

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

**June 28th, 2022**

Refer to [www.oshtemo.org](http://www.oshtemo.org) home page for Virtual Meeting Information

**REGULAR MEETING  
6:00 P.M.  
AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Regular Session Items

**WORK SESSION ITEMS**

4. Budget Kickoff – “AGVs” (Continued)
5. Updates & Business

**BREAK (Time Permitting) – 7:05 P.M.**

**REGULAR SESSION ITEMS – 7:15 P.M.**

6. Consent Agenda
  - a. Approve Minutes June 14<sup>th</sup>, Regular Meeting, & June 16<sup>th</sup> & 17<sup>th</sup> Special Meetings, 2022
  - b. Receipts & Disbursements Report
  - c. Budget Amendments
  - d. Job Description Amendment
7. Discussion on Housing
8. Public Comment
9. Board Member Comments
10. Adjournment

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

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

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

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

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

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

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

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

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

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

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

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

## Zoom Instructions for Participants

### Before a videoconference:

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

### To join the videoconference:

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

You may also join a meeting without the link by going to [join.zoom.us](#) on any browser and entering this **Meeting ID: 832 1639 7786**

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

### To join the conference by phone:

1. On your phone, dial the teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **832 1639 7786#**

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



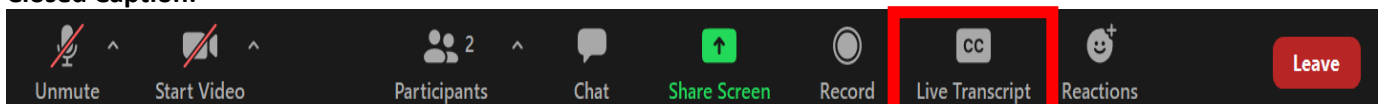
Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

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

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

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

### Closed Caption:



### Turn on Closed Caption:

Using the icons at the bottom of the Zoom screen:

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

**Budget Amendment Requests**

Date	Dept. Head	Fund Name	Funds Requested To			Funds Requested From			Explanation of Request	Previously Discussed	Within Apprvd Budget
			GL Number	Description	Amount	GL Number	Description	Amount			
6/13/2022	Rick Everett	Parks / Fire	107-756-92300	Heat	\$ 3,800.00		Carry over	\$ 3,800.00	Purchase PrePay Propane at locked in rate for 2022-2023 heating season. And to cover shortage in parks account due to present high costs. Suspected savings \$1,300.	Yes	Yes
			206-341-92300	Heat	\$ 800.00		Carry over	\$ 800.00			
			<b>Total</b>			\$ 4,600.00	<b>Total</b>				

Date	Dept. Head	Fund Name	Funds Requested To			Funds Requested From			Explanation of Request	Previously Discussed	Within Apprvd Budget
			GL Number	Description	Amount	GL Number	Description	Amount			
6/13/2022	Rick Everett	General/ Parks/Fire	101-218-97400	Capital Outlay	\$ 2,441.77	101-001-40100	Carryover	\$ 2,441.77	Snowblower for Bobcat Ordered last year; PO created/approved in 2021 but equipment was backordered. Expect delivery sometime this year.	Yes	No
			107-756-97700	Capital Outlay/ Equip	\$ 1,953.41	107-756-40100	Carryover	\$ 1,953.41			
			211-344-98000	Capital Outlay	\$ 488.35	211-001-40100	Carryover	\$ 488.35			
			<b>Total</b>			\$ 4,883.53	<b>Total</b>				

Date	Dept. Head	Fund Name	Funds Requested To			Funds Requested From			Explanation of Request	Previously Discussed	Within Apprvd Budget
			GL Number	Description	Amount	GL Number	Description	Amount			
6/14/2022	Rick Everett	General/Fire	101-218-97400	Capital Outlay	\$ 15,000.00	101-001-40100	Carryover	\$ 15,000.00	Replacement Fire alarm system was planned and funded in 2021 but won't be completed until 2022 (\$15,000 already paid from original \$45,000 PO.)	Yes	No
			211-344-98000	Capital Outlay	\$ 15,000.00	211-001-40100	Carryover	\$ 15,000.00			
			<b>Total</b>			\$ 30,000.00	<b>Total</b>				

Date	Dept. Head	Fund Name	Funds Requested To			Funds Requested From			Explanation of Request	Previously Discussed	Within Apprvd Budget
			GL Number	Description	Amount	GL Number	Description	Amount			
6/24/2022	Karen High	Parks	107-756-97400	Capital Outlay/Imp	\$ 6,100.00	107-756-97400	Capital Outlay/Imp	\$ 3,050.00	Fencing between tennis and pickleball courts at Oshtemo Township Park. Total project cost is \$6,100; Pickleball Club has committed to paying \$3,050, half the cost of the fence, and half rebudgeted w/in line.	Yes	Yes
						107-751-46000	Donations	\$ 3,050.00			
			<b>Total</b>			\$ 6,100.00	<b>Total</b>				

Date	Dept. Head	Fund Name	Funds Requested To			Funds Requested From			Explanation of Request	Previously Discussed	Within Apprvd Budget
			GL Number	Description	Amount	GL Number	Description	Amount			
6/21/2022	James Porter	Finance & Legal	101-223-82600	Legal Fees	\$8,000.00	249-001-40100	Carryover	\$ 8,000.00	Contract for building fire systems expert witness in Oshtemo Twp v. Hope Woods (estimated contract cost)	No	No
			<b>Total</b>			\$ 8,000.00	<b>Total</b>				

Date	Dept. Head	Fund Name	Funds Requested To			Funds Requested From			Explanation of Request	Previously Discussed	Within Apprvd Budget
			GL Number	Description	Amount	GL Number	Description	Amount			
6/23/2022	SO?HR	General Fund	101-249-87200	New Hire Expenses	\$2,000.00	101-001-40100	Carryover	\$2,000.00	Increased new hire expenses for Maintenance Director retirement	Yes	No
			<b>Total</b>			\$ 2,000.00	<b>Total</b>				

