



# MIDDLETOWN

## MIDDLETOWN CITY COUNCIL AGENDA TUESDAY, December 21, 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-** Public Right-of-Way Vacation: A partial right-of-way vacation request by petitioner David Striker, with Tri-County Management, for the vacation of City-owned right-of-way, known as Reynolds Avenue, that is located between the properties located at Parcel IDs: Q6511007000023, Q6511 007000018, and Q6511007000043. The city-owned right-of-way requested for vacation is approximately 0.01acres in size. The Planning Commission recommendation is forwarded to the City Council for final review and decision.

#### **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 September 21, 2021
- b) Receive and file the following board and commission minutes:
  - Board of Zoning Appeals- October 6, 2021
  - Civil Service- October 21 & November 18, 2021
  - Board of Health-November 9, 2021
- c) Confirm the personnel appointments of Derek Brown to the position of Electronics Technician in the Department of Public Works & Utilities, Division of Electronic Maintenance; Ashley Schwab and Margaret Van Vliet to the position of Senior Account Clerk in the Department of Finance, Division of Water and Sewer Administration; Ryan Childs, Christopher Gargiulo, Joshua Patton, Zachary Timmons, Isaac Steinbrunner, Andrew Maurer and Celine Schank to the position of Firefighter-EMT in the Department of Public Safety, Division of Fire.
- d) Purchase Hydrofluorosilicic Acid (HFS) from PVS Nolwood Chemicals, of Detroit, Michigan, in the amount of \$4.308/gallon for use at the Water Treatment Plant during the 2022 calendar year.
- e) Purchase liquid chlorine (Sodium Hypochlorite 12-13% concentration) from Miami Products and Chemical Company, of Dayton, Ohio, in the amount of \$1.28/gallon for use at the Water Reclamation Facility.
- f) Purchase of liquid chlorine (Sodium Hypochlorite 15-18% concentration) from JCI Jones Chemical, Inc, of Beechgrove, Indiana, in the amount of \$1.73/gallon for use at the Water Treatment Plant.
- g) Confirm the following e following title and wage range changes effective January 1, 2022 in accordance with Ordinance No. 02021-105, 02021-106, and 02021-107:

Title Change Only



# MIDDLETOWN

## MIDDLETOWN CITY COUNCIL AGENDA TUESDAY, December 21, 2021

---

Housing Code Specialist to Code Specialist: Sarah Valentin, Shawn Dickens, Candice Stultz, Lisa Robyn Rawlins

Historic Property Specialist to Code Specialist: Annette Accurso

Sanitarian to Registered Environmental Health Specialist: Rebecca Janay Mourer

### Wage Range Change Only

Scott Tadych Public Works & Utilities Director Range 167, Step G

Nakita Lancaster Assistant Public Works & Utilities Director Range 291, Step I

### Title and Wage Range Change

Budget Analyst to Budget Manager Angie Carr, currently Range 181, Step G, moving to range 177, Step E

## LEGISLATION

1. **Ordinance No. 02021-116**, an ordinance establishing a procedure for and authorizing an amendment to a contract with Perkins/Carmack Construction, LLC for the design and construction of a maintenance building at the Water Reclamation Facility and declaring an emergency.
2. **Ordinance No. 02021-117**, an ordinance authorizing the purchase of additional aviation fuel from AvFuel and declaring an emergency.
3. **Ordinance No. 02021-118**, an ordinance establishing a procedure for and authorizing a contract with Schulte Business Services to provide snow removal at Middletown Regional Airport and declaring an emergency.
4. **Ordinance No. 02021-119**, an ordinance establishing a procedure for and authorizing additional funds for the 2021 contracts for grounds maintenance and declaring an emergency.
5. **Ordinance No. 02021-120**, an ordinance establishing a procedure for and authorizing a contract with Metropolitan Environmental Services to clean approximately 151,000 feet of sanitary sewer and declaring an emergency.
6. **Resolution No. R2021-52**, a resolution approving and adopting the 2020-2030 Parks Master Plan. (Second Reading)
7. **Ordinance No. 02021-121**, an ordinance amending section 1226.10 of the Middletown Development Code of the Middletown Codified Ordinances. (Second Reading)
8. **Ordinance No. 02021-122**, an ordinance establishing a procedure for and authorizing a contract with Five Star Commercial Roofing, Inc. for the repair of the roof on the ATAD Building at the Water Reclamation Facility. (Second Reading)



# MIDDLETOWN

## MIDDLETOWN CITY COUNCIL AGENDA TUESDAY, December 21, 2021

---

9. **Ordinance No. 02021-123**, an ordinance determining to proceed with an issue of bonds in the amount of \$16,800,000 and certifying the same to the Board of Elections. (Second Reading)
10. **Resolution No. R2021-53**, a resolution requesting the Auditor of Butler County to advance to the Treasurer of the City of Middletown, Ohio, taxes assessed and collected for and on behalf of the City of Middletown, Ohio and declaring an emergency.
11. **Resolution No. R2021-54**, 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. (Year End – Various Funds)
12. **Ordinance No. 02021-124**, an ordinance establishing a procedure for and authorizing the continuation of a contract with Safe Skies Aviation, LLC for fixed base operator services at Middletown Regional Airport on a month-to-month basis and declaring an emergency.
13. **Ordinance No. 02021-125**, an ordinance authorizing the amendment of a contract with Rumpke of Ohio, Inc. for refuse collection and disposal and declaring an emergency.
14. **Resolution No. R2021-55**, a final resolution authorizing the City Manager to enter a contract with the State of Ohio, Department of Transportation for the 2022 Urban Paving Program on a portion of State Route 4 from Tytus Avenue to Germantown Road and declaring an emergency. (No action requested until 1/4/22.)
15. **Ordinance No. 02021-126**, an ordinance authorizing a contract with Milcon Concrete, Inc. for improvements to Central Avenue between Canal Street and University Boulevard and declaring an emergency. (no action requested until 1/4/22.)
16. **Ordinance No. 02021-127**, an ordinance amending Section 452.15 (City Parking Facility Fees) of the Codified Ordinances. (First Reading)
17. **Ordinance No. 02021-128**, an ordinance establishing a procedure for and authorizing a contract with Cartograph Systems, LLC for the purchase of asset management software. (First Reading)
18. **Ordinance No. 02021-129**, an ordinance vacating a portion of public right-of-way located between the parcels known as Q6511007000023, Q6511007000018 and Q6511007000043. (First Reading)
19. **Ordinance No. 02021-130**, an ordinance approving a request to rezone one parcel located at the southwest corner of Manchester Road and Dixie Highway from R-2 (Low Density Residential) to PD (Planned Development) and approving a preliminary development plan. (First Reading)

## NEW BUSINESS

# **PUBLIC HEARING**



December 13, 2021

**TO:** City Council  
**ATTN:** Jim Palenick, City Manager  
**FROM:** Ashley Combs, Development Services Director

**SUBJECT:** **Right-of-Way Vacation #3-21: Portion Of A Public Right-Of-Way**  
*Located near the intersection of Reynolds Ave. and S. Canal St.*

**PETITIONER:**

David Striker  
Tri County Management Inc.  
2501 Cincinnati Dayton Road

**REQUEST:**

Public Right-of-Way Vacation: A partial right-of-way vacation request by petitioner David Striker, with Tri-County Management, for the vacation of City-owned right-of-way, known as Reynolds Avenue, that is located between the properties located at Parcel IDs: Q6511007000023, Q6511007000018, and Q6511007000043. The city-owned right-of-way requested for vacation is approximately 0.01 acres in size. The Planning Commission recommendation is forwarded to the City Council for final review and decision.

**HISTORY:**

In March 2017 the petitioner submitted a partial alley vacation request that was approximately 10 feet wide and 65 feet long between lots numbered 024 and 044. The applicant proposed that the alley located between the buildings would be closed off from through traffic and be used for outdoor seating for their bar/restaurant.

Planning Commission recommended denial of an alley vacation to the City Council. The recommendation of denial was based on the City Engineering Department comments that stated, "the Engineering Department does not believe it is in the best interest of the City to remove this access to public parking and therefore does not recommend the vacation of this alley. Ultimately the alley vacation was approved by the City Council overturning the Planning Commission's recommendation.

**STAFF ANALYSIS:**

Per the Ohio Revised Code that provides for statutory proceedings to vacate a street, alley, or portion thereof by the legislative authority upon petition by a person owning a lot in the immediate vicinity of the street or alley, the process for vacation requires filing a petition to Planning Commission to make a recommendation to City Council. The Planning Commission recommendation is then forwarded to City Council for final consideration. If approved, the city owned property will be split evenly and sold to the abutting property owners.

The petitioner requests the additional right-of-way to be vacated to be used for the outdoor space that will be utilized by his business. The petitioner will have outdoor seating and be restoring the alley with new pavers and asthetic upgrades (lighting, etc.).

**PLANNING COMMISSION DECISION:**

At their regular meeting held on Wednesday, December 8, 2021, the Planning Commission voted to recommend approval of the right-of-way petition due to the staff recommendation, appropriate paperwork being filed, and to support the business owner so that work could start in the alley to perform the upgrades to allow for the outdoor seating and dining area for their bar/restaurant.

**LEGAL NOTICE:**

Meeting notices were sent to the property owners that are within 200 feet of the proposed street vacation as well as the utility providers. No objections have been received at this time. An important determination for the right-of-way vacation is that there is no longer a public need for the property as a public street.

**OTHER CITY DEPARTMENT COMMENTS:**

The City's internal Development Committee reviewed the proposal and gave its support. The Development Committee includes the City Manager and Assistant City Manager, Economic Development Department, Law Department, Public Works & Engineering Department, Police, Development Services, Building Inspections Division, Planning/Zoning Division, and Code Enforcement Division.

**RIGHT-OF-WAY VACATION REVIEW CRITERIA:**

1. The vacation of the requested right of way should not be a detriment to the neighborhood or to emergency service access or utility providers.
2. Planning Commission's recommendation is forwarded to City Council for a public hearing. City Council makes the final decision by City ordinance to vacate public right-of-way.

**RIGHT-OF-WAY VACATION PETITION PROCESS:**

1. Petition for vacation filed with clerk of city council.
2. Clerk forwards request to city planning commission staff.
3. Request is placed on agenda of city planning commission.
4. Public agencies and affected property owners are notified.
5. Public hearing held at Planning Commission.
6. Planning commission approves or denies request.
7. A recommendation based on the above is forwarded to the clerk of the city council.
8. City council sets a public hearing before city council.
9. City council conducts a public hearing.
10. Decision is made to approve or deny request.
11. If approved, legislation is adopted vacating public right-of-way.

**ATTACHMENTS:**

Vacation petition and vacation location map.

**ALTERNATIVES:**

City Council shall adopt, adopt with some modification, or deny the recommendation of the Planning Commission. City Council shall not alter or make a decision that varies from the Planning Commission without a majority vote of City Council.

**FINANCIAL IMPACT:**

None

**EMERGENCY/NON-EMERGENCY:**

Non-Emergency



# MIDDLETOWN

## ALLEY VACATION PETITION

Honorable City Council Members  
Middletown, Ohio

Date: 10/08/2021

The undersigned, being owners of property abutting the street/alley/ walkway between Lots Q6511007000023, Q6511007000018, & Q6511007000043 in the City of Middletown, running North / South (north, east, south, west) off Central Ave (Street, Road, Blvd, etc.) hereby petition that said street/alley/ walkway be vacated pursuant to law.

And the undersigned, being all the owners of property abutting said street/ alley/walkway, do hereby consent that the same be vacated without notice or publication of the public hearing to be held by the City Council, as provided in Section 723.06 of the Ohio Revised Code.

OWNER SIGNATURE

LOT NUMBER

*Dave Striker* Q6511007000043

*Larry Keyes* Q6511007000023

*Larry Keyes* Q6511007000018

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Person:

Name Dave Striker / Tri-County Management

Address 1224 Central Avenue

Middletown Ohio 45044



CITY OF MIDDLETOWN CASH  
AND RECEIPTS REPORT

DATE 10/20/2021

## City Council

---

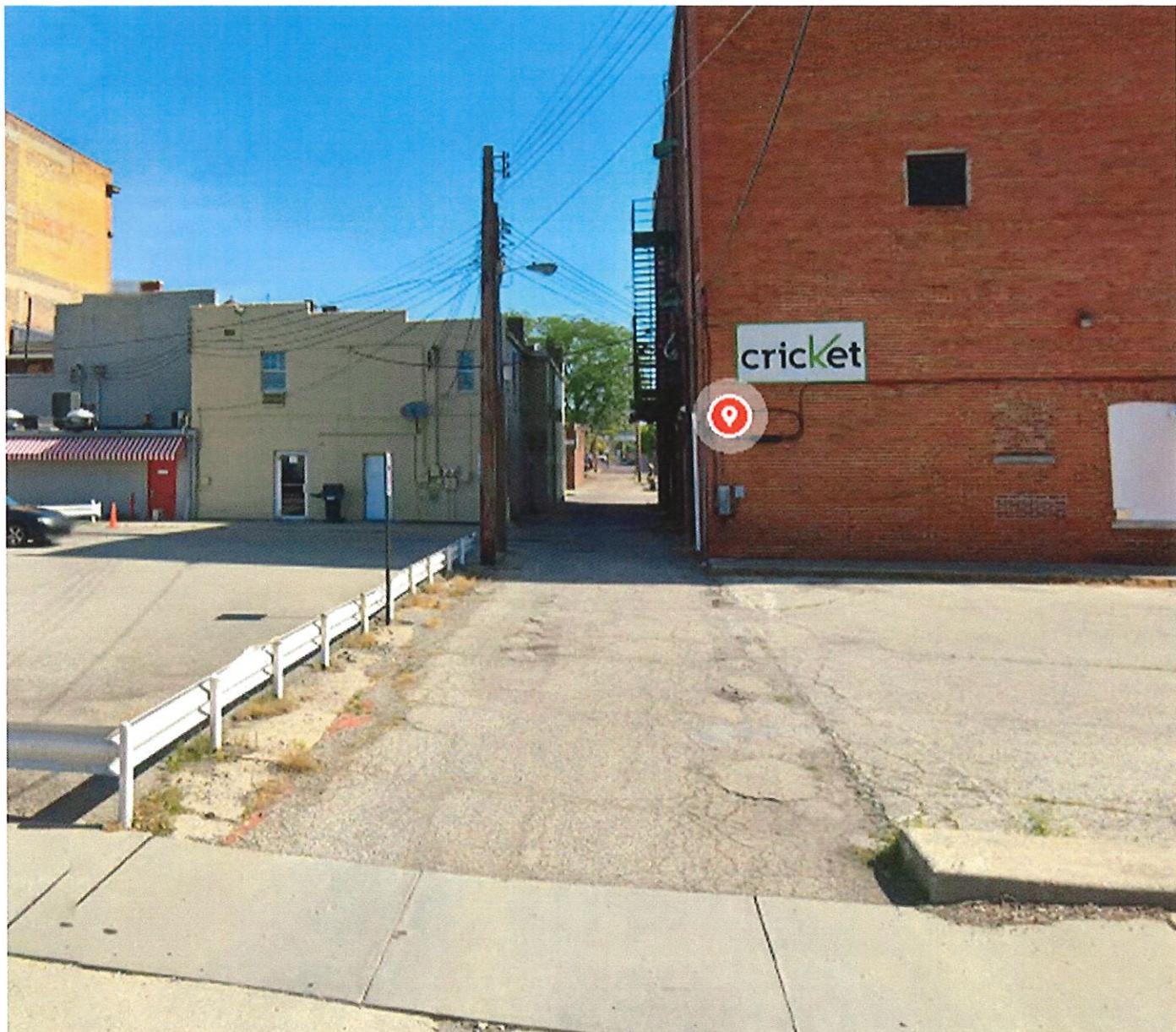
**DEPARTMENT/DIVISION**

*Amy Schindl*  
COLLECTOR'S SIGNATURE

REFERENCE NO. \_\_\_\_\_

'REMARKS:





# **CITIZEN COMMENTS**

# **COUNCIL COMMENTS**

# **CITY MANAGER REPORTS**

# **CONSENT AGENDA**

## ROLL CALL

## EXECUTIVE SESSION

## CITIZEN COMMENTS

## COUNCIL COMMENTS

Ms. Vitori

At 5:00 p.m., Mayor Condrey called the City Council Meeting to order in Council Chambers, Lower Level of the City Building.

City Council Members present: A. Vitori, T. Moon, J. Mulligan, N. Condrey, M. Nenni.

At 5:00 p.m. Mr. Mulligan moved to adjourn to executive session under the authority of O.R.C. 121.22 (G) (1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Ms. Vitori seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori.

At 5:40 p.m. Mr. Mulligan moved to return to regular session. Ms. Vitori seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey.

Chris Batty, 128 Marymont Court, Middletown, OH, just two weeks ago and for the past four months I've warned you of the illegal government mandates and requested this council take action, proactively to do your job, uphold your oath of office and protect the God-given, constitutionally protected rights of Middletonians by voting on and passing a medical freedom ordinance. Just two days after the last city council meeting, Joe Biden illegally and unconstitutionally issued a vaccine mandate for over 100 million Americans. Recent data reveals that there are as many adverse reactions and even deaths caused by this experimental vaccine such as, 61,000 hospitalizations, 110,000 doctors office visits 6,000 cases of anaphylaxis, 8,000 Bell's palsy, 2,000 miscarriages, 7,000 heart attacks, 20,000 permanently disabled folks, 15,000 deaths. That's right, deaths. To make it a little more personal I've had multiple people that I know personally that have had adverse reactions. One had to go to the emergency room just two hours after getting the vaccine and I'm seeing videos and reading affidavits of people that have also experienced detrimental effects. I keep hearing from our leaders that when it comes to a Covid death, one is just too many, but 15,000 deaths and hundreds of thousands or more of adverse effects are not too much? Although Governor DeWine likely will not do his job to protect us the way he should, the way other governors are, at least he acknowledged that Biden made a mistake with this mandate. What this country needs is cities all over our nation standing up to this tyranny and enacting legislation to the same effect to send the message that these illegal overreaches will not be tolerated. We need brave, patriotic councilmen women and mayors to stand up and do what is right and lead the charge on this. I've come here for the last four months to inform you and also to arm you with the data and the pre-written ordinances and point you to other brave leaders that are doing the right thing to encourage and compel you to do the same. Look at Lebanon City, their city council passed it two weeks ago and I can email you a copy of their ordinances and resolutions they passed. Perhaps this council could talk to Lebanon's and leverage what they know. I understand that Law Director Ben Yoder had some uncertainties about the law in his response about three months ago so hopefully those should be easily cleared up. Just this morning Sheriff Jones issued a statement and did a video stating that they are not the shot police and will not be enforcing vaccines. This isn't just a statement it's action to send a clear message to the tyrants in this country that are encroaching on and taking our freedoms. I'm thankful for brave folks like this and they are simply fulfilling their oath and following the Constitution of the United States and I quote, "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic. This is the same oath that each one of you took and swore to when taking your positions and the people of Middletown expect you to abide by it. Therefore, I urge you to bring this resolution or ordinance up for a first reading and a vote at or before the next city council meeting. If you aren't in support of it the people of the city will simply replace you with someone who will."

Ms. Vitori congratulated Portopia which is the new immersive art experience that the Visitors Bureau launched recently. It is really great family entertainment. It's an adventure and has clues and codes and most of the kids that have come through so far have really enjoyed it. The Visitors Bureau is working on some promotions for first responders and teachers. I want to thank DMI (Downtown Middletown Inc.) for Dog Days which was another fun event where we saw lots of people out and about with all their pooches. It was nice to see the streets full of people and life. I have received some questions and concerns from residents about public records requests. I would like for the City to kind of explain what a public records request is how it works.

Mr. Brodi Conover commented that the City receives hundreds of public records requests a year and we process all of them all the same way. The City receives the request and determines if there is a responsive record. The request must specifically identify what it is seeking and the record must actually exist. The City's Law Department knows where everything is and they work with other departments to find what the requester is looking for. Regardless of who makes a request we treat them all the same and respond to them as best we can. We really try to work with the people that are making the request and we keep a log of where the request is in the process of response. If someone requests a record but that doesn't exist we will try to reach back out to them to let them know how our records are organized and provide retention schedules. City emails are preserved on an archiver server. There was discussion about employees'

text messages in relation to public records requests. Ms. Cohen reported that every employee is provided the employee handbook that requires employees to maintain public records. If people want to make a public records request, the easiest way to do it is through the City website or you can provide the request to any staff member.

**Mr. Mulligan**

Mr. Mulligan commented that earlier this month he had the opportunity and participated in a ribbon cutting event for the new bike path connection between Middletown and Franklin. He congratulated all of the entities that were involved including Middletown, Franklin, Great Miami Riverway, Butler Metro Parks, Ohio Department of Transportation. This was the longest, most challenging portion of the bike path to complete because of the topography and a railroad track. I encourage the residents of Middletown to get out and enjoy this amenity. It connects over 300 miles of bike path for biking, walking, running and enjoying our scenic riverfront. In the future there will be a connection made from North Breiel at State Route 73 to make access to the bike path easier. The Middletown Economic Development team put together a great session for the inaugural meeting of the Small Business Alliance. There were about 30 small business owners that came together. The Small Business Alliance will help small business owners navigate the world of Google and marketing and it's a free service. I would encourage all small businesses to take advantage of this. The City really wants to be at your side and to be your partner. Go to [choosemiddletownoh.org](http://choosemiddletownoh.org) to sign up. The next meeting is October 13, 2021 at 8 a.m.

**Mr. Moon**

Mr. Moon commented that last Friday he had the opportunity to play a small part at the First Friday Dog Days event downtown. Ms. Nenni and I were the judges of the dogs that were dressed up. It was a lot of fun and a great event. I had a chance to talk to the owner of White Dog Distillery and got a brief update on his plans and the impact of the grant he received from the City. He is on track to bring the project to fruition.

**Ms. Nenni**

Ms. Nenni echoed Mr. Moon's comments about the Dog Days event. It was a really nice to see so many people downtown and to see an event that memorializes a friend of ours, Kara Goheen, and all of the work that she put into creating that event and making it so special. Thank you to all of the people who continue to work so hard to make the City vibrant. The First Friday event for September is hosted by the Pendleton Art Center. So many people are enjoying the newly paved roads but keep in mind that the speed limits have not changed, please be safe.

**Ms. Condrey**

Ms. Condrey asked for an update on the electric use at Smith Park. Mr. Tadych responded that they are working to get the locks back on the electric outlets; the Parks Department has had a lot of transitions due to retirements. Mayor Condrey asked if there was a main switch to shut the power off to the entire park at night. Mr. Tadych didn't think so but he would find out.

**CITY MANAGER REPORT**

Mr. Palenick was on vacation. Assistant City Manager Cohen discussed the October 19, 2021 City Council meeting. Mr. Palenick and other key staff members would not be able to attend that meeting due to a conflict. It was requested that City Council call a special meeting for the purpose of the second budget presentation and the Riverfront Development project for Thursday, October 21 at 5:30 p.m.

**CONSENT AGENDA**

Receive and file the following Board and Commission minutes:

Board of Zoning Appeals- July 7, 2021  
Board of Health- August 10, 2021  
Planning Commission- August 11, 2021

Receive and file Oaths of Office for Kimberly Poe and Jennifer Rednour

Confirm the following personnel appointments:

Devra Wells to the position of Assistant Development Services Director in the Development Services Department; and Christina Blanton to the position of Dispatcher in the Department of Public Safety, Division of Police; Hannah Moore to the position of Human Resources Specialist in the Department of Administrative Services, Division of Human Resources; Shawn Dickens to the position of Housing Code Specialist in the Department of Development Services.

Confirm the promotional appointments of Jonathan Winkler to the position of Equipment Operator in the Department of Public Works & Utilities, Division of Street Maintenance; Nicolas Gillespie to the position of Equipment Operator in the Department of Public Works & Utilities, Division of Parks Maintenance; and Matthew Hale to the position of Equipment Operator in the Department of Public Works & Utilities, Division of Stormwater Maintenance.

To authorize the City Manager to enter into a contract with Grid One Solutions to assist the Water Maintenance Department with meter transmission unit (MTU) installations.

Appoint the following members to the Community Center Advisory Committee:

Dr. Keith Bricking, Jennifer Effinger, Stephen Hightower, Deanna Shores and Tyler Roberts, Tal Moon and Ami Vitori

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

MOTION ITEM	To authorize the City Manager to enter into a professional services contract with Brown and Caldwell for as-needed engineering services for the sewer rehab and replacement program.
	Mr. Mulligan moved to authorize the City Manager to enter into a professional services contract with Brown and Caldwell for as-needed engineering services for the sewer rehab and replacement program. Ms. Nenni seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori, Mr. Moon.
Waive Charter	Mr. Mulligan moved to suspend the Charter provision that requires reading on two separate days and to declare Resolution No. R2021-36, Resolution No. R2021-37, Ordinance No. O2021-76, Ordinance No. O2021-77, Resolution No. R2021-38, Ordinance No. O2021-78, Ordinance No. O2021-79 and Ordinance No. O2021-80 emergency measures to be read one time only. Ms. Vitori seconded. Ms. Condrey commented that she didn't feel that Resolution No. R2021-37 or Ordinance No. O2021-76 should be considered as emergency legislation. Motion carried. Ayes: Mr. Mulligan, Ms. Vitori, Ms. Nenni, Mr. Moon. Nay: Ms. Condrey.
Res. No. R2021-36 Accept the Amounts And Rates	<b>Resolution No. R2021-36</b> , a resolution accepting the amounts and rates as determined by the Budget Commission and authorizing the necessary tax levies and certifying them to the County Auditor and declaring an emergency was read.
	Mr. Mulligan moved to approve Resolution No. R2021-36, a resolution accepting the amounts and rates as determined by the Budget Commission and authorizing the necessary tax levies and certifying them to the County Auditor and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Ms. Condrey, Ms. Nenni, Ms. Vitori, Mr. Moon, Mr. Mulligan.
Ord. No. O2021-72 Fare Free Transit 2022	<b>Ordinance No. O2021-72</b> , an ordinance authorizing the Middletown Transit System to operate fare free in calendar year 2022 was read for a second time.
	Ms. Vitori commented that a gentleman who is a frequent bus rider sung the praises of this program to us at the end of the last council meeting. It assuaged our fears about it being a constant homeless circulator saying that he really hadn't seen much if any of it and he rides it every day to different parts of town. He explained a lot of the program's benefits to him as a rider. I think while we had those fears, the benefits of the relationship that we have with that organization and the potential future projects that we might have with them outweigh any of the concerns that I previously had. The two main points are that the exchange of money is a challenge and that the grant dollars exceed the revenue generated by the fares.
	Ms. Condrey commented that she didn't find either one of those arguments to be worth not to charge a fare, for a few reasons. One, with that same argument of it's hard to collect money then should we stop collecting for water in our City because that also costs money to collect. Businesses have to collect money every day and that's part of the process. Do they stop having to deal with collecting money and we give grants to that? I just don't find that that is a good enough reason to not collect fare. The grant dollars are our tax dollars, it's just a different level, not coming directly from the City but we're paying that money anyway. It's not a free lunch it's just coming from a different pot of money and as stewards of grant money, I feel we should also try to spend as little of grant money as we can so that the money can be spent where it's more needed. I personally don't believe that we should be waiving the fees for the transit system and plan to vote against this.
	Mr. Mulligan moved to approve Ordinance No. O2021-72, an ordinance authorizing the Middletown Transit System to operate fare free in calendar year 2022. Ms. Vitori seconded. Motion carried. Ayes: Ms. Nenni, Ms. Vitori, Mr. Moon, Mr. Mulligan. Nay: Ms. Condrey.
Ord. No. O2021-73 Amend Development Code	<b>Ordinance No. O2021-73</b> , an ordinance amending various sections the Middletown Development Code of the Middletown Codified Ordinances was read for a second time.
	Mr. Mulligan moved to approve Ordinance No. O2021-73, an ordinance amending various sections the Middletown Development Code of the Middletown Codified Ordinances. Ms. Nenni seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori.
Ord. No. O2021-74 Grant Compassion City Center, Inc. (Middie Way Baseball)	<b>Ordinance No. O2021-74</b> , an ordinance authorizing the City Manager to enter into a grant agreement with Compassion City Center, Inc. was read for a second time.
	Mr. Mulligan moved to approve Ordinance No. O2021-74, an ordinance authorizing the City Manager to enter into a grant agreement with Compassion City Center, Inc. Mr. Moon seconded. Motion carried. Ayes: Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori.
Res. No. R2021-37 Amend Appropriations	<b>Resolution No. R2021-37</b> , 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 was read. (General & Capital Improvement Funds)

Mr. Mulligan moved to approve Resolution No. R2021-37, 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. (General & Capital Improvement Funds) Mr. Moon seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori, Mr. Moon.

Public Works Director Scott Tadych discussed the features and capacity of the proposed mobile restroom trailers and explained that the trailers would be stored at the airport and be available to use at any park or large City event. The ARPA funds can be used because these trailers will help to support local tourism. Mr. Tadych explained that the City would be responsible for opening and closing these mobile restrooms, just like they do the current park facilities.

Mayor Condrey asked for clarification about the restrooms being utilized regularly at the airport. The current restroom facilities at the airport will remain open and available for use.

**Ord. No. 02021-76  
Mobile Restroom  
Trailers**

**Ordinance No. 02021-76**, an ordinance establishing a procedure for and authorizing a contract with NRT Sales, LLC for the purchase of two mobile restroom trailers and declaring an emergency was read.

Mr. Mulligan moved to approve Ordinance No. 02021-76, an ordinance establishing a procedure for and authorizing a contract with NRT Sales, LLC for the purchase of two mobile restroom trailers and declaring an emergency. Ms. Nenni seconded. Motion carried. Ayes: Ms. Condrey, Ms. Nenni, Ms. Vitori, Mr. Moon.

