



CITY OF AUBURN HILLS
Regular City Council Meeting

November 2, 2020

CALL TO ORDER: Mayor McDaniel at 7:00 PM.
LOCATION: Virtual Meeting, Auburn Hills, MI 48326
Present: Mayor McDaniel, Council Members Burmeister, Kittle, Knight, Marzolf, Moniz and Verbeke
Absent: None
Also Present: City Manager Tanghe, Assistant City Manager Grice, City Attorney Beckerleg, City Clerk Pierce, Mgr. of Business Development Carroll, Fire Chief Taylor, Police Chief Baker, Lt. McGraw, Director of Authorities Skopek, DPW Director Melchert, Mgr of Municipal Properties Torres, Engineer Juidici

0 Guests

4. APPROVAL OF MINUTES

4a. City Council Meeting Minutes, October 19, 2020

Moved by Verbeke, Seconded by Knight.

RESOLVED: To approve the City Council Minutes of October 19, 2020 as presented.

VOTE: Yes: Burmeister, Kittle, Knight, Marzolf, McDaniel, Moniz, Verbeke

No: None

Resolution No. 20.11.151

Motion Carried (7 - 0)

5. APPOINTMENTS AND PRESENTATIONS

6. PUBLIC COMMENT

7. CONSENT AGENDA

7a. Board and Commission Minutes

7a1. Planning Commission, October 7, 2020

7a2. Tax Increment Finance Authority Informational Meeting, October 13, 2020

7a3. Tax Increment Finance Authority Regular Meeting, October 13, 2020

7a4. Brownfield Redevelopment Authority, October 20, 2020

RESOLVED: To receive and file the Board and Commission Minutes.

7b. Motion – To award a contract to Solar Carpet for new carpeting at the Fieldstone Golf Club.

RESOLVED: To approve the contract with Solar Carpet of Redford, Michigan for the replacement of carpeting at the Fieldstone Golf Club for \$18,812 to be funded from G/L 584-753-970.000.

Moved by Kittle, Seconded by Moniz.

RESOLVED: To approve the Consent Agenda.

VOTE: Yes: Burmeister, Kittle, Knight, Marzolf, McDaniel, Moniz, Verbeke

No: None

Resolution No. 20.11.152

Motion Carried (7 - 0)

8. OLD BUSINESS

9. NEW BUSINESS

9a. Motion - To award the purchase of Panasonic MK3 Body-worn Cameras.

Lieutenant McGraw presented the purpose of this project is to provide ways to increase levels of transparency and accountability for the Police Department. It was explained that the 25 body cameras being purchased will have a 12 hour battery life, rugged design, 1080p HD resolution, dependability as well as compatibility with the in-car video systems and one touch recording. Panasonic cameras were chosen due to the compatibility with the established infrastructure which will result in a cost savings. The cameras have a 3 year warranty with the possibility of upgrades at a later time. It was discussed that the in-house server will provide enough storage for retention purposes and will be easier to accumulate information should it be needed at a later time.

Mr. Kittle shared that he is glad to see the City stepping forward in this direction for the protection of not only the City, but the Police department but also the safety and security of the residents, and the interest of the City.

Mr. Marzolf indicated that this an excellent use the State forfeiture funds.

Moved by Moniz, Seconded by Burmeister.

RESOLVED: To award the purchase of Panasonic MK3 Body-worn Cameras to CDW-G by the Auburn Hills Police Department for \$47,760.72 utilizing state forfeiture funds.

VOTE: Yes: Burmeister, Kittle, Knight, Marzolf, McDaniel, Moniz, Verbeke

No: None

Resolution No. 20.11.153

Motion Carried (7 - 0)

9b. Motion/Public Hearing – To adopt an ordinance to amend Chapter 46 of the Auburn Hills City Code, to add a new Article X - to provide for the seizure of personal and real property that are the proceeds of a crime, and to add new Article XI – for the seizure and forfeiture of personal and real property subject to lawful seizure from controlled substance violations in the City of Auburn Hills.

Attorney Beckerleg presented the ordinance amendment of Article X and XI to Chapter 46. The ordinance allows the City to seize and keep proceeds of a crime through the forfeiture process when people are found guilty or are convicted of a crime. Mr. Beckerleg stated that currently, there is no mechanism in place that allows the City to keep the funds. This ordinance mirrors State Law.

Mayor McDaniel opened the Public Hearing at 7:22PM. Hearing no comment, he closed the Public Hearing at 7:22PM.

Moved by Burmeister, Seconded by Verbeke.