Date	Dept. Head	Fund Name	Funds Requested To			Funds Requested From			Explanation of Request	Previously Discussed	Within Apprvd Budget
			GL Number	Description	Amount	GL Number	Description	Amount			
6/23/2022	SO/HR	Multiple		Salaries	\$ 20,300.00		Carryover	\$ 23,600.00	Per Township Compensation Policy, normal annual compensation review was conducted in the first 6 months of the year and adjustments determined.	Yes	No
				Pension	\$ 1,700.00						
				FICA	\$ 1,600.00						
			<b>Total</b>			\$ 23,600.00	<b>Total</b>				

Grand Total	\$ 87,183.53
Total Added to Budget (Projects not completed/not spent in 2021)	\$ 79,183.53
<b>Total Not Previously Discussed with TB</b>	<b>\$ 8,000.00</b>

REVIEW DATE      6/24/2022      SIGNATURE \_\_\_\_\_



# Memorandum

**Date:** 06/23/22  
**To:** Oshtemo Township Board  
**From:** Sara Feister, HR/Benefit Coordinator  
**Subject:** Maintenance Director Job Description Revision

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**BACKGROUND:**

The current Maintenance Director announced his intention to retire, therefore, we need to move to post the open position as soon as possible.

**PURPOSE:**

A review of the current adopted job description was completed, and changes were necessary to bring the description up to the actual duties of the position, with more of a focus on managerial type tasks.

## CHARTER TOWNSHIP OF OSHTEMO POSITION DESCRIPTION

**Position Title:** MAINTENANCE DIRECTOR

**General Summary:**

This is a full-time position operating under the general direction of the Township Supervisor or if unavailable, the Clerk or Treasurer. The Maintenance Director shall be responsible for overseeing the Maintenance Department and its personnel who shall perform a variety of duties in the Township Hall/Office building, Township Parks, Oshtemo Community Center, Grange Hall and cemeteries. This is a managerial level position, directing staff and consulting resources to accomplish the broad scope of township facilities maintenance and facilities planning. Employee must be competent in safety procedures, completing accident reports, scheduling, budgeting, and employee reviews. Employee must have a working knowledge of HVAC, plumbing, sprinkler systems, and vehicle/equipment maintenance.

**Physical Requirements:**

The physical demands described hereafter are representative of those that must be met by an employee to successfully perform the essential functions of this general maintenance position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to stand, sit, walk, talk, climb and hear; use hands to finger, handle and operate tools, objects, or controls. The employee is required to climb stairs, stoop, kneel and crouch.

The employee must frequently lift and/or move up to fifty (50) pounds and occasionally lift and/or move up to one hundred (100) pounds. The employee must have the ability to recognize and identify similarities or differences between characteristics of colors, shapes, sizes, and sounds associated with the job.

Ability to work under conditions where exposure to environmental factors such as temperature variations and extremes, odors, noise, machinery, electrical current, wetness, dirt and dust may cause discomfort.

**Typical Responsibilities - Oversee and maintain the following:**

### GENERAL DUTIES

Oversee maintenance of~~Maintain~~ all buildings and grounds owned and operated by the Township including:

1. Mowing grass;
2. Trimming trees and shrubbery;

3. Weeding planting beds;
4. Picking up all litter;
5. Plowing snow from parking lots;
6. Cleaning sidewalks of snow and ice;
7. Maintaining all rest rooms - clean daily if needed;
8. Check paper supplies; and
9. General building maintenance.

### **TOWNSHIP HALL/OFFICE**

1. Empty kitchen trash daily.
2. Set up rooms for meetings.
3. Order maintenance supplies, i.e., paper supplies, cleaning products.
4. Maintain lock and pass code system.
5. Maintain and replace Township flags as needed, lower to half staff when appropriate.
6. Restock copy machine paper supply.
7. Update MSDS for Township buildings.
8. Perform minor repairs to buildings and equipment as needed.
9. Be knowledgeable of heating and cooling systems and controls.
10. Arrange and oversee special service contractors.

### **PARKS**

1. Perform minor repairs to building and equipment if needed.
2. Perform safety inspection of playground equipment and picnic tables bi-weekly.
3. Rake out sand to maintain an even surface under equipment.
4. Trim brush and trees which become obstructive on trails or in parks.
5. Winterize parks and spring start-up.
6. Change seasonal park hour signs.
7. Test water in Township Park.
8. Check park electrical outlets.
9. Maintain Township Park sprinkler.
10. Maintain Flesher Field concession building.

### **CEMETERIES**

1. Remove dead funeral flowers.
2. Restore/seed graves after burials.
3. Maintain fences.
4. Place Veterans' flags before Memorial Day and remove by Labor Day.
5. Winterize and spring start up of water at Genessee Prairie and West Oshtemo.

### **OSHTEMO COMMUNITY CENTER AND GRANGE HALL**

1. Perform inspection after each rental.
2. Perform minor repairs to building and equipment if needed.

## **ELECTIONS**

1. Assist with election equipment and precinct set-up.
2. Run errands on Election Day.

The above statements are intended to describe the general nature and level of work being performed. They are not to be construed as an exhaustive list of all duties performed.

### **Employment Qualifications:**

**DRIVERS LICENSE REQUIREMENT:** Must maintain a current Michigan motor vehicle operator's license without restrictions (other than corrective lenses requirement.)

**EDUCATION:** High school graduate or equivalent

**EXPERIENCE:** Must have good general mechanical ability and knowledge and at least five (5) years maintenance experience including supervisory experience. Must have computer proficiency in Microsoft Outlook, Word, and Excel.



Effective Date: 06/11/13

# MEMORANDUM



**Date:** May 25, 2022  
**To:** Township Board  
**From:** Legal Department  
**Subject:** Enactment of a Fair Housing Ordinance

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## **OBJECTIVE:**

To allow the Board the opportunity to consider the enactment of a Fair Housing Ordinance and/or establishment a Housing Commission. If the Board chooses to proceed with such an ordinance, Township Counsel requests directions on the parameters for such an ordinance.

## **BACKGROUND:**

The City of Kalamazoo enacted its Fair Housing Ordinance in November 2020. In March 2021 the City held a Housing Equity Workshop and provided information on their Fair Housing Ordinance and associated programs. In early 2022 the Board requested that Township Counsel review the issue of the Township's Authority to Create a Housing Commission and the City of Kalamazoo's Fair Housing Ordinance.

