

**COMMITTEE OF THE WHOLE WORK SESSION
MINUTES FROM MAY 6, 2025**

Mayor Patricia Randall called the Regular Meeting to order at 01:30 PM in the Council Chambers at Portage City Hall.

ROLL CALL: Councilmembers Chris Burns, Victor Ledbetter, Nicole Miller, Terry Urban, Jihan Young, Mayor Pro Tem Jim Pearson, and Mayor Patricia Randall were present.

ABSENT: None.

ALSO PRESENT: City Manager Pat McGinnis, Chief Operating Officer Adam Herringa, Chief Development Officer Peter Dame, City Clerk Erica Eklov, Assistant to the City Manager Justin Williams, and Purchasing Manager Victoria Barboza.

INTRODUCTION ON PROVISION OF LEGAL SERVICES: City Manager McGinnis introduced the meeting, providing the background on the Council's goal to evaluate legal services and the development of the bids and firms presented today.

Mayor Randall asked about the location of the two firms whose bids were dismissed. The City Manager responded with Detroit and Lansing. City Manager McGinnis relayed that five responses were received, but two were non-responsive as they did not give a lump sum.

Councilmember Urban asked about the information provided, noting CMDA's chart of additional charges. He stated the comparison did not include the legal research fee. Victoria stated that her table did not include any charges provided by the firms in clarification. The City Manager noted he had created an additional table including all fees today. Mayor Pro Tem Pearson suggested questioning the firm. Mayor Pro Tem Pearson noted the City of Kalamazoo has an in-house attorney and asked about Kalamazoo Township's arrangement, as well as Oshtemo Township's. The City Manager and Clerk Eklov responded that the Township also utilized Bauckham Sparks, but Oshtemo's firm was unknown. There was additional discussion about legal representation in the area and the firms' extra charges, and membership subscriptions to the MML, MMRMA, or LexisNexis.

The City Manager said that if the Council reached a consensus today, the next steps would be staff development of a contract; if not, the Council could set a future agenda for further discussion. The Mayor asked about the search process. Chief Operating Officer Herringa responded that an extensive search was conducted, listing various firms he had contacted. Mayor Randall asked why they weren't included. Mr. Herringa responded that firms were either not interested because they were not doing the work anymore, not taking new clients, or were too far away.

Councilmember Urban asked about the Police Division's need to contact the attorney and get an immediate answer, and if so, how often. The City Manager confirmed that it happens occasionally, where they can contact the prosecuting attorney via text message. Councilmember Urban then asked about feedback from staff, noting a written recommendation from Public Safety was not included. City Manager McGinnis responded that he hadn't included it because it was unsolicited, and the city manager didn't want to seek recommendations from all department heads, but noted feedback was included in follow-up questions to the attorneys.

Mayor Randall noted the interview process, citing past practice with City Manager interviews. Mayor Pro Tem Pearson noted his agreement with Councilmember Urban regarding feedback from the directors. The City Manager responded, stating that staff reports to him and regular discussions with staff regarding contractors are not usually relayed directly to the council. Councilmember Burns echoed Mayor Pro Tem Pearson, stating that the Council had the opportunity to contact references, but that the Council would want to know if there was negative feedback.

Councilmember Urban asked about virtual attendance by a firm at meetings and whether the Council had a position, citing some had additional charges. The City Manager noted a preference for in-person meetings, but virtual meetings would also suffice. Councilmember Urban noted the other meetings the attorney is needed, such as the Planning Commission or Zoning Board of Appeals, which are less scripted.

Chief Development Officer (CDO) Dame noted a Commission meeting where Attorney Kaufman couldn't attend, and a fellow attorney was provided who noted he normally attends to his clients virtually. Councilmember Burns said it was one of the criteria that he would be evaluating.

Councilmember Young noted a desire not to limit options based on this singular aspect, stressing the need to be flexible. Councilmember Urban stressed that his question concerned allowing virtual attendance regularly. Councilmember Burns asked about the references contacting practice. Mayor Randall stated that it would be figured out at the end with any finalists.

