



Richard Aguirre, City Clerk-Treasurer
CITY OF GOSHEN

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To: Mayor Leichty, Board of Public Works & Safety, Fire Chief Dan Sink & City Attorney Stegelmann
From: Clerk-Treasurer Richard R. Aguirre
Date: May 30, 2024
Subject: Concerns about the Safe Haven Baby Box agreement, costs and implementation

Scheduled to be before the Board on May 30, 2024 will be a proposed agreement with Safe Haven Baby Boxes, Inc. The proposed agreement is supported by the Goshen Fire Department and is the result of diligent work by City Attorney Stegelmann. It also is supported by a number of local residents and a sponsoring organization dedicated to saving lives by making baby boxes widely available to parents who have made the difficult decision to surrender their babies. There can be no more noble cause than acting to save innocent lives.

That stated, as the Chief Fiscal Officer for the City of Goshen, it's my responsibility to advise decision makers about issues that I believe should be considered before any City agreement is approved. In this case, there are issues that should be explored by the Board before it approves the agreement with Safe Haven Baby Boxes, Inc. These issues include the following:

- **Incomplete financial and insurance review.** On the first page of the Lease and Service Agreement, under "Recitals," the final "Whereas" clause states, in part: *"Provider has consulted its ... financial and insurance related advisors ..."* I am the City of Goshen official responsible for overseeing the City's financial and insurance well-being and I am unaware that any consultation was conducted before this agreement was circulated. **Why is it stated there was consultation? And if so, what was done and by whom?**
- **Abdication of the City's appropriate role to communicate with and inform our residents.** The second page of the agreement, Section 2. Services by SHBB states, in part that SHBB shall provide annual services related to the performance of this Agreement, *"including providing educational materials to Provider ... operating a toll-free phone number for the general public to utilize in emergency situations involving abandoned children ... (and) providing educational information to the general public regarding the location and awareness of the Safety Device at the Provider's facility as well as other educational resources related to child welfare advocacy and safe haven law awareness ..."* **Why should the City surrender its informational responsibility to a private organization? Why will we be barred from providing materials? Why can we not refer individuals to other organizations? And why are we agreeing to provide materials without reviewing and approving them in advance?**
- **High cost and actual value of the baby box.** The second page of the agreement, Section 4. Consideration. states that the City will pay SHBB an **initial fee of \$15,500, a renewal fee of \$500 for each successive term under this agreement, and an annual fee of \$500 and other associated expenses as determined from time to time by SHBB** on Jan. 1 of every year that this agreement is in force.



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In June 2023, the City was quoted an initial fee of \$11,000. Why has the price increased by nearly 41% in less than a year? Why would \$500 be charged for each successive term as well as a \$500 annual fee? What are “associated expenses” and how will they be determined? For insurance purposes, we must provide the actual cost/value of the baby box. What is the true replacement cost?

- **SHBB can change provisions but not the City.** The second page of the agreement, Section 5. Obligations of Provider. states that the City *“agrees to follow all policies and procedures provided by SHBB which may change from time to time ... (and) agrees to not change, add to, subtract from, alter, rebrand, or otherwise modify the Safety Device and accompanying signage as set forth in Exhibit A in any manner whatsoever without the prior written approval of SHBB ... (and) Provider agrees to accept complete liability for any and all unapproved modifications to the Safety Device and any and all unapproved modifications to accompanying parts of the Safety Device, including required signage/materials.”* **If SHBB can change policies and procedures, why not the City? Why must the City agree to provisions that prohibit any changes to signage or materials? Why are we surrendering this right and responsibility?**
- **Concerns about the City’s liability.** The fourth page of the agreement, Section 8. Insurance. states that the City *“agrees to procure and maintain in full force and effect at all times during the Term of this Agreement and any renewals thereof, at its own cost and expense, a policy or policies of comprehensive commercial general liability insurance on an occurrence basis, in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate and a \$2,000,000 limit umbrella coverage related to the Safety Device’s placement and operation in or about Provider’s facility against all loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in upon or about the Safety Device during the Term of this Agreement and all extensions thereof.”* This section also states that *“SHBB’s liability as to the Safety Device in relation to the Provider under this Agreement is covered under the City’s master general liability and umbrella policies.”*

Who is responsible for paying if the City’s insurance costs increase? What is the limit of the City’s liability for a claim against SHBB?

