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CITY COUNCIL AGENDA ITEM

Date: July 8, 2019

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
Julie Quinlan Dufrane, Assistant City Attorney
Nicole F. MacMillan, Assistant City Attorney

Subject: 2nd Quarter 2019 Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the SECOND quarter of 2019 are in bold.**

A. ANATOMY OF THE CASE

Once a lawsuit has been filed against the City or City employees, the City Attorney's office prepares a memo regarding the allegations in the complaint. At that time, our office requests authority from Council to represent the City and/or the employees. Our office then engages in the discovery process, which generally lasts for several months, and involves interrogatories, requests for documents, and depositions. After discovery, almost all cases are required to go through case evaluation (also called mediation). In this process, three attorneys evaluate the potential damages, and render an award. This award can be accepted by both parties, and will conclude the case. However, if either party rejects a case evaluation award, there are potential sanctions if the trial result is not as favorable as the mediation award. In many cases, a motion for summary disposition will be filed at the conclusion of discovery. In all motions for summary disposition, the Plaintiff's version of the facts are accepted as true, and if the Plaintiff still has failed to set forth a viable claim against the City, then dismissal will be granted. It generally takes at least a year before a case will be presented to a jury. It also takes approximately two years before a case will be finalized in the Michigan Court of Appeals and/or the Michigan Supreme Court.

B. ZONING CASES

These are cases where the property owner has sued for a use other than that for which the land is currently zoned and/or the City is suing a property owner to require compliance with the existing zoning provisions.

1. International Outdoor, Inc. v City of Troy. On February 3, 2017, International Outdoor, Inc. filed this lawsuit in the Federal District Court for the Eastern District of Michigan challenging the constitutionality of the City's sign ordinance. International argues, among other things, that



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since the City does not require permits for temporary signs or special event signs, the permit requirement to erect a billboard is a content based restriction, allegedly in violation of the 2015 *Reed v. Town of Gilbert* U.S. Supreme Court case. According to International, the ordinance is unconstitutional and should not have been applied as a basis to deny the permits for its requested billboards. International states it is seeking injunctive and declaratory relief and money damages, but the complaint does not request any specific remedy. However, the case was filed under 42 U.S.C. Section 1983, which allows for the recovery of attorney fees if the plaintiff prevails on any aspect of the case. The lawsuit was assigned to Judge George Caram Steeh. The City filed a motion to dismiss. A hearing on the motion was scheduled for June 26, 2017. On June 30, 2017, the Court entered its order granting in part and denying in part the City's motion to dismiss. The Court granted the City's motion to dismiss Count II of the complaint, which alleged the Sign Ordinance contained content based restrictions imposed without a compelling government interest. However, the Court denied the City's motion as to Count I, which alleged the variance provisions of the Sign Ordinance constituted an unconstitutional prior restraint because it gives the Building Code Board of Appeals unbridled discretion in deciding a variance request. The City filed a motion for reconsideration, which is still pending with the Court. On December 20, 2017, the Court entered its order denying the motion for reconsideration, but clarifying that the Court had not made a final decision on the validity of Troy's Sign Ordinance. The City must now file an answer to Count I of the complaint. The City filed its answer, and the parties are now engaging in discovery. Discovery is continuing. Plaintiffs scheduled depositions of former and select current members of the Building Code Board of Appeals, and the City objected. Plaintiff then filed a motion to compel the depositions, to which the City responded. The Court issued an order stating that there would not be oral argument on the motion, so we are now waiting for the Court's decision concerning these depositions. The Court denied Plaintiff's motion to compel depositions. Plaintiff has now filed a motion for summary judgment, and the City's response is due October 11th. The City filed a response to the motion for summary judgment and a cross motion for summary judgment in favor of the City. A hearing on both the Plaintiff's motion and the City's motion was held on January 16, 2019. On January 18, 2019, the Court issued its opinion and order denying Plaintiff's motion for summary judgment and granting the City's motion for summary judgment. The Court entered a final judgment in the case in favor of the City. Plaintiff has now filed an appeal with United States Court of Appeals for the Sixth Circuit in Cincinnati, Ohio. Plaintiff also filed a motion in the District Court, claiming entitlement to attorney fees based on the Court's rulings, some of which were favorable to the Plaintiff, even though the case was dismissed in favor of the City. The City timely responded to this motion, which is still pending. As required by the Sixth Circuit Court of Appeals, the parties participated in an unfruitful mediation conference call on March 6, 2019. Afterwards, the Sixth Circuit established its appellate briefing schedule, requiring Plaintiff's brief to be filed on or before April 29, 2019, and the City's response is due May 28, 2019. **On April 1, 2019, District Court Judge Steeh issued his opinion and order denying the Plaintiff's motion for attorney fees. Plaintiff has filed a second appealing to challenge the denial of attorney fees. On motion of the Plaintiff, the second appeal was consolidated with the initial appeal and the briefing schedule was amended. Plaintiff filed its appellate brief, and the City timely filed its response.**



