

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

WARREN CITY COUNCIL,

Plaintiff,

vs.

Case No. 2022-000923-AW

JAMES R. FOUTS, MAYOR OF THE
CITY OF WARREN,

Hon. Denis LeDuc

Defendant.

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**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

INTRODUCTION

This case arises out of a basic disagreement between the Mayor of the City of Warren and the Warren City Council about the proper interpretation of the City Charter’s budgetary provisions. The Mayor believes that the Charter gives the Council authority to approve or reject the Mayor’s proposed budget—not to redline it item by item, amend it, or adopt an entirely new budget of the Council’s creation. By contrast, the Council’s maintains that the Charter gives it *carte blanche* to revise the Mayor’s proposed budget, without further input or consultation with the Mayor.

After attempting to work collaboratively with the Council to resolve this longstanding disagreement, the Mayor eventually sought this Court’s guidance through a declaratory judgment action, Case No. 2022-000840-CZ, filed on February 25, 2022. Apparently dissatisfied that it did not fire the first salvo, the Council filed its own lawsuit, seeking both mandamus and declaratory relief. The Council has also moved for a temporary restraining order and preliminary injunction seeking, in exceedingly vague terms, to prevent the Mayor from “facilitating, encouraging, or allowing the expenditure of unappropriated City funds.”

The Council’s request for injunctive relief suffers from numerous flaws. *First*, the Council’s interpretation of the Charter disregards its plain text and seeks to disrupt the balance of power between the legislative and executive branches that the voters approved. *Second*, the Council has failed to identify any ministerial duty that the Mayor was supposed to carry out, and mandamus will not lie to compel general compliance with the law. (For both of those reasons, the Council’s claims are unlikely to succeed on the merits.) *Third*, the City of Warren has been operating under the Mayor’s interpretation of the rules for nine months, and the Council will not be harmed by the continued implementation of a valid budget by various City departments and municipal agencies; neither the public interest nor balance of harms supports judicial intervention.

Fourth, the Council’s lawsuit is untimely, both because the Council did not properly authorize this lawsuit (and the matter is therefore not properly presented) and because the Council has not explained why it waited until nearly three-quarters of the budget cycle had already elapsed before filing suit (and the matter should therefore be barred by laches). The Court should consequently deny the Council’s request for a temporary restraining order and preliminary injunction in full.

BACKGROUND

A. The Charter Assigns to the Mayor the Responsibility of Developing a Recommended Budget, and to the Council the Ability to Approve or Reject It.

The Charter mandates a detailed, step-by-step process for the preparation, review, and approval of an annual budget for the City, imposing specific requirements for the Mayor and City departments to compile and prepare a budget recommendation. See 1956 Warren Charter, “Charter”.¹ The Charter charges the Mayor with the duty to “[p]repare the annual budget proposal and present it to the council with an explanation thereof at the time and in the manner required by this charter[.]” See Charter, Section 7.3(6). All of this is consistent with the fact that, “The executive or administrative powers of the city, except as herein otherwise provided, are hereby vested in and shall be exercised by the mayor...” Charter, Section 7.1.

Section 8.2 of the Charter specifies the procedure for the Mayor to provide his recommended annual budget for the City:

Not later than the first Monday of February of each year, each officer, department, board and commission of the city shall submit to the controller an itemized estimate of its expected income and expenditures during the next fiscal year for the department or activities under its control. The controller shall compile and submit to the mayor, not later than the second Monday in March of each year, a budget form setting forth in a simple column the budget requests of each officer and department of the city. **The mayor shall review such budget form and budget requests and** in a column parallel to and adjacent to that containing such budget requests **shall enter his budgetary recommendations** for each item requested by

¹ [https://library.municode.com/print.aspx?clientID=10936&HTMReque\(mml.org\).](https://library.municode.com/print.aspx?clientID=10936&HTMReque(mml.org).)

the several officers and departments with such additions thereto and deletions therefrom as he shall deem proper **and, not later than the second Monday in April of each year he shall submit to the council a recommended budget for the next fiscal year which is within the tax limit and other revenue sources of the city.**

Charter, Section 8.2; emphases added.

The Mayor's recommended budget must include "at least the following information":

- (1) The estimates of the several officers and departments as received by the controller;
- (2) The detailed estimates of the mayor, with supporting explanations of proposed expenditures of each office and department of the city...;
- (3) Statements of the bonded and other indebtedness of the city, showing the debt redemption and interest requirements, the debt authorized, and unissued, and the condition of sinking funds, if any;
- (4) Detailed estimates of all anticipated revenues of the city from sources other than taxes...;
- (5) A statement of the estimated accumulated cash and unencumbered balances, or deficits, at the end of the current fiscal year;
- (6) An estimate of the amount of money to be raised from current and delinquent taxes and the amount to be raised from bond issues which, together with available unappropriated surplus and any revenues from other sources, will be necessary to meet the proposed expenditures.

Charter, Section 8.2.

In other words, each of the City's departments, officers, boards, and commissions submits a budget to the controller; the controller compiles and sends the information to the Mayor; the Mayor reviews and makes recommendations on each requested budget item, and the Mayor then submits his recommended budget to the Council. Once the Mayor submits his recommended budget to the Council, the budget, "together with [the] supporting schedules, information, and messages, **shall be reviewed by the council.**" Charter, Section 8.3; emphasis added. The Mayor's

recommended budget is then published to members of the public at the clerk's office, and the Council must hold a hearing on the budget. Charter, Sections 8.3, 8.4.

Per the Charter, "[n]ot later than the third Monday in May of each year, the council shall, by resolution, adopt a budget for the ensuing fiscal year and make an appropriation of the money needed therefor." Charter, Section 8.5(a.) However, if the Council fails to adopt a budget resolution within the prescribed timeframe, that omission "shall not invalidate either the budget or the tax levy therefor." Charter, Section 8.5(a). The Charter grants the Council the power merely to hold a budget hearing and adopt a budget by a date certain.

B. The Mayor Presents His Recommended Budget for Fiscal Year 2021-2022, but the Council Decides to Create and Adopt Its Own Budget.

In accordance with Sections 8.2 and 8.3 of the Charter, the Mayor presented his recommended budget for fiscal year ("FY") 2021-2022 to the Council in April 2021. The Mayor's recommended budget was also published to the residents of the City and other members of the public at the clerk's office. The Council took its time in addressing the Mayor's recommendations. Then, on May 11, 2021, rather than reviewing and voting on the Mayor's recommended budget as presented, the Council attempted to amend, vote on, and adopt an altered budget at the public budget hearing.

On May 14, 2021, Mayor Fouts issued a letter to the Council vetoing the Council's putative adoption of its own, unauthorized budget. Ex. 1: May 14 Letter. The same day, in a good faith attempt to reach a compromise agreement with the Council, the Mayor sent a letter to the Council enclosing a modified recommended budget that incorporated various suggestions and requests from the Council as demonstrated by its putative adoption vote. Ex. 2: Modified Budget. The Council refused to consider the Mayor's modified May 14, 2021, recommended budget, did not

respond to the Mayor's letter, and never placed the Mayor's modified recommended budget on any Council meeting agenda.

Instead, on May 25, 2021, the Council voted to override the Mayor's May 14 veto. Ex. 3: Inter-Office Communication Override. Despite the Mayor's attempts to appease the Council by modifying his original budget recommendation, the Council continued to maintain that the unauthorized budget it purported to pass without Charter authorization—rather than the recommended budget the Mayor provided in accordance with the Charter—is the operative budget for FY 2021-2022.

C. The Mayor Seeks Declaratory Relief to Settle the Budget Questions, and the Council Goes on a Counteroffensive.

On February 25, 2022, the Mayor filed a declaratory judgment action in this Court, Case No. 2022-000840-CZ, against the Council, seeking the Court's assistance in clarifying the Council's apparent misapprehension of several portions of the Charter. In addition to the budget issue, the Mayor prayed for a determination that the Council has violated the Charter with its attempts to directly contact and command appointed administrative officers and department directors. The Mayor also challenged the Council's continued, open-ended retention of the law firm Plunkett Cooney as unauthorized by the Charter and an improper attempt to usurp the function of the City's duly-appointed City Attorney, Ethan Vinson.

When the Council learned of the Mayor's case, the Council inexplicably decided to file its own, separate lawsuit on March 3, 2022, rather than simply raising its claims and concerns in the pending action started by the Mayor. In its Complaint—after dubiously affirming that “[t]here is no other civil action between these parties arising out of the same transaction or occurrence” and then admitting in a footnote that the Council is, in fact, aware of the Mayor's case—the Council alleged that the Mayor violated the Charter, the Uniform Budgeting and Accounting Act

(“UBAA”), MCL 141.121 *et seq*, and the Recodified Tax Increment Financing Act (“RTIFA”), MCL 125.4101 *et seq*, because the Downtown Development Authority (“DDA”), which is a separate legal entity, has expended certain funds in accordance with the Mayor’s FY 2021-2022 budget, rather than the Council’s budget. See Compl ¶¶39-40. The Council also alleged that the Mayor allowed \$1,697.98, to be encumbered for “community promotion” in accordance with the Mayor’s FY 2021-2022 budget, rather than the Council’s budget. See Compl ¶¶42, 52. The Council asserted three claims: for mandamus (Count I), declaratory relief (Count II), and injunctive relief (Count III). On March 11, 2022, the Council filed its Motion for Temporary Restraining Order and Preliminary Injunction (“Motion”), seeking to restrain the Mayor “from facilitating, encouraging, or allowing the expenditure of unappropriated City funds.” Prelim Inj Br at 18.

