1. April 20, 2021 Agenda
   Documents:
   20210420.PDF

2. April 20, 2021 Workbook
   Documents:
   04-20-2021 WORKBOOK.PDF
MIDDLETOWN CITY COUNCIL AGENDA
TUESDAY, April 20, 2021

CITY COUNCIL BUSINESS MEETING – 5:30 PM – COUNCIL CHAMBERS – LOWER LEVEL

MOMENT OF MEDITATION/PLEDGE OF ALLEGIANCE TO THE FLAG/ROLL CALL

PUBLIC HEARING - 2021 Fiscal year CDBG Plan

PRESENTATION - Arbor Day Proclamation

PRESENTATION - Final Redevelopment Plan for Towne Mall Galleria Property - RiNKA Design, Steve Morales, Elliot Young, Evan Crossman, Presenters

CITIZEN COMMENTS

COUNCIL COMMENTS

CITY MANAGER REPORTS

CONSENT AGENDA. . . Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote of consent. There will be no separate discussion of these items. If discussion is desired, that item will be removed and considered separately.
   a) Approve the City Council Minutes of February 16, 2021.
   b) Confirm the personnel appointments of Dustin Alcorn to the position of Maintenance Worker in the Department of Public Works and Utilities, Storm Water Maintenance Division; and Jennifer Lyons to the position of Permit Specialist in the Development Services Department.
   c) Receive and file an oath of office for Jamie Patterson.
   d) Receive and file the Board of Health minutes of March 9, 2021.
   e) Proclaim April Fair Housing Month
   f) Confirm the following board and commission appointments:
      Middletown Visitors Bureau-Kevin Kimener and Michell Cook
      Income Tax Review Board- Jeff Nye
      Building & Housing Board of Appeals- Kevin Puckett

MOTION AGENDA
   a) Authorize the City Manager to enter into a professional services contract with Brown and Caldwell for owner’s advisor services associated with the Downtown CSO Storage Basin Project.
   b) Authorize the purchase of a new Vactor truck equipped with a hydro-excavator for the sewer maintenance department.

LEGISLATION

1. Ordinance No. 02021-29, an ordinance authorizing the purchase of aviation fuel from AvFuel and declaring an emergency.

2. Ordinance No. 02021-30, an ordinance establishing a procedure for and authorizing a contract with Aclara Technologies, LLC for the purchase of replacement equipment for the automated meter reading system. (Second Reading)

3. Ordinance No. 02021-31, an ordinance authorizing a contract with Jacobs Engineering for the design of two back-up generators and one elevated storage tank for the distribution of water. (Second Reading)
4. **Ordinance No. O2021-32**, an ordinance authorizing a contract with Barrett Paving Materials Inc. for the 2021 Local Street Improvement Program. (Second Reading)

5. **Resolution No. R2021-16**, a resolution supporting Amtrak’s proposed expansion of passenger rail services in Ohio and for congressional actions needed to authorize and appropriate funds to the expansion. (Second Reading)

6. **Ordinance No. O2021-33**, an ordinance adopting a General Fund Reserve Policy. (Second Reading)

7. **Resolution No. R2021-17**, a resolution authorizing a transfer of funds to the Middletown Port Authority and declaring an emergency.

8. **Ordinance No. O2021-34**, an ordinance authorizing a contract with WSP USA to provide construction inspection services for the 2021-2022 street levy paving project and declaring an emergency.

9. **Resolution No. R2021-18**, a resolution authorizing the City Manager to enter into a settlement agreement with Manchester Hotel, LLC and Snider Building, LLC and declaring an emergency.

10. **Ordinance No. O2021-35**, an ordinance creating the 2021 Growth Expansion Transformation Grant Program for small businesses and declaring an emergency. (No action requested until May 4, 2021.)

11. **Resolution No. R2021-19**, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2021 and declaring an emergency. (Street Levy Fund) (No action requested until May 4, 2021.)

12. **Resolution No. R2021-20**, a resolution authorizing the purchase of real property from Premier Health and Atrium Medical Center and declaring an emergency. (No action requested until May 4, 2021.)

13. **Resolution No. R2021-21**, a resolution identifying four sites to be used for the relocation of city fire stations and declaring an emergency. (No action requested until May 4, 2021.)

14. **Resolution No. R2021-22**, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2021. (General Fund and Police Grant Fund) (First Reading)

15. **Ordinance No. O2021-36**, an ordinance to enact Chapter 832 (Massage Parlors) of the Middletown Codified Ordinances. (First Reading)

16. **Ordinance No. O2021-37**, an ordinance authorizing a land swap and development agreement with Dickie D. Brandon, Trustee of the O.L.C. Revocable Land Trust, Dickie Brandon and Phillip Brandon. (First Reading)

**NEW BUSINESS**
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**NEW BUSINESS**
PUBLIC HEARING
PRESENTATION
PROCLAMATION

Whereas, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees. This holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska. Arbor Day is now observed throughout the nation and the world; and

Whereas, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife. Trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

Whereas, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community. Trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, I, Nicole Condrey, Mayor of the City of Middletown, Ohio, do hereby proclaim April 30th, 2021, as

Arbor Day

in the City of Middletown, and I urge all citizens to support efforts to protect and nurture our trees and urban forest not just for the beauty they provide but for the benefits they give our residents and community.

IN WITNESS HEREOF, I have hereunto subscribed my name this 20th day of April, in the year two thousand twenty-one.

Nicole Condrey, Mayor

Attest: Clerk of Council
PRESENTATION
CITIZEN COMMENTS
COUNCIL COMMENTS
CITY MANAGER REPORTS
CONSENT

AGENDA
Mr. Don Gilgrist, Journal News, stated, “Just wanted to inform Council and Administration that this is my last council meeting. I have accepted a new assignment with Dayton Daily News and this is my last week here. It has been a pleasure and a privilege to cover you all during 4 assignments in the last 16 years. So, I will be heading over to Warren County. I will be keeping an eye on you, just not as close. I just wanted to let you know. Thank you.”

Ms. Condrey thanked Mr. Richter and congratulated him on his new position.

Mr. Don Gilgrist, stated, “Good evening, my name is Don Gilgrist. I have been a resident of the City of Middletown since 1972. I am a retired teacher from Middletown City Schools and also a part-time adjunct professor at the Middletown campus of Miami University. I am here in attendance tonight to speak on behalf of the integrity and character of Jason Deaton. He is a police officer in the Middletown police force. Jason has been accused of using what, I guess, is now known as a racial sign. If you do a study on that racial sign, his wasn’t in the right position for it and it was more of a game that he had played when he was in junior high. I feel bad that he has had to go through this whole ordeal, being such a good cop in Middletown. I have known Jason for over 20 years. The first time I met him he took my tennis class at Miami University. He was a top student, not only in his physical ability and his mental ability but also in his respect. I put a lot of emphasis on grading students that way; the way that he respected me and the way he respected his classmates. Later, he married the daughter of a close friend of mine and I got to know him on a more personal level and watched his family grow. In the 20 years that I have known him I have never once heard Jason use inappropriate language or treat anybody in a disparaging manner that would ever be considered racist or anything like that. I have watched him and his wife parent their two boys who are now in their teens. All those years, both of them have instilled values and respect in the boys. Jason has been a youth sports coach ever since his older son was at the age to start participating. I have seen him coach basketball, football and lacrosse. He gives a lot of time to the community he works in and to his sons. As a coach, Jason tries to instill good character, self-control and respect into all of his players. (Mr. Gilgrist reached the 3-minute time limit.)

Mr. Kent Keller II stated, “Thank you council that showed up, it shows that you care about this city, the fact that you came here. Two weeks ago, the City Manager made a video, Jim Palenick. I just wanted to point out a few things that I noticed. A couple of people apparently dug through the Facebook page of a good cop. He happened to be a Trump supporter. Some people found that he was playing the circle game, which I play with my kid all the time, and somehow blew it up into something it’s not. But within 22 hours of two people complaining you released a city video Jim. Meanwhile, for years I have been complaining about budget issues, the fact that the airport is constantly being poked and prodded and people are being bullied around and businesses are being bullied. The fact that the 2019 to 2020 budget went up 147% to $739,000 and you didn’t do a video for that within 22 hours. You didn’t do a video about Dan Dickten lying to officers, lying to investigators and then getting paid six months leave. In fact, after he was let go, the city congratulated him, gave him a pat on the back. While he was getting $65,000 + of my tax dollars. You didn’t do a video for him. Why didn’t you do a video about Dan Dickten lying to officers, lying to investigators? You didn’t do a video about Matt Eisenbraun, who has a court case coming up and has committed a serious misdemeanor? No video or apology about that. I have been in the city for 42 years; don’t you dare come in this city and start dividing and playing games. We have good officers. Don’t you dare accuse our officers of things that they didn’t do. If an officer actually did something, if an officer has mistreated someone, let’s see it; but don’t try to put this (gestured with his hand) together with white supremacy. Don’t. Do not accuse our officers of something they didn’t do. You will not bring that into my town. Thank you.”

Ms. Condrey thanked Mr. Richter and congratulated him on his new position.

Mr. Ed Richter, Journal News, stated, “Just wanted to inform Council and Administration that this is my last council meeting. I have accepted a new assignment with Dayton Daily News and this is my last week here. It has been a pleasure and a privilege to cover you all during 4 assignments in the last 16 years. So, I will be heading over to Warren County. I will be keeping an eye on you, just not as close. I just wanted to let you know. Thank you.”

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Lamar Farrell, 5002 Manchester Road, Middletown, spoke on behalf of Jason Deaton. A man that I have known and spent a lot of time with over the last 16 years. One of the saddest moments I have ever spent with Jason was when his brother was killed. I spent many hours with Jason and the family in the days following his death. Jason was involved in a very vicious fight against a white supremacist and he sustained many broken bones in his face. The woman that he was trying to help was a woman of color. Since the beginning of time, the world has taken symbols and perverted them. The game Mr. Deaton was playing was turned into a racial witch hunt. Jason Deaton is a coach of children of many colors. He is a good friend of Steven Hartman owner of Dedicated Motivated. The sad tragedy is that people take something and try
Ms. Vitori commented that she was glad that everyone came and spoke on behalf of Officer Deaton. I think it is important that he was able to deny these allegations. These comments began on social media over a week before we had the video or any comments. This had snowballed, there were thousands of comments on many different pages. I was getting messages. It was already out there which means we have a responsibility as a City to talk to this officer and give the opportunity to clear his name which is what we did. I am grateful that the City Manager handled it the way he did and I applaud Chief Birk as well. I think the video was sharing that information so that people knew that we heard them. It wasn’t two people, I had more than two people texting me and the NAACP represents more than two people. I think that it is hard to see things through other people’s lenses. Given a context some people felt that it potentially could have been a bad situation; but because we addressed it we were able to say, “no, that’s not what it was.” This guy was playing a game and in the context of his life and who he is; he’s a great officer, it’s not the case here. I think we did the right things to give everyone the chance to talk about this thing, to communicate, to share. That’s what you do when you are a transparent government. You don’t just sweep it under the rug and hope that people stop talking about it, because that doesn’t typically happen, I want to thank everyone involved, Chief Birk did a great job and Shelby and the City Manager did as well. I also want to applaud the City crews for their hard work during the recent snow events.

Mr. Moon thanked the City’s public works employees for working around the clock during the recent heavy snowfalls and Mr. Richter for covering City Council meetings for many years and wished him the best.

Ms. Nenni echoed Mr. Moon’s comments about Mr. Richter and commented, “we will miss you in our meetings. I appreciate you coming down to say goodbye in person. Thank you to the City road crews and their families that are working long hours plowing snow and dealing with water main breaks. It is important to see all perspectives of a situation to really know and to get to the bottom of what the intentions are. I think City staff handled it pretty well and I appreciate them communicating and having an open dialog about these kinds of issues. It is difficult for both sides.

Ms. Condrey commented that as the Council representative to the Citizens Advisory Board if we have a similar situation in the future, we could call a special meeting of the Citizens Advisory Board. I think that would be a great use for that board and come together and have a good community discussion in a venue that allows for that. I will do my best to call a special meeting when it is needed. I met with Dr. Dora Bronston over the weekend and had a really good discussion about assuming best intent. While that is not always possible, assuming best intent gives us a better outlook as we start the conversation and begin working with others. I recorded our conversation and my goal is to take clips of that and put it together and have it available as some thoughtful pieces to consider as we are interacting with others.

City Council discussed setting up a work session to receive more information and to discuss the City’s response to homelessness issues.

Mr. Palenick pointed out that what was previously item #1. Ordinance No. O2021-10, an ordinance authorizing the City Manager to enter into a Memorandum of Understanding with OneCity for Recovery was tabled and is not on tonight’s agenda.

Approve the City Council Minutes of November 11, 2020. Confirm the personnel appointments of Kevin Bryant, Savannah Conrad, Jeremy Spears, Tyler Mullis, Cameron Koch, Michael Welch, Kyle Baughman to the position of Firefighter-EMT in the Department of Public Safety, Division of Fire; and Candice Stultz to the position of Housing Code Specialist in the Department of Public Safety, Division of Police.

Receive and file an oath of office for Elayna Romine. Receive and file the board and commission minutes of:

Planning Commission-August 12 and December 9, 2020

Approve the final plat for Renaissance 2 Section 13 Subdivision.

Receive and file Maintenance and Performance Bonds submitted by Grand Communities, LLC., guaranteeing public improvements constructed as part of Renaissance 2 Section 13 Subdivision.
Proclamation: February - Black History Month

Mr. Mulligan moved to approve the issues and actions listed on the Consent Agenda. Ms. Nenni seconded. Motion carried. Ayes: Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori.

MOTION AGENDA

Approve a contract with Everett J. Prescott, Inc., of West Carrollton, OH, in an estimated amount of $113,601.58 for the purchase of supplies for the Water Maintenance Division.

Mr. Mulligan moved to approve a contract with Everett J. Prescott, Inc., of West Carrollton, OH, in an estimated amount of $113,601.58 for the Water Maintenance Division. Mr. Moon seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon.

Waive Charter

Mr. Mulligan moved to suspend the Charter provision that requires reading on two separate days and to declare Ordinance No. 2021-15 an emergency measure to be read one time only. Mr. Moon seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan. Nays: Ms. Condrey.

Ord. No. 2021-12 Extend Fire Uniform Contract with A.E. David

Ordinance No. 2021-12, an ordinance establishing a procedure for and authorizing an extension of the current contract with A.E. David Company for the purchase of fire uniforms was read for the second time.

Mr. Mulligan moved to approve Ordinance No. 2021-12, an ordinance establishing a procedure for and authorizing an extension of the current contract with A.E. David Company for the purchase of fire uniforms. Ms. Nenni seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey.

Ord. No. 2021-13 SBED Grant Mz Jades Soul Food, LLC

Ordinance No. 2021-13, an ordinance authorizing the City Manager to enter into an agreement for a Small Business Economic Development Grant with Mz Jades Soul Food, LLC was read for the second time.

Mr. Mulligan moved to approve Ordinance No. 2021-13, an ordinance authorizing the City Manager to enter into an agreement for a Small Business Economic Development Grant with Mz Jades Soul Food, LLC. Ms. Condrey seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey.

Ord. No. 2021-14 Renew and Expand D.O.R.A.

Ordinance No. 2021-14, an ordinance renewing the Designated Outdoor Refreshment Area and authorizing an expansion of the boundary thereof was read for the second time.

Mr. Mulligan moved to approve Ordinance No. 2021-14, an ordinance renewing the Designated Outdoor Refreshment Area and authorizing an expansion of the boundary thereof. Mr. Moon seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Miss Condrey, Ms. Vitori.

Res. No. R2021-04 Hidden Heroes City

Resolution No. R2021-04, a resolution in support of the City of Middletown, Ohio becoming a Hidden Heroes City in support of military and veteran caregivers was read for the second time.

Mr. Mulligan moved to approve Resolution No. R2021-04, a resolution in support of the City of Middletown, Ohio becoming a Hidden Heroes City in support of military and veteran caregivers. Ms. Condrey seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori.

Res. No. R2021-05 Amend Appropriations

Resolution No. R2021-05, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2021 was read for the second time. (Police Grant Fund)

Mr. Mulligan moved to approve Resolution No. R2021-05, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2021. (Police Grant Fund) Ms. Nenni seconded. Motion carried. Ayes: Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan.

Ord. No. 2021-15 Contract for Gateway Maintenance

Ordinance No. 2021-15, an ordinance establishing a procedure for and authorizing a contract with T.R. Gear Landscaping, Inc. for gateway maintenance and declaring an emergency.

Mr. Mulligan moved to approve Ordinance No. 2021-15, an ordinance establishing a procedure for and authorizing a contract with T.R. Gear Landscaping, Inc. for gateway maintenance and declaring an emergency. Mr. Moon seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey.

Res. No. R2021-07 Amend

Resolution No. R2021-07, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren,
Appropriations
State of Ohio, for the period ending December 31, 2021 was read for the first time. (General Fund)

Ord. No. O2021-16
Ordinance No. O2021-16, an ordinance establishing a procedure for and authorizing a contract with Gillig, LLC and Butler County Regional Transit Authority for the purchase of a 35 foot diesel bus was read for the first time.

Contract to Purchase Bus

Ord. No. O2021-17
Ordinance No. O2021-17, an ordinance amending Ordinance No. O2020-69 establishing the pay ranges, pay policy and benefits for various salaried and hourly classifications within the service of the City that are hired prior to 2018 was read for the first time.

Amend PBO

Ord. No. O2021-18
Ordinance No. O2021-18, an ordinance amending Ordinance No. O2020-70 establishing the pay ranges, pay policy and benefits for various salaried and hourly classifications within the service of the City that are hired January 1, 2018 or later was read for the first time.

Amend PBO After 01/01/2018

ADJOURNMENT
At 6:19 p.m., the meeting was declared adjourned until February 25, 2021 at 4:00 p.m. in Council Chambers.

Nicole Condrey, Mayor
Attest: ___________________________
TO: James Palenick, City Manager
FROM: Megan Ellis, Human Resources Specialist
SUBJECT: APPOINTMENT – MAINTENANCE WORKER

We are recommending the conditional appointment of DUSTIN ALCORN to the position of Maintenance Worker in the Department of Public Works and Utilities, Storm Water Maintenance Division. Mr. Alcorn was selected from the eligibility list as a result of Civil Service testing procedures. He will fill the vacancy created by the promotion of David Todd Abell to Equipment Operator.

Mr. Alcorn will be assigned to Range PW-3, Step A which is provides a salary of $17.26 hourly and $35,900.80 annually. The appointment is conditional upon the candidate successfully passing the required medical evaluation.

/me

cc: Amy Schenck, Clerk of Council
    Scott Tadych, Public Works Director
    Brian Adams, Public Works Superintendent
    Charlie Anderson, Public Works Superintendent
    Human Resources
    Finance (Payroll)
    file

ccmtg4/20/21

STORM WATER MAINTENANCE
Authorized Strength – 9.5
Current Staff Level – 8.5
April 15, 2021

TO: James Palenick, City Manager

FROM: Megan Ellis, Human Resources Specialist

SUBJECT: APPOINTMENT – PERMIT SPECIALIST

We are recommending the appointment of JENNIFER LYONS to the position of Permit Specialist in the Development Services Department. Ms. Lyons’ exceptional appointment has received the approval of the Middletown Civil Service Commission under the provisions of Chapter 124.30, paragraph (A) of the Ohio Revised Code. This is a new position in 2021 (Ordinance No. 02020-69 and 02020-70, as amended).

Ms. Lyons will be assigned to Range 246, Step I, which provides a salary of $1,955.52 bi-weekly, $50,843.56 annually. The appointment is conditional upon the candidate passing the required medical evaluation.

/me

cc: Amy Schenck, Clerk of Council
    Ashley Combs, Development Services Director
    Finance (Payroll)
    
ccmtg04/20//21
MIDDLETOWN

OATH OF OFFICE

I, Jamie Patterson, do solemnly swear that I will support the Constitution and laws of the United States and of the State of Ohio, and the Charter and Ordinances of the City of Middletown; that I will not make or authorize expenditures of public money other than for adequate consideration and efficient service; and that I will in all respects faithfully discharge the duties of my employment or office for the City of Middletown, Butler/Warren Counties, Ohio.

[Signature]

Position

State of Ohio
County of Butler, ss:

Sworn to and subscribed before me this 7th day of April, 2021.

[Signature]

Notary Public

My Commission Expires 1/18/2023
CITY OF MIDDLETOWN
BOARD OF HEALTH
Minutes
March 9, 2021

The City of Middletown Board of Health met in remote session at 7:30 AM on March 9, 2021.

Members Present
Mayor Nicole Condrey, BS, President
Jeff Bonnell
Margie Davis, RN
Ruth Lollie
Charlene Kurtz, BSN, RN
Dr. Anita Scott Jones, Ed.D., MBA, BS
David Schul

Health Department Staff Present
Jackie Phillips Carter, MPH, BSN, RN
Carla Ealy, RN
Chandra Corbin, BSN, RN
Amanda McDonald

Absent and Excused
Dr. Ken Patrick, DVM

ROLL CALL
Motion: Ms. Kurtz moved, seconded by Ms. Davis to excuce Dr. Patrick.
Roll call vote: Yes-6 (Bonnell, Davis, Lollie, Kurtz, Jones, Schul). No-0. Motion passed.

CITIZEN COMMENTS
None.

APPROVAL OF MINUTES-February 2021
Ms. Kurtz noted that Dengue Fever had been spelled wrong at the top of page two, Ms. Condrey also noted that the word bias should read “biased” at the bottom of page two.
Motion: Ms. Kurtz moved, seconded by Mr. Schul to approve the corrected February 2021 Board of Health Meeting Minutes.
Roll call vote: Yes-6 (Bonnell, Davis, Lollie, Kurtz, Jones, Schul). No-0. Motion passed.

RECEIVE AND FILE FINANCIAL REPORT-February 2021
Motion: Ms. Kurtz moved, seconded by Mr. Bonnell to receive and file the February 2021 Financial Report.
Roll call vote: Yes-6 (Bonnell, Davis, Lollie, Kurtz, Jones, Schul). No-0. Motion passed.

