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January 12, 2026

CONFIDENTIAL COMMUNICATION
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Finance and Administration Committee
City of Novi
45175 Ten Mile Road
Novi, MI 48375

RE: Possible Sale or Lease of Ice Arena
Enterprise Fund Issue

Dear Mayor Fischer and Committee Members:

You asked our office to address a couple of issues specific to the ice arena ahead of the Finance and Administration Committee's meeting on January 20, 2026. One was the process and/or hurdles for a sale or lease of the arena to a third party, and the other was a discussion of the limitations imposed on use of ice arena funds by virtue of the fact that it operates as a business type entity through an enterprise fund.

1. Sale or Lease Issues

The City Council has the authority to sell or lease City property, including park property. There are a couple of major considerations when park property is involved, however.

a. Number of Votes Required.

Section 7.6(b) of the City Charter lists a number of items for which an affirmative vote of five members of Council are required. The relevant one is subsection (b)(2), which lists "Leasing, selling or disposing of any City-owned real estate or interest therein." The City has sold or conveyed park property in the past, and to my knowledge the five-vote limitation has not been bucked up against. However, it might be appropriate in this circumstance to have some discussion early on to determine whether there is sufficient interest by five members of Council in proceeding further with the process discussed next.

b. Limitations on Selling Park Property in the Home Rule City Act (HRCA).

Several City Councilmembers should be familiar with the provision of the HRCA that limits the sale of park property by a City without the vote of the people. MCL 117.5 is a list of things a home rule city is "prohibited" from doing without a vote, and it includes, at subsection 5(e): "to sell a park, cemetery, or any part of a park or cemetery, *except where the park is not required under an official master plan of the city*." The ice arena property is listed as a park in the City's master plan for land use and in its recreation plan.

You will recall that the italicized language of subsection 5(e) was critical in terms of how the City handled the property "swap" with the school district a few years ago, where it sold City parkland to the school district and bought some of the school's property. Council determined in that case that it did *not* want to put the issue to a vote of the people, so what it did instead was to *remove* the park area that it was selling to the school district from the master plan and the recreation plan. That process followed what the City did back at the time it settled the *Sandstone* lawsuit by (among other things) conveying parkland to the developer.

The master plan amendment process does take some time. Basically, it starts at the Planning Commission, which must draft actual amendments to the master plan document, provide notice of those amendments to listed statutory entities (neighboring communities, the County, etc.), and then hold a public hearing to accomplish the amendments. The process usually takes several months. The recreation plan amendment process can be accomplished alongside the master plan amendment.

Again, given the cost and the time needed to accomplish the removal, some inquiry should be made at the outset as to whether five members of Council are interested in going through the master plan amendment process to allow the sale.

c. Lease to a Third Party.

As noted above, the City can lease public property to a third party, with sufficient votes to do so. A potential additional hoop comes from Section 12.3 of the Charter, which states that any lease for a period of time over three years can be the subject of a referendum petition and corresponding vote of the people.

If the City does lease the ice arena to a private third party (as opposed to the current management agreement system), the property, even though still owned by the City, would likely become taxable and the governmental immunity concepts that apply to public property would likely no longer apply to the leased area.

2. Enterprise Fund Issues

The City's Ice Arena Fund is an enterprise fund. In that sense, it is not much different than the City's Water & Sewer Fund, which was the subject of the significant challenge over the past several years in the *Nofar v Novi* case. If you recall, the claim by the plaintiff in that case was that the fees charged by the City to fund the water and sewer system exceeded the cost of providing water and sewer services to the extent that a significant fund balance had accrued in the fund and that as a result, the fees could no longer be considered "user fees," but had essentially become illegal, non-voter approved "taxes." The City defended against the claim in large measure by noting the "business type" nature of the Water & Sewer Enterprise Fund, in which all of the user fees collected were used only to fund that system, and no parts of those fees migrated out to other parts of the City's budget or operations' the fees collected were not used for any purpose other than providing water and sewer services. The court accepted that argument, even though there was, at least temporarily, a very significant fund balance in the Water & Sewer Fund; the court agreed with the City's position that, eventually, that fund balance made up of accrued user fees would be spent entirely within the water and sewer system.

The Ice Arena Fund is no different. The user fees that the City charges to run the ice arena cannot be argued to be illegal, non-voted taxes because (at present) they generally reflect the cost to provide ice arena services. The current Ice Arena Fund balance of about $5 million does not appear to be excessive given the long-term CIP/potential physical improvements to the building. But, like the Water & Sewer Fund, in order to be able to make that argument, all of those user fees need to remain within the Ice Arena Fund and cannot be transferred elsewhere within the City's budget (e.g., the General Fund).

Also relevant to the discussion of whether an aspect of governmental activity can bring in sufficient funds that some are permanently transferred to other aspects of government is the exception to governmental immunity that can be found when a court finds the activity to be a "proprietary function"—i.e., a money-making endeavor as opposed to a governmental function. See MCL 691.1413: *"The immunity of the governmental agency shall not apply to actions to recover for bodily injury or property damage arising out of the performance of a proprietary function as defined in this section. Proprietary function shall mean any activity which is conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees."* Again, a typical argument against applying the proprietary function exception is that all the fees collected are used for the provision of the service involved.

The City did not have to set the ice arena up to operate through an enterprise fund. Some cities do operate ice arenas as part of a general parks department (e.g., it appears that Farmington Hills' ice arena is just within Special Services Department). The City could switch to that model if it chose to. However, some thought would have to be given to the treatment of the current surplus in the Ice Arena Fund. Although we have not researched the issue in any great detail, our initial thought is that the user fees collected, accumulated, and currently existing within the fund balance would probably best be spent not on other parks activities or General Fund matters, but should instead be spent on ice arena activities until spent down. Again, if it looks as though a majority of Council is prepared to move out of the enterprise fund model, we would need to look much more closely at that question.

Moving out of the enterprise fund model would not preclude the ice arena from being leased to a third party under the concept discussed above. In other words, the fact that the ice arena would be an asset of the City and considered part of the Parks Fund generally would not prevent the City from looking at a third-party lease. The same considerations as to a potential referendum and the loss of tax exempt/governmental immunity status would still apply, however.

I hope this responds to your questions. If not, please let me know.

Very truly yours,

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Thomas R. Schultz

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