



**EMERGENCY FINANCIAL MANAGER
CITY OF FLINT
GENESEE COUNTY MICHIGAN**

ORDER No. 9

INVALIDATING COUNCIL ACTION

BY THE POWER AND AUTHORITY VESTED IN THE EMERGENCY FINANCIAL MANAGER ("EMERGENCY FINANCIAL MANAGER") FOR THE CITY OF FLINT, MICHIGAN ("CITY") PURSUANT TO PUBLIC ACT 72 OF 1990, THE LOCAL GOVERNMENT FISCAL RESPONSIBILITY ACT, MCL 141.1201 *et seq* ("PUBLIC ACT 72"), EDWARD J. KURTZ, THE EMERGENCY FINANCIAL MANAGER, ISSUES THE FOLLOWING ORDER:

On May 15, 1990, the Local Government Fiscal Responsibility Act, Public Act 72 of 1990, ("Public Act 72") was enacted to provide for review, management, planning, and control of the financial operation of units of local government; to provide criteria to be used in determining the financial condition of a local government; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state boards, agencies, and officials, and officials and employees of units of local government; and

On August 8, 2012, the Local Emergency Financial Assistance Loan Board appointed Edward J. Kurtz as the Emergency Financial Manager for the City of Flint; and

On November 12, 2012, Flint City Council adopted Resolution No. 121084.1 titled "Resolution to Overturn/Appeal Freedom of Information Act Request Denial." In doing so, Council violated Flint City Charter §4-602, Form of Documents, because Council adopted the resolution without first submitting the resolution to the Chief Legal Officer for review and approval; and

Resolution No. 121084.1 concerns an appeal by Henry Tannenbaum of TDM Realtors of the City's denial of his October 18, 2012 request under the Freedom of Information Act (FOIA); and

Mr. Tannenbaum is currently a plaintiff in a civil lawsuit against the City of Flint, *1104 Houses LLC, et al v City of Flint*, Genesee County Circuit Court Case Number 12-97704-AW, which concerns the same subject matter as his FOIA request; and

A party to litigation may not use FOIA to obtain documents related to the pending lawsuit, MCL 15.243(1)(v); and

Pursuant to Public Act 72, the Emergency Financial Manager exercises the authority and responsibilities of the Mayor and City Council concerning the adoption, amendment, and enforcement of ordinances and resolutions affecting the financial condition of City of Flint; and

The subject FOIA request concerns pending litigation against the City of Flint which, if successful, will adversely affect the financial condition of the City of Flint.

For the above stated reasons, Flint City Council Resolution No. 121084.1 is null and void because (1) it was adopted in violation of Flint City Charter §4-602, and (2) it violates Public Act 72 by usurping the authority of the Emergency Financial Manager.

This Order is effective immediately.

This Order may be amended, modified, repealed or terminated by any subsequent order issued by the Emergency Financial Manager.

Dated: Dec 12, 2012

By:



Edward J. Kurtz
Emergency Financial Manager
City of Flint

xc: State of Michigan Department of Treasury
Mayor Dayne Walling
Flint City Council
Inez Brown, City Clerk