a guilty plea to, the offense involved, or 1 or more of the events described in section 17-221a(2) applies.
- (2) At the forfeiture hearing, the plaintiff must prove 1 or both of the following, as applicable:
 - (a) The property is subject to forfeiture as provided in section 17-221(1).
 - (b) If a person, other than the person who has been convicted of a violation of the Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code, or entered into a plea agreement in connection with a violation of Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code as provided under section 17-221a(1), claims an ownership or security interest in the property, that the person claiming the interest in the property had prior knowledge of or consented to the commission of the crime.
- (3) If the plaintiff fails to meet the burden of proof under subsection (2), property seized under section 17-222 must be returned to the owner not more than 14 days from the date the court issues a dispositive order.
- (4) Except as otherwise provided in section 17-221a, property must be returned to the owner not more than 14 days after the occurrence of any of the following:
 - (a) A warrant is not issued against a person for the commission of a crime within 90 days after the property was seized.
 - (b) All charges against the person relating to the commission of a crime are dismissed.
 - (c) The person charged with committing a crime is acquitted of the crime.
 - (d) In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime.
 - (e) Entry of a court order under this article for the return of the property.

- (5) A party to a forfeiture proceeding may seek an extension of the time periods described in this section for good cause. The court may grant a motion for an extension under this subsection for good cause shown.

State law reference - MCL 333.7523a

Sec. 17-224. – Disposition of forfeited property.

- (1) When property is forfeited under this article, the city may do any of the following:
- (a) Retain the property for official use.
 - (b) Sell the property that is not required to be destroyed by law and that is not harmful to the public. The proceeds and any money, negotiable instruments, securities, or any other thing of value as described in section 17-221(1)(f) that are forfeited under this article shall be deposited with the city treasurer and applied as follows:
 - (i) For the payment of proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs, except as otherwise provided in subsection (4).
 - (ii) The balance remaining after the payment of expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the treasurer of the city. If more than 1 agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the money among the treasurers of the entities having budgetary authority over the seizing agencies. A seizing agency may direct that the funds or a portion of the funds it would otherwise have received under this subsection be paid to nonprofit organizations whose primary activity is to assist law enforcement agencies with drug-related criminal investigations and obtaining information for solving crimes. The money received by a seizing agency under this subparagraph and all interest and other earnings on money received by the seizing agency under this subparagraph shall be used only for law enforcement purposes, as appropriated by the entity having budgetary authority over the seizing agency. A distribution made under this subparagraph shall serve as a supplement to, and not a replacement for, funds otherwise budgeted for law enforcement purposes.
- (2) Notwithstanding subsection (1), the city may donate lights for plant growth or scales forfeited under this article to elementary or secondary schools or institutions of higher education that request in writing to receive those lights or scales under this subsection,

for educational purposes. The city shall donate lights and scales under this subsection to elementary or secondary schools or institutions of higher education in the order in which the written requests are received. The city may limit the number of lights and scales available to each requestor.

- (3) In the course of selling real property under subsection (1)(b), the court that has entered an order of forfeiture may, on motion of the agency to whom the property has been forfeited, appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:
 - (a) List the forfeited real property for sale.
 - (b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.
 - (c) Accept offers to purchase the forfeited real property.
 - (d) Execute instruments transferring title to the forfeited real property.
- (4) If a court enters an order of forfeiture, the court may order a person who claimed an interest in the forfeited property under section 17-223(1)(c) to pay the expenses of the proceedings of forfeiture to the city.

State law reference - MCL 333.7524

Sec. 17-224b. – Report by agency of seizure and forfeiture activities under uniform forfeiture reporting act.

- (1) The city shall report all seizure and forfeiture activities under this article to the department of state police as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.
- (2) The city is subject to audit as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.

State law reference - MCL 333.7524b

Sec. 17-225. – Controlled substance as contraband; seizure and summary forfeiture.

- (1) A controlled substance listed in schedule 1 that is possessed, transferred, sold, or offered for sale in violation of the Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code, is contraband and shall be seized and summarily forfeited. A controlled substance listed in schedule 1 which is seized or

comes into the possession of the city, the owner of which is unknown, is contraband and shall be summarily forfeited.

- (2) Species of plants from which controlled substances in schedules 1 and 2 may be derived which have been planted or cultivated in violation of the Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code, or of which the owner or cultivator is unknown, or which are wild growths, may be seized and summarily forfeited.
- (3) The failure, upon demand by the city or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate license or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

State law reference - MCL 333.7525

Sec. 17-226. – Reserved.

Sec. 17-227. – Destruction of controlled substance seized as evidence.

- (1) Prior to trial the city attorney may move in writing for an order permitting the destruction of all or part of a controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance seized as evidence in connection with a violation of this article. The motion shall specify the reasons supporting the destruction. The city attorney shall serve a copy of the motion, and any supporting materials, on the defendant or his or her attorney.
- (2) If the defendant objects, the defendant or his or her attorney shall file specific objections within 21 days after receiving the motion described in subsection (1). Failing to comply with this time limit waives any objection to the destruction of the evidence.
- (3) Before any hearing on the motion, the defendant or his or her attorney shall have an adequate opportunity to inspect or test, or both, the evidence sought to be destroyed, subject to reasonable supervision by laboratory or law enforcement personnel.
- (4) Following a hearing, the court may order destruction of all or part of the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance if the court determines on the record that the destruction is warranted. The court shall specify the evidence to be destroyed and may include further provisions in the order as the interests of justice require.
- (5) The law enforcement agency having custody of the evidence shall destroy the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance in accordance with an order entered under subsection (4). Before destroying

the evidence, the law enforcement agency shall make an accurate photographic record of the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance. The court may order that further records be made before the evidence is destroyed.

State law reference - MCL 333.7527

Sec. 17-228 to 17-230 Reserved.

Sec. 17-231. – Burden of proof of exemption or exception.

- (1) It is not necessary for the city to negate any exemption or exception in this article in a complaint, information, indictment, or other pleading or in a trial, hearing, or other proceeding under this article. The burden of proof of an exemption or exception is upon the person claiming it.
- (2) In the absence of proof that a person is the authorized holder of an appropriate license or order form issued under this article, the person is presumed not to be the holder of the license or order form. The burden of proof is upon the person to rebut the presumption.
- (3) A liability is not imposed by this article or an authorized state, county, or local officer, engaged in the lawful performance of the officer's duties.

State law reference - MCL 333.7531

SECTION 2. Repealer.

All ordinances, or parts of ordinances, in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Severability.

Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.

SECTION 4. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

SECTION 5. Effective Date.

This ordinance as ordered shall take effect ten (10) days after its adoption and upon publication.

SECTION 6. Inspection.

A copy of this ordinance may be inspected or purchased at the City Clerk's office between the hours of 8:00 a.m. and 11:30 a.m. and between the hours of 12:30 p.m. and 4:30 p.m. on regular business days.