

Attorney Memorandum¹

To: Garland Doyle, Pontiac City Clerk
From: Nick Curcio, Attorney
Re: Planning Commission's Failure to Act on City Council Referral
Date: March 9, 2021

In January 2020, the Pontiac City Council voted to refer a proposed zoning ordinance amendment regarding medical marijuana regulations to the Planning Commission.² To date, the Planning Commission has not given a recommendation on the referred ordinance, and some have suggested that it is unnecessary for it to do so. You asked for my opinion as to whether the Planning Commission has a duty to review the proposed ordinance and make an up-or-down recommendation to the City Council. For the reasons described below, I believe that it does.

Pursuant to the Michigan Zoning Enabling Act, the legislative body (here, the City Council) "may refer any proposed amendments to the [planning] commission for consideration and comment within a time specified by the legislative body."³ Although the statute does not expressly state that a legislative body's referral obligates the planning commission to make a recommendation on the proposal, that obligation is necessarily implied from the text and structure of the statute. For one, if a planning commission could simply ignore referrals, the language in the statute that authorizes the legislative body to make referrals and set deadlines for the planning commission's consideration would be effectively meaningless. That would be contrary to a principal rule of statutory interpretation that requires all words in a statute to be given operative meaning to the

¹ This memo is one of several that you asked me to prepare as your privately retained legal counsel. During our initial consultation, you explained to me that you felt pressured to take actions in your role as City Clerk that you believed to be contrary to applicable law. Accordingly, you asked for my opinion on various legal issues to help you decide how to respond to those pressures. Please note that I do not represent or have any relationship with the City of Pontiac. Pursuant to Section 4.202(a) of the Pontiac City Charter, the City Attorney is responsible for "supervising the conduct of all the legal business of the City and its departments."

² The statements of fact in this opinion are based primarily on your representations to me during our initial consultation. For the most part, I have not independently verified those representations. I did verify, however, that on January 21, 2020, the City Council approved a motion "to refer item #18 (emergency ordinance to amend Ordinance 2363) to the Planning Commission." Corrected Minutes of the Pontiac City Council, January 21, 2020.

³ MCL 125.3401(3).

extent possible.⁴ Further, other provisions in the statute require that a planning commission hold at least one public hearing on a proposed zoning ordinance and make a recommendation to the legislative body before the legislative body can consider its adoption.⁵ In light of these requirements, if a planning commission could simply refuse to take action on a referral, it would effectively have the power to veto proposals put forward by the municipality's elected officials. Given that planning commissions are appointed advisory bodies rather than elected lawmaking bodies, the statute could not possibly contemplate such extraordinary power.

One notable aspect of the scenario that you described is that the City Council's referral did not state a deadline by which the Planning Commission must act on the proposed amendment. The general rule is that when no express deadline is provided, a public official or public body must act within a "reasonable period of time."⁶ While there is no precise formula for determining what amount of delay is reasonable, it would seem that a delay of over a year would likely be deemed unreasonable. Nevertheless, if the City Council wishes to prompt the Planning Commission to make a recommendation on the proposal, it could consider making a new motion directing the Planning Commission to act within a specified deadline, as authorized by the Zoning Enabling Act. If the Planning Commission then refuses or fails to comply with that deadline, the City Council or other interested parties could likely bring a mandamus lawsuit seeking to compel it to do so.⁷ Further, individual Planning Commissioners who refuse to comply with the deadline would potentially be subject to removal from the Planning Commission based on "nonfeasance" in office.⁸

I hope this memo sufficiently answers your question. Please let me know if there is anything further I can do to assist with this issue.

⁴ *In re Turpening Estate*, 258 Mich App 464, 465; 671 NW2d 567 (2003) ("In construing a statute, this Court should give every word meaning, and should seek to avoid any construction that renders any part of a statute surplus or ineffectual.").

⁵ See MCL 125.3202(1), MCL 125.3306(1), MCL 125.3401(1).

⁶ 1970 OAG 5613 (1979).

⁷ See, e.g., *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 283; 761 NW2d 210 (2008) ("Mandamus is the appropriate remedy for a party seeking to compel action by [public] officials.").

⁸ MCL 125.3815(9) ("The legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office . . ."). "Nonfeasance" is generally defined as "failing to perform any act that the duties of the office require of the officer." *People v Perkins*, 468 Mich 448, 456; 662 NW2d 727 (2003).