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2. Tollbrook, LLC v City of Troy. Tollbrook submitted an application for a conditional rezoning of three parcels, from one family residential zoning to Big Beaver Form Based District zoning. This application, proposing 140 new apartment units on three residential parcels, was denied by the Troy City Council. Plaintiff filed this lawsuit on May 5, 2017 in United States District Court, alleging that the City of Troy violated its substantive due process rights under the 5th and 14th Amendments of the United States Constitution. Plaintiff also alleges that Council's decision was arbitrary and capricious and not rationally related to the governmental interest of protecting public health, safety, and welfare. Plaintiff asserts that its application and proposed site plan are consistent with the City's Master Plan, and satisfy all five criteria considered for conditional rezoning, as set forth in the City's Zoning Ordinance, Section 16.04(C)(3)(a-e). Plaintiff also argues that Council's decision to deny the rezoning application was unrelated to legitimate land use considerations, including but not limited to neighbor opposition. Plaintiff also raises an alleged unconstitutional due process claim under 42 U.S.C. §§ 1983 and 1988. The case was assigned to Judge Goldsmith. In lieu of answering the Complaint, the City's first responsive pleading was a Motion to Dismiss for Failure to State a Claim. Both parties have filed briefs, and we are waiting for the Court to schedule oral argument. The parties presented oral argument on September 19, 2017. Judge Goldsmith took the motion under advisement, and is expected to issue a written opinion. The Court did not issue an opinion prior to the end of the calendar year. On January 9, 2018, the Court issued an Opinion and Order granting the City's Motion to Dismiss. Tollbrook timely filed an appeal with the Sixth Circuit, U.S. Court of Appeals. The Sixth Circuit Court of Appeals has required the parties to engage in a mediation conference, where possible settlements are explored. Since Tollbrook expressed a desire to submit a proposed settlement offer to City Council, which anticipates opportunities for public input, the briefing schedule has been stayed. Absent a City Council closed session discussion, Plaintiff subsequently withdrew its settlement offer. Plaintiff then timely filed its brief on appeal. The City's responsive brief is due on October 9, 2018. Oral argument is scheduled for January 30, 2019 in the United States Court of Appeals for the Sixth Circuit. The Court held oral argument as scheduled on January 30, 2019. The parties are now waiting for the Court to issue its written opinion. **On May 21, 2019, the Sixth Circuit Court of Appeals issued its opinion in favor of the City.**

3. Crossroads v. City of Troy. Plaintiff filed this lawsuit against the City, challenging the City's sign ordinance and also the City's sign moratorium. Plaintiff argues that three billboard sign permits were improperly rescinded as a result of the moratorium. The City has filed an answer and affirmative defenses. A scheduling conference was held on October 22, 2018. The Plaintiff filed a motion for partial summary judgment on one count of its 3 count complaint and the City filed a response. On January 17, 2019, Assigned Eastern District of Michigan Judge George Caram Steeh entertained arguments on the motion for partial summary judgment. On January 22, 2019, the Court entered its order denying Plaintiff's motion for partial summary judgment and granting the City's request to dismiss Count III of the complaint. The parties are now engaging in discovery on the remaining two counts. **Discovery continues.**



C. EMINENT DOMAIN CASES

These are cases in which the City wishes to acquire property for a public improvement and the property owner wishes to contest either the necessity or the compensation offered. In cases where only the compensation is challenged, the City obtains possession of the property almost immediately, which allows for major projects to be completed.