**Ord. No. 02021-77  
Amend Contract  
Howell Contractors**

**Ordinance No. 02021-77**, an ordinance establishing a procedure for and authorizing a third amendment to a contract with Howell Contractors, Inc. for replacement of the North Middletown Interceptor Sewer and declaring an emergency was read.

Mr. Mulligan moved to approve Ordinance No. 02021-77, an ordinance establishing a procedure for and authorizing a third amendment to a contract with Howell Contractors, Inc. for replacement of the North Middletown Interceptor Sewer and declaring an emergency. Ms. Nenni seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey.

**Res. No. R2021-38  
Res. Of Necessity**

**Resolution No. R2021-38**, a resolution declaring the necessity of acquiring, constructing, installing, equipping, or improving public improvements within the City of Middletown, Ohio and declaring an emergency was read.

Mr. Mulligan moved to approve Resolution No. R2021-38, a resolution declaring the necessity of acquiring, constructing, installing, equipping, or improving public improvements within the City of Middletown, Ohio and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori.

**Ord. No. 02021-78  
Proceed with Public  
Improvements  
MADE Industrial Park**

**Ordinance No. 02021-78**, an ordinance determining to proceed with the acquisition, construction, installation, equipping, and improvement of public improvements and declaring an emergency as read.

Mr. Mulligan moved to approve Ordinance No. 02021-78, an ordinance determining to proceed with the acquisition, construction, installation, equipping, and improvement of public improvements and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori.

**Ord. No. 02021-79  
Levy Special  
Assessments  
MADE Industrial Park**

**Ordinance No. 02021-79**, an ordinance levying special assessments for the purpose of acquiring, constructing, installing, equipping, and improving public improvements and declaring an emergency was read.

Mr. Mulligan moved to approve Ordinance No. 02021-79, an ordinance levying special assessments for the purpose of acquiring, constructing, installing, equipping, and improving public improvements and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori, Mr. Moon.

**Ord. No. 02021-80  
Contract with DSD  
Advisors, LLC**

**Ordinance No. 02021-80**, an ordinance authorizing a contract with DSD Advisors, LLC to provide public policy and government relations assistance (lobbying) and declaring an emergency was read.

Mr. Mulligan moved to approve Ordinance No. 02021-80, an ordinance authorizing a contract with DSD Advisors, LLC to provide public policy and government relations assistance (lobbying) and declaring an emergency. Mr. Moon seconded. Motion carried. Ayes: Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan.

**Res. No. R2021-39  
Amend Appropriations**

**Resolution No. R2021-39**, 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 was read

	<p>with no action requested until October 5, 2021. (General Fund – Human Resources)</p> <p><b>Ord. No. 02021-81</b> <b>Contract Polydyne, Inc.</b></p> <p><b>Ord. No. 02021-82</b> <b>Amend Contract with</b> <b>Air Products</b></p> <p><b>NEW BUSINESS</b></p>
	<p><b>Ordinance No. 02021-81</b>, an ordinance establishing a procedure for and authorizing a contract with Polydyne, Inc. for the purchase of polymer for use at the Water Reclamation Facility for the year 2022 was read for the first time.</p> <p><b>Ordinance No. 02021-82</b>, an ordinance establishing a procedure for and authorizing an amendment to the contract with Air Products for the purchase of carbon dioxide for use at the Water Treatment Plant for the year 2022 was read for the first time.</p>
	<p>Ms. Vitori stated that she has received several emails from people who are not interested in the medical freedom ordinance that Mr. Batty requested. I am not interested in this ordinance and I don't think Council is supportive of it, because three of us would have spoken up. I have heard from small business owners that don't want to be told how to run their businesses. I know he keeps coming and asking, so I wanted to provide that feedback.</p> <p>Ms. Condrey stated that she would be supportive of an ordinance that dealt with the vaccine specifically. I was in a Mayor's Alliance meeting in Columbus last week. The Ohio Director of Health said that he knows the risks associated with Covid and he chose to be vaccinated- the key word being chose. I believe our citizens have a right to choose the vaccine. I want to keep our freedoms in place so that it's not forced upon us.</p> <p>Ms. Vitori commented at this point there isn't anything forcing it upon us.</p> <p>Ms. Condrey stated that there are federal mandates for some government jobs.</p> <p>Ms. Vitori stated that in terms of making a city-wide ordinance, I don't feel like there's anything at the table that we need to move forward on. Mr. Batty keeps coming and we just haven't said anything. Typically, the way it works is that three Council members would have to back an ordinance and so far there hasn't been support for it.</p> <p>Ms. Condrey stated that she has been working on the legislation. I want the proposal to be relevant to Middletown. What I have seen to date was not exactly what I would propose. I'm getting a little closer to something that I would like to put forward to staff.</p> <p>Ms. Cohen asked to be kept up to date on whatever you want us to consider and we'll distribute it appropriately.</p> <p>Ms. Nenni commented that if anyone has something that they would like to present it would need to be seconded by two other council members before we would expend staff resources to look into that specific piece of legislation.</p> <p>Ms. Condrey said at the last meeting, Ms. Cohen stated that I should send it to her so now I'm confused about the process and asked for clarification.</p> <p>Ms. Cohen stated that it would be helpful for staff to have a chance to look at what is proposed and be able to respond intelligently to any questions but if council would like to vote first before staff time is expended that is certainly up to you.</p> <p>Ms. Nenni commented that we talk so often about how thinly our staff is stretched and as Council member Vitori stated, no one else was interested in the legislation that was proposed. If someone else would like to propose a different piece of potential legislation, I would want to look at that legislation myself and hear from my fellow counselors that they were interested in going down that path.</p> <p>Ms. Condrey asked how can you look at the legislation when I can't email it to council because doing so would violate the Ohio sunshine laws.</p> <p>Ms. Vitori suggested that she bring it to new business and explain the intent of the proposed legislation.</p> <p>Ms. Condrey explained that her intent would be to create legislation that in Middletown, Ohio we would not allow any employers, especially City staff to require a vaccine of any citizen of our city or anyone employed in our City. That's it in a nutshell but there's a lot more details in that because it's tied into the law and the constitution; but that would be where I would go with it.</p> <p>Ms. Nenni said I still have problems with that because while you're talking about protecting the freedoms of people you're also taking freedoms away from small businesses to make decisions for themselves and for their business and for the people who choose to be employed with them. That's my problem with what you're proposing. I'm not really interested in going down that road with the heretofore presented legislation.</p>

Mr. Moon commented that he would be very concerned about the legal liability we would be assuming by prohibiting an employer from doing something. It's just a thought from the insurance perspective. We talked about a contract that we were looking at with DMI for downtown security. We were concerned about the legal liability of giving a grant to a third party. Now we would potentially be assuming legal liability for injuries that a third party may sustain. Hearing it for the first time, that would be my gut reaction. Taking it a step further, I would want to consult with our insurance provider. Does that create insurability issues for the City at large because we are assuming those liabilities?

Mr. Mulligan suggested getting an updated opinion from Bricker and Eckler on this type of legislation.

Ms. Condrey commented that she just received the legislation that the City of Lebanon approved and she hasn't had a chance to fully look over it. It seems more tailored to the vaccine itself and not masks at large.

Mr. Moon clarified that the City of Lebanon's legislation dealt with just their city staff and the resolution that dealt with employers was an encouragement to do so.

Ms. Condrey asked if Council would be supportive of an ordinance stating that City staff could not be mandated to get vaccinated and that we would encourage other employers to do the same.

Ms. Nenni commented that we're not mandating it to our staff right now. It's just a recommendation.

Ms. Cohen stated that we would also need to look at how that would affect our charter provisions indicating that the City Manager is given the chief administrative office and how that affects the charter balance of power.

Ms. Condrey commented that the City is dipping their toes into the vaccination aspect because there are issues dealing with leave whether you're vaccinated or not. The toe is being dipped in the water and I'd like to protect that from going any further.

Mr. Conover stated that we can tailor the prior decision in light of the new circumstances if that is something you guys are interested in.

Ms. Condrey asked if there was any interest in having legal services review legislation of this type.

Mr. Mulligan said that he would be open to a limited review, the lawyer's input would be important.

Ms. Vitori asked if we want to bother spending time and resources on it at all. At this point we're not really facing a decision to be made but we're making one. Do we want to proactively do that and spend the money on legal or do we want to see what happens with this union discussion? I don't feel compelled right now that we need an ordinance in place. So that's the question, knowing our legal team is obviously already busy.

Ms. Condrey stated that I think it's worth the resources, we'd have to get enough of us to say that it is.

Ms. Nenni commented that Council recently considered legislation to expend more City funding for legal fees because we've spent so much on legal fees. I'm comfortable with where we're at right now. I certainly would like to see an update from staff on what happens with the discussions with the unions on the sick leave but I'm not interested in changing anything legislatively right now as it pertains to masks or vaccines.

Mr. Moon commented that I really need to know more about what's happening with the toe dipping in the water because that's the first I've heard about that. I'm not prepared to make any decision right now until I know more about that.

Ms. Condrey asked Ms. Cohen to speak about that in some fashion because otherwise we're at a standstill.

Ms. Cohen responded that she doesn't think we're in a place where we can intelligently have that discussion this evening. The information may change tomorrow and I would like to take the time to adequately address that.

Ms. Condrey expressed her appreciation for Ms. Nenni and Ms. Vitori's hard stance on the issue and for sharing their thoughts. There are two of us sitting up here who aren't willing to say enough and just keep punting on this issue. Either we look into it or we don't. If you're

interested in saving the freedoms and liberties of our citizens to get the vaccine you are, if you're not, you're not.

Ms. Vitori stated that we are talking about whether or not we want to spend time and resources on seeing if it is even possible, feasible and legal within the charter rules to do something like this. Do we want this kind of ordinance in place right now or do we want to wait and see if it's necessary at another time?

Ms. Nenni commented that my impression is that the majority of council has said no we don't want to do anything right now at this moment and that's where it stands.

Mr. Moon commented that if Mr. Palenick were here, I would tell him it was my preference that he not make this mandatory for our staff. Whether we need to pass legislation on that is a whole different conversation.

Mr. Mulligan commented that it's always good to get an opinion from legal counsel. My position on the vaccines and masks hasn't really changed. There are no plans for any mandates from this desk. We want everyone to stay safe and use their own good judgment and hopefully we'll get through this and pass this pandemic.

Ms. Condrey stated that I'm still supportive of no vaccines but I think the rest of council is going to sit and wait it out.

#### ADJOURNMENT

At 7:05 p.m., the meeting was declared adjourned until October 5, 2021 at 5:30 in Council Chambers.

---

Nicole Condrey, Mayor

Attest: \_\_\_\_\_

# BOARD OF ZONING APPEALS MINUTES

## October 6, 2021



MEETING  
LOCATION: City Council Chambers, City Building

MEMBERS: Christopher Amburgey Todd Moore  
PRESENT: Roger Daniel Jerry Heidenreich  
David Kash

STAFF  
PRESENT: Devra Wells, Assistant Development Services Director  
Ashley Combs, Development Services Director

OTHERS PRESENT: Phillip Brandon

Chairman Todd Moore called the meeting to order at 5:30 P.M. The roll was called by Assistant Development Services Director, Devra Wells. A voting quorum was present for the meeting. Mr. Moore led the pledge of allegiance.

### **APPROVAL OF PREVIOUS MEETING MINUTES – SEPTEMBER 1, 2021**

Mr. Moore asked if everyone had a chance to review the previous meeting minutes and asked for a motion regarding the September 1, 2021 meeting minutes. Mr. Daniel made a motion to approve the minutes as submitted. Mr. Kash seconded the motion. The motion for approval as submitted carried through roll call with Mr. Moore abstaining.

### **VARIANCE REQUEST #14-21: AREA AND DIMENSIONAL VARIANCE – 3316 TYTUS AVENUE**

Mr. Moore presented Area and Dimensional Variance Case #14-21: A request by applicant Phillip Brandon for approval of two Area and Dimensional Variances at the property located at 3316 Tytus Avenue. The property is zoned R-4: Attached Residential District. The variances requested are for a 12 foot reduction of the minimum lot width and a 6 foot reduction of the minimum lot width. If approved this would result in the creation of two new buildable lots.

Devra Wells, Assistant Development Services Director, spoke to the Board about changes in procedure that were recommended by the Law Department concerning aspects of the Board of Zoning Appeals meetings. She asked to be sworn in before giving her staff report and stated that the report would no longer include a staff recommendation for either approval or denial of any request. The Board discussed the reasons behind the change in format including the potential for an appeal of their decisions.

Ms. Wells was sworn in by Mr. Moore and presented the case using PowerPoint presentation.

Ms. Wells displayed photos of the subject property.

Ms. Wells displayed a zoning map and stated that the property was located in Butler County and is zoned R-4 Attached Residential District. It is vacant residential land and is a total of 1.3554 acres.

Ms. Wells displayed Table 1204-4: Site Development Standards from the Middletown Development Code. She stated that the minimum lot width requirement for a single-family home in the R-4 district is 70 feet. The applicant is requesting to create two lots – one with a 58 foot width and one with a 64 foot width. Ms. Wells stated that the applicant received approval of a variance in July 2021 for the same property. However, when the foundation for the first house was poured, it was placed one foot off of the planned location. The placement was within the acceptable allowance for their contract but does not allow for the required lot width of 65.2 feet that was approved by the Board of Zoning Appeals in July. The applicant is now asking for the variance to allow the lot width to be 64 feet in order to move forward with the lot split application.

Ms. Wells stated that per the Middletown Development Code, the requirement for legal notice for variance requests, meeting notice letters for the proposed variance were sent to all property owners contiguous and directly across the street or public right-of-way and noted that no comments were received.

Ms. Wells read Chapter 1226.10: Variances:

Per the Middletown Development Code, the purpose of a variance is to provide limited relief from the requirements of the code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose on property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship.

Ms. Wells displayed and read the Use Variance Review Criteria:

- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- C. The variance requested cannot otherwise be resolved by a zoning map amendment or a zoning map amendment is not the most beneficial approach;
- D. The essential character of the neighborhood will not be substantially altered as a result of the variance;
- E. There is an existing structure that cannot be reasonably used for a permitted use or a conditionally permitted use in the applicable zoning district;
- F. The proposed use is listed in Table 1204-3;
- G. The hardship condition is not created by actions of the applicant;
- H. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- I. The granting of the variance will not adversely affect the public health, safety or general welfare;
- J. The variance will be consistent with the general spirit and intent of this code;
- K. The requested use is permitted in another district in this code; and
- L. The variance sought is the minimum that will afford relief to the applicant.

Ms. Wells displayed the following Appeals information: any person or entity claiming to be injured or aggrieved by any final action of the Board of Zoning Appeals has the right to appeal the decision the court of common pleas as provided in the Ohio Revised Code Chapters 2505 and 2506.

Ms. Wells concluded her staff report.

Mr. Moore opened the public hearing and invited anyone forward who wanted to speak for the application.

Applicant, Phillip Brandon, came forward to speak for the requested variance and was sworn in by Mr. Kash. Mr. Brandon spoke to the Board about the “one foot tolerance” that is normally included in the contract to pour foundation walls. He said that the contractor may need to avoid obstacles such as tree roots, soft soil, etc. and that is why the allowance exists. When the foundation was set, he discovered that the lot width would not meet the variance that was approved in July 2021. He is requesting that the variance be granted with the new reductions of 12 feet and 6 feet. He said that 1, 2, 4, and 7 are the criteria that the Board used at the last hearing to approve the variance and they still apply.

Hearing no other questions for the applicant, Mr. Moore opened the public hearing to those wishing to speak in opposition. Hearing none the public hearing was closed. Mr. Moore closed the public hearing.

Mr. Kash asked if the Mr. Brandon cited the correct criteria for approval from the July meeting. Ms. Wells stated that she believed that he did. Mr. Kash made a motion to grant approval of the variance based on the review criteria 1, 2, 4, and 7. Mr. Heidenreich seconded the motion. The motion for approval carried unanimously through roll call. Ms. Wells stated that lot width is the only measurement that she is prohibited from altering by granting an Administrative Waiver. Any other site development standard would have been eligible for a 10% waiver. However, lot width reduction approvals have to be granted by the Board.

#### **NEW/OLD BUSINESS**

Mr. Moore asked about the change in procedure for the Board meetings. He asked if there were any recent legal cases or changes in the law that were the cause for the change. Ms. Wells stated that the conversation was held during a training session for a separate Board. The Law Director, Ben Yoder, was discussing the differences between each Board and their powers. He recommended that anyone who gives testimony be sworn in. The Board discussed whether they thought that staff recommendation affected their decisions. They stated that they have made decisions that didn't agree with staff recommendation and made decisions that have agreed with it. Mr. Kash stated that he understood the basis behind the recommendation. Mr. Amburgey stated that he thinks that a lack of staff recommendation hurts the Board because it takes away information that they would otherwise have. Mr. Kash stated that they receive a staff report and have a chance to ask any questions about issues that they don't understand before the meeting.

#### **ADJOURNMENT**

With no further business to conduct, there was a motion to adjourn at 5:57 pm. The motion passed unanimously.



Todd Moore  
Chairman



Devra Wells  
Assistant Development Services Director

\*Full Meeting Recording Available in the Development Services Department.

**MIDDLETOWN CIVIL SERVICE COMMISSION  
MEETING MINUTES – October 21, 2021 – 8:00 A.M.  
Conference Room 2C**

**ROLL CALL**

Meeting called to order

Members present: Tom Brickey, Chair  
Bill Becker, Vice-Chair  
Kathleen Batliner, Member

Staff Present: Megan Ellis, Human Resources Specialist

---

**APPROVAL OF MINUTES**

**Motion:** Moved by Mr. Brickey to approve the minutes of the meetings held on September 16, 2021 and October 13, 2021. Ms. Batliner seconded the motion. **Motion passed.**

**NEW BUSINESS**

**1. Eligibility Lists**

**a. Maintenance Worker**

Megan Ellis advised that the exam was held on Tuesday, October 12, 2021. There were 9 applicants, 6 passed the written exam, and 3 were no shows. She further stated that Mr. Brickey reviewed the applications prior to the meeting. **Motion:** Moved by Ms. Batliner to approve the eligibility list for the position of Maintenance Worker. Mr. Brickey seconded the motion. **Motion passed.**

**b. Executive Account Clerk**

Megan Ellis advised that exam was held on Thursday, October 14, 2021. She stated that this is a promotional position within the Finance Department. Ms. Ellis further stated there were 5 applicants, 3 passed the written exam, and 2 failed. **Motion:** Moved by Mr. Brickey to approve the eligibility list for the position of executive Account Clerk. Ms. Batliner seconded the motion. **Motion passed.**

**2. Update on Job Announcements/Exams**

Commission received the job posting for Maintenance Worker, Executive Account Clerk, Electronics Technician, and Water Reclamation Operator.

**REPORTS**

**1. Personnel Transactions**

Commission received the Personnel Transactions for the month of September 2021.

**ADJOURN**

Ms. Ellis advised that the next meeting will be held on November 18, 2021. **Motion:** Moved by Ms. Batliner to adjourn the meeting. Mr. Brickey seconded the motion. **Motion passed.**

*Tom Brickey*

Tom Brickey, Chair

Approved: 11-18-21

**MIDDLETOWN CIVIL SERVICE COMMISSION  
MEETING MINUTES – November 18, 2021 – 8:00 A.M.  
Conference Room 2C**

**ROLL CALL**

Meeting called to order

Members present: Tom Brickey, Chair  
Bill Becker, Vice-Chair  
Kathleen Batliner, Member

Staff Present: Megan Ellis, Human Resources Specialist  
Kee Edwards, Human Resources Assistant Director, Middletown City Schools

---

**APPROVAL OF MINUTES**

**Motion:** Moved by Mr. Brickey to approve the minutes of the meetings held on October 21, 2021. Ms. Batliner seconded the motion. **Motion passed.**

**NEW BUSINESS**

**1. Eligibility Lists**

**a. Senior Account Clerk**

Megan Ellis advised that the exam was held on Tuesday, November 9, 2021. She stated there were 6 applicants, 3 passed the written exam, 3 failed, and 1 was a no show. She further stated that Ms. Batliner reviewed the applications prior to the meeting. **Motion:** Moved by Ms. Batliner to approve the eligibility list for the position of Senior Account Clerk. Mr. Brickey seconded the motion. **Motion passed.**

**b. Electronics Technician**

Megan Ellis advised that the exam was held on Wednesday, November 10, 2021. She stated there were 5 applicants and all 5 passed the written exam. Ms. Ellis further stated that Ms. Batliner reviewed the applications prior to the meeting. **Motion:** Moved by Mr. Brickey to approve the eligibility list for the position of Electronics Technician. Mr. Becker seconded the motion. **Motion passed.**

**c. Water Reclamation Operator**

Megan Ellis advised that the exam was held on Thursday, November 11, 2021. She stated there were 4 applications, 1 of the applicants was a certified operator and the other 3 were uncertified. All 3 of the uncertified applicants failed the written exam. Ms. Batliner reviewed the application prior to the meeting. **Motion:** Moved by Mr. Becker to approve the eligibility list for the position of Water Reclamation Operator. Ms. Batliner seconded the motion. **Motion passed.**

**d. Dispatcher**

Megan Ellis advised that the exam was held on Saturday, November 13, 2021. She stated there were 6 applications, 2 had taken the exam, and 4 were no shows. Ms. Ellis further stated the 2 applicants that had taken the exam passed. Ms. Batliner reviewed the applications prior to the meeting. **Motion:** Moved by Mr. Brickey to approve the eligibility list for the position of Dispatcher. Ms. Batliner seconded the motion. **Motion passed.**

**e. Middletown City Schools- Secretary**

Kee Edwards advised that the exam was held on Thursday, November 4, 2021. He stated there were 21 applications, 9 had shown up for the examination, and 12 were no shows. Mr. Edwards further stated all 9 had passed the written examination. Ms. Ellis stated that Mr. Brickey reviewed the applications prior to the meeting. **Motion:** Moved by Mr. Brickey to approve the eligibility list for the position of Secretary. Mr. Becker seconded the motion. **Motion passed.**

**2. Update on Job Announcements/Exams**

Commission received the job posting for Senior Account Clerk, Dispatcher, and Equipment Operator.

**REPORTS**

**1. Personnel Transactions**

Commission received the Personnel Transactions for the month of October 2021.

**ADJOURN**

Ms. Ellis advised that the next meeting will be held on December 16, 2021. **Motion:** Moved by Ms. Batliner to adjourn the meeting. Mr. Becker seconded the motion. **Motion passed.**

Tom Brickey  
Tom Brickey, Chair

Approved: 12 - 16 - 21

CITY OF MIDDLETOWN  
BOARD OF HEALTH  
Minutes  
November 9, 2021

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

Members Present

David Schul, Vice President  
Jeff Bonnell  
Margie Davis, RN  
Sally Kash, MS, RN  
Charlene Kurtz, BSN, RN  
Ruth Lolli  
Dr. Ken Patrick, DVM

Health Department Staff Present

Jackie Phillips Carter, MPH, BSN, RN  
Carla Ealy, REHS  
Chandra Corbin, BSN, RN  
Amanda McDonald

Absent and Excused

Mayor Nicole Condrey, BS, President

---

ROLL CALL

**Motion:** Mr. Bonnell moved, seconded by Ms. Lolli to excuse Mayor Condrey.

**Roll call vote:** Yes 6- (Bonnell, Davis, Kash, Kurtz, Lolli, Patrick). No-0. Motion Passed.

CITIZEN COMMENTS

None.

APPROVAL OF MINUTES-October 2021

**Motion:** Dr. Patrick moved, seconded by Ms. Kash to approve the October 2021 Board of Health Meeting Minutes.

**Roll call vote:** Yes 6- (Bonnell, Davis, Kash, Kurtz, Lolli, Patrick). No-0. Motion Passed.

RECEIVE AND FILE FINANCIAL REPORT-October 2021

**Motion:** Ms. Kurtz moved, seconded by Ms. Kash to receive and file the October 2021 Financial Report.

**Roll call vote:** Yes 6- (Bonnell, Davis, Kash, Kurtz, Lolli, Patrick). No-0. Motion Passed.

EDUCATION PRESENTATION-Food Safety Inspections

Ms. Ealy presented a video demonstrating a brief overview of what health inspectors look for while conducting a food safety inspection. The environmental health division is responsible for inspections of food service operations located within the city of Middletown. Those facilities may include: restaurants, grocery stores, retail food establishments, schools, vending machines, mobiles and temporary food operations. Ms. Mourer explained that registered environmental health specialists begin their inspection by introducing themselves and washing their hands to prevent any contamination during the inspection. Inspectors check the walk-in coolers and freezers, first by checking the temperature gage on the outside of the unit and then by testing a time/temperature controlled for safety food (TCS) product inside the unit. Environmental health specialists also ensure that food is being stored properly inside the walk-in units, products are date marked and proper lighting is being used. The inspection then moves to dry-goods. Health specialists ensure that dry-

goods are being kept in original or closed/clear containers off of the floor and there is no rust on storage shelving and no dented cans in storage. Environmental health specialists check the temperature of prepared food and the holding temperatures of both hot and cold foods. Finally, the health specialists ensure that the facility is being properly maintained, the floors and equipment are being properly cleaned and the ware wash is being performed correctly. Inspection reports are typed up in the office and then sent directly to the facility. All food safety inspections are made available to the public at [cityofmiddletown.org](http://cityofmiddletown.org).

#### Executive Session

Executive session was called under the authority of O.R.C. 121.22 (G)(1) to consider the appointment, employment, dismissal, discipline, promotion demotion, or compensation of a public employee or official.

**Motion:** Ms. Kurtz moved, seconded by Ms. Lolli to move to executive session at 7:46AM.

**Roll call vote:** Yes 6- (Bonnell, Davis, Kash, Kurtz, Lolli, Patrick). No-0. **Motion Passed.**

#### REGULAR SESSION

**Motion:** Dr. Patrick moved, seconded by Ms. Kurtz to resume regular session at 8:30AM.

**Roll call vote:** Yes 5- (Davis, Kash, Kurtz, Lolli, Patrick). No-0. **Motion Passed.**

#### NEW BUSINESS

Travel Authorizations

None.

#### **Approval of Agreement for Facility Use-Middletown City School District**

Ms. Phillips Carter explained to the board that this agreement extends through the end of 2022 and includes all school buildings in the Middletown City School District.

**Motion:** Ms. Davis moved, seconded by Ms. Lolli to approve the Agreement for Facility Use.

**Roll call vote:** Yes 5- (Davis, Kash, Kurtz, Lolli, Patrick). No-0. **Motion Passed.**

#### **Approval of Agreement between Butler County General Health District and City of Middletown Health Department- Public Health Workforce Grant**

Ms. Phillips Carter explained to the board that this grant went to Butler County General Health District first, CMHD will be receiving a subgrant. Each employee hired under the Workforce Grant will be contracted and the Board of Health will receive a job description and resume.

**Motion:** Ms. Kash moved, seconded by Ms. Lolli to approve the Agreement between Butler County General Health District and City of Middletown Health Department-Public Health Workforce Grant.

**Roll call vote:** Yes 5- (Davis, Kash, Kurtz, Lolli, Patrick). No-0. **Motion Passed.**

#### OLD BUSINESS

##### COVID

Ms. Phillips Carter stated that CMHD has seen a large increase in our weekly COVID vaccine clinics. There are over 200 vaccines scheduled for the upcoming clinic on November 11, 2021. Ms. Phillips Carter informed the board that booster shots can be "mixed and matched," meaning that individuals can choose from Moderna, Pfizer or Johnson and Johnson for their booster shot no matter which vaccine they previously received.

CMHD can now begin vaccinating 5-11 year-olds. We have ordered 300 doses of pediatric Pfizer and will be splitting our inventory with Hamilton City Health Department. Centerpoint Health and Primary Health Solutions are also vaccinating children.

## REPORTS

### Health Commissioner

Ms. Phillips Carter followed up with the board regarding the complaint received by Mayor Condrey concerning a rusty filament on the grass at the airport. It was identified as a rust fungus that affects many kinds of plants.

Ms. Phillips Carter has been invited by Judge Sherron to attend the American Legion Veterans Day Luncheon. Ms. Phillips Carter informed the board that the health department is open on Veterans Day with normal business hours.

### Medical Director

In Dr. Jennewine's absence, Ms. Corbin reported the October communicable disease numbers to the board.

Chlamydia infection	36
COVID-19	431
Gonococcal infection	12
Hepatitis B	4
Hepatitis C	6
Salmonellosis	1
Streptococcal-Group A-invasive	2

### Director of Nursing

Ms. Corbin informed the board that there were 234 positive cases of COVID reported in the first week of October, there have been 110 positive cases reported in the first week of November. Ms. Corbin stated that the health department is seeing an average of 10-20 positive cases reported daily.

Ms. Corbin informed the board that the majority of vaccines being given are second doses or booster shots. We are still seeing some first doses being given, largely driven by Medicare incentives and employer's requirements.

Ms. Corbin informed the board that CMHD began administering booster shots on October 25<sup>th</sup>, there have been 448 booster doses administered as of November 9<sup>th</sup>.

CMHD has administered 71 doses of flu vaccine. Ms. Corbin informed the board that there have been no flu hospitalizations reported to CMHD.

### Discussions

Feedback: Ms. Phillips Carter informed the board that CMHD is offering flu and COVID vaccines at the Syringe Exchange and The Gathering.

Ms. Corbin added that CMHD continues to provide COVID vaccine to home-bound patients weekly.

### Environmental Director

Ms. Ealy informed the board that all three-year septic inspections have been completed.

Plans have been received and approved for the following: Triple J's Essential Deli, Foodies (mobile) and Tienda La Caracha. Zip's Drive Thru has been licensed.