EDUCATION PRESENTATION- Childhood Mental Illness
Dr. Jennewine shared an educational presentation on childhood mental illness. An estimated 20% of children have a diagnosable mental illness during any given year. Suicide is the leading cause of death in children age 10-17. The most common mental illnesses among children include: ADHD, anxiety, mood disorders, disruptive behavior disorder, elimination disorders, schizophrenia, and tic disorders.
Dr. Jennewine listed the following warning signs of developing mental illnesses in children: changes in school performance, use of drugs or alcohol, changes in sleep and/or eating habits, excessive complaints of physical disorders, intense fear of gaining weight, loss of interests in friends and activities, and withdrawing or spending excessive amounts

City of Middletown Health Department | One Donham Plaza, Middletown, OH 45042 | 513.425.1818 Fax 513.425.7852
of time alone. Causes of mental illness can be hereditary or biological, but can also be caused by psychological trauma or environmental circumstances.

Diagnosing mental illnesses in children can be more difficult than with adults because many of the signs of mental illness in children can also occur as a normal part of development. Behaviors become symptoms when they occur very often, last a long time, occur at an unusual age, or cause significant disruption the child's or family's, ability to function. There are no specific tests to diagnose mental illnesses in children, only tests to rule out other disorders.

Treatment of mental illness include medication and psychotherapy; many children benefit from a combination of both. Treatments are usually effective, although often times to varying degrees depending on the individual and severity of illness.

Throughout the COVID-19 pandemic there has been a 25-50% increase in children diagnosed with mental illness requiring treatment. Contributing factors include: homes with financial strains due to parental job losses, increased difficulty with access to healthcare and treatment options, isolation from peers and other adults outside the home due to the lockdowns, and parental mental health issues inside the home due to COVID. Data involving suicide rates is conflicting. Some areas show as high as 67% increases, other areas show little change from 2019. It will be one to two years until the data is better collected, analyzed and understood.

The American Academy of Pediatrics reviewed visits to pediatric emergency departments from January-July. February, March, April and July were most notable. All four months were when COVID concerns were the highest.

Medical Director
Dr. Jennewine reported the February communicable disease numbers.

<table>
<thead>
<tr>
<th>Disease</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chlamydia Infection</td>
<td>19</td>
</tr>
<tr>
<td>COVID-19</td>
<td>281</td>
</tr>
<tr>
<td>Gonococcal infection</td>
<td>12</td>
</tr>
<tr>
<td>Hepatitis B</td>
<td>1</td>
</tr>
<tr>
<td>Hepatitis C</td>
<td>5</td>
</tr>
<tr>
<td>Varicella</td>
<td>1</td>
</tr>
</tbody>
</table>

OLD BUSINESS

COVID
Ms. Phillips Carter informed the board that CMHD has received 300 doses of the Johnson and Johnson one-dose vaccines. We are currently compiling a list of individuals interested in this vaccine. We will either be holding Johnson and Johnson clinics or hold mini-clinics at the health department. Governor DeWine has increased qualifying categories to receive the vaccine to 50 years or older, type II diabetics, those with end stage renal disease, and childcare, adult daycare and funeral workers.
CMHD will be holding a Moderna clinic on Saturday, March 13th at Miller Ridge Elementary School, with 500-600 patients expected.
Ms. Phillips Carter informed the board that any individual looking to receive a vaccine should call the health department at 513-425-7844.

PHAB
Ms. Phillips Carter stated that CMHD has been hard at work preparing for the PHAB site visit at the end of May.

NEW BUSINESS

Travel Authorizations
None.
Review of Regional Harm Reduction Collaborative Funding for Syringe Supply Services (SSP)
Ms. Phillips Carter informed the board that the money from the mental health board goes to offset the funding of SEP.

Approval of Agreement between the Board of Health of the Butler County General Health District and City of Middletown Health Department-COVID-19 Vaccine Grant
Ms. Phillips Carter stated that CMHD has already received the money from this grant. The money is being used to fund the vaccine clinics being held by CMHD.
Motion: Ms. Kurtz moved, seconded by Ms. Davis to approve the COVID-19 Vaccine Grant.
Roll call vote: Yes-6(Bonnell, Davis, Loll, Kurtz, Jones, Schul). No-0. Motion passed.

Public Health Week-April 5-11, 2021
Ms. Phillips Carter informed the board that public health week is April 5-11, 2021. Public health week is a time to recognize the contributions of public health and highlight issues that are important to improving our nation’s health. Included in the BOH packet is a detailed list of the topics being focused on this year.
Mr. Bonnell felt the topics seemed political and asked Ms. Phillips Carter if she agreed. Ms. Phillips Carter explained that these initiatives are ongoing concern covered by public health. Board members Mr. Schul and Ms. Kurtz agreed that similar topics have been discussed over the years.
Ms. Phillips Carter informed the board that ODH gave a kudos to Butler County for their success in vaccinating minorities. Butler County General Health District Health Commissioner, Jenny Bailer, attributed the success of Butler County to City of Middletown Health Department Health Commissioner, Jackie Phillips Carter, for her continued efforts in reaching minority populations.

REPORTS
Health Commissioner
Ms. Phillips Carter informed the board that she took part in Innovation Weekend hosted by Miami University. The topic of discussion this year was homelessness. Ms. Phillips Carter stated that this event continues to be enlightening every year. The students are smart, care and ask great questions. Ms. Phillips Carter commented that our future is in great hands.
Ms. Phillips Carter and Ms. Corbin will be strategically planning a Latino vaccine clinic in an effort to continue to reach minority populations.
Ms. Phillips Carter and Ms. Ealy have been attending meetings discussing festivals, parades, etc. The governor is expected to lift some, if not all, of the restrictions once we get down to 50 cases per 100,000 Ohioans.

Director of Nursing
Ms. Corbin informed the board that CMHD has given 4,603 vaccines since December 21, 2020. 2,513 doses were given in February.
Ohio Department of Health is strongly encouraging use of their website, Vaccine Management Solution (VMS), to schedule vaccinations. CMHD piloted the system on Thursday, March 4, 2021. Ms. Corbin states that this is a good tool. Ms. Corbin informed the board that there is a COVID outbreak at a local manufacturing company. The company has done well quarantining affected employees. The outbreak is thought to have started at a lunch meeting. There are 23 employees currently either quarantined or tested positive.

Environmental Director
Ms. Ealy stated that she has been working with organizations in getting them on board with what they need when everything is opened back up.
Ms. Ealy informed the board that there were actually six homeowners being taken to court over failure to connect to city sewer. One additional homeowner will be served by a process server as he lives out of town.
Ms. Ealy stated that she and Ms. Mourer have been able to complete most inspections. There were a few seasonal places that did not open at all.
Ms. Ealy informed the board that in the City of Middletown there are: 261 FSO/RFE operations, 29 pools, 18 mobiles, 2 campgrounds and 6 body art facilities.

ADJOURNMENT
The meeting was adjourned at 8:51 AM. The next meeting will be held on April 13, 2021 at 7:30 AM.

Jacquelyn D. Phillips Carter, MPH, BSN, RN
Secretary

Nicole Condrey, President
City of Middletown Board of Health
PROCLAMATION

WHEREAS, the Fair Housing Act, enacted on April 11, 1968, enshrined into federal law the goal of eliminating racial segregation and ending housing discrimination in the United States; and

WHEREAS, the Fair Housing Act prohibits discrimination in housing based on race, color, religion, sex, familial status, national origin, and disability, and commits recipients of federal funding to affirmatively further fair housing in their communities; and

WHEREAS, the City of Middletown is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all; and

WHEREAS, our social fabric, the economy, health, and environment are strengthened in diverse, inclusive communities; and

WHEREAS, more than fifty years after the passage of the Fair Housing Act, discrimination persists, and many communities remain segregated; and

WHEREAS, acts of housing discrimination and barriers to equal housing opportunity are repugnant to a common sense of decency and fairness.

NOW, THEREFORE, I, Nicole Condrey, Mayor of the City of Middletown, Butler and Warren Counties, Ohio do hereby resolve that April 2021, be designated as Fair Housing Month in the City of Middletown and urge all citizens to wholeheartedly recognize this celebration throughout the year.

IN WITNESS, WHEREOF, I, have unto placed my hand and the seal of the City of Middletown this 20th day of April, 2021.

Mayor

Attest: Clerk of Council
MOTION ITEM
April 7, 2021

TO:       James Palenick, City Manager
FROM:    Scott Tadych, Public Works and Utilities Director
PREPARED BY:  Nakita Lancaster, Assistant Public Works Director

PURPOSE
To authorize the City Manager to enter into a professional services contract with Brown and Caldwell for owner’s advisor services associated with the Downtown CSO Storage Basin Project.

BACKGROUND AND FINDINGS
The City entered into a consent decree with the Ohio and US EPAs in 2018. As part of the signed agreement, the City is required to implement projects outlined in the Long Term Control Plan (LTCP). These projects will address the City’s combined sewer overflows (CSOs) into the Great Miami River as well as the City’s aging wastewater infrastructure.

The Downtown CSO Storage Basin is the first of two large CSO storage facilities that the City will be required to construct. Based on the hydraulic modeling of the City’s combined sewer system and the required level of control, the estimated size of the storage facility is 5.1 MG. The consent decree requires that design for the project commence in 2022 and construction be completed by the end of 2025.

The City intends to complete the project using the Progressive Design-Build procurement model. In the State of Ohio, public utilities are required to obtain the services of a criteria engineer (also known as Owner’s Advisor) before contracting for design-build services (ORC Section 153.692). As such, the City has selected Brown and Caldwell to serve as the Owner’s Advisor for this project. Brown and Caldwell worked with the City to develop the LTCP which included the hydraulic model and conceptual site plans.

The first phase of the project will be to prepare procurement documents for the selection of a Design-Build firm. Brown and Caldwell will assist in the preparation of procurement documents,
developing design criteria, and evaluating the proposals.

**ALTERNATIVES**

Per the Ohio Revised Code, an engineer employed by the City is eligible to serve as the criteria engineer provided the Ohio facilities construction commission is notified. While the Public Works Department has engineers on staff, the scope of this project exceeds the knowledge of any single engineer. Therefore, engaging an engineering consulting firm with a breadth of subject matter experts will provide better project oversight.

The City did not issue an RFP for the role of Owner’s Advisor to solicit proposals from other consulting firms. Given Brown and Caldwell’s extensive background in the development and execution of the LTCP, they are the most qualified consultant to continue to develop the project into design and construction.

**FINANCIAL IMPACT**

The fee for Phase 1 Owner’s Advisor Services is in an amount no-to-exceed $194,024. Funds are appropriated in the 2021 Sewer Capital Reserve Fund (495.631.54540).

**EMERGENCY/NON-EMERGENCY**

Motion Agenda
PURPOSE

To authorize the purchase of a new Vactor truck equipped with a hydro-excavator for the sewer maintenance department.

BACKGROUND AND FINDINGS

The Sewer Maintenance Department is responsible for maintaining the sewer system in good working order. Vactor trucks are routinely used for cleaning sewer lines, pump stations, catch basins, and other infrastructure throughout the City. Currently, the City does not have a Vactor truck equipped with a hydro-excavator and is limited on the work that can be performed with existing equipment. Purchase of the new equipment will allow the sewer maintenance department to respond more promptly and efficiently to service requests throughout the City.

The State of Ohio Department of Administrative Services has a State Term Schedule for the purchase of Vactor trucks through a local dealer, Jack Doheny Companies. The City maintains other Vactor fleet vehicles and benefits from local maintenance and warranty work.

ALTERNATIVES

The equipment price and alternative vendors have already been vetted through the Ohio State Purchasing Program. The State of Ohio has a State Term Schedule with the Vactor company for equipment purchases. The City could elect to seek other vendors but it is not expected that the City could negotiate a more favorable price.

FINANCIAL IMPACT

The cost for the Vactor truck is $362,411 and funds are appropriated in the Sewer Capital Reserve Fund (495.631.54540)

EMERGENCY/NON EMERGENCY

Motion agenda.
LEGISLATION
ITEM 1
ORDINANCE NO. O2021-29

AN ORDINANCE AUTHORIZING THE PURCHASE OF AVIATION FUEL FROM AVFUEL AND DECLARING AN EMERGENCY.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is hereby authorized to purchase aviation fuel from AvFuel in accordance with the contract entered into in 2019.

Section 2

For said purposes, the Finance Director is authorized and directed to expend a sum not to exceed $300,000.00 from the Airport Fund (Fund # 525).

Section 3

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.

Section 4

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to allow the immediate purchase of fuel to prevent fuel interruptions to airport users, and shall take effect and be in force from and after its adoption.

Nicole Condrey, Mayor

Adopted: __________

Attest:____________________________________

Clerk of City Council
March 29, 2021

TO: Jim Palenick, City Manager

FROM: Chris Xeil Lyons, Economic Development Director
Submitted by Matt Eisenbraun, Assistant Economic Development Director

2021 Airport Fuel Purchases

PURPOSE

To authorize the purchase of up to $300,000 in aviation fuels from Avfuel Corporation for fuel needs at Middletown Regional Airport in 2021.

BACKGROUND AND FINDINGS

In 2019, the City, acting as the fixed-based-operator (FBO) service provider and fuel supplier at Middletown Regional Airport, entered into a contract for the ongoing purchase of aviation fuels with the Avfuel Corporation. This contract called for Avfuel to be the supplier of fuel to the airport for a period of seven years and remains in effect today.

Each year, the airport budgets an appropriate amount to ensure the regular, uninterrupted supply of fuel for based and transient users is available at the airport. As the number of operations per month increases with warmer weather, the number of re-supply purchases will increase to 1-2 shipments per week.

FINANCIAL IMPACT

The City has budgeted $300,000 for fuel purchases in 2021. The fuel will be sold at the airport and the revenues will be part of the airport’s yearly revenue stream.

ALTERNATIVES

The alternative would be to not purchase fuel for sales at the airport or to purchase from a different provider. However, Staff recommends proceeding with the fuel sale contract with Avfuel. Fuel sales are a critical resource that is needed at every airport and not providing fuel would put an undue burden on businesses that operate at the airport and disrupt economic activity. Choosing to move to another company could cause potential liability for breach of contract and delay in providing fuel to airport users.

EMERGENCY/NON-EMERGENCY

Second reading emergency – Staff would like to ensure the uninterrupted supply of fuel.
LEGISLATION
ITEM 2
ORDINANCE NO. O2021-30

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH ACLARA TECHNOLOGIES, LLC FOR THE PURCHASE OF REPLACEMENT EQUIPMENT FOR THE AUTOMATED METER READING SYSTEM.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Revised Code, is hereby authorized to enter into a contract with Aclara Technologies, LLC for the purchase of replacement equipment for the automated meter reading system at $95.00 per meter transmission unit.

Section 2

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed $255,360.00 to be paid in equal amounts from the Water Fund (Fund # 494) and Sewer Fund (Fund # 495).

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Revised Code, shall not be applicable to the award and execution of the aforesaid contract.

Section 4

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.

Section 5

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Nicole Condrey, Mayor
March 9, 2021

TO: Jim Palenick, City Manager
FROM: Scott Tadych, Public Works & Utilities Director
PREPARED BY: Nakita Lancaster, Assistant Public Works & Utilities Director

PURPOSE

To waive the bidding procedure and authorize the purchase of replacement equipment for the automated meter reading system from Aclara Technologies LLC.

BACKGROUND AND FINDINGS

The City installed an automated water meter reading system in 2005-06 through a performance-based contract with Johnson Controls. Approximately 20,000 water meters were installed at that time with meter transmission units (MTU’s) and other communication equipment to transmit real-time readings at a cost of approximately $9.5 million. The project significantly increased the accuracy of the City’s water billing system and eliminated the need for manual meter readings.

The typical useful life for MTUs is 15-20 years and the City has begun replacing MTUs as needed. It is anticipated that most or all of the City’s MTUs will need to be replaced in the next few years. Equipment failures cause estimated billings which creates billing issues and customer complaints.

Since the meters were all installed during a two-year window, the need to replace the MTUs is accelerating. The City purchased 2,688 MTUs at the beginning of 2021. However, the number of MTUs requiring replacement is already nearing the total purchased for 2021. To keep pace with the failing MTUs, we are recommending that an additional 2,688 be purchased in 2021.

ALTERNATIVES

The software used by the vendor (Aclara) is proprietary and therefore, Aclara is considered the sole-source provider for the associated MTUs. Since the City purchased this system back in 2005-2006, the most cost effective solution is to continue to replace MTUs. The only alternative would be replacing the current system with a completely new system at cost of $10 - $20 million.
**FINANCIAL IMPACT**

The quote from Aclara totals $255,360 for 2688 MTU’s at $95 per MTU,

Funds are appropriated in Water (494) and Sewer (495) Capital in 2021 for the purchase. The total cost will be split evenly between these funds.

**EMERGENCY/NON EMERGENCY**

Non-emergency.
LEGISLATION
ITEM 3
ORDINANCE NO. O2021-31

AN ORDINANCE AUTHORIZING A CONTRACT WITH JACOBS ENGINEERING FOR THE DESIGN OF TWO BACK-UP GENERATORS AND ONE ELEVATED STORAGE TANK FOR THE DISTRIBUTION OF WATER.

WHEREAS, a new water storage tank was recommended as part of Middletown’s Water Distribution Planning (2017) and the Blueball Storage Tank Modeling Analysis (2019); and

WHEREAS, Jacobs Engineering developed the current water distribution model for the City and is the contractor most familiar with the system, treatment plant and remote storage and pumping facilities; and

WHEREAS, an elevated water storage tank and two back-up generators for use at the Water Treatment Plant and the Yankee Road Pump Station need to be designed;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Revised Code, is hereby authorized to enter a professional services contract with Jacobs Engineering for the design of two back-up generators and one elevated storage tank for water distribution. The contract shall be in a form approved by the Law Director.

Section 2

For said purposes, the Finance Director is hereby authorized and directed to expend a sum not to exceed $765,000.00 from the Water Capital Reserve Fund (Fund # 494), which such sum is hereby appropriated to the accounts of 018 (494.018.54530).

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Revised Code, shall not be applicable to the award and execution of the aforesaid contract.

Section 4
This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Nicole Condrey, Mayor

1st Reading: April 6, 2021
2nd Reading:__________
Adopted:____________
Effective:___________

Attest:______________________
        Clerk of City Council
March 22, 2021

TO: Jim Palenick, City Manager
FROM: Scott Tadych, Public Works and Utilities Director
PREPARED BY: Nakita Lancaster, Assistant Public Works and Utilities Director

Professional Services Contract – Drinking Water Reliability Design

PURPOSE

To authorize a professional services contract with Jacobs Engineering for the design of two back up generators and one elevated storage tank.

BACKGROUND AND FINDINGS

The City continues to evaluate its water system to improve its reliability and resiliency to provide service to residents, commercial, and industrial users. A recommendation for a new storage tank is documented in a Memorandum, Middletown Water Distribution Planning (Jacobs, 2017) to address water demand increases for the power plant that is now on-line, and the related Memorandum Blueball Storage Tank Modeling Analysis (Jacobs, 2019). A similar recommendation was provided by the Ohio EPA to the City in January 2021. The tank volume is expected to be 2 million gallons (MG) but the design tank volume will be determined during the preliminary design phase of the project.

Additionally, the City would like to add back-up power at the Water Treatment Plant (WTP) and Yankee Pump Station to increase system reliability and enable the plant to produce and distribute water in the event of a power outage. The generators will significantly increase water system resiliency in the event of widespread power outages.

ALTERNATIVES

The project recommended is intended to improve system reliability and therefore, the alternative to not making these investments, leaves the water system vulnerable to power outages and disruption of water services.

Jacobs Engineering developed the water distribution model for the City and is familiar with the City’s water distribution system, treatment plant, and remote storage and pumping facilities. Given their extensive knowledge of the water system and model, they are considered the most qualified firm to carry out the design work. The City could solicit additional proposals from other consultants; however, hiring another consultant is likely to increase the scope of work. Another consultant would need to verify model calibration before relying on the model for design.
FINANCIAL IMPACT

This professional services contact is in an amount not-to-exceed $765,000.00. There are sufficient funds in water capital fund (494) and we request that these funds be appropriated for this project.

EMERGENCY/NON-EMERGENCY

Non-emergency.
LEGISLATION
ITEM 4
ORDINANCE NO. O2021-32

AN ORDINANCE AUTHORIZING A CONTRACT WITH BARRETT PAVING MATERIALS INC. FOR THE 2021 LOCAL STREET IMPROVEMENT PROGRAM.

WHEREAS, the following streets are included in the 2021 Local Street Program:

<table>
<thead>
<tr>
<th>Street</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Ave.</td>
<td>Canal</td>
<td>University</td>
</tr>
<tr>
<td>Henry</td>
<td>Charles</td>
<td>Malvern</td>
</tr>
<tr>
<td>North</td>
<td>University</td>
<td>Shafor</td>
</tr>
<tr>
<td>Milton</td>
<td>Aberdeen</td>
<td>Alamo</td>
</tr>
<tr>
<td>Milton Ct.</td>
<td>Milton</td>
<td>End</td>
</tr>
<tr>
<td>Alamo</td>
<td>Milton</td>
<td>Sheldon</td>
</tr>
<tr>
<td>Park</td>
<td>Selden</td>
<td>Goldman</td>
</tr>
<tr>
<td>Ross</td>
<td>Grand</td>
<td>Sherman</td>
</tr>
<tr>
<td>Jefferson</td>
<td>Highland</td>
<td>Breiel</td>
</tr>
<tr>
<td>Karen</td>
<td>Elmer</td>
<td>End</td>
</tr>
<tr>
<td>Graydon</td>
<td>Elmer</td>
<td>End</td>
</tr>
<tr>
<td>Morgan</td>
<td>Oxford State</td>
<td>Pershing</td>
</tr>
</tbody>
</table>

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is hereby authorized to enter a contract with Barrett Paving Materials Inc. for the 2021 Local Street Improvement Program, in accordance with the low bid on file in the office of the City’s Contract Administrator.

Section 2

For said purposes, the Finance Director is hereby authorized and directed to expend a sum not to exceed $3,537,877.00 as follows:

- $1,100,000.00 Capital Improvement Fund (Fund # 220),
- $1,026,264.22 Auto & Gas Tax Fund (Fund # 210),
- $  700,000.00 Stormwater Capital Reserve Fund (Fund # 415),
- $1,255,037.40 Property Owner Assessments Fund (Fund # 892), and
- $  500,000.00 Street Levy Fund (Fund # 201), of which such sum $500,000.00 is hereby appropriated to the accounts of 990 (201.990.54520).
Section 3

This ordinance shall take effect and be in force from and after the earliest time allowed by law.

