

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: CITY ATTORNEY REPORT

DATE: November 30, 2022

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The following is my report to the City Council on issues in which our office has been engaged since the last Council meeting:

1. Shyft Group - Industrial Facilities Exemption Certificate. I have been working with the City staff as it relates to preparing an agreement between the Shyft Group and the City. In order to be eligible for an Industrial Facilities Exemption Certificate, the City and Shyft Group must enter into a contract. This is required by MCL 207.572. The statute provides for no required minimum conditions or specific clauses that must be included in the contract. This statute was an amendment to an initial Industrial Facilities Tax Act that gave the municipality a remedy, should the holder of the certificate fail to continue operation of the facility for the total term of the tax exemption.

The City has used for many years this template for the contract which is fine-tuned for each project. In this case, representatives of the Shyft Group and the City staff have come to an agreement on these terms, subject to approval by City Council, which in my opinion, fairly protects the City should Shyft Group fail to continue production within the City during the 12-year tax reduction time period.

The key provisions relative to the protection of the City relate to the events of default and the mitigation of the "clawback" contained in the contract. If the Shyft Group closes within five years, all of the abated taxes will be returned to the City. If it complies with the reporting conditions throughout the contract, and it closes after five years, but before the expiration of the 12-year time period, the clawback would be limited to those five years. If Shyft Group fails to meet the City's reporting requirements, and the facility closes, the clawback of the unpaid taxes would be for the full time period in which the tax reduction was in effect.

As I have indicated, this is the template that has been used by the City for a very long time and I am very comfortable with its terms as they have been modified to apply to the Shyft Group.

It is my opinion that this is a binding contract, upon due execution, and meets the requirements of MCL 207.572 of the Industrial Facilities Tax Act.

2. Rental License Enforcement. As indicated previously, a number of tickets have been issued and the next batch will go out in the next week or so. The City Manager and I will keep the Council apprised.

3. Bruch v Charlotte, Small Claims Tax Appeal. As the Council is aware, Mr. Bruch has filed a tax appeal in the Small Claims Division of the Michigan Tax Tribunal, challenging his assessment for the funding of the Fire Department. The tax tribunal has set a hearing on January 17, 2023, to hear the matter.

I have conferred with the City Manager and the City Assessor and I will be preparing a Motion to Dismiss the appeal. There are no facts in dispute and the question is whether the City has validly instituted the Special Assessment, for which I believe there is no dispute. I will be filing this within the next week or so.

4. Conversations with the City Manager. From time to time, I continue to have conversations with the City Manager regarding a variety of City matters.

TMH:cf