



City of the Village of Clarkston
375 Depot Rd
Clarkston, Michigan 48346
City Council Special Meeting
01 06 2021

Special City Council Meeting
Wed, Jan 6, 2021 7:00 PM - 8:00 PM (EST)

You may join the meeting from your computer, tablet or smartphone using the following link: <https://global.gotomeeting.com/join/359331861>

Or you may call in using the following phone number and access code: (669) 224-3412 . Access Code: 359-331-861

1. Call To Order
2. Pledge Of Allegiance
3. Roll Call
Mayor Haven, Avery, Bonser, Casey, Kneisc, Luginski, Wylie
4. Approval Of Agenda - Motion
5. Public Comments:
Individuals have the opportunity to address the City Council on subjects not on the Agenda, limiting their comments to three minutes. Alternatively, public comments may be emailed to City Manager Jonathan Smith @ smithj@villageofclarkston.org or City Clerk Jennifer Speagle @ speaglej@villageofclarkston.org and they will be read out loud during this time. If preferred, comments may be stated or submitted anonymously.
6. Resolution: Adopt Rules For Electronic Meetings

Documents:

[RESOLUTION TO ADOPT RULES FOR ELECTRONIC MEETINGS 1-6-2021.PDF](#)
7. Resolution: Closed Session To Discuss Pending Litigation
To Hold a Closed Session Meeting as permitted by State Statute MCL 15.268 (e) to discuss the Bisio v City of Clarkston Lawsuit (Oakland County Circuit Court Case number 2015-150462-CZ Pending before Honorable Leo Bowman.)

Documents:

[RESOLUTION CLOSED SESSION FOR PENDING LITIGATION 1-6-2021.PDF](#)
8. Return To Open Session

9. Roll Call

Mayor Haven, Avery, Bonser, Casey, Kneisc, Luginski, Wylie

10. Resolution: To Obtain Additional Legal Council For Bisio V Clarkston Lawsuit

Documents:

[RESOLUTION ADDITIONAL LEGAL COUNSEL FOR BISO LAWSUIT
SETTLEMENT 1-6-21.PDF](#)

11. Adjourn

Only those matters that are on the agenda are to be considered for action.

Law Office of Thomas J. Ryan, P.C.

2055 Orchard Lake Road, Sylan Lake, MI 48320

(248)334-9938

To: Jonathan Smith, Mayor Haven and City Council
From: Thomas J. Ryan, City Attorney
Date: January 4, 2021
Re: Amendment to Public Act 228 by the Michigan legislature and signed by Governor Whitmer to extend the no reason virtual meeting amendment to the Michigan Open Meeting Act to March 31, 2021

Dear Mr. Smith,

As initially noticed in my November 12, 2020 memo to you and City Council, the legislature and Governor Whitmer had amended the Open Meeting Act to allow virtual meetings to occur for no reason by public bodies to December 31, 2020. For the following year there were specific reasons allowed for virtual attendance by a public body member, which expired on December 31, 2021, thereafter allowing virtual attendance by a public member for military service.

With the numbers spiking in Michigan, the Michigan legislature passed legislation signed by Governor Whitmer on December 22, 2020, adopting Public Act 254 of 2020, which basically mirrors Act 228 but extending the virtual attendance by a public body member to March 31, 2021. This was a three month extension continuing all the prior conditions attached to Public Act 228.

Public Act 254 does contain in Section 3(1) language stating "For a meeting of a public body held in person before April 1, 2020, the public body shall do both of the following:

(a) To the extent feasible under the circumstances, ensure adherence to social distancing and mitigation measures recommended by the Center Disease Control and Prevention for purposes of preventing the spread of COVID-19 including the measure that an individual remain at least 6 feet from anyone from outside the individual's household.

(b) Adopt heightened standards of facility cleaning and disinfection to limit participant exposure to COVID-19, as well as protocols to clean and disinfect in the event of a positive COVID-19 case in the public body's meeting place."

Thus, there is a local option for an in-person meeting prior to April 1, 2021 if the aforementioned conditions are met, and if it is the desire of the City Council to have an in-person meeting.

I have attached an amended Resolution for all council members and for the sake of clarity I have indicated which rules are unchanged and have only shown the amendments, and I have attached a copy of Public Act 254. I would recommend adoption by the City Council at its first meeting in January.

