



**Short Term Rental Task Force  
Regular Meeting  
May 4, 2023 3:00PM  
City Hall  
102 Butler Street, Saugatuck, MI**

*This is an in-person meeting at Saugatuck City Hall, 102 Butler St, Saugatuck, MI 49453. The meeting will also be available live, virtually on Zoom.*

- 1. Call to Order/Roll Call:**
- 2. Approval of Agenda:** (Voice Vote)
- 3. Approval of Minutes:** (Voice Vote)
- 4. Public Comments on Agenda Items:** (Limit 3 minutes)
- 5. Review/Discussion:**
  - A. Introductions/Reason for Service
  - B. Purpose of STR Task Force
  - C. Open Meetings Act and Freedom of Information Act
  - D. Phases, Tasks, and Deliverables
  - E. Schedule Next Meeting
- 6. Communication:**
  - A. D. Brayer
- 7. Public Comment:** (Limit 3 minutes)
- 8. Member Closing Comments:**
- 9. Adjourn** (Voice Vote)

**NOTICE:**  
Join online by visiting:  
<https://us02web.zoom.us/j/2698572603>  
**572603**

Join by phone by dialing:  
**(312) 626-6799 -or-  
(646) 518-9805**

Then enter "Meeting ID":  
**2698572603**

Please send questions or comments regarding meeting agenda items prior to meeting to:  
[rcummins@saugatuckcity.com](mailto:rcummins@saugatuckcity.com)

**CITY OF SAUGATUCK COUNTY  
OF ALLEGAN STATE OF  
MICHIGAN**

**RESOLUTION NO. 230216-A**

**A RESOLUTION ADOPTING THE PLANNING COMMISSION'S  
RECOMMENDATION TO FORM A SHORT-TERM RENTAL TASK FORCE**

Council Member Stanton, offered the following resolution and moved for its adoption, seconded by Council Member Gardner:

**RECITALS**

WHEREAS, the City of Saugatuck has established reviewing short-term rentals as a priority for 2023; and

WHEREAS, the Planning Commission recently reviewed short-term rental data for the City and each zoning district; and

WHEREAS, Section 4.28 of the City Charter states, “[t]he mayor, with the advice and consent of the city council may, from time to time, appoint such committees or boards as are deemed appropriate to advise and consult with them, and with appropriate departments, regarding any municipal activity”; and

WHEREAS, the City Council received a recommendation from the Planning Commission to form a short-term rental task force, and the City Council acknowledges the Planning Commission’s recommendation and agrees that a short-term rental task force, with assistance and facilitation by a professional planning consultant approved by City Council, should be formed to assist the City Council and Planning Commission regarding short-term rentals; and

WHEREAS, the purpose and priorities of a short-term rental task force should include identifying and prioritizing current short-term rental concerns, issues, opportunities, and objectives held by the residents, property and business owners of the City, schools, public safety and other community stakeholders; and

WHEREAS, a short-term rental task force should gather data and insights regarding short-term rental issues, concerns, opportunities, and objectives, including but not limited to current and historical data on registered properties, locations, and rental licenses, listings and occupancies, using both City and third-party data, the number and categories of complaints filed with the City and any enforcement actions taken by the City related to short-term rentals, and resident, property and business owner feedback in the form of forums and surveys; and

WHEREAS, a short-term rental task force should develop a written and balanced executive summary of the findings of their quantitative and qualitative data gathering that includes definitions of any specific concerns and issues that need to be addressed and the specific goals and objectives of any contemplated changes to the City’s current short-term rental policies,

practices, and regulatory and zoning ordinances, including fees, as well as specific methods for measuring whether goals and objectives are met; and

WHEREAS, if the short-term rental task force determines there is a need for changes to the City's current short-term rental policies, practices, and regulatory and zoning ordinances, including fees, they should review and discuss options and policies of similar resort-focused communities, primarily in Michigan, that have made changes to their short-term rental policies, practices, and regulatory and zoning ordinance, including fees; and

WHEREAS, the short-term rental task force should formulate recommendations on the City's short-term rental policies, practices, and regulatory and zoning ordinance, including fees, for review and discussion by the Planning Commission and City Council; and

WHEREAS, the short-term rental task force should consider, but not be bound by, the experiences, issues, concerns, policies, practices, and regulatory and zoning ordinances of the City of the Village of Douglas and Saugatuck Township, as well as the Tri-Community Master Plan; and

WHEREAS, the makeup of a short-term rental task force should represent and balance different stakeholders within the community including:

1. One member from City Council (1);
2. Two members from the Planning Commission (2);
3. One member from the retail, restaurant or lodging business owner community (1);
4. One member from a short-term rental property management group (1);
5. One member from a residential zone who holds a short-term rental license and/or is positive about short term-rentals (1);
6. One member from a commercial zone member who is not the owner of a short-term rental (1);
7. One member from the real estate realtor community with no short-term rental ownership (1);
8. One member from a residential zone who is not a short-term rental owner and who feels negatively impacted by short-term rentals in their neighborhood (1); and

WHEREAS, the members of the short-term rental task force should be residents, property, or business owners of the City of Saugatuck, with preference given to City residents.

NOW, THEREFORE, BE IT RESOLVED that:

1. The foregoing recitals are hereby affirmed and are incorporated herein, and are deemed to

represent the position of the City Council of the City of Saugatuck.

2. The City Council adopts the Planning Commission's recommendation that the Mayor, with the advice and consent of the City Council, shall appoint a short-term rental task force to consist of nine members representing different stakeholders within the community as described above; and

3. The City Council adopts the Planning Commission's recommendation that this short-term rental task force be selected in accordance with the City Council's Boards and Commission Selection Policy, have parity as close as possible between short-term rental owners and non-short-term rental owners, report its recommendations to the Planning Commission and City Council on or before September 21, 2023, comply with Open Meetings Act requirements including public notices and gathering public comments, be voluntary and uncompensated, and provide written reports to the Planning Commission and City Council during each monthly meeting.

4. All resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, repealed.

YEAS: Council Members: Muncey, Leo, Dean, Stanton, Gardner


NAYS: Council Members: Baldwin

ABSTAIN: Council Members: None

ABSENT: Council Members: Lewis

**ADOPTED** this 16<sup>th</sup> day of February 2023,


**CITY OF SAUGATUCK**

BY:   
\_\_\_\_\_  
Scott Dean, Mayor

BY:   
\_\_\_\_\_  
Jamie Wolters, City Clerk

**CERTIFICATION**

I, Jamie Wolters, the duly appointed clerk of the City of Saugatuck do hereby certify the foregoing is a true and complete copy of a resolution adopted by the City Council at a special meeting held February 16, 2023.

Signed:   
\_\_\_\_\_  
Jamie Wolters, City Clerk



# OPEN MEETINGS ACT HANDBOOK



**Attorney General Dana Nessel**

Additional copies available at [mi.gov/foia-ag](http://mi.gov/foia-ag)

The Handbook is intended to be a quick reference guide. It is not intended to be encyclopedic on every subject or resolve every situation that may be encountered.

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## OPEN MEETINGS ACT

### THE BASICS

**The Act** – the [Open Meetings Act \(OMA\)](#) is 1976 PA 267, MCL 15.261 through 15.275. The OMA took effect January 1, 1977. In enacting the OMA, the Legislature promoted a new era in governmental accountability and fostered openness in government to enhance responsible decision making.<sup>1</sup>

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the [OMA](#).<sup>2</sup>

**What bodies are covered?** – the OMA applies to all meetings of a [public body](#).<sup>3</sup> A "public body" is broadly defined as:

[A]ny state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to *exercise governmental or proprietary authority or perform a governmental or proprietary function*; a lessee of such a body performing an essential public purpose and function pursuant to the [lease agreement](#).<sup>4</sup> [Emphasis added.]

As used in the OMA, the term "[public body](#)" connotes a collective entity and does not include an individual government official.<sup>5</sup> The OMA does not apply to [private, nonprofit corporations](#).<sup>6</sup>

**Public notice requirements** – a meeting of a public body cannot be held unless public notice is given consistent with the [OMA](#).<sup>7</sup> A [public notice](#) must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations

<sup>1</sup> *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993).

<sup>2</sup> MCL 15.261.

<sup>3</sup> MCL 15.263. When the Handbook refers to a "board," the term encompasses all boards, commissions, councils, authorities, committees, subcommittees, panels, and any other public body.

<sup>4</sup> MCL 15.262(a). The provision in the OMA that includes a lessee of a public body performing an essential public purpose is unconstitutional because the title of the act does not refer to organizations other than "public bodies." OAG, 1977-1978, No 5207, p 157 (June 24, 1977). Certain boards are excluded "when deliberating the merits of a case." MCL 15.263(7). See also MCL 15.263(8) and (10).

<sup>5</sup> *Herald Co v Bay City*, 463 Mich 111, 129-133; 614 NW2d 873 (2000) – a city manager is not subject to the OMA. *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich App 572, 579; 697 NW2d 529 (2005). OAG, 1977-1978, No 5183A, p 97 (April 18, 1977).