Nicole Condrey, Mayor

1st Reading: April 6, 2021
2nd Reading: ______
Adopted: ______
Effective: ______

Attest: _______________________
Clerk of the City Council
DATE       March 24, 2021
TO:        Jim Palenick, City Manager
FROM:      Scott Tadych, Public Works and Utilities Director
           Prepared by Rob Nicolls, City Engineer

2021 LOCAL STREET IMPROVEMENTS

PURPOSE

Authorize the City Manager to enter into a contract with Barrett Paving Materials Inc. to proceed with the 2021 Local Street Improvement Program. The streets to be paved include:

<table>
<thead>
<tr>
<th>Street</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIRST AVE</td>
<td>CANAL</td>
<td>UNIVERSITY</td>
</tr>
<tr>
<td>HENRY</td>
<td>CHARLES</td>
<td>MALVERN</td>
</tr>
<tr>
<td>MALVERN</td>
<td>TYTUS</td>
<td>END</td>
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<tr>
<td>NORTH</td>
<td>UNIVERSITY</td>
<td>SHAFOR</td>
</tr>
<tr>
<td>MILTON</td>
<td>ABERDEEN</td>
<td>ALAMO</td>
</tr>
<tr>
<td>MILTON CT</td>
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<td>END</td>
</tr>
<tr>
<td>ALAMO</td>
<td>MILTON</td>
<td>SHELDON</td>
</tr>
<tr>
<td>PARK</td>
<td>SELDEN</td>
<td>GOLDMAN</td>
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<tr>
<td>ROSS</td>
<td>GRAND</td>
<td>SHERMAN</td>
</tr>
<tr>
<td>LEFFERSON</td>
<td>HIGHLAND</td>
<td>BREIEL</td>
</tr>
<tr>
<td>KAREN</td>
<td>ELMER</td>
<td>END</td>
</tr>
<tr>
<td>GRAYDON</td>
<td>ELMER</td>
<td>END</td>
</tr>
<tr>
<td>MORGAN</td>
<td>OXFORD STATE</td>
<td>PERSHING</td>
</tr>
</tbody>
</table>

BACKGROUND AND FINDINGS

The City is proposing to proceed with the 2021 Local Street Improvement Program which consists of repairing defective concrete and reconstructing/resurfacing selected streets. A separate request has been made to pass a Resolution of Necessity requiring owners to repair defective concrete sidewalks and drive aprons prior to road reconstruction. This
contractor will complete these repairs along with the road reconstruction.

The project is partially funded by an Ohio Public Works Commission (OPWC) grant in the amount of $1,100,000. Construction will start after July 1st, 2021 due to grant requirements. The project is to be completed by May 31st, 2022 weather permitting.

Four contractors submitted a bid for the project. Barrett Paving Materials, Inc. submitted the lowest and best bid.

**ALTERNATIVES**

None.

**FINANCIAL IMPACTS**

The lowest bid received for this project on March 9, 2021 was $3,537,877.00 which is 4% lower than the engineer’s estimate and 1% lower than the next bidder.

The project will be funded by the Capital Improvements Fund (220) $1,100,000 (OPWC grant), Street Levy Fund (201) $500,000, Auto & Gas Tax Fund (210) $1,026,264.22, the Stormwater Capital Fund (415) $700,000, and Property Owner Assessments (892) $211,612.78.

$500,000 from the Street Levy Fund (201) needs appropriated to account #201.990.54520.

**EMERGENCY/NON EMERGENCY**

Non-Emergency

**ATTACHMENTS**

Vicinity Map
Bid Tab
# 2021 Local Street Improvements

## Bid Tabulation

**Legal Notice No. 21-8206**  
**Bids Received: March 9, 2021**

<table>
<thead>
<tr>
<th>Contractor's Name &amp; Address</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Engineer's Estimate</strong></td>
<td>$3,670,393.25</td>
</tr>
</tbody>
</table>
| Barrett Paving Materials, Inc.  
  3751 Commerce Road  
  Franklin, OH 45005 | $3,537,877.00|
| R.A. Miller Construction Co.  
  4148 Augspurger Road  
  Hamilton, OH 45011 | $3,577,566.09|
| John R. Jurgensen Co.  
  11641 Mosteller Road  
  Cincinnati, OH 45241 | $3,606,496.85|
| Adleta Construction  
  389 S. Wayne Avenue  
  Cincinnati, OH 45215 | $3,926,809.78|

*Barrett Paving Materials, Inc.* was the low bid in the amount of **$3,537,877.00** which is 4% under the Engineer’s Estimate of **$3,670,393.25**
LEGISLATION
ITEM 5
RESOLUTION NO. R2021-16

A RESOLUTION SUPPORTING AMTRAK’S PROPOSED EXPANSION OF PASSENGER RAIL SERVICES IN OHIO AND FOR CONGRESSIONAL ACTIONS NEEDED TO AUTHORIZE AND APPROPRIATE FUNDS TO THE EXPANSION.

WHEREAS, Ohio, with only three Amtrak routes – two confined mostly to the northern edge of the state – sees only 32 passenger trains crossing the state per week. It has far fewer intercity or regional passenger rail services than any of its neighbors except Kentucky; and

WHEREAS, Ohio, the nation’s seventh-most populous state, is only the 27th highest Amtrak ridership state and has the lowest ratio of Amtrak riders per resident of the top-10 most populous states, according to Amtrak; and

WHEREAS, the City of Middletown has a long history of railroad usage, including the presence of a railroad depot near the downtown area; and

WHEREAS, Amtrak is developing a network expansion plan that includes additional passenger rail service on new routes with new communities that do not currently have rail service, including creating routes connecting Cincinnati, Dayton, Columbus and Cleveland, along with connections from those cities to communities in surrounding states; and

WHEREAS, a multimodal transportation center at Middletown served by Amtrak passenger rail services and Butler County Regional Transit Authority local buses would serve as an economic development catalyst by affordably and comfortably linking Middletown, Hamilton and Oxford residents and businesses to population and business centers in the Midwest, Northeast and the world through air-rail connections; and

WHEREAS, the City of Middletown and the Southwest Ohio communities see the value of frequent passenger rail service as critical to efficient travel for employees, and increases the attractiveness of these communities as a business and tourist destination;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City of Middletown supports the development of passenger rail service in Ohio and in the City of Middletown, Butler County.
Section 2

The City of Middletown requests the Ohio Congressional Delegation representing the City to support a renewal of the five-year federal Surface Transportation Reauthorization in 2021 that includes Amtrak’s proposed Corridors Development Program authorized at $25 billion for capital improvements and $300 million for operations over five years.

Section 3

The City of Middletown further requests the Ohio Congressional Delegation representing the City to provide in the upcoming Transportation and Housing Urban Development appropriations bill $5 billion for capital improvements and $60 million for operations to fund Amtrak’s Corridor Development Program.

Section 4

The Clerk of Council shall cause copies of this resolution to be transmitted to the Offices of the Ohio Congressional Delegation representing the City of Middletown and to Derrick James, Senior Government Affairs Officer, Amtrak, 500 W. Jackson Blvd., Chicago, IL 60661 and jamesde@Amtrak.com, as well as to Stu Nicholson, Executive Director, All Aboard Ohio, 3136 Kingsdale Center, Upper Arlington, OH 43221 and footestu@gmail.com.

Section 5

This resolution shall take effect and be in force from and after the earliest period allowed by law.

Nicole Condrey, Mayor

1st Reading: April 6, 2021
2nd Reading:_______
Adopted:_________
Effective:_________

Attest:
Clerk of City Council
DATE: March 29, 2021

TO: Jim Palenick, City Manager

FROM: Susan Cohen, Administrative Services Director

PURPOSE

To provide a show of support for the development of passenger rail service in Ohio.

BACKGROUND AND FINDINGS

In 2021, the federal government indicated it was a priority of the administration to increase the use of passenger rail in the United States. Commercial provider Amtrak has proposed bringing substantial increases in the availability of passenger rail services in Ohio. This project has been called locally the 3C rail project, that would connect Cincinnati, Columbus and Cleveland together by rail service. The intention of the service would be to potentially connect using existing track along the I-75 corridor. The City of Middletown is well situated to be an interim stop on the 3C line. Along with this 3C update, Amtrak would provide additional services to get from those cities to other destinations outside of the State. This connection would provide a crucial link to new tourism dollars as well as connecting City residents to other population centers.

Funding and the new federal passenger rail program depend on support from Congress and the new Biden Administration. City staff contacted the Ohio group spearheading this effort to get additional information on the project. All aboard Ohio has continued to lobby for new transportation dollars to come to Ohio and for the rail system improvements to be adopted as soon as possible. During these conversations, the group requested the City provide a resolution of support to show Ohio’s representatives the desire to proceed with these links in our cities and communities.

The development of rail in Ohio could provide a steady group of visitors coming to Middletown individually as well as Butler County as a whole. Service such as this would be a great source of support for new tourism efforts such as the potential studies for a regional convention center in the City. Service could also provide job opportunities for Middletown residents operating the rail system and working on any potential stop in this area.

ALTERNATIVES

Council may choose not to provide the resolution of support. Council may choose to provide other means of support. However, Staff recommends providing a resolution of support as well as pursuing other forms of support in order to position Middletown well to participate in this potential new mode of transport.
**FINANCIAL IMPACTS**

No current, direct financial impact of filing this resolution of support. However, the Development of passenger rail in Ohio could provide additional income to the City by increased tourism and commercial development in the area.

**EMERGENCY/NON EMERGENCY**

Non emergency
LEGISLATION
ITEM 6
ORDINANCE NO. O2021-33

AN ORDINANCE ADOPTING A GENERAL FUND RESERVE POLICY.

WHEREAS, the City’s current policy for use of General Fund Reserve funds states: “The City will maintain a minimum of fifteen percent (15%) of its annual General Fund expenditures as a contingency reserve in its General Fund. The goal of this policy is to maintain sufficient reserves in the General Fund to allow the City to avoid emergency employee reductions in force and abrupt service charge increases.”; and

WHEREAS, staff has recommended that this policy be amended to include a “maximum percentage” to hold in reserve, with funds exceeding the “maximum percentage” to be used for the then-highest-priority, nonrecurring capital improvements;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

City Council hereby adopts an updated General Fund Reserve Policy to be read as follows:

“To the extent that the City’s “contingency” General Fund Reserve, as calculated and established, post-audit, effective July 1st of each calendar year for the Budget year immediately preceding, contains a “surplus”; Then, City shall deposit said “surplus” in an established Capital Improvement Fund for expenditure on the highest-priority capital need identified and prioritized in the then-current, long-term Capital Improvement Plan (C.I.P.). A “surplus” shall be defined as any amount exceeding twenty-percent (20%) of the actual total General Fund expenditures for the audited year most-recently completed, having first taken into account and having subtracted therefrom the current years budgeted use of Fund Balance.

The capital items to be funded by this “surplus” can only include those items that do not have an otherwise-identified funding stream within the Capital Improvement Plan. As such, the “surplus” would not be used on infrastructure funded within Enterprise Funds.”
Section 2

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement and does not assess a tax or payment.

Section 3

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Nicole Condrey, Mayor

1st Reading: April 6, 2021
2nd Reading: ________
Adopted: ________
Effective: ________

Attest: ______________________

Clerk of the City Council
TO: James M (Jim) Palenick, City Manager
FROM: Jake Burton, Finance Director

GENERAL FUND RESERVE POLICY

PURPOSE

The purpose of this staff report is to present for adoption an updated General Fund Reserve Policy for the City of Middletown consistent with that presented and discussed at the 2021 Strategic Planning Session.

BACKGROUND and FINDINGS

The City of Middletown’s currently-existing General Fund Reserve policy states:
“The City will maintain a minimum of fifteen percent (15%) of its annual General Fund expenditures as a contingency reserve in its General Fund. The goal of this policy is to maintain sufficient reserves in the General Fund to allow the City to avoid emergency employee reductions in force and abrupt service charge increases.”

However, as we pointed out and discussed during the Strategic Planning Session, there are many communities that also establish within their Reserve policy, a “maximum percentage” to hold in reserve as well. When such a “maximum” reserve percentage is established, the policy usually then calls for funds exceeding that maximum, (post-audit), to be spent on the then-highest-priority, nonrecurring capital improvements. With this in mind, we have established our amended and proposed policy to now read as follows:

“To the extent that the City’s “contingency” General Fund Reserve, as calculated and established, post-audit, effective July 1st of each calendar year for the Budget year immediately preceding, contains a “surplus”; Then, City shall deposit said “surplus” in an established Capital Improvement Fund for expenditure on the highest-priority capital need identified and prioritized in the then-current, long-term Capital Improvement Plan (C.I.P.). A “surplus” shall be defined as any amount exceeding twenty-percent (20%) of the actual total General Fund expenditures for the audited year most-recently completed, having first taken into account and having subtracted therefrom the current years budgeted use of Fund Balance.
The capital items to be funded by this “surplus” can only include those items that do not have an otherwise-identified funding stream within the Capital Improvement Plan. As such, the “surplus” would not be used on infrastructure funded within Enterprise Funds.”

So, in other words, “surplus”-funded capital improvements would consist only of those items that have no potential outside funding sources and would otherwise have to be funded exclusively from the General Fund.

**ALTERNATIVES**

Do not adopt the policy and instead maintain our existing policy with a minimum but no maximum reserve. Or; adopt a slightly-altered new “maximum” policy, with an alternative maximum percentage, such as 21%, 22%, or 23%.

**FINANCIAL IMPACT**

If the General Fund Reserve should still exceed 20% following the completion of the 2020 Audit, after taking into account and subtracting the adopted and budgeted 2021 use of Fund balance, we would then move to reduce the General Fund reserve to precisely the 20% total; accounting for the excess funds as “surplus” -- to then be spent on the highest priority, (General Fund-dependent) items as approved in the Long-Term Capital Improvement Plan. The first of which will be presented to the City Council for adoption in the Fall of 2021.

**EMERGENCY/NON-EMERGENCY**

This is a Non-Emergency action item.
LEGISLATION

ITEM 7
RESOLUTION NO. R2021-17

A RESOLUTION AUTHORIZING A TRANSFER OF FUNDS TO THE MIDDLETOWN PORT AUTHORITY AND DECLARING AN EMERGENCY.

WHEREAS, in 2021, City Council terminated its agency relationship with Middletown Moving Forward (hereinafter “MMF”) and established the Middletown Port Authority (hereinafter “Port Authority”); and

WHEREAS, pursuant to a series of promissory notes, certain investors previously loaned funds to MMF which funds used to provide project financing to various entities; and

WHEREAS, the investor loans are being assigned to the Port Authority as the successor entity to MMF, and the Port Authority will pay off the principal and interest currently owed to the investors;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

Pursuant to Ohio Revised Code Sections 4582.25(A), 4582.43, and 4582.431, City Council authorizes the Finance Director to pay a sum not to exceed $520,000.00 to be paid as follows: $400,000.00 from the Greentree Industrial Park TIF Fund (Fund # 375), which such sum is hereby appropriated to the accounts of 990 (375.990.52480), and $120,000.00 from the Civic Development Fund (Fund # 249).

Section 2

City Council hereby determines that the use of the funds authorized to be contributed in accordance with the direction set forth in Section 1 of this Resolution is for a public purpose.

Section 3

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement and does not assess a tax or payment.
Section 4

This resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: in order to fund the Middletown Port Authority as it assumes the loan obligations of Middletown Moving Forward at the end of April, and shall take effect and be in force from and after its adoption.

Nicole Condrey, Mayor
Adopted: 

Attest: ______________________
    Clerk of City Council

H:\law\leg\2021 Leg\O Funds for Port Authority
DATE: April 7, 2021

TO: Jim Palenick, City Manager

FROM: Chris Xeil Lyons, Economic Development Director
PREPARED BY: Alaina Geres, Economic Development Program Manager

PURPOSE
To authorize a transfer of funds to the Middletown Port Authority to pay off the principal and interest currently owed by the CIC (Middletown Moving Forward) to the Investors and to establish an operating budget for the Middletown Port Authority.

BACKGROUND AND FINDINGS
From 2015 to 2017, the CIC entered into a series of promissory notes with the Investors to obtain funds that the CIC then loaned to Torchlight Pass, LLC, Historic Goetz Tower LLC, and the City. In 2021, City Council adopted Ordinance Nos. O2021-02 and O2021-03 terminating the City’s agency relationship with the CIC and creating the Middletown Port Authority, respectively. As the successor entity to the CIC, the Middletown Port Authority will accept the assignment of the Loans from the CIC to the Port Authority. In connection with such assignment, the Port Authority will pay off the principal and interest currently owed by the CIC to the Investors.

This will enable the Middletown Port Authority to (i) service loans previously administered by Middletown Moving Forward, Inc. (the “CIC”), which loans will be assigned to and serviced by the Port Authority (the “Loans”), and (ii) make principal and interest payments owed by the CIC under a series of promissory notes to investors who provided funds for the Loans, including Duke Investments, LLC, American Savings Bank, First Financial Bank, Middletown Area Development Enterprise, Inc., and the Middletown Community Foundation, Inc. (collectively, the “Investors”). See attached payoff statement for amounts. To summarize the full settlement statement, the CIC currently has a total of $742,883. This will be moved from the CIC to the Port Authority. After paying the principal due of $735,900, the interest due of $74,304, and holding a reserve of $450,000 to service the Goetz loan, there will be a deficit of $517,321. The $520,000 we are requesting to transfer will cover this deficit and the small remaining balance will be used towards operating expenses.

To note, the City enacted legislation, Ordinance No. O2017-24 allowing for use of Greentree Industrial Park TIF funds city-wide for urban redevelopment.

ALTERNATIVES
The alternative is to not do this, which would negatively impact the city, as we would have to continue to pay interest to the investors, which is not going to be cost effective for the Port Authority.
**FINANCIAL IMPACTS**
$400,000 from Greentree Industrial Park TIF Fund (#375) which needs to be appropriated to account 375.990.52480

$120,000 from ED/Civic Development/Other Professional Services – 249.990.52480

**EMERGENCY**
This is requested to be adopted as emergency legislation to allow the Port Authority to pay all principal and interest owed to the Investors as soon as possible.
LEGISLATION
ITEM 8
ORDINANCE NO. O2021-34

AN ORDINANCE AUTHORIZING A CONTRACT WITH WSP USA TO PROVIDE CONSTRUCTION INSPECTION SERVICES FOR THE 2021-2022 STREET LEVY PAVING PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, a Request for Qualifications was issued for construction inspection services for the 2021-2022 street levy paving project; and

WHEREAS, nine firms responded to the RFQ with WSP USA providing the lowest hourly rates and having inspectors already in the City working on other projects;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is authorized to enter into a contract with WSP USA to provide construction inspection services related to the 2021-2022 street levy paving project in accordance with the qualification letter, attached hereto as Exhibit “A”. The contract shall be in a form approved by the Law Director.

Section 2

For said purposes, the Finance Director is hereby authorized and directed to expend a sum not to exceed $150,000.00 from the Street Levy Fund (Fund # 201), which such sum is hereby appropriated to the accounts of 990 (201.990.54520).

Section 3

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.

Section 4

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to permit the consultant to begin work as soon as the paving contractor begins construction, and shall take effect and be in force from and after its adoption.

Nicole Condrey, Mayor

Adopted:

Attest: __________________________
Clerk of City Council
TRANSMITTAL LETTER

March 25, 2021

Rob Nicolls, P.E., City Engineer
City of Middletown
1 Donham Plaza
Middletown, OH 45042

RE: Proposal for Construction Inspection Services for the 2021-2022 Street Levy Program

Dear Mr. Nicolls:

The City of Middletown (City) desires engineering services to properly inspect, test, and document the current 2021-2022 Street Levy Program. WSP USA Inc. (WSP) possess professional construction managers and inspectors with many years of experience working for the Ohio Department of Transportation (ODOT), cities, and counties. WSP’s construction group offers engineering and inspection services that adapt to budgetary constraints, and confirms proper construction and documentation, while containing engineering and inspection costs whenever possible.

Our Project Manager, Dan Mendel, PE, will be the primary point of contact with the City, bringing 31 years of ODOT experience serving in roles as District Construction Administrator, Warren County Resident Engineer, and Project Engineer. Dan is supported by Deputy Project Manager, Jon Milesky, PE, PS, who has 32 years of ODOT experience serving in roles as Design Engineer, Permit Engineer, Test Lab Engineer, and LPA Coordinator. Dan’s team of qualified engineers, technicians, and inspectors will be available for the two-year program.

The WSP team’s in-depth experience and superior knowledge of ODOT and city requirements, demonstrates that WSP’s CE&I personnel are the perfect team to effectively and efficiently provide construction engineering and inspection services to the City for this important paving program.

Respectfully submitted,

[Signature]

Dennis Stemler, PE
Senior Supervising Construction Engineer
PROJECT APPROACH

PROJECT UNDERSTANDING:
WSP USA Inc. (WSP) is thoroughly acquainted with the requirements for this project specific construction inspection contract. We understand the 2021-2022 Street Paving Levy Program consists of asphalt pavement resurfacing/reconstruction of 137 lane miles of mainly residential streets in the City of Middletown (City). The requested services include construction inspection for asphalt paving, curb repairs, and ADA ramp construction. To accomplish this amount of work over two construction seasons, the contractor will need: multiple mills, pavers, and numerous work crews to meet the project completion date. If not correctly inspected and managed, a project of this size and scope can go off the rails. Our team has the personnel to correctly manage the project to meet specification and minimize impacts to residents and the traveling public, keeping the project on track.

PROJECT APPROACH:
Project Management Software: WSP utilizes the APPIA program which is provided and supported by InfoTech. This software is recognized and recommended by FHWA for all agencies not inspecting and managing a project through the local DOT. The software is an all-inclusive project management system that covers and populates all the areas of project management which includes inspection reports, material tracking and approval, pay estimates and change orders.

Monitor Construction Activities: WSP inspectors will monitor the contractor’s work, to be sure it is complying with the specifications. Our managers and inspectors meet and work with the contractor before and during operations to stay ahead of expectations and requirements. Work that does not meet specification and quality requirements will be addressed as they occur and addressed accordingly. All inferior work will be communicated to the City with recommended corrective action. Inspectors will prepare daily reports that include details of the work performed, pay quantities, and corresponding photo documentation. Problems or issues will get delivered to the City. Dan will communicate weekly updates to the City Engineer regarding work progress and upcoming contractor scheduling. Dan’s team will track work progress and address changed field conditions and project issues as they occur.