Respectfully submitted,

Thomas J. Ryan
City Attorney

Act No. 254
Public Acts of 2020
Approved by the Governor
December 22, 2020
Filed with the Secretary of State
December 22, 2020
EFFECTIVE DATE: December 22, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senator Theis

ENROLLED SENATE BILL No. 1246

AN ACT to amend 1976 PA 267, entitled "An act to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts," by amending sections 3 and 3a (MCL 15.263 and 15.263a), section 3 as amended and section 3a as added by 2020 PA 228.

The People of the State of Michigan enact:

Sec. 3. (1) All meetings of a public body must be open to the public and must be held in a place available to the general public. All persons must be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting. For a meeting of a public body held in person before April 1, 2021, the public body shall do both of the following:

(a) To the extent feasible under the circumstances, ensure adherence to social distancing and mitigation measures recommended by the Centers for Disease Control and Prevention for purposes of preventing the spread of COVID-19, including the measure that an individual remain at least 6 feet from anyone from outside the individual's household.

(b) Adopt heightened standards of facility cleaning and disinfection to limit participant exposure to COVID-19, as well as protocols to clean and disinfect in the event of a positive COVID-19 case in the public body's meeting place.

(2) All decisions of a public body must be made at a meeting open to the public. For purposes of any meeting subject to this section, except a meeting of any state legislative body at which a formal vote is taken, the public body shall, subject to section 3a, establish the following procedures to accommodate the absence of any member of the public body due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by the governor or a local official, governing body, or chief administrative officer that would risk the personal health or safety of members of the public or the public body if the meeting were held in person:

(a) Procedures by which the absent member may participate in, and vote on, business before the public body, including, but not limited to, procedures that provide for both of the following:

(i) Two-way communication.

(ii) For each member of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she is attending the meeting remotely.

(b) Procedures by which the public is provided notice of the absence of the member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that will come before the public body.

(3) All deliberations of a public body constituting a quorum of its members must take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person must not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person must be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person must not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies, but only when deliberating the merits of a case:

(a) The Michigan compensation appellate commission operating as described in either of the following:

(i) Section 274 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.274.

(ii) Section 34 of the Michigan employment security act, 1936 (Ex Sess) PA 1, 421.34.

(b) The state tenure commission created in section 1 of article VII of 1937 (Ex Sess) PA 4, MCL 38.131, when acting as a board of review from the decision of a controlling board.

(c) The employment relations commission or an arbitrator or arbitration panel created or appointed under 1939 PA 176, MCL 423.1 to 423.30.

(d) The Michigan public service commission created under 1939 PA 3, MCL 460.1 to 460.11.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or other association or facility formed under that act as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body that adopts a nonpolicymaking resolution of tribute or memorial, if the resolution is not adopted at a meeting.

(10) This act does not apply to a meeting that is a social or chance gathering or conference not designed to avoid this act.

(11) This act does not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection must be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation that the board of trustees, by rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, determines requires immediate action.

(12) As used in subsection (2):

(a) "Formal vote" means a vote on a bill, amendment, resolution, motion, proposal, recommendation, or any other measure on which a vote by members of a state legislative body is required and by which the state legislative body effectuates or formulates public policy.

(b) "Medical condition" means an illness, injury, disability, or other health-related condition.

Sec. 3a. (1) A meeting of a public body held, in whole or in part, electronically by telephonic or video conferencing in compliance with this section and, except as otherwise required in this section, all of the provisions of this act applicable to a nonelectronic meeting, is permitted by this act in the following circumstances:

(a) Before March 31, 2021 and retroactive to March 18, 2020, any circumstances, including, but not limited to, any of the circumstances requiring accommodation of absent members described in section 3(2).

(b) On and after March 31, 2021 through December 31, 2021, only those circumstances requiring accommodation of members absent for the reasons described in section 3(2). For the purpose of permitting an electronic meeting due to a local state of emergency or state of disaster, this subdivision applies only as follows:

(i) To permit the electronic attendance of a member of the public body who resides in the affected area.

(ii) To permit the electronic meeting of a public body that usually holds its meetings in the affected area.

(c) After December 31, 2021, only in the circumstances requiring accommodation of members absent due to military duty as described in section 3(2).