A memo on the Township's Authority to Create a Housing Commission was provided to the Board on February 23, 2022. Counsel also reviewed the City of Kalamazoo's Ordinance and provide an analysis along with a memo regarding Substantive Due Process considerations for ordinance enactment. These two memos were provided to the Board on February 28<sup>th</sup>, 2022.

## **INFORMATION PROVIDED:**

I have attached the February 23, 2022 Memo re: the Township's Authority to Create a Housing Commission, and the February 28<sup>th</sup>, 2022 Memos analyzing the City of Kalamazoo's Fair Housing Ordinance and Substantive Due Process considerations for ordinance enactment.

## **STATEMENT OF REQUESTED BOARD ACTION:**

I recommend that the Board consider the needs of the Township, the financial requirements and obligations, and its goals for the future and determine whether it would like to move forward with the creation of a Housing Commission and a Fair Housing Ordinance, and the parameters for such an ordinance if the Board decides to create one.

# MEMORANDUM

**To:** Township Board  
**From:** James Porter  
**Date:** February 23, 2022  
**Subject:** Township's Authority to Create a Housing Commission

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The Board recently requested that I review the City of Kalamazoo's housing ordinance regarding the issue of whether the Township could enact a similar ordinance and create a housing commission. While researching the issue, I took a closer look at the housing law in Michigan. I came across the Housing Facilities Act (Public Act 18 of 1933; MCL 125.651 et seq.), which provides some very broad authority to the Township in this area which I thought might be of interest to the Board.

The Housing Facilities Act, Section 2 (MCL 125.652) provides for the creation of municipal housing commissions, and states that a city, village, township, or county may

“purchase, acquire, construct, maintain, operate, improve, extend or repair housing facilities and eliminate housing conditions which are detrimental to the public peace, health, safety, morals or welfare.”

Municipalities can accomplish the goals of the Act by creating a housing commission through the enactment of an ordinance (subject to referendum). The Act (at MCL 125.653(c)) specifically grants a housing commission created by a township the same power as that given to a city or village, however, the township board acts as the housing commission (rather than a separate commission being formed) and the township supervisor performs the functions required and/or permitted by the Act (instead of a chief administrative officer, as one would do in a city or village).

A township housing commission, under the Act, does however have additional freedom regarding the composition of its commission members, as the composition of the commission is set by the township electors, rather than by appointment, and their term is set by statute. However, the commission is still a public body, and is subject to the requirements of the Open Meetings Act (MCL 125.655(1)). The commission also has the authority to hire professional consultants, and employees, when necessary (MCL 125.655(3)).

Section 6 of the Act ((MCL 125.655) provides for funding the commissions operations:

(1) Funds for the operation of the commission may be loaned or granted by the governing body. The governing body may condition the provision of funds to the commission upon an agreement that the commission shall as soon as possible

reimburse the incorporating unit for all money expended by it for the commission from revenues received from the sale of bonds.

(2) A commission may solicit, accept, and enter into agreements relating to, grants from any public or private source, including the state or federal government or any agency of the state or federal government, and may carry out any federal or state program related to the purposes for which the commission is created. The governing body of an incorporating unit may adopt a resolution that requires approval by the governing body before the commission may accept or enter into agreements relating to 1 or more types of grants.

The commission has very broad powers set forth in Section 7 of the statute which reads as follows:

Such commission shall have the following enumerated powers and duties:

(a) To determine in what areas of the city or village it is necessary to provide proper sanitary housing facilities for families of low income and for the elimination of housing conditions which are detrimental to the public peace, health, safety, morals, and/or welfare;

(b) To purchase, lease, sell, exchange, transfer, assign and mortgage any property, real or personal, or any interest therein, or acquire the same by gift, bequest or under the power of eminent domain; to own, hold, clear and improve property; to engage in or to contract for the design and construction, reconstruction, alteration, improvement, extension, and/or repair of any housing project or projects or parts thereof; to lease and/or operate any housing project or projects;

(c) To control and supervise all parks and playgrounds forming a part of such housing development but may contract with existing departments of the city or village for operation or maintenance of either or both;

(d) To establish and revise rents of any housing project or projects, but shall rent all property for such sums as will make them self-supporting, including all charges for maintenance and operation, for principal and interest on loans and bonds, and for taxes;

(e) To rent only to such tenants as are unable to pay for more expensive housing accommodations;

(f) To call upon other departments for assistance in the performance of its duties, but said departments shall be reimbursed for any added expense incurred therefor.

(g) It shall have such other powers relating to said housing facilities project as may be prescribed by ordinance or resolution of the governing body of the city or village or as may be necessary to carry out the purposes of this act.

There are, however, a number of statutory restrictions and limitations:

- No member, officer, or employee “shall have any interest directly or indirectly in any contract for property, materials or services to be acquired by said commission.” (MCL 125.658).
- The Commission must make annual reports of its activities, expenditures, etc. (MCL 125.659).
- There are limitations on when bonds can be issued (MC 125.667- 125.670) and how projects can be undertaken (MCL 125.665).
- There limitations on the amount of which is limited to the lowest possible rate consistent with providing decent safe and sanitary dwelling accommodation.
- In addition there are restrictions on when a tendency or contract can be terminated.

However, there are also a number of benefits to establishing a housing commission:

- Property, income, and operations of the commission would be exempt from all state and local taxes (while at the same time allowing the Township to assess an annual service fee not to exceed 10% of the annual shelter rents- similar to what we do with those properties that have a PILOT). (MCL 125.661a).
- The commission would have the authority to exercise the power of eminent domain to take property for the purposes of the act (“Housing projects contemplated by this act are hereby declared to be for public purposes within the meaning of the constitution, state laws and charters relative to the power of eminent domain.” MCL 125.660(a); 125.661).
- The commission is able to assert the defense of governmental immunity in any lawsuits against it, and the costs (investigation, attorney fees, judgements, etc.) of such lawsuits “shall be paid only from the operating revenue of the housing project or projects or from the proceeds of liability insurance” rather than being a “general obligation of the incorporating unit”. (MCL 125.663).
- The Township may also be eligible to secure both federal and state grants for housing development. (MCL 125.656(2)).

Additionally, as a side note, if the County of Kalamazoo were to create a housing commission, it would have the ability to exercise the power of eminent domain to

“acquire private property lying within the corporate boundaries of cities, villages and townships within the county, for purposes of this act, upon the consent, by resolution, of the legislative body of the city, village or township in which the property is located.