<sup>6</sup> OAG, 1985-1986, No 6352, p 252 (April 8, 1986) – the Michigan High School Athletic Association is not subject to the OMA. See also *Perlongo v Iron River Cooperative TV Antenna Corp*, 122 Mich App 433; 332 NW2d 502 (1983).

<sup>7</sup> MCL 15.265(1). *Nicholas v Meridian Charter Twp*, 239 Mich App 525, 531; 609 NW2d 574 (2000).



the public body considers appropriate.<sup>8</sup> If a public body is a part of a state department, a [public notice](#) must also be posted in the principal office of the state department.<sup>9</sup>

Public notice requirements are specific to the type of meeting:

- (1) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.
- (2) For a change in schedule of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.
- (3) For a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting.
- (4) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after [public notice](#) has been posted at least 18 hours before the reconvened meeting.<sup>10</sup>

At their first meeting of the calendar or fiscal year, each board must set the dates, times, and places of the board's regular meetings for the coming year. The OMA does not require any particular number of meetings. The board's schedule of regular meetings is not, of course, set in stone. The board is free to cancel or reschedule its meetings.

The minimum 18-hour notice requirement is not fulfilled if the public is denied access to the notice of the meeting for any part of the [18 hours](#).<sup>11</sup> The requirement may be met by posting at least 18 hours in advance of the meeting using a method designed to assure access to the notice. For example, the public body can post the [notice](#) at the main entrance visible on the outside of the building that houses the principal office of the public body.<sup>12</sup>

A public body must send copies of the public notices by first class mail to a requesting party, upon the party's payment of a yearly fee of not more than the reasonable estimated cost of printing and postage. Upon written request, a public body, at the same time a public notice of a meeting is posted, must provide a copy of the public notice to any newspaper published in the state or any radio or television station located in the state, [free of charge](#).<sup>13</sup>

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<sup>8</sup> MCL 15.264(a)-(c).

<sup>9</sup> MCL 15.264(c).

<sup>10</sup> MCL 15.265(2)-(5).

<sup>11</sup> OAG, 1979-1980, No 5724, p 840 (June 20, 1980).

<sup>12</sup> OAG No 5724.

<sup>13</sup> MCL 15.266.

**Agendas and the OMA** – while the OMA requires a public body to give public notice when it meets, it has no requirement that the [public notice](#) include an agenda or a specific statement as to the purpose of a meeting.<sup>14</sup> No agenda format is required by the OMA.<sup>15</sup>

**Penalties for OMA violations** – a public official who "intentionally violates" the OMA may be found guilty of a [misdemeanor](#)<sup>16</sup> and may be [personally liable](#) for actual and exemplary damages of not more than \$500 for a single meeting.<sup>17</sup> The exemptions in the OMA must be strictly construed. The "rule of lenity" (i.e., courts should mitigate punishment when the punishment in the criminal statute is unclear) does not apply to construction of the OMA's exemptions.<sup>18</sup>

A decision made by a public body may be invalidated by a court, if the public body has not complied with the requirements of [MCL 15.263\(1\), \(2\), and \(3\)](#) [i.e., making decisions at a public meeting] or if failure to give notice in accordance with section 5 has interfered with substantial compliance with [MCL 15.263\(1\), \(2\), and \(3\)](#) and the court finds that the noncompliance has impaired the rights of the public under the OMA.

**Lawsuits to compel compliance** – actions must be brought within [60 days](#) after the public body's approved minutes involving the challenged decision are made publicly available.<sup>19</sup> If the decision involves the approval of contracts, the receipt or acceptance of bids, or the procedures pertaining to the issuance of bonds or other evidences of indebtedness, the action must be brought within [30 days](#) after the approved minutes are made publicly available.<sup>20</sup> If the decision of a state public body is challenged, venue is in [Ingham County](#).<sup>21</sup>

**Correcting non-conforming decisions** – in any case where a lawsuit has been initiated to invalidate a public body's decision on the ground that it was not made in conformity with the OMA, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with the OMA. A decision reenacted in this manner shall be effective from the [date of reenactment](#) and is not rendered invalid by any deficiency in its initial enactment.<sup>22</sup> If the board acts quickly, the reenactment may defeat a claim for attorney's fees, since plaintiffs would not be successful in "obtaining relief in the action" within the meaning of the OMA.<sup>23</sup>

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<sup>14</sup> OAG, 1993-1994, No 6821, p 199 (October 18, 1994). But, as discussed in OAG No 6821, other statutes may require a public body to state in its notice the business to be transacted at the meeting.

<sup>15</sup> *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).

<sup>16</sup> MCL 15.272.

<sup>17</sup> MCL 15.273.

<sup>18</sup> *People v Whitney*, 228 Mich App 230, 244; 578 NW2d 329 (1998).

<sup>19</sup> MCL 15.270(3)(a).

<sup>20</sup> MCL 15.270(3)(b).

<sup>21</sup> MCL 15.270(4).

<sup>22</sup> MCL 15.270(5).

<sup>23</sup> *Leemreis v Sherman Twp*, 273 Mich App 691, 700; 731 NW2d 787 (2007). *Felice v Cheboygan County Zoning Comm*, 103 Mich App 742, 746; 304 NW2d 1 (1981).

## DECISIONS MUST BE MADE IN PUBLIC MEETINGS

**All decisions must be made at a meeting open to the public** – the OMA defines "decision" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a [public body](#) effectuates or formulates public policy."<sup>24</sup> The OMA provides that "[a]ll decisions of a public body shall be made at a meeting open to the public," and that, with 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](#)."<sup>25</sup>

The OMA does not contain a "voting requirement" or any form of "formal voting requirement." A "consensus building process" that equates to decision-making would fall under the act.<sup>26</sup> For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes. A "round-the-horn" process violates the OMA.<sup>27</sup>

**Meeting "informally" to discuss matters** – while the OMA "does not apply to a meeting which is a [social or chance gathering or conference](#) not designed to avoid this act,"<sup>28</sup> a meeting of a public body must be open to the public. The OMA does not define the terms "social or chance gathering" or "conference," and provides little direct guidance as to the precise scope of this [exemption](#).<sup>29</sup> To promote openness in government, however, the OMA is entitled to a broad interpretation and exceptions to conduct closed sessions must be construed strictly.<sup>30</sup> Thus, the [closed session exception](#) does not apply to a quorum of a public body that meets to discuss matters of public policy, even if there is no intention that the deliberations will lead to a decision on that occasion.<sup>31</sup>

**Canvassing board members on how they might vote** – an informal canvas by one member of a public body to find out where the votes would be on a particular issue does not violate the OMA,

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<sup>24</sup> MCL 15.262(d).

<sup>25</sup> MCL 15.263(2) and (3).

<sup>26</sup> *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich at 229.

<sup>27</sup> *Booth Newspapers, Inc*, 444 Mich at 229 – "any alleged distinction between the [public body's] consensus building and a determination or action, as advanced in the OMA's definition of 'decision,' is a distinction without a difference."

<sup>28</sup> MCL 15.263(10).

<sup>29</sup> OAG, 1981-1982, No 6074, p 662, 663 (June 11, 1982).

<sup>30</sup> *Wexford County Prosecutor v Pranger*, 83 Mich App 197, 201, 204; 268 NW2d 344 (1978).

<sup>31</sup> OAG, 1977-1978, No 5298, p 434, 435 (May 2, 1978). See also OAG, 1979-1980, No 5444, p 55, 56 (February 21, 1979) – anytime a quorum of a public body meets and considers a matter of public policy, the meeting must comply with the OMA's requirements. Compare OAG, 1979-1980, No 5437, p 36, 37 (February 2, 1979), where members of a public body constituting a quorum come together by chance, the gathering is exempt from the OMA; however, even at a chance meeting, matters of public policy may not be discussed by the members with each other.

so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to the avoid the OMA.<sup>32</sup>

**May a quorum of a board gather outside an open meeting without violating the OMA?** – yes, in some instances. In addition to a purely [social gathering or chance gathering](#)<sup>33</sup> that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a [civic organization](#),<sup>34</sup> listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn't deliberate toward, or make, a [decision](#).<sup>35</sup>

A board quorum also may meet for a workshop, seminar, informational gathering, or professional conference designed to convey, to the conference participants, information about areas of [professional interest](#) common to all conference participants.<sup>36</sup> These kinds of meetings involve a conference designed primarily to provide training or background information and involve a relatively broad focus upon issues of general concern, rather than a more limited focus on matters or issues of [particular interest](#) to a single public body.<sup>37</sup> However, when gatherings are designed to receive input from officers or employees of the public body, the OMA requires that the gathering be held at a [public meeting](#).<sup>38</sup>

The OMA was not violated when several members of the board of county commissioners attended a public meeting of the county planning committee (which had more than fifty members, two who were county commissioners), which resulted in a quorum of the board being present at the meeting (without the meeting also being noticed as a county commission meeting), so long as the nonmember commissioners did not engage in deliberations or render [decisions](#).<sup>39</sup>

**Advisory committees and the OMA** – the OMA does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely [advisory](#) or only capable of making 'recommendations concerning the exercise of governmental authority.'"<sup>40</sup>

Where, on the other hand, a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full public body of the opportunity to consider a matter, a decision of the committee or subcommittee "is an exercise of governmental authority which effectuates

<sup>32</sup> *St Aubin v Ishpeming City Council*, 197 Mich App 100, 103; 494 NW2d 803 (1992).