RESOLVED: To adopt an ordinance to amend Chapter 46 – Offenses and Miscellaneous Provisions, of the Auburn Hills City Code, as amended, to add a new Article X-to provide for the seizure of personal and real property that are the proceeds of a crime, and to add new Article XI – for the seizure and forfeiture of personal and real property subject to lawful seizure from controlled substance violations in the City of Auburn Hills. (Attachment A)

VOTE: Yes: Burmeister, Kittle, Knight, Marzolf, McDaniel, Moniz, Verbeke

No: None

Resolution No. 20.11.154

Motion Carried (7 - 0)

9c. Motion - To award 2020 Chrysler Drive Traffic Signal Upgrades, and related OHM Scope of Construction Services.

Mr. Melchert reintroduced the project that was originally introduced October 19, 2020. He reiterated to Council that this portion of the motion was placed on hold and is now up for consideration. He explained that the signals are at the following locations; Chrysler Drive West and the road that leads to the parking structure, number 814 and Chrysler Drive East/Chrysler Drive South number 825.

Mr. Kittle questioned the breakdown of pricing for the casing from Dan's Excavating verses the other submissions. Mr. Melchert and Mr. Juidici shared that companies have been known to combine pricing in their bids and that Dan's Excavating will be held to the pricing they submitted. Mr. Melchert also shared that OHM looks very closely at the math that is submitted for errors.

Moved by Kittle, Seconded by Knight.

RESOLVED: To award the 2020 Chrysler Drive traffic signal upgrades to Dan's Excavating, Inc. in the amount of \$362,062.16 and award related Construction Services to the City's Engineer, OHM Advisors, in the not to exceed amount of \$22,500.

VOTE: Yes: Burmeister, Kittle, Knight, Marzolf, McDaniel, Moniz, Verbeke

No: None

Resolution No. 20.11.155

Motion Carried (7 - 0)

10. COMMENTS AND MOTIONS FROM COUNCIL

Mr. Kittle – He commented that the Spooktacular event hosted by the Downtown Development Authority was well done. He also commented his surprise by the number of Absent Voter Ballots that have been submitted.

Mr. Moniz – He wished the City Clerk and her staff good luck on the Presidential Election.

Mr. Knight – He reported that there is a Memorial Project that is being organized. He and his wife will match any contributions by individuals or families at 10% up to \$10,000 by March 31, 2021. The fundraising project will start soon.

Mr. Marzolf – He provided well wishes to the family of Ido Saltarelli, owner of Country Kitchen. He also stated that he was glad to see the event Diwali being celebrated at Riverside Park on November 14, 2020.

Ms. Verbeke – She wished the City Clerk good luck with the Presidential Election.

Mayor McDaniel – He also commented that Spooktacular was a great event and that there has been a lot of good feedback on happy children. He also sent out thoughts and prayers to the Ido Saltarelli family.

11. CITY ATTORNEY REPORT

12. CITY MANAGER REPORT

Mr. Tanghe – He Complimented the City Clerk and her office staff for the great work at preparing for the Presidential Election. He also thanked other departments that have rotated staff in and out to aid the Clerk's office with the high volume of absentee voter ballots. He stated that everyone has pulled together.

13. CITY CLERK REPORT

Ms. Pierce – Thanked City Council and management for all the support during the preparation for the Presidential Election. She reported that almost 7500 ballots have been issued with 87% returned, which accounts to about 46% of the voters. She reminded everyone of the poll hours.

14. ADJOURNMENT

Hearing no objections, the Mayor adjourned the meeting at 7:41 PM.

Kevin R. McDaniel, Mayor

Laura M. Pierce, City Clerk

APPENDIX A

CITY OF AUBURN HILLS

ORDINANCE NO. 20-922

AN ORDINANCE TO AMEND CHAPTER 46 – OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE AUBURN HILLS CITY CODE, AS AMENDED, TO ADD A NEW ARTICLE X – SEIZURE AND FORFEITURE OF PROCEEDS OF CRIMES, TO PROVIDE FOR THE SEIZURE OF PERSONAL AND REAL PROPERTY THAT ARE THE PROCEEDS OF A CRIME, THE SUBSTITUTED PROCEEDS OF A CRIME, AN INSTRUMENTALITY OF A CRIME AND TO ADD A NEW ARTICLE XI – FORFEITURE OF PROPERTY – CONTROLLED SUBSTANCE VIOLATIONS, TO PROVIDE FOR THE SEIZURE AND FORFEITURE OF PERSONAL AND REAL PROPERTY SUBJECT TO LAWFUL SEIZURE FROM CONTROLLED SUBSTANCE VIOLATIONS.

THE CITY OF AUBURN HILLS ORDAINS:

SECTION 1.

Chapter 46 – Offenses and Miscellaneous Provisions, of the Auburn Hills City Code, as amended, is hereby amended to add a new Article X – Seizure and Forfeiture of Proceeds of Crimes, to read as follows:

ARTICLE X. – SEIZURE AND FORFEITURE OF PROCEEDS OF CRIMES

Sec. 46-280. – Definitions.