LEGAL STANDARD

Michigan sets a high bar for motions to obtain a temporary restraining order or preliminary injunctive relief. Under MCR 3.310, “[a] temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party’s attorney only if

- (a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued;
- (b) the applicant’s attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required; and
- (c) a permanent record or memorandum is made of any nonwritten evidence, argument, or other representations made in support of the application.

MCR 3.310(B)(1).

The issuance of a preliminary injunction is considered “extraordinary” relief that has been characterized as “one of the most drastic tools in the arsenal of judicial remedies.” *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 146, n1; 809 NW2d 444

(2011); *Connell v Lorenzo*, 241 F3d 800 (CA 6, 2001) (internal citations omitted); see also *Benisek v Lamone*, 138 S Ct 1942, 1943 (2018) (cautioning that “a preliminary injunction is ‘an extraordinary remedy never awarded as of right’”). The plaintiff, as the party seeking injunctive relief, “has the burden of establishing that a preliminary injunction should be issued, whether or not a temporary restraining order has been issued.” MCR 3.310(A)(4).

In determining whether a temporary or preliminary relief should issue, courts consider whether “(1) the moving party made the required demonstration of irreparable harm, (2) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, (3) the moving party showed that it is likely to prevail on the merits, and (4) there will be harm to the public interest if an injunction is issued.” *Detroit Fire Fighters Ass’n, IAFF Local 344 v City of Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008).

ARGUMENT

I. THE COUNCIL IS UNLIKELY TO PREVAIL ON ITS CLAIMS.

A. The Charter Assigns to the Mayor, Not to the Council, the Responsibility for Proposing Budgets, and the Council’s Claim for Declaratory Relief Fails.

In this case, the Charter makes the budgetary process extremely clear: (1) “each officer, department, board and commission of the city shall submit to the controller an itemized estimate of its expected income and expenditures during the next fiscal year,” Section 8.2; (2) the controller compiles and submits a budget to the mayor, Section 8.2; (3) the Mayor reviews the budget from the controller and makes a recommendation on each requested item, Section 8.2; (4) the Mayor submits his recommended budget to the Council by the second Monday in April with detailed estimates of proposed expenditures and anticipated revenues (including tax revenue) and debt, Section 8.2; (5) the Council reviews the Mayor’s recommended budget, Section 8.3; (6) the Mayor’s recommended budget is published to the public, Section 8.3; (7) the Council holds a

public hearing on the budget, Section 8.4; and (8) the Council either approves or rejects the Mayor's recommended budget by the third Monday in May, Section 8.5(a). As is evident from these provisions, unlike the detailed budget process assigned to the executive branch of government, the Charter grants the Council a narrow, limited power: merely to hold a budget hearing and adopt a budget by a date certain.

Rules of statutory construction apply to the interpretation of municipal charters. *Barrow v Detroit Election Com'n*, 305 Mich App 649, 663; 854 NW2d 489 (2014) (citation omitted). That includes the principle that the specification that an act must occur by a particular mode or method excludes the use of alternative methods. See *Hackel v Macomb Co Com'n*, 298 Mich App 311, 324; 826 NW2d 753 (2012) ("[T]he doctrine of *expressio unius est exclusio alterius*, or inclusion by specific mention excludes what is not mentioned[,] characterizes the general practice that when people say one thing they do not mean something else."); *Taylor v Currie*, 277 Mich App 85, 96; 743 NW2d 571 (2007) ("When a statute limits a thing to be done in a particular mode, it includes a negative of any other mode.") The Charter contains no language granting the Council authority to make any amendments or modifications to the Mayor's proposed budget.

The Michigan Supreme Court reached a similar conclusion in *Detroit City Council v Stecher*, 430 Mich 74; 421 NW2d 544 (1988). In *Stecher*, the mayor of Detroit submitted to the Detroit city council a mid-year proposal recommending certain transfers of appropriations to balance the budget. 430 Mich at 78. Rather than accepting or rejecting the mayor's recommendations, the council altered some of the proposed transfers and adopted that altered proposal by resolution. *Id.* The mayor declined to sign the resolution; the council purported to override what they perceived as a veto by the mayor; and the council then sued the budget director in mandamus for not implementing the council's approved transfers. *Id.* at 78-79. When the case

reached the Michigan Supreme Court, the “heart of the dispute between the parties” was whether the council was “free to change the proposal submitted by the mayor.” *Id.* at 86.

To resolve that question, the Court examined the language of the charter, which “allows the council to make transfers of appropriations during the fiscal year ‘upon written request by the mayor,’” which the Court “distinguished from th[e] [power] of the council during the initial budget adoption process when the council has the power to adopt the budget proposals submitted by the mayor ‘with or without amendment.’” *Id.* at 82. The Court thus concluded that “[t]he city council may accept or reject recommendations submitted by the mayor to effect a balanced budget, but the council may not unilaterally amend the mayor’s proposals.” *Id.* at 90.

Stecher underscores what the plain language of the Charter here makes clear: the Mayor must recommend a budget, and the Council must either approve or reject it in full. The Council lacks the authority to amend or alter the Mayor’s proposed budget, or to promulgate its own. Consequently, the Mayor’s actions were entirely lawful, and the Council’s claim for declaratory relief is unlikely to succeed on the merits.

The legislative history behind the City’s Charter also supports the Mayor’s interpretation of the pertinent Charter rules. The “Minutes of the Meeting Held Friday, February 3, 1956” (Ex. 4) document the discussions of the commissioners who created the City’s 1956 Charter. This record make clear that the commission’s assumption and intention was to have the Mayor’s recommended budget serve as the functional budget in the event that Council failed to timely adopt a budget. Ex 4, Minutes of the Meeting Held Friday, February 3, 1956, p 7. As the minutes reveal:

A discussion followed on this subject. The approval of the budget by the council; the veto powers of the mayor and what would happen if a budget could not be agreed upon. Mr. Sidwell stated that if by a certain period the council and mayor could not agree upon the budget, in order to avoid the city employees going without pay, that the mayor’s proposed budget, if he were a strong-mayor, would be adopted.

Ex. 4, Meeting Minutes, p 7.

There is no disputing that following this discussion on February 3, 1956, the Warren Charter Township City Commission deliberated and elected to form a city, with a strong mayor form of government. In other words, the commission created the City of Warren with the intention that, “if ... the council and mayor could not agree upon the budget, [to avoid a shut down], the mayor’s proposed budget ... would be [used].”

The online non-profit, American Civics League, explains the wisdom behind a system in which the mayor proposes and the council disposes what the mayor has proposed:

The ‘checks and balances’ mechanism of American democracy is indispensable to its unique operation to protect everyone’s rights by creating dynamic tension between governmental power centers. None of the three branches of government is supreme; each is checked by the other branch.

[American Civics League ACL](#) (emphasis in original).

The wisdom of this system argues against the Council’s interpretation of the rules. If the Council were able to pass a budget that is not proposed by the Mayor, then the Council could pass any budget it wanted, and there would be no check on the legislative branch’s power. The Charter demonstrates a desire to have the Mayor’s recommendation serve as the primary source of the budget, keeping the Council as a secondary check on that power. The Mayor has operated within that framework, but the Council incorrectly insists it does not need the Mayor to form a budget.

B. The Council Has Not Identified a Clear Legal Right or Duty, and Its Mandamus Claim Likewise Fails.

Like its claim for declaratory relief, the Council’s claim for mandamus falls well short of the mark. “A writ of mandamus is an extraordinary remedy.” *Lansing Sch Ed Ass’n v Lansing Bd of Ed (On Remand)*, 293 Mich App 506, 519; 810 NW2d 95 (2011). Issuance of a writ of mandamus is therefore proper only if four conditions are met: “(1) the party seeking the writ has a

clear, legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists, legal or equitable, that might achieve the same result.” *O’Connell v Dir of Elections*, 317 Mich App 82, 90-91; 894 NW2d 113 (2016) (internal quotation marks omitted). “The plaintiff has the burden to demonstrate an entitlement to the extraordinary remedy of a writ of mandamus.” *Citizens Protecting Michigan’s Constitution v Secy of State*, 324 Mich App 561, 584; 922 NW2d 404 (2018). Generally, mandamus will not issue where the legal right alleged is disputed or doubtful. *McLeod v Kelly*, 304 Mich 120, 7 NW2d 240 (1942); *PT Today, Inc v Comm’r of Office of Financial and Ins Servs*, 270 Mich App 110, 139, 715 NW2d 398 (2006) (“[T]he mandamus standard is not a vehicle for a court to put itself in a government official’s shoes.”).