- **Worrisome representations about the baby boxes.** The sixth page of the agreement, Section 12. Disclaimer and Limitation of Warranties. states the following (in bold face type and all capital letters): ***“SHBB IS NOT THE MANUFACTURER OF THE SAFETY DEVICE AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE OR NON-INFRINGEMENT OF THE SAFETY DEVICE. WITH RESPECT TO SAFETY DEVICE, PROVIDER ACCEPTS IT ‘AS IS.’ THE SAFETY DEVICE SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO PROVIDER BY THE SAFETY DEVICE MANUFACTURER AND/OR AVAILABLE BY THE SAFETY DEVICE’S COMPOSITE PARTS.”***

The initial information is at deceptive and at worse false.



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These baby boxes ARE made by SHBB, Inc. at its headquarters in Woodburn, Indiana. On April 18, 2024, WRTV (Indianapolis) reported on the manufacture of baby boxes by SHBB in a production area of its Woodburn headquarters. The report included comments from Monica Kelsey, the founder of SHBB, at the facility. There also were comments from her son, who is the manager for production and described the manufacturing process, and her husband, shown making the baby boxes. Link to story: <https://www.wrtv.com/news/local-news/behind-the-boxes-the-small-passionate-team-manufacturing-safe-haven-baby-boxes-in-rural-indiana>

Why is this false claim in this agreement? It should be removed.

Also why is the City leasing and paying for a device that comes with “no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, quality performance or non-infringement of the safety device.”

Is the City even allowed to accept a piece of equipment without any warranties or expectation of performance? Is it prudent to do so?

- **Questions about surrender procedures and costs.** Exhibit A, Safe Haven Baby Box, Inc. Policies and Procedures, III. Generic procedures when the Baby Box is Activated, states in part, “A. *Emergency Personnel, including, Firefighters, Police Officers, EMT’s, or Paramedics must perform the act of retrieving a newborn and taking said newborn into custody when he or she is voluntarily placed in a Box and the parent does not express an intent to return for the newborn.*” **How is a City employee supposed to conclude a parent “does not express an intent to return for the newborn.” What if the parent changes her mind? Shouldn’t this determination be left to a judge?**
- In that same section, it is stated as follows in “E. *Newborns will be evaluated by medical personnel at the location and immediately transported to the closest hospital for further evaluation. The evaluation at the hospital will include screenings and examinations by physicians as necessary.*” **Who will pay for the baby’s medical care? Will the City be responsible? How will the charges for the ambulance services be recorded and will compensation for the City be sought? From whom? If not, why not?**
- In that same section, it is stated as follows in “G. *The hospital supervisor will notify the appropriate state agency and have a social services consult order placed.*” **How will this provision be enforced? Can we require Goshen Hospital personnel to do anything?**
- **More questionable provisions.** Exhibit A, Safe Haven Baby Box, Inc. Policies and Procedures, IV. Additional Procedures for designated Providers, states in part, “E. *The Baby Box will not be announced to the public or otherwise discussed with third parties or go ‘live’ prior to the official unveiling/blessing of the Baby Box, which will be agreed upon prior to “going live”*”

We should not agree to this muzzling provision. We are proposing to spend public resources and have an obligation to inform the public about this device.

Also, while an unveiling of a new public improvement is to be expected, a Christian “blessing” ceremony does not seem appropriate.



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The section also states in part, *“H. Each Provider will provide medical information and a copy of parents’ rights located in a bag inside the Baby Box. The bag is to be placed on the medical bassinet and leaning against the outside door.”*

We can/should include information prepared by SHBB but should not surrender our right and responsibility to provide additional information provided by credible organizations that inform parents of their rights and provide lists of medical and counseling resources. We should care about the parents as much as the babies.