INTERVIEW: BAUCKHAM, THALL, SEEBER, KAUFMAN, & KOCHES P.C.

Firm Presentation: Attorney Catherine Kaufman provided her firm's introductions and provided a verbal presentation. Erin Gerswindt, Michael Bila, Joshua Thall, and Seth Koches were also present. Attorney Kaufman handed out a written testimony from Public Safety Director Nicholas Arnold. She touched on their local presence, participation with the Public Safety Department, marijuana legislation, FOIAs, prosecutions, and supplemental topic opinions and reviews. Attorney Kaufman cited various instances of current efforts under her current position as the City Attorney.

Question & Answer Session: Councilmember Burns asked Attorney Kaufman about key legal issues facing municipalities in Michigan today and how her firm would address them. Attorneys Kaufman and Koches responded that housing is a major concern statewide, with potential state legislation amending zoning districts; short-term rentals and renewable energies are also significant issues affecting municipalities; the potential merging of medical and adult-use marijuana laws; and preemption of local authority, election law, and taxation structure are ongoing challenges.

Councilmember Miller asked how the City Attorney's office can contribute to the long-term success and growth of Portage. Attorney Kaufman responded that the firm aims to understand the legislative body's goals and provide the legal framework to achieve them, emphasizing the importance of being attuned to the city's needs and providing guidance within legal parameters. She closed by highlighting the firm's prior history with the city, and continued work with departments would allow them to help the City Council continue progress.

Councilmember Ledbetter asked about how they'd avoid a conflict of interest. Attorney Kaufman responded that minor issues can be handled appropriately, while larger matters would be forwarded to the County Prosecutor's office. She also noted the firm serves several other local municipalities, which would need to ensure full disclosure to all parties.

Mayor Randall asked about ensuring effective communication and collaboration with the Mayor, City Council, and other city officials. Attorney Kaufman highlighted the new City Attorney Access policy, but noted she remains open to discussion, stating she is cautious about using "reply all" in emails to avoid Open Meetings Act violations and often sends information through the City Manager or Clerk to forward along as she does with other municipalities.

Mayor Pro Tem Pearson asked about the firm's approach to minimizing legal risks and liabilities for a city. Attorney Kaufman responded that her firm is quite conservative, citing examples of proactive strategies of advising against texting during meetings due to the Open Meetings Act, discussing zoning ordinances with Community Development, and working with Public Safety on developing enforceable ordinances.

Councilmember Young asked how the firm remains current with municipal law to ensure the city remains compliant with new regulations. Attorney Kaufman responded, noting they start with familiarizing themselves with the underlying legislation, followed by the City's Charter, but overall, understanding municipal law with a wealth of experience on various issues supports their responses. She also noted the number of attorneys in the firm and their varied backgrounds.

Councilmember Urban noted the firm's position as the incumbent spurred his question, asking how often the firm had been contacted by staff for unexpected advice or other products. Attorney Kaufman responded five to ten times per week and cited various examples. Regarding Public Safety, Attorney Gerschwendt responded, noting she had received inquiries roughly three to five per week via her cell phone at night. Attorney Koches also stated that some efforts to change to local citation also avoid the County Prosecutor's office.

Mayor Randall asked about virtual participation with their other municipalities. Attorney Kaufman confirmed the practice, noting 20 percent of their clients allow it. The Mayor then inquired about the effectiveness of virtual attendance. Attorney Kaufman replied that it is not as effective, but it can be a cost-savings for some municipalities.

Councilmember Burns asked about the time estimates provided. Attorney Kaufman stated the information was a full firm response effort, based on current experience with the city, citing no additional fees or mileage. He also asked how she contracted with other municipalities. She responded that only Portage has flat billing; all others bill one-tenth per hour. Councilmember Urban asked about Attorney Kaufman's assignment of certain duties to various attorneys in the firm. She responded with specifics. He asked whether she felt one attorney could manage both civil and criminal prosecutions/court activities. She responded that Attorney Geschwendt could do so as a full-time position, but noted the firm has other clients and the difficulty hiring quality attorneys.