The resolution shall be adopted by a majority of the members of the legislative body elected and serving on the question.”

That is, the county could exercise eminent domain to take private property within the Township for the purposes allowed under the Act- this power is independent of the Township’s decision to make a housing commission.

The purpose of this memo is to advise the Board of its authority in this area and let the Board decide whether to look further into the establishment of a housing commission in the Township. Obviously, this would be a major undertaking which I wouldn’t recommend without a complete analysis of the Township’s ability to venture into this field including a discussion regarding funding, staffing, and office space to accommodate such a program.

# MEMORANDUM

**Date:** February 28, 2022  
**To:** Township Board  
**From:** James Porter  
**Subject:** City of Kalamazoo's Fair Housing Ordinance

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This memorandum has been prepared in response to a request from the Township Clerk that I review the Fair Housing Ordinance adopted by the City of Kalamazoo to address discriminatory housing practices. The City's ordinance is fairly broad in scope and impacts property owners that have rentals in the City of Kalamazoo. I thought an outline of the ordinance would assist the Board in understanding the ordinance better and my opinion of it.

The City of Kalamazoo's "Fair Housing" Ordinance (Chapter 18A) is broken down into three articles. Article 1 deals with the general provisions of the and sets forth the basic premise for the need and definitions. Article 2, "Fair Housing Standards", is dedicated to the prohibitions under the ordinance to avoid housing discrimination and/or disparate treatment of renters. Article 3 "Enforcement" very briefly establishes the notice, remedy, and commencement of enforcement date (after November 30, 2020). I have provided a brief review of each section below however, I am attaching a copy of the City's Ordinance for the Board's review.

Per Article 1, Section A-1, the purpose of the ordinances is assure that all residents have "an equal opportunity to live in adequate housing facilities and prohibit unlawful discriminatory practices in housing and real estate transactions." Specifically, the City wishes to prohibit housing discrimination and practices that are not addressed under state or federal law. The ordinance says it especially focuses on issues involving source of income, status is a victim of domestic violence, prior arrests, or conviction record.

Article 1, Section 18 A-2 provides numerous definitions applicable to the ordinance (which are "terms of art"- that is, have special meaning as applied to the ordinance). I will not reiterate these definitions here for the sake of brevity.

Article 2, Section 18 A-3, "Discriminatory housing practices" lists a number of discriminatory housing practices prohibited under the new ordinance. In addition to terms aimed at avoiding deceptive sales/leasing practices, the ordinance also prohibits discrimination in lending an insurance based on the "location" of the property within the City (I do not believe these clauses would be needed in a Township Ordinance as the entire area lies within one zip code). Perhaps of

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7275 W. Main Street  
Kalamazoo, MI 49009  
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particular interest, are the prohibitions against blanket rental policy that (a) prohibits renting to a person based on eviction filings or actual evictions or an outright ban for prospective tenants with prior actual evictions, and/or (b) bans any aspect of housing because of conviction record (except when mandated by state or federal law). In addition, no person can refuse to rent to/take adverse action against someone based on (a) their status as a victim of domestic violence or (b) having an early lease termination. There are also provisions regarding income discrimination, that is, the ordinance prohibits landlords from requiring additional income sources for individuals with rent vouchers (beyond the required utilities) and provides that all sources of income need to be taken into account for a tenant when using a financial income standard for leasing.

Article 2, Section 18 A- 4, “Rental housing: prohibition on criminal record inquiries” places limitations on the extent to which criminal record inquiries and/or the criminal history of a housing applicant can be taken into account. This section details when a criminal conviction can be used and when it cannot be used, limits the use of criminal records. Specifically, no person may only be used to deny housing if the landlord has not taken into account the totality of the circumstances around that conviction (e.g., evidence of rehabilitation, the length of time since the conviction, the severity of the criminal conviction, and the relevance of the conviction to housing)- *this applies to the applicant themselves and their household members*. Furthermore, this section specifically requires that all solicitations for rentals include specific language referencing the City of Kalamazoo’s ordinance regarding criminal checks, prohibits communications which state or imply that people with convictions will not be considered, and requires landlord notification to applicants of adverse actions based on a criminal background check. This later requirement is important to another requirement in the ordinance under Section 18 A-5(F) and (G), as violations may result in a return of an application fee to the applicant.

Article 2, Section 18 A-5, “Rental application fees” prohibits landlords from charging application fees in excess the cost of background checks (and specifies what may be included in such checks) and prohibits the addition of “administration fees” which are not actual, reasonable, costs associated with such checks. Applicants must, to the extent allowable by law, provide the applicate with the information returned from a background check. In addition, landlords are required to provide written notice of their rental criteria, the application fee (and not take more than that amount) and prohibits advertising/taking of applications for unit unless they are “readily available”. This section also outlines specific criteria on which the application will be handled, the length of time they would be held, and when refunds would be warranted. Additional documentation requirements are imposed under this section to ensure proper accounting of monies accepted by the landlord, documenting “wait list” status, and reasons for housing denials. Penalties may be imposed for violations.

Article 2, Section 18 A-6, “Exercise of rights protected; retaliation prohibited” provides protections against landlord retaliation for violations alleged under the ordinance, and provides a set period (90 days) in which there is a (rebuttable) presumption of retaliation for any adverse action. That is, if a violation is alleged, the investigating agency will presume (absent evidence to



the contrary) that the adverse action taken resulted from such an exercise of their rights under the ordinance.

Article 2, Section 18 A– 7, "Exemptions" provides some modifications of the prohibitions provided above. There are exemptions for a religious organization's housing facilities (may limit to their own sect/those who abide to their moral tenants, unless they are a housing facility/shelter open to the public or operated as part of the organizational mission, proselytizing, or religious activities). Importantly, there is also an exemption for owner-occupied, one/two-family dwellings, and housing/public accommodations to allow occupancy to be restricted based on sex. There are additional exemptions for age, ownership arrangements, and rentals to family members (where the owner also resides in the dwelling).

Article 2, Section 18 A– 8 "Landlord records" sets record retention requirements and requires that all records be maintained for minimum of one year from the date of application, and requires the landlord to provide access these records to verify compliance.