There are no pending eminent domain cases for this quarter.

D. CIVIL RIGHTS CASES

These are cases that are generally filed in the federal courts, under 42 U.S.C. Section 1983. In these cases, the Plaintiffs argue that the City and/or police officers of the City of Troy somehow violated their civil rights.

1. Adam Community Center v. City of Troy et. al. Plaintiff filed this lawsuit against the City of Troy, the Troy City Council, the Troy Planning Commission, the Troy Zoning Board of Appeals, and each of the individual members of the Troy Zoning Board of Appeals, challenging the ZBA denial of significant variance requests for the property at 3565 Rochester Road. Plaintiff needed these variances to have a place of worship, plus a library, gym, and banquet center. Plaintiff's eleven count complaint argues that the City of Troy, the Troy City Council and the Troy Planning Commission, as the entities responsible for Troy's zoning ordinance, violated ADAM's Constitutional First and Fourteenth Amendment rights (Exercise of Religion, Freedom of Speech and Freedom of Assembly), ADAM's Fifth Amendment Rights, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and also ADAM's Michigan Constitutional Rights. ADAM argues that there is no other Islamic house of worship in the City, and therefore the City and/or the Defendants violated their First Amendment Rights and RLUIPA. Plaintiff's lawsuit also alleges that the City and the individual ZBA members engaged in discrimination in denying ADAM's variance requests. Plaintiff also asserts that there were procedural irregularities at the June 19, 2018 public hearing which allegedly entitle ADAM to injunctive and declaratory relief, as well as compensatory and punitive damages. Specifically, ADAM is seeking a Court order overriding the ZBA's variance denials and the City's zoning regulations for churches, plus damages. The City filed a motion to dismiss as its first responsive pleading, seeking dismissal of the entire case, and/or dismissal of some of the claims and defendants. On March 12, 2019, the Court entertained oral argument on the motion, and the parties are now waiting for a written decision from U.S. District Court Judge Nancy Edmunds, who is the presiding judge for this case. **On April 4, 2019, the Court granted in part and denied in part the City's Motion for Dismissal. Plaintiff's state law claims were dismissed by Court order. The case is now proceeding through discovery.**

E. PERSONAL INJURY AND DAMAGE CASES



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These are cases in which the Plaintiff claims that the City or City employees were negligent in some manner that caused injuries and/or property damage. The City enjoys governmental immunity from ordinary negligence, unless the case falls within one of four exceptions to governmental immunity: a) defective highway exception, which includes sidewalks and road way claims; b) public building exception, which imposes liability only when injuries are caused by a defect in a public building; c) motor vehicle exception, which imposes liability when an employee is negligent when operating their vehicle; d) proprietary exception, where liability is imposed when an activity is conducted primarily to create a profit, and the activity somehow causes injury or damage to another; e) trespass nuisance exception, which imposes liability for the flooding cases.