As used in this Article:

- (a) “Crime” means committing, attempting to commit, conspiring to commit, or soliciting another person to commit any criminal offense in connection with which the forfeiture of property is sought.
- (b) “Instrumentality of a crime” means any property, other than real property, the use of which contributes directly and materially to the commission of a crime.
- (c) “Person” means an individual, corporation, limited liability company, partnership, or other business entity, or an unincorporated or voluntary association.

- (d) “Proceeds of a crime” means any property obtained through the commission of a crime, including any appreciation in the value of the property.
- (e) “Security interest” means any interest in real or personal property that secures payment or performance of an obligation.
- (f) “Substituted proceeds of a crime” means any property obtained or any gain realized by the sale or exchange of proceeds of a crime.
- (g) “Willful blindness” means the intentional disregard of objective fact that would lead a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose.

State law reference – MCL 600.4701

Sec. 46-281. – Property subject to seizure and forfeiture.

- (1) Except as otherwise provided in this article, the following property is subject to seizure by, and forfeiture to the City under this article:
 - (a) All personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.
 - (b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime, except real property that is the primary residence of the spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.
- (2) Property is not subject to seizure or forfeiture if either of the following circumstances exists:
 - (a) The owner of the property did not have prior knowledge of, or consent to the commission of, the crime, if the lack of prior knowledge is not the result of the owner’s willful blindness.
 - (b) Upon learning of the commission of the crime, the owner of the property served written and timely notice of the commission of the crime upon an appropriate law enforcement

agency and served a written and timely notice to quit upon the person who committed the crime.

- (3) The forfeiture of property encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of, the crime.
- (4) The forfeiture of property encumbered by an unpaid balance on a land contract is subject to the interest of the land contract vendor, if the vendor did not have prior knowledge of, or consent to the commission of, the crime.
- (5) The forfeiture of the substituted proceeds of a crime is limited to the value of the proceeds of the crime in addition to both of the following:
 - (a) The amount by which any restitution or damages owed to the victim of the crime exceeds the value of the proceeds of the crime.
 - (b) The amount by which any reasonable expenses of the forfeiture proceedings and sale, including, but not limited to, expenses for maintaining custody of the property, as well as advertising and prosecution costs, exceeds the value of the proceeds of the crime.

State law reference – MCL 600.4702

Sec. 46-282. – Seizure of property.

- (1) Personal property subject to forfeiture under this article may be seized pursuant to an order of seizure issued by the court having jurisdiction over the property upon a showing of probable cause that the property is subject to forfeiture.
- (2) Personal property subject to forfeiture under this article may be seized without process under any of the following circumstances:
 - (a) The property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime and the seizure is incident to a lawful arrest.

- (b) The seizure is pursuant to a valid search warrant.
 - (c) The seizure is pursuant to an inspection under a valid administrative inspection warrant.
 - (d) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
 - (e) Exigent circumstances exist that preclude the obtaining of a court order, and there is probable cause to believe that the property is subject to forfeiture under this Article.
 - (f) The property is the subject of a prior judgment in favor of the City in a forfeiture proceeding.
- (3) The city attorney may apply ex parte for an order authorizing the filing of a lien notice against real property subject to forfeiture under this article. The application shall be supported by a sworn affidavit setting forth probable cause for a forfeiture action pursuant to this article. An order authorizing the filing of a lien notice may be issued upon a showing of probable cause to believe that the property is subject to forfeiture under this article.
- (4) Property that belongs to the victim of a crime shall promptly be returned to the victim, except in the following circumstances:
- (a) The property is contraband.
 - (b) The ownership of the property is disputed until the dispute is resolved.
 - (c) The property is required to be retained as evidence under section 4(4) of the Crime Victim's Rights Act, 1985 PA 87, MCL 780.754.
- (5) Personal property seized under this article is not subject to any other action to recover personal property, but is considered to be in the custody of the seizing agency subject only to subsection (4) and sections 46-284 to 46-286 or to an order and judgment of the court having jurisdiction over the

forfeiture proceedings. Except as provided in subsection (6), when property is seized under this article, the seizing agency may do either or both of the following:

- (a) Place the property under seal.
 - (b) Remove the property to a place designated by the court.
- (6) The seizing agency may deposit money seized under this article into an interest-bearing account in a financial institution. As used in this subsection, “financial institution” means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.
- (7) Title to all property subject to forfeiture under this article vests in the City upon the commission of the conduct giving rise to forfeiture, together with the proceeds of the property after the property vests under this subsection. Any subsequent property transfer that occurs before the final disposition of the forfeiture proceeding is void against the City unless the transferee claims and establishes all of the following:
- (a) The transferee has an interest of record in the property.
 - (b) The transferee purchased the property in good faith and for fair value.
 - (c) The property interest was acquired without notice of the forfeiture proceeding or the facts that gave rise to the proceeding.