Ms. Ealy informed the board that Ms. Mourer has completed the COVID 19 After Action Report and continues to work on grant deliverables.

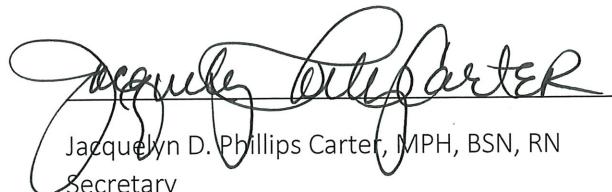


City of Middletown Health Department  
Middletown, Ohio

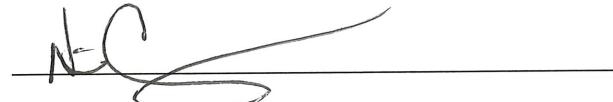
*A Connected and Healthy Community to Live, Work and Play*

ADJOURNMENT

The meeting was adjourned at 8:56 AM. The next meeting will be held on December 14, 2021 at 7:30 AM.

A handwritten signature in black ink that reads "Jacquelyn D. Phillips Carter".

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

A handwritten signature in black ink that reads "Nicole Condrey".

Nicole Condrey, President  
City of Middletown Board of Health

## HUMAN RESOURCES

December 9, 2021

**TO:** James Palenick, City Manager

**FROM:** Rachel Combs, Human Resources Manager

**SUBJECT: APPOINTMENT – ELECTRONICS TECHNICIAN**

We are recommending the conditional appointment of **DEREK BROWN** to the position of Electronics Technician in the Department of Public Works & Utilities, Division of Electronic Maintenance. Mr. Brown was selected from the eligibility list as a result of Civil Service testing procedures.

Mr. Brown will be assigned to Salary Range 240, Step J, which provides a salary of \$1,856.48 bi-weekly, \$48,268.48 annually. The appointment is conditional upon the candidate successfully passing the required background and medical evaluation.

/me

c: Amy Schenck, Clerk of Council  
Scott Tadych, Public Works & Utilities Director  
Brian Brooks, Electronics Maintenance Supervisor  
Human Resources  
Finance (Payroll)  
file

ccmtg12/21/2021

### **ELECTRONICS MAINTENANCE**

Authorized Strength: 4FT  
Current Staff Level: 3FT

## HUMAN RESOURCES

December 7, 2021

**TO:** James Palenick, City Manager  
**FROM:** Rachel Combs, Human Resources Manager  
**SUBJECT: APPOINTMENTS – SENIOR ACCOUNT CLERK**

We are recommending the appointments of **ASHLEY SCHWAB** and **MARGARET VAN VLIET** to the position of Senior Account Clerk in the Department of Finance, Division of Water and Sewer Administration. Ms. Schwab and Ms. Van Vliet were selected from the eligibility list as a result of Civil Service testing procedures. They will fill the vacancies created by the resignation of Kimberly Poe and the promotion of Sandra Byrd.

Ms. Schwab and Ms. Van Vliet will be assigned to Salary Range 234, Step A, which provides a salary of \$1,389.32 bi-weekly, \$36,122.32 annually. The appointments are conditional on the candidates passing the required background check and medical evaluation.

c: Amy Schenck, Clerk of Council  
Nathan Cahall, Finance Director  
Barbara Bradley, Assistant Finance Director  
Human Resources  
Finance (Payroll)  
file

ccmtg12/21/2021

**Finance/Water & Sewer Admin**

Authorized Strength - 9  
Current Staff Level – 7

## HUMAN RESOURCES

December 9, 2021

**TO:** James Palenick, City Manager  
**FROM:** Rachel Combs, Human Resources Manager  
**SUBJECT: APPOINTMENTS – FIREFIGHTER-EMTS**

We are recommending the appointments of **RYAN CHILDS, CHRISTOPHER GARGIULO, and JOSHUA PATTON** to the position of Firefighter-EMT in the Department of Public Safety, Division of Fire. All were selected from the eligibility list as a result of Civil Service testing procedures. They will fill the new positions created in the 2022 budget.

The above recommended will be assigned to Range FF-EMT, FO1, Step A which provides a salary of \$43,488.70 annually. The appointments are conditional on the candidates passing the required medical evaluations.

/me

c: Amy Schenck, Clerk of Council  
Paul Lolli, Fire Chief  
Tom Snively, Assistant Fire Chief  
Human Resources  
Finance (Payroll)  
File

Ccmtg12/21/2021

### **FIRE DEPARTMENT**

Authorized Strength – 85 (3 new positions in 2022 budget)  
Current Staff Level – 82

## HUMAN RESOURCES

December 8, 2021

**TO:** James Palenick, City Manager  
**FROM:** Rachel Combs, Human Resources Manager  
**SUBJECT: APPOINTMENTS – FIREFIGHTER-EMTS**

We are recommending the following conditional appointments to the position of Firefighter-EMT in the Department of Public Safety, Division of Fire:

<u>Recommended</u>	<u>Replacing</u>
Zachary Timmons	William Ross Green who resigned 11/13/2021
Isaac Steinbrunner	Cameron Koch who resigned 12/8/2021
Andrew Maurer	Jake Jackson anticipated resignation 12/13/2021
Celine Schank	David Von Bargen anticipated retirement 1/31/2021

All were selected from the eligibility list as a result of Civil Service testing procedures.

The above recommended will be assigned to Range FF-EMT, FO1, Step A which provides a salary of \$43,488.70 annually. The appointments are conditional on the candidates passing the required medical evaluations.

/me

c: Amy Schenck, Clerk of Council  
Paul Lolli, Fire Chief  
Tom Snively, Assistant Fire Chief  
Human Resources  
Finance (Payroll)  
File

Ccmtg12/21/2021

### FIRE DEPARTMENT

Authorized Strength – 82  
Current Staff Level – 82

## **S T A F F   R E P O R T**

For the Business Meeting of December 21, 2021

---

December 6, 2021

TO: Jim Palenick, City Manager  
FROM: Samantha Zimmerman, Purchasing Agent

**Bid Recommendation, SWOP4G Bid  
Hydrofluorosilicic Acid (HFS)**

### **PURPOSE**

To recommend the purchase of Hydrofluorosilicic Acid (HFS) from PVS Nolwood Chemicals, of Detroit, Michigan, in the amount of \$4.308/gallon for use at the Water Treatment Plant during the 2022 calendar year.

### **BACKGROUND and FINDINGS**

This is a routine purchase that is completed each year for the purchase of approximately 11,748 gallons of HFS to be used at the Water Treatment Plant. HFS is the fluoride that is added to our water prior to distribution.

This is a SWOP4G bid led by Montgomery County. This bid is for fifteen different chemicals, and municipalities have the option to participate in the bid for some or all of the chemicals, depending on which ones they use. Twenty-nine different entities participated in the bid. Of the twenty-nine participating entities, three entities requested prices for a combined total of 21,248 gallons of bulk HFS. PVS Nolwood Chemicals submitted the lowest price for the bulk HFS section of the bid.

### **ALTERNATIVES**

The alternative is to not add HFS to the water. HFS is a required chemical, as determined by a vote of the citizens of Middletown.

### **FINANCIAL IMPACT**

As with most of our chemicals, this chemical is used on an “as needed” basis (depending on weather, usage, and plant conditions), so there is no way to know exactly how much will be used over the years’ time. We estimate the usage of approximately 11,748 gallons at the Water Treatment Plant throughout the 2022 calendar year (\$50,610.38).

**EMERGENCY/NON-EMERGENCY**

Consent Agenda

cc: Nathan Cahall, Finance Director  
Scott Tadych, Public Works & Utilities Director  
Scott Belcher, Water Treatment Manager

## **S T A F F   R E P O R T**

For the Business Meeting of December 21, 2021

---

December 2, 2021

TO: Jim Palenick, City Manager  
FROM: Samantha Zimmerman, Purchasing Agent

### **Bid Recommendation, SWOP4G Bid Sodium Hypochlorite - WRF**

#### **PURPOSE**

To recommend the purchase of liquid chlorine (Sodium Hypochlorite 12-13% concentration) from Miami Products and Chemical Company, of Dayton, Ohio, in the amount of \$1.28/gallon for use at the Water Reclamation Facility.

#### **BACKGROUND and FINDINGS**

This is a routine bid that is completed each year to provide the Water Reclamation Facility with liquid chlorine as required by EPA regulations. This is a chemical that is used as a disinfecting agent at the Water Reclamation Facility. The Water Reclamation Facility will use approximately 38,000 gallons during the 2022 calendar year.

This is a SWOP4G bid led by Montgomery County. This bid is for fifteen different chemicals, and municipalities have the option to participate in the bid for some or all of the chemicals, depending on which ones they use. Twenty-nine different entities participated in the bid. Of the twenty-nine participating entities, nine entities requested prices for a combined total of 201,972 gallons of bulk chlorine. Miami Products submitted the lowest price for the bulk chlorine section of the bid.

#### **ALTERNATIVES**

Liquid chlorine is a chemical that is specifically needed for the operation of the Water Reclamation Facility.

#### **FINANCIAL IMPACT**

As with most of our chemicals, this chemical is used on an “as needed” basis (depending on weather, usage, and plant conditions), so there is no way to know exactly how much will be used over the years’ time. We estimate the usage of approximately 38,000 gallons at the Water Reclamation Facility throughout the 2022 calendar year (\$48,640).

#### **EMERGENCY/NON-EMERGENCY**

Consent agenda

cc: Nathan Cahall, Finance Director  
Scott Tadych, Public Works & Utilities Director  
Gerry Burris, Water Reclamation Manager

## **S T A F F   R E P O R T**

For the Business Meeting of December 21, 2021

---

December 6, 2021

TO: Jim Palenick, City Manager  
FROM: Samantha Zimmerman, Purchasing Agent

### **Bid Recommendation, SWOP4G Bid Sodium Hypochlorite - WTP**

#### **PURPOSE**

To recommend the purchase of liquid chlorine (Sodium Hypochlorite 15-18% concentration) from JCI Jones Chemical, Inc, of Beechgrove, Indiana, in the amount of \$1.73/gallon for use at the Water Treatment Plant.

#### **BACKGROUND and FINDINGS**

This is a routine bid that is completed each year to provide the Water Treatment Plant with liquid chlorine as required by EPA regulations. This is a chemical that is used as a disinfecting agent at the Water Treatment Plant. The Water Treatment Plant will use approximately 47,052 gallons during the 2022 calendar year.

This is a SWOP4G bid led by Montgomery County. This bid is for fifteen different chemicals, and municipalities have the option to participate in the bid for some or all of the chemicals, depending on which ones they use. Twenty-nine different entities participated in the bid. Of the twenty-nine participating entities, nine entities requested prices for a combined total of 201,972 gallons of bulk chlorine. JCI Jones submitted the lowest price for the bulk chlorine section of the bid.

#### **ALTERNATIVES**

Liquid chlorine is a chemical that is specifically needed for the operation of the Water Treatment Plant.

#### **FINANCIAL IMPACT**

As with most of our chemicals, this chemical is used on an “as needed” basis (depending on weather, usage, and plant conditions), so there is no way to know exactly how much will be used over the years’ time. We estimate the usage of approximately 47,052 gallons at the Water Treatment Plant throughout the 2022 calendar year (\$81,399.96).

#### **EMERGENCY/NON-EMERGENCY**

Consent agenda

cc: Nathan Cahall, Finance Director  
Scott Tadych, Public Works & Utilities Director  
Scott Belcher, Water Treatment Manager

# HUMAN RESOURCES

December 13, 2021

**TO:** James Palenick, City Manager

**FROM:** Megan Ellis, Human Resources Specialist

**SUBJECT: ORDINANCE NO. 02021-105, 02021-106, and 02021-107**

We are recommending the following title and wage range changes effective January 1, 2022 in accordance with Ordinance No. 02021-105, 02021-106, and 02021-107:

## **Title Change Only**

### Housing Code Specialist to Code Specialist

Sarah Valentin	Shawn Dickens
Candice Stultz	Lisa Robyn Rawlins

### Historic Property Specialist to Code Specialist

Annette Accurso

### Sanitarian to Registered Environmental Health Specialist

Rebecca Janay Mourer

## **Wage Range Change Only**

Scott Tadych	Public Works & Utilities Director	Range 167, Step G
Nakita Lancaster	Assistant Public Works & Utilities Director	Range 291, Step I

## **Title and Wage Range Change**

### Budget Analyst to Budget Manager

Angie Carr, currently Range 181, Step G, moving to range 177, Step E

c: Amy Schenck, Clerk of Council  
Scott Tadych, Public Works Director  
Nathan Cahall, Finance Director  
Jackie Phillips, Health Commissioner  
Ashley Combs, Development Services Director  
Human Resources  
Finance (Payroll)  
file

ccmtg 12/21/2021

# **LEGISLATION**

# **ITEM 1**

**ORDINANCE NO. O2021-116**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING AN AMENDMENT TO A CONTRACT WITH PERKINS/CARMACK CONSTRUCTION, LLC FOR THE DESIGN AND CONSTRUCTION OF A MAINTENANCE BUILDING AT THE WATER RECLAMATION FACILITY AND DECLARING AN EMERGENCY.**

**WHEREAS**, City Council previously approved a contract with Perkins/Carmack Construction, LLC for the design and construction of a maintenance building at the Water Reclamation Facility in Ordinance No. O2021-57 on July 20, 2021; and

**WHEREAS**, through the design phase and contract negotiation, it was determined that changes to the original scope would be needed;

**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 Ohio Revised Code, is hereby authorized to enter into an amendment of the contract with Perkins/Carmack Construction, LLC to pay for Change Orders 1 through 5. The change orders are attached hereto as Exhibits A - E.

**Section 2**

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed \$194,235.00 from the Sewer Capital Reserve 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 Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

**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: so that the funds can be encumbered from the 2021 budget, 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 Change Orders Perkins Carmack WRF building



6005 Meijer Drive Milford Ohio 45150  
513-248-4800 Fax 513-248-4810

## Scope Changes

August 26, 2021

Nakita Lancaster  
City Middletown  
1 Donham Plaza  
Middletown, Ohio 45042

Re: Middletown WWTP Building

The following are costs associated with additional scope and costs increase:

• Original Proposal Amount:	\$1,780,955
• Option #1 Horizontal siding in lieu of CMU	(\$45,977)
• Option #2 Add Sun Shades to East Windows	\$17,977
• PEMB Costs Escalation Original Costs: \$135,715	
• PEMB Locked in costs \$169,383	
• Carried \$18,000 over run	
• Net PEMB Costs	\$15,668
• <b>Allowance</b>	<b>\$30,000</b>
• Survey Allowance	\$ 5,000
• Add (2) windows to office North wall	\$ 4,954
• Add 4" conduit raceway for Duke Energy 2" Gas line	\$ 4,200
• Add 1" interior gas lines for unit heaters and Furnaces	\$ 8,100
• Add (2) pole Lights	\$ 9,000
• Add 70LF of fence towards the West	\$ 3,100
• Add (15) 3 tier metal lockers	\$ 14,700
• Install Gang Shower in Men's Restroom to match existing Including (2) 6' benches and epoxy floor + walls	\$ 9,700

**Revised Proposal Amount: \$1,857,377**

Sincerely:

Terry Perkins / Managing Partner  
C: Doug Carmack



6005 Meijer Drive      Milford Ohio 45150  
513-248-4800   Fax 513-248-4810

## Change Order #2

October 22, 2021

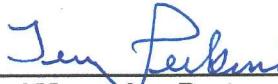
Nakita Lancaster  
City Middletown  
1 Donham Plaza  
Middletown, Ohio 45042

Re: Middletown WWTP Building

The following are costs for a (2) year and (5) year warranty:

- Furnish a 2 year warranty in lieu of the (1) year furnished in the bid. This warranty has bonding backing and will be an add of \$14,855
- Furnish a 5 year warranty in lieu of the (1) year furnished in the bid. This warranty will not have bonding back up and will only be P/C backed. The Bonding Company will not write a (5) year warranty bond. Add \$37,000
- P/C does not agree that these extended warranties are necessary, but this is an owner decision. The metal building has a 20 year warranty, there is HVAC equipment that comes with 5 year warranty.

Sincerely:

  
\_\_\_\_\_  
Terry Perkins / Managing Partner  
C: Doug Carmack

**Perkins/Carmack Construction LLC is an Equal Opportunity Employer**  
[www.perkinscarmack.com](http://www.perkinscarmack.com)



6005 Meijer Drive      Milford Ohio 45150  
513-248-4800   Fax 513-248-4810

## Change Order #3

November 5, 2021

Nakita Lancaster  
City Middletown  
1 Donham Plaza  
Middletown, Ohio 45042

**Re: Middletown WWTP Building**

The following are costs for additional scope of work:

- Add 20' cantilever sliding gate with operator. The price also included 1" underground electric and (6) remote control transmitters. **\$21,215**
- Additional 235 square yards of asphalt, gravel, and excavation. **\$12,977**
- 1000 gallon oil water interceptor with 4" pipe from 5' outside of building **\$14,743**
- **Total Change Order:\$48,935**

Sincerely:

  
Terry Perkins / Managing Partner  
C: Doug Carmack

**Perkins/Carmack Construction LLC is an Equal Opportunity Employer**  
**www.perkinscarmack.com**

## EXHIBIT D

Change Order #4: \$75,000 allowance carried due to recommendations from Geotechnical Exploration.



### GEOTECHNICAL EXPLORATION MIDDLETOWN WATER RECLAMATION FACILITY MAINTENANCE BUILDING MIDDLETOWN, OHIO

Prepared for:  
**PERKINS/CARMACK CONSTRUCTION, LLC**  
**MILFORD, OHIO**

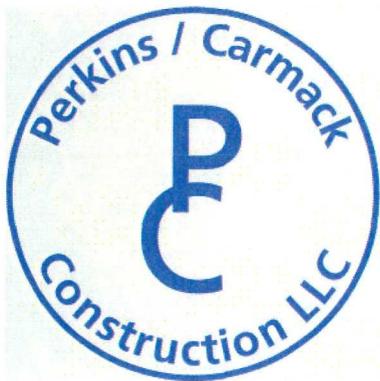
Prepared by:  
**GEOTECHNOLOGY, LLC**  
**CINCINNATI, OHIO**

Date:  
**OCTOBER 29, 2021**

Geotechnology Project No.:  
**J039539.01**

SAFETY  
QUALITY  
INTEGRITY  
PARTNERSHIP  
OPPORTUNITY  
RESPONSIVENESS

# EXHIBIT E



6005 Meijer Drive Milford Ohio 45150  
513-248-4800 Fax 513-248-4810

## Change Order #5

December 6, 2021

**Nakita Lancaster  
City Middletown  
1 Donham Plaza  
Middletown, Ohio 45042**

## Re: Middletown WWTP Building

**The following are costs for additional scope of work:**

- This change order is for material escalation from the original proposal of May to the November contract.
- We will invoice against this amount with back up of actual material escalation.

### • Total Change Order:\$25,000

**Sincerely:**

**Terry Perkins / Managing Partner**  
**C: Doug Carmack**

**Perkins/Carmack Construction LLC is an Equal Opportunity Employer**  
**[www.perkinscarmack.com](http://www.perkinscarmack.com)**

**S T A F F   R E P O R T**  
For the Business Meeting of: December 7, 2021

---

November 17, 2021

TO: Jim Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director

PREPARED BY: Nakita Lancaster, Assistant Public Works and Utilities Director

**Water Reclamation Facility (WRF) Maintenance  
Building Contract – Contract Amendment**

**PURPOSE**

To authorize a contract amendment for the contract with Perkins/Carmack Construction LLC for the design and construction of a new maintenance building at the Water Reclamation Facility (WRF).

Original contract authorized by City Council on July 20, 2021.

**BACKGROUND AND FINDINGS**

Original project background was included in the Staff Report prepared for the July 6, 2021 (first reading) and July 20, 2021 (second reading) City Council Meetings.

The contractor submitted their original proposal cost (\$1,826,932) to the City based on the scope that the City provided in the formal solicitation. The City added \$50,000 to the original proposal cost as a project contingency in the event that there were scope modifications developed during the design process. The total authorization from City Council was \$1,876,932.

At the same time the contract authorization was requested, the City also requested approval for a bond note in the amount of \$2,000,000 to finance the proposed WRF Maintenance Building. The City had requested up to \$2,000,000 for the bond note based on preliminary estimates provided to the City for the cost of the proposed maintenance building.

During scope review with the contractor, contract negotiations, development of detailed design drawings, and geotechnical investigations the total cost of the contract was modified as follows:

<b>Summary of Price Adjustments</b>				
	<b>Description</b>	<b>Date</b>	<b>Fee Adjustment</b>	<b>New Contract Amount</b>
<b>Original Proposal</b>				\$1,826,932
<b>Proposal to council</b>	Added \$50,000 as project contingency		\$50,000	\$1,876,932
<b>Change Order 1</b>	Met with contractor to review scope assumptions, select optional features, and discuss material escalation	8/27/2021	\$30,445	\$1,857,377
<b>Change Order 2</b>	Added 1-year warranty (provides two total) per recommendation from City's legal council	10/22/2021	\$14,855	\$1,872,232
<b>Change Order 3</b>	Added operated gate access, additional asphalt, oil-water separator	11/5/2021	\$48,935	\$1,921,167
<b>Change Order 4</b>	Allowance for geotech based on geotechnical investigation	11/9/2021	\$75,000	\$1,996,167
<b>Change Order 5</b>	Material cost escalation allowance	11/9/2021	\$25,000	\$2,021,167
<b>*amount approved by City Council at July 20, 2021 meeting = 1,876,932</b>				

Note, change orders 4 and 5 (totaling \$100,000) are allowances to be utilized only if necessary and authorized by the City during construction.

### **ALTERNATIVES**

The contractor has worked with the City to determine scope modifications that are necessary and/or beneficial to the City. We have negotiated these change orders with the contractor and believe they are appropriate.

### **FINANCIAL IMPACT**

As noted, City Council previously authorized \$1,876,932 for the design and construction of the Water Reclamation Facility. The total amount requested for the contract amendment is \$144,235, which includes all allowances. Funds are appropriated in the sewer capital budget (495.880.54540).

### **EMERGENCY/NON-EMERGENCY**

Emergency

*We request this matter be read as an emergency since the contract has already been signed and work on the project has begun. The funds for the maintenance building were appropriated in the 2021 budget and the emergency approval will allow the total contract cost to be encumbered in its budget year.*

# **LEGISLATION**

# **ITEM 2**

**ORDINANCE NO. O2021-117**

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

**WHEREAS**, City Council authorized \$300,000.00 for the purchase of aviation fuel from AvFuel in Ordinance No. O2021-29, adopted on April 20, 2021; and

**WHEREAS**, fuel sales at the Airport have exceed projections for 2021, resulting in the need to purchase additional fuel; and

**WHEREAS**, City staff has recommended appropriating funds from the 2021 revenue surplus to fund this expense;

**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 purchase additional 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 \$115,000.00 from the Airport Fund (Fund # 525), which such sum is hereby appropriated from the accounts of 525 (525.525.53335).

**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

**S T A F F   R E P O R T**  
For the Business Meeting of: December 7, 2021

---

November 24, 2021

TO: Jim Palenick, City Manager

FROM: Susan Cohen, Assistant City Manager  
Prepared by - Matt Eisenbraun, Assistant Economic Development Director

**SUPPLEMENTAL APPROPRIATION – AIRPORT FUND**

**PURPOSE**

To request a supplemental appropriation for the purchase of aviation fuel from Avfuel to keep inventory and continue sales from the Fixed Based Operator (FBO) service provider.

**BACKGROUND and FINDINGS**

The Airport Fund is an enterprise fund used to pay operating expenses for Middletown Regional Airport/Hook Field. Due to the continued increase in volume of purchases of aviation fuel at Middletown Regional Airport, a supplemental appropriation for the projected inventory expenses of fuel sales for the balance of the year 2021 is being requested.

Fuel purchases (in gallons) have been ahead of *2020 Year-End sales* volume this year. Currently, fuel sales revenues are also ahead of projected numbers:

Fuel Sales Revenue 2021 budget - \$366,900.00  
Fuel Sales Revenue YTD - \$604,834.22  
Current Budget Surplus - \$237,934.22

**FINANCIAL IMPACT**

Supplemental appropriation of \$115,000.00 to Aviation Fuel Purchases (525.525.53335) is being requested from the budget surplus.

**ALTERNATIVES**

To not fund the supplemental appropriation and discontinue fuel sales from the FBO provider and disrupt the business operation of airport and all businesses using the airport as a base of operations.

**EMERGENCY/NON-EMERGENCY**

Emergency action is requested so that an adequate amount of fuel can be

# **LEGISLATION**

# **ITEM 3**

**ORDINANCE NO. O2021-118**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH SCHULTE BUSINESS SERVICES TO PROVIDE SNOW REMOVAL AT MIDDLETOWN REGIONAL AIRPORT 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, without complying with the procedures of Chapter 735 of the Ohio Revised Code, is authorized to enter into a contract with Schulte Business Services to provide snow removal at Middletown Regional Airport. The contract shall be in a form substantially similar to Attachment "1", attached hereto, and be approved by the Law Director and City Manager.

**Section 2**

The Finance Director is hereby authorized and directed to pay a sum not to exceed \$13,000.00 from the Airport Fund (Fund # 525).

**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 Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

**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: in order allow the contractor to begin providing snow removal as soon as weather requires, and shall be in full force and effect from the date of its adoption.

---

Nicole Condrey, Mayor

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

## ATTACHMENT "1"

### AIRPORT SNOW REMOVAL AGREEMENT

This Airport Snow Removal Agreement (hereinafter "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 between the City of Middletown, One Donham Plaza, Middletown, Ohio 45042 (hereinafter "City") and Schulte Business Services with an address of \_\_\_\_\_, \_\_\_\_\_ Ohio \_\_\_\_\_ (hereinafter "Contractor").

**WHEREAS**, the City owns and operates the Middletown Regional Airport (hereinafter "Airport"); and

**WHEREAS**, the City is in need of an experienced contractor to provide certain snow removal services at the Airport for the 2021-2022 winter season; and

**WHEREAS**, the Contractor is willing to provide Snow Removal Services as set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises as stated herein, the City and the Contractor do hereby agree as follows:

#### **1. TERM OF AGREEMENT**

The term of this Agreement shall be a period commencing on \_\_\_\_\_, 202\_\_\_\_ and terminating on May 31, 2022 (the "Term").

#### **2. SNOW REMOVAL SERVICES PROVIDED BY CONTRACTOR AND SNOW REMOVAL FEE**

Contractor will provide complete snow and ice removal services at the Airport during the Term, provided that the City must obtain and provide any equipment necessary to provide the same. Contractor will not be responsible for filing NOTAMS with the FAA or assessing the runway/taxiway conditions. Contractor will maintain two qualified snow removal employees at all time, and snow removal will be billed at the rate of \$50.00 per hour, per person, based on the Hobbs meter in each piece of snow removal equipment or based on an alternative method of timekeeping approved in advance by the Airport Manager that tracks the actual labor provided by Contractor. This hourly Hobbs rate includes hand shoveling and salting or sanding that may be required at Hangars 1701 and 1707. This will be billed on a weekly basis during the snow season.

Notwithstanding the rate set above, compensation under this section shall not exceed \$13,000.00 without prior written approval of the City (the "Not To Exceed"). If Contractor reaches the Not To Exceed amount, Contractor's obligation to provide further snow removal services as set forth in this Agreement shall be immediately suspended, and Contractor shall not be held liable for any ramifications arising from the lack of snow removal during any such suspension. The Not to Exceed amount may be increased by the City at any time during the Term, at the City's sole discretion, by the provision of written notice to Contractor setting forth a new Not to Exceed amount. If such written notice is provided after Contractor's obligations to provide snow removal services had already been suspended, such suspension shall immediately terminate and Contractor

shall again be obligated to provide snow removal services as set forth herein.

### **3. TERMINATION**

Either party may terminate this Agreement at any time and for any or no reason. Notwithstanding the foregoing, Contractor must provide at least 60 days' written notice prior to terminating this Agreement. Upon termination of this Agreement, all City property in Contractor's possession promptly shall be returned to the City. Contractor will be compensated for all approved service hours provided to the City prior to the termination of this Agreement, subject to the provisions herein.

### **4. INDEPENDENT CONTRACTOR**

The City shall not treat Contractor as an employee for purposes of FICA, the Social Security Act, FUTA, income tax withholding, workers' compensation, unemployment insurance, life insurance, death benefits, health insurance, pension and profit sharing plans, or any other expenses and/or fringe benefits customarily paid by an employer on behalf of any of its employees. Contractor confirms that Contractor is covered under Ohio's workers' compensation system.

Contractor is solely responsible with respect to, and will pay, all self-employment taxes, income taxes, and any and all other taxes or sums to federal, state, or local taxing authorities due to status as an independent contractor and will execute an affidavit to this effect if requested by the City.

### **5. NO AGENCY**

Contractor is not an agent of the City and has no right or authority to assume or create any obligation, express or implied, on behalf of or in the name of the City. Under no circumstances will Contractor expressly or impliedly state or otherwise communicate to any party that he/she is a director, officer, employee, or representative of the City.

### **6. NO MODIFICATION**

No provision of this Agreement can be waived, amended, modified, or supplemented in any respect, except by a subsequent written agreement executed by Contractor and the City Manager.

### **7. SAFETY, MAINTENANCE, AND COMPLIANCE**

All equipment provided by the City for Contractor's use during this Agreement shall be maintained and operated by Contractor in a manner consistent with all applicable laws and required safety standards. Any violation of safety standards may be deemed cause for immediate termination of the agreement. While the Airport Manager is responsible for monitoring Contractor's performance, Contractor is responsible for conducting all services in accordance with all applicable FAA regulations, the Middletown Regional Airport's Maintenance Plan and the City of Middletown's rules and regulations, policies, procedures and agreements.