1. Barnwell v. City of Troy et al. This suit was filed in Oakland County Circuit Court, and assigned to Judge Phyllis McMillen. Troy is one of several municipalities to be sued as a result of the massive rainstorm that occurred on August 11, 2014. Plaintiffs have asked for a class action certification to allow all Troy persons damaged by flooding to also make claims. In this lawsuit, the named Defendants are Troy and the Oakland County Water Resources Commissioner (and especially the George W. Kuhn Retention facility (GWK RTF)). This lawsuit is very similar to lawsuits filed against Royal Oak, Madison Heights, Clawson, Oak Park, Hazel Park, Berkley, Huntington Woods, Ferndale, and Pleasant Ridge. The City filed a timely answer to the complaint, and the case is now in the discovery phase. The Court has issued a discovery order, governing all of the currently pending Oakland County flooding cases. The parties are currently engaging in the discovery process. This case is still in the discovery phase. The first phase of discovery is complete, and the City has reviewed all notice of claims. The Court has set a deadline for raising any legal issues about the claims that cannot be resolved prior to that time. After the latest status conference, the Court issued a scheduling order, setting deadlines for the parties to file motions concerning notices of claims. On November 2, 2018, the Court heard oral argument on a motion filed by Oakland County challenging the notice of claims. On November 20, 2018, the Court filed an opinion and order, denying Oakland County's Motion. On December 7, 2018, Oakland County filed a claim of appeal, which is pending. Oakland County's appeal is still pending, but the parties are also exploring facilitation of the case, as required by the Court's order staying the proceedings. **The parties have scheduled a facilitation starting September 16, 2019.**
2. Tschirhart v. Troy- Plaintiff filed this wrongful death lawsuit against the City, claiming that the City and individual City employees and contractors were responsible for the drowning death of Plaintiff's son, Shaun Tschirhart, at the Community Center pool on April 15, 2015. Shaun was a swimming in the pool that day as part of a Friendship Club activity, and unfortunately suffered a seizure while swimming. Plaintiff's complaint alleges gross negligence, and an alleged failure to properly screen, train, and supervise City employees. The case is assigned to Oakland County Circuit Court Judge Daniel O'Brien. As its first responsive pleading, the City filed a motion for dismissal, arguing that Plaintiff had failed to assert a viable claim against the City. This motion is pending before the Court. The Court denied the City's motion, and the City immediately filed a claim of appeal with the Michigan Court of Appeals, challenging the denial of governmental immunity. A timely brief on appeal will be filed once the Court issues a briefing schedule. The City's brief on appeal is due February 7, 2019. A timely brief on appeal was filed by the City of Troy Defendants. Plaintiff's brief on appeal is expected to be filed by



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April 12, 2019. **The briefs have been submitted, and the parties are waiting for the Court to schedule oral argument.**

3. Miller v. City of Troy, et al- This lawsuit stems from an incident that occurred on November 8, 2017, when Plaintiff bicyclist collided in the crosswalk with a Troy police cruiser. The Troy Police Officer had just shifted the police cruiser from park to drive in order to stop a speeding car. Plaintiff filed suit against the Troy Police Officer and the City, as well as two insurance companies that insure Plaintiff's vehicles (a first party claim). The case was filed in Oakland County Circuit Court, and was assigned to Judge Phyllis McMillen. All parties are in the process of exchanging discovery. Discovery is ongoing, and depositions are scheduled for early 2019. The parties have scheduled and attended numerous depositions in this case. **The mandatory Court ordered mediation did not result in a settlement in this case. The parties were ordered to facilitate the case, and this is scheduled for July 22, 2019.**
4. Adams v City of Troy, et al – Plaintiff Adams filed this two count Complaint alleging negligence under the motor vehicle exception to governmental immunity, and gross negligence against the City and one of its police officers stemming from an automobile accident that occurred on August 16, 2016. Mr. Adams was driving in the center turn lane of eastbound Maple Road when the police officer was dispatched to locate a vehicle fleeing from the scene of a retail fraud. The police officer, who was also traveling eastbound on Maple Road, was attempting to make a U-turn when the vehicles collided. Plaintiff's improper use of the center turn lane was determined to be a contributing factor to the accident. The case is assigned to the Honorable Judge Rae Lee Chabot in Oakland County Circuit Court. A timely Answer to the Complaint has been filed on behalf of the City defendants, and the parties are engaged in the discovery process. The parties continue to be engaged in discovery. **The parties have scheduled depositions in this case. The Court has also extended the Court deadlines, based on requests by the parties.**
5. Cioroiu v. City of Troy – Plaintiff's mother, acting as next of friend, has filed a Complaint against the City of Troy alleging negligent maintenance of a sidewalk at/near Big Beaver and Livernois. The claim stems from an incident that occurred on May 26, 2018, where Plaintiff alleges that he flipped his bike as a result of a discontinuity in the sidewalk. Plaintiff alleges that he fractured his clavicle and suffered kidney pain. The case is assigned to Judge Hala Jarbou in Oakland County Circuit Court. The parties have commenced the discovery process. **The parties have completed depositions in this case.**