Starting with the first element, the Council has not alleged or asserted an entitlement to a clear legal right owed by the Mayor to the Council. “A clear legal right is a right clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *League of Women Voters of Michigan v Secy of State*, 333 Mich App 1, 6; 959 NW2d 1 (2020) (internal quotation marks omitted). Nowhere in its Complaint or its Motion does the Council identify *any* clearly ascertainable legal right that it possesses. Rather, it relies generally on its purported “right to have [the] Mayor comply with the City Charter, the UBAA, and the TRIFA and to not otherwise usurp the City Council’s clear authority in violation of the separation of powers.” (Prelim Inj Br at 14.) In other words, the Council’s position is that it has a clear legal right to have the Mayor generally comply with the law (at least, the law as the Council interprets it). But this type of generalized duty is indistinguishable from that owed to the citizenry at large and insufficient to support mandamus relief. See *Univ Med Affiliates, PC v Wayne Co Executive*, 142 Mich App 135, 143;

369 NW2d 277 (1985) (“[I]t has long been the policy of the courts to deny the writ of mandamus to compel the performance of public duties by public officials unless the specific right involved is not possessed by citizens generally.”).

Nor has the Council identified a clear legal duty owed by the Mayor. While the Council cites several sections of the Charter in its Complaint and Motion, these provisions simply spell out the City’s annual budgetary process, which the Council admits the Mayor followed by submitting a recommended budget in April 2021. See Compl ¶¶14-19, 22; Prelim Inj Br at 4-5. More to the point, the only specific violations the Council alleges are “[i]ncorrectly interpreting the City Charter to require the City Council to adopt [the] Mayor’s recommended budget, rather than ‘a budget’...,” [a]llowing the expenditure of unappropriated City funds,” and “[f]ailing to comply with the UBAA and RTIFA in violation of the City Charter.” See Compl ¶52; Prelim Inj Br at 15. However, the Council has no legal right to have the Mayor subscribe to a particular “interpret[ation]” of the Charter. Nor does the Mayor have a legal duty to instruct any City department or the DDA not to expend funds, or to adopt the Council’s preferred interpretation of the Charter. On the latter point, for all of the reasons explained in Section I.A, it is in fact the Council’s—not the Mayor’s—interpretation of the Charter that is “[i]ncorrect[.]” Compl ¶52; Prelim Inj Br at 15.

Plaintiff’s reliance on the UBAA as a controlling authority is misplaced, because the statute explicitly provides that its default provisions for creating a budget only apply when a city’s charter fails to establish such a system. Section 14 of the UBAA begins, “[u]nless otherwise provided by law, charter, resolution or ordinance...” MCL 141.434(1). Section 16 similarly starts off, “[u]nless another method for adopting a budget is provided by a charter provision...” MCL 141.436(1). The Court should not be deceived by the Council’s misguided arguments on this point; the UBAA’s

requirements on budget making are inapposite, because the City’s Charter provides its own system for adopting a budget. In any event, the Council cites only to two prohibitory provisions in the UBAA (“shall not divert money,” MCL 141.438(3), and “shall not authorize or participate in the expenditure,” MCL 141.439(1)). See Compl ¶52; Prelim Inj Br at 15. The Council makes no attempt to identify a specific, affirmative legal duty that it seeks to have the Mayor fulfill, and it fails to account for the DDA’s independence as a separate agency with a board of nine members.

To the extent the Council intends to rely on the RTIFA for mandamus relief, the Council again fails to identify any provision of the statute that imposes any legal right or duty relevant to this dispute. The Council cites only to Section 228 of the RTIFA, which merely requires the DDA director to “prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year” and provides that “[f]unds of the municipality shall not be included in the budget of the authority except those funds authorized in this part or by the governing body of the municipality.” MCL 125.4228(1); see also Prelim Inj Br at 6. However, under the RTIFA, Warren’s DDA is a separate “public body corporate which may sue and be sued in any court of this state.” MCL 125.4202(2). The DDA is a separate unit of local government, and its budget (which is completely independent) has been traditionally created with the City’s annual budget only as a matter of convenience—not due to any legal requirement.

Nothing in any of these passages provides for a clear legal duty owed by the Mayor. The Council effectively concedes as much, since it complains only that the Mayor “[a]llowed the DDA to adopt a budget and expend unappropriated funds without City Council approval in violation of the RTIFA.” Compl ¶52; Prelim Inj Br at 15 (emphasis added). However, the Mayor is not the DDA. He is the chairman of the DDA’s board, but he has only one of nine votes on that board.

The Council’s desire to hold the Mayor responsible for the actions of a separate unit of local government with its own nine-member decision making apparatus is clear, but also clearly wrong.

Moreover, the Council has completely failed to identify any ministerial act that it wants the Mayor to perform, and its attempt to conceptualize the “Mayor’s duties under the City Charter, the UBAA, and the RTIFA” as ministerial is weak. “A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *League of Women Voters*, 333 Mich App at 8 (internal quotation marks omitted). Thus, “[i]f the act requested by the plaintiff involves judgment or an exercise of discretion, a writ of mandamus is inappropriate.” *Hanlin v Saugatuck Tp*, 299 Mich App 233, 248; 829 NW2d 335 (2013).

In its Complaint and Motion, the Council has barely even attempted to identify a particular duty on the part of the Mayor, let alone demonstrate that such a duty is merely ministerial. The only specific duty the Council mentions is the Charter requirement that the Mayor “recommend a budget to the City Council,” which the Council admits that the Mayor did. Prelim Inj Br at 15; emphasis omitted. Regrettably, the Council’s prayer for relief also fails to shed any additional light on the particular act the Council seeks to have the Mayor perform. See Compl, p 15 ¶a (requesting a writ of mandamus directing the Mayor “to comply with his obligations under the City Charter, the UBAA, and the RTIFA”); Prelim Inj Br at 18 (seeking same relief via injunction).

In sum, rather than being “virtually certain to prevail” on its mandamus claim, the Council—being able to meet none of the elements of that claim—is almost sure to lose on the merits. Compare Sections I.A and I.B, *supra*, with *Warren City Council v Buffa*, 333 Mich App 422, 427, 434-435; 960 NW2d 166 (2020) (concluding that city clerk’s duty to certify ballot language was clear and ministerial where statute provided “that if proposed ballot language is

certified to a local clerk by 4:00 p.m. on the twelfth Tuesday before the election, ‘the clerk shall certify the ballot wording to the county clerk at least 82 days before the election,’” since statute “leaves no room for discretion”). The Court should accordingly deny the Council’s request for a temporary restraining order and preliminary injunction.

II. THE COUNCIL WILL NOT SUFFER IMMEDIATE OR IRREPARABLE HARM.

Under Michigan law, “a particularized showing of irreparable harm is an indispensable requirement to obtain a preliminary injunction.” *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008) (internal quotation marks omitted). “[A]n injunction will not lie ... where the threatened injury is speculative or conjectural.” *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 651-652; 825 NW2d 616 (2012) (internal quotation marks omitted). “The mere apprehension of future injury or damage cannot be the basis for injunctive relief.” *Pontiac Fire Fighters*, 482 Mich at 9. Rather, the plaintiff “must demonstrate ‘a particularized showing of irreparable harm’ and ‘the injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief.’” *Hammel*, 297 Mich App at 651-652.

The Council has not made that showing here.² All the Council contends is that “the Mayor’s unlawful action will cause irreparable harm to the perception residents of the City of Warren have of their elected officials” and to the Council because it may have to “re-allocate funds appropriated for other uses” if the Council’s budget is determined to be operative. Prelim Inj Br at 16-17. The

² This deficiency highlights the extremely poor fit between the wrong complained of and the remedy sought. Aside from a de minimis expenditure of \$1,697.98 for community promotion in administrative unallocated expense, all of the expenditures with which the Council takes issue were made by the DDA, not by the Mayor. See Prelim Inj Br at 11. It is not clear how issuing an injunction against the Mayor would redress or prevent further spending by the DDA that the Council believes is unlawful.

Council's "mere apprehension of future injury" to the public's confidence in City government amounts to the type of conjecture that Michigan courts have repeatedly rejected in the context of injunctive relief. *Pontiac Fire Fighters*, 482 Mich at 9. But, in addition to being speculative, the claims of purported harm presuppose the Council's success on the budget controversy. If the Mayor is correct and his recommended budget is found to be operative, the only "unlawful action" in this situation will be the Council's attempt to circumvent the Charter's budgetary process and impose its own preferred budget.

Moreover, if the Mayor's budget is operative, the Council will have to correct its own unlawful allocation of appropriated funds. In any event, there is nothing "unlawful" about the Mayor overseeing the expenditure of funds in accordance with a budget promulgated in accordance with the Charter, and the Council will not suffer any harm from having that lawful budget implemented. The same is true where the Mayor oversaw the expenditure of funds in accordance with a budget he reasonably believed to have been promulgated in accordance with the Charter.