After analyzing the City of Kalamazoo's ordinance, the questions in my mind are whether (a) a similar ordinance would be enforceable, and (b) whether this would be a viable option for the Township. First, because this ordinance impacts a property owner's rights with regard to their rental property, an analysis is required on the constitutional issue of due process. I am providing the Board with a separate memorandum on substantive due process, and concerns for enactment of ordinances, as a point of general reference for the Board, rather than go into detail here.

In short, however, I believe that the Township could enact a fair housing ordinance similar to that of the City of Kalamazoo without substantive due process concerns because I believe it sufficiently related to the legitimate exercise of the Township's police power to survive a substantive due process challenge. Additionally, as I provided in my February 23, 2022 memo on the Township's authority to create a Township Housing Commission, there is state law which provides a de facto assumption of "public purpose" for any actions of a housing commission consistent with that Act.

That being said, while I cannot guarantee that all aspects of such an ordinance would necessarily survive a court challenge, and I do have concerns about the Township enacting an ordinance which may exceed its legal authority and enforcement ability, my primary concern is financial. That is to say, whether the Township has sufficient staff (administrative, enforcement, and legal) to implement and enforce the ordinance- including additional staff to effectuate the substantial increase in inspections from the expansion to single-family and two-family rentals, and any resulting litigation required to ensure compliance. If the Board does proceed with enacting a similar ordinance, I would recommend that as part of the implementation that the necessary staffing and funding issues also be addressed.

Additionally, I have concerns that the ordinance does not provide relief from the criminal conviction, domestic violence, or other protected classifications thereunder for single-family and two-family dwelling (even with owner occupation). Since we currently do not take enforcement

action against these property types, and this represents a large portion of the Oshtemo rental housing, I believe this would significantly hamper a “fair” application of such an ordinance. This may require the Township to change its ordinance to call for inspections of single-family and two-family properties- doing so would clearly require additional time, effort, and staffing for Ordinance Enforcement. Additionally, the Board may want to consider adopting some of the additional provisions in this regard from the City of Kalamazoo (e.g., requirements that there be a local agent to prevent “absentee landlords”, etc.) if it plans to revise the current ordinance.

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**Chapter 18A**  
**FAIR HOUSING**

ARTICLE I  
**General Provisions**

**§ 18A-1. Policy.**

- A. It is the policy of the City of Kalamazoo in the exercise of its municipal authority for the protection of the public health, safety, and general welfare that all residents be assured of an equal opportunity to live in adequate housing facilities and prohibit unlawful discriminatory practices in housing and real estate transactions.
- B. The prohibitions against discrimination provided for in this chapter do not preempt federal or state law, but are intended to supplement existing state and federal civil rights law to prohibit discrimination and practices in the area of housing not addressed at state or federal law, especially in regards to actions taken because of an individual's source of income, status as a victim of domestic violence, prior arrests, or conviction record; provided, however, this chapter shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.

**§ 18A-2. Definitions.**

- A. Any term used in this chapter shall have the definition as provided in Chapter 18, Nondiscrimination.
- B. As used in this chapter, the following words and phrases have the following meanings:

ACTUAL EVICTION — The completed legal process of a landlord removing a tenant from a rental property.

ADVERSE ACTION — To evict an individual, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or reduce any tenant subsidy. The adverse action must relate to property located in the City of Kalamazoo.

AGENT — A person acting on behalf of a housing facility entity.

APPLICANT — An individual applying to rent or lease a housing facility and an individual applying to be added to an existing housing facility lease.

BLANKET POLICY — A policy or practice that generally treats an individual as a member of group based on a particular characteristic as opposed to singularly.

DIRECTLY RELATED CONVICTION — The conduct for which the person was convicted or that is the subject of an unresolved arrest that has a direct and specific negative bearing on the health, safety, or right to peaceful enjoyment of the premises by persons, and includes one or more of the following offenses:

- (1) Any conviction where state or federal law prohibits the applicant from being eligible for public housing; or
- (2) Any conviction that leads to the applicant becoming a lifetime registered sex offender.

**EVICTION FILING** — A legal filing intended to start the process in which a landlord removes a tenant from a rental property.

**EVIDENCE OF REHABILITATION** — Includes, but is not limited to, a person's satisfactory compliance with all terms and conditions of parole or probation (however, an inability to pay fines, fees and restitution due to indigence shall not be considered regarding compliance with terms and conditions of parole or probation or both); employer recommendations, especially concerning a person's post-conviction employment; educational attainment or vocational or professional training since a conviction, including training received while incarcerated; completion or active participation in rehabilitative treatment, such as alcohol or drug treatment; letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or probation or parole officers who have observed the applicant since their conviction; and the length of time since conviction or release from incarceration. Successful completion of parole, probation, mandatory supervision, or post-release community supervision shall create a presumption of rehabilitation.

**HOUSING FACILITY** — Any dwelling unit or facility used or intended or designed to be used as the home, domicile or residence of one or more persons, including, but not limited to, a house, apartment, rooming house, housing cooperative, homeless shelter, hotel, motel, tourist home, retirement home or nursing home.

**LANDLORD** — Any owner, lessor, sublessor, managing agent, or company, or any other person that rents, leases, or approves the rental or lease of a housing facility, or makes tenancy decisions.

**PUBLIC HOUSING** — Rental housing facilities developed with federal, state, or local government (City or county) funding or which pay an annual service charge in lieu of taxes and are intended for eligible low-income individuals and families, the elderly, and persons with disabilities.

**REAL ESTATE TRANSACTION** — The sale, exchange, rental or lease of real property.

**RENTAL APPLICATION FEE** — Any fee paid by an applicant to a landlord to permit a background check of the applicant before or after a leasehold contract is created.

**SOURCE OF INCOME** — Lawful verifiable income derived from wages, salaries or other compensation for employment, money derived from a gift or bequest, contract (including insurance proceeds), loan, or the settlement or award for a claim for personal injury. It also includes but is not limited to social security benefits, supplemental security income, unemployment benefits, retirement income, alimony, child support, Federal Housing Choice Voucher, Local Housing Assistance Fund Millage, or any other housing subsidy.