## **8. DAMAGES**

The Contractor shall also be responsible for any damages to City-owned equipment (normal wear and tear excepted) caused by Contractor's negligence, gross-negligence, or intentional act, or damage to any other property or persons during Contractor's provision of services pursuant to this Agreement. Contractor shall take all reasonable precautions to mitigate damage to Airport property, buildings, and equipment. Contractor shall report any damage that is observed or caused within three (3) hours of the observation or cause to the Airport Manager.

## **9. INSURANCE AND INDEMNIFICATION**

Contractor shall, at its own expense, maintain Comprehensive General Liability Insurance in the sum of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage, as well as replacement value insurance coverage with respect to any equipment provided to Contractor by the City. Upon Contractor's execution of this Agreement, Contractor shall furnish the City with a copy of certificate(s) of insurance demonstrating compliance with this insurance requirement which shall name the City of Middletown as an additional insured. Further, all insurance policies procured to comply with this paragraph must contain a provision requiring thirty (30) days prior written notice to the City in the event of cancellation or diminution in coverage.

Contractor shall keep and hold harmless the City from and against any and all claims, demands, suits, judgments, costs, and expenses asserted by any person or persons, including agents or employees, by reason of death or injury to persons or loss or damage to property, resulting from Contractor's performance of this Agreement or acts or omissions, except to the extent that such claims, demands, suits, judgments, costs and expenses may be attributed to the acts or omissions of the City or its agents or employees.

## **10. MISCELLANEOUS**

a) This Agreement and the performance thereunder shall be governed by and interpreted under Ohio law. Any controversy or claim arising out of or relating to this Agreement shall be resolved in the Court of Common Pleas of Butler County, Ohio.

b) The City and the Contractor acknowledge and agree that this Agreement is reasonable, valid and enforceable. However, if any term or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, it is the parties' intent that such provision be changed in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable, and the remainder of the provisions of this Agreement will in no way be affected, impaired, or invalidated as a result.

c) Neither party shall assign this Agreement without the prior written consent of the other and any attempted assignment without such consent shall be null and void and of no effect.

d) The failure by either party to this Agreement, at any time, to enforce or to require strict compliance or performance by the other of any of the provisions of this Agreement shall not constitute a future waiver of such provisions and shall not affect or impair in any way the rights of the parties at any time to enforce said provisions.

e) This Agreement supersedes all prior agreements. This Agreement represents the entire agreement between the City and Contractor, which may not be changed or otherwise modified unless such change or modification is in writing and signed by both parties.

f) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have set their hands on the date first set forth herein.

**CITY OF MIDDLETOWN**

By: \_\_\_\_\_  
James M. Palenick  
City Manager

Approved as to form:

**CONTRACTOR**

By: \_\_\_\_\_  
Jesse Schulte  
Owner

Phone: (937) 321-5116

\_\_\_\_\_  
Law Director

4825-4633-7743v4

**STAFF REPORT**  
For the Business Meeting of: December 7, 2021

---

November 24, 2021

TO: Jim Palenick, City Manager

FROM: Susan Cohen, Assistant City Manager  
Submitted by Matt Eisenbraun, Assistant Economic Development Director

**Airport Snow Removal Contract for 2022**

**PURPOSE**

To authorize the City Manager to enter into a month to month contract with Schulte Business Services for snow removal at the Middletown Regional Airport.

**BACKGROUND AND FINDINGS**

Safe Skies Aviation has been acting as the interim Fixed Based Operator (FBO) service provider until a permanent provider can be brought under contract. Due to the timing of the initial FBO transition, when Safe Skies Aviation began providing FBO services the snow removal responsibility was included as part of the contract as a convenience to the City.

Presuming that snow removal will not be included in the FBO responsibilities moving forward, Safe Skies has requested to have Snow Removal removed from its responsibilities rather than potentially being left with only the snow removal work when the permanent FBO service provider begins to operate at Middletown Regional Airport.

In April 2021, the City engaged Schulte Business Services to provide mowing and trimming on a month-to-month basis. Schulte Business Services has performed a number of services at the airport historically and is familiar with the facilities. Schulte Business Services is willing to provide snow removal services on a month to month basis under the same conditions and at the same hourly rate as is currently being paid to Safe Skies Aviation.

Schulte Business Services will maintain two qualified snow removal employees at all times, and snow removal will be billed at the rate of \$50.00 per hour, per person.

**FINANCIAL IMPACT**

Not to exceed \$13,000 - Funds are available in the Airport Fund (525.525.52520) for this purpose.

## **ALTERNATIVES**

The alternative would be to not perform snow removal activities overall and close the airport during snow events. This would be disruptive to users of the airport and not be in line with efforts to maintain operations on a 24/7 basis.

## **EMERGENCY/NON-EMERGENCY**

Emergency – this action would move snow removal responsibilities at the beginning of the calendar year.

# **LEGISLATION**

# **ITEM 4**

**ORDINANCE NO. O2021-119**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING ADDITIONAL FUNDS FOR THE 2021 CONTRACTS FOR GROUNDS MAINTENANCE AND DECLARING AN EMERGENCY.**

**WHEREAS**, City Council approved extensions of the annual mowing contracts by Ordinance No. O2021-06, adopted February 2, 2021; and

**WHEREAS**, due to weather conditions during the 2021 mowing season and the need for adjustments to the assigned parcels between contractors, additional funds need to be appropriated for grounds maintenance; and

**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 Ohio Revised Code, is authorized to enter any necessary contract amendments for the expenditure of additional funds for the 2021 grounds maintenance contracts.

**Section 2**

For said purposes, the Finance Director is authorized and directed to expend a sum not to exceed \$33,570.00 from the following funds:

General Fund (Fund # 100) (45%)	\$15,106.50
Stormwater Fund (Fund # 515) (49%)	\$16,449.30
Water Fund (Fund # 510) (6%)	\$2,014.20

**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 Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

**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 contractors to be paid without interruption, 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 Additional Funds for 2021 Mowing

## **STAFF REPORT**

For the Business Meeting of December 7, 2021

---

November 16, 2021

TO: Jim Palenick, City Manager  
FROM: Samantha Zimmerman, Purchasing Agent

### **CONTRACT MOWING FOR 2021 – CHANGE ORDER**

#### **PURPOSE**

To request approval for an additional amount of \$33,570 for Contract Mowing for the 2021 mowing season.

#### **BACKGROUND and FINDINGS**

The City has various properties that need to be mowed throughout the mowing season. This includes the City building, City parks, medians, as well as other City-owned properties. The original bid was based on 25 cuts per year, although the number of cuts per year varies, depending on the weather and various other conditions. Western & Co., Norvell's Turf Management, Inc., and H.D. Lawn Care are the contractors completing the mowing for the 2021 mowing season.

Due to weather conditions over the 2021 mowing season, additional mows were needed to keep the areas maintained. Also, Western was unable to continue cutting some of their assigned parcels which resulted in Norvell's and H.D. taking these over at the same or increased prices. This has resulted in an additional \$33,570 needed in order to pay our current contractors.

#### **ALTERNATIVES**

Do not approve. However, the amounts originally approved for this contract are based on an estimate and depend on the weather conditions.

#### **FINANCIAL IMPACT**

The cost will be shared between three different funds as follows:

General Fund	45%	\$15,106.50
Stormwater Fund	49%	\$16,449.30
Water Fund	6%	\$ 2,014.20

There are sufficient funds available for this additional amount owed for the 2021 contract mowing.

## **EMERGENCY/NON EMERGENCY**

2<sup>nd</sup> reading emergency – A 2<sup>nd</sup> reading emergency is being requested in order to pay out the additional funds before the end of the year.

cc:     Nathan Cahall, Finance Director  
          Barb Bradley, Assistant Finance Director  
          Scott Tadych, Public Works and Utilities Director  
          Charlie Anderson, Public Works Superintendent

# **LEGISLATION**

# **ITEM 5**

**ORDINANCE NO. O2021-120**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH METROPOLITAN ENVIRONMENTAL SERVICES TO CLEAN APPROXIMATELY 151,000 FEET OF SANITARY SEWER AND DECLARING AN EMERGENCY.**

**WHEREAS**, staff requested quotes from three contractors in the region that have the capability to provide the sanitary sewer cleaning services and the post-cleaning inspections needed for approximately 151,000 feet sewer, some of which is currently 100% blocked by roots or other debris; and

**WHEREAS**, two of the three contractors provided quotes, while the third was too busy with other projects to dedicate resources to the City; and

**WHEREAS**, staff recommends proceeding with Metropolitan Environmental Services as the lowest and best quote for this work; and

**WHEREAS**, the quote provided by Metropolitan Environmental Services anticipates 70% of the segments will need "light cleaning", 30% will need "heavy cleaning", CCTV inspections, a traffic control allowance, and a \$30,000.00 contingency should the assumption of 70%/30% for light and heavy cleaning be inaccurate;

**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 Ohio Revised Code, is authorized to enter into a contract with Metropolitan Environmental Services for the cleaning of approximately 151,000 feet of sanitary sewer throughout the City. The contract shall be in a form approved by the Law Director.

**Section 2**

The Finance Director is hereby authorized and directed to pay a sum not to exceed \$699,444.00 from the Sewer Capital Reserve 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 Ohio 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 resolution 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 sanitary sewer cleaning to begin immediately and the funds to be encumbered from the 2021 budget, and shall take effect and be in force from and after its adoption.

---

Nicole Condrey, Mayor

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

**STAFF REPORT**  
For the Business Meeting of: December 7, 2021

---

November 16, 2021

TO: Jim Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director

PREPARED BY: Nakita Lancaster, Assistant Public Works and Utilities Director

**Contract Services – Sanitary Sewer Cleaning Contract  
with Metropolitan Environmental Services**

**PURPOSE**

To authorize contract services with Metropolitan Environmental Services for the cleaning of approximately 125,000 feet of sanitary sewer.

**BACKGROUND AND FINDINGS**

In March 2021, City Council authorized the City Manager to enter into a contract with RedZone Robotics for a condition assessment of the sanitary and combined sewer system. The contract was to inspect approximately 700,000 feet of sewer. The authorized contract amount included a modest allowance (\$79,500) to cover the light cleaning of any sewers that they were unable to inspect without cleaning. The cleaning allowance was based on the assumption that only 53,000 feet of sewer would require cleaning at a unit cost of \$1.50 per foot for light cleaning.

Once RedZone began inspections, they encountered sewers with large amount of debris, sediment, and roots that prevented complete inspection. In total, they identified approximately 151,000 feet that were unpassable with inspection equipment. In some instances, the contractor was able to complete the inspection by reversing the inspection and entering from the other manhole. However, 124,772 feet was unable to be inspected even with reversal.

After reviewing the cleaning needs identified by RedZone, it was obvious that the original allowance for light cleaning would not be sufficient. We reviewed different strategies with them to determine the most cost effective and efficient way to complete the cleaning work and subsequent inspections. We ultimately determined that it was not cost effective for RedZone to complete the cleaning work since they would need to hire contract services.

It makes sense to have the cleaning contractor also complete the CCTV inspections since the CCTV inspections are required to confirm that the pipes have been cleaned. Therefore, the pipe segments were removed from RedZone's scope and those pipe segments will be inspected by the cleaning contractor. We drafted a change order (approved by RedZone, pending City legal approval) to remove 124,772 feet of pipe from RedZone's scope of work as well as to remove the \$79,500 cleaning allowance from the contract fee. This resulted in a change order of -\$263,093 from their overall contract.

Quotes were obtained from contractors that have the capabilities to perform light and heavy cleaning as well as inspections. There are limited contractors in the region that have the capabilities to complete large diameter sewer cleaning, heavy cleaning, and inspections. Quotes were obtained on a unit cost basis for light and heavy cleaning as well as CCTV inspections. We reached out to three contractors and obtained two quotes. The third contractor was too busy with other projects to dedicate the resources to ours. We applied assumptions for quantities based on the inspection information from RedZone.

Based on unit costs provided, we recommend Metropolitan Environmental Services for the Sanitary Sewer Cleaning Contract. The contract will include services for light cleaning (assumed 70% of pipe segments), heavy cleaning (assumed 30% of pipe segments), CCTV inspections, and a traffic control allowance. Additionally, we have added a \$30,000 allowance, should the assumptions of the 70/30 split between light/heavy cleaning be inaccurate.

Getting the sewers cleaned in a timely fashion is critical to providing sanitary sewer service to the City of Middletown. For the pipes included in this contract (151,000 feet), inspection equipment was unable to pass through the sewer unobstructed. In some instances, the pipes are nearly 100% obstructed with roots and/or debris. We are declaring the project an emergency since we hope to have a contractor begin work immediately to clear large obstructions in the City's sewer. All of these pipe segments represent a serious risk of sewage backups resulting in surcharging and basement backups (both unpermitted discharges regulated by the Ohio EPA).

## **ALTERNATIVES**

As mentioned above, there are limited contractors that have the capabilities to complete the work. In many instances issuing an RFP for projects doesn't yield more contractor participation compared with contacting contractors directly. Therefore, we feel like the quotes that we received would be representative (or better) than what we would have obtained from issuing a formal RFP for this.

The City does have some capabilities for cleaning but it is limited to light cleaning of smaller diameter pipes. In addition to having limited capabilities, the sewer maintenance department is limited in the number of staff available to complete the work.

## **FINANCIAL IMPACT**

The contract with Metropolitan Environmental Services is in an amount not-to-exceed \$699,444. Funds are appropriated in the sewer capital fund under account 495.631.54540.

Note: there was a change order applied to the contract with RedZone for the amount of -\$263,093 that has in effect been applied to this contract.

## **EMERGENCY/NON-EMERGENCY**

Second reading emergency

*Since the sewers that are part of this contract were unpassable with a camera for inspections, it is likely that they could contribute to sewer backups and system surcharging. We're requesting a second reading emergency so that we're able to execute the contract in a timely manner and have the cleaning crews get to work removing the blockages in the sewer system.*

# **LEGISLATION**

# **ITEM 6**

**RESOLUTION NO. R2021-52**

**A RESOLUTION APPROVING AND ADOPTING THE 2020-2030 PARKS MASTER PLAN.**

**WHEREAS**, the City contracted with V3 to prepare a master plan for parks in the Middletown; and

**WHEREAS**, the Parks Master Plan will become the guiding policy for the goals, objectives and implementation strategies for the park and recreation needs of the City from 2020 to 2030; and

**WHEREAS**, the Park Board recommended adoption of the master plan at its meeting on August 26, 2021; and

**WHEREAS**, the Parks Master Plan has been subjected to review and comment and is now before City Council for adoption;

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

**Section 1**

The Parks Master Plan, which is on file in the offices of the Clerk of City Council and the Public Works & Utilities Director, is hereby approved and adopted as a policy for parks in the City, and its concepts and designs will be included in next version of the city-wide Master Plan.

**Section 2**

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

---

Nicole Condrey, Mayor

1<sup>st</sup> Reading: \_\_\_\_\_  
2<sup>nd</sup> Reading: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

**S T A F F   R E P O R T**  
For the Business Meeting of: December 7<sup>th</sup>, 2021

---

November 23, 2021

TO: Jim Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director

**Adoption of 2020 – 2030 Parks Master Plan**

**PURPOSE**

To adopt the City of Middletown 2020 – 2030 Parks Master Plan.

**BACKGROUND AND FINDINGS**

The purpose of the Parks Master Plan is to assist the City and Park Board in establishing clear and realistic goals, objectives and implementation strategies for the next ten years to best meet the current and future park and recreation needs of the City. This plan provides guidance for both short and long range planning for the City's park system by integrating community input and recreation planning standards.

The plan categorizes recommended improvements into three categories:

1. Immediate Needs – Focus on repairing elements throughout the park system that have deteriorated over time.
2. Basic Improvements – Focus of incremental investment in new and improved facilities throughout the park system that serve the needs and desires of the community.
3. Aspirations – Build upon the existing network of incorporating some of the larger opportunities identified during the master planning process.

Recommended improvements for all City Parks are compiled into an action plan matrix for incorporation into overall City capital improvement planning efforts.

**ALTERNATIVES**

1. Adopt the plan as drafted
2. Adopt the plan with suggested changes

**FINANCIAL IMPACT**

Future financial impacts will be determined as specific projects are prioritized for implementation.

## **RECOMMENDATION**

The City Park Board recommended the plan for adoption at the August 26, 2021 Park Board Meeting. City Staff recommends adoption of the plan as drafted.

## **EMERGENCY/NON EMERGENCY**

Non-Emergency

# **LEGISLATION**

# **ITEM 7**

**ORDINANCE NO. O2021-121**

**AN ORDINANCE AMENDING SECTION 1226.10 (VARIANCES) OF THE MIDDLETOWN CODIFIED ORDINANCES.**

**WHEREAS**, staff submitted a Development Code text amendment for Section 1226.10 (Variances) of the Codified Ordinances to Planning Commission for consideration; and

**WHEREAS**, the requested amendment would remove “use variances” as a permissible type of variance; and

**WHEREAS**, after holding a public hearing on October 13, 2021, Planning Commission recommended to deny the requested text amendment, and has submitted that recommendation to City Council; and

**WHEREAS**, upon receiving such recommendation, City Council held a public hearing on December 7, 2021, notice of such public hearing having been given in the Journal-News at least 30 days prior to such hearing, and City Council hereby disagrees with the recommendation of the Planning Commission;

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

**Section 1**

Section 1226.10 (Variances) of the Middletown Codified Ordinances is hereby amended as set forth in full in Exhibit “A”, attached hereto.

**Section 2**

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

\_\_\_\_\_  
Nicole Condrey, Mayor

1<sup>st</sup> reading: \_\_\_\_\_

2<sup>nd</sup> reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

Effective: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

## EXHIBIT “A”

### § 1226.10 VARIANCES.

#### (a) Purpose.

(1) The purpose of a variance is to provide limited relief from the requirements of this code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose on property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

(2) Standards found in Chapter 1222: Subdivision Design may not be altered through this variance process. Any modification to those standards shall be reviewed as a subdivision modification pursuant to § 1226.07(g).

#### (b) Variance review procedure. The review procedure for variances shall be as follows:

(1) Step 1 - Application. The applicant shall submit an application in accordance with § 1226.02 and with the provisions of this section.

(2) Step 2 - Staff review and staff report.

A. Upon determination that a variance application is complete, the Development Code Administrator shall refer the application to the BZA.

B. Prior to the BZA hearing for the variance application, the Development Code Administrator shall review the application and prepare a staff report.

(3) Step 3 - BZA review and decision.

A. The BZA shall hold a hearing on the variance application at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.

B. The BZA shall review the variance application during a hearing. In reviewing the application, the BZA shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.

C. Notification of the hearing shall be provided in accordance with § 1226.02(i).

D. In making its decision, the BZA may approve, approve with modifications or supplementary conditions, or deny the application.

E. In approving a variance, the BZA may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as

it determines are required to ensure compliance with the standards of this section and the purpose of this code. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of Chapter 1228: Enforcement and Penalties.

~~F. For use variances, an automatic condition to any approval shall be that should the existing structure be torn down or damaged beyond 50% of the market value as established by the applicable county auditor, the use variance shall expire.~~

(c) Review criteria.

(1) Where an applicant seeks a variance to any of the area or dimensional standards in this code, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as defined in division (c)(3) below.

~~(2) Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship as defined in division (c)(4) below.~~

(32) Area and dimensional variance review criteria.

A. The following factors shall be considered and weighed by the BZA to determine practical difficulty:

1. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;

2. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

3. Whether the special conditions and circumstances are a direct result from the actions of the applicant, his or her agents, or prior property owners;

4. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;

5. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

6. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;

7. Whether special conditions or circumstances exist as a result of actions of the owner;

8. Whether the property owner's predicament can feasibly be obviated through some method other than a variance;

9. Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or

10. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

B. No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

(4) ~~Use variance review criteria. In order to grant a use variance, the BZA shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:~~

- ~~A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;~~
- ~~B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;~~
- ~~C. The variance requested cannot otherwise be resolved by a zoning map amendment or a zoning map amendment is not the most beneficial approach;~~
- ~~D. The essential character of the neighborhood will not be substantially altered as a result of the variance;~~
- ~~E. There is an existing structure that cannot be reasonably used for a permitted use or a conditionally permitted use in the applicable zoning district;~~
- ~~F. The proposed use is listed in Table 1204-3;~~
- ~~G. The hardship condition is not created by actions of the applicant;~~
- ~~H. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;~~
- ~~I. The granting of the variance will not adversely affect the public health, safety or general welfare;~~
- ~~J. The variance will be consistent with the general spirit and intent of this code;~~
- ~~K. The requested use is permitted in another district in this code; and~~
- ~~L. The variance sought is the minimum that will afford relief to the applicant.~~

(d) Time limit.

(1) The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the variance was approved or the approval shall expire.

(2) Upon expiration of a variance approval, a new application, including all applicable fees, shall be required before a new variance will be reviewed.

(3) Where a variance applies to a structure, the variance approval shall expire if the structure is demolished or otherwise torn down unless the requirements of Chapter 1224: Nonconformities applies.

(e) Appeals. Any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision the court of common pleas as provided in R.C. Chapters 2505 and 2506.



November 22, 2021

**TO:** City Council  
**ATTN:** Jim Palenick, City Manager  
**FROM:** Ashley Combs, Development Services Director  
Austin Musser, City Law Department  
**SUBJECT:** Public Hearing: Text Amendments to Middletown Development Code

**REQUEST:**

Text Amendment Case: A request for consideration of text amendments to the Middletown Development Code pertaining to Chapter 1226: Review Authority and Procedures. Planning Commission's recommendation of denial is being forwarded to City Council for final review and decision.

**1. Chapter 1226: Review Authority and Procedures**  
**a. 1226.10: Variances**

**Request:** Staff requests the removal of "Use Variance" as a permissible type of variance and any reference to "use variances" in the Middletown Development Code.

A "use variance" is a specific type of variance from the Middletown Development Code. While the BZA routinely hears requests for "area" or "dimensional" variances that allow for modifications of requirements such as setbacks or height limitation (and for clarity those variances are not being altered by this proposal), a use variance goes a step farther and allows the BZA to decide whether or not a property owner can deviate from the uses that are otherwise permitted within the applicable district. Staff believes that it is best practice not to allow use variances, and that applicants should instead request a change to the zoning designation for their property that would be heard by Planning Commission and City Council if they desire a use different from those permitted in the Development Code.

Although the Ohio Supreme Court has concluded that use variances can be constitutional, Ohio courts regularly express concern about them as a borderline impermissible delegation of a legislative function (setting appropriate uses) to an otherwise largely administrative body (the BZA). Changing the use of a property is very impactful to the future development of both that property and surrounding properties. As such, many within the planning community in Ohio believe that use variances bypass the otherwise proper planning process of going through Planning Commission and Council, which are the bodies that more typically enact the legislation (the map and the text) that guides zoning decisions.

Every community is different, but many communities in Ohio have elected not to permit use variances. In a quick review, some nearby communities that fall into that category appear to include Mason (allowing variances only for dimensional or area requirements), Lebanon (authority of BZA is only to grant dimensional variances), Franklin (does not list use variance

as a permissible variance for BZA), and West Chester Township (explicitly prohibits use variances).

In 2018 staff removed “use adjustments” from the Code for the same reasons. Removing “use variances” from the Middletown Development Code will allow for the consistency between our comprehensive plan and the land-use decisions made by Planning Commission and City Council.

## **Chapter 1226: Review Authority and Procedures**

### **1226.03: Code Text and Map Amendments**

#### **Planning Commission Review and Recommendation:**

- A. The Planning Commission shall hold a public hearing on the code text amendment at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
- B. Notification of the public hearing shall be provided in accordance with Section 1226.02(i).
- C. In reviewing the application, the Planning Commission shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- D. Within a reasonable amount of time from the close of the public hearing, the Planning Commission shall make a recommendation to City Council on the application. In making its recommendation, the Planning Commission may recommend approval, approval with some modification, or denial of the application.

#### **Review Criteria:**

Recommendations and decisions on code text amendment applications shall be based on consideration of the following review criteria. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.

1. The proposed amendment is consistent with the master plan, other adopted City plans, and the stated purposes of this code;
2. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
3. The proposed amendment will promote the public health, safety, and general welfare;
4. The proposed amendment, if amending the zoning map, is consistent with the stated purpose of the proposed zoning district;
5. The proposed amendment is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated; and/or
6. The proposed amendment is not likely to result in significant adverse impacts upon other property in the vicinity of the subject lot.

#### **Attachments:**

Middletown Development Code with proposed changes highlighted in yellow.

**PLANNING COMMISSION RECOMMENDATION:**

At their regular meeting held on Wednesday, October 13, 2021, the Planning Commission voted to deny the request to remove the use variance process from the Middletown Development Code. The Planning Commission denied the staff recommendation due to the following reasons: removal of the use variance process is not business friendly and causes a lengthier review process (through the rezoning process) and that removal of the use variance process infringes upon property owners' rights to use their property as they wish.

**ALTERNATIVES:**

City Council shall adopt, adopt with some modification, or deny the recommendation of the Planning Commission. City Council shall not alter or make a decision that varies from the Planning Commission without a majority vote of City Council.

**FINANCIAL IMPACT:**

None

**EMERGENCY/NON-EMERGENCY:**

Non-Emergency

- B. The BZA shall review the variance application during a hearing. In reviewing the application, the BZA shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- C. Notification of the hearing shall be provided in accordance with Section **1226.02(l)**.
- D. In making its decision, the BZA may approve, approve with modifications or supplementary conditions, or deny the application.
- E. In approving a variance, the BZA may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to be ensure compliance with the standards of this section and the purpose of this code. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of **Chapter 1228: Enforcement and Penalties**.
- F. ~~For use variances, an automatic condition to any approval shall be that should the existing structure be torn down or damaged beyond 50 percent of the market value as established by the applicable county auditor, the use variance shall expire.~~

**(c) Review Criteria**

- (1) Where an applicant seeks a variance to any of the area or dimensional standards in this code, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as defined in Section **1226.10(c)(3)** below.
- (2) ~~Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship as defined in Section 1226.10(e)(4) below.~~

**(3) Area and Dimensional Variance Review Criteria**

- A. The following factors shall be considered and weighed by the BZA to determine practical difficulty:
  - I. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
  - II. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
  - III. Whether the special conditions and circumstances are a direct result from the actions of the applicant, his or her agents, or prior property owners;

- iv. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
- v. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
- vi. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;
- vii. Whether special conditions or circumstances exist as a result of actions of the owner;
- viii. Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
- ix. Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or
- x. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

B. No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

**(4) Use Variance Review Criteria**

In order to grant a use variance, the BZA shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- C. The variance requested cannot otherwise be resolved by a zoning map amendment or a zoning map amendment is not the most beneficial approach;
- D. The essential character of the neighborhood will not be substantially altered as a result of the variance;
- E. There is an existing structure that cannot be reasonably used for a permitted use or a conditionally permitted use in the applicable zoning district;
- F. The proposed use is listed in Table 1204-3;
- G. The hardship condition is not created by actions of the applicant;
- H. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- I. The granting of the variance will not adversely affect the public health, safety or general welfare;

# ZONING PRACTICE

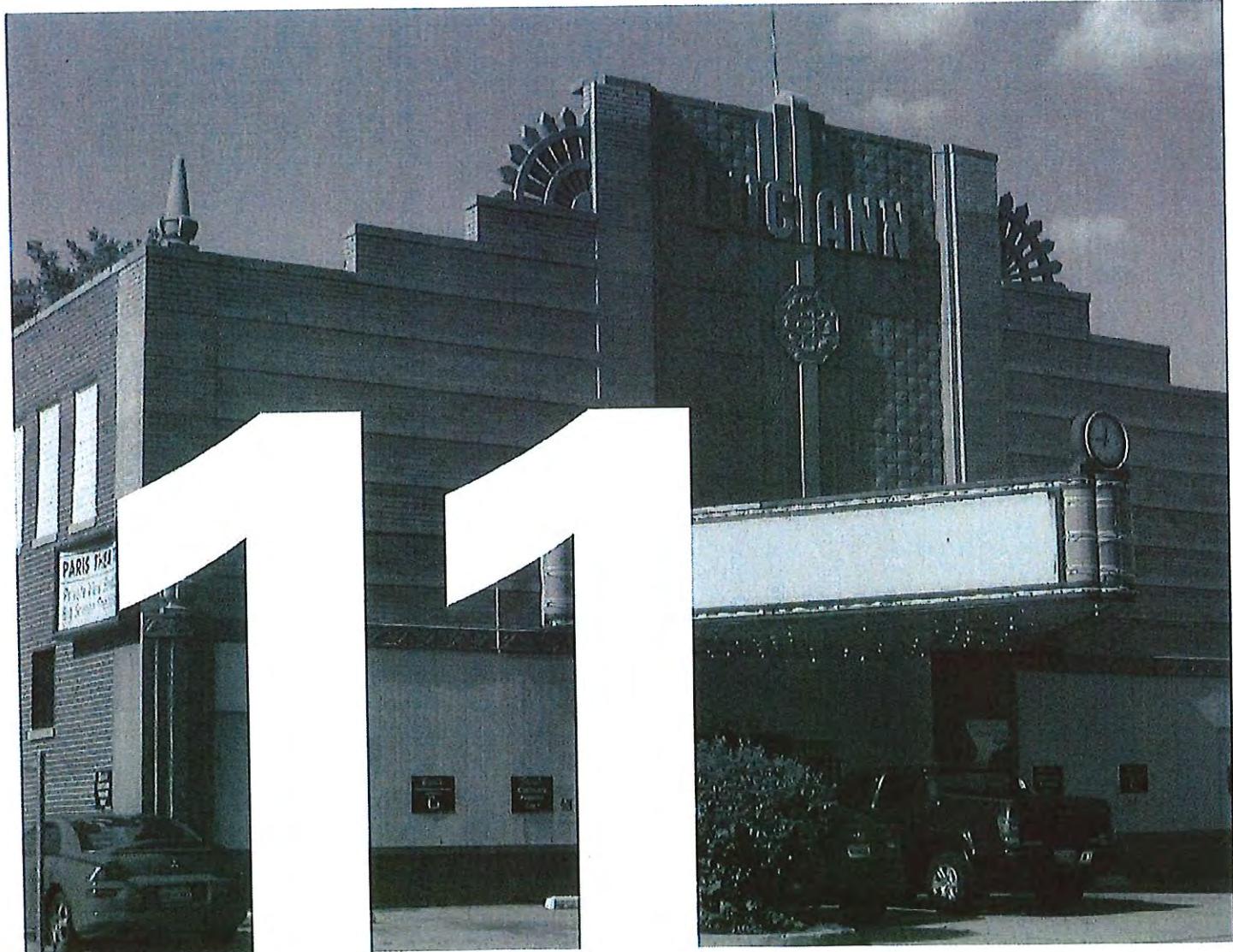
NOVEMBER 2020

APA

AMERICAN PLANNING ASSOCIATION

⊕ ISSUE NUMBER 11

## PRACTICE USE VARIANCES



# The Use Variance: Zoning Savior or Annihilator?

By Josh Whitehead, AICP

Zoning is the municipal tool that, as U.S. Supreme Court Justice George Sutherland put it, ensures that the "pig is in the pen and not the parlor" (*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926)). The use variance, when used appropriately, addresses not only the pig whose pen has gentrified into a parlor through no fault of his own, but also the pig whose parlor is in name only due to action by city hall.