The budget dispute became ripe seven months ago, in July of 2021, and the Council has failed to demonstrate irreparable harm that will result from allowing the Court to adjudicate the central dispute over the budget process in the normal course of litigation, without any temporary injunctive relief. The Court should deny the request for a temporary restraining order and injunctive relief for that additional reason.

III. NEITHER THE BALANCE OF HARDSHIPS NOR THE PUBLIC INTEREST WEIGHS IN FAVOR OF ISSUING AN INJUNCTION.

In its Motion, the Council glosses over these two factors and resorts to colorful hyperbole, characterizing the Mayor as a "dictator with unilateral control," "rid[ing] roughshod over the City Council," and declaring that Mayor will not experience even "the slightest" harm from an injunction. Prelim Inj Br at 17-18. This sort of flamboyant rhetoric is not sufficient to carry the

Council's burden. Again, the Council's argument presupposes that its interpretation of the Charter is correct. It is not.

As the Mayor addresses extensively in Section I, *supra*, the Council lacked authority to create and enact its preferred budget for FY 2021-2022; the Charter strictly limits the Council's involvement in the budgetary process to reviewing, holding a hearing on, and either approving or rejecting—not amending—the Mayor's recommended budget. See generally Charter Sections 8.2, 8.3, 8.4. Both the Mayor and the public are being harmed by the Council's active resistance to implementing the FY 2021-2022 budget lawfully promulgated by the Mayor. The Council's intransigence on this point is interfering with the administration of important local development projects that will benefit the City of Warren, its residents, and the community at large. It also stands to muddle another budget cycle. Barring further spending for programs—as lawfully accounted for in the Mayor's recommended FY 2021-2022 budget and in the Controller's monthly reports to the Council—would only exacerbate those ongoing harms.

IV. THE COUNCIL FAILED TO PROPERLY AUTHORIZE OR TIMELY FILE ITS LAWSUIT.

A. The Council Did Not Authorize Suit, and Its Claims Are Consequently Not Ripe.

As yet another problem, the Council's case is not properly before the Court, because the public body which ostensibly seeks the relief requested in this suit never authorized the action in the manner called for by law. Furthermore, the attorney who purports to represent the Plaintiff was never engaged through the process prescribed by law. While these may be technical mistakes that are amenable to correction without dismissal, there can be no disputing that the matter is not properly before the Court at this time, and the prayer for relief cannot be granted until the errors are corrected.

Michigan's Open Meetings Act ("OMA") is found at MCL 15.261 *et seq.* Under law, the Council is a public body required to follow the OMA. MCL 15.262. In pertinent part, the OMA requires that "[a]ll decisions of a public body shall be made at a meeting open to the public," and with only limited exceptions, "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public." MCL 15.263 (1), (2).

However, the online archives of the Council's meetings reveal no instance in which the body either deliberated or decided to file this suit or to engage Jeffrey Schroder to do so. See <https://vimeo.com/tvwarren>. Plaintiff's Complaint was filed on March 3, 2022. Therefore, the closed session ostensibly held on March 8, could not have authorized it.³ As a consequence, neither the public nor the Court may be assured that the suit was lawfully authorized by a legal majority of the members of Council. While there is no need to invade the attorney-client privilege, it is not clear that the Council meant to engage Mr. Schroder to file this action.

Under the OMA, non-conforming and invalidated decisions of a public body can be cured through reenactment. See MCL 15.270 (5). Nevertheless, the Council's failure to do anything to comply with the specific provisions of the OMA, as pointed out above, require *ex post facto* correction, at a minimum.

B. The Council's Delay in Seeking Injunctive Relief Should Bar Its Claims.

In addition to being premature, the Council's request for injunctive relief also comes far too late. The budgetary process for FY 2021-2022 occurred in April and May 2021. See Compl ¶¶22-33; Prelim Inj Br at 7-8. Under the Council's own version of events, it was aware as early as July 27, 2021, that the Mayor was proceeding with his recommended budget as the City's operative

³ There were several violations of the OMA involved in Council's closed session and its failure to return to an open meeting after the private one. However, setting aside those additional violations, the chronology of events forecloses the possibility of lawful authorization.

budget, when the Council heard remarks from the City Controller. Prelim Inj Br at 9. The City Controller again brought this to the Council’s attention on August 10, 2021. Prelim Inj Br at 9-10. At least one Council member was present and participated in the DDA meeting on September 15, 2021, when the City Controller and DDA Treasurer expressed the same sentiment. Compl ¶¶37-38; Prelim Inj Br at 10. That Council member even directly questioned the DDA board as to “which line item the MIWARREN funding for \$310,000.00”—one of the expenditures with which the Council takes issue in this case—“will be coming out of in regards to the budget.” See Ex. H to Prelim Inj Mot, p 2, section 4; see also Prelim Inj Br at 10-11.

In other words, the Council has been on notice since at least July 27, 2021, that the Mayor considered his recommended budget to be the City’s operative budget for FY 2021-2022 and planned to act in accordance with that budget. Nevertheless, the Council waited until March 3, 2022—more than seven months later—to seek injunctive relief to stop the behavior it objects to. “If a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief on the ground that the plaintiff is chargeable with laches.” *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013), citing *Lothian v City of Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982). “Laches is an equitable tool used to provide a remedy for the inconvenience resulting from the plaintiff’s delay in asserting a legal right that was practicable to assert.” *Id.* at 115. The doctrine applies where an undue delay, in conjunction with the “prejudice occasioned by the delay,” makes enforcement of a claim inequitable. See *Lothian*, 414 Mich at 168.

In the intervening months since the Council learned of the Mayor’s interpretation, and as the Council notes in its brief, the DDA has already expended significant amounts of funds in accordance with the Mayor’s recommended budget. See Compl ¶¶37-40; Prelim Inj Br at 10-11.

As the Council further notes, unwinding those transactions would be very difficult at this late date. See Prelim Inj Br at 16-17. The Council offers no explanation for its decision to wait more than half a year, until the eve of the next fiscal year's budgetary process, to challenge the status of the Mayor's FY 2021-2022 budget. As such, the Council's request for injunctive relief is also barred by the doctrine of laches.

CONCLUSION

For all of the foregoing reasons, Defendant James R. Fouts, Mayor of the City of Warren, respectfully requests that this Court deny Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 
Lawrence T. García (P54890)
Erika L. Giroux (P81998)
150 West Jefferson Ave., Suite 2500
Detroit, Michigan 48226
(313) 963-6420
garcia@millercanfield.com
giroux@millercanfield.com
Attorneys for Defendant

Dated: March 17, 2022

EXHIBIT 1

MAY 14 VETO

RECEIVED AT:
2021 MAY 14 AM 11:13

Warren City Clerk



CITY OF WARREN
CITY CLERK

May 14, 2021

OFFICE OF THE MAYOR
ONE CITY SQUARE, SUITE 215
WARREN, MI 48093-8726
(586) 574-4520
www.cityofwarren.org

Ms. Sonja Buffa
City Clerk
City of Warren

RE: Veto of Council Action at Regular Meeting on Tuesday, May 11, 2021
Agenda Item 14(a): CORRESPONDENCE FROM THE MAYOR:
CONSIDERATION AND ADOPTION OF A RESOLUTION adopting Fiscal Year
2021/2022 Budget (Second Reading).

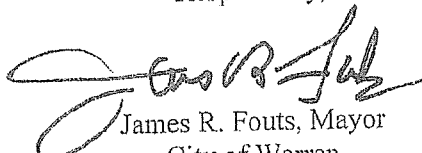
Dear Ms. Buffa:

Pursuant to Section 6.8 of the City Charter (the "Charter") of the City of Warren, County of Macomb, State of Michigan (the "City"), I hereby veto the City Council's rejection of the Mayor's proposed budget for Fiscal Year 2021/2022, taken under Agenda Item 14(a) at the regular meeting of the City Council on Tuesday, May 11, 2021.

As you know, Section 8.2 of the Charter requires the Mayor to submit a proposed budget and Section 8.5 of the Charter provides that the City Council shall, by resolution, adopt a budget for the ensuing fiscal year. The City Charter does not grant the City Council the authority to propose and adopt its own budget – it may only act upon the budget proposed by the Mayor. Any action taken that does not adopt the budget as presented must therefore be deemed to be a rejection. To the extent the Council asserts that it was adopting its own budget, it is an unlawful *ultra vires* act for which it has no legal authority.

Consequently, the operation of the Council resolution rejecting the Mayor's budget is suspended in accordance with Section 6.8 of the Warren City Charter.