F. MISCELLANEOUS CASES

1. Michigan Association of Home Builders; Associated Builders and Contractors of Michigan; and Michigan Plumbing and Mechanical Contractors Association v. City of Troy – The Plaintiffs filed a complaint for Declaratory and Injunctive Relief in the Oakland County Circuit. On the date of filing the Plaintiffs also filed a Motion for Preliminary Injunction and Order to Show



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Cause. The Plaintiffs allege that the City of Troy has violated Section 22 of Michigan's Stille-DeRossett Hale Single State Construction Code Act by collecting fees for building department services that are not reasonably related to the cost of providing building department services. They are alleging that the City of Troy has illegally entered into a contract with Safe Built of Michigan, Inc. for building services that provides that 20% of each building permit fee be returned to the City to cover services that are not "reasonably related to the cost of building department services," as required by state statute. The Plaintiffs also assert a violation of the Headlee Amendment, arguing that the 20% returned to the City is a disguised tax that was not approved by voters. The Plaintiffs are asking for a declaratory judgment, as well as a return of any "surplus" building department service funds collected to date. Plaintiffs also request an order requiring the City to reduce its building department fees. The City of Troy was served with the Complaint and the Motion for Preliminary Injunction and Order for Show Cause on Wednesday, December 15, 2010. The parties were required to appear at Court on Wednesday, December 22, 2010, but the Court did not take any action at that time. Instead, the Court adjourned the matter to January 19, 2011. In the interim, the parties may engage in preliminary discovery in an attempt to resolve this matter. The parties are conducting discovery. The parties have completed discovery. Trial in this matter is scheduled for January 30, 2012. After being presented with motions for summary disposition, the Court ordered the parties to engage in mediation with a neutral municipal audit professional. Financial documents concerning this case are now being reviewed by an independent CPA. It is expected that the April 19, 2012 trial date will be postponed until after this review is complete. Mediation was unsuccessful in resolving this case, and therefore the Court is expected to issue an order on the pending Summary Disposition Motions. The trial date has been adjourned. On November 13, 2012, Oakland County Circuit Court Judge Shalina Kumar issued her order in favor of the City, and dismissed this case. Plaintiffs filed an appeal, which is now pending in the Michigan Court of Appeals. Appellant's brief is expected to be filed soon. The parties timely filed their appellate briefs, and are now waiting for the Court of Appeals to schedule a date for oral argument. The Court of Appeals has not yet scheduled oral argument for this case. The parties are still waiting for a date for oral argument. Oral argument was held on March 4, 2014. On March 13, 2014, the Court of Appeals issued its opinion ruling in the City's favor and affirming the Circuit Court's decision dismissing the case. On April 23, 2014, Plaintiff Home Builders filed an Application for Leave to Appeal with the Michigan Supreme Court. Troy's response was filed on May 19, 2014. The Michigan Supreme Court considered the application for leave to appeal and ordered that the matter be scheduled for oral argument. The Court also permitted the parties to submit supplemental briefs, which are due October 29, 2014. The City timely filed its supplemental brief with the Michigan Supreme Court. The parties are now waiting for the Court to set a date for oral argument on the application. The Michigan Supreme Court entertained oral arguments on the application for leave to appeal on March 11, 2015. On June 4, 2015, the Michigan Supreme Court reversed the decisions of the Court of Appeals and the Circuit Court and ruled there was no requirement for Plaintiffs to exhaust their administrative remedies. The case was remanded to Circuit Court for further proceedings. A status conference was held on June 18, 2015 with Judge Kumar. During the status conference, Judge Kumar scheduled a hearing for September 2, 2015, allowing the parties to address the issues that were previously raised in the motion for summary disposition but were not decided since the case was initially dismissed for failure to