<sup>33</sup> OAG, 1979-1980, No 5437, p 36 (February 2, 1979).

<sup>34</sup> OAG, 1977-1978, No 5183, p 21, 35 (March 8, 1977).

<sup>35</sup> OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978).

<sup>36</sup> OAG, 1979-1980, No 5433, p 29, 31 (January 31, 1979).

<sup>37</sup> OAG, 1981-1982, No 6074, at p 664.

<sup>38</sup> OAG No 5433 at p 31.

<sup>39</sup> OAG, 1989-1990, No 6636, p 253 (October 23, 1989), cited with approval in *Ryant v Cleveland Twp*, 239 Mich App 430, 434-435; 608 NW2d 101 (2000) and *Nicholas v Meridian Charter Twp*, 239 Mich App at 531-532. If, however, the noncommittee board members participate in committee deliberations, the OMA would be violated. *Nicholas*, 239 Mich App at 532.

<sup>40</sup> OAG, 1997-1998, No 6935, p 18 (April 2, 1997); OAG No 5183 at p 40.

public policy" and the committee or subcommittee proceedings are, therefore, subject to the [OMA](#).<sup>41</sup>

If a joint meeting of two committees of a board (each with less than a quorum of the board) results in the presence of a quorum of the board, the board must comply in all respects with the OMA and notice of the joint meeting must include the fact that a [quorum](#) of the board will be present.<sup>42</sup>

**Use of e-mail or other electronic communications among board members during an open meeting** – e-mail, texting, or other forms of electronic communications among members of a board or commission during the course of an open meeting that constitutes deliberations toward decision-making or actual decisions violates the OMA, since it is in effect a "closed" session. While the OMA does not require that all votes by a public body must be by roll call, voting requirements under the act are met when a vote is taken by roll call, show of hands, or other method that informs the public of the public official's decision rendered by his or her vote. Thus, the OMA bars the use of e-mail or other electronic communications to conduct a secret ballot at a public meeting, since it would prevent citizens from knowing how members of the public body have [voted](#).<sup>43</sup>

Moreover, the use of electronic communications for discussions or deliberations, which are not, at a minimum, able to be heard by the public in attendance at an open meeting are contrary to the OMA's core purpose – the promotion of openness in government.<sup>44</sup>

Using e-mail to distribute handouts, agenda items, statistical information, or other such material during an open meeting should be permissible under the OMA, particularly when copies of that information are also made available to the public before or during the meeting.

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<sup>41</sup> *Schmiedicke v Clare School Bd*, 228 Mich App 259, 261, 263-264; 577 NW2d 706 (1998); *Morrison v East Lansing*, 255 Mich App 505; 660 NW2d 395 (2003); and OAG, 1997-1998, No 7000, p 197 (December 1, 1998) – a committee composed of less than a quorum of a full board is subject to the OMA, if the committee is effectively authorized to determine whether items will or will not be referred for action by the full board, citing OAG, 1977-1978, No 5222, p 216 (September 1, 1977).

<sup>42</sup> OAG, 1989-1990, No 6636, at p 254.

<sup>43</sup> See *Esperance v Chesterfield Twp*, 89 Mich App 456, 464; 280 NW2d 559 (1979) and OAG, 1977-1978, No 5262, p 338 (January 31, 1978).

<sup>44</sup> See *Booth Newspapers, Inc*, 444 Mich at 229; *Schmiedicke*, 228 Mich App at 263, 264; and *Wexford County Prosecutor*, 83 Mich App at 204.

## CLOSED SESSIONS

**Meeting in closed session** – a public body may meet in a [closed session](#) *only* for one or more of the permitted purposes specified in section 8 of the OMA.<sup>45</sup> The [limited purposes](#) for which closed sessions are permitted include, among others<sup>46</sup>:

- (1) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, *if the named person requests a [closed hearing](#)*.<sup>47</sup>
- (2) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement *if either negotiating party requests a [closed hearing](#)*.<sup>48</sup>
- (3) To consider the purchase or lease of real property up to the time an option to purchase or lease that [real property](#) is obtained.<sup>49</sup>
- (4) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, *but only if an [open meeting](#) would have a detrimental financial effect on the litigating or settlement position of the public body*.<sup>50</sup>
- (5) To review and consider the contents of an application for employment or appointment to a public office *if the candidate requests that the application remain confidential*. However, all [interviews](#) by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.<sup>51</sup>
- (6) To consider material [exempt](#) from discussion or disclosure by state or federal statute.<sup>52</sup> But note – a board is not permitted to go into closed session to discuss an attorney's oral opinion, as opposed to a written legal memorandum.<sup>53</sup>

**A closed session must be conducted during the course of an open meeting** – section 2(c) of the OMA defines "[closed session](#)" as "a meeting or part of a meeting of a public body that is

<sup>45</sup> MCL 15.268. OAG, 1977-1978, No 5183, at p 37.

<sup>46</sup> The other permissible purposes deal with public primary, secondary, and post-secondary student disciplinary hearings – section 8(b); state legislature party caucuses – section 8(g); compliance conferences conducted by the Michigan Department of Community Health – section 8(i); and public university presidential search committee discussions – section 8(j).

<sup>47</sup> MCL 15.268(a) (Emphasis added.)

<sup>48</sup> MCL 15.268(c) (Emphasis added.)

<sup>49</sup> MCL 15.268(d).

<sup>50</sup> MCL 15.268(e) (Emphasis added.)

<sup>51</sup> MCL 15.268(f) (Emphasis added.)

<sup>52</sup> MCL 15.268(h).

<sup>53</sup> *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 467, 469-470; 425 NW2d 695 (1988).

closed to the public."<sup>54</sup> Section 9(1) of the OMA provides that the [minutes](#) of an open meeting must include "the purpose or purposes for which a closed session is held."<sup>55</sup>

**Going into closed session** – section 7(1) of the [OMA](#)<sup>56</sup> sets out the procedure for calling a closed session:

A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

Thus, a public body may go into closed session only upon a motion duly made, seconded, and adopted by a [2/3 roll call vote](#) of the members appointed and serving<sup>57</sup> during an open meeting for the purpose of (1) considering the purchase or lease of real property, (2) consulting with their attorney, (3) considering an employment application, or (4) considering material exempt from disclosure under state or federal law. A majority vote is sufficient for going into closed session for the other OMA permitted purposes.

We suggest that every motion to go into closed session should cite one or more of the permissible purposes listed in section 8 of the [OMA](#).<sup>58</sup> An example of a motion to go into closed session is:

I move that the Board meet in closed session under section 8(e) of the Open Meetings Act, to consult with our attorney regarding trial or settlement strategy in connection with [the name of the specific lawsuit].

Another example is the need to privately discuss with the public body's attorney a memorandum of advice as permitted under section 8(h) of the OMA – "to consider material [exempt](#) from discussion or disclosure by state or federal statute."<sup>59</sup> The motion should cite section 8(h) of the OMA and the statutory basis for the closed session, such as section 13(1)(g) of the [Freedom of Information Act](#), which exempts from public disclosure "[i]nformation or records subject to the attorney-client privilege."<sup>60</sup>

**Leaving a closed session** – the OMA is silent as to how to leave a closed session. We suggest that you recommend a motion be made to end the closed session with a majority vote needed for

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<sup>54</sup> MCL 15.262(c).

<sup>55</sup> MCL 15.269(1).

<sup>56</sup> MCL 15.267(1).

<sup>57</sup> And not just those attending the meeting. OAG No 5183 at p 37.

<sup>58</sup> MCL 15.268.

<sup>59</sup> MCL 15.268(h). Proper discussion of a written legal opinion at a closed meeting is, with regard to the attorney-client privilege exemption to the OMA, limited to the meaning of any strictly legal advice presented in the written opinion. *People v Whitney*, 228 Mich App at 245-248.

<sup>60</sup> MCL 15.243(1)(g).

approval. Admittedly, this is a decision made in a closed session, but it certainly isn't a decision that "effectuates or formulates public policy."

When the public body has concluded its closed session, the open meeting minutes should state the time the public body reconvened in open session and, of course, any votes on matters discussed in the closed session must occur in an open meeting.

**Decisions must be made during an open meeting, not the closed session** – section 3(2) of the OMA requires that "[a]ll decisions of a public body shall be made at a meeting [open to the public](#)."<sup>61</sup> Section 2(d) of the OMA defines "[decision](#)" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."<sup>62</sup>

**Avoid using the terms "closed session" and "executive session" interchangeably** – we suggest that a public body not use the term "executive session" to refer to a "closed session." The term "executive session" does not appear in the OMA, but "closed session" does. "Executive session" is more of a private sector term and is often used to describe a private session of a board of directors, which is not limited as to purpose, where actions can be taken, and no minutes are recorded.

