DATE: October 15, 2025
TO: Planning Commission, City Administrator, City Clerk
CC: Mayor and City Council
RE: Protest - Planning Commission Public Hearing October 28 2025 for Conditional Rezoning of 20160 Mack

The City disseminated notice for a "Public Hearing on Conditional Rezoning." This is the **first announcement** to the public that the subject property is under application for rezoning.

In a meeting Monday October 13,2025, among a resident and City Administrator, Assistant City Administrator and City Planner, a direct question was asked by the resident about the process for scheduling a public hearing for October 28. Per the resident's notes: *It appears that the Administration believes there have been no process violations in issuing this public notice, with no difference between a public meeting and a public hearing. Rather, applications are automatically put on the next PC meeting agenda to avoid applicants having to wait months before knowing the status of their application. It appears that City Administrators are deciding to put items on public meeting agendas, an action they feel does not violate any Open Meeting Act provisions.*

Such a response by The City is alarming, demonstrating lack of conscientious research and analysis of critical public meeting requirements. Scheduling this public hearing for October 28 is unlawful, and the decision process to convene a public hearing violates due process and the Open Meetings Act.

Due Process: Past Practice On March 25, 2025, the Planning Commission held a public meeting to "Consider Rezoning Application and set a date for Public Hearing." The Public Hearing was scheduled and convened on April 22, 2025.

Decision to Convene a Public Hearing

- **If this decision was made by the City Administrator, he has exceeded his authority.** Such a decision must be made by a **legislative body**. The administrator is an employee who implements policy, not a decision-maker on zoning matters. Any such decision must be made at a public meeting in compliance with the Open Meetings Act.
- If the **Administrator did not make this decision** to convene a public hearing, then **how was the decision made and involving whom**? The likely answer is that it came about via discussion among members of the Planning Commission, and City Administrator; perhaps even some Council members. This decision process is in **direct violation of the Open Meetings Act.**

The public **expects compliance with the law. In this case, specifically: that the same process for rezoning consideration via public meeting, followed by a public hearing with 15 days' advance notice --as conducted March-April 2025-- be codified and followed for ANY and EVERY application for rezoning**, Thus, a public meeting must be held to "consider rezoning application and set a date for public hearing" to comply with the practice established on March 25, 2025. This public meeting might be held October 28. Any public hearing on rezoning must take place on a date following the public meeting (e.g. after October 28), and comply with the 15-day notice requirement.

YOUR CITIZENS INSIST that the City Immediately retract the Public Notice on Conditional Rezoning, such retractions to appear in all "notice vehicles:" newspapers, internet and mailings. Thank you.

Lynne Aldrich Beth Ann Bayus Kristen Buccellato Jon Dougherty Patti Dougherty Gary Felts Terrence Kosky Colleen McIver Christina Pitts Helen Taylor Joanne Shenstone

1) Public Hearing - Decision MUST derive from a Public Meeting

Based on the Michigan Attorney General's Open Meetings Act Handbook, **a public body is NOT allowed to make a private decision on whether to hold a public hearing.**

- **All decisions must be made in public meetings.** The OMA provides that "all decisions of a public body shall be made at a meeting open to the public," and 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".
- **Decisions cannot be made in closed session.** Section 3(2) of the OMA requires that all decisions of a public body shall be made at a meeting open to the public, and the purposes of closed sessions must be strictly limited to specific exceptions - no decision making is permitted in closed session.
- Therefore, the decision of whether or not to hold a public hearing is itself a "decision" that must be made publicly during an open meeting. The public body cannot:
    - Discuss and decide this in a closed session
    - Use "round-robin" voting (passing around a sign-off sheet)
    - Make the decision through private communications among members
    - Use any other method that avoids public deliberation and voting

The vote on whether to schedule a public hearing must occur during a properly noticed open meeting where the public can observe the deliberation and the vote.

Based on Michigan case law, the most significant case addressing whether decisions can be made privately is **Booth Newspapers, Inc. v. University of Michigan Board of Regents, 444 Mich. 211; 507 N.W.2d 422 (1993)**. This landmark case directly addresses the question of lawful decision-making to convene a public hearing.

Key Principles from Booth Newspapers:

1. All decisions must be public, not just the final vote: The Michigan Supreme Court held that the OMA requires "all decisions of a public body" and "all deliberations of a public body constituting a quorum of its members" to occur at meetings open to the public.

2. "Consensus building" is decision-making: The Court rejected the University's argument that its "consensus building" process was different from decision-making, stating: "any alleged distinction between the committee's consensus building and a determination or action, as advanced in the OMA's definition of 'decision,' is a distinction without a difference".

3. Round-robin decision-making violates the OMA: The Court found that when board members used telephone calls or sub-quorum meetings "to achieve the same intercommunication that could have been achieved in a full board meeting," this violated the OMA because it achieved "the same effect as if the entire board had met publicly and formally cast its votes".

4. Announcing a decision publicly is not the same as making it publicly: The Court stated: "The Presidential Selection Committee did not make the decision to appoint Dr. Duderstadt publicly, it merely announced the decision publicly".

Under Booth Newspapers, **a public body cannot make a private decision on whether to hold a public hearing**. The decision about whether to hold a hearing is itself a "decision" that effectuates public policy and must be made through deliberation and voting at an open meeting. Any attempt to reach consensus privately—whether through closed sessions, phone calls, emails, or sub-quorum meetings—would violate the OMA.

2) A city administrator does NOT have the authority to decide on a public hearing for rezoning.

Under the Michigan Zoning Enabling Act, "the legislative body of a local unit of government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented". The legislative body (city council) has the authority to approve or deny rezoning requests, typically after receiving a recommendation from the planning commission.

Before submitting recommendations for a proposed zoning ordinance to the legislative body, the zoning commission shall hold at least one public hearing.

Administrative officials (like city administrators) typically have enforcement authority, not decision-making authority on rezonings. The city council, upon a recommendation from the planning commission, has the authority to approve or deny rezoning requests.

The decision to hold a public hearing on a rezoning is a legislative decision that must be made by the city council (or other legislative body), not by a city administrator. The administrator is an employee who implements policy, not a decision-maker on zoning matters. Any such decision would need to be made at a public meeting in compliance with the Open Meetings Act.

In Herald Co v Bay City, 463 Mich 111, 129-133; 614 NW2d 873 (2000), the Michigan Supreme Court held that a city manager is not subject to the Open Meetings Act. This is significant because it establishes that **a city manager (or administrator) is NOT a "public body"** under the OMA. The court distinguished between:

- **Collective bodies** (councils, boards, commissions) that ARE subject to the OMA
- **Individual officials** (city managers, administrators) who are NOT "public bodies"

While this case addresses the OMA specifically, it **reinforces the broader principle that city administrators are individual administrative officials, not decision-making bodies.**

The distinction is critical because:

1. **Legislative decisions** (like rezoning and whether to hold public hearings) must be made by the **legislative body** (city council)
2. **Administrative officials** implement and enforce decisions but don't make legislative policy decisions
3. Under the Michigan Zoning Enabling Act, rezoning is explicitly a **legislative function** requiring action by the legislative body

The case law reviewed earlier, **Booth Newspapers v. University of Michigan Board of Regents**, reinforces that all **decisions** must be made by the public body at open meetings. Since a city administrator is not a "public body," they cannot make zoning decisions like whether to hold a public hearing on rezoning. The authority comes from the statutory framework and the general principle that legislative decisions must be made by legislative bodies, not administrative staff.