Plant Inspection: WSP understands that the City does not want a full-time inspector at the plant. Deputy Project Manager, Jon Milesky, PE, PS, was the former ODOT District 8 Test Lab Engineer responsible for certifying asphalt and concrete plants. Along with our asphalt inspectors, Jon can review asphalt testing results and minimize the need for second party lab testing. This enables the team to validate asphalt produced and minimize or eliminate the need for second party lab testing. If required, plant samples can be taken as necessary by WSP plant inspectors. Testing of samples would be performed by a local materials testing firm. Any testing and lab monitoring will be performed as necessary by the City. The WSP team will provide recommendations on whether and when this should happen.

Tracking Contract Pay Quantities:
Contract pay items will be tracked daily. APPIA uses the Mobile Inspector App, that allows for pay items to be tracked under their respective bid reference numbers. Pay items can be monitored by the City through the APPIA software and compared in several manners, such as paid-to-date, and percent complete.
Pay estimates will be generated from the data and compared to contractor pay invoicing. The APPIA system also documents that the materials are approved before payment.

**Material Testing:** WSP inspectors have a broad spectrum of material inspection experience and certifications. Our on-site team will monitor and test the following materials:

**Concrete**
Our inspectors are ACI certified to test concrete. We will test concrete at the recommended intervals or as needed. We test for air/slump and yield. Project managers and inspectors will make sure only approved concrete JMF’s are used while managing and recording all test results. Any cylinder breaks will be coordinated with the City through any contracts they have, or we can conduct strength tests on the cylinders through a local materials testing firm.

**Asphalt**
Our inspectors and managers are experienced in noticing asphalt deficiencies that affect asphalt life such as: segregation, checking, bleeding, flushing, compaction temperatures, as well as others, and the cause of these problems. Often, this enables us to prevent these deficiencies from happening.

Project managers and inspectors will make sure only approved asphalt JMF’s are used while managing all quantities and tickets. Our inspectors will monitor paving and compaction operations and can take samples as needed. Actual compaction testing by the contractor with a nuclear gauge is part of project item requirements. These tests can be verified and monitored.

Any compaction testing or lab core testing deemed necessary would be performed by our materials testing subconsultant.

Our Project Manager, Dan Mendel, PE, has working knowledge of the City of Middletown’s construction practices. Many of our inspectors live in the vicinity, and have the local familiarity of the project areas.

The WSP team has the experience and depth to handle multiple assignments, and the flexibility to serve multiple inspection roles.

“I am committed to managing the Street Levy Paving Program to correctly inspect, and meet project specifications with the least impact to travelers and residents, while controlling project costs.”
PROJECT BILLING

Project Manager Dan Mendel, PE and team inspectors are currently working in the area. Their close proximity provides the City with inspectors they know and trust, yielding better communication, faster response times, and maximizing onsite field inspection by using approved funding for inspection services versus expenses.

Dan’s approach to construction specific projects is to be responsive, offer staff with appropriate qualifications, provide quality inspection services, provide continual project status and client satisfaction check-ins, and provide documentation that allows for efficient project close out.

WSP’s current field FAR Overhead Rate is 98.35%, well below the average consultant providing at least a 62% savings to the contract, and additional inspection at no cost to the City, with trusted inspection staff. This allows WSP to provide more experienced and better qualified inspectors at cost effective rates.

WSP team members have multiple ODOT prequalifications, allowing them to inspect several operations that will eliminate the need to change personnel and reduce down time. Several of WSP’s project inspectors and structures inspectors are CE-1’s which will provide added flexibility without additional inspectors.

WSP’s team is local, eliminating the need for travel costs, providing seamless communication, faster response times, and maximizing the use of inspection contract funding for inspection hours, rather than lodging, meals, and other per diem costs.

WSP utilizes flexible starting and quitting times to better accommodate and adjust to the ever-changing contractor’s schedule resulting in reduced hours needed.

WSP closely monitors and accurately submits weekly burn rates, working closely with the City of Middletown for approval and concurrence before invoicing to avoid surprises on contract costs. Our contractual costs will be tracked in real time so that the City, at any point in time, can review project status and make any adjustment that may be required.
## Project Matrix and Rates

The tables below illustrate the WSP team’s ODOT construction prequalifications and billing rates.

### ODOT Construction Prequalifications

<table>
<thead>
<tr>
<th>WSP Staff</th>
<th>Firm</th>
<th>Role</th>
<th>Project Inspector</th>
<th>Structural Inspector</th>
<th>T&amp;E Inspector</th>
<th>Soils and Aggregate Inspector</th>
<th>CE 1</th>
<th>CE 2</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dan Mendel</td>
<td>WSP</td>
<td>Project Manager</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>☑</td>
<td>☑</td>
<td>CUF Certified</td>
</tr>
<tr>
<td>Jon Milesky</td>
<td>WSP</td>
<td>Project Engineer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>☑</td>
<td>☑</td>
<td>CUF Certified</td>
</tr>
<tr>
<td>Chris Uckotter</td>
<td>WSP</td>
<td>Project Inspector</td>
<td>☑</td>
<td></td>
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<td>☑</td>
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<td>CUF Certified</td>
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<tr>
<td>Mike Frey</td>
<td>WSP</td>
<td>Project Inspector</td>
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<tr>
<td>Travis Carter</td>
<td>WSP</td>
<td>Project Inspector</td>
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<td>☑</td>
<td>CUF Certified</td>
</tr>
<tr>
<td>Ronnie Hibbard</td>
<td>WSP</td>
<td>Project Inspector TWL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>CUF Certified Interim Work Status Project Inspector</td>
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<tr>
<td>Richard Shelley</td>
<td>WSP</td>
<td>Asst. Project Eng/Insp</td>
<td></td>
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<td></td>
<td>CUF Certified</td>
</tr>
<tr>
<td>Tony Perkins</td>
<td>WSP</td>
<td>Project Inspector TWL</td>
<td></td>
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<td>CUF Certified Interim Work Status Project Inspector</td>
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<tr>
<td>Harold Stone</td>
<td>WSP</td>
<td>Project Inspector TWL</td>
<td></td>
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<td></td>
<td></td>
<td>CUF Certified Interim Work Status Project Inspector</td>
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### Rates

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<th>Title</th>
<th>Rate</th>
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</thead>
<tbody>
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<td>*Project Manager</td>
<td>$150.00</td>
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<tr>
<td>*Assistant Project Manager</td>
<td>$134.00</td>
</tr>
<tr>
<td>*Field Project Manager</td>
<td>$112.00</td>
</tr>
<tr>
<td>Senior Project Inspector</td>
<td>$87.00</td>
</tr>
<tr>
<td>Project Inspector</td>
<td>$81.00</td>
</tr>
</tbody>
</table>

*These rates do not include vehicle costs.*
Our Project Manager, Dan Mendel, PE, will manage the inspection and administration of the contract. Our DPM, Jon Milesky, PE, PS, will perform day-to-day management activities.

Dan’s team includes previous ODOT and City of Cincinnati inspectors that have unmatched knowledge, understanding, and direct experience concerning relevant ODOT and local standards, procedures, and guidance documents. The organization chart below identifies reporting structure of responsible personnel that will place an emphasis on safety, quality, cost control, schedule control, efficiency, and sustainability.

Project Manager Dan Mendel, PE, is a Professional Engineer in Ohio and is prequalified with ODOT as a Construction Engineer Level 1 & 2.

DPM Jon Milesky, PE, PS, is prequalified with ODOT as a Construction Engineer Level 1 & 2. He has certifications in Asphalt 1, 2 & 3; Aggregate 1, 2 & 3; American Concrete Institute Concrete Strength Testing; American Concrete Institute Concrete Field Technician, and Ohio Ready Mix Concrete, Level 2.

Project Inspectors: Ronnie Hibbard and Mike Frey, PS. ODOT Prequalified Project Inspectors are at a minimum Level 1 NICET certified. They have certifications with ODOT in Flexible Pavements, Traffic Work Zone, ACI Concrete Field Testing, Technician - Grade I, and ODOT Level I Aggregate Technician.

WSP Project Inspectors: Tony Perkins and Harold Stone. WSP Project Inspectors are pursuing prequalification as an ODOT approved inspector. They have certifications with ODOT in Flexible Pavements, Traffic Work Zone, ACI Concrete Field Testing, Technician - Grade I, and ODOT Level I Aggregate Technician. They have inspected numerous street rehab projects involving pavement repairs, curb and driveway replacements, and grinding and replacing existing asphalt pavement.

WSP works with several material testing labs that will be utilized as required.
Dan Mendel, P.E.
PROJECT MANAGER

B.S. | CIVIL ENGINEERING | UNIVERSITY OF CINCINNATI | 1990

- 32 years of experience
- Prequalified with ODOT as a Construction Engineer, Level 1 & 2
- Professional Engineer in Ohio, 1994 (58401)

Project manager and point of contact Dan Mendel, has a long history of success managing ODOT construction inspection contracts and LPA projects. He will confirm that the 2021-2022 Street Levy Program is delivered safely, efficiently, and effectively as he has done on the complicated Jeremiah Morrow Bridge project. Dan was the DCA for three years at District 8 responsible for all aspects of construction management, including unsurpassed knowledge of ODOT specifications, policies, and procedures.

Dan excels in LPA leadership and has worked well and efficiently with the different divisions within cities and will continue to excel in his management leadership and responsiveness to the needs of the City. He will communicate proactively and positively from pre-construction to project completion. Dan has worked on numerous bridges and major interchanges for ODOT and LPA projects delivering first class, quality projects under budget that have led to client satisfaction and repeated success.

Dan is available as needed for assignment to this contract based on project development needs.

- Ohio Department of Transportation (ODOT), District 8 Construction Administrator, Lebanon, Ohio: Dan oversaw the contract administration for all construction projects in District 8 for 6 years. He supervised 51 employees and 10-20 consultant inspectors throughout the year. Responsible for overseeing the test lab, LPA program and DBE program for District 8.
- Ohio Department of Transportation, District 8, Lebanon, Ohio: Resident engineer for Warren/Clinton County for 20 years. He oversaw the contract administration for all construction projects in Warren and Clinton County for ODOT. He supervised 21 construction employees and 5-10 construction consultant inspectors on a yearly basis.
- Jeremiah Morrow Bridge: Project engineer for the $91M Jeremiah Morrow Bridge project.
- Widening SR 741 from Kings Island Drive to Kings Mill Road, including a new bridge over I-71. $11M
- New construction of Tylersville Road from SR 42 to Kings Island Drive. $11M
- Culvert replacement on SR 42 just north of Tylersville Road; Widening of Kings Island Drive; Involvement of Western Row interchange project while DCA.
USA after a successful 32 year career at ODOT, District 8. His last position was District Test Lab Engineer from 2014 to 2020 where he was responsible for running the day-to-day operations and approval of all asphalt, concrete and aggregate that is incorporated into District 8 projects. He managed a team that certified, monitored and tested materials for quality assurance and managed consultant employees that assisted in the asphalt monitoring; Jon taught asphalt, concrete and aggregate classes to employees and engineers. Jon performed yearly certification of concrete, asphalt and aggregate plants along with all concrete trucks.

Jon was the LPA Construction Monitor and the District Warranty Monitor from 2012 to 2020 with ODOT, District 8 where he monitored and managed multiple construction projects of varying sizes and disciplines. He was responsible for making sure that all ODOT and FHWA requirements and standards were met. He was the liaison between FHWA and the local agency which included attending meetings, monitoring construction projects, approving change orders, solving problems in the field, and working with construction plans.

**Jon is available as needed for assignment to this contract based on project development needs.**

- **Ohio Department of Transportation, District Lebanon, Ohio, District Test Lab Engineer, May 2014 – 2020:** over five years running the day-to-day operation and approval of all asphalt, concrete, and aggregate incorporated into District 8 projects.
- **City of Wilmington, Ohio:** performing general construction inspection including revision of the cities standard drawings.
- **City of Norwood, Ohio:** performed street inventory and rating of over 100 streets. Provided presentation to the Mayor.
- **ODOT BUT-CR 19-1.89,** Butler County Engineer’s Office: oversaw LPA for a major widening of Cincinnati-Dayton Road, realignment of Station Road with Lesourdsville Road and West Chester Road. Includes new signals and channel realignment.
- **ODOT BUT-CR 113-1.00,** Butler County Engineer’s Office: oversaw LPA for a major widening of Liberty-Fairfield Road with sewer work, utilities, and signals.
- **ODOT GRE-CR 71-3.51,** City of Beavercreek: oversaw LPA for relocation and extension of Shakertown Road.
Ronnie Hibbard
ODOT PREQUALIFIED PROJECT INSPECTOR

Ronnie has 33 years of experience in the construction field as a project inspector/project manager. He has proven competence in providing construction inspections and reviews. He possesses the ability to work on several projects simultaneously, while dedicating attention to each individual project. Ronnie was a project manager and inspector with ODOT for multi-million-dollar construction projects in Butler County, Ohio. He performed inspection ensuring contractor compliance with state specifications, performed field tests on materials to verifying quality control, verified plan quantities and calculations, tested concrete for air, slump and yield, and performed duties under Highway Technician 4 classification. Ronnie confirmed contractor compliance with state specifications, performed field tests on materials (roadways, drainage, demolition, embankment, sub-grades, piles, detours, bridge paintings, structures, etc.). He verified plan quantities and calculations with blue prints and tested concrete for air, slump, and yield. Ronnie operated embankment kit to test compaction and density and collected material samples and performed duties listed under Highway Technician 4 classification. Ronnie will provide day-to-day project inspection for the program.

- I-75, Tylersville Rd to I-275 NB & SB
- I-275, Pleasant Ave. (127) to Loveland Exit
- I-275 Pleasant Ave. (127) to Colerain Ave.
- I-74 Rybolt Road to I-75
- SR 122, Butler County Line to Preble County Line
- SR 748, SR 126 to SR 128
- SR 126, Ross to Indiana Line
- SR 128, Hamilton City Limits to Ross
- SR 128, Hamilton City Limits to Preble County
- SR 73, University Blvd. to SR 127
- SR 4, Hamilton City Limits to Middletown
- SR 747, SR 4 to Hamilton County Line
- SR 27, Hamilton County Line to Oxford City
- SR 27, Oxford City to College Corner, Indiana
- SR By-Pass 4, to Rt 4 Fairfield
- SR 177, Preble County Line to Montgomery County
- SR 4, Hamilton City Limits to Middletown
- SR 747, SR 4 to Hamilton County Line
Mike Frey, PS  
**ODOT PREQUALIFIED PROJECT INSPECTOR**

- 39 years of experience
- Project Inspector/Project Manager
- Associate of Engineering, Cincinnati State

Mike is an experienced construction inspection professional with significant experience in all aspects of construction project management in civil engineering and inspector leadership. He has expertise in working as a field superintendent, estimator, inspector, and safety analyst, maintaining quality assurance and control measures to maximize performance operations and ensure adherence to regulations. Prior to joining WSP, Mike worked as a construction inspector and surveyor for the City of Cincinnati. Created plans and wrote specifications for hundreds of city construction projects to ensure maximum project safety, effectiveness and coordination of various roles. He managed hundreds of complex construction and engineering contracts ranging in $100M+, while collaborating with ODOT, FAA, SORTA and the EPA for adherence to city, state and federal regulations and procedures. Mike oversaw site operations for stadium construction, new and rebuilt bridges, airport runways, new and rehabbed roadways to maximize infrastructure. He provided construction layout on all of the major construction projects within the city of Cincinnati.

- **HAM-275-39.81 Construction Administration, Hamilton County, Ohio**: project inspector for the rehabilitation of 10 bridges on I-275 east of Cincinnati, including the Combs-Hehl Bridge over the Ohio River into Kentucky. Administration of all aspects of the construction project including coordination with Kentucky Transportation Cabinet’s District 6 Office. The Combs-Hehl Bridge is a twin span single pier cantilever bridge carrying Interstate 275 (I-275) across the Ohio River.

Mike performed as surveyor/inspector on the following City of Cincinnati projects:

- Columbia Parkway Land Slide Correction and Pier Wall
- Queen City Storm Sewer and Street Realignment
- Fort Washington Way Pier Walls and Bridges
- Eighth Street Viaduct
- 219 Street Rehab Pavement Repairs 2018
- 320 Street Rehab Pavement Repairs 2017
- Boudinot Avenue Rehab
- Western Hills Viaduct Upper Deck Rehabilitation
- 18 Street Rehabs Avondale & Paddock Hills
- 18 Street Rehabs Carthage & Hartwell
- 17 Street Rehabs Mt. Washington
Tony Perkins
WSP PROJECT INSPECTOR

32 years of experience

ODOT Flexible Pavements, ODOT Traffic Work Zone, ACI Concrete Field Testing, Technician - Grade I, ODOT Level I Aggregate Technician. Confined Space

Tony has more than 32 years of experience in the construction field as a project inspector. He has proven competence in providing construction inspections and reviews. He possesses the ability to work on several projects simultaneously while dedicating attention to each individual project.
- **Apple Patch Park & Ride, Oldham County, Kentucky**: provided construction inspection for a parking lot, shelter, playground, bike lockers, walkways, and paving of a 1000-foot access road located on Apple Patch Way.
- **HAM-75-3.81 Construction Inspection, Hamilton County, Ohio**: performing construction inspection as a sub-consultant for a ramp from eastbound I-74 to northbound I-75 including paving on I-275 from the Kentucky state line to Five Mile Road.

Harold Stone
WSP PROJECT INSPECTOR

19 years of experience

ODOT Flexible Pavements, ODOT Traffic Work Zone, ACI Concrete Field Testing, Technician - Grade I, ODOT Level I Aggregate Technician. Confined Space

Harold performs field density testing on soils, asphalt and aggregates using a nuclear density gauge, and concrete testing air, slump, cylinder casting. He performs drill shaft inspections, reinforced concrete inspections, mortar and grout testing and inspections, proof rolling inspections, AHERA training certifications, and is an industrial hygiene environmental field technician.
- **ODOT District 8 General Construction Task Order, Various Locations, Cincinnati, Ohio**: I-675 Construction Inspection: project inspector for pavement.
- **ODOT District 8 Hamilton County Sign Upgrade, Hamilton County, Ohio**: project inspector for sign upgrades on SR 22 and US 42.
TEAM’S SIMILAR PROJECTS

HAM-75-3.81
Construction
Inspection
Hamilton
County, Ohio
WSP is performing construction inspection as a sub-
consultant for Part 1 (building a ramp from eastbound I-74 to northbound I-75) of the major reconstruction of the I-74/I-75 interchange north of downtown Cincinnati. The project includes paving on I-275 from the Kentucky state line to Five Mile Road.

APPLE PATCH PARK & RIDE
Oldham County, Kentucky
WSP provided construction inspection and engineering for the Apple Patch Park & Ride for the Kentucky Transportation Cabinet through a statewide LPA contract for 2017-2019. The facility included a parking lot, shelter, playground, bike lockers, walkways, and paving of a 1000-foot access road located on Apple Patch Way.

HAM-275-39.81
Construction Administration and Inspection Services
Hamilton County, Ohio
WSP is providing construction administration for the rehabilitation of 10 bridges on I-275 east of Cincinnati, including the Combs-Hehl Bridge over the Ohio River into Kentucky. The project includes paving on I-74, including the ramp, and onto I-75.

HAM-FORT WASHINGTON WAY-HAM-I-71
Mill & Fill Paving
Hamilton County, Ohio
Mike Frey provided inspection for mill & fill paving on Fort Washington Way and on I-71 from Montgomery Road to I-275.
DATE   April 7, 2021

TO: Jim Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director
Prepared by Rob Nicolls, City Engineer

2021-22 STREET LEVY PAVING PROJECT-INSPECTION SERVICES AGREEMENT

PURPOSE

Authorize the City Manager to enter into a professional services contract with WSP USA to provide construction inspection services for the 2021-22 Street Levy Paving Project and authorize a supplemental appropriation.

BACKGROUND AND FINDINGS

The City publicly advertised a Request for Qualifications to provide construction inspection services for the 2021-2022 Street Levy Paving Project. Nine consulting firms responded to the request for qualifications.

Three Consultants were short listed and WSP USA provided the lowest hourly rates and has inspector(s) working in town on other projects which will enable efficient use of their time.

ALTERNATIVES

Award a contract to a different consultant.

FINANCIAL IMPACTS

The inspection contract will be funded by the Street Levy Fund (201). $419,084.55 of the $31.3M levy fund was set aside for this purpose in the construction contract award process. Staff is requesting $150,000 be appropriated from the Street Levy Fund at this time to fund #201.990.54520 which will be utilized for the contract with WSP USA. Actual amounts to be paid will be based on the unit prices contained in their letter of qualifications.
A summary of the Street Levy Funding is as follows:

Revenues
- Bond Proceeds $31,300,047.50

Expenses
- 2021-22 Street Levy Paving Project $26,380,962.95
- Additional contract authorization $4,000,000
- Construction inspection, materials testing and project management assistance $419,084.55
- Budget deficit 2021 Local Street Improvements $500,000

$31,300,047.50

**EMERGENCY/NON EMERGENCY**

Emergency. Emergency Legislation is requested to allow the consultant to begin work as soon as the construction contractor begins.

**ATTACHMENTS**

WSP USA Letter of Qualifications
LEGISLATION
ITEM 9
RESOLUTION NO. R2021-18

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT WITH MANCHESTER HOTEL, LLC AND SNIDER BUILDING, LLC AND DECLARING AN EMERGENCY.

WHEREAS, the City has been involved in litigation with Manchester Hotel, LLC and Snider Building, LLC since 2018 to resolve the issue of ownership of the former Manchester Hotel and Snider Building (aka Sonshine Building) after the City invoked the Right of Reverter provision of a development agreement with the two companies; and

WHEREAS, a recently issued court decision determined that there were no material issues of fact in the case and the City was granted ownership of the building as a matter of law through rescission of the development agreement; and

WHEREAS, the parties to the lawsuit have tentatively negotiated a financial payment to reimburse Bill Grau, the owner of the two companies, for properly documented expenses related to the care and upkeep of the buildings during his ownership;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is hereby authorized to sign a settlement agreement on behalf of the City in Manchester Hotel, LLC, et al. v. City of Middletown, et al., Case No. CV 2018 12 2832, filed in the Butler County Court of Common Pleas in order to resolve the pending lawsuit. A copy of the proposed settlement agreement is on file in the office of the Law Director.

Section 2

For said purposes, the Finance Director is authorized and directed to expend a sum not to exceed $161,824.60 from the General Fund (Fund # 100), which such sum is hereby appropriated to the accounts of 150 (100.150.52480).