Respectfully,


James R. Fouts, Mayor
City of Warren

Cc: Mindy Moore, Council Secretary
Richard Fox, Controller

EXHIBIT 2
MAY 14 MODIFIED
BUDGET



CITY CONTROLLER'S OFFICE

ONE CITY SQUARE, SUITE 425
WARREN, MI 48093-5289
(586) 574-4600
FAX (586) 574-4614
www.cityofwarren.org

May 14, 2021

Honorable Mayor and
Members of the Warren City Council

Dear Mayor and Council Members,

The Mayor's Recommended Budget has been modified after consideration of the City Council's proposed changes and is now the final Fiscal 2022 Annual Budget for the City of Warren. The final adoption of the Budget by the City Council has followed the legally required public hearings prescribed by State law and City Charter. The Appropriations Resolution is the City's legislative vehicle for appropriations and sets the legal expenditures by a line item budget and may not be changed, except with City Council approval, as provided by the State Budget Act.

With the adoption of this budget, the property tax levy for all services will be 27.2287 mills (\$27.2287 of taxes for every \$1,000 of taxable valuation). City property taxes will average \$1,200.10 per residential property taxpayer.

2022 General Fund

The General Fund revenues total \$128,998,519 and expenditures total \$128,998,519. The Budget reflects City Council's decisions made and agreed upon since the Mayor presented the Recommended Budget on April 12, 2021. The City Council reviewed the Budget during two budget sessions and the Charter required a public hearing on the Budget.

Changes to the Mayor's Recommended Budget

General Fund:

In summary, the City Council increased the Mayor's recommended \$128,437,512 General Fund Budget to \$128,998,519 resulting in a total increase of \$561,007.

Some of the significant changes agreed upon by the Mayor and subsequent financial impacts include:

General Fund:

• Increase Deputy Council Secretary wage including associated benefits	\$ 15,319
• Increase Police Department staffing – add 5 Police Officers with benefits	535,688
• Increase Animal Control's Animal Collections	<u>10,000</u>
Total General Fund	\$ 561,007

Special Revenue Funds:

• Increase Recreation's Other Services and Charges - Horticulture	\$ <u>55,000</u>
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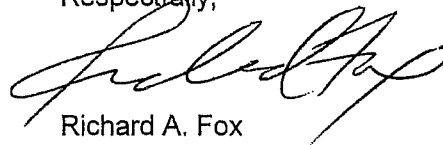
Enterprise Funds:

• Water & Sewer System - Reduce Water & Sewer Charge	\$ 2,662,400
• Water & Sewer System - Increase Grant Revenue	<u>2,632,500</u>
Total Enterprise Funds (net) Retained Earnings	\$ (29,900)

The Fiscal 2022 Budget has been modified to reflect all City Council agreed upon amendments and represents the City's plan for providing services to Warren residents.

I wish to recognize the excellent work of all departments who participated in the budget process. I would like to express my sincere appreciation to all members of the Controller's Office who assisted and contributed in the preparation of this budget. I would also like to thank your office and members of the Warren City Council for your interest and support in planning and conducting the financial operations of the City in a responsible and progressive manner.

Respectfully,



Richard A. Fox
City Controller

GENERAL APPROPRIATIONS RESOLUTION
ADOPTING FISCAL YEAR 2021/2022 BUDGET AND
TAX RATE FOR FISCAL YEAR 2021/2022

A _____ Meeting of the City Council of the City of Warren, County of Macomb, Michigan held _____, 2021, at 7:00 o'clock p.m. Eastern Daylight Savings Time via Zoom meeting.

PRESENT: Council Members _____

ABSENT: Council Members _____

The following resolution was offered by Councilperson _____ and supported by Councilperson _____.

The proposed budget for fiscal year of July 1, 2021 to June 30, 2022 has been submitted to this Council, as summarized in Table I – Estimated Revenue Budget and Table II – Budget Appropriations, copies of which are attached and incorporated by reference into this General Appropriations Resolution.

A public hearing on the proposed budget was held on April 27, 2021, and the City Council has completed its review of the Mayor's proposed budget for the fiscal year 2021/2022.

The sums to be raised by taxation for the general purpose of the City and for the payment of principal and interest on its indebtedness are as follows:

<u>Funds:</u>	<u>Tax Rate</u>
<u>General Fund</u>	
Charter Millage	8.4600
Special Levies:	
Police and Fire Pension	4.9848
Police & Fire Operating	4.7492
Emergency Medical Service	.2815
Police	.9439
Fire	.9439
Total General Fund Operating Levy	<u>20.3633</u>
<u>Special Revenue</u>	
Library (Charter)	.4697
Library (Voted)	.6014
Sanitation	2.8196
Parks & Recreation	.9396
2011 Local Street Repair & Maintenance	<u>2.0351</u>
Total Special Revenue Fund Levy	<u>6.8654</u>
Total Levy	<u>27.2287</u>

THEREFORE IT IS RESOLVED, that the City Council establishes the Estimated Revenue Budget for the various funds as summarized in Table I, and appropriates funds on a budgetary center basis to the various City departments, divisions, boards, commissions and other activities as summarized in Table II.

IT IS FURTHER RESOLVED, that the City officials responsible for the departmental, division, board, commission or activity expenditures authorized in the Budget Appropriations may expend funds up to, but may not exceed, the total appropriation authorized for each department, division, board, commission or activity on a line item budget.

IT IS FURTHER RESOLVED, that for monthly financial reports to the City Council, the budget line items shown in the departmental budget document should be used for comparative reporting purposes.

IT IS FURTHER RESOLVED, that the City tax rate for fiscal year July 1, 2021 to June 30, 2022 is adopted as follows:

<u>Funds:</u>	<u>Tax Rate</u>
<u>General Fund</u>	
Charter Millage	8.4600
Special Levies:	
Police and Fire Pension	4.9848
Police & Fire Operating	4.7492
Emergency Medical Service	.2815
Police	.9439
Fire	.9439
Total General Fund Operating Levy	<u>20.3633</u>
<u>Special Revenue</u>	
Library (Charter)	.4697
Library (Voted)	.6014
Sanitation	2.8196
Parks & Recreation	.9396
2011 Local Street Repair & Maintenance	<u>2.0351</u>
Total Special Revenue Fund Levy	<u>6.8654</u>
Total Levy	<u>27.2287</u>

IT IS FURTHER RESOLVED, that if any portion, section, subsection, or other part of this resolution, or its application to any person or circumstance, is invalidated or declared unlawful for any reason, then such portion, section, subsection or other part shall be separable, and the remainder of the resolution shall remain in full force and effect.

AYES: Council Members _____

NAYS: Council Members _____

RESOLUTION DECLARED ADOPTED this ____ day of _____, 2021.

MINDY MOORE
Secretary of the Council

CERTIFICATION

STATE OF MICHIGAN)

) SS

COUNTY OF MACOMB)

I, SONJA BUFFA, duly elected City Clerk for the City of Warren, Macomb County, Michigan, hereby
certify that the foregoing is a true and correct copy of the resolution adopted by the Council at its meeting held on

SONJA BUFFA
City Clerk

TABLE I
ESTIMATED REVENUE BUDGET

	Mayor's Recommended Budget	City Council Amendments Add/(Delete)	City Council Adopted Budget
<u>Operating Funds:</u>			
<u>General Fund:</u>			
Property Taxes	\$ 75,841,467	\$ -	\$ 75,841,467
Intergovernmental Revenues	20,636,552	-	20,636,552
Licenses and Permits	4,405,000	-	4,405,000
Fines and Forfeitures	4,548,982	-	4,548,982
Interest on Investments	400,000	-	400,000
Charges for Services	5,622,124	-	5,622,124
Miscellaneous Income	8,961,581	-	8,961,581
Capital Equipment Reserve	4,835,305	-	4,835,305
Fund Balance Appropriated	3,186,501	561,007	3,747,508
Total General Fund	\$ 128,437,512	\$ 561,007	\$ 128,998,519
<u>Michigan Transportation Funds:</u>			
<u>Major Streets:</u>			
State Shared Revenues	\$ 12,091,915	\$ -	\$ 12,091,915
Interest on Investments	25,000	-	25,000
Miscellaneous Reimbursements	91,955	-	91,955
Fund Balance Appropriated	796,149	-	796,149
Total Major Streets	\$ 13,005,019	\$ -	\$ 13,005,019
<u>Local Streets:</u>			
State Shared Revenues	\$ 4,507,766	\$ -	\$ 4,507,766
Interest on Investments	15,000	-	15,000
Transfer from General Fund	88,154	-	88,154
Transfer from Major Fund	1,000,000	-	1,000,000
Fund Balance Appropriated	690,010	-	690,010
Total Local Streets	\$ 6,300,930	\$ -	\$ 6,300,930
<u>Library Special Revenue Fund:</u>			
Property Taxes	\$ 3,913,849	\$ -	\$ 3,913,849
Intergovernmental Revenues	474,000	-	474,000
Interest on Investments	40,000	-	40,000
Charges for Services	86,500	-	86,500
Fund Balance Appropriated	908,741	-	908,741
Total Library Special Revenue Fund	\$ 5,423,090	\$ -	\$ 5,423,090
<u>Recreation Special Revenue Fund:</u>			
Property Taxes	\$ 3,433,343	\$ -	\$ 3,433,343
Intergovernmental Revenues	422,285	-	422,285
Interest on Investments	1,200	-	1,200
Charges for Services	1,607,350	-	1,607,350
Miscellaneous Income	55,050	-	55,050
Fund Balance Appropriated	959,104	55,000	1,014,104
Total Recreation Special Revenue Fund	\$ 6,478,332	\$ 55,000	\$ 6,533,332
<u>Communications Special Revenue Fund:</u>			
Franchise Fee Revenues	\$ 2,100,000	\$ -	\$ 2,100,000
Interest on Investments	30,000	-	30,000
Miscellaneous Income	200	-	200
Fund Balance Appropriated	458,814	-	458,814
Total Communications Special Revenue Fund	\$ 2,589,014	\$ -	\$ 2,589,014