State law reference – MCL 600.4703

Sec. 46-283. – Notice of seizure and intent to forfeit and dispose of property.

- (1) Within 28 days after personal property is seized or a lien notice is filed against real property, the seizing agency or, if the property is real property, the city attorney shall give notice of the seizure of the property and the intent to forfeit and dispose of the property according to this article to each of the following persons:

- (a) If charges have been filed against a person for a crime, the person charged.
 - (b) Each person with a known ownership interest in the property.
 - (c) Each mortgagee, person holding a security interest, or person having a lien that appears on the certificate of title or is on file with the secretary of state or appropriate register of deeds, if the property is real property, a mobile home, motor vehicle, watercraft, or other personal property.
 - (d) Each holder of a preferred ship mortgage of record in the appropriate public office pursuant to 46 USC 30101, 31301-31343, if the property is a watercraft more than 28 feet long or a watercraft that has a capacity of 5 net tons or more.
 - (e) Each person whose security interest is recorded with the appropriate public office pursuant to the Federal Aviation Act of 1958, Public Law 85-726, if the property is an aircraft, aircraft engine, or aircraft propeller, or a part of an aircraft, aircraft engine, or aircraft propeller.
 - (f) Each person with a known security interest in the property.
 - (g) Each victim of the crime.
- (2) The notice required under subsection (1) shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or where the real property is located for 10 successive publishing days. Proof of written notice or publication shall be filed with the court having jurisdiction over the seizure or forfeiture.
- (3) If personal property was seized, the seizing agency shall immediately notify the city attorney of the seizure of the property and the intent to forfeit and dispose of the property according to this article.
- (4) An attorney for a person described in subsection (1)(a) shall be afforded a period of 56 days within which to examine money seized under this Article. This 56-day period shall begin to run after notice is given under subsection (1) but before the money is deposited into a financial institution.

Sec. 46-284. – Motion to return property or discharge lien.

- (1) A person who did not have prior knowledge of, or consent to the commission of, the crime, or a transferee under section 46-282 (7), may move the court having jurisdiction to return the property or discharge the lien on the grounds that the property was illegally seized, that the property is not subject to forfeiture under this article, or that the person has an ownership or security interest in the property and did not have prior knowledge of, or consent to the commission of, the crime, or acquired an ownership or security interest by a transfer that is not void under section 46-282 (7). The court shall hear the motion within 28 days after the motion is filed.
- (2) At the hearing on the motion filed under subsection (1), the city attorney, shall establish the following:
 - (a) Probable cause to believe that the property is subject to forfeiture under this article and that the person filing the motion had prior knowledge of, or consented to the commission of, the crime, or acquired his or her interest by a transfer that is void under section 46-282 (7). Prior written notice of illegal use of the property to the interest holder constitutes prima facie evidence of knowledge of the crime.
 - (b) If the person filing the motion claims the property was illegally seized, that the property was properly seized.
- (3) If the city attorney fails to sustain his or her burden of proof under subsection (2), the court shall order the return of the property, including any interest earned on money deposited in a financial institution as defined in section 46-282 (6), or the discharge of the lien.
- (4) If a motor vehicle is seized under section 46-282, the owner of the vehicle may move the court having jurisdiction over the forfeiture proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner. The court shall hear the motion within 7 days after the motion is filed. If the owner of the vehicle establishes at the hearing that he or she holds the legal title of the vehicle and that it is necessary for him or her or his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner. If the court orders the return of the vehicle to the owner, the court shall order the seizing agency to file a lien against the vehicle and the owner to post a bond in an amount equal to the value of the vehicle.
- (5) The testimony of a person at a hearing held under this section is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this section does not waive the person's constitutional right against self-incrimination.

State law reference – MCL 600.4705

Sec. 46-285. – Return of property or discharge of lien.

- (1) Except as otherwise provided by law, personal property seized under section 46-282 shall be returned to the owner, or a lien filed against real property under section 46-282, within 7 days after the occurrence of any of the following:
 - (a) A warrant is not issued against a person for the commission of a crime within 28 days after the property is seized or, if the property is real property, within 28 days after the lien is filed.
 - (b) All charges against the consenting legal owner relating to the commission of a crime are dismissed.
 - (c) The consenting legal owner charged with committing a crime is acquitted of the crime.
 - (d) In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime.
 - (e) Entry of a court order under this article for the return of the property or the discharge of the lien.
- (2) Before the expiration of period of time prescribed under section (1)(a), the city attorney may petition the court ex parte for not more than an additional 28 days to complete its investigation and issue charges or return the property. The court shall grant an extension under this subsection to the extent necessary upon determining that there is good cause shown for the extension.