**SURVIVOR OF DOMESTIC VIOLENCE** — An individual against whom any of the following acts were perpetrated by a person that was not an act of self-defense:

- (1) Causing or attempting to cause physical or mental harm to a family or household member;

- (2) Placing a family or household member in fear of physical or mental harm;
- (3) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress; or
- (4) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, threatened, harassed, or molested.
- (5) Conduct constituting sexual assault as described in MCLA §§ 750.520a to 750.520I.
- (6) Conduct constituting stalking as defined at MCLA §§ 750.411h and 750.411i.

ARTICLE II  
**Fair Housing Standards**

**§ 18A-3. Discriminatory housing practices.**

Except as otherwise provided in this chapter:

- A. No person shall discriminate in leasing, selling or otherwise making available any housing facilities.
- B. No person shall discriminate in the terms, conditions, maintenance or repair in providing any housing facility.
- C. No person shall refuse to lend money for the purchase or repair of any real property or insure any real property solely because of the location in the City of such real property.
- D. No person shall promote real estate transactions by representing that changes are occurring or will occur in an area with respect to any protected classification.
- E. No person shall place a sign or other display on any real property which indicates that the property is for sale or has been sold when it is not for sale or has not recently been sold.
- F. Landlords must carefully consider the reason for and length of time since an actual eviction of, or eviction filing against, a rental applicant. No landlord shall have or enforce a blanket policy that prohibits renting to a person based on eviction filings or actual evictions, or outright bans prospective tenants with prior actual evictions or eviction filings.
- G. No person is permitted to establish a blanket policy banning any aspect of housing because of a conviction record except when mandated by federal or state law.
- H. A landlord may not refuse or base an adverse action, in whole or in part, on either an applicant or tenant with the status as a victim of domestic violence or having an early lease termination under MCLA § 554.601b.
- I. No person shall fail to account for any tenant or prospective tenant's entire source of income when using a financial income standard for entering into or renewing a tenancy or lease for a housing facility.
- J. A landlord may not require an individual who receives housing assistance of dedicated rent via voucher or any other housing subsidies to earn any more than what is needed to pay for utilities as a requirement for tenancy.

**§ 18A-4. Rental housing: prohibition on criminal record inquiries.**

- A. No person shall use any criminal history information, other than convictions contained in a conviction record, to deny an individual any aspect of housing. An individual's conviction record may only be used to deny the individual housing if the landlord considers an applicant's conviction record taking into account such factors as evidence of rehabilitation, the length of time since conviction, the severity of a criminal conviction, the relevance of the conviction to housing, and

any circumstances surrounding the conviction relating to disability or domestic violence. This provision shall not bar a landlord from considering criminal conduct occurring on the premises of the landlord's property, regardless of whether that conduct resulted in conviction.

- B. It is the responsibility of a landlord to ensure that its employees and agents comply with this section.
- C. Regarding applicants and their household members, a landlord may base an adverse action in whole or in part on directly related convictions that have a direct and specific negative bearing on the safety of persons or real property, given the nature of the housing, and includes one or more of the following:
  - (1) Any conviction where state or federal law prohibits the applicant from being eligible for public housing; or
  - (2) Any conviction that leads to the applicant becoming a lifetime registered sex offender.
- D. The landlord shall promptly notify the applicant of any final adverse action based upon their conviction history or contents of the criminal background check.
- E. It shall be unlawful for any landlord to engage in a communication, including the production or dissemination of advertisements, related to housing that expresses, directly or indirectly, that any person with an arrest record or conviction record will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as permitted by local, state or federal law. For purposes of this subsection, "engage in a communication" includes, but is not limited to, making a verbal statement or producing or disseminating any solicitation, advertisement or signage.
- F. A landlord shall state in all solicitations or advertisements for the rental or lease of eligible housing, or made on their behalf, that a landlord will consider qualified applicants consistent with this chapter. This language shall include, at a minimum, the following statement:

"The rental or lease of this property must comply with the City of Kalamazoo ordinance regulating the use of criminal background checks as part of the tenant screening process to provide individuals with criminal backgrounds a fair opportunity. For additional information please contact the City of Kalamazoo Civil Rights Board."

#### **§ 18A-5. Rental application fees.**

- A. A rental application fee may not exceed the actual cost of the background check process, which may include national, state and local criminal histories, credit reports, rental history records, reference checks, eviction records and employment verification obtained by a landlord to screen an applicant. An application fee shall not include administrative fees, except for actual reasonable costs necessarily incurred to check the rental history and employment verification of an applicant. Landlords must provide applicants an itemized explanation of an application fee. A landlord must provide an applicant with any reports or correspondence generated as



a result of the screening process to the extent permitted or required by state and federal law.

- B. Before receiving a rental application fee, a landlord must provide a written notice to the applicant setting forth the criteria on which the application will be judged and the amount of the application fee that will be charged. The amount received shall not exceed the amount disclosed.
- C. Landlords shall only advertise housing facilities, receive applications, screen applicants and accept rental application fees for properties that are readily available for rent and occupancy unless an applicant consents in writing to being added to a waiting list. A housing facility is no longer considered readily available if a different applicant has been offered the housing facility and accepted and has placed a deposit on the housing facility. For purposes of this section, a housing facility will be considered readily available if a tenant of the unit has declared they will not be renewing the lease. Landlords shall document the date and time that deposits are placed on housing facilities.
- D. A landlord may collect and hold an application fee for an available housing facility for up to 30 calendar days so long as the landlord provides a written receipt to the applicant. If a housing facility becomes no longer available after applications and application fees are received but before some applications have undergone screening process, all application fees associated with unscreened applications must be returned to the respective applicants within 14 calendar days from the date the housing facility is no longer available for rent.
- E. In all cases where an applicant is not offered the housing facility applied for, the landlord shall provide the applicant with a written statement explaining the reason or reasons that the housing facility was not offered to the applicant. The explanation must provide the applicant with a clear statement of the reason or reasons that the housing facility was not offered along with any documentation substantiating the reason or reasons.
- F. If an applicant believes the application fee exceeds the actual cost of the screening process or believes that the reasons for denial deviate from the disclosed criteria for evaluating the application, or believes that the landlord has violated any other requirement of this section, the applicant or their representative may, within 30 days of receipt of the denial, file a written complaint with the City Manager or the City Manager's designee. For purposes of this section, a denial means any circumstances which the applicant is not offered the housing facility.
- G. If it is determined that a landlord has violated this section, in addition to any fines imposed as a result of a municipal civil infraction, the rental property owner must refund the entire application fee to the applicant, including, but not limited to, situations in which the screening process has not occurred or has not been documented sufficiently prior to denial.