Take the example pictured below, a classic apartment building in Memphis, Tennessee, that was once the home of the author of this article. While legal under the local zoning code when constructed in 1928, it later became nonconforming due to a subsequent change to code that prohibited residential buildings in its commercial zoning district. While this building may have been a very attractive pig and the darling of its block, it was a pig nonetheless. In most

jurisdictions in this country, its owner would have but one option to restore the legitimacy of its use as an apartment building: petition the city to rezone the property, a process wrought with difficulties. First, the rezoning process requires two separate public hearings with two separate bodies—the same two bodies that approved the downzoning. In the first place, via a text or map amendment to the zoning code. In addition, many states require consistency between their cities' land-use decisions and long-range plans, and since many zoning changes that create nonconforming uses are the result of a long-range plan, undoing the zoning change would be inconsistent with the plan and thereby potentially illegal. Tennessee, however, allows variance requests to be inconsistent with a long-range plan, thereby making it the only viable option for certain pig owners ([§13-4-202\(b\)\(2\)\(C\)\(iii\)](#)).



Josh Whitehead

❸ This apartment building became a nonconforming use after a zoning change prohibited exclusively residential uses in its zoning district.

## THE HISTORY OF THE VARIANCE

Ever since zoning came to America, the debate over the variance has waged. For some, it is a safety valve providing relief from unnecessary or excessive governmental intervention in the marketplace; for others, it is a "cheat" for scofflaws seeking to avoid playing by the rules. In reality, the variance can be, and has been, both. The debate over the variance began nearly 100 years ago with the drafting of the Standard State Zoning Enabling Act, largely waged between two of its principal authors, Edward Bassett and Alfred Bettman. The model zoning act was written to promote municipal zoning. With the federal government taking the lead, states could easily adopt the model act, which in turn would allow its subunit municipal governments to adopt local zoning ordinances. Section seven of the act articulated the zoning ordinance's relief valve:

The board of adjustment shall have the following powers . . .

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done (U.S. DOC 1926).

The standard act did not explicitly allow for use variances or discourage their use; in fact, the word "use" is nowhere to be found. In addition, nothing extraordinary about the property was required as a predicate to any variance—just a "special condition." No direction was given to the municipal zoning board on what constituted such a special condition. This language was a compromise

between those on the advisory committee in favor of municipal ordinances providing great latitude for variances, led by Bassett, and those who were not, led by Bettman (Knack et al. 1996).

Why did the two fathers of zoning approach variances so differently? One explanation has been provided by Tennessee land-use attorney George Dean, who has opined that Bassett was the more pragmatic of the two by lobbying for a "practicable remedy" to the zoning ordinance; without one, the ordinance may frequently be challenged in court and its "constitutionality . . . imperiled" (Dean 2009). Bassett was also a firm believer that the variance should be heard by an expert administrative panel (Salkin 2017). With a zoning board that understood the zoning ordinance and regularly administered the test for variances, courts would be less likely to invalidate not only the variance but also the entire zoning ordinance (Salkin 2017). An early New York opinion put it this way:

The creation of a board of appeals, with discretionary powers to meet specific cases of hardship or specific instances of improper classification is not to destroy zoning as a policy, but to save it. The property of citizens cannot and ought not to be placed within a strait-jacket. Not only may there be grievous injury caused by the immediate act of zoning, but time itself works changes which require adjustment. What might be reasonable today might not be reasonable tomorrow (*People ex rel. St. Basil's Church of City of Utica v. Kerner et al.*, 125 Misc. 526, 211 N.Y.S. 470).

Alfred Bettman, on the other hand, felt like too many zoning variances represented a "more serious impairment of the integrity of the [zoning ordinance] than results from Court decisions or councilmanic spot zoning" (Bassett et al. 1935). Bettman thought Bassett's generous variance language would create an opportunity or temptation for the zoning board of appeals "to substitute gradually a system of regulations by individual lots . . . as distinguished from regulation by districts . . ." (Bettman and Nolen 1938).

By 1930, the U.S. Department of Commerce reported that 35 states had adopted pieces of legislation based on their Standard Act (Knack et al. 1996). By the end of 1930, 786 municipalities had created planning commissions (Chase 1931). Of course, many states did not pass the act verbatim. Tennessee, for example, provided Alfred Bettman the opportunity to add language to the Standard Act that was blocked by Edward Bassett (Dean 2009). Its enabling act, adopted in 1935 and largely unaltered since, contains the following language with regard to variances:

Powers of board of appeals. The board of appeals has the power to:

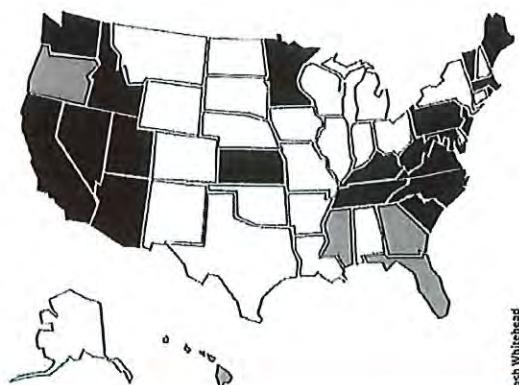
(3) Where, by reason of exceptional narrowness, shallowness or shape of a specific place of property at the time of the enactment of the zoning regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any [zoning] regulation . . . would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property, authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship (§17-207, emphasis added).

Bettman's statute is very specific as to what made a property "special"; it had to be shaped differently from other lots or have some sort of topographic abnormality. If a property owner was able to demonstrate this special circumstance, he or she had to then further prove that this special circumstance was somehow related

to the proposed improvement that could not be built under the regulations of the zoning code due to some "practical difficulty" or "undue hardship." This was quite a high bar for property owners to meet, much less understand. In fact, many states neither define these terms nor differentiate between the two.

As opposed to Tennessee and other states that hired Bettman to tweak the Standard Act, some states' enabling legislation predated the Standard Act. For instance, Edward Bassett's first professional consultation in the field of zoning was in fact the very first zoning code in the country, New York City's. He is attributed as the coauthor of the 1916 resolution along with George McAneny, who was then the city's president of the board of aldermen. New York's variance language was even less specific than the Standard Act:

Article II, §7. Use District Exceptions. The Board of Appeals, created by chapter 503 of the laws of 1916, may, in appropriate cases, after public notice and hearing, and subject to appropriate conditions and safeguards, determine and vary the application of the use district regulations



Josh Whitehead

➊ The states shown in black follow the more restrictive Bettman approach to variances, while the states shown in white follow the less restrictive Bassett approach. States in gray are largely silent on the issue of variances altogether.

herein established in harmony with their general purpose and intent [of the zoning resolution] . . . (New York 1916).

So long as there were "safeguards" and "harmony with the general purpose and intent" of the zoning resolution, any zoning variance could be theoretically approved. In other words, no unique situation of the property was required. Most states are like Tennessee and New York: they either take the restrictive Bettman approach like the former or the looser Bassett approach like the latter.

#### A LOOK AT A FEW STATES

Due to the imprecise and varying language of the many states' pieces of enabling legislation, variances vary wildly from state to state. As noted city planner Frederick H. Balr, Jr., aptly put it, "There is probably no area of zoning law where higher courts point in so many directions as the field of variances" (1984). This is particularly true for use variances, which have the potential of an additional layer of legal and political murkiness, given they have the same result as a rezoning. Use variances are therefore the focus of a great deal of attention, particularly when a city's council feels usurped by a process that varies from a zoning map and code that it adopted. The following case studies highlight this inevitable conflict.

In 1986, Jim and Susan Brandt were told to file for a variance before they could rent the two long-standing homes on their property to two separate families, as the property was in a single-family zoning district (*Matthew v. Smith*, 707 S.W.2d 411 (Mo. 1986)). The Kansas City Board of Adjustment approved the request, which was appealed up to the Missouri Supreme Court. In its *Matthew* decision, the court overturned a 1930 case largely interpreted as barring use variances in the state (*State ex rel. Nigro v. Kansas City*, 27 S.W.2d 1030, 325 Mo. 95 (1930)). It also set out a new rule for use variances: they must be predicated upon an "unnecessary hardship," while area variances need only pass the "practical difficulties" test. As a result of *Matthew*, boards of adjustment in Missouri were explicitly given the green light to approve use

variances, including Kansas City's. This was a drastic change to zoning law in the state. In fact, the reversal was so pronounced that a University of Missouri law review article exclaimed that the "Use Variance Comes to Missouri" (Scott 1987). But the city council of Kansas City was not impressed, feeling its legislative zoning powers were infringed by the advent of the use variance. It passed a resolution asking the Missouri General Assembly that its enabling legislation be amended to overturn *Matthew* (Kansas City 1992). The General Assembly obliged, and now the Missouri statutes have a carve-out prohibiting use variances in just one place in the state: Kansas City ([§89.090](#)).

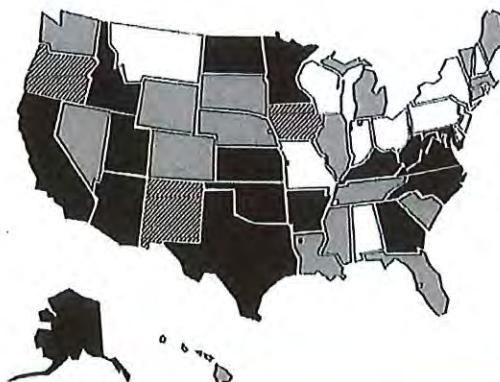
A situation similar to that in Kansas City transpired in Tulsa, Oklahoma, in the late 1970s. Don Nucholls and his partner Lee Rhodes applied for a variance to the Tulsa Board of Adjustment for the operation of their real estate office in a residential zoning district (*Nucholls v. Board of Adjustment of City of Tulsa*, 560 P.2d 556, 1977 O.K. 3 (1977)). The board ruled that it could not act upon the applicant's request because the Tulsa zoning code prohibited use variances (*Nucholls v. Board of Adjustment of City of Tulsa*, 1977, p. 557). The matter was appealed to the Oklahoma Supreme Court, which found that the Tulsa ordinance barring use variances was nullified by enabling legislation (*Nucholls v. Board of Adjustment of City of Tulsa*, 1977, p. 560). As a result of the *Nucholls* decision, the Oklahoma legislature amended the Oklahoma Statutes to explicitly outlaw local use variances, with the notable exception of those related to "oil and/or gas applications"

([§511-44-104.3-4](#)). Unlike in Missouri, this legislation had statewide applicability, reflecting a more widespread disdain throughout the state over the use variance.

Similar across-the-board prohibitions of use variances have recently passed by the Minnesota and North Carolina legislatures. In Minnesota, a pro-use variance ruling by the state supreme court triggered the legislative change ([§394.27\(7\)](#) & [§462.357\(6\)](#)). In response to *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (2010)). Meanwhile, in North Carolina, the legislature codified long-established case law adverse to the concept ([§160D-705\(d\)](#) in response to *Lee v. Board of Adjustment of the City of Rocky Mount*, 226 N.C. 107 (1946)).

On the other end of the spectrum is New York. Its statute states that zoning boards "shall have the power to grant use variances . . ." ([General City Law §81-B.3\(a\)](#)). Similar language is found in New Jersey's zoning statutes ([§40:55D-70.57.d](#)).

The Indiana Court of Appeals rebuked Shelby County when its zoning board



• Jurisdictions shown in white allow use variances, while those that disallow use variances are shown in black. States shown in gray are either silent on the issue or allow their cities to prohibit use variances. Jurisdictions shown in hatching either require use variances to be approved by the local legislative body and not the zoning board or allow use variance appeals to be heard by the local legislative body.

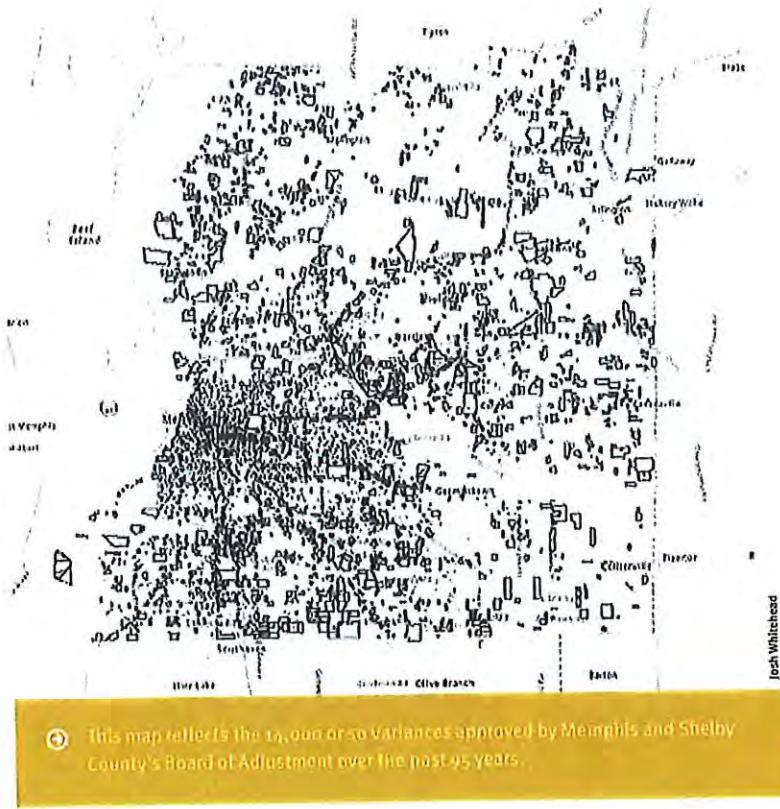
refused to consider a use variance due to a local ordinance banning them, finding "a zoning ordinance may not in any way restrict the authority of the board of zoning appeals to grant a variance where the enabling statute endows such board with powers to authorize variances . . ." (*Strange v. Board of Zoning Appeals of Shelby County*, 428 N.E.2d 1328 (Ind. Ct. App. 1981)). Following that opinion, the Indiana General Assembly amended the Indiana Code to require final approval of use variances by the municipal legislative body in the two jurisdictions presumably disturbed by this ruling: St. Joseph County (which includes South Bend) and Lake County (which includes Gary) (§36-7-318.6(b)(3)).

As far as the findings of fact expected to be made by zoning boards for the different types of variances, New York leads the way in setting apart use and non-use variances: the "practical difficulty" standard found in many statutes is used for area variances and the presumably more difficult "undue" or "unnecessary hardship" standard is used for use variances (General City Law 681-B). As discussed earlier, this is also the judicially established standard now followed by most jurisdictions in Missouri, based on *Matthew*.

The map above reflects the current status of use variances around the country. States are evenly split on the issue of use variances: 16 require localities to hear use variance requests, 17 prohibit use variances, and 18 are somewhere in between. Note that Omaha, Nebraska; Kansas City, Missouri; Memphis/Shelby County, Tennessee; Tampa, Florida; Shreveport, Louisiana; and two counties in Indiana are shaded differently from their states; this is due to special enabling legislation for these jurisdictions that differ from the rest of the state.

#### POTENTIAL MODEL LEGISLATION

In 2002, the American Planning Association published the *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change*. This model legislation prohibits the use variance altogether, due to the potential for great abuse ([§10-503](#)). This broad approach, however, fails to recognize truly unique situations



such as the apartment building pictured earlier. This section of the article will take a brief look at one community's experience with such abuse and its solution.

Memphis, Tennessee, and its county, Shelby County, have a long history of coordinating planning and zoning matters. The city's and county's planning commissions and zoning boards of adjustment were formally merged in 1956 and 1970, respectively, but they have shared the same staff since 1931. At the same time, the community has a long history of addressing zoning issues by variance. While most of these are bulk variances, many are use variances. The use variance in Memphis and Shelby County was sent into overdrive in 1964 with a Tennessee Supreme Court case that upheld the local zoning board's approval of a gas station in a residential district (*Reddoch v. Smith*, 379 S.W.2d 641, 214 Tenn. 213 (1964)). In

*Reddoch*, the court found that test of use variances under the special enabling acts in Shelby County was either a practical difficulty or unnecessary hardship and this was met in this circumstance given the history of the subject site, including its previous use by the state highway patrol and a nursery, as well as its position on a busy highway near a new highway interchange. This arguably low bar was later applied by the state's supreme court to the special enabling act in Memphis (which largely mirrored that of Shelby County's) in a case where the practical difficulty or unnecessary hardship was found where the cost of filling land zoned for single-family housing above the 100-year floodplain warranted its use for multifamily housing (*Glanckler v. City of Memphis*, 481 S.W.2d 376 (Tenn. 1972)).

With the blessing from the judiciary, many developers in Memphis and Shelby

County in the ensuing decades either went straight to the zoning board to rezone by use variance or did so after their rezoning request was rejected by the appropriate elected legislative body. This was met with continued resistance in the community, the Memphis City Council, and the editorial boards of the city's two daily newspapers. The Tennessee General Assembly never did, however, amend the pertinent enabling legislation. So, the local legislative bodies decided to try the next best thing: amend the local ordinance, but not by prohibiting use variances as they were explicitly permitted in the enabling legislation and recognized by the courts. Instead, all use variances would go to the elected bodies after a review by the planning commission, the same process for a rezoning (Covington 1999).

Requiring use variances to go through the same steps as a rezoning certainly put an end to many frivolous use variance requests, but it failed to serve those property owners who were in desperate need of a real safety valve to the local land-use regime. Take, as an example, the case of William Lee, the longtime owner of a classic 1920s corner store in North Memphis pictured at right. In 1988, the store was inexplicably downzoned to an exclusively residential district, making the property nonconforming. Twenty years later, he closed the store for a period exceeding 365 days to care for his dying wife—thus extinguishing his nonconforming status. When he pursued reopening the store, he had to go through a fairly arduous use variance process with the two bodies that downzoned his property, rather than a nimble review by an independent zoning board.

I was appointed as the administrator of the zoning department in Memphis and Shelby County shortly after Lee's request was heard by the Memphis City Council. Shortly thereafter, I began work on addressing the use variance process in such a way that would both discourage situations like the gas station and apartment building built on greenfields that had been sanctioned by the Tennessee Supreme Court but also provide a fair and reasonable process for individuals in William Lee's position. In 2012, the Memphis City Council and Shelby County



• A corner store in Memphis that inspired an update to Memphis and Shelby County's use-variance standards.

Board of Commissioners approved a zoning code amendment that brought the ordinance in line with the enabling legislation by placing the duties of reviewing use variances to the body bestowed with that responsibility, the zoning board, and required a finding that none of the uses permitted on the property are practical given some peculiarity of the site ([Memphis and Shelby County Unified Development Code §9.22.6B](#)). The amendment also prohibited any use variance on a property that had been subject to a rezoning request at any time in the prior 18 months.

One of the first applications of the new use-variance process dealt with a nearly 100-year-old church building in a single-family neighborhood. The parish had outgrown the church and moved to a much larger building, leaving it empty. In 2013, a developer sought to rezone the property to a multifamily zoning district to allow it to be converted to apartments. As this would not have guaranteed the restoration of the old church building, the developer was encouraged by planning staff to refile for a use variance, which could be specifically conditioned on the utilization of the church building for the desired multifamily use. The question for the zoning board was fairly straightforward under the

new ordinance: Would the conversion of a relatively large structure originally built as a place of worship to a single-family home be practical? Another, more recent, example involved the usage of the rear one-fifth of an old theater building that was incredibly included in a residential zoning district at some point in the 1950s. After the theater building was closed for 365 days and lost its nonconforming status, its rear one-fifth required zoning action before the building could be rehabilitated. Again, the use-variance question to the board was simple: Was it practical to use the rear portion of an old theater for residential purposes?

A similar approach to the use variance that could also serve as model legislation may be found in Tampa, Florida. Like Memphis and Shelby County, zoning in Tampa is pursuant to special legislation passed by the Florida Legislature specifically for that city. This special act prohibits use variances for new construction on unimproved property ([Laws of Florida, Special Acts of 1969, Chapter 69-1651 §1](#)). In other words, a completely undeveloped "green" piece of property is unlikely to exhibit any unique qualities that would prevent the property owner from adhering to the zoning ordinance. Tampa's special statute also requires all

use variances to be reviewed for comments by the local planning commission, which helps Tampa's zoning board make more informed decisions that are in keeping with the various long-range plans and objectives of the municipality.

Likewise, Rhode Island's enabling act specifically requires that a zoning board must find that "the subject land or structure cannot yield any beneficial use" under the zoning ordinance in order for a use variance to be granted ([§45-24-41\(e\)](#)).

#### CONCLUSIONS

Some communities throughout the nation allow an unfettered utilization of the use

variance; others restrict them entirely. Both may find it helpful to follow the lead represented by Tampa's and Rhode Island's enabling legislation and Memphis and Shelby County's zoning code. Depending on the pertinent statutory and case law governing communities' zoning regulations, this may require state action but could also be as easy as amending the local zoning code. Such a move would be welcome news to the millions of property owners in those states that outlaw use variances, particularly as more localities strive for consistency between long-range comprehensive plans and individual land-use decisions. Use variances should be the rare

exception to consistency, thereby strengthening the consistency requirements for all other zoning requests.

#### ABOUT THE AUTHOR

Josh Whitehead, AICP, is a sixth-generation Memphian who was appointed as the head of the zoning office in Memphis and Shelby County in 2010. As such, he serves as the secretary of the communities' planning commission and zoning board. He holds a master's in community planning from the University of Cincinnati and a juris doctor from the University of Memphis, where he currently serves as adjunct professor. Whitehead has been published in law review journals on issues related to housing and blight but is most active on [crenedememph.com](#), a blog that features his take on Memphis' design, history, and architecture.

#### REFERENCES

Bair, Frederick H. Jr. 1984. *The Zoning Board Manual*. Chicago: Planners Press. Available at <http://bit.ly/13DABFt>.

Baker, N.E. 1927. *The Legal Aspects of Zoning*, p. 70.

Bassett, Edward M., Frank B. Williams, Alfred Bettman, and Robert Whitten. 1935. *Model Laws for Planning Cities, Counties, and States*. Cambridge, Massachusetts: Harvard University Press.

Bassett, Edward M. 1940. *Zoning*, p. 122.

Bettman, Alfred, and John Nolen Jr. 1938. "Recent Trends in Zoning Legislation." *The Planners' Journal*, 4(6): 135-138. Available at <http://bit.ly/1slmAfr>.

Chase, Lester G. 1931. *A Tabulation of City Planning Commissions in the United States*. Washington, D.C.: U.S. Department of Commerce. Available at <http://bit.ly/31uXhh>.

Covington, Jimmie. 1999. "County OK's First Reading of Billboard Restriction." *Commercial Appeal*, November 9.

Dean, George A. 2009. *Tennessee Zoning Boards: Practice and Procedure*. Nashville, Tennessee: GadShill Press.

Kansas City (Missouri), City of. 1992. Resolution No. 920162, adopted by the City Council on February 27, 1992. Available at <https://bit.ly/3nfVpxk>.

Knack, Ruth, Stuart Meck, and Israel Stollman. 1996. "The Real Story Behind the Standard Planning and Zoning Acts of the 1920s." *Land Use Law*, February. Available at <https://bit.ly/2GCKe2f>.

New York, City of. 1916. *Building Zone Resolution*. Available at <https://en.nyc.gov/25Chc7S>.

Salkin, Patricia E. 2017. "Zoning Administration: The Instruments and Agencies of Enforcement." In *New York Zoning Law and Practice*, Vol. 2, §27:11.

Scott, Gregory J. 1987. "Use Variance Comes to Missouri." *Missouri Law Review*, 52(2). Available at <https://bit.ly/2jzGicP>.

U.S. Department of Commerce (DOC). 1926. *Standard State Zoning Enabling Act*.

Cover: Brent Moore/creativecommons  
(CC BY-NC 2.0)

#### VOL. 37, NO. 11

The American Planning Association provides leadership in the development of vital communities for all by advocating excellence in planning, promoting education and resident empowerment, and providing our members with the tools and support necessary to ethically meet the challenges of growth and change.

*Zoning Practice* (ISSN 1548-0135) is a monthly publication of the American Planning Association. Joel Albizo, FASAE, CAP, Chief Executive Officer; Petra Hurtado, PhD, Research Director; Joseph DeAngelis, AICP, and David Morley, AICP, Editors.

Subscriptions are available for \$95 (U.S.) and \$120 (foreign). Missing and damaged print issues: Contact APA Customer Service (312-433-9100 or [subscriptions@planning.org](mailto:subscriptions@planning.org)) within 90 days of the publication date.

©2020 by the American Planning Association, which has offices at 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601-5927, and 1030 15th St., NW, Suite 750 West, Washington, DC 20005-1503; [planning.org](http://planning.org).

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means without permission in writing from APA.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.



**American Planning Association**  
*Creating Great Communities for All*

**ZONING PRACTICE**  
AMERICAN PLANNING ASSOCIATION

205 N. Michigan Ave.  
Suite 1200  
Chicago, IL 60601-5927



**DOES THE USE VARIANCE  
DESERVE ITS BAD  
REPUTATION?**

**11**

# **LEGISLATION**

# **ITEM 8**

**ORDINANCE NO. O2021- 122**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH FIVE STAR COMMERCIAL ROOFING, INC. FOR THE REPAIR OF THE ROOF ON THE ATAD BUILDING AT THE WATER RECLAMATION FACILITY.**

**WHEREAS**, staff contacted multiple contractors for recommendations and proposals to complete the ATAD Building roof repairs at the Water Reclamation Facility; and

**WHEREAS**, two contractors provided quotes as follows:

HKC Roofing and Sheet Metal	\$96,617
Five Star Commercial Roofing, Inc.	\$58,075; and

**WHEREAS**, Five Star Commercial Roofing, Inc. is determined to be the lowest and best quote; and

**WHEREAS**, staff has also recommended an additional 10% contingency (\$5,807.50) for any material or labor escalation that may occur due to current market conditions;

**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, shall enter into a contract with Five Star Commercial Roofing, Inc. for the repair of the ATAD Building roof at the Water Reclamation Facility in accordance with the quotation on file with the Public Works & Utilities Department. 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 \$63,882.50 from the Sewer Capital Reserve 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**

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

---

Nicole Condrey, Mayor

1<sup>st</sup> Reading: \_\_\_\_\_  
2<sup>nd</sup> Reading: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

H:/Law/leg/2021 Leg/O Five Star Commercial Roofing – WRF ATAD Building

**S T A F F   R E P O R T**  
For the Business Meeting of: December 7, 2021

---

November 17, 2021

TO: Jim Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director

PREPARED BY: Nakita Lancaster, Assistant Public Works and Utilities Director

**Contract Services – Water Reclamation Facility ATAD  
Building Roof Repair**

**PURPOSE**

To authorize contract services with Five Star Roofing for the replacement of three roofs associated with the ATAD Building.

**BACKGROUND AND FINDINGS**

The Autothermal Thermophilic Aerobic Digestion (ATAD) process was designed by CDM in 2007 and constructed in 2008. Thickened sludge from the wastewater treatment is fed to the ATAD units where the organic material in the sludge begins to digest, generating high heat. The high heat generated in the digestion process kills pathogens that are commonly found in wastewater sludge. The result of the digestion process is Class A biosolids. Biosolid disposal from wastewater facilities is regulated based on these classifications. Class A biosolids can be utilized for beneficial reuse, reducing disposal cost of biosolids. The project added two new reactors and a control building which houses all the electrical and operating equipment for the process area.

The roofs at many of the buildings at the water reclamation facility (WRF) have experienced leaks. The leaks prompted the WRF Manager to have an assessment completed for all roofs at the WRF to prioritize which roofs had the most urgent need of replacement or repair. The roofs associated with three ATAD structures were identified as the most critical in need of repair. For the reactors, the integrity of the roofs is important to successful thermophilic digestion. And the control room houses electrical and operating equipment that is essential to operating the ATAD process area.

The company (The Garland Company, Inc.) that performed the inspections for all of the WRF roofs provided cost estimates and recommendations for the roof repairs. Due to the extensive damage on the ATAD roofs, Garland recommended complete replacement of the roofs at a cost ranging from \$365,000 to \$420,000.