State law reference – MCL 600.4706

Sec. 46-286. – Notice of return of seized property or discharge of lien to certain persons.

- (1) Within 7 days after personal property is returned to the owner, or a lien filed against real property or a motor vehicle is discharged pursuant to section 46-285, the seizing agency, or if the property is real property, the city attorney who gave notice of the seizure of the property and the intent to forfeit and dispose of the property pursuant to section 46-283, shall give notice to the persons who received notice pursuant to section 46-283 that the property has been returned to the owner or that the lien has been discharged pursuant to section 46-285.
- (2) The notice required under subsection (1) shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for 10 successive publishing days.

State law reference – MCL 600.4706a

Sec. 46-287. – Forfeiture proceedings.

- (1) If property subject to forfeiture under this article has a total value of less than \$100,000.00, within 28 days after the conviction of a person of a crime, the city shall give notice of the seizure of the property or, if a lien has been filed, the filing of the lien, and the intent to begin proceedings to forfeit and dispose of the property according to this article to each of the persons to whom notice is required to be given under section 46-283. Notice shall be given in the same manner as required under section 46-283.
- (2) Within 28 days after receipt of the notice or of the date of the first publication of the notice under subsection (1), a person claiming an interest in property subject to the notice may file a claim with the city expressing his or her interest in the property and any objection to forfeiture. The objection shall be written, verified, and signed by the claimant, and include a description of the property interest asserted. The verification shall be notarized and include a certification stating that the undersigned has examined the claim and answer and believes it to be, to the best of his or her knowledge, true and complete.
- (3) Except in the case of real property, if no claim is filed within the 28-day period as described in subsection (2), the city shall declare the property forfeited and shall dispose of the property according to section 46-288.

- (4) If a claim is filed within the 28-day period as described in subsection (2), the city shall transmit the claim with a list and description of the property to the city attorney. The city attorney shall institute a civil action for forfeiture within 28 days after the expiration of the 28-day period.
- (5) If property subject to forfeiture under this article has a total value of more than \$100,000.00 or is real property, the city attorney, shall institute a civil action for forfeiture within 28 days after the conviction of a person of a crime.
- (6) At the forfeiture proceeding, the plaintiff shall prove all the following by a preponderance of the evidence:
 - (a) That the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.
 - (b) If a person, other than the person convicted of the crime, claims an ownership or security interest in the property, that the person claiming the interest in the property had prior knowledge of, or consented to the commission of, the crime.
 - (c) If a person, other than the person convicted of the crime, claims an ownership or security interest in the property under section 46-282 (7), that the transfer occurred subsequent to the criminal conduct that gave rise to forfeiture.
- (7) If the plaintiff carries the burden of proof described in subsection (6)(c), the burden of proof shifts to the claimant to prove by a preponderance of the evidence that the transfer was not void under section 46-282 (7).
- (8) If the plaintiff fails to meet the burden of proof under subsection (6), the property shall be returned to the owner within 7 days after the court issues a dispositive order.

State law reference – MCL 600.4707

Sec. 46-288. – Sale of property.

- (1) When property is forfeited under this article, the city may sell the property that is not required to be destroyed by law and that is not harmful to the public and may dispose of the proceeds and any money, including any interest earned on money deposited in a financial institution as described in section 46-282 (6), negotiable instrument, security, or other thing of value that is forfeited under this article in the following order of priority:
 - (a) Pay any outstanding security interest of a secured party who did not have prior knowledge of, or consent to the commission of, the crime, or did not acquire his or her interest as the result of a transfer that is void under section 46-282 (7).
 - (b) Satisfy any order of restitution in the prosecution for the crime.
 - (c) Pay the claim of each person who shows that he or she is a victim of the crime to the extent that the claim is not covered by an order of restitution.
 - (d) Pay any outstanding lien against the property that has been imposed by a governmental unit.
 - (e) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, as well as reasonable prosecution and court costs.
 - (f) The balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the city.
- (2) In the course of selling real property under subsection (1), the court that enters an order of forfeiture, on motion of the city, may appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:
 - (a) List the forfeited real property for sale.
 - (b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.

- (c) Accept offers to purchase the forfeited real property.
 - (d) Execute instruments transferring title to the forfeited real property.
- (3) If any property included in the order of forfeiture under this article cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court may order forfeiture of any other reachable property of the owner up to the value of the property that is unreachable as described in this subsection. This subsection only applies against an owner that is also the person convicted of the crime underlying the forfeiture action.

State law reference – MCL 600.4708

Sec. 46-289. – Jurisdiction.