**§ 18A-6. Exercise of rights protected; retaliation prohibited.**

- A. It shall be unlawful for a landlord or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this

chapter.

- B. It shall be unlawful for a landlord to interrupt, terminate, or fail to refuse to initiate or conduct a transaction involving the rental or lease of eligible housing, including falsely representing that such property is not available for rental or lease, or otherwise take adverse action against a person in retaliation for exercising rights protected under this chapter. Such rights include but are not limited to:
  - (1) The right to file a complaint or inform any person about a landlord's alleged violation of this chapter;
  - (2) The right to inform the administering agency about a landlord's alleged violation of this chapter;
  - (3) The right to cooperate with the administering or enforcing agencies or other persons in the investigation or prosecution of any alleged violation of this chapter; or
  - (4) The right to inform any person of their rights under this chapter.
- C. Protections of this section shall apply to persons who mistakenly but in good faith allege violations of this chapter.
- D. Taking adverse action against a person within 90 days of the exercise of one or more rights described in this section shall create a rebuttable presumption in the administering agency's investigation of such adverse action that such adverse action was taken in retaliation for the exercise of those rights.

#### **§ 18A-7. Exceptions.**

The following practices are not violations of this chapter:

- A. For a religious organization to restrict the occupancy of any of its housing facilities or accommodations which are operated as a direct part of its religious activities to persons who are members of the denomination involved or who agree to conform to the moral tenets of that religious organization. This exception does not include housing facilities or homeless shelters that are generally made available to the public at large as part of the religious organization's mission, proselytizing, or religious activities.
- B. For the owner of an owner-occupied, one-family or two-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use based on sex.
- C. To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, persons over 50 years of age or disabled persons.
- D. To discriminate in any arrangement for the shared ownership, lease or residency of a housing facility.
- E. In the rental of housing facilities in a building which contains dwelling units for not

more than two families living independently of each other if the owner of the building or a member of the owner's family resides in one of the dwelling units, or to the rental of a room or rooms in a single-family dwelling by an individual if the lessor or a member of the lessor's family resides in the dwelling.

**§ 18A-8. Landlord records.**

- A. Unless prohibited by federal or state law, a landlord shall maintain and retain records of tenant application forms, and other pertinent data and records required in this chapter, for a minimum of one year from the date of application, and shall allow the administering or enforcing agencies to access such records, with appropriate notice and at a mutually agreeable time, to monitor or verify compliance with the requirements of this Chapter.
- B. At no time shall the administering or enforcing agencies require a landlord to provide any information or documents the disclosure of which would violate local, state or federal law.
- C. Anytime a landlord does not maintain or provide adequate records documenting compliance with this chapter or does not allow reasonable access to such records, the Office of the Chief Financial Officer or other City department or agency shall have the authority to provide all nonfinancial information necessary to fulfill the administering or enforcing agencies' responsibilities under this chapter, subject to applicable federal and state confidentiality laws.

ARTICLE III  
**Enforcement**

**§ 18A-9. Notices.**

The City Manager or his or her designee shall publish on the City website and make available to landlords, in all languages spoken by more than 5% of the City population, a notice suitable for posting that informs housing applicants of their rights under this chapter. This notice shall be updated on or before December 1 of any year in which there is a change in the language spoken by more than 5% of the City population.

**§ 18A-10. Remedies.**

The provisions of this chapter are to be enforced through any of the mechanisms provided at Article III of Chapter 18, §§ 18-9 through 18-13.

**§ 18A-11. Commencement of enforcement.**

No complaints seeking the enforcement of the provisions of this chapter may be filed with the City prior to November 30, 2020.

# MEMORANDUM

**Date:** February 28, 2022  
**To:** Township Board  
**From:** James Porter  
**Subject:** Substantive Due Process and Ordinance Enactment

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This memorandum has been prepared in response to a request that I determine the feasibility of enacting a Fair Housing Ordinance in the Township (similar to the one adopted by the City of Kalamazoo) to address discriminatory housing practices. I have outlined my review and analysis of the City’s ordinance in a separate memorandum entitled “City of Kalamazoo’s Fair Housing Ordinance”.

This memorandum, though specifically addressing enactment of a housing ordinance, is equally applicable to the enactment of other ordinances by the Township where there is a potential for claims of a substantive due process violation. There are two basic “types” of due process under the United States Constitution; procedural due process (that is, due process by law through court proceedings) and substantive due process under the U.S. Constitution 5<sup>th</sup> and 14<sup>th</sup> amendments. The first type, which most people are familiar with, involves notice and an opportunity to be heard in a legal setting (e.g., the right to appeal a zoning decision, the ability to be heard by a jury, etc.). Substantive due process, however, can be more elusive and difficult to understand. Fundamentally, this principal deals with (in addition to protection of certain legal procedures) the pre-court aspect of a law or regulation; that is whether the law (ordinance, statute, regulation, etc.) is written and enforced to allow for the exercise of “privileges and immunities” guaranteed by the U.S. Constitution or “fundamental rights” (e.g., the right to marry, work an ordinary job, raise children in a particular way, etc.) that are not expressly provided for in the Constitution. Whether these (economic or noneconomic) rights have been violated requires a court to evaluate whether a particular law has been, or even can be, fairly applied (regardless of the procedures followed) and whether such application violates due process rights. If the law does violate substantive due process rights, it can be struck down by the courts.

For example, economic substantive due process would deal with a regulation of property and/or businesses (that is, would the law deprive the individual(s) of monetary gain from property/a business?), and regulations restricting and regulating the use of property/business interests must be in the furtherance of the public health, safety, and welfare. Substantive due process questions could also arise for noneconomic rights, for example, when you are dealing with a fundamental

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right (e.g., privacy). Here, a regulation on property, and the business of renting those properties, would clearly deal with an economic substantive due process issue.