The WRF Manager and Maintenance Supervisor reached out to multiple roofing companies to

obtain recommendations and cost proposals. Despite attempts to contact multiple roofing companies, only two were responsive to our request to visit the WRF to look at the ATAD roofs and provide cost estimates. These two contractors both recommended that roof be repaired instead of fully replaced (as Garland had recommended).

The scope of work includes removing existing flashing and any of the existing asphalt roof that is deteriorated or saturated. A new rubberized roofing membrane will be installed, including new flashing and gutter apron.

The cost estimates received for this scope of work are:

HKC Roofing and Sheet Metal - \$96,617  
Five Star Roofing - \$58,075

Both estimates include a 20-year warranty.

We recommend hiring Five Star Roofing to complete the roof repair for the ATAD buildings.

### **ALTERNATIVES**

1. Publish a formal solicitation.

Given that we were unsuccessful at receiving multiple quotes by contacting roofers directly, we don't anticipate the results would be any different if we solicited cost proposals using the City's BidView system.

2. Replace the roof entirely.

We did receive one recommendation to replace the roofs in their entirety. This recommendation was based on the fact that there is extensive water damage to the existing roofs. The two other contractors that we consulted both felt that the damaged portions could be selectively removed instead of a complete tear off.

### **FINANCIAL IMPACT**

Funds are appropriated in the sewer capital fund for facility upgrades (495.880.54540). The quote provided by Five Star Roofing is \$58,075. Due to current market conditions, we request an additional 10% (\$5,807.50) be authorized to account for any material or labor escalation. We request that a total amount of \$63,882.50 be authorized for the contract with Five Star Roofing.

### **EMERGENCY/NON-EMERGENCY**

Non-emergency

# **LEGISLATION**

# **ITEM 9**

**ORDINANCE NO. O2021-123**

**AN ORDINANCE DETERMINING TO PROCEED WITH AN ISSUE OF BONDS IN THE AMOUNT OF \$16,800,000 AND CERTIFYING THE SAME TO THE BOARD OF ELECTIONS.**

(Ohio Revised Code Section 133.18)

**WHEREAS**, the Council, at its meeting on November 16, 2021, passed an ordinance (the "Ordinance of Necessity") declaring that it is necessary to issue bonds in the amount of \$16,800,000 (the "Bonds") for the purpose of constructing fire facilities; furnishing and equipping the same; improving the sites thereof; and acquiring interests in land as necessary in connection therewith, and that it is necessary that a direct tax be annually levied on all the taxable property in the City outside of the ten-mill limitation to meet the debt charges on the Bonds and any securities issued in anticipation thereof;

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

**Section 1**

It is necessary to proceed with the issuance of the Bonds in the amount and for the purpose described in the preamble to this Ordinance, and to levy, outside of the ten-mill limitation provided by law, an annual tax on all the taxable property in the entire territory of the City to pay debt charges on the Bonds and any securities issued in anticipation thereof.

**Section 2**

The Bonds shall be dated approximately June 1, 2022; shall bear interest at the estimated rate of 3.35% per annum; and shall be paid over a period not to exceed 30 years, as calculated under Ohio Revised Code Chapter 133.20.

**Section 3**

The question of issuing the Bonds shall be submitted to all the electors of the entire territory of the City at the election to be held at the usual voting places within the City on May 3, 2022. All of the territory of the City is located in Butler and Warren Counties, Ohio.

**Section 4**

The form of the ballot to be used at said election shall be substantially as follows:

**AFFIRMATIVE VOTE IS NECESSARY FOR PASSAGE**

Shall bonds be issued by the City of Middletown for the purpose of constructing fire facilities; furnishing and equipping the same; improving the sites thereof; and acquiring interests in land as necessary in connection therewith in the principal amount of \$16,800,000, to be repaid annually over a maximum period of 30 years, and an annual levy of property taxes be made outside the ten-mill limitation, estimated by the county auditor to average over the repayment period of the bond issue one (1.00) mills for each one dollar of tax valuation, which amounts to \$0.10 for each one hundred dollars of tax valuation, commencing in 2022, first due in calendar year 2023, to pay the annual debt charges on the bonds, and to pay debt charges on any notes issued in anticipation of those bonds?

	FOR THE BOND ISSUE
	AGAINST THE BOND ISSUE

### **Section 5**

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

### **Section 6**

The Clerk of Council of the Council is directed to certify a copy of this Ordinance, once effective, along with copies of the Ordinance of Necessity and the certificate of the Butler County Auditor, to the Board of Elections of Butler County, Ohio on or before February 2, 2022.

### **Section 7**

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

---

Nicole Condrey, Mayor

1st Reading: December 7, 2021  
2nd Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

**CERTIFICATE**

The undersigned Clerk of Council of the City of Middletown, Butler and Warren Counties, Ohio, hereby certifies that the foregoing is a true copy of an ordinance duly passed by the City Council of said City on December 21, 2021, and, once effective, that a true copy thereof was certified to the Board of Elections of Butler County, Ohio.

---

Clerk of Council  
City of Middletown  
Butler and Warren Counties, Ohio

**STAFF REPORT**  
For the City Council Meeting of: November 16, 2021

---

November 9, 2021

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

(2) Ordinances: (1.) Declaring Necessity of \$16,800,000 Bond Issue to Finance Fire Stations on May 3, 2022 Ballot; and. (2.) Ordinance Authorizing “Reimbursement Resolution” allowing for Certain Original Expenditures Incurred for Fire Station Costs in Advance of Bond Sale to be Reimbursed from Proceeds.

**PURPOSE:**

We are requesting that the City Council authorize and adopt two, separate Ordinances. The first, an Ordinance “Declaring the necessity of a bond issue in the amount of \$16,800,000 for the design and construction, furnishing and equipping of fire facilities (four, fire stations), as well as improving the sites thereof and acquiring interests in land as necessary”; and placing the question of said Bond issue on the May 3, 2022 election ballot.

The second Ordinance would serve as, what is generally referred to in bond financing terms as a “Reimbursement Resolution”. Which means it allows the City to spend its own funds, following passage of the reimbursement resolution but in advance of the bond financing closing, on certain original eligible costs associated with the design, construction, equipping, or furnishing of the stations, or on site-improvements or acquisition costs, and then having the option to have such eligible costs “reimbursed” from the bond proceeds once received.

**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 all of 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 City Council previously determined and designated the most optimal city-owned and controlled locations for siting the new stations, and, as authorized on July 20<sup>th</sup>, 2021, further declared the intent to place on the May 3, 2022 election ballot a question before

voters seeking a 1-mil tax on the real property located within the City's corporate boundaries, for a term of 25-years.

More recently however, in refining the precise details of how the bonds must be structured, we learned that were we to position and structure the Bond financing as a "1-mill levy" we would be limited in the total proceeds we could receive upon closing to approximately one-half of that which is required. Conversely, if the financing is positioned and structured as a \$16,800,000 debt financing with a conservative-enough estimate of the total (maximum) years to be imposed multiplied by an equally-conservative estimate of the interest rate that will be achieved in May/June 2022 when we ostensibly could look to "close" (assuming a successful ballot election); then we can effectively "back-in" to knowing that the 1-mill property tax levy should not be exceeded during the life of the levy, and, in fact could reasonably decrease over time. With this in mind, and given that we have unfortunately seen a rise in interest rates beyond that which we initially expected (projecting a 3.35% per annum rate) we now need to pass the Ordinance and seek the ballot question with a "maximum thirty (30) years listed for the duration of the levy".

Clearly, our hope is that the debt will be repaid in full in less than the maximum duration, and since we are freeing up potential General Fund Savings (LED street light retro-fit-caused decrease in electricity expense) to contribute to decreasing the repayment terms, we feel comfortable in stating that the likelihood is quite good that the levy will remain at 1-mill or less for a period of years less than the 30-years we are now required to list as a maximum for the ballot question and the Bond structuring. The Bonds will be sold with a call provision that will allow them to be retired in whole or in part without penalty after the first 10 years, approximately.

## **FINANCIAL IMPACTS**

The yearly debt service payments necessary to repay the \$16,800,000 financing will be covered by the imposition of a 1-mil property tax levy (or possibly lesser in out-years if sufficient increase in valuation over time occurs) imposed to replace the expiring 1-mil levy that funded repayment of the Central Connections (Senior) mortgage over the preceding ten (10) years.. This levy, if approved, would be first-imposed for the 2022 tax year, with collections first occurring in 2023. Based on the current valuation, the revenues from the levy would calculate to an estimated \$848,116 in the first year. However, when accounting for a 5% delinquency rate, we would expect to generate \$805,710 in the first year, with future estimated revenues growing by a conservative 1% in non-re-evaluation years, and 5% in re-evaluation years. This estimated revenue stream would then fully pay the required debt service (principal and interest, with interest estimated at 3.35%) over the maximum 30 years on the \$16,800,000 of Bond principal issued.

The average annual levy proceeds and corresponding debt service over the life of the issue is estimated at \$850,780. Current estimates also show that a bond retirement fund of approximately \$676,000 would be included with the bond issuance as well as the expected \$333,000 in issuance costs – all fully covered by the 1-mil levy. To the extent that more

revenues (surplus) would be produced during the maximum 30-year term than would be required to fully repay the debt service, all such surplus would be used exclusively to repay the debt early.

In addition, we have stated that the \$815,000 retro-fit of remaining non-upgraded street lights to LED fixtures (ARPA funded) should save the City approximately \$140,000 per year in General Fund expense and future City Council's can budget much of such savings to the early repayment of said bonds as well. However, because that is subject to future budget allocations ( by future City councils) we cannot decrease the 30-year maximum bond term as a result.

### **ALTERNATIVES**

Any feasible alternative to this request (the extension of a 1-mil real property tax levy that the public has gotten used to for the last 10 years) would require us to come up with another means to raise the nearly-\$17 Million cost of fire station design and construction. This could be accomplished (other than though property taxes) by going to the voters with a ballot request for an income tax increase – which would require not less than a 1/8<sup>th</sup> of 1% increase for a term of at least 15 years.

It is very clear that the American rescue Plan Act Funds (ARPA) can not be used to build fire stations directly, but instead could first, to the extent of so-called “lost revenues” (due to the COVID-19 pandemic as allowed under Federal law and calculated as counter-factual revenues) be used to make-up-for or replace City Funds lost. Our ARRPA budget only contemplates the LED retro-fit to create additional monies freed up from electricity expense savings

Generating the needed revenues by cutting other expenses within the General Fund budget in an amount averaging \$850,000 per-year, while technically possible, would devastate the very program outreach (public safety) that we would be trying to enhance; since the only way to make such significant cuts would be to personnel costs within public safety. And, this is clearly not recommended.

To build a single new station each 5-6 years would not solve or respond to the acute problem of how deficient these stations are, and would add approximately double to the final cumulative tally of costs to replace. (inefficiencies of single builds and inflation).

Finally, doing nothing does not alter the pressing and ever-escalating need to replace the wholly obsolete and inadequate fire stations currently in operation. Recruiting is already very difficult, but as we attempt to convince possible new young employees to work and live in these deteriorating and unhealthy facilities, we find the prospect ever more daunting.

### **RECOMMENDATION**

It is the recommendation of the City Manager, Fire Chief, Fire Command Staff, Finance Department, and financial advisor to the City, to authorize and approve the following two Ordinances:

- 1.) An Ordinance declaring necessity of bond issue in the amount of \$16,800,000 and submitting the question of such bond issue to the electors; and declaring an emergency.
- 2.) An Ordinance authorizing the use of a portion of the proceeds of obligations of the City of Middletown, Ohio in the estimated principal amount of \$16,800,000 to be issued for the purpose of constructing fire facilities; furnishing and equipping the same; improving the sites thereof; and acquiring interests in land as necessary in connection therewith; and declaring an emergency.

#### **EMERGENCY/NON-EMERGENCY**

These two Ordinances are each forwarded as single-reading “emergencies” for legislative action– to take immediate effect upon approval. This is necessary in order to meet the order of adoption and timing of approval of the documents required by City Bond Counsel and Ohio State regulations.

#### **ATTACHMENT(S):**

- 1.) An Ordinance declaring necessity of bond issue in the amount of \$16,800,000 and submitting the question of such bond issue to the electors; and declaring an emergency.
- 2.) An Ordinance authorizing the use of a portion of the proceeds of obligations of the City of Middletown, Ohio in the estimated principal amount of \$16,800,000 to be issued for the purpose of constructing fire facilities; furnishing and equipping the same; improving the sites thereof; and acquiring interests in land as necessary in connection therewith; and declaring an emergency.
- 3.) Certificate of estimated life and maximum maturity.
- 4.) Millage estimates for \$16,800,000 Fire house Construction bonds – 30 year term.

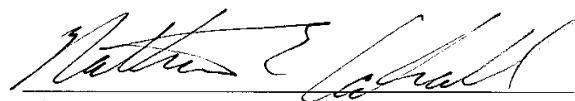
## **CERTIFICATE OF ESTIMATED LIFE AND MAXIMUM MATURITY**

To: City Council  
City of Middletown  
Butler and Warren Counties, Ohio

The undersigned Finance Director of the City of Middletown, Butler and Warren Counties, Ohio, hereby certifies as follows:

1. The estimated life of the improvements described as follows exceeds five years:  
constructing fire facilities; furnishing and equipping the same; improving the sites thereof; and acquiring interests in land as necessary in connection therewith.
2. The maximum maturity of bonds issued to pay the cost of such improvements is 30 years, calculated in accordance with Ohio Revised Code Section 133.20.

Dated: November 16, 2021



Finance Director  
City of Middletown  
Butler and Warren Counties, Ohio

## Certificate of Estimated Average Annual Property Tax Levy for Bonds of Subdivisions of the State

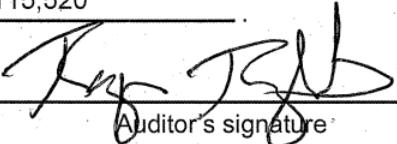
The county auditor of Butler County, Ohio, does hereby certify the following:

1. On November 18, 2021, the taxing authority of the City of Middletown (political subdivision name) certified a copy of its resolution adopted November 16, 2021, declaring the necessity of issuing bonds in the aggregate principal amount of \$ 16,800,000, and levying a tax outside the 10-mill limitation for the purposes set forth in the resolution to be placed on the ballot at the May 3, 2022, election.

2. The estimated average annual property tax levy required throughout the stated maximum maturity of the bonds to pay the interest on the bonds and retire the principal over 30 years is calculated to be one (1 . 00) mills for each one dollar of tax valuation, which is ten cents (\$ 0 . 10) for each \$100 of tax valuation.

3. The total tax valuation of the subdivision used in calculating the average annual property tax levy is

\$ 848,115,520



Auditor's signature

12/1/21

Date

### Instructions

1. "Total tax valuation" should include the taxable value of all real property and certain public utility personal property in the subdivision. Because of the rapid phase-out of the tangible personal property tax, including certain public utility personal property, and the long term of a bond issue, the taxable value of such property should not be included in "total tax valuation." See Bulletin 8 for a more detailed explanation of the exclusions from tax valuation and how to obtain them. If the subdivision is located in more than one county, the home county auditor (where the greatest taxable value of the subdivision is located) shall obtain the assistance of the other county auditors to establish the total tax valuation of the subdivision.
2. For purposes of this certification, "subdivision" includes any agency, board, commission, or other authority authorized to request a taxing authority to submit a tax levy on its behalf.
3. In calculating the estimated average annual property tax levy, the auditor shall assume that the bonds are issued in one series bearing interest and maturing in equal principal amounts in each year over the maximum maturity of the bonds, and that the subdivision's tax valuation for the current year remains the same throughout that period. If the tax valuation for the current year (the year in which you are making this certification) is not yet determined, the auditor shall estimate that valuation. In other words, the total tax valuation used for this purpose may differ from the tax valuations on the tax lists that were most recently certified for collection.
4. For purposes of this certification, we suggest that you round the millage to the nearest tenth (0.1) of a mill. This ensures that whole cents will be presented here and on the ballot.
5. Please file this certificate with the subdivision as soon as possible so that the taxing authority can pass a resolution to proceed not later than 98 days before the election for school districts, or 90 days before the election for all other subdivisions.

**City of Middlewootn, Butler & Warren Counties, Ohio**

**Millage Estimates For \$16,800,000 Fire House Construction Bonds - 30 Year Term**

**BALLOT MILLAGE CALCULATION  
ASSUMPTIONS**

		<b>APPRAISED VALUE</b>	<b>TAX VALUE 35%</b>	<b>ANNUAL</b>	<b>MONTHLY</b>	<b>WEEKLY</b>	<b>DAILY</b>
<b>2020 TAX VALUATION</b>	848,115,520	\$50,000	\$17,500	\$1,46	\$0.34	\$0.05	
<b>INTEREST RATE</b>	3.35%	\$60,000	\$21,007	\$1.76	\$0.41	\$0.06	
<b>MAXIMUM (YEARS)</b>	30	\$70,000	\$24,500	\$2.05	\$0.47	\$0.07	
<b>ISSUE SIZE</b>	\$16,800,000	\$75,000	\$26,250	\$2.19	\$0.51	\$0.07	
<b>First Year Interest</b>	562,800	\$80,000	\$28,000	\$2.34	\$0.54	\$0.08	
<b>Last Year Interest</b>	18,760	\$90,000	\$31,500	\$2.63	\$0.61	\$0.09	
<b>TOTAL</b>	581,560	\$100,000	\$35,000	\$3.11	\$0.74	\$0.11	
<b>Average Annual Interest</b>	290,780	\$110,000	\$38,500	\$3.62	\$0.74	\$0.11	
<b>Average Annual Principal</b>	560,000	\$120,000	\$42,000	\$4.13	\$0.51	\$0.81	\$0.12
<b>Average Annual Levy Proceeds/Payment</b>	850,780	\$125,000	\$43,750	\$3.89	\$0.66	\$0.84	\$0.12
<b>Estimated Millage</b>	1.00	\$130,000	\$45,500	\$4.64	\$0.80	\$0.88	\$0.13
<b>Average Home Value</b>	\$100,000	\$140,000	\$49,000	\$4.15	\$0.40	\$0.95	\$0.13
<b>Annual Cost</b>	\$35.11	\$150,000	\$52,500	\$5.26	\$1.39	\$1.01	\$0.14
<b>Monthly Cost</b>	\$2.93	\$160,000	\$56,000	\$5.18	\$1.68	\$1.08	\$0.15
<b>Weekly Cost</b>	\$0.68	\$175,000	\$61,250	\$6.44	\$1.52	\$1.18	\$0.17
<b>Daily Cost</b>	\$0.10	\$225,000	\$78,750	\$7.90	\$1.58	\$1.52	\$0.22
<b>Millage Impact Per \$200,000 True Home Value</b>		\$250,000	\$87,500	\$8.77	\$1.31	\$1.69	\$0.24
<b>1 Mills</b>	\$70.00	\$275,000	\$96,250	\$9.55	\$1.05	\$1.86	\$0.26
<b>0.5 Mills</b>	\$35.00	\$300,000	\$105,000	\$10.33	\$0.78	\$2.03	\$0.29
<b>0.25 Mills</b>	\$17.50	\$350,000	\$122,500	\$12.88	\$10.24	\$2.36	\$0.34

**ORDINANCE NO. O2021-110**

**AN ORDINANCE DECLARING NECESSITY OF BOND ISSUE IN THE AMOUNT OF \$16,800,000 AND SUBMITTING THE QUESTION OF SUCH BOND ISSUE TO THE ELECTORS; AND DECLARING AN EMERGENCY.**

(Ohio Revised Code Section 133.18)

**WHEREAS**, the Council has determined that it is necessary to finance the construction and acquisition of certain improvements to the City's fire facilities; and

**WHEREAS**, the City finds it necessary to declare an emergency, for the reason that this Ordinance must be certified by the County Auditor of Butler County, Ohio in order to be included on the ballot at the election to be held on May 3, 2022, which is in the best interest and welfare of the City's residents.

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

**Section 1**

It is necessary for the purpose of constructing fire facilities; furnishing and equipping the same; improving the sites thereof; and acquiring interests in land as necessary in connection therewith, to issue and sell bonds of the City in the amount of \$16,800,000 (the "Bonds"). It is further necessary that there shall be annually levied on all the taxable property in the entire territory of the City a direct tax outside of the ten-mill limitation to pay the debt charges on the Bonds and any securities that the Council may determine to issue in anticipation thereof. The Bonds shall be dated approximately June 1, 2022; shall bear interest at the estimated rate of 3.35% per annum; and shall be paid over a period not to exceed 30 years, as calculated under Ohio Revised Code Chapter 133.20.

**Section 2**

The question of issuing the Bonds shall be submitted to all the electors of the entire territory of the City at the election to be held at the usual voting places within the City on May 3, 2022. All of the territory of the City is located in Butler and Warren Counties, Ohio.

**Section 3**

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

**Section 4**

The Clerk of this Council is authorized and directed to certify a copy of this Ordinance to the County Auditor of Butler County, Ohio.

## Section 5

This Ordinance shall take effect immediately upon passage by the Council as an emergency, for the reason that prompt certification of it to the County Auditor of Butler County, Ohio is in the best interest and welfare of the City's residents.

/s/ Nicole Condrey  
Nicole Condrey, Mayor

Adopted: November 16, 2021

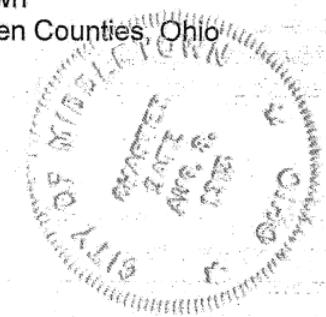
Attest: /s/ Amy Schenck  
Clerk of the City Council

## **CERTIFICATE**

The undersigned Clerk of Council of the City of Middletown, Butler and Warren Counties, Ohio, hereby certifies that the foregoing is a true copy of an ordinance duly passed by the City Council of said City on November 16, 2021 and that a true copy thereof was certified to the County Auditor of Butler County, Ohio.

Amy Schenck  
Clerk of Council  
City of Middletown  
Butler and Warren Counties, Ohio

H:/Law/leg/2021 Leg/O Necessity – Fire Levy



# **LEGISLATION**

# **ITEM 10**

**RESOLUTION NO. R2021-53**

**A RESOLUTION REQUESTING THE AUDITOR OF BUTLER COUNTY TO ADVANCE TO THE TREASURER OF THE CITY OF MIDDLETOWN, OHIO, TAXES ASSESSED AND COLLECTED FOR AND ON BEHALF OF THE CITY OF MIDDLETOWN, OHIO AND DECLARING AN EMERGENCY.**

**WHEREAS**, Ohio Revised Code Section 321.34 provides that the City Council of an Ohio municipal corporation may request from the Butler County Auditor advance payment of tax funds assessed and collected for and on behalf of such municipal corporation; and

**WHEREAS**, the aforesaid statute requires that such request be made by a formal resolution and that such advance payment of tax funds be paid to the Treasurer of the municipal corporation;

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

**Section 1**

In accordance with Ohio Revised Code Section 321.34, the Council of the City of Middletown, Ohio hereby requests that the Auditor of Butler County advance to the Treasurer of the City of Middletown, Ohio taxes assessed in 2021 for and on behalf of the City of Middletown and collected in 2022.

**Section 2**

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 request prior to the first advanced payment dates, and shall be in full force and effect from the date of its adoption.

---

Nicole Condrey, Mayor

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

**STAFF REPORT**  
For the City Council Meeting of: December 21, 2021

---

December 3, 2021

TO: James M. (Jim) Palenick, City Manager  
FROM: Nathan E. Cahall, Finance Director

**Annual Request for County Auditor Advance Payment of Taxes**

**PURPOSE:**

The purpose of this legislation is to authorize a request to the Butler County Auditor for advance payment of property taxes in accordance with ORC 321.34. The passage of this legislation is an annual practice of the City.

**BACKGROUND AND FINDINGS**

Butler County collects property taxes on behalf of the City of Middletown. The collections are paid to the City in two installments during the year. The City has the option to pass a resolution requesting advance payment of property taxes which allows it to receive those monies sooner, ahead of the two, standard, semi-annual settlement dates.

**FINANCIAL IMPACTS**

The request for advances will allow the City to utilize and/or earn interest on funds that belong to the City instead of waiting until the required distributions are submitted from the county.

**ALTERNATIVES**

The alternative would be to not pass the annual resolution which would result in the City receiving property tax revenue twice a year on the default settlement dates. Butler County would collect the funds and hold them until those dates.

**RECOMMENDATION**

Staff recommends approval of this measure by City Council.

**EMERGENCY/NON-EMERGENCY:**

Staff requests City Council pass this measure by emergency so that taxes due to the City can be received as soon as is permitted for fiscal year 2022.

# **LEGISLATION**

# **ITEM 11**

**RESOLUTION NO. R2021-54**

**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. (YEAR END – VARIOUS FUNDS)**

**NOW, THEREFORE, 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 Health Fund of the City to accounts of the City for the purposes herein described as follows:

FROM: Unappropriated HEALTH Fund (Fund # 228)	\$4,500
TO: Salaries & Wages, Accounts of 450 (228.450.51110)	\$4,500
<b>TOTAL HEALTH FUND</b>	<b>\$4,500</b>

**Section 2**

The following previously appropriated sums in the General Fund are hereby transferred:

FROM: Economic Development, Other Prof. Services, Accounts of 164 (100.164.52480)	\$10,000
TO: Economic Development, Salaries & Wages, Accounts of 164 (100.164.51110)	\$10,000
<b>TOTAL GENERAL FUND</b>	<b>\$10,000</b>

**Section 3**

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

FROM: Planning, Other Prof. Services, Accounts of 162 (100.162.52480)	\$2,200
TO: Unappropriated GENERAL Fund (Fund # 100)	\$2,200
<b>TOTAL GENERAL FUND</b>	<b>\$2,200</b>

#### **Section 4**

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)	\$19,467.79
TO:	Fiscal Charges - Debt Service, Accounts of 901 (100.901.57130)	\$7,267.79
	Building Inspection, Other Prof. Services, Accounts of 260	
	(100.260.52480)	\$2,200.00
	Utilities, Gas & Electric, Accounts of 590 (100.590.52210)	\$10,000.00
<b>TOTAL GENERAL FUND</b>		<b>\$19,467.79</b>

#### **Section 5**

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

FROM:	Unappropriated PUBLIC SAFETY Fund (Fund # 200)	\$950,000
TO:	Transfers Out, Accounts of 915 (200.915.58725)	\$950,000
<b>TOTAL PUBLIC SAFETY FUND</b>		<b>\$950,000</b>

#### **Section 6**

The following sums are hereby removed from appropriated funds in the Auto & Gas Fund of the City to accounts of the City for the purposes herein described as follows:

FROM:	Grounds Maintenance, Salaries & Wages, Accounts of 543	
	(210.543.51110)	\$32,000
TO:	Unappropriated AUTO & GAS Fund (Fund # 210)	\$32,000
<b>TOTAL AUTO &amp; GAS FUND</b>		<b>\$32,000</b>

#### **Section 7**

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

FROM:	Unappropriated AUTO & GAS Fund (Fund # 210)	\$32,000
TO:	Electronics, Salaries & Wages, Accounts of 524 (210.524.51110)	\$32,000
<b>TOTAL AUTO &amp; GAS FUND</b>		<b>\$32,000</b>

## **Section 8**

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

FROM:	Unappropriated CAPITAL IMPROVEMENT Fund (Fund # 220)	\$1,530,103.44
TO:	ODOT Urban Paving Program, Accounts of 027 (220.027.54520)	\$737,247.19
	Paving, Accounts of 032 (220.032.54520)	\$389,900.64
	<u>Bike Path, Accounts of 624 (220.624.54200)</u>	<u>\$402,955.61</u>
	<b>TOTAL CAPITAL IMPROVEMENT FUND</b>	<b>\$1,530,103.44</b>

## **Section 9**

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

FROM:	Unappropriated SEWER CAPITAL RESERVE Fund (Fund # 495)	\$11,181.21
TO:	Fiscal Charges – Debt Service, Accounts of 901 (495.901.57130)	\$11,181.21
	<b>TOTAL SEWER CAPITAL RESERVE FUND</b>	<b>\$11,181.21</b>

## **Section 10**

The following previously appropriated sums in the Solid Waste Disposal Fund are hereby transferred:

FROM:	Other Misc. Contractual Services, Accounts of 990 (555.990.52980)	\$2,500
TO:	<u>Salaries &amp; Wages, Accounts of 905 (555.905.51110)</u>	<u>\$2,500</u>
	<b>TOTAL SOLID WASTE DISPOSAL FUND</b>	<b>\$2,500</b>

## **Section 11**

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

FROM:	Unappropriated INCOME TAX Fund (Fund # 230)	\$635,777
TO:	Transfers Out, Police Pension Fund, Accounts of 915 (230.915.58140)	\$342,162
	Transfers Out, Fire Pension Fund, Accounts of 915 (230.915.58130)	\$293,615
	<b>TOTAL INCOME TAX FUND</b>	<b>\$635,777</b>

## Section 12

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

FROM: Unappropriated WATER Fund (Fund # 510)	\$22,000
TO: Other Prof. Services, Accounts of 560 (510.560.52480)	\$22,000
<b>TOTAL WATER FUND</b>	<b>\$22,000</b>

## Section 13

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

FROM: Unappropriated SANITARY SEWER Fund (Fund # 520)	\$22,000
TO: Other Prof. Services, Accounts of 580 (520.580.52480)	\$22,000
<b>TOTAL WATER FUND</b>	<b>\$22,000</b>

## Section 14

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

FROM: Unappropriated EMPLOYEE BENEFITS Fund (Fund # 661)	\$300,000
TO: Medical, Accounts of 990 (661.990.52421)	\$300,000
<b>TOTAL EMPLOYEE BENEFITS FUND</b>	<b>\$300,000</b>

## Section 15

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

FROM: Unappropriated SOLID WASTE DISPOSAL Fund (Fund # 555)	\$260,000
TO: Other Prof. Services, Accounts of 990 (555.990.52480)	\$260,000
<b>TOTAL SOLID WASTE DISPOSAL FUND</b>	<b>\$260,000</b>

## Section 16

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 therefore, 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 17**

All legislation inconsistent herewith is hereby repealed.