The forfeiture action and related proceedings provided for in this article shall be brought in the district court pursuant to that court's equity jurisdiction.

State law reference – MCL 600.4709

Sec. 46-290. – Report of seizure and forfeiture activities.

- (1) The city shall report all seizure and forfeiture activities under this chapter to the department of state police as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.
- (2) The city is subject to audit as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.

State law reference – MCL 600.4710

SECTION 2.

Chapter 46 – Offenses and Miscellaneous Provisions, of the Auburn Hills City Code, as amended, is hereby amended to add a new Article XI, Forfeiture of Property – Controlled Substance Violations, to read as follows:

ARTICLE XI. – FORFEITURE OF PROPERTY – CONTROLLED SUBSTANCE VIOLATIONS

Sec. 46-291. – Property subject to forfeiture; burden of proof; “imitation controlled substance” defined.

- (1) The following property is subject to forfeiture:
 - (a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.
 - (b) A raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, or other drug in violation of this article; or a raw material, product, or equipment of any kind that is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of MCL 333.7341.
 - (c) Property that is used, or intended for use, as a container for property described in subdivision (a) or (b).
 - (d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):
 - (i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article.

- (ii) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.
 - (iii) A conveyance is not subject to forfeiture for a violation of section MCL 333.7403(2)(c) or (d), MCL 333.7404, or MCL 333.7341(4).
 - (iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.
 - (e) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this article.
 - (f) Anything of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.
 - (g) Any other drug paraphernalia not described in subdivision (b) or (c).
- (2) The plaintiff in a forfeiture action under this article has the burden of proving a violation of this article by clear and convincing evidence. This subsection applies to forfeiture proceedings commenced under this article on or after the effective date of the amendatory act that added this subsection.
 - (3) As used in this section, "imitation controlled substance" means that term as defined in MCL 333.7341.

State law reference – MCL 333.7521

Sec. 46-292. – Civil asset forfeiture; conditions, requirements, and limitations.

- (1) Except as otherwise provided in this section, property may be seized as provided in section 46-293 for a violation of this article, but is not subject to forfeiture under section 46-291 or disposition under section 46-296 unless a criminal proceeding involving or relating to the property has been completed and the defendant pleads guilty to or is convicted of a violation of this article.
- (2) A criminal conviction or guilty plea under subsection (1) is not required if one or more of the following apply:
 - (a) No person claims any interest in the property as provided under section 46-294 or the owner of the property withdraws his or her claim in the property.
 - (b) The owner of the property waives the criminal conviction or plea requirement under subsection (1) and elects to proceed with the civil forfeiture proceeding.
 - (c) A criminal charge has been filed and one or both of the following apply:
 - (i) The defendant is outside this state and cannot reasonably be extradited or brought back to the state for prosecution.
 - (ii) Reasonable efforts have been made by law enforcement authorities to locate and arrest the defendant, but the defendant has not been located.
- (3) If a person withdraws his or her claim under subsection (2)(a), the city attorney must review the seizure of the property and approve the forfeiture of the property before the property may be forfeited.
- (4) Subsection (1) does not prohibit the immediate destruction of property that may not be lawfully possessed by any person or that is dangerous to the health or safety of the public regardless of whether the person is convicted of a violation of this article.

- (5) This section applies to forfeiture proceedings that are initiated on or after the effective date of this amendatory act.
- (6) This section does not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeds \$50,000.00, excluding the value of contraband.

State law reference – MCL 333.7521a

Sec. 46-293. – Property subject to forfeiture; seizure; process; seizure without process.

Property that is subject to forfeiture under this article or pursuant to section 46-291 may be seized upon process issued by the court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

- (a) Incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.
- (b) The property is the subject of a prior judgment in favor of this state in an injunction or forfeiture proceeding under this article.
- (c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
- (d) There is probable cause to believe that the property was used or is intended to be used in violation of this article.

State law reference – MCL 333.7522

Sec. 46-294. – Seizure under section 46-293; forfeiture proceedings; procedure.

- (1) Subject to section 46-292, if property is seized under section 46-293, forfeiture proceedings must be instituted promptly. If the property is seized without process under section 46-293, and the total value of the property seized does not exceed \$50,000.00, the following procedure must be used:

- (a) The local unit of government that seized the property shall notify the owner of the property that the property has been seized and, if charges have been filed against a person for a crime, the person charged, and that the local unit of government intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice must be published on the local unit of government's public website and in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.
 - (b) Unless all criminal proceedings involving or relating to the property have been completed, the seizing agency shall immediately notify the city of the seizure of the property and the intention to forfeit and dispose of the property.
 - (c) Any person claiming an interest in property that is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a written claim signed by the claimant with the local unit of government expressing his or her interest in the property and any objection to forfeiture. A claim or an objection under this subsection must be written, verified, and signed by the claimant, and include a detailed description of the property and the property interest asserted. The verification must include a certification under the penalty of perjury stating that the undersigned has examined the claim and believes it to be, to the best of the claimant's knowledge, true and complete. A written claim under this subsection must be made on the form developed by the state court administrative office as required under subsection (2). Upon the filing of the claim, the local unit of government shall transmit the claim with a list and description of the property seized to the city attorney. The city attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period.
 - (d) If no claim is filed within the 20-day period as described in subdivision (c), the local unit of government shall declare the property forfeited and shall dispose of the property as provided under section 46-296.
- (2) Any person asserting an ownership interest in seized property under subsection (1)(c) shall use the state court administrative office official form for properly asserting an ownership interest in seized property.
 - (3) Property taken or detained under this article is not subject to an action to recover personal property, but is deemed to be in the custody of the seizing agency subject only to this section or an order and

judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the seizing agency may do any of the following:

- (a) Place the property under seal.
 - (b) Remove the property to a place designated by the court.
 - (c) Require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
 - (d) Deposit money seized under this article into an interest-bearing account in a financial institution. As used in this subdivision, “financial institution” means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.
- (4) Title to real property forfeited under this article must be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.
- (5) An attorney for a person who is charged with a crime involving or related to money seized under this article must be afforded a period of 60 days within which to examine that money. This 60-day period begins to run after notice is given under subsection (1)(a) but before the money is deposited into a financial institution under subsection (3)(d). If city attorney fails to sustain his or her burden of proof in forfeiture proceedings under this article, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (3)(d).

State law reference – MCL 333.7523

Sec. 46-295. – Stay of civil forfeiture during pending criminal proceedings; forfeiture hearing; burden of proof; return of property.

- (1) If section 46-292 applies to a forfeiture case under this article, the seized property is subject to forfeiture under section 46-291, and a person has filed a claim as provided under section 46-294, a

civil forfeiture action under this act must be stayed during the pendency of the applicable criminal proceedings. The civil forfeiture action must proceed after the defendant is convicted of, or enters a guilty plea to, the offense involved, or one or more of the events described in section 46-292 (2) applies.

- (2) At the forfeiture hearing, the plaintiff must prove one or both of the following, as applicable:
 - (a) The property is subject to forfeiture as provided in section 46-291 (1).
 - (b) If a person, other than the person who has been convicted of a violation of the Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code, or entered into a plea agreement in connection with a violation of Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code as provided under section 46-292 (1), claims an ownership or security interest in the property, that the person claiming the interest in the property had prior knowledge of or consented to the commission of the crime.
- (3) If the plaintiff fails to meet the burden of proof under subsection (2), property seized under section 46-293 must be returned to the owner not more than 14 days from the date the court issues a dispositive order.
- (4) Except as otherwise provided in section 46-292, property must be returned to the owner not more than 14 days after the occurrence of any of the following:
 - (a) A warrant is not issued against a person for the commission of a crime within 90 days after the property was seized.
 - (b) All charges against the person relating to the commission of a crime are dismissed.
 - (c) The person charged with committing a crime is acquitted of the crime.
 - (d) In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime.
 - (e) Entry of a court order under this article for the return of the property.

- (5) A party to a forfeiture proceeding may seek an extension of the time periods described in this section for good cause. The court may grant a motion for an extension under this subsection for good cause shown.

State law reference – MCL 333.7523a

Sec. 46-296. – Disposition of forfeited property.

- (1) When property is forfeited under this article, the city may do any of the following:
 - (a) Retain the property for official use.
 - (b) Sell the property that is not required to be destroyed by law and that is not harmful to the public. The proceeds and any money, negotiable instruments, securities, or any other thing of value as described in section 46-291(1)(f) that are forfeited under this article shall be deposited with the city treasurer and applied as follows:
 - (i) For the payment of proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs, except as otherwise provided in subsection (4).
 - (ii) The balance remaining after the payment of expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the treasurer of the city. If more than one agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the money among the treasurers of the entities having budgetary authority over the seizing agencies. A seizing agency may direct that the funds or a portion of the funds it would otherwise have received under this subsection be paid to nonprofit organizations whose primary activity is to assist law enforcement agencies with drug-related criminal investigations and obtaining information for solving crimes. The money received by a seizing agency under this subparagraph and all interest and other earnings on money received by the seizing agency under this subparagraph shall be used only for law enforcement purposes, as appropriated by the entity having budgetary authority over the seizing agency. A distribution made under this subparagraph shall serve as a supplement to, and not a replacement for, funds otherwise budgeted for law enforcement purposes.