(2) A meeting of a public body held electronically under this section must be conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. A public body may use technology to facilitate typed public comments during the meeting submitted by members of the public participating in the meeting that may be read to or shared with members of the public body and other participants to satisfy the requirement under this subsection that members of the public be heard by others during the electronic meeting and the requirement under section 3(5) that members of the public be permitted to address the electronic meeting.

(3) Except as otherwise provided in subsection (8), a physical place is not required for an electronic meeting held under this section, and members of a public body and members of the public participating electronically in a meeting held under this section that occurs in a physical place are to be considered present and in attendance at the meeting for all purposes.

(4) If a public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, in addition to any other notices that may be required under this act, post advance notice of a meeting held electronically under this section on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled or electronic public meetings that is accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of nonregularly scheduled or electronic public meetings. Subject to the requirements of this section, any scheduled meeting of a public body may be held as an electronic meeting under this section if a notice consistent with this section is posted at least 18 hours before the meeting begins. Notice of a meeting of a public body held electronically must clearly explain all of the following:

(a) Why the public body is meeting electronically.

(b) How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically.

(c) How members of the public may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.

(d) How persons with disabilities may participate in the meeting.

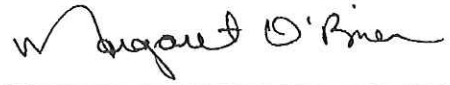
(5) Beginning on the effective date of the amendatory act that added this section, if an agenda exists for an electronic meeting held under this section by a public body that directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, on a portion of the website that is fully accessible to the public, make the agenda available to the public at least 2 hours before the electronic meeting begins. This publication of the agenda does not prohibit subsequent amendment of the agenda at the meeting.

(6) A public body shall not, as a condition of participating in an electronic meeting of the public body held under this section, require a person to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms established and required by the public body necessary to permit the person to participate in a public comment period of the meeting.

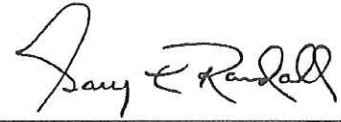
(7) Members of the general public otherwise participating in a meeting of a public body held electronically under this section are to be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of this act applicable to a closed session.

(8) At a meeting held under this section that accommodates members absent due to military duty or a medical condition, only those members absent due to military duty or a medical condition may participate remotely. Any member who is not on military duty or does not have a medical condition must be physically present at the meeting to participate.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor

CITY OF THE VILLAGE OF CLARKSTON, MICHIGAN

RESOLUTION TO ADOPT RULES FOR ELECTRONIC MEETINGS, AS AMENDED

At a special meeting of the City Council, Oakland County, Michigan, held remotely via GoToMeeting due to the COVID-19 pandemic, on Wednesday, January 6, 2021, at 7:00 p.m.

Present: _____

Absent: _____

The following Resolution was offered by _____ and supported by _____ to adopt Rules for Electronic Meetings, As Amended.

WHEREAS, the Michigan Open Meetings Act, MCL 15.261 et seq. was recently amended again by the adoption of Public Act 254 of 2020 to extend the remote attendance by members of a public body using telephonic or video conferencing means; and

WHEREAS, the City Council desires to continue to meet and conduct the public business of the City in a manner that permits both the general public and members of the City Council and other City boards and commissions subject to the Open Meetings Act to participate by electronic means.

THEREFORE, IT IS RESOLVED by the City of the Village of Clarkston City Council that its Rules and Order of Procedure are hereby amended to read as follows:

ELECTRONIC MEETINGS

Rule 1. ELECTRONIC MEETINGS AUTHORIZED

The City Council may meet and conduct its meetings, in whole or in part, by electronic means using telephone conferencing or video conferencing technology without regard to physical place and physical presence requirements, in accordance with Section 3a of the Open Meetings Act, MCL 15.263a, as amended, before March 31, 2021.

On or after March 31, 2021 through December 31, 2021, City Council meetings may be held, in whole or in part, by electronic means using telephone conferencing or video conferencing technology due to circumstances requiring accommodation of any City Councilmember absent because of military duty, a medical condition, or when a declared statewide or local state of emergency or state of disaster exists and the personal health or safety of members of the public or public body would be at risk if the meeting were held in person. As used in these Rules, the term “medical condition” means an illness, injury, disability, or other health-related condition, including the quarantine or isolation of a City Councilmember to minimize the spread of a contagious disease.