TABLE I
ESTIMATED REVENUE BUDGET

	Mayor's Recommended Budget	City Council Amendments Add/(Delete)	City Council Adopted Budget
<u>Operating Funds:</u>			
<u>Sanitation Special Revenue Fund:</u>			
Property Taxes	\$ 10,302,953	\$ -	\$ 10,302,953
Intergovernmental Revenues	450,000	-	450,000
Interest on Investments	20,000	-	20,000
Miscellaneous Income	164,306	-	164,306
Transfer Station Royalties	150,000	-	150,000
Fund Balance Appropriated	278,392	-	278,392
Total Sanitation Special Revenue Fund	<u>\$ 11,365,651</u>	<u>\$ -</u>	<u>\$ 11,365,651</u>
<u>Rental Ordinance Fund:</u>			
Inspection Fees	\$ 990,000	\$ -	\$ 990,000
Interest on Investments	10,000	-	10,000
Fund Balance Appropriated	1,282	-	1,282
Total Rental Ordinance Fund	<u>\$ 1,001,282</u>	<u>\$ -</u>	<u>\$ 1,001,282</u>
<u>Vice Crime Confiscation Fund:</u>			
Vice Crime Confiscation's	\$ 20,000	\$ -	\$ 20,000
Interest on Investments	1,500	-	1,500
Fund Balance Appropriated	38,500	-	38,500
Total Vice Crime Confiscation Fund	<u>\$ 60,000</u>	<u>\$ -</u>	<u>\$ 60,000</u>
<u>Drug Forfeiture Fund:</u>			
Drug Forfeitures	\$ 500,000	\$ -	\$ 500,000
Interest on Investments	15,000	-	15,000
Fund Balance Appropriated	573,266	-	573,266
Total Drug Forfeiture Fund	<u>\$ 1,088,266</u>	<u>\$ -</u>	<u>\$ 1,088,266</u>
<u>Act 302 Police Training Fund:</u>			
State Grant	\$ 24,000	\$ -	\$ 24,000
Interest on Investments	100	-	100
Total Act 302 Police Training Fund	<u>\$ 24,100</u>	<u>\$ -</u>	<u>\$ 24,100</u>
<u>Downtown Development Authority Fund:</u>			
Property Taxes	\$ 6,364,000	\$ -	\$ 6,364,000
Intergovernmental Revenues	3,800,000	-	3,800,000
Interest on Investments	75,000	-	75,000
Miscellaneous Income	50,000	-	50,000
Fund Balance Appropriated	3,649,540	-	3,649,540
Total Downtown Development Authority Fund	<u>\$ 13,938,540</u>	<u>\$ -</u>	<u>\$ 13,938,540</u>
<u>2011 Local Street Repair & Replacement Fund:</u>			
Property Taxes	\$ 7,436,350	\$ -	\$ 7,436,350
Intergovernmental Revenues	200,000	-	200,000
Interest on Investments	25,000	-	25,000
Fund Balance Appropriated	1,253,962	-	1,253,962
Total 2011 Local Street Repair & Replacement	<u>\$ 8,915,312</u>	<u>\$ -</u>	<u>\$ 8,915,312</u>
<u>Indigent Defense Fund:</u>			
Fund Balance Appropriated	\$ -	\$ -	\$ -
Total Indigent Defense Fund	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

TABLE I
ESTIMATED REVENUE BUDGET

	Mayor's Recommended Budget	City Council Amendments Add/(Delete)	City Council Adopted Budget
<u>Operating Funds:</u>			
<u>Enterprise Funds:</u>			
Stilwell Manor:			
Rental Revenues	\$ 554,502	\$ -	\$ 554,502
Interest on Investments	2,000	-	2,000
Miscellaneous Income	419,914	-	419,914
Appropriation of Retained Earnings	201,077	-	201,077
Total Stilwell Manor	<u>\$ 1,177,493</u>	<u>\$ -</u>	<u>\$ 1,177,493</u>
Coach Manor:			
Rental & Maintenance Revenues	\$ 1,626,925	\$ -	\$ 1,626,925
Interest on Investments	3,000	-	3,000
Miscellaneous Income	17,500	-	17,500
Appropriation of Retained Earnings	24,919	-	24,919
Total Coach Manor	<u>\$ 1,672,344</u>	<u>\$ -</u>	<u>\$ 1,672,344</u>
Water and Sewer System:			
Water and Sewer Charges	\$ 58,025,500	\$ (2,662,400)	\$ 55,363,100
Pre-Treatment/Cross Connection Charges	1,262,467	-	1,262,467
Interest on Investments	115,070	-	115,070
Miscellaneous Income	1,670,604	2,632,500	4,303,104
Appropriation of Retained Earnings-Restricted	21,187,681	29,900	21,217,581
Total Water and Sewer System	<u>\$ 82,261,322</u>	<u>\$ -</u>	<u>\$ 82,261,322</u>
<u>Capital Project Fund:</u>			
37th District Court Renovation Fund:			
Court Building Renovation Fee	\$ 500,000	\$ -	\$ 500,000
Interest on Investments	15,000	-	15,000
Total 37th District Court Renovation Fund	<u>\$ 515,000</u>	<u>\$ -</u>	<u>\$ 515,000</u>
Civic Center South Construction Fund:			
Fund Balance Appropriated	-	-	-
Total Civic Center South Construction Fund	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
<u>Debt Funds:</u>			
Chapter 20 & 21 Drain Debt Fund:			
Interest on Investments	\$ 50	\$ -	\$ 50
Total Chapter 20 & 21 Drain Debt Fund	<u>\$ 50</u>	<u>\$ -</u>	<u>\$ 50</u>
Michigan Transportation Debt:			
Transfer from Major Roads	\$ 1,108,118	\$ -	\$ 1,108,118
Total Michigan Transportation Debt	<u>\$ 1,108,118</u>	<u>\$ -</u>	<u>\$ 1,108,118</u>
Capital Improvement Debt:			
Transfer from Major Roads	\$ 753,262	\$ -	\$ 753,262
Total Capital Improvement Debt	<u>\$ 753,262</u>	<u>\$ -</u>	<u>\$ 753,262</u>
Downtown Development Authority Debt:			
Transfer from DDA Operating Fund	\$ 6,478,057	\$ -	\$ 6,478,057
Total Downtown Development Authority Debt	<u>\$ 6,478,057</u>	<u>\$ -</u>	<u>\$ 6,478,057</u>
Total All Funds	<u>\$ 292,592,694</u>	<u>\$ 616,007</u>	<u>\$ 293,208,701</u>

TABLE II
BUDGET APPROPRIATIONS

	Mayor's Recommended Budget	City Council Amendments Add/(Delete)	City Council Adopted Budget
<u>Operating Funds:</u>			
<u>General Fund:</u>			
Council	\$ 884,944	\$ 15,319	\$ 900,263
District Court	7,655,515	-	7,655,515
Mayor	759,198	-	759,198
Clerk	1,937,880	-	1,937,880
Treasurer	1,482,145	-	1,482,145
Controller	1,931,177	-	1,931,177
Information Systems	885,477	-	885,477
Legal	1,890,633	-	1,890,633
Assessing	2,240,530	-	2,240,530
Human Resources	1,724,391	-	1,724,391
Property Maintenance Inspection	2,555,978	-	2,555,978
Community & Economic Development	387,382	-	387,382
Unallocated Expense	5,428,495	-	5,428,495
Commissions (12)	230,341	-	230,341
Total General Government	<u>\$ 29,994,086</u>	<u>\$ 15,319</u>	<u>\$ 30,009,405</u>
Fire Department	\$ 28,174,807	\$ -	\$ 28,174,807
Police Department	48,100,381	535,688	48,636,069
Animal Control	545,201	10,000	555,201
Civil Defense	246,593	-	246,593
Total Public Safety	<u>\$ 77,066,982</u>	<u>\$ 545,688</u>	<u>\$ 77,612,670</u>
Director of Public Services	\$ 532,319	\$ -	\$ 532,319
Engineering and Inspections	2,392,725	-	2,392,725
Building and Inspections	4,086,816	-	4,086,816
DPW Garage	8,000,140	-	8,000,140
Building Maintenance	2,636,682	-	2,636,682
Street Lighting	2,875,000	-	2,875,000
Total Public Services	<u>\$ 20,523,682</u>	<u>\$ -</u>	<u>\$ 20,523,682</u>
Planning	<u>\$ 852,762</u>	<u>\$ -</u>	<u>\$ 852,762</u>
Total General Fund	<u>\$ 128,437,512</u>	<u>\$ 561,007</u>	<u>\$ 128,998,519</u>
<u>Special Revenue Funds:</u>			
<u>Michigan Transportation Funds:</u>			
<u>Major Streets:</u>			
Operating Costs	\$ 5,043,639	\$ -	\$ 5,043,639
Debt Service Costs	1,861,380	-	1,861,380
Transfer to Local Street Fund	1,000,000	-	1,000,000
Construction Projects	5,100,000	-	5,100,000
Total Major Streets	<u>\$ 13,005,019</u>	<u>\$ -</u>	<u>\$ 13,005,019</u>
<u>Michigan Transportation Funds:</u>			
<u>Local Streets:</u>			
Operating Costs	\$ 620,000	\$ -	\$ 620,000
Construction Projects	5,680,930	-	5,680,930
Total Local Streets	<u>\$ 6,300,930</u>	<u>\$ -</u>	<u>\$ 6,300,930</u>