- (2) Notwithstanding subsection (1), the city may donate lights for plant growth or scales forfeited under this article to elementary or secondary schools or institutions of higher education that request in writing to receive those lights or scales under this subsection, for educational purposes. The city shall donate lights and scales under this subsection to elementary or secondary schools or institutions of higher education in the order in which the written requests are received. The city may limit the number of lights and scales available to each requestor.

- (3) In the course of selling real property under subsection (1)(b), the court that has entered an order of forfeiture may, on motion of the agency to whom the property has been forfeited, appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:
 - (a) List the forfeited real property for sale.

 - (b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.

 - (c) Accept offers to purchase the forfeited real property.

 - (d) Execute instruments transferring title to the forfeited real property.

- (4) If a court enters an order of forfeiture, the court may order a person who claimed an interest in the forfeited property under section 46-294(1)(c) to pay the expenses of the proceedings of forfeiture to the city.

State law reference – MCL 333.7524

Sec. 46-297. – Report by agency of seizure and forfeiture activities under uniform forfeiture reporting act.

- (1) The city shall report all seizure and forfeiture activities under this article to the department of state police as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.

- (2) The city is subject to audit as required under the Uniform Forfeiture Reporting Act, MCL 28.111 et. seq.

State law reference – MCL 333.7524b

Sec. 46-298. – Controlled substance as contraband; seizure and summary forfeiture.

- (1) A controlled substance listed in schedule 1 that is possessed, transferred, sold, or offered for sale in violation of the Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code, is contraband and shall be seized and summarily forfeited. A controlled substance listed in schedule 1 which is seized or comes into the possession of the city, the owner of which is unknown, is contraband and shall be summarily forfeited.
- (2) Species of plants from which controlled substances in schedules 1 and 2 may be derived which have been planted or cultivated in violation of the Public Health Code, Act 368 of 1978, or a local ordinance substantially corresponding to the Public Health Code, or of which the owner or cultivator is unknown, or which are wild growths, may be seized and summarily forfeited.
- (3) The failure, upon demand by the city or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate license or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

State law reference – MCL 333.7525

Sec. 46-299. – Destruction of controlled substance seized as evidence.

- (1) Prior to trial the city attorney may move in writing for an order permitting the destruction of all or part of a controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance seized as evidence in connection with a violation of this article. The motion shall specify the reasons supporting the destruction. The city attorney shall serve a copy of the motion, and any supporting materials, on the defendant or his or her attorney.
- (2) If the defendant objects, the defendant or his or her attorney shall file specific objections within 21 days after receiving the motion described in subsection (1). Failing to comply with this time limit waives any objection to the destruction of the evidence.

- (3) Before any hearing on the motion, the defendant or his or her attorney shall have an adequate opportunity to inspect or test, or both, the evidence sought to be destroyed, subject to reasonable supervision by laboratory or law enforcement personnel.
- (4) Following a hearing the court may order destruction of all or part of the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance if the court determines on the record that the destruction is warranted. The court shall specify the evidence to be destroyed and may include further provisions in the order as the interests of justice require.
- (5) The law enforcement agency having custody of the evidence shall destroy the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance in accordance with an order entered under subsection (4). Before destroying the evidence, the law enforcement agency shall make an accurate photographic record of the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance. The court may order that further records be made before the evidence is destroyed.

State law reference – MCL 333.7527

Sec. 46-299a. – Burden of proof of exemption or exception.

- (1) It is not necessary for the city to negate any exemption or exception in this article in a complaint, information, indictment, or other pleading or in a trial, hearing, or other proceeding under this article. The burden of proof of an exemption or exception is upon the person claiming it.
- (2) In the absence of proof that a person is the authorized holder of an appropriate license or order form issued under this article, the person is presumed not to be the holder of the license or order form. The burden of proof is upon the person to rebut the presumption.
- (3) A liability is not imposed by this article on an authorized state, county, or local officer, engaged in the lawful performance of the officer's duties.

State law reference – MCL 333.7531

SECTION 3. Repealer.

All ordinances, or parts of ordinances, in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 4. Severability.

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

SECTION 5. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law when they were commenced.

SECTION 6. Effective Date.

The provisions of this Ordinance are hereby ordered to take effect upon publication in the manner prescribed by the Charter of the City of Auburn Hills.

SECTION 7. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Auburn Hills at a meeting thereof duly called and held on the ____ day of _____, 2020, and ordered to be given publication in the manner prescribed by the Charter of the City of Auburn Hills.

AYES:

NAYES:

ABSTENTIONS:

STATE OF MICHIGAN)

) ss.

COUNTY OF OAKLAND)

I, the undersigned, the duly qualified Clerk of the City of Auburn Hills, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance No. _____ adopted by the Auburn Hills City Council on the _____ day of _____, 2020, the original of which is in my office.

Laura M. Pierce, City Clerk