### **Section 18**

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 permit appropriation in the 2021 budget, 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\r Second Year end Approp & Transfers

## **STAFF REPORT**

For the City Council Meeting of: December 21, 2021

---

December 16, 2021

TO: James M. (Jim) Palenick, City Manager  
FROM: Nathan E. Cahall, Finance Director

### **2021 Budget Adjustments Legislation**

#### **PURPOSE:**

The purpose of this request is to authorize a supplemental appropriation of funds for certain departmental expenses related to personnel costs and other items.

The following 2021 budget adjustments are proposed:

1. Increase in personal services expenses for the Health Department from unappropriated reserves in the amount of \$4,500.00 to cover the cost of unforeseen vacation buy-outs. (Account 228.450.51110)
2. Authorize an increase for Economic Development Department personnel expenses in the amount of \$10,000.00 from departmental contractual expenses. (From Account 100.164.52480 in the amount of \$10,000.00 to Account 100.164.51110)
3. Authorize an appropriation from General Fund Unappropriated Reserves of \$7,267.79 to Account 100.901.57130 for the cost of unappropriated issuance costs related to the bond anticipation notes issued in July of this year.
4. Authorize an increase in the Public Safety Fund (#200) for Account 200.915.58275 in the amount of \$950,000.00 to be transferred to the General Fund. This amount was recently authorized to be transferred to Fund #200 due to surplus income tax collections compared to original estimates. The transfer approval did not include a corresponding appropriation for the account number in question.
5. Authorize a decrease in appropriations for Account 210.543.51110 in the amount of \$32,000.00 (Grounds Maintenance wages) and an increase in appropriations for Account 210.524.51110 (Electronics Wages) of \$32,000.00.

6. Authorize an increase in the appropriation for the Capital Improvement Fund (#220) to account for payments made on the City's behalf by the State of Ohio for certain projects during 2021 in the aggregate amount of \$1,530,103.44.
7. Authorize an appropriation from Sewer Capital Fund Unappropriated Reserves of \$11,181.21 to Account 495.901.57130 for the cost of unappropriated issuance costs related to the bond anticipation notes issued in July of this year.
8. Authorize an intra-fund adjustment of appropriations within the Solid Waste Disposal Fund (#555) of \$2,500.00 from Account 555.990.52980 to Account 555.905.51110 to account for personnel costs associated with the fund not originally budgeted.
9. Authorize an increase in appropriations for the Income Tax Fund (#230) Account 230.915.58140 of \$342,162.00.
10. Authorize an increase in appropriations for the Income Tax Fund (#230) Account 230.915.58130 of \$293,615.00.
11. Authorize an increase in appropriations in both the water and sewer administration budgets to cover surplus expenses related to electronic payment processing and other related expenses. (Account 510.560.52480 additional \$22,000 and Account 520.580.52480 additional \$22,000.)
12. Authorize an increase in appropriations for the Employee Benefits Fund (#661) of \$300,000.00 from unappropriated fund reserves for contractual services. (Account 661.990.52421)
13. Authorize an appropriation of the General Fund advance of \$260,000.00 for the Solid Waste Disposal Fund (#555). (Account 555.990.52480)
14. Authorize a decrease in appropriation for professional services in the development service's budget of \$2,200.00 (Account 100.162.52480) and a corresponding increase in appropriations in the building inspection department of \$2,200.00 (Account 100.260.52480)
15. Authorize an increase in appropriations for the General Fund Street Lighting division of \$10,000.00 from General Fund unappropriated reserves for Account 100.590.52210.

## **BACKGROUND AND FINDINGS**

The City typically makes year-end adjustments to various appropriations toward end of each fiscal year in order to comply with accounting regulations and to ensure that all funds do not end the fiscal year with a negative fund balance. The following summarizes the details of each budget adjustment proposed.

1. Increase in personnel costs – Health Department.

This would increase the overall personnel expenses for Account 228.450.51110 to \$522,078.00. (Increase of \$4,500.00) The funds would come from departmental unappropriated reserves.

2. Increase for Economic Development Department personnel expenses in the amount of \$10,000.00 from departmental contractual expenses.

This would shift certain unused non-personnel appropriations within the department's budget to cover remaining unbudgeted personnel costs for the remainder of the year. This measure is expenditure neutral for the department.

3. Authorize an appropriation from General Fund Unappropriated Reserves of \$7,267.79 to Account 100.901.57130 for the cost of unappropriated issuance costs related to the bond anticipation notes issued in July of this year.

At the time of issuance of the bond anticipation note by the City in the summer of this fiscal year, there were certain issuance costs associated with the debt obligation that were paid by the City. Those issuance costs were not originally included in the 2021 budget adopted by City Council. This authorization would allow for this portion of the General Fund to balance at year's end.

4. Authorize an increase in the Public Safety Fund (#200) for Account 200.915.58275 in the amount of \$950,000.00 to be transferred to the General Fund.

This amount was recently authorized to be transferred to Fund #200 due to surplus income tax collections compared to original estimates. The transfer approval did not include a corresponding appropriation for the account number in question. The legislation proposed completes this contemplated movement of dollars between the funds involved.

5. Authorize a decrease in appropriations for Account 210.543.51110 in the amount of \$32,000.00 (Grounds Maintenance wages) and an increase in appropriations for Account 210.524.51110 (Electronics Wages) of \$32,000.00.

This proposed adjustment of expenses within Fund #210 accounts for personnel expenses that have shifted over the year within the overall fund. This measure is expense neutral, yet necessary for accounting purposes.

6. Authorize an increase in the appropriation for the Capital Improvement Fund (#220) to account for payments made on the City's behalf by the State of Ohio for certain projects during 2021 in the aggregate amount of \$1,530,103.44.

The City of Middletown was the beneficiary of state funding assistance from both ODOT and OPWC this fiscal year for three capital improvement projects. Although the City did

not directly receive or disperse funding to the contractors for these projects, since they were directly paid by the state on behalf of the City, the City is still required to show these payments on its behalf in the budget pursuant to AOS Bulletin 2002-004. This accounting reporting function will not alter the ending fund balance of Fund #220 since the payments dispersed by the state will also be shown on offsetting revenue accounts. The following additional appropriations for the following accounts are proposed:

From Unappropriated Fund #220 Reserves to:

Account 220.027.54520 – Additional appropriation of \$737,247.19

Account 220.032.54520 – Additional appropriation of \$389,900.64

Account 220.624.54200 – Additional Appropriation of \$402,955.61

7. Authorize an appropriation from Sewer Capital Fund Unappropriated Reserves of \$11,181.21 to Account 495.901.57130 for the cost of unappropriated issuance costs related to the bond anticipation notes issued in July of this year.

At the time of issuance of the bond anticipation note by the City in the summer of this fiscal year, there were certain issuance costs associated with the debt obligation that were paid by the City. Those issuance costs were not originally included in the 2021 budget adopted by City Council. This authorization would allow for this portion of the General Fund to balance at year's end.

8. Authorize an intra-fund adjustment of appropriations within the Solid Waste Disposal Fund (#555) of \$2,500.00 from Account 555.990.52980 to Account 550.905.51110 to account for personnel costs associated with the fund not originally budgeted.

This adjustment does not increase the overall appropriation for Fund #555. For accounting compliance purposes, certain unused non-personnel expenses must obtain Council approval to be used for personnel costs. The increase in budgeted personnel costs for the year is a result in an underestimate of health insurance costs due to an employee coverage change during the fiscal year.

9. Authorize an increase in appropriations for the Income Tax Fund (#230) Account 230.915.58140 of \$342,162.00.

This proposed budget adjustment will reconcile the dollars transferred to the Police Pension Fund so that they match the appropriations from that fund which flow into the General Fund. These amounts have not matched since the passage of the 2021 budget. This measure eliminates the difference.

10. Authorize an increase in appropriations for the Income Tax Fund (#230) Account 230.915.58130 of \$293,615.00.

This proposed budget adjustment will reconcile the dollars transferred to the Fire Pension Fund so that they match the appropriations from that fund which flow into the General

Fund. These amounts have not matched since the passage of the 2021 budget. This measure eliminates the difference.

11. Authorize an increase in appropriations in both the water and sewer administration budgets to cover surplus expenses related to electronic payment processing and other related expenses.

This budgetary adjustment accounts for the previous underestimate for credit and debit card processing costs as more and more customers migrate to online payments. This adjustment would come from unappropriated reserves from both Fund #510 and #520 respectively.

12. Authorize an increase in appropriations for the Employee Benefits Fund (#661) of \$300,000.00 from unappropriated fund reserves for contractual services.

As Council is aware, the City is a self-insured employer for purposes of providing medical insurance and other related benefits. It appears that expenditure trends will surpass currently budgeted spending limits by the end of the month. It should be noted that the fund is estimated to surpass revenue collection projections for the year, as well. Staff requests an additional appropriation of \$300,000.00 for Account 661.990.52421 to cover medical and other insurance expenses for the year. This request is a hedge against any unexpected claims before the end of the year, and all unused funds will be carried over to 2022.

13. Authorize an appropriation of the General Fund advance of \$260,000.00 for the Solid Waste Disposal Fund (Account 555.990.52480).

This final budgetary adjustment would authorize the utilization of funds advanced previously by City Council for payment of expenses for the remainder of 2021.

14. Authorize a decrease in appropriation for professional services in the development service's budget of \$2,200.00 (Account 100.162.52480) and a corresponding increase in appropriations in the building inspection department of \$2,200.00 (Account 100.260.52480)

This adjustment simply shifts certain funding already appropriated in the General Fund for professional services to reflect costs incurred by the building inspection division of the department. This is an expense neutral measure, but necessary to allow the building inspection operation's budget to balance.

15. Authorize an increase in appropriations for the General Fund Street Lighting division of \$10,000.00 from General Fund unappropriated reserves for Account 100.590.52210.

Electric service charges for the City's street lighting came in slight over budgeted levels for the year. This minor adjustment will allow this component of the General Fund budget to end in the black for the year.

## **FINANCIAL IMPACTS**

The overall fiscal impact to the City's combined financial standing resulting from the proposed budgetary adjustments is minimal.

## **ALTERNATIVES**

The alternative would be to not authorize the budget adjustments requested which would result in negative fund balances for certain funds and/or result in the City exceeding certain budgeted expense items. That would be in violation of state law.

## **RECOMMENDATION**

Staff recommends approval of this measure by Council.

## **EMERGENCY/NON-EMERGENCY:**

The supplemental appropriation legislation containing these proposed amendments to the 2021 City budget is necessary to meet the end of year deadline for compliance with accounting and auditing requirements.

# **LEGISLATION**

# **ITEM 12**

**ORDINANCE NO. O2021-124**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING THE  
CONTINUATION OF A CONTRACT WITH SAFE SKIES AVIATION, LLC FOR  
FIXED BASE OPERATOR SERVICES AT MIDDLETOWN REGIONAL AIRPORT  
ON A MONTH-TO-MONTH BASIS AND DECLARING AN EMERGENCY.**

**WHEREAS**, City Council approved a month-to-month contract with Safe Skies Aviation, LLC by Consent Agenda on June 1, 2021 for fixed base operator (FBO) services at Middletown Regional Airport with funds for four months and one extension of three months on September 9, 2021 by Ordinance No. O2021-68; and

**WHEREAS**, negotiations with a new long-term FBO have taken longer than expected, and therefore, it is necessary to continue the contract with Safe Skies Aviation, LLC for an additional three months (through March 2022); and

**WHEREAS**, Safe Skies Aviation, LLC is willing to continue providing FBO services at the established rate; and

**WHEREAS**, City staff is satisfied with the performance of the contractor and believes continuation of the contract is in the City's best interest;

**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 Ohio Revised Code, is authorized to continue the fixed base operator services contract on a month-to-month basis, at the rate of \$17,124.00 per month.

**Section 2**

For said purposes, the Finance Director is authorized and directed to expend a sum not to exceed \$51,372.00 from the Airport Fund (Fund # 525).

**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 Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

## **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 contractor to continue providing services and be paid without interruption, 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 Safe Skies (FBO Extension thru March 2022)

**STAFF REPORT**  
For the Business Meeting of: December 15, 2021

---

December 21, 2021

TO: City Council

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

Prepared by: Susan Cohen, Assistant City Manager

**Contract with Safe Skies Aviation, LLC for month-to-month provision of Fixed Base Operator (FBO) services at Middletown Regional Airport.**

**PURPOSE**

To authorize the City Manager to approve and continue a month-to-month professional services contract with Safe Skies Aviation, LLC, for the non-exclusive provision of certain Fixed-Base-Operator (FBO) services at the Middletown Regional Airport. Cost of the FBO services shall be \$17,124 per month for an extension period of not more than three additional months.

**BACKGROUND AND FINDINGS**

The City is currently in the process of transitioning away from employing and directing City employees to provide the fixed-base-operator (FBO) services at the Middletown Regional Airport, and instead have such efforts provided through a multi-year contract which will be awarded to a selected new entity as the result of a currently running Request for Qualifications (RFQ) process. Negotiations have been ongoing to attempt to secure those services. Although we attempted to have the ongoing FBO in place prior to the previous extension being completed, negotiations have taken longer than anticipated. Staff anticipates bringing a new contract for council's review in January 2022.

During the transition period, the city has been working with Safe Skies Aviation, LLC (Kurt Yearout) to provide FBO services on a month to month basis. He has consented to continue the contract for these services on a month-to-month basis, with no desire to continue long term thereafter, but as a nod to the City's transition and need to maintain continuity of services. When we speak of "FBO" services, we include: managing aircraft traffic and city equipment; managing the aircraft fueling services; providing service truck, crew car, and tie-down services; cleaning and maintaining vacant "T" hangars; providing multiple duties related to "community" hangars; and managing the FBO office and pilot lounge among a multiple of contractually-detailed requirements. Safe Skies Aviation has been providing these services successfully during negotiations.

## **FINANCIAL IMPACTS**

Total cost of the maximum 3 month provision of the FBO services outlined is established at \$51, 372

## **ALTERNATIVES**

Our alternative to such arrangement would be stopping fueling and line services altogether or attempt to find another alternate, short-term contractor instead of Safe Skies. In that regard we know of no likely alternative who has continuity of service, understanding, and relationship at the airport.

## **EMERGENCY/NON-EMERGENCY**

Emergency

# **LEGISLATION**

# **ITEM 13**

**ORDINANCE NO. O2021-125**

**AN ORDINANCE AUTHORIZING THE AMENDMENT OF A CONTRACT WITH RUMPKE OF OHIO, INC. FOR REFUSE COLLECTION AND DISPOSAL AND DECLARING AN EMERGENCY.**

**WHEREAS**, City Council authorized a three-year contract with Rumpke of Ohio, Inc. in Ordinance No. O2019-80 for the collection and disposal of refuse (2020-2022); and

**WHEREAS**, City Council approved a change order in the amount of \$90,000.00 for additional cost of the services in 2021 by Ordinance No. O2021-104, adopted November 16, 2021; and

**WHEREAS**, an additional \$30,000.00 is needed to pay for the remainder of costs incurred in 2021;

**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 an amendment to the contract with Rumpke of Ohio, Inc. as may be necessary to pay the remaining shortfall for the 2021 contract year.

**Section 2**

For said purposes, the Finance Director is authorized and directed to expend a sum not to exceed \$30,000.00 from the Solid Waste Fund (Fund # 555).

**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 funds to be available quickly in order to pay the upcoming invoices for the remainder of 2021, and shall take effect and be in force from and after its adoption.

---

Nicole Condrey, Mayor

Adopted:\_\_\_\_\_

Attest:\_\_\_\_\_  
Clerk of City Council

**S T A F F   R E P O R T**  
For the City Council Meeting of: December 7, 2021

---

December 13, 2021

TO: James M. (Jim) Palenick, City Manager  
FROM: Nathan E. Cahall, Finance Director

**Rumpke Contract Limit Adjustment**

**PURPOSE:**

The purpose of this request is to amend the contract expenditure limit established by City Council by Ordinances O2019-80 and O2021-104 which approved the spending limits for the three-year contract award to Rumpke for trash hauling services.

**BACKGROUND AND FINDINGS**

The City authorized the current contract with Rumpke for trash hauling services in 2019 with the passage of Ordinance O2019-80. The enabling legislation placed an expenditure limit for each year of the three-year contract. The 2021 limit was an aggregate amount of \$3,630,346.00. Of that gross expenditure limit, \$3,541,606.00 was the established spending limit authorized to be spent out of the Solid Waste Disposal Fund (#555). Per the City's contract provisions with the vendor, this amount will be exceeded for fiscal year 2021. This is due to operational charges exceeding estimates established back in 2019. The ordinance was recently adjusted with the passage of Ordinance O2021-104 which raised the annual spending limit by \$90,000.00. The annual spending limit will need to be raised one final time by an additional \$30,000.00. This final adjustment to the contract award legislation is the last administrative action necessary for end of year compliance after Council's recent approval of a general fund advance to the waste fund earlier this year.

**FINANCIAL IMPACTS**

The proposed spending limit will fall within existing appropriation levels established by Council previously this fiscal year.

**ALTERNATIVES**

The alternative would be to not authorize the spending limit adjustment requested which would result in the City not being able to pay any outstanding invoices from the vendor for the remainder of the year.

## **RECOMMENDATION**

Staff recommends approval of this measure by Council.

## **EMERGENCY/NON-EMERGENCY:**

The supplemental appropriation legislation containing these proposed amendments to the 2021 City budget is necessary to meet the end of year deadline for compliance with accounting and auditing requirements and to meet the City's contractual obligations under the solid waste hauling contract with Rumpke.

# **LEGISLATION**

# **ITEM 14**

**RESOLUTION NO. R2021-55**

**A FINAL RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER A CONTRACT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION FOR THE 2022 URBAN PAVING PROGRAM ON A PORTION OF STATE ROUTE 4 FROM TYTUS AVENUE TO GERMANTOWN ROAD AND DECLARING AN EMERGENCY.**

The following Final Resolution enacted by the City of Middletown, Ohio, hereinafter referred to as the Legislative Authority/Local Public Agency or "LPA", in the matter of the stated described project.

**WHEREAS**, on the 20<sup>th</sup> day of July, 2021, the LPA enacted legislation proposing cooperation with the Director of Transportation for the described project:

**The project consists of resurfacing N. Verity Parkway (S.R. 4) between Tytus Avenue and Germantown Road, including pavement markings, lying within the City of Middletown.**

**WHEREAS**, the LPA shall cooperate with the Director of Transportation in the above described project as follows:

**The City agrees to assume and bear one hundred percent (100%) of the entire cost of the improvement within the city limits, less the amount of Federal-Aid funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U.S. Department of Transportation.**

The share of the cost of the LPA is now estimated in the amount of **\$241,736.00**, but said estimated amount is to be adjusted in order that the LPA's ultimate share of said improvement shall correspond with said percentages of actual costs when said actual costs are determined; and

**WHEREAS**, The Director of Transportation has approved said legislation proposing cooperation and has caused to be made plans and specifications and an estimate of cost and expense for improving the above described highway and has transmitted copies of the same to this legislative authority; and

**WHEREAS**, the LPA desires the Director of Transportation to proceed with the aforesaid highway improvement.

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

### **Section 1**

I. That the estimated sum of **\$241,736.00** has been previously appropriated for the improvement described above. The Finance Director is hereby authorized and directed to issue an order on the treasurer for said sum upon the requisition of the Director of Transportation to pay the cost and expense of said improvement. We hereby agree to assume in the first instance, the share of the cost and expense over and above the amount to be paid from **Federal** funds.

II. That the LPA hereby requests the Director of Transportation to proceed with the aforesaid highway improvement.

III. That the LPA enter into a contract with the State, and that **City Manager** be, and is hereby authorized to execute said contract, providing for the payment of the LPA the sum of money set forth herein above for improving the described project.

IV. That the LPA transmit to the Director of Transportation a fully executed copy of this Resolution.

### **Section 2**

This is to certify that we have compared the foregoing copy of Resolution with the original record thereof, found in the record of proceedings of the LPA, and which Resolution was duly passed by the LPA on the 4<sup>th</sup> day of January, 2022, and that the same is a true and correct copy of the record of said Resolution and the action of said LPA thereon.

### **Section 3**

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 meet state deadlines for project scheduling, and shall take effect and be in force from and after its adoption.

---

Nicole Condrey, Mayor

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

## **FINAL RESOLUTION**

The following Final Resolution enacted by the City of **Middletown**, Ohio, hereinafter referred to as the Legislative Authority/Local Public Agency or "LPA", in the matter of the stated described project.

WHEREAS, on the **20th day of July, 2021**, the LPA enacted legislation proposing cooperation with the Director of Transportation for the described project:

**The project consists of resurfacing N. Verity Parkway (S.R. 4) between Tytus Avenue and Germantown Road, including pavement markings, lying within the City of Middletown; and**

WHEREAS, the LPA shall cooperate with the Director of Transportation in the above described project as follows:

**The City agrees to assume and bear one hundred percent (100%) of the entire cost of the improvement within the city limits, less the amount of Federal-Aid funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U. S. Department of Transportation.**

The share of the cost of the LPA is now estimated in the amount of **Two Hundred Forty-One Thousand Seven Hundred Thirty-Six and - - - 00/100 Dollars, (\$241,736.00)**, but said estimated amount is to be adjusted in order that the LPA's ultimate share of said improvement shall correspond with said percentages of actual costs when said actual costs are determined; and

WHEREAS, The Director of Transportation has approved said legislation proposing cooperation and has caused to be made plans and specifications and an estimate of cost and expense for improving the above described highway and has transmitted copies of the same to this legislative authority; and

WHEREAS, The LPA desires the Director of Transportation to proceed with the aforesaid highway improvement.

NOW, THEREFORE, be it resolved:

- I. That the estimated sum, of **Two Hundred Forty-One Thousand Seven Hundred Thirty-Six and - - - 00/100 Dollars, (\$241,736.00)** is hereby appropriated for the improvement described above and the fiscal officer is hereby authorized and directed to issue an order on the treasurer for said sum upon the requisition of the Director of Transportation to pay the cost and expense of said improvement. We hereby agree to assume in the first instance, the share of the cost and expense over and above the amount to be paid from **Federal** funds.
- II. That the LPA hereby requests the Director of Transportation to proceed with the aforesaid highway improvement.
- III. That the LPA enter into a contract with the State, and that the **City Manager** be, and is hereby authorized to execute said contract, providing for the payment of the LPA the sum of money set forth herein above for improving the described project.
- IV. That the LPA transmit to the Director of Transportation a fully executed copy of this Resolution.

This is to certify that we have compared the foregoing copy of Resolution with the original record thereof, found in the record of the proceedings of the LPA, and which Resolution was duly passed by the LPA on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that the same is a true and correct copy of the record of said Resolution and the action of said LPA thereon.

We further certify that said Resolution and the action of said LPA thereon is recorded in the journal of said LPA in Volume \_\_\_\_\_, at Page \_\_\_\_\_, and under date of \_\_\_\_\_, 20\_\_\_\_.

Legislative Authority of the  
City of **Middletown**, Ohio

---

**City Manager**

SEAL  
(If Applicable)

---

Clerk (Secretary Ex-Officio)

**FISCAL OFFICER'S CERTIFICATE**  
(Chapter 5521 and Section 5705.41, Ohio Revised Code)

I hereby certify to that the money, to wit: **\$241,736.00** required for the payment of the cost other than that thereof assumed by the **Federal** Government, for the improvement of that portion of **S.R. 4**, lying within the corporate limits of the City of **Middletown**, more particularly described as follows:

**The project consists of resurfacing N. Verity Parkway (S.R. 4) between Tytus Avenue and Germantown Road, including pavement markings, lying within the City of Middletown; and**

has been lawfully appropriated for such purpose and is in the treasury to the credit of, or has been levied placed on the duplicate and in process of collection for the appropriate fund, and not appropriated for any other purpose; or is being obtained by sale of bonds issued on account of said improvement, which bonds are sold and in process of delivery.

I further certify that this certificate was made, sealed and filed with the legislative authority of the City of **Middletown**, Ohio, after said legislative authority passed the final resolution in connection with the within described project; and that this certificate was forthwith recorded in the record of the proceedings of said legislative authority, namely:

Legislative Authority's Journal, Volume \_\_\_\_\_, at Page \_\_\_\_\_,

IN WITNESS WHEREOF, I have hereunto set my hand and official seal as said fiscal officer, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Fiscal Officer's Seal)  
(If Applicable)

---

Fiscal Officer of the City of  
**Middletown**, Ohio

**C O N T R A C T**  
(Chapter 5521, Ohio Revised Code)

This contract is made by and between the State of Ohio, Department of Transportation, acting through its director (hereinafter referred to as the "STATE"), 1980 West Broad Street, Columbus, Ohio 43223, and the City of **Middletown**, (hereinafter referred to as the legislative authority/Local Public Agency or "LPA").

**WITNESSTH:**

**WHEREAS**, Chapter 5521 of the Ohio Revised Code provides that the legislative authority may cooperate with the STATE in a highway project made by and under the supervision of the Director of Transportation; and

**WHEREAS**, through the enactment of preliminary legislation, the LPA and the STATE have agreed to cooperate in the highway project described below; and

**WHEREAS**, through the enactment of final legislation, the LPA has committed to pay an estimated amount of money as its share of the total estimated cost and expense of the highway project described below; and

**WHEREAS**, the fiscal officer of the LPA has filed with the LPA a certificate stating that sufficient moneys are available, as required by Chapter 5521 and Section 5705.41 of the Ohio Revised Code. A duplicate certificate is attached hereto; and

**WHEREAS**, in accordance with the final legislation, the LPA hereby enters into this contract with the STATE to provide for payment of the agreed portion of the cost of the highway project and any additional obligations for the highway project described below.

**NOW, THEREFORE**, in consideration of the premises and the performances of mutual covenants hereinafter set forth, it is agreed by parties hereto as follows:

**SECTION I:**      **RECITALS**

The foregoing recitals are hereby incorporated as a material part of this contract.

**SECTION II:**      **PURPOSE**

The purpose of this contract is to set forth requirements associated with the highway project described below (hereinafter referred to as the "PROJECT") and to establish the responsibilities for the administration of the PROJECT by the LPA and the STATE.

**SECTION III: LEGAL REFERENCES**

This contract is established pursuant to Chapter 5521 of the Ohio Revised Code.

**SECTION IV: SCOPE OF WORK**

The work to be performed under this contract shall consist of the following:

**The project consists of resurfacing N. Verity Parkway (S.R. 4) between Tytus Avenue and Germantown Road, including pavement markings, lying within the City of Middletown.**

**SECTION V: FINANCIAL PARTICIPATION**

1. The STATE agrees to provide the necessary funds as enumerated in this section and allowed by law for the financing of this project.
2. The STATE may allocate the money contributed by the LPA in whatever manner it deems necessary in financing the cost of construction, right-of-way, engineering, and incidental expenses, notwithstanding the percentage basis of contribution by the LPA.
3. The total cost and expenses for the project are only an estimate and the total cost and expenses may be adjusted by the STATE. If any adjustments are required, payment of additional funds shall correspond with the percentages of actual costs when said actual costs are determined, and as requested, by the Director of Transportation.
4. The LPA agrees to pay to the STATE its share of the total estimated cost expense for the above highway project in the amount of **Two Hundred Forty-One Thousand Seven Hundred Thirty-Six and - - - 00/100 Dollars, (\$241,736.00)**.
5. **The City agrees to assume and bear one hundred percent (100%) of the entire cost of the improvement within the city limits, less the amount of Federal-Aid funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U. S. Department of Transportation.**
6. The LPA agrees to assume and bear One Hundred Percent (100%) of the cost of any construction items required by the LPA on the entire project, which are not necessary for the improvement, as determined by the State and Federal Highway Administration.
7. The LPA agrees that change orders and extra work contracts required fulfilling the construction contracts shall be processed as needed. The STATE shall not approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.

## **SECTION VI: RIGHT-OF-WAY AND UTILITIES**

1. The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.
2. The LPA agrees that all utility accommodation, relocation, and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual, including that:
  - A. Arrangements have been or will be made with all utilities where facilities are affected by the described PROJECT, that the utilities have agreed to make all necessary removals and/or relocations to clear any construction called for by the plans of this PROJECT, and that the utilities have agreed to make the necessary removals and/or relocations after notification by the LPA or STATE.
  - B. The LPA shall, at its own expense, make all removals and/or relocations of publicly-owned utilities which do not comply with the reimbursement provisions of the ODOT Utilities Manual. Publicly-owned facilities which do comply with the reimbursement provisions of the ODOT Utilities Manual will be removed and/or relocated at project expense, exclusive of betterments.
  - C. The removals and/or relocation of all utilities shall be done in such a manner as not to interfere with the operation of the contractor constructing the PROJECT and that the utility removals and/or relocations shall be approved by the STATE and performed in accordance with the provisions of the ODOT Construction and Materials Specifications.

## **SECTION VII: ADDITIONAL PROJECT OBLIGATIONS**

1. The STATE shall initiate the competitive bid letting process and award the PROJECT in accordance with ODOT's policies and procedures.
2. The LPA agrees:
  - A. To keep said highway open to traffic at all times;
  - B. To maintain the PROJECT in accordance with the provisions of the statutes relating thereto,
  - C. To make ample financial and other provisions for such maintenance of the PROJECT after its completion;
  - D. To maintain the right-of-way and keep it free of obstructions in a manner satisfactory to the STATE and hold said right-of-way inviolate for public highway purposes;

- E. To place and maintain all traffic control devices conforming to the Ohio Manual of Uniform Traffic Control Devices on the project in compliance with the provisions of Section 4511.11 of the Ohio Revised Code;
- F. To regulate parking in accordance with Section 4511.66 of the Ohio Revised Code, unless otherwise controlled by local ordinance or resolution.