**Staff and others may join the board in a closed session** – a public body may rely upon its officers and employees for [assistance](#) when considering matters in a closed session. A public body may also request private citizens to assist, as appropriate, in its considerations.<sup>63</sup>

**Forcibly excluding persons from a closed session** – a public body may, if necessary, exclude an [unauthorized individual](#) who intrudes upon a closed session by either (1) having the individual forcibly removed by a law enforcement officer, or (2) by recessing and removing the closed session to a new location.<sup>64</sup>

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<sup>61</sup> MCL 15.263(2). *St Aubin v Ishpeming City Council*, 197 Mich App at 103. See also, OAG, 1977-1978, No 5262, at p 338-339 – the OMA prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted and OAG, 1979-1980, No 5445, p 57 (February 22, 1979) – a public body may not take final action on any matter during a closed meeting.

<sup>62</sup> MCL 15.262(d).

<sup>63</sup> OAG, 1979-1980, No 5532, p 324 (August 7, 1979).

<sup>64</sup> OAG, 1985-1986, No 6358, p 268 (April 29, 1986), citing *Regents of the Univ of Michigan v Washtenaw County Coalition Against Apartheid*, 97 Mich App 532; 296 NW2d 94 (1980).



## PUBLIC ATTENDING OPEN MEETINGS

**Excluding individuals** – no one may be excluded from a meeting otherwise open to the public except for a [breach of the peace](#) actually committed at the meeting.<sup>65</sup>

**Identifying public attendees** – no one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a [condition](#) precedent to attend a public meeting.<sup>66</sup>

Building security at the meeting site may cause issues. Members of the public might object, based on the [OMA](#), to signing in to gain access to the building where a public meeting is being held.<sup>67</sup> We, therefore, recommend that public bodies meet in facilities or areas not subject to public access restrictions.

If the public body wishes the members of the public to identify themselves at the meeting, we suggest the board chair announce something like this:

The Board would appreciate having the members of the public attending the meeting today identify themselves and mention if they would like the opportunity to speak during the public comment period. However, you do not need to give your name to attend this meeting. When the time comes to introduce yourself and you do not want to do so, just say pass.

Since speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a [rule](#) requiring individuals to identify themselves if they wish to speak at a meeting.<sup>68</sup>

**Limiting public comment** – a public body may adopt a [rule](#) imposing individual time limits for members of the public addressing the public body.<sup>69</sup> In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a [rule](#) limiting the period of public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.<sup>70</sup>

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<sup>65</sup> MCL 15.263(6).

<sup>66</sup> MCL 15.263(4).

<sup>67</sup> In addition, "[a]ll meetings of a public body . . . shall be held in a place available to the general public." MCL 15.263(1).

<sup>68</sup> MCL 15.263(5). OAG, 1977-1978, No 5183, at p 34.

<sup>69</sup> OAG, 1977-1978, No 5332, p 536 (July 13, 1978). The rule must be duly adopted and recorded. OAG, 1977-1978. No 5183, at p 34.

<sup>70</sup> OAG No 5332 at p 538.

**Meeting location** – the [OMA](#) only requires that a meeting be held "in a place available to the general public;" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.<sup>71</sup> However, if a meeting is held so far from the public which it serves that it would be difficult or inconvenient for its citizens to attend, the meeting may not be considered as being held at a place available to the general public. Whenever possible, the meeting should be held within the public body's geographical boundaries.

**Timing of public comment** – a public body has discretion under the OMA when to schedule [public comment](#) during the meeting.<sup>72</sup> Thus, scheduling public comment at the beginning<sup>73</sup> or the [end](#)<sup>74</sup> of the meeting agenda does not violate the OMA. The public has no right to address the [commission](#) during its deliberations on a particular matter.<sup>75</sup>

**Taping and broadcasting** – the [right](#) to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting.<sup>76</sup> A board may establish reasonable [regulations](#) governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.<sup>77</sup> And the exercise of the [right](#) to tape-record, videotape, and broadcast public meetings may not be dependent upon the prior approval of the public body.<sup>78</sup>

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<sup>71</sup> OAG, 1979-1980, No 5560, p 386 (September 13, 1979). Of course, local charter provisions or ordinances may impose geographical limits on public body meetings.

<sup>72</sup> MCL 15.263(5).

<sup>73</sup> *Lysogorski v. Bridgeport Charter Twp*, 256 Mich App at 302.

<sup>74</sup> OAG, 1979-1980, No 5716, p 812 (June 4, 1980).

<sup>75</sup> OAG, 1977-1978, No 5310, p 465, 468 (June 7, 1978).

<sup>76</sup> MCL 15.263(1).

<sup>77</sup> OAG, 1987-1988, No 6499, p 280 (February 24, 1988).

<sup>78</sup> MCL 15.263(1).

## MINUTES

**What must be in the minutes** – at a minimum, the minutes must show the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The [minutes](#) must include all roll call votes taken at the meeting.<sup>79</sup> The OMA does not prohibit a public body from preparing a more detailed set of minutes of its public meetings if it chooses to do so.<sup>80</sup>

**When must the minutes be available** – proposed minutes must be made available for public inspection within eight days after the applicable meeting. Approved [minutes](#) must be made available for public inspection within five days after the public body's approval.<sup>81</sup>

**When must the minutes be approved** – at the board's [next meeting](#).<sup>82</sup> Corrected minutes must show both the original entry and the correction (for example, using a "strikethrough" word processing feature).

**Closed session minutes** – a separate set of minutes must be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in [closed session](#) to consider approving the minutes.<sup>83</sup>

Closed session minutes shall only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the [OMA](#).<sup>84</sup> The board secretary may furnish the minutes of a closed session of the body to a board member. A member's [dissemination](#) of closed session minutes to the public, however, is a violation of the OMA, and the member risks criminal prosecution and civil penalties.<sup>85</sup> An audiotape of a closed session meeting of a public body is part of the minutes of the session meeting and, thus, must be filed with the clerk of the public body for retention under the OMA.<sup>86</sup>

Closed session minutes may be [destroyed](#) one year and one day *after approval of the minutes of the regular meeting at which the closed session occurred*.<sup>87</sup>

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<sup>79</sup> MCL 15.269(1).

<sup>80</sup> Informational letter to Representative Jack Brandenburg from Chief Deputy Attorney General Carol Isaacs dated May 8, 2003.

<sup>81</sup> MCL 15.269(3).

<sup>82</sup> MCL 15.269(1)

<sup>83</sup> OAG, 1985-1986, No 6365, p 288 (June 2, 1986). This, of course, triggers the need for more closed session minutes.

<sup>84</sup> MCL 15.270, 15.271, and 15.273; *Local Area Watch v Grand Rapids*, 262 Mich App 136, 143; 683 NW2d 745 (2004); OAG, 1985-1986 No 6353, p 255 (April 11, 1986).

<sup>85</sup> OAG, 1999-2000, No 7061, p 144 (August 31, 2000).

<sup>86</sup> *Kitchen v Ferndale City Council*, 253 Mich App 115; 654 NW2d 918 (2002).

<sup>87</sup> MCL 15.267(2).

**Inadvertent omissions from the minutes** – the OMA does not invalidate a decision due to a simple error in the minutes, such as inadvertently omitting the vote to go into closed session from a meeting's minutes.<sup>88</sup>

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<sup>88</sup> *Willis v Deerfield Twp*, 257 Mich App 541, 554; 669 NW2d 279 (2003).

## PARLIAMENTARY PROCEDURES

**Core principle** – for the actions of a public body to be valid, they must be approved by a [majority vote](#) of a quorum, absent a controlling provision to the contrary, at a lawfully convened meeting.<sup>89</sup>

### QUORUM

**Quorum** – is the minimum number of members who must be present for a board to act. Any substantive action taken in the absence of a quorum is invalid. If a public body properly notices the meeting under OMA, but lacks a quorum when it actually convenes, the board members in attendance may receive reports and comments from the public or staff, ask questions, and comment on matters of interest.<sup>90</sup>

**What is the quorum?** – look to the statute, charter provision, or ordinance creating the board. On the state level, the Legislature in recent years has taken care to set the board quorum in the statute itself. The statute will often provide that "a majority of the board appointed and serving shall constitute a quorum." For a 15-member board, that means eight would be the quorum, assuming you have 15 members appointed and serving. Without more in the statute, as few as five board members could then decide an issue, since they would be a majority of a [quorum](#).<sup>91</sup> But, be careful, recent statutes often provide that "voting upon action taken by the board shall be conducted by [majority vote](#) of the members appointed and serving." In that instance, the board needs at least eight favorable votes to act.<sup>92</sup> The Legislature has a backstop statute, which provides that any provision that gives "joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."<sup>93</sup>

**Disqualified members** – a member of a public body who is disqualified due to a [conflict of interest](#) may not be counted to establish a quorum to consider that matter.<sup>94</sup>

<sup>89</sup> OAG, 1979-1980, No 5808, p 1060 (October 30, 1980). Robert's Rules of Order Newly Revised (RRONR) (10<sup>th</sup> ed.), p 4. We cite to Robert's Rules in this Handbook as a leading guide on parliamentary procedures. This is not to imply that public bodies are, as a general rule, bound by Robert's Rules.