Substantive due process issues have been well addressed by the courts at the federal level, however substantive due process is an “evolving” doctrine of law, and Michigan’s courts have not analyzed these issues in exactly the same manner as the federal courts. The Michigan Constitution, and other state laws, provides additional protections to certain individuals beyond those codified in the U.S. Constitution. Therefore, I needed to review the Michigan case law on this issue in order to determine whether I believe the state-level courts would uphold an ordinance similar to the City of Kalamazoo’s if it were enacted by the Township. The essential matter to consider (when determining substantive due process rights) is, has the government’s action taken away something from an individual/group of individuals in a manner not allowed under the state or federal constitutions, or in a way which deprives them of a fundamental or guaranteed right?

On the matter of economic substantive due process, the power to zone (as an exercise of municipal police power) and restrictions on that power, is the area in which a great deal of ink has been spilled addressing these issues at the federal level and in Michigan. There are, similarly, a glut of cases addressing alleged housing discrimination (primarily under the Federal Fair Housing Act and/or the state’s Elliot Larsen Civil Rights Act or Michigan Persons with Disabilities Civil Rights Act). These cases often overlap, and in analyzing the case law I focused on a number of cases dealing with zoning as an exercise of a township’s police power in support of the public health, safety, and welfare. The ordinance at issue, similarly, involves exercising a municipality’s police power in support of the public health, safety, and welfare- even though it is not a “zoning issue” it still impacts a basic property interests. I have provided some analysis of cases on point below.

First, let me say, that the U.S. Supreme Court has acted in the past to invalidate local municipal ordinances, and that federal courts may also have jurisdiction over local ordinance matters if they involve a federal statute. The primary case cited below, *Mettler*, though decided by the Michigan Court of Appeals, relies heavily on federal substantive due process case law to establish the test which is now binding on lower court jurisprudence in Michigan.

Prior to the *Mettler* decision, the Court of Appeals examined a substantive due process claim in a zoning issue in the case of *Fericks v Highland Township*, 228 Mich.App. 575 (1998). There, the Plaintiff challenged the Township’s zoning ordinance (claiming the rezoning to R-1-A with a minimum 3-acre lot size was an unconstitutional taking of their property). The court said the key question was the *reasonableness* of the zoning ordinance. The court held that the zoning regulations are valid where they have a rational relation to public health, safety, welfare if those regulations are not an unreasonable exercise of the police power (i.e., have become arbitrary, destructive, or confiscatory). Accordingly, the court found that substantive due process had not been violated as the zoning ordinance and “advances reasonable governmental interests related to the public health, safety, and general welfare.” Therefore, there was not a substantive due process violation.

In the above mentioned *Mettler Walloon, LLC v. Melrose Township*, Mich.App. 184 (2008) case, a property owner challenged the denial of its proposed development. Plaintiff claimed that the Township and violated "its constitutionally protected rights to substantive due process and to the reasonable use and enjoyment of its property, as protected by the Michigan and United States Constitutions.'...". The Michigan Court of Appeals, relying primarily on federal cases, undertook a very detailed analysis regarding substantive due process and clearly stated that the standard for government action involves the question of whether there was "egregious or arbitrary governmental conduct" and applied the U.S. Supreme Court's "shock the conscience standard" (i.e., there is no reasonable justification or legitimate government justification for the action). A few key quotations from this case are warranted:

To state a cognizable substantive due process claim, the plaintiff must allege "conduct intended to injure in some way unjustifiable by any government interest" and that is "conscience-shocking" in nature. *Mettler* at 306 (citing, *Mitchell v. McNeil*, 487 F.3d 374, 377 (C.A.6, 2007) (internal citations omitted)).

The doctrine of substantive due process does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law. Rather, substantive due process prevents governmental power from being used for purposes of oppression, or abuse of government power that shocks the conscience, or action that is legally irrational in that it is not sufficiently keyed to any legitimate state interest. Although we have the left door [sic] slightly ajar for federal relief in truly horrendous situations, the threshold for establishing the requisite abuse of government power is a high one indeed." *Mettler* at 307 (citing, *SFW Arecibo Ltd. v. Rodríguez*, 415 F.3d 135, 141 (1st Cir.2005) (internal citations omitted)).

In *Koscielski v. City of Minneapolis*, 435 F.3d 898 (C.A.8, 2006), the court held that the plaintiffs, operators of a firearms dealership, failed to show that a city zoning ordinance restricting where firearms dealerships could operate was so irrational and egregious as to shock the conscience, so as to violate their substantive due process rights, where there were vacant lots meeting the requirements of the zoning ordinance. The court stated:

Due process claims involving local land use decisions must demonstrate the "government action complained of is truly irrational, that is something more than ... arbitrary, capricious, or in violation of state law."...

*Mettler* at 307-308.

The Michigan Supreme Court subsequently denied reviewed the Court of Appeal's decision in *Mettler*. Subsequent Michigan case law has referenced the *Mettler* case a number of times, and relied on the Court's analysis when reviewing questions of substantive due process (e.g., *Cummins v Robinson Township*, 283 Mich.App 677 (2009)- upholding an ordinance requirement claiming that there was no substantive due process).

Boiling this all down, the question here is whether landlords in the Township could establish a substantive due process claim for an economic taking if we were to enact a fair housing ordinance similar to that of the City of Kalamazoo. Because this question would involve a property right, not a fundamental right, any landlord challenging the proposed ordinance would have to show (1) the existence of a constitutionally protected property or liberty interest (i.e., a protected property interest) and (2) that the interest has been deprived by an arbitrary and capricious action of the Township (i.e., action rising to the “shock the conscience” level). The governmental action will survive a substantive due process action so long as it is rationally related to a legitimate state interest and/or does not arbitrarily deprive the property owners of their economic rights in their property.

Applying the Michigan Court of Appeal’s substantive due process test to the ordinance at issue I believe that it would likely withstand a substantive due process challenge. It would be difficult for a plaintiff to establish (a) that enactment of such an ordinance was “shocking to the conscious” when a similar ordinance has been enacted in the City of Kalamazoo and Grand Rapids; and (b) it would be difficult to show that adding additionally protected classes (and reporting requirements) would substantively deprive the property owners of the economic interests in their property. Further, the action to enact such an ordinance is obviously in line with a legitimate state interest-protecting residents from housing discrimination- and covers areas of discrimination not already protected by state or federal law. Additionally, as I provided in my February 23, 2022 memo on the Township’s authority to create a creation of Township Housing Commission, there is state law which provides a de facto assumption of “public purpose” for any actions of a housing commission consistent with that Act.