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August 25, 2004

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Mr. John L. Dalton, President
City Council
c/o Ms. Susan Galeczka
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309-3033

Re: ***Open Burning Regulations***

Dear President Dalton:

In accordance with the direction given by the City Council at its last regular meeting, I have prepared and enclose a revised version of the proposed ordinance to amend section 58-58 of Chapter 58, Fire Prevention and Protection, of the Code of Ordinances. Please note the original proposed change to section 1102.6.8, on page 4 of the ordinance, remains intact and would make it discretionary, rather than mandatory, for the City to recover restitution for open burning regulations. Please note I have also added language to section 103.4.7.1, on page 2 of the proposed ordinance, to clarify that the mandatory restitution under that section for other fire code violations does not apply to open burning violations.

At that same Council meeting, a resident requested interpretation and clarification of the difference between open burning allowed under section 1102.6.1.1 and a recreational fire under section 1102.6.1.2. The resident explained that he had a metal and brick lined pit in his yard that he believes should be construed as an outdoor fire place, under section 1102.6.1.1, allowing him to burn any time without a permit. In my opinion, and under the facts presented, the current wording of the ordinance could be liberally construed to be consistent with the resident's interpretation. However, in discussing this matter with Fire Chief Walterhouse, he expressed concern about the inability and inefficiencies his Department would face in controlling outdoor fires if the condition the resident has is considered lawful and does not require a burning permit. Therefore, Chief Walterhouse has suggested that the references to "outdoor fire place" and "barbeque pit" be deleted from the ordinance so that the ordinance will consider any outdoor fire taking place outside of a barbeque grill to be a recreational fire requiring a permit. When this

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proposed ordinance comes back before the City Council, it may be helpful to ask Fire Chief Walterhouse to be present so that we can discuss and address issues or questions relating to permissible open burning.

Very truly yours,

BEIER HOWLETT, P.C.



John D. Staran

JDS/lh
Enclosure

cc: Mayor Pat Somerville (w/enc)
Mr. Greg Walterhouse, Fire Chief (w/enc)