<sup>90</sup> OAG, 2009-2010, No 7235, p (October 9, 2009).

<sup>91</sup> See OAG, 1977-1978, No 5238, p 261 (November 2, 1977).

<sup>92</sup> See OAG, 1979-1980, No 5808, at p 1061.

<sup>93</sup> MCL 8.3c. *Wood v Bd of Trustees of the Policemen and Firemen Retirement System of Detroit*, 108 Mich App 38, 43; 310 NW2d 39 (1981).

<sup>94</sup> OAG, 1981-1982, No 5916, p 218 (June 8, 1981). But see MCL 15.342a, which provides a procedure for disqualified public officials to vote in some limited circumstances where a quorum is otherwise lacking for a public body to conduct business.

**Losing a quorum** – even if a meeting begins with a quorum present, the board loses its right to conduct substantive action whenever the attendance of its members falls below the necessary quorum.<sup>95</sup>

**Resigned members** – the common law rule in Michigan is that a public officer's resignation is not effective until it has been accepted by the appointing authority (who, at the state level, is usually the governor). Acceptance of the [resignation](#) may be manifested by formal acceptance or by the appointment of a successor.<sup>96</sup> Thus, until a resignation is formally accepted or a successor appointed, the resigning member must be considered "appointed and serving," be counted for quorum purposes, and be permitted to vote.

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<sup>95</sup> RRONR (10<sup>th</sup> ed.), p 337-338.

<sup>96</sup> OAG, 1985-1986, No 6405, p 429, 430 (December 9, 1986), citing *Clark v Detroit Bd of Education*, 112 Mich 656; 71 NW 177 (1897).

## VOTING

**Abstain** – means to refuse to vote. Thus, a board member does not "vote" to abstain. If a vote requires a majority or a certain percentage of the members present for approval, an abstention has the same effect as a "no" vote.<sup>97</sup>

**Adjourning the meeting** - a presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.<sup>98</sup>

**Chairperson voting** – perhaps as a spillover from the well-known constitutional rule that the vice president can only vote to break a tie in the United States Senate<sup>99</sup> or that a legislative presiding officer usually refrains from voting unless his or her vote affects the result,<sup>100</sup> some believe that a board's presiding officer (usually, the chairperson) can only vote to break a tie. However, absent a contrary controlling provision, all board members may [vote](#) on any matter coming before a board.<sup>101</sup> A board's presiding officer can't vote on a motion and then, if the vote is tied, vote to break the tie unless explicitly authorized by law.<sup>102</sup>

**Expired-term members** – look first to the statute, charter provision, or ordinance creating the public body. Many statutes provide that "a member shall serve until a successor is appointed." Absent a contrary controlling provision, the general rule is that a public officer holding over after his or her term expires may [continue](#) to act until a successor is appointed and qualified.<sup>103</sup>

**Imposing a greater voting requirement** – where the Legislature has required only a majority vote to act, public bodies can't impose a greater voting requirement, such as requiring a two-thirds vote of its members to [alter](#) certain policies or bylaws.<sup>104</sup>

**Majority** – means simply "more than half."<sup>105</sup> Thus, on a 15-member board, eight members constitute a majority.

<sup>97</sup> RRONR (10<sup>th</sup> ed.), p 390-395.

<sup>98</sup> *Dingwall v Detroit Common Council*, 82 Mich 568, 571; 46 NW 938 (1890),

<sup>99</sup> US Const, art I, §3.

<sup>100</sup> RRONR (10<sup>th</sup> ed.), p 392-393 – an assembly's presiding officer can break or create a tie vote.

<sup>101</sup> See OAG, 1981-1982, No 6054, p 617 (April 14, 1982).

<sup>102</sup> *Price v Oakfield Twp Bd*, 182 Mich 216; 148 NW 438 (1914).

<sup>103</sup> OAG, 1979-1980, No 5606, p 493 (December 13, 1979), citing *Greyhound Corp v Public Service Comm*, 360 Mich 578, 589-590; 104 NW2d 395 (1960). See also, *Cantwell v City of Southfield*, 95 Mich App 375; 290 NW2d 151 (1980).

<sup>104</sup> OAG, 1979-1980, No 5738, p 870 (July 14, 1980). OAG, 2001-2002, No 7081, p 27 (April 17, 2001), citing *Wagner v Ypsilanti Village Clerk*, 302 Mich 636; 5 NW2d 513 (1942).

<sup>105</sup> RRONR (10<sup>th</sup> ed.), p 387.

**Proxy voting** – the OMA requires that the deliberation and formulation of decisions effectuating public policy be conducted at open meetings.<sup>106</sup> Voting by proxy effectively forecloses any involvement by the absent board member in the board's public discussion and deliberations before the board votes on a matter effectuating public policy.<sup>107</sup> Without explicit statutory authority, this [practice](#) is not allowed.<sup>108</sup>

**Roll call vote** – there is no bright line rule for conducting a [roll call vote](#).<sup>109</sup> We suggest some rules of thumb. When a voice vote reveals a divided vote on the board (i.e., more than one no vote), a roll call vote should be conducted to remove doubt about the vote's count. When the board is acting on matters of significance, such as, contracts of substantial size or decisions that will have multi-year impacts, a roll call vote is the best choice.

**Round-robin voting** – means approval for an action outside of a public meeting by passing around a sign-off sheet. This practice has its roots in the legislative committee practice of passing around a tally sheet to gain approval for discharging a bill without a committee meeting. "[Round-robinning](#)" defeats the public's right to be present and observe the manner in which the body's decisions are made and violates the letter and the spirit of the OMA.<sup>110</sup>

**Rule of necessity** – if a state agency's involvement in prior administrative or judicial proceedings involving a party could require recusal of all of its board members or enough of them to prevent a quorum from assembling, the common law rule of necessity precludes recusing all members, if the disqualification would leave the agency unable to adjudicate a question.<sup>111</sup> But the rule of necessity may not be applied to allow members of a public body to vote on matters that could benefit their [private employer](#).<sup>112</sup>

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<sup>106</sup> *Esperance v Chesterfield Twp*, 89 Mich App at 464, quoting *Wexford County Prosecutor v Pranger*, 83 Mich App 197; 268 NW2d 344 (1978).

<sup>107</sup> Robert's Rules concur: "Ordinarily it [proxy voting] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable." RRONR (10<sup>th</sup> ed.), p 414. The Michigan House and Senate do not allow proxy voting for their members.

<sup>108</sup> OAG, 2009-2010, No 7227, p (March 19, 2009). OAG, 1993-1994, No 6828, p 212 (December 22, 1994), citing *Dingwall*, 82 Mich at 571, where the city council counted and recorded the vote of absent members in appointing election inspectors. The Michigan Supreme Court rejected these appointments, ruling that "the counting of absent members and recording them as voting in the affirmative on all questions, was also an inexcusable outrage."

<sup>109</sup> "The fact that the Open Meetings Act prohibits secret balloting does not mean that all votes must be roll call votes." *Esperance v Chesterfield Twp*, 89 Mich App at 464 n 9. The OMA does provide that votes to go into closed session must be by roll call. MCL 15.267.

<sup>110</sup> OAG, 1977-1978, No 5222, at p 218. See also, *Booth Newspapers*, 444 Mich at 229, which concluded that "round-the-horn" deliberations can constitute decisions under the OMA.

<sup>111</sup> *Champion's Auto Ferry, Inc v Michigan Public Service Comm*, 231 Mich App 699; 588 NW2d 153 (1998). The Court noted that the PSC members did not have any personal financial interest in the matter. *Id.* at 708-709.

<sup>112</sup> OAG, 1981-1982, No 6005, p 439, 446 (November 2, 1981). After OAG No 6005 was issued, the Legislature amended section 2a of 1973 PA 196, MCL 15.342a, to provide a procedure for voting by public officials in some limited circumstances where a quorum is otherwise lacking for a public entity to conduct business.



**Secret ballot** – the OMA requires that all decisions and deliberations of a public body must be made at an open meeting and the term "[decision](#)" is defined to include voting.<sup>113</sup> The OMA prohibits a "[voting procedure](#)" at a public meeting that prevents citizens from knowing how members of a public body have voted."<sup>114</sup> Obviously, the use of a secret ballot process would prevent this transparency. All board decisions subject to the OMA must be made by a public vote at an open meeting.<sup>115</sup>

**Tie vote** – a tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.<sup>116</sup>

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<sup>113</sup> See MCL 15.262(d) and 15.263(2) and (3).

<sup>114</sup> OAG, 1977-1978, No 5262, at p 338-339.

<sup>115</sup> *Esperance*, 89 Mich App at 464.

<sup>116</sup> *Rouse v Rogers*, 267 Mich 338; 255 NW 203 (1934). RRONR (10<sup>th</sup> ed.), p 392.

## Email and Retention of Records

### What is email?

Electronic mail (email) is a means of exchanging messages and documents using computers. A complete email message includes the contents of the communication, the transactional information (dates and times that messages were sent, received, opened, deleted, etc.), and any attachments.