Follow-up: None for the firm.

Citizen Bill Walkowiak (3530 Wedgwood Drive) spoke about his need to find personal legal assistance and concerns with the Governor's office. The Mayor and City Manager responded that staff would follow up after the meeting.

INTERVIEW: BLOOM SLUGGETT, PC

Firm Presentation: Attorneys David Eberle and Cliff Bloom presented. Attorney Bloom provided the firm's history, noting his position as one of the founding members, and cited his 42-year tenure. He noted the focus on municipal law in 2013, as well as experience in riparian law, highlighting two prior consultations with the city on the latter topic. He noted other city clients and the current market struggle for municipal attorneys. Attorney Eberle noted the firm includes counselors and attorneys with a focus on the client-relationship aspect. He then spoke regarding the team of attorneys and collaboration within the firm.

Question & Answer Session: Councilmember Burns asked about current legal issues facing Michigan municipalities. Attorney Eberle responded that a historic issue is marijuana, while a current issue is alternative energy options, and growing issues are housing and other economic developments. Attorney Eberle stated the firm engages with policymakers and city staff to craft workable legislation, to provide the City Council with as much information as possible to make informed decisions and assess risk. Councilmember Burns then asked about a successful example. Attorney Eberle responded with the development of a Payment In Lieu Of Taxes (PILOT) agreement and guiding documents to ensure success. Attorney Bloom cited success with short-term housing ordinances but noted the need to allow experts to assist with certain matters, such as zoning ordinances.

Councilmember Miller asked how the firm would ensure the city's long-term success. Attorney

Bloom highlighted the City of Kentwood, citing annual training sessions their firm provides, meetings attended in person to support, and experience with issues to provide knowledgeable information. Councilmember Ledbetter asked about developing relationships between the Public Safety Department, the County Prosecutor's Office, and on-call availability despite being a Grand Rapids area firm. Attorney Eberle responded, highlighting his prior County Prosecutor's Office experience, stating that the attorneys begin by meeting with the various entities to establish a relationship and understanding. Councilmember Ledbetter then asked about potential creative solutions or ordinance creation. Attorney Eberle responded with an example of a blight instance created by a common property owner prosecution as an effort to demonstrate.

Mayor Randall asked about virtual attendance by legal counsel. Attorney Eberle responded that they were happy to attend in whatever manner the municipality desires. The Mayor then asked about the current contracts. Attorney Eberle responded that both Kentwood and South Haven desired in-person attendance, but others allowed virtual attendance unless a particular subject demanded attendance. Attorney Bloom elaborated that it was a matter of cost, as well as function.

Mayor Pro Tem Pearson asked about Master Plans versus Zoning Ordinances. Attorney Bloom responded, stating that major decisions should align with the Master Plan, and amendments to the plan should accompany significant rezonings.

Councilmember Young asked about legal advice conflicts with the governing body's goals and efforts in ethical advice. Attorney Eberle responded that their responsibility as attorneys is to give the best legal advice, but to offer possible avenues. Attorney Bloom stated that if an ethics matter is involved that may differ from legal guidance, their firm will flag that and explain options. Councilmember Young asked if they were comfortable guiding a board against a matter.

Councilmember Ledbetter asked for an example of legal but not ethical. Attorney Bloom responded, noting Michigan law lacks detailed state statutes on ethical rules and conflicts of interest for municipal officials, requiring extrapolation from cases and Attorney General opinions, but the firm maintains high ethical standards.

Councilmember Urban asked about the assignment of duties and time management. Attorney Eberle confirmed that the firm would meet the requirements. Attorney Bloom supplemented that the firm also planned to add an attorney shortly. Councilmember Urban expressed concerns about the quoted transportation costs.