Section 3

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.
Section 4

This resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to cause the immediate resolution of the lawsuit, thereby allowing for the properties to be returned to the City without further delay, and shall take effect and be in force from and after its adoption.

Nicole Condrey, Mayor

Adopted:___________

Attest:________________________

Clerk of City Council
DATE: April 12, 2021

TO: Jim Palenick, City Manager

FROM: Susan Cohen, Assistant City Manager

PURPOSE

To authorize the City Manager to enter into a settlement agreement in accordance with a Court decision regarding the pending lawsuit with Manchester Hotel, LLC and Snider Building, LLC and appropriate funds to pay settlement amounts.

BACKGROUND AND FINDINGS

In May 2014, the City entered into a development agreement with two companies owned by William Grau, the Manchester Hotel, LLC and the Snider Building, LLC. Through these two companies, Mr. Grau agreed to develop the buildings commonly known as the Manchester Hotel and the Snider Ford or Sonshine Building into a hotel and brewery/distillery and restaurant. The development agreement called for the project to be completed within two years, by late 2016. The redevelopment did not go according to plan. In October 2018, the City notified Grau and the companies of its intent to exercise a clause in the development agreement to take back the buildings under the legal action of reversion.

Upon exercise of the Right of Reverter by the City in December 2018, Mr. Grau and his associated companies filed legal action against the City to maintain ownership of the buildings. The City has been engaged in Court proceedings in the Butler County Court of Common Pleas since that time to resolve the question of ownership and damages under the development agreement.

On March 11, 2021, Judge Michael Oster, Jr. entered a decision on Motions for Summary Judgment. Under the terms of this decision, the Judge found that there were no material issues of fact in the case and the City was granted ownership of the building as a matter of law through rescission of the development agreement. Therefore, the Judge ordered the Development Agreement rescinded. Under this legal theory, “where there is a material breach of contract, substantial nonperformance and entire or substantial failure of consideration, the injured party is entitled to rescission of the contract.” The legal theory of rescission means that the Court is ordering the parties to act as if the contract never existed and returning the parties to their original positions. As a part of that relief, the City is now the rightful legal owner of the buildings. Further, the City must work with Grau to
determine any financial payment that is due to reimburse him for properly documented expenses related to the care and upkeep of the buildings. Simply put, if the contract did not exist, Grau would not have spent money to benefit the building and the City must make him whole for those expenses.

To finalize the Judge’s orders, the City has been engaged in discussion with Grau through legal counsel. The parties have reviewed Grau’s demands, as well as the legally admissible expenses, and negotiated a settlement of $161,824.60 that constitutes reimbursement of expenses for his eight years of ownership of the building. These expenses broadly constitute work done to the buildings, studies done regarding the feasibility of development, applications and professional services regarding the tax credits needed for development, tax payments, insurance, utilities and security measures for the buildings. Had the City owned the buildings for the last eight years, it would have incurred costs to maintain, secure and market them.

This settlement will constitute a complete resolution of the legal case between the City and Grau. This settlement also allows the City to gain closure and a definitive amount for settlement immediately. Without a settlement agreement, the Court will schedule an evidentiary hearing regarding the financial expenditures and issue an order to resolve the financial question. This could result in a higher monetary settlement than we have negotiated and would certainly result in increased legal fees to resolve the matter.

ALTERNATIVES

If City Council chooses not to approve the settlement agreement, staff can attempt to continue to negotiate with the parties for settlement under different terms. If no settlement is reached between the parties, the Court will conduct an evidentiary hearing in which the Judge will determine the financial payment between the parties and issue an order for the City to pay its ordered settlement amount.

Staff is recommending the settlement agreement as proposed after a review of all expenses requested, and a review of appropriate law. We believe this is a reasonable settlement amount and limits the additional monies that will be spent on attorney fees and potential for the Court to order a higher settlement amount.

FINANCIAL IMPACTS

The negotiated settlement amount is $161,824.60 to be appropriated from the unappropriated General Fund balance. Funds should be appropriated to (100.150.52480).

EMERGENCY/NON-EMERGENCY

Emergency legislation is requested in order to complete the settlement in compliance with the court schedule and secure the property back to City control as soon as possible.
LEGISLATION
ITEM 10
ORDINANCE NO. O2021-35

AN ORDINANCE CREATING THE 2021 GROWTH EXPANSION TRANSFORMATION GRANT PROGRAM FOR SMALL BUSINESSES AND DECLARING AN EMERGENCY.

WHEREAS, the Economic Development Department has developed a new grant program for 2021 called the Growth Expansion Transformation (GET) Grant Program for small businesses; and

WHEREAS, the grants will focus on three areas: (1) rental assistance, (2) building improvements and (3) upper floor residential rehabilitation;

NOW, THEREFORE, BE IT ORDAINED, by City Council of the City of Middletown, Butler/Warren Counties, Ohio, that:

Section 1

The 2021 Growth Expansion Transformation (GET) Grant Program for small businesses is hereby created. The GET grants shall be administered in a manner substantially similar to the terms included in the information sheet attached hereto as Exhibit “A”. The Economic Development Department is responsible for reviewing grant applications, awarding funds and administering the program.

Section 2

The City Manager is hereby authorized to enter into grant agreements with small businesses that are awarded GET grants without further action by City Council. A grant agreement must be signed for each grant in a form to be approved by the Law Director.

Section 3

For said purposes, the Finance Director is authorized and directed to expend a sum not to exceed $50,000.00 from the Property Development Fund (Fund # 499). The maximum amount of each grant shall not exceed $6,000.00.

Section 4

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to make the grant funds available to small businesses during the current construction season, and shall take effect and be in force from and after its adoption.

Nicole Condrey, Mayor
Growth Expansion Transformation (G.E.T.) Grants Program
Information Sheet

A. Introduction

The GET Grant Program is designed to stimulate the establishment of new Middletown businesses, help existing Middletown businesses expand and create more residential units within the City. Our program awards funding to projects that support small business growth, create jobs, leverage private investment, and will be catalytic for our community.

Under this program, applicants will be able to receive grant funds of $1,000 to $6,000 to reimburse half of their eligible costs in completing a project.

There will be three eligible uses:

- Rent Assistance
- Building Improvements
- Upper Floor Residential Rehab

If awarded, grant recipients will need to show receipts of expenses to be eligible for payment. For example, $2,000 worth of expenses will need to be shown for reimbursement of a $1,000 grant and $12,000 worth of expenses will need to be shown for a reimbursement of a $6,000 grant.

B. Eligibility

Only one legal entity can apply per year. However, both a tenant and building owner are eligible to apply as two separate legal entities. For example, a tenant could apply for rent assistance and the building owner could apply for building improvements. Or a tenant could apply for building improvements and the building owner could apply for building improvements as well, as two separate legal entities. However, businesses where the ownership also owns the real estate at the property, are not eligible to apply more than once in a one-year period.

Applicant’s business and/or property owners must meet all of the following requirements in order to be eligible to receive a grant under this program:

a) The business and/or property owner must be properly licensed to operate within the City of Middletown, Ohio, Butler or Warren County where applicable, and State of Ohio, and the
property must meet all City of Middletown zoning requirements, and meet all local and state building, health, and fire code requirements where applicable.

b) The business and/or property owner, applicants and affiliated persons and/or entities for this program must not have made or filed pending adverse claims against the City in the form of settlement demands and/or lawsuits; not shall they be delinquent on their obligations to pay loans, fines, liens, taxes, utilities, or other obligations owed to the City.

**Eligibility - Rent Assistance**

a) Applicant must be a corporation, firm, partnership, limited liability company, sole proprietorship, or similar entity engaging or intending to engage in commercial activity.

   **Excludes:** Not-for-profit organizations, sexually-oriented businesses, businesses that primarily sell tobacco or tobacco related products, financial institutions making credits or loans, check cashing institutions, franchises, home businesses, business who do not report employee’s wages to the City of Middletown, businesses not allowable by zoning requirements,

b) A lease must be signed and executed after April 1st, 2021 or within 90 days of an award letter. If applicant is approved and a prospective business does not meet these deadlines, allocated funding will be released and the City will move onto the next qualified applicant.

   • Rents must not be in excess of the fair market rents for the area and quality of the space, as determined by the Economic Development staff.
   • Businesses must establish, keep and contractually agree to regular, set, operating hours that are equal to or greater than forty (40) hours per week.

c) Applicant must employ a minimum of two (2) full-time equivalent employee whose wages are reported to the City of Middletown (and subject to the City's income tax), State of Ohio and federal government.

   • A position occupied by the business owner may count as one of the required job positions.

d) Applicant must be a new commercial enterprise or a substantial expansion of an existing commercial enterprise.

   • Assistance may not be provided to a business that is relocating its operations from one commercial space to another unless there will be a significant expansion of the business' operations.
   • An existing business must expand to occupy more than one hundred fifty percent (150%) of existing space. Verification of this threshold must be provided in the application package.
   • An expanding business applicant must create at least two (2) additional full-time equivalent employees.

**Eligibility - Building Improvements & Upper Floor Residential Rehab**

a) Applicant must either own a commercial property located within the City of Middletown to apply for the program or the tenant must gain written consent of the property owner.

**C. Eligible Costs**
Expenses incurred prior to execution of an agreement with the City are not eligible for reimbursement.

**Eligible Costs - Rent Assistance**

The rent assistance incentive offers financial relief in the form of reimbursement of rent payment of up to half of the business’ monthly rent or $500 per month (whichever is less.) Eligibility for assistance is up to twelve months. The business must sign at least a two-year lease and create at least 2 full-time equivalent jobs. Must sign a lease by April 1, 2021 or within 90 days of the award letter.

a) The maximum total benefit per business is $6,000.00. Rent Assistance offers financial assistance in the form of reimbursement of rent payment of up to half of the business's monthly rent or $500.00 per month (whichever is less). Eligibility for assistance is up to twelve months. A business will be eligible starting the second month of operation.

b) After approval, businesses must sign and submit a quarterly reimbursement request (attached as an exhibit to their contract) and attach canceled check(s) for the rent payment to the landlord in order to be reimbursed.

c) Rent must be paid timely in accordance with the terms of the leases.

**Eligible Costs - Building Improvements & Upper Floor Residential Rehab**

All invoices/expenses must be constructed, billed, and submitted for reimbursement within the contract’s term.

Exterior Building Improvements Eligible for Reimbursement:
- Façade Improvements – restoring storefronts, tuck-pointing, cornice repairs, etc…
- Painting
- New Doors
- New Windows
- Signage
- Awnings
- Electrical / Lighting
- Landscaping

Interior Building Improvements Eligible for Reimbursement:
- Build-outs
- Painting
- New Flooring
- Electrical / Lighting
- HVAC
- Plumbing

Professional Design Services Eligible for Reimbursement
- Architectural
- Engineering
- Electric Engineering
- Legal

**Roofs and paving/asphalt are an ineligible expense.**
D. General Program Requirements

- **Site Visits**: City staff will conduct a site visit and take photographs of the space before payments begin in order to verify that the business is in operation. Staff may also conduct unannounced site visits periodically to ensure compliance with the terms of the agreement.

- **Marketing**: Applicant must allow permission for any photographs to be used for marketing purposes by the City of Middletown.

General Program Requirements - Rent Assistance

- **Open & Operational**: The business owner is responsible for the first month of rent once the business is open and operational. Once an application is approved, rent incentive payments are eligible to be requested during the fourth full month a business is open for business, operational, and meets all of the criteria of the Rent Assistance Incentive.

- **Discontinuation of Payment**: The receipt of past payments is no guarantee of future payments. The City of Middletown retains the right to discontinue rent assistance payments at any time if the business ceases to comply with program requirements.

General Program Requirements - Building Improvements & Upper Floor Residential Rehab

- **Vacant Properties**: Applications involving vacant properties should demonstrate that the improvements will help attract a commercial tenant within the next 12 months and the future user will diversify the business district’s commercial offerings and create jobs in the City OR improvements will create at least one residential unit in the City. The owner must agree to actively market all vacant spaces, including creating a free listing on the City’s website, installing a “for lease” sign in each vacant space, and make reasonable accommodations to show the property to all qualified prospects.

- **Construction**: Applicants will oversee the entire construction process. Applicant must utilize professional contractors, and work cannot be done “in house” using applicant’s own employees. In order to be eligible for reimbursement, applicants shall ensure that construction is completed, all contractors were paid, and submit final expenditures to the City for reimbursement within 4 months after the contract’s execution. A final building inspection is required.

E. The Application Process

Application Process - Rent Assistance, Building Improvements & Upper Floor Residential Rehab

1) **Pre-submittal Meetings**: All applicants MUST schedule a meeting with the Economic Development Department and Development Services Department to review their project before submitting an application. Applicants should bring current photos of the property and if applicable, drawings of the proposed alterations and signage to the meeting.
   a. To schedule a meeting with Economic Development, please call Debbie Garitson, Economic Development Administrative Assistant at (513) 425-7941 or email at business@cityofmiddletown.org.
b. To schedule a meeting with Development Services, please call Holly Schultheis, Development Services Executive Assistant at (513) 425-7950 or email hollys@cityofmiddletown.org.

2) **Application**: The City will not accept or process incomplete applications due to limited funding. Please send all completed applications and required documentation, as stated below, to:

   ATTN: Alaina Geres, ED Program Manager  
   Economic Development Department  
   City of Middletown  
   1 Donham Plaza  
   Middletown, OH 45042  
   OR  
   email (preferred) business@cityofmiddletown.org

A staff member of the Economic Development department will email you a signed copy of your application as confirmation of receipt of the application. Do not consider your application submitted until you have received the confirmation email from City staff.

The required checklist is below:

**All application packets must include the following documentation:**

- Completed and signed application
- Attach completed W-9 (for person/entity receiving grant funds)
- Copy of Certificate of Zoning, Temporary Certificate of Zoning, Certificate of Occupancy, Certificate of Appropriateness, and/or Permits if applicable, as determined by Development Services staff

**Include the following if applying for Rent Assistance:**

- A copy of executed or proposed multi-year commercial lease agreement
- A letter of support from the Small Business Development Center - Middletown
- A copy of all business and occupational licenses, registration with the Ohio Secretary of State

**Include the following if applying for Building Improvements & Upper Floor Residential Rehab:**

- Attach all contractor quotes, bids, and drawings of proposed improvements

**F. Program Agreement**

If an application for assistance is approved, you will receive an offer letter via email. You will have 7 days to accept the offer by replying to the email. The City will then enter into an executed agreement with the applicant. This is a requirement in order for the applicant to receive fund disbursements.

*The City of Middletown does not discriminate in its programs and activities on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, physical or mental disability, pregnancy, race, religion, sex, sexual orientation, or veteran status, as applicable.*
DATE: April 7, 2021

TO: Jim Palenick, City Manager

FROM: Chris Xeil Lyons, Economic Development Director
PREPARED BY: Alaina Geres, Economic Development Program Manager


PURPOSE
To authorize the City Manager to enter into agreements to administer a small business entrepreneurial grant program, titled Growth Expansion Transformation (G.E.T.) Grants.

BACKGROUND AND FINDINGS
As we move forward from the COVID-19 pandemic, the City wants to be able to nimbly assist the small businesses of Middletown. The City of Middletown’s Economic Development department has set aside $50,000 for city-wide small business assistance for 2021 to accomplish this goal. We are requesting approval for the City Manager to be able to enter into grant agreements for small business development grants under a newly created “Growth, Expansion, Transformation” Grant, otherwise known as a GET Grant Program.

Under this program, applicants will be able to receive grant funds of $1,000 to $6,000 to reimburse half of their eligible costs in completing a project. There will be three eligible uses: Rent Assistance, Building Improvements, and Upper Floor Residential Rehab. Applicants will need to show receipts of expenses to be eligible for payment. Minimum grant award is $1,000 for $2,000 worth of expenses and maximum grant award is $6,000 for $12,000 worth of expenses.

Applicants will initiate this process by meeting with the Economic Development & Development Services staff before submitting the application. After applicants submit the application, that application will be vetted by both departments as well as the appropriate City departments to guarantee understanding and compliance with required procedures for operating the new business such as planning, zoning, building department, health department, etc. If the project is eligible, owners will be issued an award and can be given reimbursement upon providing appropriate documentation of work completed pursuant to the program guidelines.

Each category will have strict allowances and uses as stated below. Please see the attached Program Information Sheet and Application for more information.

Rent Assistance – Targeted for new businesses to Middletown, this provides a 50% reimbursement of rent payments up to $500 per month (for $1,000/monthly lease.) Eligibility is for twelve months. New leases only – will also look at newly signed leases that have been signed as of April 1, 2021. Requires tenant to sign a two-year lease.
**Building Improvements** – Targeted for new or existing businesses, we will match building improvement investment made by the building owner or business on a $1 to $1 basis, up to a maximum total benefit per business of $6,000.

**Upper Floor Residential Rehab** – Targeted for mixed-use properties with current vacant space, this provides eligible property owners up to $6,000 per project for the redevelopment of vacant upper floor space into quality affordable rental housing.

**ALTERNATIVES**
1. The City could bring each agreement to council for individual approval as necessary
2. The City could utilize program funding for other economic development programs
3. The City could cease small business grant programs
4. Staff could pursue incentive programs on an as needed basis for businesses instead of a standardized program

Staff is not recommending these options because other options fail to get money out to business for assistance or require additional time for legislation. This timing could prevent the businesses from realizing the benefits during this important time of recovery from COVID 19.

**FINANCIAL IMPACTS**
$50,000 – 499.990.52811 – CRA Payments

**EMERGENCY**
Second Reading Emergency for Action on May 4, 2021 to allow businesses to take part in warm weather construction season

**ATTACHMENTS**
Growth Expansion Transformation (GET) Grants Program – Information Sheet
Growth Expansion Transformation (GET) Grants Program – Application
Growth Expansion Transformation (G.E.T.) Grants Program
Application

Eligible use applying for (select one only):

☐ Rent Assistance
☐ Building Improvements
☐ Upper Floor Residential Rehab

All applicants should complete the following section:

Application Date: ________________________________
Pre-meeting Date w/ Economic Development Staff: _______________________
Pre-meeting Date w/ Development Services Staff: _________________________
Applicant Name: ________________________________________________
Applicant Mailing Address: _________________________________________
Applicant Phone: _________________________________________________
Applicant Email: _________________________________________________
Project Address: _________________________________________________
Legal Owner of Property: __________________________________________

Complete the following section if applying for Building Improvements & Rent Assistance:

Business Name (D/B/A if applicable): _________________________________
New Middletown Business: Yes | No    Existing Middletown Business: Yes | No

** SUBMISSION OF AN APPLICATION IS NOT A GUARANTEE OF FUNDING **
Was/is this business located at another Middletown site: Yes | No Dates: _______

Previous Business Address (if applicable): _________________________________

Square footage of existing location: _____ Square footage of new location: _____

Type of Business: ___________________ Service/Product: ___________________

Business Occupational License: _________ Business IRS Tax EIN: ___________

Hours of Operation: ______________________________________________________

Total Private Start-up Investment (Do not include rent): $_____________________

Please describe your business:
_____________________________________________________________________
_____________________________________________________________________

Will the business be adding any additional jobs? Yes | No # of jobs __________

Existing Jobs: ___________ Projected New Jobs (List Below): ___________

Existing Annual Payroll: $______________/year

Estimated New Annual Payroll: $__________/year

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<th>New Positions – Short Description</th>
<th>Number of Jobs</th>
<th>Hourly Pay</th>
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Will your hiring plan include a preference to hiring Middletown residents? Yes | No

Complete the following section if applying for Rent Assistance:

Do you have a 2-year or longer executed (signed) lease agreement? Yes | No

Length of New Lease: __________________________ Monthly Rental Rate: $_______

When will you open for business? ____________________________________________

How long has the property been vacant? ______________________________________

Landlord’s Name: _________________________________________________________

Landlord’s Email Address: _________________________________________________

Landlord’s Mailing Address: ________________________________________________

Landlord’s Phone Number: _________________________________________________

** SUBMISSION OF AN APPLICATION IS NOT A GUARANTEE OF FUNDING **
Complete the following section if applying for Building Improvements & Upper Floor Residential Rehab:

Description of Project (attach separate page if necessary):
___________________________________________________________________
___________________________________________________________________
___________________________________________________________________

Description of how improvements will benefit the tenant and business district (attach separate page if necessary):
___________________________________________________________________
___________________________________________________________________
___________________________________________________________________

Itemized Costs of Improvements:

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<th>ITEM</th>
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Sources of Funding: __________________________________________________
___________________________________________________________________

Project Construction Start Date: ____________ Est. Completion Date: __________
Are you utilizing a Middletown contractor? Yes | No If so, list: _________________
Vacancy: Has the property been previously vacant? Yes | No
If so, estimate how long? _________________
Are you receiving grant assistance from any other governmental agencies? Yes | No
If yes, list any additional grant sources and amounts:
___________________________________________________________________
___________________________________________________________________

** SUBMISSION OF AN APPLICATION IS NOT A GUARANTEE OF FUNDING **
SUPPORTING DOCUMENT CHECKLIST

All application packets must include the following documentation:

- Completed and signed application
- Attach completed W-9 (for person/entity receiving grant funds)
- Copy of Certificate of Zoning, Temporary Certificate of Zoning, Certificate of Occupancy, Certificate of Appropriateness, and/or Permits if applicable, as determined by Development Services staff

Include the following if applying for Rent Assistance:

- A copy of executed or proposed multi-year commercial lease agreement
- A letter of support from the Small Business Development Center - Middletown
- A copy of all business and occupational licenses, registration with the Ohio Secretary of State

Include the following if applying for Building Improvements & Upper Floor Residential Rehab:

- Attach all contractor quotes, bids, and drawings of proposed improvements

** SUBMISSION OF AN APPLICATION IS NOT A GUARANTEE OF FUNDING **
CERTIFICATION AND WAIVER OF PRIVACY

I, the undersigned applicant(s), certify that all information presented in this application, and all of the information furnished in support of the application, is given for the purpose of obtaining a reimbursable grant under the City of Middletown Growth Expansion Transformation Grant Program, and it is true and complete to the best of the applicant(s) knowledge and belief. The applicant(s) further certifies that he/she is aware of the fact that he/she can be penalized by fine and/or imprisonment for making false statements or presenting false information.

I understand that this application is not a guarantee of funding assistance. Should my application be approved, I understand that the City of Middletown may at its sole discretion terminate the program and reimbursements at any time for any cause.