### Is email a public record?

Email messages are public records if they are created or received as part of performing a public employee's official duties.

The Michigan Freedom of Information Act (FOIA) (1976 PA 442, as amended) defines a public record as "a writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

### I sometimes use my home computer and personal email account to conduct government business.

#### Am I creating public records?

Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer resources.

### What is a Retention and Disposal Schedule?

Michigan law requires that all public records be inventoried on an approved Retention and Disposal Schedule that identifies how long the records must be kept, when they must be destroyed, and when certain records can be sent to the State Archives of Michigan for permanent preservation. Public records cannot be destroyed unless disposal is authorized by an approved Retention and Disposal Schedule.

### Is there a Retention and Disposal Schedule that covers municipal public records?

Yes. General Retention Schedule #8 covers municipal records. Additionally, the State of Michigan's Records Management Services has created department-specific schedules for local governments. If a municipality maintains records that are not listed on General Retention Schedule #8 or any of the department-specific schedules, a specific schedule must be created to address the retention of those records before they can be destroyed. Records Management Services is available to advise municipalities about Retention and Disposal Schedules and records management issues. Additional information is available from the Records Management Services' website, [www.michigan.gov/recordsmanagement/](http://www.michigan.gov/recordsmanagement/).

### Does all email have the same retention period?

No. Just like paper records, email records are used to support a variety of business processes. Email messages must be evaluated for their content and purpose to determine the length of time the message must be retained in accordance with the appropriate Retention and Disposal Schedule.

"Plus" material was provided by the State of Michigan Records Management Services.

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# Scope of Service



We have prepared the following Scope of Service in response to the City of Saugatuck’s Request for Proposals for Short-Term Rental Task Force assistance. We understand that Saugatuck City Council has formed a short-term rental task force in order to identify and prioritize current short-term rental concerns, issues, opportunities and objectives held by residents, property and business owners and other community stakeholders.

The City of Saugatuck is one of Michigan’s premiere communities, with its quaint downtown, plentiful tourism opportunities, scenic natural beauty, and growing economy. Because of this, the City is well-positioned for, and has become, a prime location for short-term rentals in response to the need for vacationer lodging in the area.

At McKenna, our planning and zoning professionals understand the importance for popular lakeshore communities, such as Saugatuck, to take a proactive approach in addressing the topic of short-term rentals, and how they may affect a community. Short-term rentals are a topic of national importance, as many communities face challenges in not only housing affordability and availability, but also concerns with quality of life for adjacent properties, potential effects on local schools and businesses, and other aspects. The following scope outlines our proposed approach to assisting the City with this important endeavor to address short-term rentals in Saugatuck.

## **PHASE 1: COMPARISON, ANALYSIS & ASSESSMENT**

### **Task 1.1 – Information Gathering: Local Level**

Our team will gather data from the City regarding currently known registered rental properties. This data gathering will analyze complaints and/or variances filed to the City by property owners and other concerned citizens. Our team will summarize the concerns raised by residents and other stakeholders regarding short-term rentals and analyze how these concerns can be addressed from a zoning ordinance regulation and enforcement perspective. Our team will also map registered properties, which includes rental licenses. This mapping analysis will provide spatial information to highlight specific areas of the City where rentals may be concentrated. This mapping task will assess how the fabric of the City's neighborhoods can be affected by short-term rentals. Where available, we will review online source data to mark properties listed for rent. Further, this task will include the analysis of the City's existing land uses.

Additionally, this initial task will include the review of applicable City documents and policies as they relate to short-term rentals. This can include current zoning requirements (e.g., permitted uses in residential districts and downtown, definition of "temporary" or "short-term," accessory dwelling unit provisions, etc.), a review of the City's master plan, review of any applicable general ordinances, and other documents as deemed appropriate.

### **Task 1.2 – Information Gathering: Regional Comparisons**

Our team will gather short-term rental ordinances from other popular destination communities across the State of Michigan, focusing primarily on municipalities with water-front access. We will summarize the key takeaways from the sample peer communities for review by Saugatuck City Council and task-force members. Our team will "shred the ordinances" of comparison communities and relate those provisions to the City of Saugatuck's Zoning Ordinance as it pertains to short-term rentals to ensure compliance with State and Federal regulations. This task will also highlight areas in which the City can take away "what works" and lessons learned in other communities. Additionally, we will include an analysis of fees, enforcement, and inspection structures adopted by these peer communities.

In this phase, we will also gather data and engage in conversations with applicable regional organizations, such as Allegan County, Housing Next, and others to ensure that have the "full picture" of the short-term rental assets, challenges, and opportunities in the region.

### **Task 1.3 – Information Gathering: National Best Practices**

This final initial task of the information gathering stage will include a summary and synopsis of best practices as they relate to the regulation of short-term rentals in coastal communities. Resources available to McKenna published by organizations such as the American Planning Association (APA) have information on best practices in planning and zoning regarding this subject. McKenna will review these best practices and note recommendations applicable to Saugatuck. The results of this task will put Saugatuck at the forefront of emerging trends in best practices for regulating short-term rentals.

### **Task 1.4 – Short Term Rental Task Force Meetings**

A representative of our team will attend each task force meeting to provide updates and help facilitate the discussions. Our team representative will also provide updates on ongoing tasks, such as information gathering, public engagement summaries and any other items deemed appropriate by City leadership. Our team will be responsible for providing materials for discussion at each meeting.

## PHASE 2: PUBLIC PARTICIPATION & COMMUNITY OUTREACH

### Task 2.1 – Community Engagement

Our team will facilitate discussions with residents, property owners, business owners and community stakeholders to ascertain the climate of short-term rentals within the City and perceived concerns with short-term rentals. Engagement can be in the form of surveys, workshops, events, public hearings or a combination that best fits the community. Our community engagement approach is further outlined below.

### Task 2.2 – Community Engagement Summary

Our team will prepare a graphically rich summary of the findings from our engagement with the Saugatuck community. The summary will include an analysis of the positive and not-so-positive comments received from the community engagement sessions (as described further in the next section of this proposal). This summary will directly relate to potential changes to the City’s policies and zoning regulations as they relate to short-term rentals.

## PHASE 3: RECOMMENDATIONS

### Task 3.1 – Policies & Zoning Ordinance Recommendations

After our team has engaged with the Saugatuck community and provided the initial findings to City Council and the task force, we will prepare a draft amendment(s) to the existing Zoning Ordinance and any other City policy documents (such as the master plan) as it relates to short-term rentals. Our draft amendments will initially include a “highlight and strike” version so all interested parties may view the proposed changes clearly. Further, where applicable, our draft amendments will tie back to community feedback or other community ordinances. If our team recommends a change, we will ensure that City Council and the short-term rental task force will be fully briefed on why certain changes are being proposed.

Where applicable, and as described above, our team will provide summaries of other waterfront communities’ recent changes to short-term rental regulations and what the outcome after the changes has been.

Our team will not only look at policy and ordinance changes, but also economic impacts on rental housing within a community – where data is available.



## ONGOING MEETINGS

### Task 4.1 – Collaboration with the City of Saugatuck Planning Commission

After the draft amendments, if any, have been prepared as directed by the Task Force and City leadership, our team will facilitate two (2) working sessions with the Saugatuck Planning Commission. These working sessions will highlight the following:

- Overview of recent code enforcement action regarding short-term rentals.
- Analysis of registered rental properties within the City.
- Summary of the community engagement event(s) hosted within the community.
- Analysis of the Short-Term Rental Taskforce findings.
- Proposed changes to the current zoning regulations pertaining to short-term rentals

### Task 4.2 – Planning Commission Public Hearing

Our team will attend the Planning Commission public hearing discussing the proposed changes to the City of Saugatuck's zoning ordinance. Our team will prepare a presentation to the Planning Commission and interested public outlining the proposed changes and findings from the community engagement. As well as other relevant data in which these recommendations derive.