Councilmember Burns asked about onboarding new clients and employees. Attorney Bloom responded within a period of four to five months. Attorney Eberle stated it was also dependent upon the degree to which the City Administration involved the attorneys. Councilmember Young asked about a timeline for onboarding new firm staff, noting the City Council's expectations. Attorney Bloom responded, stating he didn't expect an issue.

Councilmember Urban noted exceptions to the Terms and Conditions by the firm in the RFP, asking if they still applied. Attorney Eberle confirmed, stating the terms may appear unrelated to legal counsel, highlighting deviations from a client relationship, and copyright matters. Councilmember Urban then highlighted a prior city eminent domain matter and subsequent solutions provided by the firm. Attorneys Bloom and Eberle responded, citing the firm's effort to learn from the process and improve going forward.

Councilmember Miller asked about the fee structure. Both Attorneys responded that flat fee contracts are rare, citing that a municipality's needs tend to ebb and flow.

Follow-up: Attorney Bloom asked the Mayor about the Council's expected timeline. Mayor Randall responded.

INTERVIEW: CUMMINGS, MCCLOREY, DAVIS & ACHO, P.L.C.

Firm Presentation: Attorneys Matthew Cross and Kristen Rewa presented. They stated the firm has been around for about 60 years and serves communities all over the state with four offices and 21 attorneys, and experience with a wide range of municipal issues. They also do general counsel work for community colleges, counties, and municipal entities. Attorney Rewa relayed her work as a former assistant city attorney for Grand Rapids and her familiarity with both in-house and outside counsel perspectives.

Question & Answer Session: Councilmember Burns asked about the key legal issues once more. Attorney Rewa responded with the integration of technology into operations, as well as employment law, citing recent state law changes. Attorney Cross responded with marijuana regulation, renewable energy, short-term rentals, and signage zoning.

Councilmember Miller asked about how the attorney's office contributes to the long-term success of the city. Attorneys Rewa and Cross stated efforts with elected officials to bring plans to fruition, even if looking at it from a different angle.

Councilmember Ledbetter asked how the firm would build a relationship with the Police Division, noting the firm was not located within the city. Attorney Rewa responded, stating she did not foresee an issue, noting her background as a police legal advisor in Grand Rapids and familiarity with a police ride-along. Councilmember Ledbetter then asked about the firm's process of creatively solving issues. Attorney Rewa responded, relaying a situation where a police department was called to deal with problem businesses, and the firm contacted the debtor of a problem venue to help close it down and set a precedent for the city.

Mayor Randall asked about virtual meeting attendance, noting Attorney Cross is from Traverse City and Attorney Rewa is based in Grand Rapids. The attorneys discussed how they work with current clients in terms of virtual vs. in-person meetings, noting it depends on the client and the situation. Attorney Cross highlighted that their travel time is included in the amount quoted, and if someone needs to be there in person, he will attend. There was additional discussion regarding remote attendance for pre-trials and arraignments, and Kalamazoo County 8th District Court's expectations.

Mayor Pro Tem Pearson asked about minimizing legal risks for clients and highlighted Master Plan updates versus ordinances. Attorney Rewa responded, as did Attorney Cross, citing a current case example in Charlevoix County.

Councilmember Young asked how the firm would stay informed about municipal law and the needs of the city, given that they don't live or work in Portage. Attorney Cross relayed that the firm is active with the MML, Michigan Municipal Risk Management Association, and other municipal firms, attending and providing training. Attorney Rewa responded, noting the City Attorney should be the subject-matter expert for the city on the Charter, ordinances, and law, while having a general knowledge base of municipalities in the state, news, and networking. While they may not have institutional knowledge, new eyes can be good.

Councilmember Urban questioned the firm's additional costs, specifically legal research fees and postage, expressing concern that these fees are not included in other proposals. Attorney Rewa responded that legal research fees are typically low, with efforts made to use free resources first, and paid research on Westlaw or LexisNexis is usually for narrow topics and short durations. Attorney Cross provided an estimate of research fees of around \$5,000 per year.