TABLE II
BUDGET APPROPRIATIONS

	Mayor's Recommended Budget	City Council Amendments Add/(Delete)	City Council Adopted Budget
<u>Operating Funds:</u>			
<u>Library Special Revenue Fund:</u>			
Personnel Services	\$ 1,742,338	\$ -	\$ 1,742,338
Employee Benefits	1,515,193	-	1,515,193
Supplies	82,000	-	82,000
Other Services and Charges	1,430,291	-	1,430,291
Capital Outlay	653,268	-	653,268
Total Library Special Revenue Fund	\$ 5,423,090	\$ -	\$ 5,423,090
<u>Recreation Special Revenue Fund:</u>			
Personnel Services	\$ 1,824,051	\$ -	\$ 1,824,051
Employee Benefits	1,213,348	-	1,213,348
Supplies	181,700	-	181,700
Other Services and Charges	2,479,233	55,000	2,534,233
Capital Outlay	780,000	-	780,000
Total Recreation Special Revenue Fund	\$ 6,478,332	\$ 55,000	\$ 6,533,332
<u>Communications Special Revenue Fund:</u>			
Personnel Services	\$ 690,949	\$ -	\$ 690,949
Employee Benefits	474,927	-	474,927
Supplies	25,500	-	25,500
Other Services and Charges	1,322,638	-	1,322,638
Capital Outlay	75,000	-	75,000
Total Communications Special Revenue Fund	\$ 2,589,014	\$ -	\$ 2,589,014
<u>Sanitation Special Revenue Fund:</u>			
Personnel Services	\$ 2,756,954	\$ -	\$ 2,756,954
Employee Benefits	2,868,961	-	2,868,961
Supplies	485,000	-	485,000
Other Services and Charges	4,881,336	-	4,881,336
Capital Outlay	373,400	-	373,400
Total Sanitation Special Revenue Fund	\$ 11,365,651	\$ -	\$ 11,365,651
<u>Rental Ordinance Fund:</u>			
Personnel Services	\$ 566,829	\$ -	\$ 566,829
Employee Benefits	304,078	-	304,078
Supplies	11,500	-	11,500
Other Services and Charges	109,875	-	109,875
Capital Outlay	9,000	-	9,000
Total Rental Ordinance Fund	\$ 1,001,282	\$ -	\$ 1,001,282
<u>Vice Crime Confiscation Fund:</u>			
Other Services and Charges	\$ 60,000	\$ -	\$ 60,000
Total Vice Crime Confiscation Fund	\$ 60,000	\$ -	\$ 60,000
<u>Drug Forfeiture Fund:</u>			
Other Services and Charges	\$ 1,088,266	\$ -	\$ 1,088,266
Total Drug Forfeiture Fund	\$ 1,088,266	\$ -	\$ 1,088,266
<u>Act 302 Police Training Fund:</u>			
Other Services and Charges	\$ 24,100	\$ -	\$ 24,100
Total Act 302 Police Training Fund	\$ 24,100	\$ -	\$ 24,100

TABLE II
BUDGET APPROPRIATIONS

	Mayor's Recommended Budget	City Council Amendments Add/(Delete)	City Council Adopted Budget
<u>Operating Funds:</u>			
<u>Downtown Development Authority Fund:</u>			
Personnel Services	\$ 146,230	\$ -	\$ 146,230
Employee Benefits	107,303	-	107,303
Supplies	3,000	-	3,000
Other Services and Charges	7,617,007	-	7,617,007
Capital Outlay	6,065,000	-	6,065,000
Total Downtown Development Authority Fund	<u>\$ 13,938,540</u>	<u>\$ -</u>	<u>\$ 13,938,540</u>
<u>2011 Local Street Repair & Replacement Fund:</u>			
Capital Improvements	\$ 8,635,112	\$ -	\$ 8,635,112
Other Services and Charges	280,200	-	280,200
Total 2011 Local Street Repair & Replacement	<u>\$ 8,915,312</u>	<u>\$ -</u>	<u>\$ 8,915,312</u>
<u>Indigent Defense Fund:</u>			
Personnel Services	\$ -	\$ -	\$ -
Employee Benefits	-	-	-
Supplies	-	-	-
Other Services and Charges	-	-	-
Capital Outlay	-	-	-
Total Indigent Defense Fund	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
<u>Enterprise Funds:</u>			
<u>Stilwell Manor:</u>			
Personnel Services	\$ 325,277	\$ -	\$ 325,277
Employee Benefits	207,941	-	207,941
Supplies	25,700	-	25,700
Other Services and Charges	424,275	-	424,275
Capital Outlay	194,300	-	194,300
Total Stilwell Manor	<u>\$ 1,177,493</u>	<u>\$ -</u>	<u>\$ 1,177,493</u>
<u>Coach Manor:</u>			
Personnel Services	\$ 60,334	\$ -	\$ 60,334
Employee Benefits	29,624	-	29,624
Supplies	41,000	-	41,000
Other Services and Charges	1,338,586	-	1,338,586
Capital Outlay	202,800	-	202,800
Total Coach Manor	<u>\$ 1,672,344</u>	<u>\$ -</u>	<u>\$ 1,672,344</u>
<u>Water and Sewer System:</u>			
Personnel Services	\$ 8,036,803	\$ -	\$ 8,036,803
Employee Benefits	8,690,744	-	8,690,744
Supplies	720,000	-	720,000
Water Purchases	11,206,000	-	11,206,000
Other Services and Charges	23,012,875	-	23,012,875
Capital Outlay	30,594,900	-	30,594,900
Total Water and Sewer System	<u>\$ 82,261,322</u>	<u>\$ -</u>	<u>\$ 82,261,322</u>

TABLE II
BUDGET APPROPRIATIONS

	Mayor's Recommended Budget	City Council Amendments Add/(Delete)	City Council Adopted Budget
<u>Operating Funds:</u>			
<u>Capital Project Fund:</u>			
37th District Court Renovation Fund:			
Capital Improvements	\$ 500,000	\$ -	\$ 500,000
Total 37th District Court Renovation Fund	\$ 500,000	\$ -	\$ 500,000
Civic Center South Construction Fund:			
Capital Improvements	\$ -	\$ -	\$ -
Total Civic Center South Construction Fund	\$ -	\$ -	\$ -
<u>Debt Funds:</u>			
Michigan Transportation Debt	\$ 1,108,118	\$ -	\$ 1,108,118
Capital Improvement Debt	753,262	-	753,262
Downtown Development Authority Debt	6,478,057	-	6,478,057
Total Debt Funds	\$ 8,339,437	\$ -	\$ 8,339,437
Total All Funds	\$ 292,577,644	\$ 616,007	\$ 293,193,651

EXHIBIT 3
MAY 25 INTEROFFICE
COMMUNICATION

CITY OF WARREN
Office of the Council Secretary

Item 14a

INTER-OFFICE COMMUNICATION

DATE: May 25, 2021

TO: James R. Fouts, Mayor

SUBJECT: (Mayor veto 5.14.21) CONSIDERATION AND ADOPTION OF A
RESOLUTION adopting Fiscal Year 2021/2022 Budget. (Second Reading). 5 votes needed to
override.

At a video conference meeting of the City Council held Tuesday, May 25, 2021, Council made
the formal motion to override the Mayor's Veto of the City Council adopted budget for
2021/2022 as amended and adopted May 11, 2021. The vote passed unanimously 7-0.

Trusting this information to be of value.

A handwritten signature in cursive script, appearing to read "Mindy Moore".

Mindy Moore
Council Secretary

cc: Attorney
Clerk
Controller

EXHIBIT 4
MINUTES OF THE
COMMISSION
MEETING, 1956

MINUTES OF THE MEETING HELD
Friday, February 3, 1956

The tenth meeting of the Warren Charter Township City Commission convened in the Conference Room of the Warren Township Police Station, Macomb County, Michigan, at 8:15 p.m., the Reverend E. J. Warnke, Chairman, presiding.