### Task 5.1 – Presentation to Saugatuck City Council

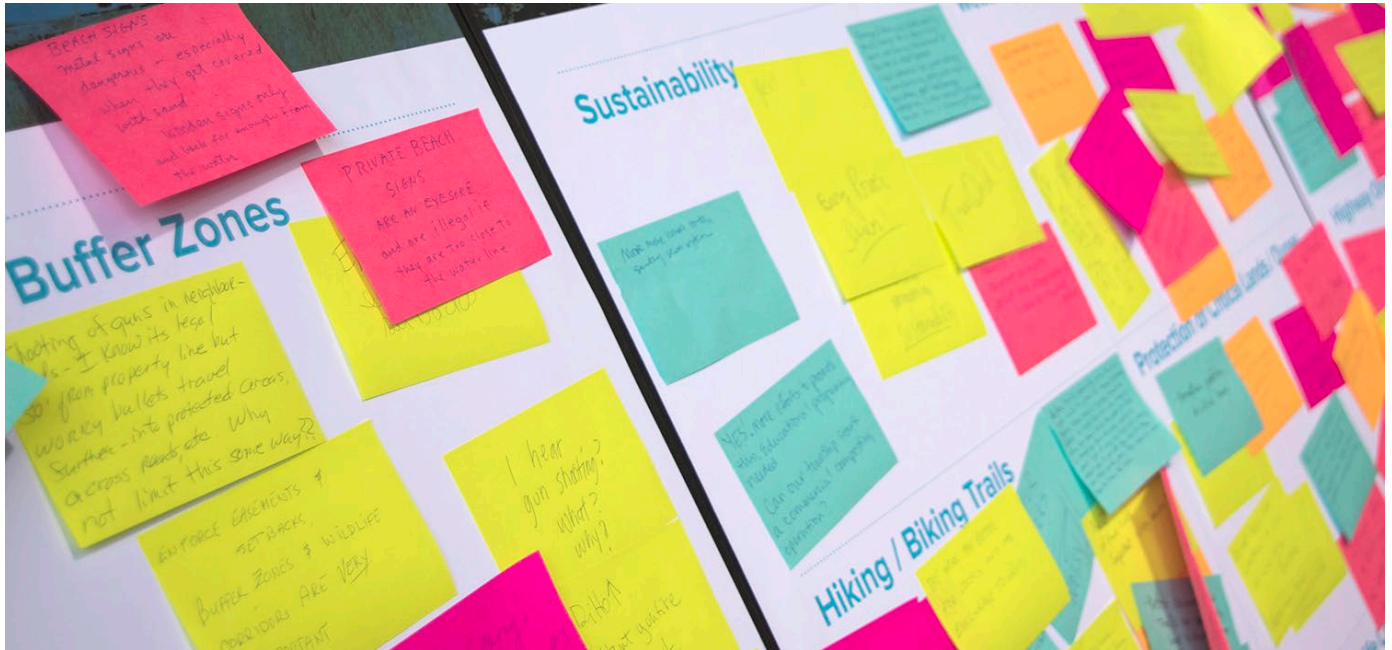
Our team will prepare a presentation to City Council outlining the findings of the taskforce, comments received during the Planning Commission working sessions and the public hearing. Our team will present the proposed zoning ordinance amendments relating to short-term rentals in an easy-to-follow format.

### Task 5.2 – Adoption

Our team will finalize any revisions as requested by City Council and assist City leadership in adopting the amended zoning ordinance and policies pertaining to short-term rentals.



# Community Engagement Approach



At McKenna, we pride ourselves on effectively delivering practical and useful planning processes – on budget and on time. As the City of Saugatuck looks to tackle short-term rental concerns raised by community members, our team is uniquely positioned to gather all manner of public feedback.

We envision our team as the facilitators of a public discussion deployed by City leaders to ensure all voices are heard and to develop consensus and excitement for potential revisions that work not only for residents, property and business owners, but also travelers to the great City of Saugatuck!

We know that the engagement processes need to be flexible, in order to allow for constant evaluation of the feedback and ensure that all voices are heard. Therefore, we are not proposing a set-in-stone scope or a lump sum price.

Instead, on the following pages, we are providing a list of possible engagement actions and activities, as well as potential deliverables to consolidate and articulate the vision of seeking community insight. This approach is designed to be a “menu” of potential public engagement options that are available to the City as deemed appropriate. Further, the City does not have to adopt the following options wholesale. McKenna is flexible to complete any combination of tasks as selected by the City.

Our public engagement process will accomplish the following primary objectives for the City of Saugatuck:

1. Listening! McKenna values all voices from community members. We find that just listening to positive and not-so-positive comments from community members provides a greater base of understanding.
2. We will provide meaningful opportunities for people to engage in the planning process, ensuring participants see their ideas reflected in the recommendations to City Council.

## OPTION #1: OUTREACH MATERIALS AND BRANDING

McKenna's talented graphic design team, led by Art Director Carrie Leitner, will work with City leaders to create a brand for the outreach campaign. The brand will be used consistently on all marketing materials. McKenna can provide the following electronic and hard copy materials for use during the outreach process. This option includes the following items:

1. **Central Outreach Website:** This site, which would have an easy-to-remember URL such as "rentsaugatuck.com", would be the hub of the online portion of the outreach, and would also contain information and updates regarding the ongoing engagement process generally.

*Approximate Fee: \$1,500 for set up, plus \$200 monthly for ongoing updates and maintenance. URL hosting fee included.*

2. **Flyers and Postcards:** McKenna can create flyers, postcards, and other small materials to be mailed, delivered to businesses, or displayed around the community.

*Approximate Fee: \$600 per design. Printing and mailing not included.*

3. **Signage and Large-Scale Materials:** McKenna can produce designs for temporary signage, banners, unstaffed engagement boards, and other large-scale installations that promote or enhance the engagement effort.

*Approximate Fee: \$600 per design. Production, shipping, and installation not included.*

The flyer features a red lighthouse icon on the left. The title "Future Vision FORMER AIRPORT SITE" is in a red script font, with "PARK TOWNSHIP, MICHIGAN" in a smaller blue font below it. The main text reads: "Residents of Park Township are invited to help determine the future of the Former Airport Site. The Township is undergoing a multi-phase process to ensure all voices are heard." Below this, it says "Phase 1: COMMUNITY BRAINSTORM". A section titled "Approximate Timeline" lists four phases: 1. Community Brainstorm (Spring / Summer 2021), 2. Ideas Evaluation (Summer / Fall 2021), 3. Development of Alternatives (Spring / Summer 2022), and 4. Final Consensus Vision (Summer / Fall 2022). An "INSTRUCTIONS" section explains that Green Cards mean "GO!" (suggestions) and Red Cards mean "STOP!" (pitfalls). It lists four categories on each card: Amenities, Design, Preservation, and Big Picture. Two sample response cards are shown. At the bottom, it says "Stay tuned for community workshops, site walks, and other opportunities as the process moves forward! Information will be included in the Township Newsletter, as well as posted at parktpvision.com and around the community." The footer includes "Phase 1: Community Brainstorm" and "PARK TOWNSHIP, MICHIGAN".





## OPTION #2: COMMUNITY WORKSHOPS AND EVENTS

Our approach to community workshops adds value to the traditional “public meeting” framework. In conjunction with the following outreach techniques, we are confident we will accomplish the City’s goals to reach a strong representative sample of its constituents.

We are open to creative ideas for events that “mix and match” the techniques presented below in conjunction with City leaders.

- 1. Community Open Houses.** McKenna team members can host public events with detailed workshop materials. McKenna will work with the City of Saugatuck leadership to maximize the impact of these events and use these events to identify project champions that will help to generate interest in the other outreach activities. Community Open House events can be made virtual or hybrid.

*Approximate Fee: \$3,500 per event.*

- 2. Small Group Discussions.** McKenna team members can host small group discussions and workshops, with the goal of developing ideas and discussions for potential changes to the short-term rental ordinance and policies. Importantly, these groups would not be “by invitation” – they would be open to all interested residents however we encourage limiting the number in attendance to help facilitate the true small group setting. We would also endeavor to create groups with diverse perspectives, including participants from different neighborhoods, different ages, and different backgrounds. As with Community Open Houses, Small Group Discussions can be made virtual or in-person.

*Approximate Fee: \$1,500 per event*

- 3. Pop-Up Engagement.** McKenna can set up engagement stations in various locations throughout the community – in parks, schools, businesses, organizations, or anyone else the community members are likely to gather or spend time. The level of interaction can vary depending on the context and desire of the host location. In some instances, we have set up a full mobile Open House, with robust opportunities for engagement, while in other outreach projects, we have simply stationed team members to hand out postcards or giveaways to raise awareness of the outreach effort and drive traffic to online tools and other events. Unstaffed remote engagement is also a possibility.

*Approximate Fee: \$500 - \$3,000 per location, depending on the level of staffing and the amount of time.*

- 4. Festivals and Gatherings.** Our team members can use festivals and other community events as opportunities for outreach. Similar to the pop-up engagement locations, there is a spectrum of opportunities to engage residents at major gatherings where people come together.

*Approximate Fee: \$1,000 - \$2,500 per event depending on the level of staffing and the length of the event.*

- 5. Targeted Outreach Meetings.** During the process, in collaboration with City leadership, it is possible that we will determine that we have not received feedback from a sub-set of residents – for instance, young people, or residents of neighborhoods away from the waterfront. If directed, McKenna team members can develop outreach events or opportunities specifically for those groups.

*Approximate Fee: Variable, depending on the type of outreach needed.*

- 6. Stakeholder interviews.** This task can include interviews of important community stakeholders as it pertains to short-term rentals. This can include interviews of applicable staff from various peer communities to get more in-depth information on their community’s challenges and triumphs with regulating short-term rentals, or discussions with other interested area organizations, such as tourism bureaus, housing advocates, and others. We will work with the City to determine any other important stakeholders that should be involved in the conversation.

*Approximate Fee: \$150 per interview*

### OPTION #3: ONLINE AND AT-HOME ENGAGEMENT TOOLS

Community engagement in in-person planning processes can be difficult. People need to have free time at a specific time, and often go to a specific place. Online outreach, on the other hand, reaches residents on their schedule and in their homes. Our team has several tools available to create robust online outreach.