Beginning January 1, 2022 members of the City Council may participate by electronic

means in City Council meetings only to accommodate their absence due to military duty.

Rule 2. CONDUCT OF ELECTRONIC MEETINGS (UNCHANGED)

An electronic meeting of the City Council will be conducted in a manner that permits two-way communication so that members of the Council can hear and be heard by one another, and so that public participants can hear members of the City Council and be heard by both the Council and other public participants. The City may use technology to facilitate typed public comments submitted by members of the public participating in the electronically-held meeting that shall be read to or shared with members of the City Council and other participants.

As permitted by the Open Meetings Act, a physical place is not required for an electronically-held meeting. Members of the City Council and members of the public participating electronically in a meeting that occurs in a physical place are considered present and in attendance at the meeting for all purposes. For a meeting at which City Councilmembers are physically absent due to military duty or a medical condition and who are being accommodated by remote participation, all other City Councilmembers must be physically present at the meeting to be able to participate.

In addition to any other notice required by the Open Meetings Act, advance notice of an electronically-held meeting shall be posted on a portion of the City's website that is fully accessible to the public. The public notice must be included on either the home page or a separate webpage dedicated to public notices for non-regularly scheduled or electronically-held public meetings that is accessible through a prominent and conspicuous link on the City's website home page that clearly describes its purpose for public notification of non-regularly scheduled or electronically-held public meetings. Any scheduled meeting of the City Council may be held as an electronic meeting as permitted by the Open Meetings Act if a notice consistent with this Rule is posted at least 18 hours before the meeting begins. Any notice of the meeting of the City Council held electronically must clearly contain all of the following:

- (a) Why the City Council is meeting electronically;
- (b) How members of the public may participate in the meeting electronically (if a telephone number, internet address or both are required to participate, that information must be provided in the notice);
- (c) How members of the public may contact members of the City Council to provide input or ask questions on any business that will come before the Council at the meeting; and
- (d) How persons with disabilities may participate in the meeting.

If an agenda exists for an electronically held meeting of the City Council, the City shall, on a portion of its website that is fully accessible to the public make the agenda of the meeting available to the public at least 2 hours before the meeting begins. This

publication of the meeting agenda does not prohibit subsequent amendment of the agenda at the meeting.

A member of the general public is not required to register or otherwise provide his or her name or other information or otherwise fulfill a condition precedent to attend an electronically-held meeting, other than mechanisms established and required by the City necessary to permit the individual to participate in a public comment period of the meeting.

Members of the general public otherwise participating in an electronically-held meeting of the City Council are excluded from participation in a closed session of the City Council that is held electronically provided that the closed session is convened and held in compliance with the requirements of the Open Meetings Act applicable to closed sessions.

Rule 3. AGENDA FOR REGULAR BUSINESS MEETINGS; ELECTRONIC MEETINGS

The order of business for all meetings of the City Council conducted electronically and held before March 31, 2021, and held beginning April 1, 2021 through December 31, 2021 for City Council meetings held, in whole or in part, by electronic means using telephone conferencing or video conferencing technology when a declared statewide or local state of emergency or state of disaster exists shall be as follows: Roll Call/Call to Order; Pledge of Allegiance; Approval of Agenda; Community Announcements; Public Comment – Items Not On the Agenda; Consent Agenda; Business Agenda; Public Comment; City Manager Report; Council Comments; and Adjournment. The order of business outlined in this paragraph is not applicable when electronic means is used to accommodate the absence of individual City Council members due to military duty or a medical condition.

Rule 4. PUBLIC COMMENTS (**UNCHANGED**)

During City Council meetings conducted electronically, members of the public attending the meeting, once recognized by the chair, shall identify themselves for the record and indicate the municipality where they reside.

Rule 5. COUNCILMEMBER ATTENDANCE BY PHONE/VIDEO (**UNCHANGED**)

A member of the City Council who anticipates being absent from a meeting due to the circumstances set forth in the Open Meetings Act and these Rules may request accommodation of their absence to permit their remote participation in and voting on Council business by two-way telephonic or video conferencing communication. A City Councilmember who desires to attend a meeting by telephonic or video conferencing shall inform the City Manager, or the City Manager's designee, at least 24 hours before the meeting to permit any necessary technology to be put in place to accommodate participation of the absent member. City Councilmembers attending a meeting by

telephone or video conferencing may fully participate in the meeting, including voting and attendance in any closed session of the City Council. A Councilmember participating by telephonic or video conferencing is not permitted to chair the meeting unless all Council members are participating by telephone or video conferencing.