Members of the Commission present:
Reverend E. J. Warnke, Chairman
Arthur J. Miller, Vice-Chairman
Harold Stilwell, Secretary-Treasurer
William A. Shaw
Earl J. Tallman
Frank E. Runey,
Joseph Stanley.

Also present: Mr. George Sidwell, consultant
Hildegard M. Lowe, Clerk

At 8:15 p.m., a quorum being present the Chairman called the meeting to order. Mr. Tallman made a motion to receive the minutes of January 20, 1956, seconded by Mr. Shaw. Mr. Stilwell moved to receive these minutes as accepted, seconded by Mr. Stanley. A vote was taken. All present were in favor. Contrary, none. The motion was carried. Mr. Miller was not present for this motion.

Mr. Shaw moved to accept the minutes of January 26, 1956, Mr. Tallman seconded this motion. There being no questions a vote was taken. All present were in favor. Contrary, none. The motion was carried. Mr. Miller was not present.

The Chairman asked if there was any old business to discuss.

Mr. Sidwell made a report to the meeting concerning the question of a census being taken. He stated there were two ways of doing it. 1. Was to have it taken at a time before

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the vote to become a city is taken, or 2, is the first question that is dealt with by the city council. Mr. Sidwell recommended that the commission not wait, but should mimeograph petitions at this time and have them signed. Acting upon recommendations, the Secretary of State will then appoint enumerators to take the census. He further stated that it required 1 percent of the populace according to the 1950 census, who were qualified electors to sign the petitions, but that it must not be less than one hundred. He further felt that it would be a great advantage to have the census taken at this time in order to avoid rushing at the last moment.

Mr. Shaw asked whether the Secretary of State would recognize a census taken at this time, and Mr. Sidwell stated that it was a question he would find out about and report to the commission at the next meeting.

Mr. Sidwell then spoke about the matter of re-registration, informing the commission that a bill had been drafted by him and was now in Senator Nicholson's office.

Mr. Runey stated that Senator Nicholson had called him and told him that he was rather ill and would not be attending the current meeting.

The Chairman asked whether there was any more old business. Mr. Runey asked whether the 7 questions raised by the Warren Village Commission would be discussed at this meeting.

Mr. Sidwell thought it would be better to discuss the various questions as the pertinent chapter was discussed.

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Mr. Stilwell suggested that another meeting be had at some future date with the Warren Village Commissioners and Mr. Sidwell thought that it was a good idea, especially from a public relations point of view.

Mr. Runey informed Mr. Sidwell that the commission had a public relations committee and asked whether he had any suggestions to make. Mr. Sidwell informed him that perhaps a little later on it might be a good idea to hold public explanatory meetings on the work of the commission and progress of the charter. It was his experience with public meetings that people were down on what they were not up on. They had a tendency to be critical.

The Chairmans stated that he would not recommend any public meetings until the commission had been through the first charter.

Mr. Sidwell thought that it should be at least until the second draft of the charter, and before it was crystallized.

Mr. Miller asked whether the commission would discuss the type of government. This matter was discussed. It was decided in view of the importance of the question, and the absence of two members of the commission that the subject be tabled until all of the commissioners were present.

Mr. Sidwell suggested that the 3 members of the Township Board should explain to the rest of the commission the budget procedure under the present Charter Township law.

Mr. Sidwell recommended the adoption of this procedure in the charter.

Mr. Sidwell recommended that advantage be taken of the maximum millage rate allowed by law. In answer to a question by Mr. Miller, Mr. Sidwell stated that it was 20 mills, or 2 percent of the valuation of the property, which amounted to the same thing. Some discussion followed on this subject.

Mr. Runey asked Mr. Sidwell about bonding, and what difference there was under a Township and under a City, and Mr. Sidwell answered that there was not too much difference. That bonds for sewage and water systems could be spread over 40 years, and general obligation bonds over a 30 year period. Mr. Sidwell did not think it was a good policy to extend bonds to the time limit, but preferred a 20 year limit on general obligation bonds. A discussion followed on this issue, joined by Mr. Runey, Mr. Tallman and Mr. Miller. Mr. Sidwell further pointed out that it required the approval of 3/5ths of the electors before any bonds could be raised. Under act number 94 of 1933, the normal rate Revenue Bond simply requires a vote of the council. That under these circumstances publication shall be made at least 30 days before the adoption of any resolution. That if within that period a petition is signed by 10 percent of the electors, the question of the issuance of the bond must be approved by 3/5ths of the electors of the city. Mr. Sidwell spoke about the improvements that must be made and recommended the separation of sanitary and storm systems.

Further discussion followed on the issuance of bonds, and Mr. Sidwell commended the Township upon their sewer program. Mr. Sidwell then dwelt upon the various types of bonds, and explained special assessment bonds and bonds issued during times of stress such as caused by floods or holocaust caused by fire, which are emergency bonds.

Mr. Stilwell asked what would happen in a case where 90 percent of a bond required the council approval and 10 percent required the vote of the electors. He was informed by Mr. Sidwell that a charter could be worded so as to take care of such an eventuality. Mr. Stilwell asked whether this was wise, and Mr. Sidwell said he thought that it was.

Mr. Miller raised the question of street paving and of the difficulty of obtaining the approval of sufficient people in order to take care of the matter. A discussion followed on this subject. Mr. Sidwell stated that it was possible to have a charter provision wherein was stated that in those cases that the Welfare and Health of the community was at stake, the council could act. The council could also establish a set rate per foot for paving and for sidewalks. A discussion was then had on sidewalks, with Mr. Shaw, Mr. Miller and Mr. Sidwell voicing opinions. Mr. Shaw raised an important point regarding a person who owned a corner lot. It was unfair that the person had to pay twice for any kind of paving. This matter was discussed, and Mr. Runey joined the general discussion. The question was raised about the people that just could not afford to pay any special assessments such as paving costs. Mr. Sidwell suggested that they give a Trust Deed to the

City of their property. It would act as a lien and payable at any time or when the property was sold. If the property was already mortgaged the City would have a second mortgage. Assessing of property was then discussed until 9:20 p.m., when a recess was called by the Chairman.

The meeting resumed at 9:35 p.m., when it was called to order by the Chairman.

Mr. Sidwell recommended that the Fiscal year begin on July 1 and that the City taxes would be payable at that time. So that the city taxes were paid in the summer time and the school and county taxes in the winter.

Mr. Sidwell then made recommendations regarding the budgetary procedure. He said that the department heads should submit proposed expenditure by the month of February. That the finance officer or controller would then compile a proposed budget from the various items submitted. This would go to either the strong-mayor or city manager for recommendations, approval or pertinent remarks, it would then go to the council for final approval. That prior to the final approval of a budget it is usual to have a public hearing, and that notice be given to the public at least 7 days beforehand. And that a copy of the budget be in the City Clerk's office.

The Chairman asked about publishing the proposed budget in the newspapers, and Mr. Sidwell thought that this would be very expensive, and it would be too detailed to mean much. And further would not be understood by too many people.

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Mr. Tallman asked how long it took to prepare the budget. Mr. Sidwell stated that if the department heads put in their proposals by February it should be ready about the middle of May. And that it should go to the council not later than April. A discussion followed on this subject. The approval of the budget by the council; the veto powers of the mayor and what would happen if a budget could not be agreed upon. Mr. Sidwell stated that if by a certain period the council and mayor could not agree upon the budget, in order to avoid the city employees going without their pay, that the mayor's proposed budget, if he were a strong-mayor, would be adopted. He pointed that a city-manager does not have a veto power.

Mr. Miller stated that he had some views on what the tax limitation in the charter might be, and felt that the township accountant, Mr. Steinhauser, should be asked to attempt to project into the future needs of the community, taking the population into account, in order that they might be able to arrive at some millage rate. Mr. Miller then quoted some figures taking into account rise in population and increased taxation revenue. He pointed out that at present about 70 percent of the taxation was being met by industry, and that in the future he could not foresee too much more expansion in this direction. However, with growth of population would come a need for increased services, which would have to be met by the individual. That he would therefore have to bear a larger share of the costs for such services. That the whole situation had to be looked

at 10 or 20 years from now.

Mr. Sidwell suggested that the millage rate could be increased on a sliding scale over a period of time so as to take into account rise in population and increased services. A discussion was held on this matter of increased millage rate. In conclusion Mr. Miller said he would ask Mr. Steinhauser to give them some figures on the future needs of the community so that they arrive at some millage rate.

The next meeting of the commission was discussed. It was decided to meet on Friday, February 10, 1956 at 8:00 p.m.

The Chairman adjourned the meeting at 10:36 p.m.

Reverend E. J. Warnke, Chairman

Harold Stilwell, Secretary Treasurer

Hildegard M. Lowe, Clerk

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2022, I electronically filed the foregoing document with the Clerk of the Court using the electronic filing system, which will send notification of such filing to all counsel of record.

By: /s/ Lawrence T. García
Lawrence T. García (P54890)