The section also states in part, *“J. Provider will ensure that no video monitoring will occur around the part of the building containing or facing the Baby Box.”*

Will obeying this provision require the City to disable/remove any of our current video monitoring devices? Will this jeopardize the safety of people or the security of any facilities or equipment? Is this wise to do? What if there was coercive behavior during the surrender of a baby? Wouldn’t we want that recorded?

The section also states in part, *“Q. In the event that the Agreement with Safe Haven Baby Boxes, Inc. is terminated for whatever reason, Provider is responsible for all costs and expenses of removing respective Baby Boxes at Provider location(s)”*

How will the City pay these costs? Will they be reimbursed?

BESIDE THESE CONCERNS ABOUT THE AGREEMENT, I HAVE THESE QUESTIONS ABOUT THE COSTS OF THE BABY BOX & IMPLEMENTATION OF THE PROGRAM:

COSTS: The City Attorney’s May 30, 2024 memorandum to the Board states, *“The City will be obligated to pay to Safe Haven Baby Boxes, Inc. the sum of \$15,500.00 as a one-time fee, and an annual fee of \$500.00. The City would need to pay for the installation of the device. City staff anticipates that grant funds will cover the cost of the acquisition and installation of the safety device.”*

What grant commitments have been made to pay for the baby box and in what amount(s)? Verbal or written promises? When will the City receive the funds? Will the grants cover all of the City’s costs, including installation, the alarm system and the \$500 yearly renewals? What will happen if the grants don’t cover all of the City’s expenses?

CITY’S SHARE OF ANY COSTS: Assuming grants do not cover all of the City’s baby box expenses, how will they be paid for and from what Department budget? No such funds are currently appropriated.

ACCOUNTING FOR THE FUNDS: Baker Tilly Municipal Advisers have informed the Clerk Treasurer that any money donated to the City specifically for the Safe Haven baby box would be accounted for per State Board of Accounts (SBOA) guidelines as a “restricted donation,” meaning that money is earmarked for the baby box project. A separate fund would need to be established to account for the donated money. Restricted donation funds, as long as they are spent on the restriction, can be spent **without** appropriation per the SBOA (Cities and Towns Bulletin, June 2016). Any other City money used would require an appropriation.



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RECOMMENDATION: IF THE PROGRAM IS DESIRED, THE COMMON COUNCIL SHOULD APPROVE AN ADDITIONAL APPROPRIATION FOR THE SAFE HAVEN BABY BOX PROGRAM BEFORE THE CITY FINALIZES THE AGREEMENT WITH SHBB, INC:

This is my best advice based on consultation with **Todd Caldwell**, a Senior Manager at Baker Tilly and a former Director of Audit Services for the State Board of Accounts. Caldwell provided the following responses to questions that I posed on Wednesday:

Can the City spend money on this project BEFORE donations have been received without triggering passage of an additional appropriation?

Only if the City were to use existing appropriations. Meaning - if the City spent money before donations roll in, you'd have to post it to an appropriation (as opposed to a non-appropriation line item).

What would be the consequence if City funds were spent and we didn't receive enough donations to cover the expenses? Would we have to get a post-expenditure appropriation?

The consequence would be any money spent in excess of donated money would need to come from City appropriations – either existing or additional.

And is it just safer to get an appropriation for up to a certain amount (say \$10,000) and note that we expect and hope donations will cover the expenses?

Council could approve an additional appropriation for up to \$10,000 (per your example), and, if needed, Council could do another additional later in the year if the \$10,000 is spent and donations don't cover expenses.

It's clear that City funds will be spent on the baby box program at some point regardless of the donations received. Donations won't cover the time Fire Department employees spend maintaining and checking the baby box and perhaps not the costs of the 24/7 alarm services.

Given that certainty, an appropriation request should be made to the Common Council before the SHBB agreement is finalized. This also would provide members of the public the opportunity to comment on whether this is an appropriate use of City funds.

THANK YOU:

Thank you for considering these issues and questions and my appropriation recommendation before approving the proposed agreement with Safe Haven Baby Boxes, Inc. I welcome your questions and feedback.

– City of Goshen Clerk-Treasurer Richard R. Aguirre