I hereby give my consent to the City of Middletown, its agents and contractors to examine any confidential information given herein. I further grant permission, and authorize any bank, employer or other public or private entity or agency to disclose information deemed necessary to complete this application.

I understand that if this application and the information furnished in support of the application are found to be incomplete, it will not be processed.

Applicant’s Signature: __________________________ Date: _____________

Printed Name: ____________________________ Title: ______________

The City of Middletown does not discriminate in its programs and activities on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, physical or mental disability, pregnancy, race, religion, sex, sexual orientation, or veteran status, as applicable.

For Internal Use:

Date & Time Received: ________________________________

Method of Delivery: ______________________________________

Received by City Staff: _________________________________

Signature of City Staff: _________________________________

Date & Time Confirmation Email Sent: ______________________

** SUBMISSION OF AN APPLICATION IS NOT A GUARANTEE OF FUNDING **
LEGISLATION

ITEM 11
RESOLUTION NO. R2021-19

A RESOLUTION TO MAKE ADJUSTMENTS TO APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF MIDDLETOWN, COUNTIES OF BUTLER AND WARREN, STATE OF OHIO, FOR THE PERIOD ENDING DECEMBER 31, 2021 AND DECLARING AN EMERGENCY. (STREET LEVY FUND)

BE IT RESOLVED by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The following sums are hereby appropriated from the Street Levy Fund of the City to accounts of the City for the purposes herein described as follows:

FROM:  Unappropriated Street Levy Fund (Fund # 201) $50,000.00
TO:  Paving, Accounts of 990 (201.990.54520) $50,000.00
TOTAL STREET LEVY FUND $50,000.00

Section 2

The Finance Director is hereby authorized to draw his warrants on the City Treasurer for payments from any of the foregoing appropriations upon receiving proper certificates and vouchers therefor, approved by the Board of Officers authorized by law to approve the same, or an ordinance or resolution of the City Council to make expenditures provided that no warrants shall be drawn or paid for salaries or wages except to persons employed by authority of and in accordance with law or ordinance.

Section 3

All legislation inconsistent herewith is hereby repealed.

Section 4

This resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: in order to make the funds available as soon as road construction begins, and shall be in full force and effect from the date of its adoption.

Nicole Condrey, Mayor

Adopted:______________

Attest:_______________________

Clerk of City Council
DATE: April 7, 2021

TO: Jim Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director
Prepared by Rob Nicolls, City Engineer

PURPOSE

To request a supplemental appropriation from the Street Levy Fund to be used for 3rd party laboratory testing on the 2021-2022 Street Levy Paving Project.

BACKGROUND AND FINDINGS

The City set aside $419,084.55 from the Street Levy Fund for construction inspection, materials testing, and project management assistance. This request is for the materials testing portion of this funding and will be used to pay for nuclear gauge density testing, asphalt extraction/gradation testing, etc that is not performed through WSP USA, the firm selected to do the construction inspection.

ALTERNATIVES

Have WSP USA hire the 3rd party laboratory testing. This would result in additional markup and possibly limit the laboratories used.

FINANCIAL IMPACTS

The $419,084.55 set aside in the Street Levy Fund will be reduced by $50,000 to $219,084.55 (after the $150,000 appropriation requested separately for WSP USA).

Staff is requesting $50,000 be appropriated from the Street Levy Fund at this time to fund #201.990.54520 which will be utilized for 3rd party laboratory testing.
A summary of the Street Levy Funding is as follows:

Revenues
- Bond Proceeds $31,300,047.50

Expenses
- 2021-22 Street Levy Paving Project $26,380,962.95
- Additional contract authorization $4,000,000
- Construction inspection, materials testing and project management assistance $419,084.55
- Budget deficit 2021 Local Street Improvements $500,000

\[ \text{Total Expenses} = 31,300,047.50 - \text{Total Revenues} \]

**EMERGENCY/NON EMERGENCY**

2nd Reading Emergency. 2nd Reading Emergency Legislation is requested to allow testing once the pavement work begins in early May.

**ATTACHMENTS**
RESOLUTION NO. R2021-20

A RESOLUTION AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM PREMIER HEALTH AND ATRIUM MEDICAL CENTER AND DECLARING AN EMERGENCY.

BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is authorized to enter an agreement for the purchase of real property from Premier Health and Atrium Medical Center. The purchase will include approximately 2.7 acres of land at the intersection of State Route 122 and Atrium Boulevard in accordance with the non-binding letter of intent, attached hereto as Attachment 1. The purchase price will be $80,000.00 per acre. The total amount will be determined when the final survey is completed. The purchase agreement shall be in a form and substance approved by the City Manager and the Law Director.

Section 2

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed $250,000.00 from the General Fund (Fund # 100), which such funds are hereby appropriated to the accounts of 212 (100.212.54355).

Section 3

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to allow the purchase to be completed without delay after the completion of due diligence, and shall take effect and be in force from and after its adoption.

Nicole Condrey, Mayor

Adopted: ____________

Attest: _________________________

Clerk of City Council
April 5, 2021

Mr. James M. Palenick
City Manager of Middletown
Middletown, OH

NON-BINDING LETTER OF INTENT

Dear James:

On behalf of Premier Health and Atrium Medical Center ("Seller"), we are pleased to submit this letter of intent to the City of Middletown ("Buyer") to purchase property on the Atrium Medical Center Campus located in Middletown, Ohio and as further described below.

**Conditions of Purchase**

Property: Approximately 2 and 7/10 (2.7) acres of land (the "Land") that is located on the North West corner of St Rt 122 and Atrium Blvd. Middletown, Ohio. The site is depicted in Exhibit A.

Purchase Price: The purchase price for the Land will be $80,000 per acre. The total purchase price will be determined when final survey is completed.

Conditions:

1. Execution of a purchase agreement for the Land (the "Purchase Agreement") within thirty (30) days of the parties signing this Letter of Intent. Buyer shall then have a ninety (90) day period from the execution of the Purchase Agreement to serve as the Buyer’s Due Diligence Period (the "Due Diligence Period"). Seller shall provide an initial draft of the Purchase Agreement, including any Declarations, within 30 days of the parties signing this Letter of Intent. The Purchase Agreement will call for the creation of permanent restrictions on the Land against uses (and users) that compete with Premier Health entities.

2. During the Due Diligence Period, the Buyer may terminate the Letter of Intent for any or no reason, with written notice to Seller. If the Letter of Intent is terminated, the Buyer will have no other obligation to the Seller and Seller will have no other obligation to the Buyer.

3. During the Due Diligence period the Buyer shall be permitted access to the Land for the purposes of conducting environmental, soils and other tests that may be required for the purposes of determining the Land’s suitability for the Buyer’s proposed development. Seller shall prepare and Seller and Buyer shall
execute a Right of Entry agreement prior to the Buyer beginning any tests.

4. Buyer shall construct a firehouse as depicted on Exhibit A. Buyer shall have the right to approve the design of the building for conformity with the quality of other buildings on the Atrium campus.

5. Buyer shall be responsible for the cost to extend any utilities required to service the Buyer’s improvements from their current location either on the AMC campus or in the public right of way.

6. Seller will be responsible for plat/lot split. Buyer will be responsible for costs of title examination and title policy. Other closing costs will be in accordance with local custom, including 50/50 split of fees of closing agent.

7. No brokers are involved in this transaction.

Upon Seller’s receipt of a fully executed copy of this LOI, Seller will prepare a final purchase agreement reflecting the terms agreed to herein. If or purchase agreement mutually acceptable to the parties is not agreed to within 30 days after the date of this LOI, this LOI may be terminated by either party.

Please indicate your understanding in principle to the terms and conditions of this Non-Binding Letter of Intent and your good faith intention to enter into a definitive Agreement with Seller by executing this letter in the space provided below.

This offer will be honored until May 4, 2021 at 12:00 PM.

Sincerely,

Keith Bricking M.D.

Acknowledged, accepted and agreed:

THE CITY OF MIDDLETOWN, OHIO

By: 

Title: 

Date: 
LEGISLATION
ITEM 13
RESOLUTION NO. R2021-21

A RESOLUTION IDENTIFYING FOUR SITES TO BE USED FOR THE RELOCATION OF CITY FIRE STATIONS AND DECLARING AN EMERGENCY.

WHEREAS, the City needs to replace its four current fire stations which are each inadequate and in poor condition; and

WHEREAS, four locations have been determined to be most optimal to minimize response times, limit disruption to neighborhoods, and minimize cost while maximizing value; and

WHEREAS, three of the four sites are currently owned by the City with the fourth to be acquired after due diligence has been completed;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is authorized to move forward with planning for the construction of four new fire stations for the City of Middletown. The sites for the new fire stations are identified below and each is generally shown on Exhibit A, attached hereto:

(1) New Headquarters: 3.6 acres at Yankee Road and Cherry Street (former Garfield School site);

(2) Station #81: 2.85 acres at Henry Avenue and Charles Street (former Jefferson School site);

(3) Station #85: 2 acres at Sophie Street and Stolz Drive, an undeveloped portion of Dowling Park; and

(4) Station #82: 2.7 acres at State Route 122 and Atrium Boulevard to be acquired from Premier Health/Atrium Medical Center.

Section 2

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to allow the planning, design and other pre-construction activities to proceed, and shall take effect and be in force from and after its adoption.

Nicole Condrey, Mayor
Adopted: _______________

Attest: 
______________________
Clerk of City Council

H:/Law/leg/2021 Leg/Identify 4 sites for fire stations
Exhibit "A"

- Old Garfield School site
- Yankee Rd. at Cherry St.
- Replaces Fire Hq. on Roosevelt Blvd.

YANKEE RD AND CHERRY ST. STATION 83

Midtown Fire Station Studies
Old Jefferson School site 2.85 acres. Replaces Station 81 on Clinton St. 2.8 acres.
- Sophie and Stolz Dr. 2 acres of Dowling Park
- Replaces Station 85 at Central Ave. and Breiel Blvd. .86 acres.
April 9, 2021

TO: City Council

FROM: James M. (Jim) Palenick, City Manager

PREPARED BY: James M. (Jim) Palenick, City Manager

A Resolution identifying and designating four (4) separate parcels of real property as future Fire Station sites; Authorizing the City Manager to enter into a Purchase and Sale Agreement with Premium Health and Atrium Medical Center for the acquisition of one (1) of said sites; and, the appropriation of funds to effectuate the acquisition.

PURPOSE

To specifically identify and designate each of the four (4) separate real properties to be utilized by the City of Middletown as sites for the to-be-relocated and newly-constructed Fire Stations. Also, to authorize the City Manager to enter into a Purchase and Sale Agreement with Premium Health and Atrium Medical Center for the acquisition of the eastern-most site, being a 2.7-acre parcel at the northwest corner of Atrium Boulevard and SR 122, consistent with the terms outlined in the Non-binding Letter of Intent (LOI attached), as well as to Authorize the appropriation of funds from the City’s unencumbered General Fund Reserve sufficient to fully cover the transaction-negotiated purchase price of $80,000 per-acre multiplied by the approximate acreage of 2.7 acres (to be precisely determined by survey).

BACKGROUND AND FINDINGS

Consistent with a long-term comprehensive planning process conducted by and on behalf of the Middletown Fire Department, and in furtherance of the program outlined at the 2021 Strategic Planning Session of City Council, the City has been moving forward with the necessary steps required to finance, plan for, design and ultimately construct four (4) new City fire Stations to replace the inadequate and obsolete existing facilities. To that end, the following four locations have been determined to be the most optimal for siting the stations based upon a number of factors, including: minimizing response-times based on both current and expected future development; limiting disruption to neighborhoods; effectuating proper site and building design; and, minimizing cost while maximizing value.

1.) New Headquarters location: (replacing 1.38-acre site on Roosevelt Blvd.) A 3.6-acre site at Yankee Road and Cherry Street, owned by the City of Middletown as acquired from the Middletown School District and former site of Garfield School.
2.) **New Station #81 location**: (replacing .28-acre site on Clinton St.) A 2.85-acre site at Henry Ave. and Charles St., owned by the City of Middletown as acquired from the Middletown School District and former site of the Jefferson School.

3.) **New Station #85 location**: (replacing .86-acre site at Central Ave. and Breiel Blvd.) A 2-acre parcel at Sophie and Stolz Drive, encompassing the undeveloped, Southern portion of Dowling Park, owned by the City of Middletown.

4.) **New Station #82 location**: (replacing .88-acre site on Dixie Hwy.) A 2.7-acre site at S.R. 122 and Atrium Blvd. currently owned by Premier Health/Atrium Medical center and being acquired by the City of Middletown.

The Purchase and Sale Agreement for parcel #4 above (the only site not currently owned by the City) will be negotiated and entered into by the City Manager fully consistent with the attached, “Non-binding Letter of Intent” which specifies a purchase price of $80,000/acre @ 2.7 acres ($216,000). We expect to execute the Purchase and Sale Agreement within 30 days following the signing of the Letter of Intent, and will then have up to a 90-day due diligence period prior to closing. Premier Health/Atrium will be provided the right to approve the exterior design of the fire station to the extent that “it conforms to the quality of other buildings on the Atrium campus”.

In order to fund the property purchase, the City would be committing to expend $216,000 in FY 2021 General Fund dollars – coming from the undesignated General Fund Reserve. We will need a supplemental appropriation approving this use and expenditure, which is included within the legislation attached to this action item. Currently (effective 3/31/21), our undesignated General Fund Reserve stands at $9,232,633, or a very healthy, 24.9% of the General Fund Budget. Following appropriation, this number would decline to $9,016,633, or 24.3%. These “surplus” funds are available in large measure do to the significant receipt of CARES Act funds in 2020, and will be made more expendable by the soon-to-be-received $18 +Million in ARPA Funding.

**FINANCIAL IMPACTS**

The cost to the City to purchase the proposed Premier/Atrium lot is $216,000. At this asking price (of only $80,000/acre), Premier is offering us a truly significant discount against the likely true market value, given the commercial land the City owns directly across from this site (so-called “Bender tract”) is under contract at $220,000/acre. This show of clear corporate benevolence is much appreciated and allows us to acquire this much-needed site in a way which limits land acquisition costs in favor of brick-and-mortar construction.

As noted above, the purchase requires an appropriation from the 2021 undesignated General Fund Reserve while still leaving a healthy balance in such Fund post-acquisition.
The full cost of designing, furnishing, and constructing the four (4) new facilities is estimated at $16,650,000 all-in. – calculated as 56,600 combined square feet at a cumulative $294/square-foot cost. These Capital costs would be covered by a 1-mil property tax levy imposed to replace the expiring 1-mil levy that funded repayment of the Central Connections (Senior) mortgage. The levy, which would currently generate approx. $809,000/year would be required for 25 years and be exclusively dedicated to Fire Capital.

**ALTERNATIVES**

The alternative to this request is to choose not to move forward with the land acquisition at this time, and to not take advantage of the deeply-discounted acquisition price. Further, we could not designate the sites as preferred new fire station locations, or look to acquire other, non-City-owned parcels in less optimal locations at significant additional cost to the City. Doing nothing, however, does not alter the pressing and ever-escalating need to replace the wholly obsolete and inadequate fire stations currently in operation.

**RECOMMENDATION**

It is the recommendation of the City Manager, Fire Chief, Fire Command Staff, and Finance Department to authorize and approve the Resolution identifying and designating four (4) separate parcels of real property as future Fire Station sites; Authorizing the City Manager to enter into a Purchase and Sale Agreement with Premium Health and Atrium Medical Center for the acquisition of one (1) of said sites; and, the appropriation of funds to effectuate the acquisition.

**EMERGENCY/NON-EMERGENCY**

This item is forwarded as a two-reading emergency – to take immediate effect upon its approval after the second reading.

**ATTACHMENT(S):**

1.) Non-Binding Letter of Intent between Premier Health/Atrium Medical Center and the City of Middletown for purchase of a 2.7-acre parcel of real property at SR 122 and Atrium Blvd.

2.) Identification, description, and siting considerations for each of Three (3) new prototype fire stations; along with One (1) new Fire station headquarters.
April 5, 2021

Mr. James M. Palenick
City Manager of Middletown
Middletown, OH

NON-BINDING LETTER OF INTENT

Dear James:

On behalf of Premier Health and Atrium Medical Center ("Seller"), we are pleased to submit this letter of intent to the City of Middletown ("Buyer") to purchase property on the Atrium Medical Center Campus located in Middletown, Ohio and as further described below.

**Conditions of Purchase**

**Property:** Approximately 2 and 7/10 (2.7) acres of land (the "Land") that is located on the North West corner of St Rt 122 and Atrium Blvd. Middletown, Ohio. The site is depicted in Exhibit A.

**Purchase Price:** The purchase price for the Land will be $80,000 per acre. The total purchase price will be determined when final survey is completed.

**Conditions:**

1. Execution of a purchase agreement for the Land (the "Purchase Agreement") within thirty (30) days of the parties signing this Letter of Intent. Buyer shall then have a ninety (90) day period from the execution of the Purchase Agreement to serve as the Buyer’s Due Diligence Period (the "Due Diligence Period"). Seller shall provide an initial draft of the Purchase Agreement, including any Declarations, within 30 days of the parties signing this Letter of Intent. The Purchase Agreement will call for the creation of permanent restrictions on the Land against uses (and users) that compete with Premier Health entities.

2. During the Due Diligence Period, the Buyer may terminate the Letter of Intent for any or no reason, with written notice to Seller. If the Letter of Intent is terminated, the Buyer will have no other obligation to the Seller and Seller will have no other obligation to the Buyer.

3. During the Due Diligence period the Buyer shall be permitted access to the Land for the purposes of conducting environmental, soils and other tests that may be required for the purposes of determining the Land’s suitability for the Buyer’s proposed development. Seller shall prepare and Seller and Buyer shall
execute a Right of Entry agreement prior to the Buyer beginning any tests.

4. Buyer shall construct a firehouse as depicted on Exhibit A. Buyer shall have the right to approve the design of the building for conformity with the quality of other buildings on the Atrium campus.

5. Buyer shall be responsible for the cost to extend any utilities required to service the Buyer's improvements from their current location either on the AMC campus or in the public right of way.

6. Seller will be responsible for plat/lot split. Buyer will be responsible for costs of title examination and title policy. Other closing costs will be in accordance with local custom, including 50/50 split of fees of closing agent.

7. No brokers are involved in this transaction.

Upon Seller's receipt of a fully executed copy of this LOI, Seller will prepare a final purchase agreement reflecting the terms agreed to herein. If or purchase agreement mutually acceptable to the parties is not agreed to within 30 days after the date of this LOI, this LOI may be terminated by either party.

Please indicate your understanding in principle to the terms and conditions of this Non-Binding Letter of Intent and your good faith intention to enter into a definitive Agreement with Seller by executing this letter in the space provided below.

This offer will be honored until May 4, 2021 at 12:00 PM.

Sincerely,

[Signature]
Keith Bricking M.D.

Acknowledged, accepted and agreed:

THE CITY OF MIDDLETOWN, OHIO

By: [Signature]
Title: City Manager
Date: 

[Signature]
Fire Stations

Fire Headquarters
1977 – 44 years

Station 81
1953 – 68 years

Station 82
Renovated 1997 – 24 years

Station 85
1965 – 56 years
HEADQUARTERS STATION LAYOUT

FIRST FLOOR: 22,650 SF
MEZZANINE: 1,100 SF
STAIR TOWER: 600 SF
TOTAL AREA: 24,350 SF

SCALE: 3/64"=1'-0"
• Old Garfield School site
  3.6 acres
• Yankee Rd. at Cherry St.
• Replaces Fire Hq. on Roosevelt Blvd.
  1.38 acres
PROTOTYPE STATION LAYOUT

FIRST FLOOR: 10,750 SF
MEZZANINE: 500 SF
TOTAL AREA: 11,250 SF

LEGEND
- ADMINISTRATION AREA
- LIVING AREA
- OPERATIONS AREA
- ENTRY

SCALE: 1/16"=1'-0"
- Old Jefferson School site 2.85 acres.
- Replaces Station 81 on Clinton St. .28 acres.
- Sophie and Stolz Dr. 2 acres of Dowling Park
- Replaces Station 85 at Central Ave. and Breiel Blvd. .86 acres.
- Atrium Blvd. and St. Rt. 122
- Replaces Station 82 on Dixie Hwy.
- 2.7 acres
- .88 acres.
LEGISLATION
ITEM 14
RESOLUTION NO. R2021-22

A RESOLUTION TO MAKE ADJUSTMENTS TO APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF MIDDLETOWN, COUNTIES OF BUTLER AND WARREN, STATE OF OHIO, FOR THE PERIOD ENDING DECEMBER 31, 2021. (GENERAL FUND AND POLICE GRANT FUND)

BE IT RESOLVED by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The following sums are hereby appropriated from the General Fund of the City to accounts of the City for the purposes herein described as follows:

FROM: Unappropriated General Fund (Fund # 100) $37,200.00
TO: Major Tools & Equipment, Accounts of 212 (100.212.53620) $12,000.00
Drugs/Medical Supplies, Accounts of 212 (100.212.53220) $25,200.00
TOTAL GENERAL FUND $37,200.00

Section 2

The following sums are hereby appropriated from the Police Grant Fund of the City to accounts of the City for the purposes herein described as follows:

FROM: Unappropriated Police Grant Fund (Fund # 251) $4,026.55
TO: Travel & Training, Accounts of 054 (251.054.52110) $4,026.55
TOTAL POLICE GRANT FUND $4,026.55

Section 3

The Finance Director is hereby authorized to draw his warrants on the City Treasurer for payments from any of the foregoing appropriations upon receiving proper certificates and vouchers therefor, approved by the Board of Officers authorized by law to approve the same, or an ordinance or resolution of the City Council to make expenditures provided that no warrants shall be drawn or paid for salaries or wages except to persons employed by authority of and in accordance with law or ordinance.

Section 4

All legislation inconsistent herewith is hereby repealed.
Section 5

This resolution shall take effect and be in force at the earliest time permitted by law.

Nicole Condrey, Mayor

1st reading: ____________
2nd reading: ____________
Adopted: ____________
Effective: ____________

Attest: ________________
   Clerk of City Council
DATE: April 7, 2021
TO: Jim Palenick, City Manager
FROM: Jacob Burton, Finance Director

Supplemental Appropriations – General Fund (Fire)

PURPOSE
To request supplemental appropriations for the Middletown Division of Fire, Fire Operations budget in the total amount of $37,200.00 for the costs associated with constructing a confined space trailer and purchasing Narcan.