Any member of the City Council attending a meeting remotely must publicly announce at the outset of the meeting (which shall be included in meeting minutes) that the member is attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must identify the member's physical location by stating the city, village, or township and the state from which the member is attending the meeting remotely.

Rule 6. OTHER BOARDS AND COMMISSIONS (UNCHANGED)

All other City boards and commissions and the members thereof are governed by and shall conform to the provisions contained in these Rules setting forth the requirements and procedures by which absent members and the public may remotely participate in meetings electronically by telephone or video conferencing. In the event of any conflict between these rules and the bylaws or procedural rules of the other board or commission, this Rule is controlling authority.

AYES: _____

NAYES: _____

ABSENT: _____

ABSTENTIONS: _____

RESOLUTION DECLARED ADOPTED.

CERTIFICATION

I, Jennifer Speagle, being the duly appointed and qualified Clerk of the City of the Village of Clarkston, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of a Resolution adopted by the City Council of the City of the Village of Clarkston at its special meeting held on January 6, 2021.

JENNIFER SPEAGLE, City Clerk

CITY OF THE VILLAGE OF CLARKSTON

**RESOLUTION TO GO INTO CLOSED SESSION
TO DISCUSS SPECIFIC PENDING LITIGATION**

At a special meeting of the of the City of the Village of Clarkston, City Council, Oakland County, Michigan, held at the City Offices in the City of the Village of Clarkston, on Wednesday, January 6, 2021, at 7:00 p.m.

PRESENT: _____

ABSENT: _____

The following Resolution was offered by _____ with support from _____ moves to adopt the following resolution:

WHEREAS, at the special City Council Meeting held on January 6, 2021, City Council desires to go into closed session to discuss specific pending litigation.

NOW, THEREFORE, BE IT RESOLVED that the City of the Village of Clarkston hereby agrees to meet in Closed Session, as permitted by State Statute MCL 15.268(e) on Wednesday, January 6, 2021 at 7:00 p.m. immediately following the adjournment of the Special Meeting held on Wednesday, January 6, 2021 at 7:00 p.m., Michigan Time, at the City of the Village of Clarkston, 375 Depot Road, Clarkston, Michigan, 48346. The purpose of the Closed Session is to discuss the Susan Bisio v City of the Village of Clarkston, Oakland County Circuit Court Case Number 2015-150462-CZ, currently pending before the Honorable Leo Bowman, and to discuss the trial or settlement strategy in conjunction with the above-named lawsuit, which if this session were be held in an open meeting would have a detrimental financial effect on the litigation or settlement position of the public body.

RESOLVED,

AYES: _____

NAYES: _____

ABSENT: _____

ABSTENTIONS: _____

RESOLUTION DECLARED ADOPTED.

Eric Haven, Mayor

CERTIFICATION

I, Jennifer Speagle, being the duly appointed and qualified Clerk of the City of the Village of Clarkston, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of a Resolution adopted by the City Council of the City of the Village of Clarkston at its special meeting held on January 6, 2021.

JENNIFER SPEAGLE, City Clerk

City of the Village of Clarkston

375 Depot Road
Clarkston, Michigan 48346

Resolution - Retain Additional Legal Counsel for Bisio v. Clarkston Settlement

WHEREAS, in a Closed Session held as part of a special meeting of the City Council on January 6, 2021, the Council discussed the possibility of retaining additional legal counsel to co-represent the City in the Bisio v Clarkston lawsuit, and;

NOW THEREFORE, BE IT RESOLVED that the City Council approves the hiring of additional legal counsel to co-represent the City in the the Bisio v Clarkston lawsuit in a not to exceed amount of \$350.00 per hour due to a conflict with City Attorney Tom Ryan.

Avery	Bonser	Casey	Haven	Kneisc	Luginski	Wylie	Totals
<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
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Resolution is Adopted

Resolution is Defeated

Jennifer Speagle, City Clerk

January 6, 2021

Date