

**RESOLUTION OF THE GRAND HAVEN BOARD OF LIGHT AND POWER'S  
COMMITMENT TO THE CONTINUED ENVIRONMENTAL REMEDIATION AND  
REDEVELOPEMENT OF THE FORMER SIMS POWER PLANT SITE ON HARBOR  
ISLAND AND APPOINTMENT OF VARNUM AS SPECIAL LEGAL COUNSEL  
FOR UTILITY MATTERS**

**WHEREAS** the members of the Board of Light and Power, like those on the City Council, are City Officers, similarly committed to the betterment of the community and the representation of the citizens who elected them both (City Charter Section 4.1 (a)); and

**WHEREAS** the Board of Light and Power also performs a local electric utility regulatory function answerable to all approximately 14,700 residential, commercial, and industrial customers within the City of Grand Haven, Ferrysburg, and three surrounding townships; and

**WHEREAS**, unlike members of any boards and commissions of the City and administrative officers appointed by, under the authority of, and accountable to City Council (City Charter Section 4.1 (b), Section 7.14 and Section 7.20), the members of the Board of Light and Power have broader powers and authority of their own, and are assigned a unique charge, distinctive roles, responsibilities, and obligations to conduct the affairs of the city owned electric utility, subject only to the "general direction of the Council," which is not as clearly defined in the Charter as some have recently suggested (City Charter Chapter 14); and

**WHEREAS**, while the electric utility facilities and services constitute a department of the city government, this department, unlike others within the City's Administrative Service, is under the control and direction of the Board of Light and Power, City Officers themselves, and its administrative agent (City Charter Chapter 14), as opposed to the administrative structure of the City, except the city electric utility, under the more direct control of City Council, its administrative agent, and the boards and commissions of the city (City Charter Chapter 7); and

**WHEREAS**, the Board of Light and Power appoints its own administrative agent, exercises full control over its funds, makes contracts concerning the electric utility, has its own purchasing policies, can acquire and dispose of property in the name of the City for its purposes, is not subject to the same budget procedures as other departments, boards, and commissions, of the City, and possesses the full power and authority to set electric rates (City Charter Chapter 14); and

**WHEREAS**, electric utility funds, including electric utility operating revenues, bond proceeds, and electric utility reserve funds, are additionally restricted by Charter and ordinance, and may only (1) defray the cost of operating the utility, (2) be used for the defined Project for which the bonds were issued, or (3) be utilized for the purpose for which the reserve funds were established (City Charter Chapter 14); and

**WHEREAS**, the Board of Light and Power desires, before moving forward further on the former Sims site environmental remediation, to establish a clear and mutual written agreement and understanding of the Board's governing roles, responsibilities, and funding obligations, and those of City Council and the Administrative Service of the City, with respect to the joint

environmental remediation and redevelopment project of the former Sims Power Plant site between the Board of Light and Power, City Council, and other departments and administrative officers of the City. The project is no longer exclusively an electric utility project, as determined appropriate by City Council, although some elements and components of it continue to serve an electric utility purpose, and the project is now being directed by other appointed City administrative officers, under the direction of Council.

**WHEREAS**, the City Attorney has recently opined that that the City Council and the Board of Light and Power may enter into an intragovernmental agreement for this purpose; and

**THEREFORE, IT IS RESOVED** that the Board of Light and Power shall not approve further funding of the Sims site environmental remediation activities which are not directly under contract with the Board, or approve the use of electric operating revenues, electric utility revenue bond proceeds, or electric utility reserve funds for such purpose until a written agreement is drafted and approved by both the Board and the City Council to better define and clarify the roles, responsibilities, and funding obligations for the jointly governed project now led and controlled directly by the City Council and other appointed administrative officers of the City, and limited, if any, review and approval by the Board or involvement by BLP staff; and

**BE IT FURTHER RESOLVED** that the Board of Light and Power approves and appoints of Varnum as its special legal counsel for utility matters, as it has served in this fashion for over 25 years until February 2022. Varnum will then serve as an agent of the Board and will work with the City Attorney to negotiate and mediate such written agreement between the Board and City Council. The Board will not proceed in development of the written intragovernmental agreement with City Council without legal representation, and until Varnum's reinstatement by the Board is approved by City Council, which approval has historically been granted as a routine matter with due consideration of the Board's approval and recommendation.

**BE IT FURTHER RESOLVED** that the primary purpose and intent of these resolutions is to promote and facilitate productive dialog and discussion between the Board and City Council and legal representation of both governing bodies, with the goal of reaching a mutual understanding and agreement on a fair, equitable and reasonable allocation of the costs and other responsibilities associated with the environmental remediation of the Sims Power Plant site on Harbor Island, consistent with the requirements and parameters of the City Charter, bond finance covenants, applicable law and regulatory requirements.

Grand Haven City Charter:

[https://library.municode.com/mi/grand\\_haven/codes/code\\_of\\_ordinances?nodeId=PTICH](https://library.municode.com/mi/grand_haven/codes/code_of_ordinances?nodeId=PTICH)