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exhaust administrative remedies. At the hearing on September 2, 2015, Judge Kumar allowed Plaintiffs to request additional discovery within 30 days. Thereafter, both parties are allowed to file supplemental briefs. Supplemental briefs have been filed and we are awaiting a decision. On February 5, 2015, Judge Kumar issued her opinion and order ruling in favor of the City and dismissing the case. Plaintiffs filed a Claim of Appeal with the Michigan Court of Appeals on February 23, 2016. The Plaintiffs and the City have both filed appellate briefs. Based on our request, the Michigan Municipal League Legal Defense Fund, Public Corporations Section of the State Bar of Michigan, Michigan Townships Association and also Safe Built have filed a motion asking for permission to file amicus briefs supporting the City's position. The Michigan Association of Realtors has sought permission to file an amicus brief supporting Plaintiffs' position. The Plaintiffs filed a reply brief. We are waiting for the Court of Appeals to rule on the motions for amicus briefs and to schedule a date for oral argument. Oral argument has not yet been scheduled. The parties presented oral arguments on September 7, 2017. On September 28, 2017, the Court of Appeals entered a two to one decision affirming the Circuit Court's grant of summary disposition in favor of the City. The Plaintiffs have filed an application for leave to appeal to the Michigan Supreme Court. The City timely filed an answer to the application. Additionally, the Michigan Municipal League's Legal Defense Fund, the Government Law Section of the State Bar of Michigan, and the Michigan Townships Association filed a motion to file an amicus curiae brief with the Supreme Court, supporting the City's position and asking for a denial of the application for leave to appeal. The Court granted the request for MML's amicus brief on January 5, 2018, and the brief was accepted for filing. The Michigan Realtor's Association filed a motion to file an amicus brief on behalf of Plaintiff Home Builders on February 23, 2018. On June 20, 2018, the Michigan Supreme Court entered an order granting the Michigan Realtor's Association's motion to file a brief amicus curiae. The Court also ordered that oral arguments be scheduled on Plaintiff's application for leave to appeal, and established a schedule for submitting supplemental written briefs. The Court accepted an amicus brief from the Michigan Health and Hospital Association and the Michigan Society of Association Executives, which was drafted by the attorney representing the Home Builders. The parties are now waiting for the Supreme Court to schedule oral argument. On December 19, 2018, the Michigan Manufacturers Association filed a motion to file a brief amicus curiae, and attached its proposed brief to the motion. On December 21, 2018, the Supreme Court granted the motion and accepted the brief that was submitted on December 19, 2018 for filing. The Michigan Supreme Court presided over the oral argument on March 7, 2019. After oral argument, the Court granted a motion to file a late amicus curiae brief. The City filed a response seeking to address the arguments raised in that brief and attached a proposed response. **On April 5, 2019, the Court granted the City's motion to file a response to the amicus curiae brief and accepted the City's response for filing. The parties are now waiting for the Supreme Court to issue its opinion.**

- Roumayah Consulting, LLC and Kevin Roumayah v City of Troy. Plaintiff Roumayah LLC is the master tenant for property at 33611 Dequindre Road in Troy that it subleases for use by caregivers registered under the Michigan Medical Marihuana Act (MMMA) to cultivate medical marihuana. Plaintiff Kevin Roumayah is a registered caregiver under MMMA and uses one of the suites at 33611 for a medical marihuana grow operation. The Plaintiffs filed a lawsuit in Oakland County Circuit Court challenging the validity of the City of Troy Medical Marihuana