100.212.53620 (Major Tools & Equipment) - $12,000.00
100.212.53220 (Drugs/Medical Supplies) - $25,200.00

BACKGROUND and FINDINGS
The Division of Fire received a donation in the amount of $7,000 in 2019 and $5,000 in 2020 from Air Products to construct a confined space training trailer. The Division of Fire has also been awarded a grant for the purchase of Narcan in the amount of $25,200 from Premier Health. In order for the Division of Fire to spend these funds, a supplemental appropriation is necessary.

FINANCIAL IMPACT
This legislation will reduce the General Fund by $37,200.00.

ALTERNATIVES
The alternative would be not to appropriate the funds which would prevent the Division of Fire from spending these funds in 2021.

EMERGENCY/NON EMERGENCY
Non-Emergency

Cc: Paul Lolli, Fire Chief
Barb Bradley, Assistant Finance Director
DATE: April 7, 2021
TO: Jim Palenick, City Manager
FROM: Jake Burton, Finance Director

Supplemental Appropriations – Police Grant Fund

PURPOSE
To request a supplemental appropriation for the Middletown Division of Police, Police Grant Fund budget in the amount of $4,026.55 for the travel and training.

251.054.552110 (Travel & Training) - $4,026.55

BACKGROUND and FINDINGS
The Division of Police was awarded $10,000 through the 2019 JAG Grant to be used for training. $10,000.00 was budgeted in 2020 for this purchase and during 2021 budget preparations, it was anticipated that this money would be spent in 2020, however, there was $4,026.55 remaining in the training account, so a supplemental appropriation is now necessary in order to complete training this year with the grant funds.

Council approved a supplemental appropriation of $8,571.00 on Resolution R2021-05 related to this same grant as that was the amount of money remaining for the purchase of equipment.

FINANCIAL IMPACT
This legislation will reduce the Police Grant Fund by $4,026.55.

ALTERNATIVES
The alternative would be not to appropriate the funds which would prevent the Division of Police from spending these funds in 2021.

EMERGENCY/NON EMERGENCY
Non-Emergency

Cc: David Birk, Police Chief
    Barb Bradley, Assistant Finance Director
LEGISLATION
ITEM 15
ORDINANCE NO. O2021-36

AN ORDINANCE TO ENACT CHAPTER 832 (MASSAGE PARLORS) OF THE MIDDLETOWN CODIFIED ORDINANCES.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio, that:

Section 1

Chapter 832 (Massage Parlors) of the Codified Ordinances is hereby enacted as set forth in Exhibit “A”, attached hereto and incorporated by reference.

Section 2

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Nicole Condrey, Mayor

1st Reading: ____________
2nd Reading: ____________
Adopted: ______________
Effective: ______________

Attest:_________________________
Clerk of the City Council
Exhibit “A”
Chapter 832 (Massage Parlors)

832.01 DEFINITIONS.

As used in this chapter:

(a) “Applicant” means a person who applies for a massage practitioner license or a massage establishment license. If the applicant for a massage establishment is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business and the person who will manage the business conducted in the City shall be deemed to be an applicant and upon issuance of a massage establishment permit, a permit holder.

(b) “Massage Establishment” means any fixed or mobile place of business or establishment wherein any of the subjects or methods of treatment listed in subsection (d) hereof are administered, practiced or used, or from which a person is dispatched for the purpose of administering, performing, practicing or using any of the subjects or methods of treatment listed therein.

(c) “Massage Practitioner” means a person who practices or administers any massage or touching techniques listed in subsection (d) hereof for a fee, income or compensation of any kind within the City.

(d) “Massage” or “Touching Techniques” shall mean any of, but not limited to, the following named subjects and methods of treatment: oil rubs; alcohol rubs; salt glows; hot or cold packs; tub, shower, or cabinet baths; colon irrigation; and touching procedures upon the external parts of the body by hand or by any electrical, mechanical or vibratory apparatus including stroking, rubbing, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage or tapotement.

(e) “Moral Turpitude” means an act of baseness, vileness, or depravity in the private and social duties which a man owes to their fellow man, or to society in general.

(f) “Massage Establishment Permit” means a permit, issued and required by the City of Middletown, to own or operate a Massage Establishment.

(g) “Massage Practitioner License” means a license, issued and required by the City of Middletown, to administer, perform, or use any of the subject or methods of treatment listed in § 832.01(d).

832.02 ENFORCEMENT AND ISSUANCE OF LICENSE.

It shall be the duty and responsibility of the Police Chief or their designee to administer the provisions of this chapter. Pursuant to this duty, the Police Chief or their designee may issue, renew, deny, suspend or revoke a massage practitioner license and/or a massage establishment permit as set forth in this chapter.
832.03 LICENSING OF MASSAGE PRACTITIONERS AND MASSAGE ESTABLISHMENTS PERMITS REQUIRED; PROHIBITIONS.

(a) It shall be unlawful for any person to practice, administer, to offer, agree to practice any subject or method of treatment listed in Section 832.01(d) in the City, whether for a fee, income or consideration of any kind, without first obtaining and maintaining in effect a valid and current massage practitioner license as required by this chapter.

(b) It shall be unlawful for any person, association, firm, or corporation to own, operate or participate in the operation of a “massage establishment” or to perform such services in the City, nor shall any premises be erected, altered, used, arranged or designed to be used in whole or in part as a “massage establishment” without first obtaining and maintaining in effect a valid and current massage establishment permit as required by this chapter.

(c) It shall be unlawful for any person, association, firm, or corporation to employ any person as a massage practitioner in the City without such person having a valid and current massage practitioner license. Without limitation, a revoked or suspended massage practitioner license shall not be considered a valid and current license.

(d) It shall be unlawful for any person, association, firm, or corporation licensed or granted a permit as provided in this chapter to operate under any name or conduct business in the City under any designation not specified in such license or permit.

(e) It shall be unlawful for any massage establishment to remain open for business or provide services any time between the hours of 10:00 p.m. and 8:00 a.m.

832.04 NEW LICENSE/PERMIT APPLICATION; PROCEDURES AND FEE.

(a) Any person, association, firm, corporation, or other business entity desiring to obtain a massage practitioner license or massage establishment permit shall make application to the Police Chief or their designee for appropriate investigation. A person desiring a license authorizing him/her to perform the activities of a massage practitioner and, in addition, seeking a permit to conduct or operate a massage establishment shall submit two separate applications.

(b) An applicant for a massage practitioner license and/or massage establishment permit shall submit the following to the Police Chief or their designee:

1. A nonrefundable license/permit fee as follows:
   - Massage establishment: $500.00
   - Massage practitioner license: $100.00

2. The full legal name and current residence address of the applicant, including any partner or limited partner of a partnership applicant, the date of birth and social security number of each individual, and the federal identification number of any partnership or corporation;

3. Any other names by which the applicant has been known, including tradenames or “doing business as” names;
(4) The address at which applicant desires to do business;
(5) Two residential addresses immediately prior to the present residential address of applicant, and the dates of residence at each;
(6) Authorization for an investigation into the background of the applicant and any person(s) or entity named in the application;
(7) Written proof that the applicant is the age of twenty-one years or older if applying for a massage establishment permit; or is the age of eighteen years or older if applying for a massage practitioner license;
(8) A color copy of a Government issued identification card
(9) The business license history of the applicant, including whether the applicant, in previously operating in the City, other municipalities, other political subdivisions, the State of Ohio or other states under a licensed business, has had such licenses/permits revoked or suspended; and if so, the reason therefor, the business activity or occupation preceding such suspension or revocation, and the business activity or occupation subsequent to such suspension or revocation;
(10) All felony and misdemeanor convictions, excluding those for traffic offenses, and the grounds for such convictions;
(11) The applicant's complete fingerprints, to be recorded by the Division of Police;
(12) The applicant's education, training and experience in the administration, practice or use of the subjects and methods listed in Section 832.01(d), including diplomas or credentials from schools or institutions of learning. The educational requirements for massage practitioner license applicants shall include certification of satisfactory completion of a minimum of 160 hours of course instruction in anatomy, physiology and massage or touching techniques from a school of massage approved by the State Medical Board of Ohio or an equivalent board from outside this state, or accredited by an accrediting agency recognized by the United States Department of Education or the Council on Post-Secondary Accreditation.
(13) Any other identification and information the Division of Police may require in order to discover or verify the truth of the above requirements to be set forth in the application.

832.05 LICENSE/PERMIT APPLICATION INVESTIGATION.

(a) Any applicant for a license/permit pursuant to these provisions shall personally appear at the Division of Police to submit the application containing the information required by Section 832.04. The Division of Police shall have a reasonable time in which to investigate the application and the background of the applicant. Based on such investigation, the Division of Police shall recommend to the Police Chief or their designee approval or denial of the license/permit.
(b) The Police Chief may deny any application for a license/permit for any of the following reasons:

1. Falsification of any of the information required for the application or failure to fully complete the application.
2. Failure to cooperate with health or safety inspections as required by applicable City of Middletown codes, or as required by any provision of this Chapter.
3. Any person named on the application is under the age of eighteen if applying for massage practitioner license or under the age of twenty-one if applying for a massage establishment permit.
4. The applicant has been convicted of or plead guilty to fraud in conducting the business of massage practitioner or massage establishment, or of fraud or deceit in obtaining a license/permit to conduct such business;
5. The applicant has been convicted or plead guilty within the last ten years in a court of competent jurisdiction to a violation of Ohio R.C. Chapter 2907, or violation of any municipal ordinance that is substantially equivalent to any offense contained in Ohio R.C. 2907, or any offense involving moral turpitude, whichever is applicable;
6. The applicant has been convicted or plead guilty to any offense involving the use of force or violence upon another person;
7. The applicant has been convicted or plead guilty to any offense involving theft;
8. The applicant has been convicted of or plead guilty to false, fraudulent, misleading or deceptive advertising;
9. The applicant is or has engaged in the business of a massage establishment or as a massage practitioner under a false or assumed name, or is impersonating another practitioner of a like or different name;
10. The licensee/permit holder has violated any provisions of this chapter.

832.06 MASSAGE ESTABLISHMENT PERMIT; SPECIAL REQUIREMENTS.

(a) No massage establishment permit shall be issued if the applicant has been convicted within the last ten years of any felony, or any misdemeanor offense involving moral turpitude having a reasonable relationship to the functions of a massage establishment permit holder, or if the application was intentionally falsified.

(b) No massage establishment permit shall be issued if the applicant has been convicted or plead guilty, within the last ten years of any offense committed outside the State of Ohio or the City, which if committed in the State of Ohio or the City would constitute a felony, or any misdemeanor offense involving moral turpitude having a reasonable relationship to the functions of a massage establishment permit holder.

(c) An applicant for a massage establishment permit shall permit officials of the City, and any other federal, state, county, or municipal agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by such
agencies, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(d) No massage establishment permit shall be issued unless inspection by officials of the City or, where appropriate, a county or state agency, indicates the site of the establishment complies with each of the following minimum requirements:

1. A current certificate of occupancy shall be issued in the name of the massage establishment.
2. A readable sign, in accordance with City codes, shall be posted at the main entrance identifying the establishment as a massage establishment.
3. Minimum lighting shall be provided in accordance with the City of Middletown code, and in addition, at least one artificial light of not less than forty watts shall be provided in each room or enclosure where services are performed on patrons which shall be in operation when such services are performed.
4. Minimum ventilation shall be provided in accordance with the City of Middletown code.
5. Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any of the subjects or methods of treatment listed in Section 832.01(d).
6. Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times.
7. Closed cabinets shall be provided, and used, for the storage of clean linens, towels, or similar items.
8. Posting of Services Available and Fees in a conspicuous place in such a manner that it can easily be seen by persons entering the Massage Establishment.
9. Maintain Written Records. Every Massage Establishment shall keep a written record of the date and hour of each service provided, the name and address of each patron and the service received, and the name of the Massage Therapist, Massage Practitioner, and/or other Employee administering the service. These records may not be used for any other purpose than as records of service provided and may not be provided to other parties by the Massage Establishment unless otherwise required by law. Such records shall be retained on the premises of the Massage Establishment for a period of two years.
10. Standard of Dress for Massage Establishments Employees. All Massage Therapists, Massage Practitioner, and/or other Employee shall remain fully clothed in clean outer garment while on the premises of the Massage Establishment. At minimum, such clothing shall be made of nontransparent material and shall not expose the buttocks, genital area or breasts of any employee at any time.
11. Adequate dressing and toilet facilities shall be provided for patrons. One dressing room, with door capable of being closed and locked, which may be the same as the massage treatment room. One toilet and one wash basin shall
be provided by every massage establishment for every three treatment rooms. A minimum of one shower or tub shall be provided for any establishment offering colon therapy, colonics, or any hydrotherapy services, including whirlpool baths, saunas, steam baths, and herbal wraps. Each dressing room or treatment room shall contain a locker for each patron to be served which shall be capable of being locked.

(12) Any pool or spa shall be inspected and issued a permit in accordance with applicable state and City of Middletown codes.

(13) All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the establishment must be in good repair and maintained in a clean and sanitary condition, in accordance with City of Middletown codes.

(14) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each day business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use.

(15) Clean and sanitary sheets and towels shall be provided for each patron of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each patron.

(16) All wash basins within an establishment shall have hot and cold running water, tempered by means of a mixing valve faucet, provide sanitary towels placed in permanent installed dispensers or upon a permanently attached rod dispenser, and provide soap in a soap dispenser that is placed on or near the wash basin. A hand wash basin shall be provided in each treatment room providing colon therapy, colonics, or hydrotherapy services, including whirlpool bath saunas, steam baths and herbal wraps.

832.07 DISPLAY OF LICENSE/PERMIT.

Every person, association, firm or corporation to whom a license/permit has been granted shall display the license/permit in a conspicuous place upon the business premises. If the license/permit has been granted to a person, a recent photograph of the licensee/permit holder shall be attached to the license.

832.08 CHANGE OF LOCATION.

The Permit holder may a change of location of a massage establishment permit by request and approval of the Police Chief or their designee, provided that all ordinances and regulations of the City are followed and a fee of $100.00 is paid to the City.

832.09 SALE, TRANSFER OR EXPANSION OF MASSAGE ESTABLISHMENT.

Upon the sale or transfer of any interest in a massage establishment, the permit therefor shall be null and void. A new application, as set forth in Section 832.04, shall be made by any person,
association, firm or corporation desiring to own or operate the establishment. The provisions of Sections 832.05 and 832.06 shall fully apply to any person, association, firm or corporation applying for a massage establishment permit for premises previously used as such establishment.

832.10 RENEWAL.

(a) Permits issued under this section for massage establishment shall be renewed annually on or before the anniversary of the date of issuance, unless the permit was revoked as provided in this chapter, the massage establishment permit holder shall pay the City a renewal fee of $250.00.

(b) The holder of an expired massage establishment permit may, within thirty days from the date of expiration, have the permit renewed upon payment of the required renewal fee plus a $25.00 late fee.

(c) Licensees issued under this section for massage practitioner shall be renewed annually on or before the anniversary of the date of issuance, unless the permit was revoked as provided in this chapter, every licensed massage practitioner shall pay the City a renewal fee of $50.00.

(d) The holder of an expired massage practitioner license may, within thirty days from the date of expiration, have the license renewed upon payment of the required renewal fee plus a $25.00 late fee.

832.11 REVOCATION, SUSPENSION OR DENIAL OF LICENSE/PERMIT, APPEAL; GROUNDS.

(a) The license of a massage practitioner or a massage establishment permit may be revoked, suspended or denied renewal based upon any one or more of the following grounds:

1. Licensee/Permit Holder failed to submit necessary renewal paperwork
2. Falsification of any of the information required for the application or failure to fully complete the application.
3. Failure to cooperate with health or safety inspections as required by applicable City of Middletown codes, or as required by any provision of this Chapter.
4. Any person named on the application is under the age of eighteen if applying for a massage practitioner license and/or under the age of twenty-one if applying for massage establishment permit.
5. The licensee/permit holder has been found guilty of fraud in conducting the business of massage practitioner or massage establishment, or of fraud or deceit in obtaining a license/permit to conduct such business.
6. The licensee/permit holder has been convicted or plead guilty within the last ten years in a court of competent jurisdiction to a violation of Ohio R.C. Chapter 2907, or violation of any municipal ordinance that is substantially equivalent to any offense contained in Ohio R.C. 2907, or any offense involving moral turpitude, whichever is applicable.
(7) The applicant has been convicted or plead guilty to any offense involving the use of force or violence upon another person.
(8) The applicant has been convicted or plead guilty to any offense involving theft;
(9) The licensee/permit holder is guilty of false, fraudulent, misleading or deceptive advertising.
(10) The licensee/permit holder is engaged in the business of a massage practitioner or massage establishment under a false or assumed name, or is impersonating another practitioner of a like or different name.
(11) The licensee/permit holder has violated any provisions of this chapter.

(b) Notwithstanding the provisions of subsection (a) hereof, the license of a massage practitioner or a massage establishment permit shall be revoked or denied renewal if the licensee/permit holder has been convicted of any offense committed outside the City or the State of Ohio which if committed in the City or the State of Ohio would constitute a felony, or any misdemeanor involving moral turpitude having a reasonable relationship to the functions of a massage practitioner or a massage establishment licensee.

(c) Notwithstanding the provisions of subsection (a) hereof, the permit of a massage establishment may be revoked or denied renewal if within a twelve month period, the permit holder or agent, employee or independent contractor of the massage establishment, while on the premises of such establishment commits any felony offense, or a misdemeanor offense involving moral turpitude having a reasonable relationship to the functions of a massage practitioner or a massage establishment.

(d) If the Police Chief or their designee determines that probable grounds exist for denial, suspension or revocation of a license/permit under this section, the Police Chief or their designee shall notify the applicant or licensee/permit holder (respondent) in writing of the intent to deny, suspend or revoke the license/permit, including the grounds therefor, by personal service or certified mail. The notification shall be directed to the most current business address on file with the City. Within ten working days of receipt of such notice, the respondent may provide to the Police Chief or their designee a written response which shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. If a response is not received by the Police Chief or their designee in the time stated or, if after review the Police Chief or their designee finds that grounds exist for denial, suspension, or revocation, then such action shall become final and notice of such final action shall be sent to the applicant or licensee/permit holder. Upon timely receipt of a written response from the respondent, if the Police Chief or their designee finds that no grounds exist for denial, suspension, or revocation of a license/permit then the Police Chief or their designee shall withdraw the intent to deny, suspend, or revoke the license/permit and shall so notify the respondent of such action in writing by personal service or certified mail.
832.12 DENIAL OR TERMINATION OF LICENSE/PERMIT; APPEAL PROCESS.

(a) The denial, revocation or nonrenewal of a massage practitioner license or a massage establishment permit shall continue for one year, and the applicant or licensee/permit holder shall not be issued a massage practitioner license or massage establishment permit for one year from the date denial, revocation or nonrenewal becomes effective; provided, however, that if the license/permit was denied or revoked under Section 832.11(c), an applicant shall not be granted another license/permit at any time, and if the license/permit was denied or revoked under Section 832.06(a) or (b), Section 832.07, or Section 832.11(a)(2) or (b), an applicant shall not be granted another license/permit until ten years have elapsed from the date of conviction.

(b) The suspension of a massage practitioner license or a massage establishment permit shall continue for a specified period not to exceed one year.

(c) The fact that a conviction is being appealed or a judgment of guilt is subsequently set aside shall have no effect on the denial, suspension, revocation or non-renewal of a license/permit under this section.

(d) Appeal of denial, revocation or nonrenewal of a massage practitioner license or a massage establishment permit shall be made to the Office of Administrative Hearings within 30 days of issuance of decision by Police Chief or their designee.

1) A person may request a hearing before a hearing examiner to contest the decision of Police Chief or their designee. The written request for hearing shall be filed with the Office of Administrative Hearings. The Office of Administrative Hearings shall set a date for the hearing and notify the person, in writing, of the date, time and location of the hearing. The hearing shall be public and a record of the hearing shall be maintained. The hearing may be informal, but all testimony shall be under oath.

2) All hearings shall be scheduled within 10 calendar days of receipt of a request for a hearing. Hearings will be held within 30 calendar days from the date the request for a hearing is filed. Any hearing date may be modified if such modification is agreed to by the appellant, by the city and by the hearing examiner, or if such modification is necessary in the interest of justice.

3) The hearing examiner shall enter into the record of the proceedings the notice of the decision by the Police Chief or their designee and any other relevant information.

4) The hearing examiner shall issue a written decision and make findings of fact from the record and conclusions of law in support of the decision within 10 calendar days from close of the hearing. The findings and conclusions shall demonstrate that the decision is consistent with applicable laws, ordinances, regulations and the interest of justice.

832.13 APPLICABILITY OF REGULATIONS TO EXISTING BUSINESS.
The provisions of this chapter shall apply to all activities regulated by this chapter of such persons and businesses described herein, whether such activities were commenced before, on or after the effective date of this chapter; provided, however, that any person licensed as a massage practitioner prior to the effective date of this chapter, by any other licensing authority, and having certification of satisfactory completion of course instruction in anatomy, physiology, or massage and touching techniques from a school or institution approved by the State Medical Board of Ohio or an equivalent board from outside this state, or accredited by an accrediting agency recognized by the United States Department of Education or the Counsel on Post-Secondary Accreditation, shall be eligible for a license under this chapter, provided they file an application within ninety (90) days of the effective date of this chapter and is otherwise qualified and complies with all other provisions set forth herein.

832.14 EXEMPTIONS.

(a) The provisions of this chapter shall not apply to:

(1) Persons authorized by the laws of the State of Ohio to practice medicine, osteopathy, chiropractic, podiatry, or naturopathy;
(2) Registered nurses, licensed practical nurses or technicians, when acting under the supervision of a licensed physician or osteopath;
(3) Persons employed or acting as trainees for any bona fide amateur, semiprofessional or professional athlete or athletic team;
(4) Persons authorized by the laws of the State of Ohio as barbers or cosmetologists, provided their activity is limited to the head, face, or neck;
(5) Persons wholly employed in the sale of clothing, cosmetics, jewelry or sporting equipment insofar as these individuals must incidentally touch a customer to properly fit or sell the product, at its standard market price;
(6) Persons wholly engaged in specialized weight reduction techniques where touching of the body is incidental to the procedure.