- 1. Social Media:** Our team can use Facebook, Twitter, and other platforms to involve people in planning processes. The value of these tools is that similar to a pop-up workshop, we will reach people where they are, and it's convenient and effective. McKenna will not just post a page and leave it. We will moderate the activity, answer questions, and engage users. We will use these informal engagement platforms to direct users to engage in the more formalized online outreach activities.

*Approximate Fee: \$500 for setup, approximately \$250 per month for maintenance and updates.*

- 2. Online or Mail-In Survey:** Public surveys provide a way to gauge the results of an event against a larger sample of public opinion. The McKenna team routinely uses online surveys to collect important information regarding attitudes about transportation, design, and development characteristics. The McKenna team will work with the City to design an online survey that best fits the project. A survey is a great tool that will ensure that those individuals who cannot make it to a public meeting will have a way to contribute. Surveys are also opportunities to get feedback on ideas that have already been generated. We have worked with a partner firm that conducts statistically valid surveys, and we could engage them as part of our team, though we have not done so yet.

*Approximate Fee: \$1,000 for online survey, \$4,000 plus mailing costs for mail-in survey, \$15,000 for statistically valid survey.*

- 3. Online Ideas Board (Social Pinpoint):** McKenna uses the online tool "Social Pinpoint" to create Online Ideas Boards, where residents can both suggest ideas, and react to what others have posted. Our team would curate and moderate the boards, generating robust, yet respectful, discussion.

*Approximate Fee: \$1,000 for setup, \$500 per month for updates and moderation.*

## VIRTUAL ENGAGEMENT BY THE NUMBERS



**1,010**

Unique Website Visitors



**418**

Survey Responses



**799**

Online Comments



**3,200**

Responses to Online Comments



# Deliverables



After the analysis and public engagement tasks are complete and recommendations are discussed with City organizations and leadership, McKenna will produce the following deliverables to the City (as the City deems necessary and as requested):

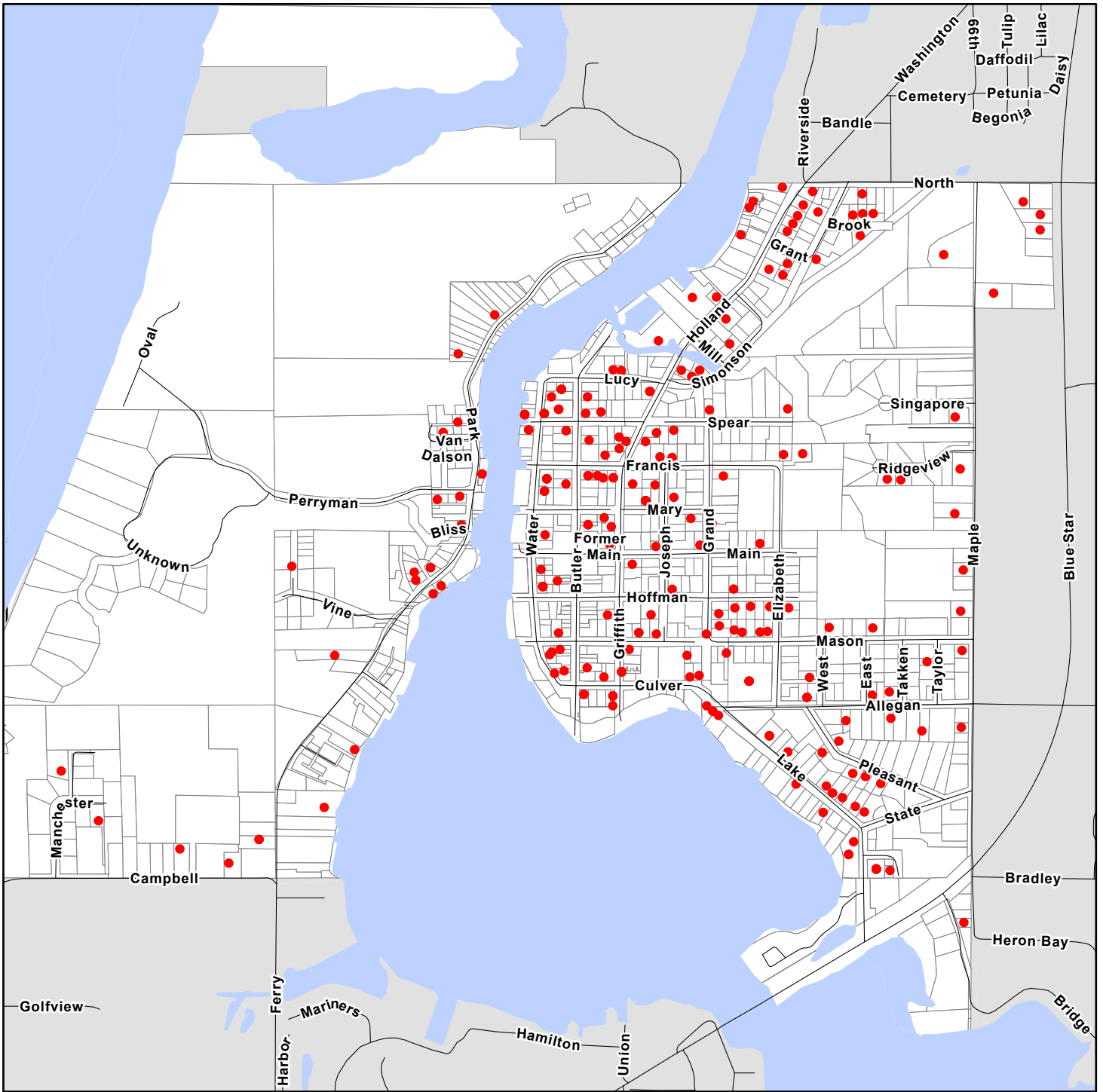
- A graphically rich report of key findings as they pertain to the short-term rental analysis at the local, regional, and national level (including analysis of existing rental properties and violations). This will include applicable maps and other information.
- A graphically rich public engagement report that summarizes the results of all public engagement activities.
- Final recommendations as they pertain to policies for the City to adopt. This deliverable can include:
  - Recommendations in ordinance format for adoption into the City’s zoning ordinance.
  - Recommendations for any applicable amendments to the master plan.
  - Other recommendations as identified throughout the duration of the project and at the City’s direction.

# Timeframe Flow Chart

We will work out a mutually acceptable schedule with City leadership, with the understanding that recommendations are due to City Council and the Planning Commission by September 2023. The following is our proposed timeline of tasks and meetings.

STEP	MONTH								
	1	2	3	4	5	6	7	8	9
Kick-off with City Leaders & Task Force	•								
Task Force Meetings									
<b>Information Gathering &amp; Assessment</b>									
City Data									
Community Reference									
National trends analysis									
<b>Public Participation and Community Outreach</b>									
Other Engagement (survey, workshops, events) – To Be Determined									
Planning Commission Workshops & Public Hearing				•	•				
<b>Recommendations</b>									
Policy & Zoning Recommendations									
Planning Commission Workshops & Public Hearing				•	•				
City Council Presentation						•	•		
Adoption									

• Notes an in-person meeting(s)



# Certified STR Locations

City of Saugatuck, Michigan

April 28, 2023

## LEGEND

- Short Term Rental (244 total)
- Parcels



Basemap Source: Michigan Center for Geographic Information, v. 17a. Data Source: Allegan County 2023. McKenna 2020.



To the Commercial Record  
Editor;

I am a 81 yr old Senior who  
rents a full time home in Saugatuck.

I find winter desolate and hardly a  
downtown shop open. I enjoy the  
diversity of the Summer Renters. They  
are friendly and tell me they love  
Saugatuck.

Granted some can cause issues. But I  
gently tell them about the issues. How  
many times have you needed to tell a  
neighbor about an issue? This is life!

I feel our town would dry up if we  
did not have short term renters.  
Rates would go sky high. Its not the  
residents who shop downtown.

many home owners are here for the  
summer and flee for the winter.

with mortgage rates sky high & now the  
real estate mortgage tax my niece tells me  
home sales have all but stopped.  
(over)

Saugatuck is a vacation mecca, the state advertizes tourists should visit Michigan for summer fun, where would they go if we limit their housing?

Possibly Saugatuck needs a noise ordinance - all quiet time 10:00 pm to 8 AM?

Possibly a hotline for non compliance renters funded by the real estate offices who rent to visitors. There appears to be a problem with no personal contact with the home owner. Arms distance car care non compliance. Possibly the owner car telephone the rental even though the RE office does the booking, emphasis on occupancy & behavior. The rental agent would be notified by the neighbor on the hot line of non compliance. The agent would need to step in. After all they are making a commission, neighbors would be made aware of the rental agency. I am not singling out rental agencies. But I feel they have an obligation to help residential home

2

Owners.

my fear is michigan legislature  
will pass a law - like other states  
have, restricting any city from  
enacting ordinances concerning  
short term rentals if the  
become too restrictive in  
hampering their income as a  
tourist destination.

we have limited choices of  
income in our region but for  
tourist income.

lots to think about

Thank you

D. Brauer  
Saugatuck