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Grow Operation License Ordinance, Chapter 104 that went into effect May 3, 2018. Plaintiffs claim they are entitled to injunctive relief because: 1) the ordinance is a zoning ordinance that was not adopted in accordance with the Michigan Zoning Enabling Act (MZEA); 2) the Plaintiffs have a valid nonconforming use under the MZEA; 3) the ordinance results in a taking of Plaintiffs property without just compensation and due process; 5) the ordinance deprives Plaintiffs of equal protection under the law; and 6) the ordinance is invalid because it is preempted by the MMMA. The Plaintiffs are seeking a declaratory judgment that the ordinance is invalid and an injunction to preclude enforcement of the ordinance. The case was assigned to Oakland County Circuit Court Judge Leo Bowman. Plaintiffs' request for a temporary restraining order and/or preliminary injunction was denied by the Court on June 13, 2018. The case is now in the discovery phase. During the pendency of this case, the Michigan Court of Appeals issued an opinion in a separate case that directly addressed the issue of whether a municipal ordinance is preempted by the MMMA. That case was appealed to the Michigan Supreme Court. The Supreme Court's decision on that appeal will have a direct impact on the outcome of this case. Thus, the Plaintiff and the City stipulated to a stay of proceedings pending the outcome of the appeal to the Michigan Supreme Court. On December 12, 2018, Judge Bowman issued an order to stay the proceedings. On January 23, 2019, the Michigan Supreme Court granted the township's application for leave to appeal in the other case, as mentioned above, so the Supreme Court will likely determine whether a municipal ordinance is preempted by the MMMA. **The parties are still waiting for the Michigan Supreme Court to issue its decision in the Byron Township case.**

3. Ryan Wolf v. City of Troy. Terminated City employee Ryan Wolf filed this lawsuit against the City, arguing that he was discharged in violation of the Whistleblower's Protection Act. Wolf argues that he was terminated as a result of his participation in a secret Open Meetings Act investigation initiated by Brian Kischnick. Wolf asserts that he was instructed not to tell anyone else about his work and his involvement, which would be contrary to City policy and procedure. Although not authorized, Wolf accessed the City's restricted closed circuit TV security camera system through another employee's locked office. Afterwards, he admitted to his behavior when it was clear that City Administration was investigating unauthorized access to the system. On review, there was insubstantial evidence to demonstrate any potential Open Meetings Act violation. This case is being handled by legal counsel assigned by our insurance carrier. It is assigned to Oakland County Circuit Court Judge Cheryl Matthews. The City timely filed its answer to the Complaint, and is responding to discovery requests. Discovery is continuing. The parties exchanged answers to interrogatories. **The parties participated in a facilitation of this case on June 28, 2019.**
4. Catalinoiu v City of Troy. Plaintiff filed this claim and delivery action in the 52-4 District Court seeking return of two handguns and two rifles and ammunition that were confiscated from Plaintiff's apartment after the police responded to a domestic assault complaint. Plaintiff was not charged with any offense. The City filed an answer to the complaint and a response to the motion for immediate possession. The case was assigned to Judge McGinnis. On March 20, 2019, the Court denied Plaintiff's motion for immediate possession. The case will now proceed to determine whether the firearms should be forfeited. **On April 24, 2019, the parties entered into a consent order for return of the firearms. The case is now concluded.**