(b) Any exemption set forth in this section is effective only insofar as and to the extent that the bona fide practice of the business or profession of the person exempted incidentally overlaps into areas regulated by this chapter, and such exemptions are solely for those activities which are performed in the course of the bona fide practice of the business or profession of the person exempted.

832.15 OTHER PROHIBITED ACTS.

It shall be unlawful:

(a) For any person, association, firm, or a corporation to conduct or operate a massage establishment under the same guise whereon there is also conducted the business of a liquor establishment, photography, video, or movie studio, model studio, art studio, telephone answering service, motion picture theater, video store or bookstore;
(b) For any person to practice or administer any subject or method of treatment listed in Section 832.01(d), whether for a fee, gratuity or compensation of any kind:
   (1) In a manner or under circumstances intended to arouse, appeal to, or gratify sexual desires; or
   (2) To any other person whose private parts are not covered by opaque material; or
   (3) Involving direct or indirect touching or contact with the genitals of the individual receiving the treatment.
(c) For any person to place either their hand(s) upon, or touch with any part of their body, or touch with a mechanical device, a sexual or genital part of any person in the course of a massage, or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person.
(d) For any person to uncover and expose the sexual or genital parts of a client or themselves before, during, or after any subject or method of treatment listed in Section 832.01(d).

832.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree. Each and every day that any such violation continues shall constitute a separate offense. Revocation or suspension of a license/permit issued under this chapter shall not be a defense against a prosecution for a violation of this chapter.
DATE:  April 9, 2021

TO:  James Palenick, City Manager

FROM:  Ashley Bretland, General Counsel
       David Birk, Chief of Police
       Written by Zachary A. Barnhart, Staff Attorney

PURPOSE

This is a request for City Council to consider proposed legislation regarding licensing of standalone massage parlors and practitioners.

BACKGROUND AND FINDINGS

City staff reviewed our city ordinances and those of other jurisdictions in regards to massage service businesses. The proposed legislation will require standalone massage parlors and massage practitioners to apply for a license from the City in order to operate within the City limits. The Police Chief or his designee will be responsible for administering the provisions of these licenses/permits. Both licenses/permits require an initial non-refundable application fee and an annual renewal fee.

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<tr>
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<th>Initial Fee</th>
<th>Renewal Fee</th>
<th>Late Fee</th>
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<tbody>
<tr>
<td>Massage Establishment Permit</td>
<td>$500.00</td>
<td>$250.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>Massage Practitioner License</td>
<td>$100.00</td>
<td>$50.00</td>
<td>$25.00</td>
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</table>

Upon receipt of the application, the Division of Police will review the application to confirm the information contained within. Once the investigation has been complete, a recommendation will be provided to the Police Chief or their designee to recommend approval or denial of the license/permit.

If licenses/permits are denied at application or revoked, suspended or not renewed, the applicant or license/permit holder will have the option to appeal. If a hearing is needed for further determination, it will be handled through the City’s Office of Administrative Hearings.

Existing standalone massage businesses will have 90 days from the effective date of this ordinance to submit the appropriate application. This legislation is intended to address the illegal activity and unsanitary conditions that have occurred at these types of unregulated businesses. Failure to adopt
the new proposed ordinance will result in the continued expenditure of City resources to combat illegal massage service businesses.

**ALTERNATIVES**

The alternative is to take no action, in which case the moratorium will expire, unless an extension is requested and granted. Upon expiration of the moratorium the City staff would resume accepting and evaluating individual requests to open businesses providing massage therapy or relaxation massage services as they are received.

**FINANCIAL IMPACTS**

Failure to adopt the proposed legislation will result in continued manpower and resources to investigate suspected illegal massage service businesses.

**EMERGENCY/NON EMERGENCY**

Non-emergency legislation is requested.
APPLICATION FOR
MASSAGE ESTABLISHMENT PERMIT

Date Application Received:__________________ Permit No.:__________________

FEES: $500.00 Initial / $250.00 Renewal

For the purposes of this application, the registrant shall be the owner of the business. Business owners must obtain a permit to operate a Massage Establishment, as such term is defined in Section 832.01 of the City of Middletown Codified Ordinances.

Complete this application in its entirety and submit it to the City of Middletown Division of Police.

Incomplete Applications will NOT be accepted.

Attach an additional sheet of paper as needed to respond to the Application.

NOTE: A COLOR COPY OF THE BUSINESS OWNER/APPLICANT’S GOVERNMENT ISSUED IDENTIFICATION CARD MUST BE SUBMITTED WITH THIS APPLICATION. THE COPY WILL BE MADE BY THE DIVISION OF POLICE.

Check one: Initial Application _____ Renewal _____

1. Address of Massage Establishment:

   (Street) (City) (State) (Zip)

2. Current owner(s) of above-described real estate: __________________________________________________________

3. Telephone numbers of above-described property owner(s):
   Home:_________________________________  Cell:______________________________

4. Email address(es) of above-described property owner(s): ____________________________________________________________

5. Name/proposed name of Massage Establishment: ____________________________________________________________

6. Name of Business Owner/Applicant:

   (Last) (First) (Middle)
7. All Nicknames and Aliases of Business Owner/Applicant:

_________________________________________

8. Home Address of Business Owner/Applicant:

<table>
<thead>
<tr>
<th>(Street)</th>
<th>(City)</th>
<th>(State)</th>
<th>(Zip)</th>
</tr>
</thead>
</table>

9. Previous two residential addresses of Business Owner/Applicant:

(i.)

<table>
<thead>
<tr>
<th>(Street)</th>
<th>(City)</th>
<th>(State)</th>
<th>(Zip)</th>
</tr>
</thead>
</table>
| From: ___________________ To: ___________________ (Month/Year)

(ii.)

<table>
<thead>
<tr>
<th>(Street)</th>
<th>(City)</th>
<th>(State)</th>
<th>(Zip)</th>
</tr>
</thead>
</table>
| From: ___________________ To: ___________________ (Month/Year)

10. Provide the business names, complete addresses, and telephone numbers of each business involving massage related services that the Business Owner/Applicant has been associated with, employed by, or been an independent contractor at during the preceding 10-year period, including the dates the Business Owner/Applicant was affiliated with or employed by each business.

_________________________________________

_________________________________________

_________________________________________

11. List and describe any of Business Owner/Applicant’s criminal convictions of record, other than minor misdemeanor traffic violations, in the preceding 10-year period, including the date of each conviction; the charge(s) for which Business Owner/Applicant was convicted; and the location (city, state and county) where each conviction occurred.

_________________________________________

_________________________________________

_________________________________________

_________________________________________

Page 2/6
12. Provide a description of any licenses, certificates, permits, or other authorizations/registrations that Business Owner/Applicant currently holds, or has held in the past, to engage in the practice of any massage-related services or business ventures.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

13. Have you, the Business Owner/Applicant, been employed by a Massage Establishment or other business engaged in any massage-related services that at any time in the preceding 10-year period had its license(s), permits and/or registration suspended or revoked, or was otherwise shut down by any legal authority?

_____ YES  _____ NO

If yes, list the dates and reasons for such suspension, revocation and/or shut down and indicate the name and location (city, county and state) of the jurisdiction or agency that issued or caused the suspension, revocation, or shut down.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

14. Describe the nature of the massage-related services to be administered at the Massage Establishment (e.g., Swedish massage, deep tissue, shiatsu, hot stone, reflexology, Thai massage, etc.).

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

15. Applicant’s authorization for background check to be completed and fingerprints to be taken:

__________________________  _______________________
Signature                      Date
I hereby certify and affirm that I currently have or will maintain a database and/or roster of all employees and independent contractors working at my Massage Establishment that contains all information required pursuant to City of Middletown Code of Ordinances. I agree and understand that this database and/or roster shall be made available to City of Middletown officials and/or authorized agents upon request by the City. I also understand and acknowledge that I am required to update the database and/or roster to include all relevant and requisite information regarding any new Massage Therapists, Massage Practitioners, Employees, and/or Independent Contractors who work at the Massage Establishment within 30 days of any new hire/association.

I further certify that I am the owner of the Massage Establishment, that I will abide by all provisions of Chapter 832 of the City of Middletown Codified Ordinances and that all information and the attachments submitted with this application are true and correct to the best of my information, knowledge, and belief. I acknowledge additional Massage Establishment Operation Requirements are included on Pages 5 and 6 of this Application.

Applicant’s Signature: ____________________________________________

Applicant’s Title: ________________________________________________

Date of Application: ____________________________

FOR USE BY THE DIVISION OF POLICE

This application is:  APPROVED _____  DENIED _____

Remarks: _______________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

Notice of approval/denial given to Applicant via _____ personal service or _____ certified mail on __________________________, 20___.

By: ____________________________ Date: ____________________________

Print Name: _______________________________
MASSAGE ESTABLISHMENT OPERATION REQUIREMENTS

In addition to all other applicable requirements prescribed by the City of Middletown Codified Ordinances, all Massage Establishments shall comply with the following operating requirements:

• *Exterior Signs.* A recognizable and legible sign shall be posted at the main entrance identifying the business as a Massage Establishment. In addition, the sign shall comply with City of Middletown Codified Ordinances.

• *Posting of Registration.* A copy of each Registration and Massage Therapists’ license(s) or license card from the State Medical Board of Ohio shall be posted in a conspicuous place in such a manner that it can easily be seen by Persons patronizing the Massage Establishment.

• *Posting of Services Available and Fees.* A list of all services available, the price thereof, and the length of time each service shall be performed shall be posted or available in a conspicuous place in such a manner that it can easily be seen by Persons entering the Massage Establishment. No other services, other than those posted, shall be provided.

• *Maintain Written Records.* Every Massage Establishment shall keep a written record of the date and hour of each service provided, the name and address of each patron and the service received, and the name of the Massage Therapist administering the service. These records may not be used for any other purpose than as records of service provided and may not be provided to other parties by the Massage Establishment unless otherwise required by law. Such records shall be retained on the premises of the Massage Establishment for a period of two years.

• *Standard of Dress for Massage Establishment Employees.* All Massage Therapists, Massage Practitioners, Employees, and Independent Contractors of the Massage Establishment shall remain fully clothed in clean outer garments while on the premises of the Massage Establishment. At a minimum, such clothing shall be made of nontransparent material and shall not expose the buttocks, genital area or breasts of any employee at any time.

• *Operating Hours.* No Massage Establishment shall be kept open for business, and no Massage Therapist shall administer massages between the hours of 10:00 p.m. and 8:00 a.m.

• *Lighting Required.* Massage Establishments will be lighted at all times during business hours to clearly show the business is in operation. Rooms where Massage Services are provided will be adequately lit when occupied to meet all emergency exiting requirements.

MASSAGE ESTABLISHMENT CONDITIONS OF PREMISES

• *Required Maintenance of Massage Establishment.* All premises and facilities of the Massage Establishment shall be maintained in a clean and sanitary condition at all times. The premises and facilities shall meet the applicable requirements of the City of Middletown Codified Ordinances, including but not limited to, those related to the safety of structures and building systems, property maintenance, zoning, and adequacy of the plumbing, heating, ventilation, and waterproofing of rooms in which showers, water or steam baths are used and maintained.
• **Linens.** All Massage Establishments shall provide clean laundered sheets, towels, and other linen for use by clients. Such linens shall be laundered after each use and stored in a sanitary manner.

• **Adequate dressing and toilet facilities shall be provided for patrons.** One dressing room, with door capable of being closed and locked, which may be the same as the massage treatment room. One toilet and one wash basin shall be provided by every massage establishment for every three treatment rooms. A minimum of one shower or tub shall be provided for any establishment offering colon therapy, colonics, or any hydrotherapy services, including whirlpool baths, saunas, steam baths, and herbal wraps. Each dressing room or treatment room shall contain a locker for each patron to be served, which locker shall be capable of being locked.

### PROHIBITED ACTS

• **Touching of Sexual and Genital Parts of Client During Massage.** No holder of a permit or any Massage Therapists, Massage Practitioners, Employees or Independent Contractors of a Massage Establishment shall place either his or her hand(s) upon, or touch with any part of his or her body, or touch with a mechanical device, a sexual or genital part of any other Person in the course of a Massage, or Massage a sexual or genital part of any other Person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any Person.

• **Uncovering and Exposure of Sexual and Genital Parts of Client Before, During, or After Massage.** No permit holder or any other Massage Therapists, Massage Practitioners, Employees, or Independent Contractors of a Massage Establishment shall uncover and expose the sexual or genital parts of a Client or themselves or any other person while engaged in the practice of Massage, or before or after a Massage.

• **Transfer of Registration.** No Permit(s) issued pursuant to this chapter shall be transferred or assigned in any manner, without written approval of the Police Chief or their designee, from any location to another location or from Person to Person.

### RENEWAL OF REGISTRATION

All permits issued under Chapter 832 shall expire on the anniversary of the date of issuance. Applications for Renewals of permits must be submitted to the City’s Division of Police no later than 60 days prior to the expiration date.
APPLICATION FOR
MASSAGE PRACTITIONER LICENSE

Date Application Received: ________________________ Permit No.: ________________________

FEES: $100.00 Initial / $50.00 Renewal

For the purposes of this application, the registrant shall be the person seeking the massage practitioner license. Massage Practitioners must obtain a license to provide a massage or method of treatment, as defined in Section 832.01 of the City of Middletown Codified Ordinances.

Complete this application in its entirety and submit it to the City of Middletown Division of Police.

Incomplete Applications will NOT be accepted. Attach an additional sheet of paper as needed.

NOTE: A COLOR COPY OF A GOVERNMENT ISSUED IDENTIFICATION CARD MUST BE SUBMITTED WITH THIS APPLICATION. THE COPY WILL BE MADE BY THE DIVISION OF POLICE.

Check one: Initial Application _____ Renewal _____

1. Applicant full legal name:

______________________________________________________________

(Last) (First) (Middle)

2. Any other names by which the applicant has been know:

____________________________________________________________________

____________________________________________________________________

3. Applicant Home Address:

___________________________________________________________________________

(Street) (City) (State) (Zip)

4. Date of Birth: __________________________________________________________

(Month) (Day) (Year)

5. Social Security Number: ______________________________

6. Contact Information: ____________________________________________________

(Phone) (Email)

7. Previous two residential addresses and dates of residence at each.

(i.) _________________________________________________________________

(Street) (City) (State) (Zip)
From: __________________________
To: __________________________ (Month/Year)

(ii.)

(Street) (City) (State) (Zip)

From: __________________________
To: __________________________ (Month/Year)

8. Applicant education, training, etc.: ________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

9. Prior licensees held by applicant:

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

10. Has applicant ever had a prior license suspended or revoked? _____ YES _____ NO

If yes, please explain: _________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

11. List and describe any criminal convictions of record, other than minor misdemeanor traffic
violations, in the preceding 10-year period, including the date of each conviction, and the
location (city, state and county) where each conviction occurred: ______________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________
12. Applicant’s authorization for background check to be completed and fingerprints to be taken:

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
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</table>

Applicant understands that, if granted a Massage Practitioner License, applicant must display such license in a conspicuous place upon the business premises. A recent photograph of the licensee shall be attached to the license. Every licensed massage practitioner shall pay to the City a renewal fee of $50.00 annually on or before the anniversary date of each year and must maintain a valid and current massage practitioner license. The City may deny an application for a license or suspend or revoke an already issued license as set forth in §832 of the City of Middletown Codified Ordinances. The procedure for appealing such denial, suspension or revocation is set forth in §832.11.

I further certify that I will abide by all provisions of Chapter 832 of the City of Middletown Codified Ordinances all information and attachments submitted with this application are true and correct to the best of my information, knowledge, and belief. I acknowledge additional Massage Practitioner Requirements are included on Page 4 of this Application.

Applicant’s Signature: ____________________________________________________________

Date of Application: ____________________________

*******************************************************************************

FOR USE BY THE DIVISION OF POLICE

This application is:  APPROVED ____  DENIED ____

Remarks: ________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Notice of approval/denial given to Applicant via _____ personal service or _____ certified mail on ______________________, 20___.

By: ____________________________ Date: __________________

Print Name: ____________________________
MASSAGE PRACTITIONER LICENSE REQUIREMENTS

In addition to all other applicable requirements prescribed by the City of Middletown Codified Ordinances, all Licensed Massage Practitioners shall comply with the following operating requirements:

• **License required.** No person shall practice, administer, offer, agree to practice any subject listed in §832.01(d) without first obtaining and maintaining a valid and current license.

• **Display of license.** All licenses issued pursuant to §832 along with a current color photograph shall be posted in a conspicuous place in such a manner that it can easily be seen by Persons patronizing the Massage Establishment.

• **Standard of Dress for Massage Establishment Employees.** All Massage Therapists, Massage Practitioners, Employees, and Independent Contractors of the Massage Establishment shall remain fully clothed in clean outer garments while on the premises of the Massage Establishment. At a minimum, such clothing shall be made of nontransparent material and shall not expose the buttocks, genital area or breasts of any employee at any time.

• **Operating Hours.** No Massage Therapist shall administer massages between the hours of 10:00 p.m. and 8:00 a.m.

PROHIBITED ACTS

• **Touching for sexual gratification.** No Massage Therapists, Massage Practitioners, Employees or Independent Contractors of a Massage Establishment shall practice or administer any subject listed in Section 832.01(d), whether for free or a fee, gratuity or compensation of any kind in a manner or under circumstances intended to arouse, appeal to, or gratify sexual desires.

• **Touching of Sexual and Genital Parts of Client During Massage.** No Massage Therapists, Massage Practitioners, Employees or Independent Contractors of a Massage Establishment shall place either his or her hand(s) upon, or touch with any part of his or her body, or touch with a mechanical device, a sexual or genital part of any other Person in the course of a Massage, or Massage a sexual or genital part of any other Person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any Person.

• **Uncovering and Exposure of Sexual and Genital Parts of Client Before, During, or After Massage.** No Massage Therapists, Massage Practitioners, Employees, or Independent Contractors of a Massage Establishment shall uncover and expose the sexual or genital parts of a client or themselves or any other person while engaged in the practice of Massage, or before or after a Massage.

• **Transfer of Registration.** No licenses issued pursuant to this chapter shall be transferred or assigned in any manner.

RENEWAL OF REGISTRATION

All licenses issued under MCO Chapter 832 shall expire on the anniversary of the date of issuance. Applications for Renewals of licenses must be submitted to the City’s Division of Police no later than 60 days prior to the expiration date.
LEGISLATION
ITEM 16
ORDINANCE NO. O2021-37

AN ORDINANCE AUTHORIZING A LAND SWAP AND DEVELOPMENT AGREEMENT WITH DICKIE D. BRANDON, TRUSTEE OF THE O.L.C. REVOCABLE LAND TRUST, DICKIE BRANDON AND PHILLIP BRANDON.

WHEREAS, Dickie D. Brandon, Trustee of the O.L.C. Revocable Land Trust, owns 2119 Roosevelt Boulevard which is not wide enough to build a home on in compliance with the Development Code; and

WHEREAS, the City took ownership of parcel number Q6542054000051, an unnumbered parcel on Bonita Drive, in 2011 through forfeiture as a result of tax foreclosure; and

WHEREAS, Dickie and Phillip Brandon are in the home construction business and interested in pursuing infill construction opportunities within the City; and

WHEREAS, by swapping the Roosevelt Boulevard and Bonita Drive properties, the Brandon’s are committing to building a four bedroom, three bathroom home to be sold by a Middletown realtor to a homeowner within 18 months of the property transfer;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is hereby authorized to enter into a Development Agreement with Dickie D. Brandon, Trustee of the O.L.C. Revocable Land Trust, Dickie Brandon and Phillip Brandon and to swap 2119 Roosevelt Boulevard and parcel number Q6542054000051 located on Bonita Drive. The Development Agreement shall state that the Brandon’s will build a home on the Bonita Drive property within 18 months of the property being transferred. The home must be listed with a Middletown realtor and sold to a homeowner. If the Brandon’s fail to complete the new construction or the terms of the Development Agreement, they will be obligated to pay the City the sum of $2,500.00. The Development Agreement shall be in a form approved by the City Manager and the Law Director.

Section 2

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.
Section 3

This ordinance shall take effect and be in force at the earliest time permitted by law.

Nicole Condrey, Mayor

1st Reading: ______________
2nd Reading: ______________
Adopted: ______________
Effective: ______________

Attest: __________________________
Clerk of the City Council
DATE        April 12, 2021
TO:          James Palenick, City Manager
FROM:        Susan Cohen, Assistant City Manager

PURPOSE

To request Council authorize a contract to swap certain lands with Dickie and Phillip Brandon under terms of a development agreement for infill construction

BACKGROUND AND FINDINGS

Staff was approached by local Developers Dickie and Phillip Brandon about entering into an agreement to exchange land parcels that would be most beneficial for the other party to possess.

Staff examined the location, and value of each property and is recommending entering into a land swap agreement with the Brandons involving the following properties.

Currently in the City possession that would be transferred to Brandons:

Bonita Drive (Parcel Q6542054000051) (Currently unnumbered address in the 4700 block of Bonita near the intersection with Daniel Court)

Currently in Brandon possession transferred to the City:

2119 Roosevelt Blvd  (Parcel Q6542032000108)

The properties in question are similarly valued by the Butler County Auditors Office. The Brandon’s are in the home construction business and are interested in pursuing infill construction opportunities in the City. The lot they own on 2119 Roosevelt is not wide enough to build a new home in compliance with the current development code. The City owned lot on Bonita is wide enough to allow for development of new housing. With this property swap, the Brandons are further committing that within 18 months of transferring the property, they will build a 4 bedroom, 3 bathroom home on the Bonita Property and will put the new home up for sale with a Middletown area realtor to sell to a homeowner. If the Brandon’s fail to complete the new construction or terms of the agreement, they will be obligated to pay the City $2,500, which is equal to 5 times the amount the city would typically sell a vacant lot for under the vacant side lot program.

The property in question that that the City possesses on Bonita was obtained in 2011 by Court ordered forfeiture and held by the City since that time. Because of the forfeiture, the City had no
cost to obtain the property but has been spending funds to maintain the property since that time.

ALTERNATIVES

Council may choose to not to enter into the agreement. Council could further direct staff to work thru the variance process on the 2119 Roosevelt address so the Brandons could build a home on that lot. If no agreement is authorized, the City would continue to maintain the property until another opportunity developed. Staff also recommends the agreement as a potential template for promoting infill construction opportunities in compliance with the City’s housing plan and housing needs.

FINANCIAL IMPACTS

None. The properties are similarly situated in value.

EMERGENCY/NON EMERGENCY

Non Emergency.
NEW BUSINESS