Mayor Randall asked about the recent 2023 and 2024 contracts. Attorney Cross responded, noting his firm transitions. Mayor Randall then asked about the "Assistant City Attorney" title. Attorney Cross responded, noting it wasn't a formal title but based on efforts by another attorney under a previous contract.

Councilmember Urban asked about the firm and its clients' inclusion in the MMRMA. Both attorneys confirmed. Councilmember Urban then asked about the quoted hours. Attorney Cross responded, stating he was unable to provide more concrete amounts and a need to clarify a virtual

attorney option for the District Court. Attorney Rewa provided an example of the firm's anticipated staffing should they receive the contract.

Councilmember Urban asked about the firm's additional meeting attendance, highlighting the Planning Commission and Zoning Board of Appeals, as well as certain staff meetings. Attorney Rewa responded that meeting attendance and scheduling would need to be further examined, prioritizing those boards that fall under the OMA.

Councilmember Miller asked about the firm's other flat-rate contracts. Both attorneys relayed that the RFP was the first they had encountered.

Follow-up: None.

STATEMENTS OF CITIZENS: None.

SUMMARY OF DISCUSSION AND NEXT STEPS: Immediately following the interviews, the City Council reviewed its assessments of the firms. Discussion included consideration of splitting prosecutorial and non-prosecutorial duties as the city's workload demand was found to be over 20 hours a week, and in-person attendance at all City Council, ZBA, and Planning Commission meetings is desired.

Councilmember Miller stated that a change to the meeting structure appears to be on the horizon.

Councilmember Burns suggested eliminating CMDA due to a lack of comparable clients and expertise. Councilmember Young expressed a preference for both Bloom Slugget and Bauckham Sparks, while noting that proximity, mileage costs, and new staffing are concerns for Bloom Slugget. She stated prior concerns with Bauckham Sparks appear to have been addressed. Mayor Pro Tem Pearson discussed his preference for Cliff Bloom but was open to hiring him as a specialist for certain cases. Mayor Pro Tem Pearson also asked that the future City Councils follow the same interview process when the next contract is drawn up in five years, noting the experience had proved beneficial. Councilmember Urban agreed with Councilmember Burns and urged remaining with the current firm. He also stressed that if the Council desires to maintain the current meeting attendance, then a local firm would save costs. Councilmember Burns stated that if Attorney Kaufman is maintained, then the desired changes are around communication with the incumbent firm.

Mayor Randall stated that Attorney Kaufman has grown into the position since her beginning and has hired more staff. The Mayor expressed concerns regarding weak results from Attorney Kaufman on prior matters, but noted the firm remains her first choice. Councilmember Ledbetter echoed other Councilmembers, and he stressed having a good relationship with Public Safety, including proximity. The Councilmember proposed considering asking the City Attorney to keep track of her work and costs, implementing an annual evaluation for the City Attorney, with feedback to the attorney that should be tangible and actionable, and focused on future expectations.

City Manager McGinnis stated that the city's lump sum retainer model was new to him upon starting with Portage and likely caused uncertainty from other firms responding to the RFP. He noted that the *Attorney Access Policy* was driven by Attorney Kaufman to better set expectations, and many staff also reached out to the Attorney through a process that has been refined to funnel through the City Manager's Office, followed by the City Clerk.

There was a consensus in support of the Bauckham, Thall, Sparks, and Sieber firm, and discussion regarding the next steps. Councilmember Burns suggested the creation of a City Attorney Evaluation Committee like the existing City Manager Evaluation Committee. Mayor Randall suggested the three most senior members outline expectations for review by the entire Council. Councilmember Urban recommended the City Manager's suggestion to add to the new expectations in the attorney's contract. City Manager McGinnis suggested adding an attorney update to the regular Council report. Mayor Pro Tem Pearson confirmed a need for regular reporting and that the City Manager could finalize the details. There was discussion regarding the hours quoted.

ADJOURNMENT: Mayor Randall adjourned the meeting at 5:25 PM.

Erica L. Eklov, City Clerk