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5. **Koerber v City of Troy.** Plaintiff filed this claim and delivery action in the 52-4 District Court seeking return of one handgun that was confiscated from Plaintiff by the Troy Police when they responded to a domestic assault complaint. The case was assigned to Judge Hartig. The City filed an answer to the complaint and a response to the motion for immediate possession. The case is set for a hearing on April 10, 2019. **The Court denied Plaintiff's motion for possession at the hearing on April 10, 2019, but indicated the Court may approve an order allowing the gun to be returned to a third party. On April 30, 2019, a stipulated order allowing for the return of the firearm to a third party was entered. This case is now concluded.**
6. **Irvin v City of Troy.** Plaintiff filed this claim and delivery action in the 52-4 District Court seeking return of one handgun that was confiscated from Plaintiff by the Troy Police when he was arrested for unlawfully carrying a concealed weapon. The case was assigned to Judge Hartig. The City filed an answer to the complaint and a response to the motion for immediate possession. On May 1, 2019, the Court did not make a ruling on the motion but instead scheduled the case for trial in August. On May 29, 2019, the Court entered a negotiated Consent Order allowing the return of the firearm to a third party. This case is now concluded.
7. **Elliot Parnes v. City of Troy/Troy Police Department.** Plaintiff filed this lawsuit under the Freedom of Information Act (FOIA). He submitted two FOIA requests seeking information concerning a police incident with a minor who was assaulting her mother. The City responded by mail prior to the extension deadline, but Plaintiff likely filed this lawsuit prior to receiving the response. The City provided some of the documentation requested in the FOIA, and relied on statutory exemptions for the remaining requests.
8. **Beccari v City of Troy.** Plaintiff filed this claim and delivery action in the 52-4 District Court seeking return of three handguns that were confiscated from Plaintiff by the Troy Police in accordance with a personal protection order that was issued against the Plaintiff. The case was assigned to Judge McGinnis. The City filed an answer to the complaint and a response to the motion for immediate possession. On May 1, 2019, the Court denied Plaintiff's motion for possession. On May 22, 2019, the Court entered an order allowing for the return of the firearms to Plaintiff, recognizing that the personal protection order was no longer valid. This case is now concluded.
9. **Kaatz v City of Troy.** Plaintiff filed this claim and delivery action in the 52-4 District Court seeking return of one handgun that was confiscated from Plaintiff by the Troy Police when he was arrested for unlawfully carrying a concealed weapon. The case was assigned to Judge Hartig. The City filed an answer to the complaint and a response to the motion for immediate possession. On June 5, 2019, the Plaintiff contacted the Court and advised he did not want to pursue the case and he did not appear for the hearing. The Court entered an Order to Dismiss Case. This case is now concluded.
10. **Briguglio v City of Troy.** Plaintiff filed this claim and delivery action in the 52-4 District Court seeking return of three handguns, one rifle and one shotgun that were confiscated from



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Plaintiff by the Troy Police in accordance with a search warrant and a personal protection order that was issued against the Plaintiff. The case was assigned to Judge Hartig. The City filed an answer to the complaint and a response to the motion for immediate possession. The next Court date is July 10, 2019.

- 11. Andrews v City of Troy. Plaintiff filed this claim and delivery action in the 52-4 District Court seeking return of two handguns, three long guns, two bayonets, a knife and a tomahawk that were confiscated from Plaintiff by the Troy Police based on reports that Plaintiff was suicidal. The case was assigned to Judge McGinnis. The City filed an answer to the complaint and a response to the motion for immediate possession. The case is set for a hearing on July 24, 2019.**

G. CRIMINAL APPEALS/ DISTRICT COURT APPEALS

These are cases involving an appeal from a decision of the 52-4 District Court in an ordinance prosecution case.

- 1. People of the City of Troy v Jeremy Anthony Capussi. The Defendant, Jeremy Anthony Capussi was charged with operating while intoxicated. The case proceeded to jury trial on February 19, 2019 before Judge Maureen M. McGinnis of the 52-4 District Court. After the testimony was concluded, the Defendant requested a jury instruction regarding his theory of the case. The City objected to the instruction as requested, arguing that it was prejudicial to the case. After both parties presented argument, the Court denied the Defendant's request. After closing arguments, and after jury instructions were given, the jury returned a verdict of guilty as charged. The Defendant has filed a claim of appeal with the Oakland County Circuit Court. Since the appeal is an appeal as of right, the Defendant may appeal any issue that was raised in the trial court, including the trial court's denial of the requested jury instruction. The case was assigned to Judge Phyllis C. McMillen. After a trial transcript is prepared and filed, the Circuit Court will establish a briefing schedule and schedule a date for oral argument on the appeal.**

H. ADMINISTRATIVE PROCEEDINGS

There are no pending Administrative Proceedings at this time.

If you have any questions concerning these cases, please let us know.