## **SECTION VIII: DISPUTES**

In the event that any disputes arise between the STATE and LPA concerning interruption of or performance pursuant to this contract, such disputes shall be resolved solely and finally by the Director of Transportation.

## **SECTION IX: NOTICE**

Notice under this contract shall be directed as follows:

**City of Middletown  
One Donham Plaza  
Middletown, Ohio  
45042**

**Ohio Department of Transportation  
Office of Contract Sales & Estimating  
1980 West Broad Street, 1st Floor  
Columbus, Ohio 43223**

## **SECTION X: FEDERAL REQUIREMENTS**

- 1. In carrying out this contract, LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or age. LPA will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, or age (40 years or older), sexual orientation, or military status (past, present, future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
- 2. To the extent necessary under Ohio law, LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. LPA will, in all solicitations or advertisements for employees placed by or on behalf of LPA, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, future). If applicable, the LPA shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

3. LPA agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. LPA shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.

#### **SECTION XI: GENERAL PROVISIONS**

1. This contract constitutes the entire contract between the parties. All prior discussions and understandings between the parties are superseded by this contract.
2. Neither this contract nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
3. Any change to the provisions of this contract must be made in a written amendment executed by both parties.
4. This contract and any claims arising out of this contract shall be governed by the laws of the State of Ohio. Any provision of this contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this contract or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that the STATE is a party to any litigation arising out of or relating in any way to this contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
5. All financial obligations of the State of Ohio, as provided in this contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code. The financial obligations of the State of Ohio shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the STATE. Additionally, it is understood that this financial obligation of the LPA shall not be valid and enforceable unless funds are appropriated by the LPA's legislative body.
6. This contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
7. LPA agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

#### **SECTION XII: SIGNATURES**

Any person executing this contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this contract on such principal behalf.

Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.

**IN WITNESS THEREOF**, the parties hereto have caused this contract to be duly executed in duplicate.

**SEAL**  
(If Applicable)

**OHIO DEPARTMENT OF  
TRANSPORTATION**

---

Director of Transportation

Approved:  
Dave Yost  
Attorney General of Ohio

By: \_\_\_\_\_  
Stephen H. Johnson  
Unit Coordinator, Transportation  
Executive Agencies Section

**LOCAL PUBLIC AGENCY**  
City of **Middletown**

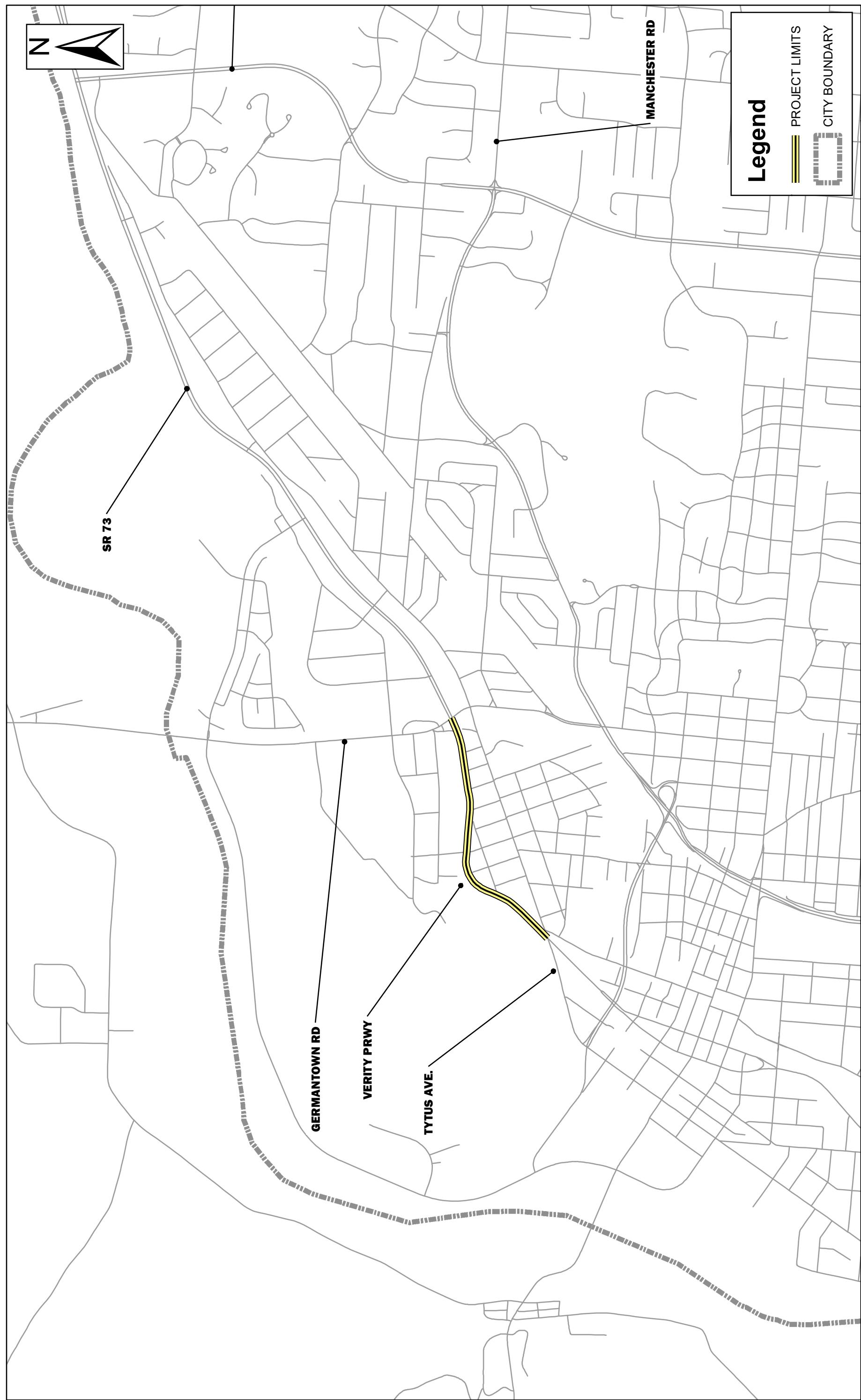
---

**City Manager**

---

Date

## 2022 URBAN PAVING PROJECT



# **LEGISLATION**

# **ITEM 15**

**ORDINANCE NO. O2021-126**

**AN ORDINANCE AUTHORIZING A CONTRACT WITH MILCON CONCRETE, INC. FOR IMPROVEMENTS TO CENTRAL AVENUE BETWEEN CANAL STREET AND UNIVERSITY BOULEVARD AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City sought bids for improvements to Central Avenue between Canal Street and University Boulevard; and

**WHEREAS**, three bids were submitted; and

**WHEREAS**, City Council hereby determines the bid of Milcon Concrete, Inc. to be the lowest and best bid;

**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 Milcon Concrete, Inc. for the full roadway reconstruction of 0.56 miles of Central Avenue between Canal Street and University Boulevard. The project will include full depth pavement replacement, utility replacements and upgrades (water, sewer, storm sewer), pedestrian upgrades including new sidewalks and enhanced crossings, streetscape improvements, traffic signal upgrades at the Canal Street and Clinton Street intersections, and decorative LED street light upgrade, in accordance with said company's bid therefor.

**Section 2**

For said purposes, the Finance Director is hereby authorized and directed to expend a sum not to exceed \$7,671,291.59 from the following funds:

Stormwater Capital Reserve Fund (Fund # 415)	\$600,000.00
Water Capital Reserve Fund (Fund # 494)	\$1,134,000.00
Sewer Capital Reserve Fund (Fund # 495)	\$1,134,000.00
Auto & Gas Fund (Fund # 210)	\$199,417.59
Capital Improvement Fund (Fund # 220)	\$4,603,874.00, of which
such sum of \$418,534.00 is hereby appropriated to the accounts of 813 (220.813.54520).	

### **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 meet ODOT's deadline to award the contract 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 Milcon Concrete - Central Ave Improvements

**STAFF REPORT**  
For Business Meeting: December 21, 21

---

DATE December 8, 2021  
TO: Jim Palenick, City Manager  
FROM: Scott Tadych, Public Works and Utilities Director

**CENTRAL AVENUE IMPROVEMENTS**

**PURPOSE**

Authorize the City Manager to enter into a contract with Milcon Concrete, Inc. to proceed with the Central Avenue Improvements.

**BACKGROUND AND FINDINGS**

The City recommends to proceed with the Central Avenue Improvements which consists of full roadway reconstruction of 0.56 miles of Central Ave. between Canal St. and University Blvd. The project includes the following:

- Full depth pavement replacement
- Utility replacements and upgrades (water, sewer and storm sewer)
- Pedestrian upgrades including new sidewalks and enhanced crossings
- Streetscape improvements – paver amenity strip with decorative street furnishings including benches, bike racks, trash receptacles, street trees and landscape planters
- Traffic signal upgrades at Canal St. and Clinton St. intersections
- Decorative LED street light upgrade

Three contractors submitted bids on December 7, 2021 for the project. Milcon Concrete Inc. submitted the lowest and best bid in the amount of \$7,671,291.59 which is 6.3% higher than the engineer's estimate and 8.4% lower than the next lowest bid.

**ALTERNATIVES**

1. Award the contract to another contractor
2. Do not proceed with the project.

**FINANCIAL IMPACTS**

The project will be funded by a combination of funds detailed below:

General Capital Fund (220) – OKI Grant	\$4,603,874.00
Stormwater Capital Fund (415)	\$600,000.00
Water Capital Fund (494)	\$1,134,000.00
Sewer Capital Fund (495)	\$1,134,000.00
Auto & Gas Tax Fund (210)	<u>\$199,417.59</u>
	\$7,671,291.59

A supplemental appropriation of \$418,534.00 is needed to the General Capital Fund (220). All remaining funds are appropriated in the 2022 budget.

#### **EMERGENCY/NON EMERGENCY**

Emergency Legislation is requested at the January 4, 2022 City Council meeting to expedite the contract award process. ODOT requires the contract to be awarded by January 24, 2022 to be considered on time.

#### **ATTACHMENTS**

Vicinity Map  
Bid Tab

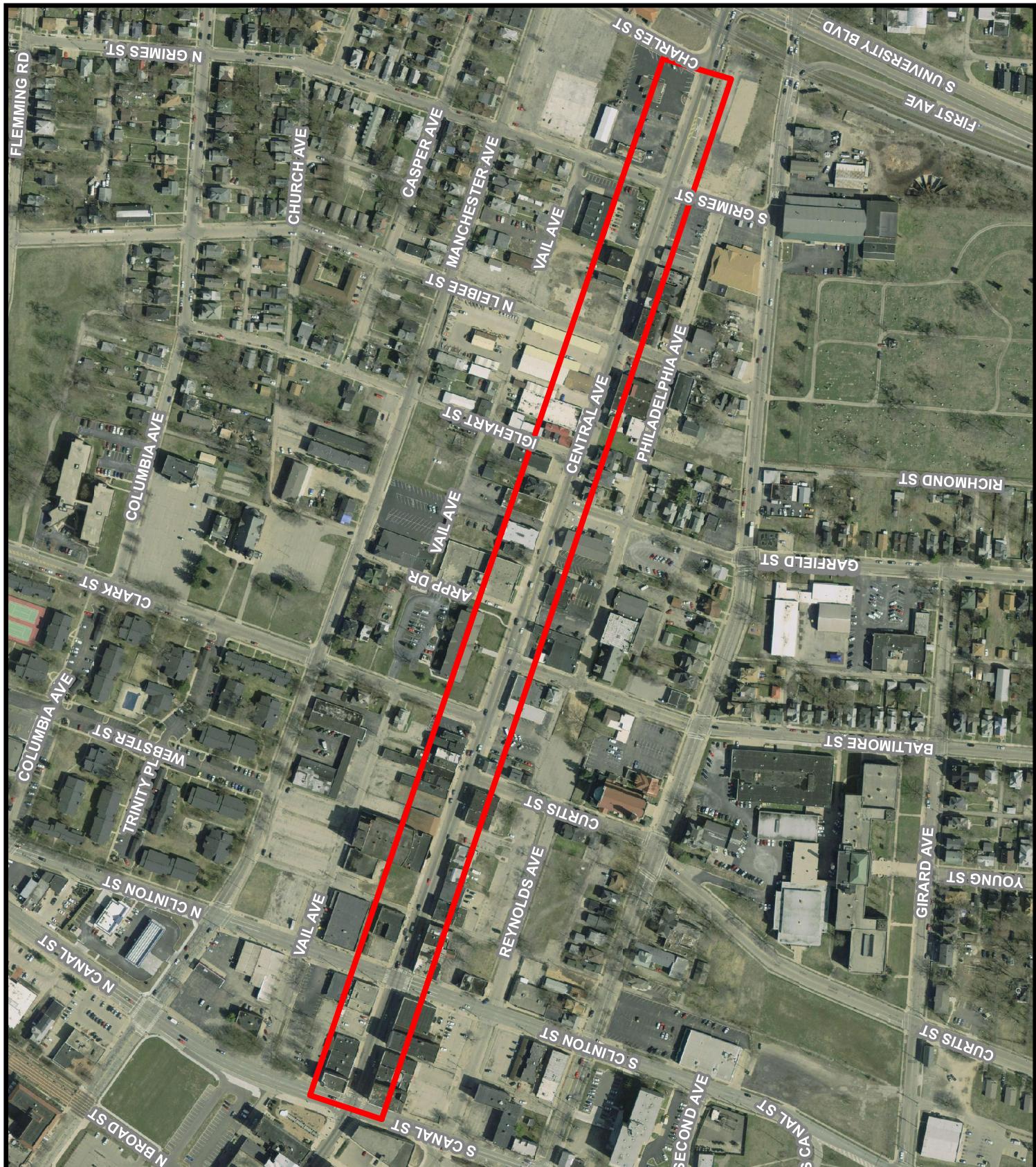
*CENTRAL AVENUE  
(Verity Parkway to Charles Street)*

**BID TABULATION**

**LEGAL NOTICE NO. 21-8278**

***BIDS RECEIVED: December 7, 2021***

CONTRACTOR'S NAME & ADDRESS	AMOUNT
ENGINEER'S ESTIMATE	\$ 7,217,529.82
MILCON CONCRETE, INC. 1360 S. Co. Rd. 25A Troy, OH 45373	\$ 7,671,291.59
FORD DEVELOPMENT CORP. 11148 Woodward Lane Cincinnati, OH 45241	\$ 8,378,030.90
SUNESIS CONSTRUCTION CO. 2610 Crescentville Road West Chester, OH 45069	\$ 9,823,555.89
<p><i>Milcon Concrete, Inc. was the low bid in the amount of \$ 7,671,291.59 which is 6% over the Engineer's Estimate of \$ 7,217,291.59</i></p>	



**CENTRAL AVENUE IMPROVEMENTS, PID 109468**  
**VICINITY MAP**



# **LEGISLATION**

# **ITEM 16**

**ORDINANCE NO. O2021-127**

**AN ORDINANCE AMENDING SECTION 452.15 (CITY PARKING FACILITY FEES)  
OF THE CODIFIED ORDINANCES.**

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

**Section 1**

Section 452.15 (City Parking Facility Fees) of the Codified Ordinances of the City of Middletown is hereby retitled City Parking Lots and Fees and is amended to read, in full, as set forth in Exhibit "A", attached hereto.

**Section 2**

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**Section 3**

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

---

Nicole Condrey, Mayor

1<sup>st</sup> Reading: \_\_\_\_\_  
2<sup>nd</sup> Reading: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

## **STAFF REPORT**

For the business meeting of December 21, 2021

---

DATE: December 15, 2021

TO: Jim Palenick, City Manager

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

### **Parking Policy Revisions**

#### **PURPOSE**

To revise the current parking policy to allow for designated parking spaces by business establishments, offices, and residential buildings and to impose reasonable fees for the use of such spaces.

#### **BACKGROUND AND FINDINGS**

The economic development department has received several requests for designated spaces as building owners are beginning to develop residential units. The need for designated spaces is important to attract tenants and create residential vibrancy.

Director Lyons asked the Development Committee and included departments of Law, Public Works, Development Services, Code Enforcement, etc... to look into this.

Law confirmed there was an existing parking policy, 452.15 that could be amended. This legislation is a result of the committee review.

#### **ALTERNATIVES**

1. Approve as is.
2. Approve with recommendations.
3. Deny.

Staff recommends approval as presented. Staff spent several meetings with our legal counsel discussing and revising the current policy.

#### **FINANCIAL IMPACTS**

Increased revenues due to imposing special parking permits.

#### **NON-EMERGENCY / EMERGENCY**

Non-emergency.

# **LEGISLATION**

# **ITEM 17**

**ORDINANCE NO. O2021-128**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH CARTEGRAPH SYSTEMS, LLC FOR THE PURCHASE OF ASSET MANAGEMENT SOFTWARE.**

**WHEREAS**, the City issued a Request for Qualifications for vendors to provide software to facilitate Public Works and Utilities Department asset management and work orders; and

**WHEREAS**, eleven responses to the RFQ were received and staff selected five of those vendors that met the needs of the City to provide software demonstrations and further explain the software capabilities of each program; and

**WHEREAS**, the list was narrowed to three vendors who provided cost proposals as follows:

	Implementation Services	Annual Subscription Fee	Total Year 1 Cost	5-Year Cost
NovoSolutions	\$32,100	\$36,940	\$66,040	\$213,800
Cartegraph	\$88,200	\$65,000	\$153,200	\$434,294
Dude Solutions	\$33,514	\$95,961	\$129,475	\$545,667

; and

**WHEREAS**, NovoSolutions provided the lowest five-year cost overall, however, the software is not setup to interface with other software programs that are used or may be used by the City (except ESRI for GIS), therefore, staff has recommended the the proposal by Cartegraph Systems LLC to provide the software based on its compatibility with other programs, its established industry use and its ability to meet the needs of the City as the lowest and best bid;

**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 Ohio Revised Code Chapter 735, is hereby authorized to enter into a contract with Cartegraph Systems LLC for the purchase of asset management software in accordance with the proposal on file in the Public Works and Utilities Department. The contract shall be in a form approved by the Law Director.

## **Section 2**

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed \$434,294.00 as follows:

\$217,147.00 from the Water Capital Reserve Fund (Fund # 494), of which such sum \$76,600.00 is hereby appropriated to the accounts of 990 (494.990.54200), and

\$217,147.00 from the Sewer Capital Reserve Fund (Fund # 495), of which such sum \$76,600.00 is hereby appropriated to the accounts of 880 (495.880.54540).

## **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 Ohio Revised Code Chapter 735 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

1<sup>st</sup> Reading:\_\_\_\_\_

2<sup>nd</sup> Reading:\_\_\_\_\_

Adopted:\_\_\_\_\_

Effective:\_\_\_\_\_

Attest:\_\_\_\_\_  
Clerk of City Council

**S T A F F   R E P O R T**  
For the Business Meeting of: December 21, 2021

---

December 8, 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 – Public Works Asset Management Software**

**PURPOSE**

To authorize a professional services agreement with Cartograph for Public Works Asset Management Software.

**BACKGROUND AND FINDINGS**

Within the Public Works and Utilities Department, assets and work orders are managed via paper copies, emails, and an old dos-based software program called AccuTerm. AccuTerm has limited functionality and is mostly used to log time that staff work on specific job code items. Work orders are generated via paper copy and entered into AccuTerm manually. The data that are entered are limited and there is not a good way to query the database for specific asset information or work order trends.

With regard to tracking and managing assets, there are some hand-written ledgers for some equipment and for others, staff rely on the institutional knowledge of senior staff to recall information. This makes it difficult to determine if there are trends related to assets that would suggest that they need to be replaced or scheduled for preventative maintenance.

The Public Works and Utilities Department would like to purchase asset management software to better facilitate work order and asset management. Asset management software will allow the Department to develop Capital Improvement Plans (CIPs) that are based on asset maintenance history and useful life. The asset management software will also track the cost of assets including replacement costs, historical maintenance costs, and labor hours associated with maintaining assets and provide insights for the Director to make informed decisions on department staffing and budget needs.

Earlier in 2021, the Public Works and Utilities Department issued an RFQ to solicit vendor qualifications to provide software to meet the departments needs. The City received eleven (11) SOQs from respondents and, after thorough review and deliberation, selected five (5) vendors most suited to meet the department's needs. At that stage, the City requested the short-listed vendors provide demonstrations for the department so that staff could see and experience the user interface and further understand the software's capabilities. Finally, after the demonstrations, the staff further

narrowed the short-list to three (3) respondents and requested cost proposals.

The three cost proposals are as follows:

	Implementation Services	Annual Subscription Fee	Total Year 1 Cost	5-Year Cost
NovoSolutions	\$32,100	\$36,940	\$66,040	<b>\$213,800</b>
Cartegraph	\$88,200	\$65,000	\$153,200	<b>\$434,294</b>
Dude Solutions	\$33,514	\$95,961	\$129,475	<b>\$545,667</b>

The PW&U Department recommends Cartegraph. Cartegraph software is compatible with many other programs such as ESRI (GIS), 311, OpenGov, and most finance software programs. The ability of this system to interface with others that City is using or may use in the future, as well as its well-established industry base (including many utilities here in Ohio), makes this an attractive option long term.

NovoSolutions is the lowest cost option but is not set up to interface with other software programs (with the exception of ESRI) and has less industry presence which makes the long-term viability of this program more questionable. Given the significant upfront investment, both capital funds and staff time to get this up and running, we want to make sure that the program we select will adapt to future needs and be available to the City long-term.

Dude Solutions has a lower implementation fee but has a higher annual subscription fee which costs the City more over a 5-year period. Additionally, their compatibility with other software and their industry presence do not compare with Cartegraph.

We believe that Cartegraph is the right investment for the PW&U Department as we work to improve the way we manage work orders and assets within our department.

## **ALTERNATIVES**

Currently we don't have a functional asset management system. This makes capital and resource planning very difficult within the department, impacting budgets and workload management.

There are other software vendors that could be selected for this. However, we were thorough and deliberative in our selection and feel this is best value option to meet the department's needs.

## **FINANCIAL IMPACT**

The cost of the project will be split between the Sewer Capital Reserve Fund and the Water Capital Reserve Fund. We request supplement appropriation of \$76,600 from each fund for a total of \$153,200 for the implementation services and first-year subscription fees. Funds should be appropriated to Water Capital (494.990.54200) and Sewer Capital (495.880.54540).

## **EMERGENCY/NON-EMERGENCY**

Non-emergency

# **LEGISLATION**

# **ITEM 18**

**ORDINANCE NO. O2021-129**

**AN ORDINANCE VACATING A PORTION OF PUBLIC RIGHT-OF-WAY LOCATED  
BETWEEN THE PARCELS KNOWN AS Q6511007000023, Q6511007000018 AND  
Q6511007000043.**

**WHEREAS**, the property owners of Q6511007000023, Q6511007000018 and Q6511007000043 petitioned for the vacation of a portion of right-of-way located between the parcels (roughly 0.01 acres), as approximately shown on the attached Exhibit "A"; and

**WHEREAS**, a portion of adjoining right-of-way was previously vacated by City Council in 2017; and

**WHEREAS**, staff has determined that there is no longer a public need for this portion of right-of way; and

**WHEREAS**, the proper notice and publication of said request to vacate said property has been provided and City Planning Commission conducted a public hearing on December 8, 2021; and

**WHEREAS**, the City Planning Commission has determined that there is no public need for the property to be vacated, that vacation will not be detrimental to the general interest, and has recommended that the right-of-way be vacated; and

**WHEREAS**, City Council has conducted a public hearing on December 21, 2021 and confirms the determination of the City Planning Commission;

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

**Section 1**

The portion of right-of-way located between the parcels known as Q6511007000023, Q6511007000018 and Q6511007000043. The exact location of the vacated right-of-way shall be determined by a survey and a legal description. The City Manager is authorized to execute the documents necessary to complete the conveyance.

**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 on and after the earliest period allowed by law.

---

Nicole Condrey, Mayor

1<sup>st</sup> Reading: \_\_\_\_\_  
2<sup>nd</sup> Reading: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council

H:/law/leg/2021 Leg/O ROW Vacation - Alley near Reynolds (Striker)





December 13, 2021

**TO:** City Council  
**ATTN:** Jim Palenick, City Manager  
**FROM:** Ashley Combs, Development Services Director

**SUBJECT:** **Right-of-Way Vacation #3-21: Portion Of A Public Right-Of-Way**  
*Located near the intersection of Reynolds Ave. and S. Canal St.*

**PETITIONER:**

David Striker  
Tri County Management Inc.  
2501 Cincinnati Dayton Road

**REQUEST:**

Public Right-of-Way Vacation: A partial right-of-way vacation request by petitioner David Striker, with Tri-County Management, for the vacation of City-owned right-of-way, known as Reynolds Avenue, that is located between the properties located at Parcel IDs: Q6511007000023, Q6511007000018, and Q6511007000043. The city-owned right-of-way requested for vacation is approximately 0.01 acres in size. The Planning Commission recommendation is forwarded to the City Council for final review and decision.

**HISTORY:**

In March 2017 the petitioner submitted a partial alley vacation request that was approximately 10 feet wide and 65 feet long between lots numbered 024 and 044. The applicant proposed that the alley located between the buildings would be closed off from through traffic and be used for outdoor seating for their bar/restaurant.

Planning Commission recommended denial of an alley vacation to the City Council. The recommendation of denial was based on the City Engineering Department comments that stated, "the Engineering Department does not believe it is in the best interest of the City to remove this access to public parking and therefore does not recommend the vacation of this alley. Ultimately the alley vacation was approved by the City Council overturning the Planning Commission's recommendation.

**STAFF ANALYSIS:**

Per the Ohio Revised Code that provides for statutory proceedings to vacate a street, alley, or portion thereof by the legislative authority upon petition by a person owning a lot in the immediate vicinity of the street or alley, the process for vacation requires filing a petition to Planning Commission to make a recommendation to City Council. The Planning Commission recommendation is then forwarded to City Council for final consideration. If approved, the city owned property will be split evenly and sold to the abutting property owners.

The petitioner requests the additional right-of-way to be vacated to be used for the outdoor space that will be utilized by his business. The petitioner will have outdoor seating and be restoring the alley with new pavers and asthetic upgrades (lighting, etc.).

**PLANNING COMMISSION DECISION:**

At their regular meeting held on Wednesday, December 8, 2021, the Planning Commission voted to recommend approval of the right-of-way petition due to the staff recommendation, appropriate paperwork being filed, and to support the business owner so that work could start in the alley to perform the upgrades to allow for the outdoor seating and dining area for their bar/restaurant.

**LEGAL NOTICE:**

Meeting notices were sent to the property owners that are within 200 feet of the proposed street vacation as well as the utility providers. No objections have been received at this time. An important determination for the right-of-way vacation is that there is no longer a public need for the property as a public street.

**OTHER CITY DEPARTMENT COMMENTS:**

The City's internal Development Committee reviewed the proposal and gave its support. The Development Committee includes the City Manager and Assistant City Manager, Economic Development Department, Law Department, Public Works & Engineering Department, Police, Development Services, Building Inspections Division, Planning/Zoning Division, and Code Enforcement Division.

**RIGHT-OF-WAY VACATION REVIEW CRITERIA:**

1. The vacation of the requested right of way should not be a detriment to the neighborhood or to emergency service access or utility providers.
2. Planning Commission's recommendation is forwarded to City Council for a public hearing. City Council makes the final decision by City ordinance to vacate public right-of-way.

**RIGHT-OF-WAY VACATION PETITION PROCESS:**

1. Petition for vacation filed with clerk of city council.
2. Clerk forwards request to city planning commission staff.
3. Request is placed on agenda of city planning commission.
4. Public agencies and affected property owners are notified.
5. Public hearing held at Planning Commission.
6. Planning commission approves or denies request.
7. A recommendation based on the above is forwarded to the clerk of the city council.
8. City council sets a public hearing before city council.
9. City council conducts a public hearing.
10. Decision is made to approve or deny request.
11. If approved, legislation is adopted vacating public right-of-way.

**ATTACHMENTS:**

Vacation petition and vacation location map.

**ALTERNATIVES:**

City Council shall adopt, adopt with some modification, or deny the recommendation of the Planning Commission. City Council shall not alter or make a decision that varies from the Planning Commission without a majority vote of City Council.

**FINANCIAL IMPACT:**

None

**EMERGENCY/NON-EMERGENCY:**

Non-Emergency



# MIDDLETOWN

## ALLEY VACATION PETITION

Honorable City Council Members  
Middletown, Ohio

Date: 10/08/2021

The undersigned, being owners of property abutting the street/alley/ walkway between Lots Q6511007000023, Q6511007000018, & Q6511007000043 in the City of Middletown, running North / South (north, east, south, west) off Central Ave (Street, Road, Blvd, etc.) hereby petition that said street/alley/ walkway be vacated pursuant to law.

And the undersigned, being all the owners of property abutting said street/ alley/walkway, do hereby consent that the same be vacated without notice or publication of the public hearing to be held by the City Council, as provided in Section 723.06 of the Ohio Revised Code.

OWNER SIGNATURE

LOT NUMBER

<u><i>Dave Striker</i></u>	<u>Q6511007000043</u>
<u><i>Larry Keyes</i></u>	<u>Q6511007000023</u>
<u><i>Larry Keyes</i></u>	<u>Q6511007000018</u>

Contact Person:

Name Dave Striker / Tri-County Management

Address 1224 Central Avenue

Middletown Ohio 45044



CITY OF MIDDLETOWN CASH  
AND RECEIPTS REPORT

DATE 10/20/2021

## City Council

---

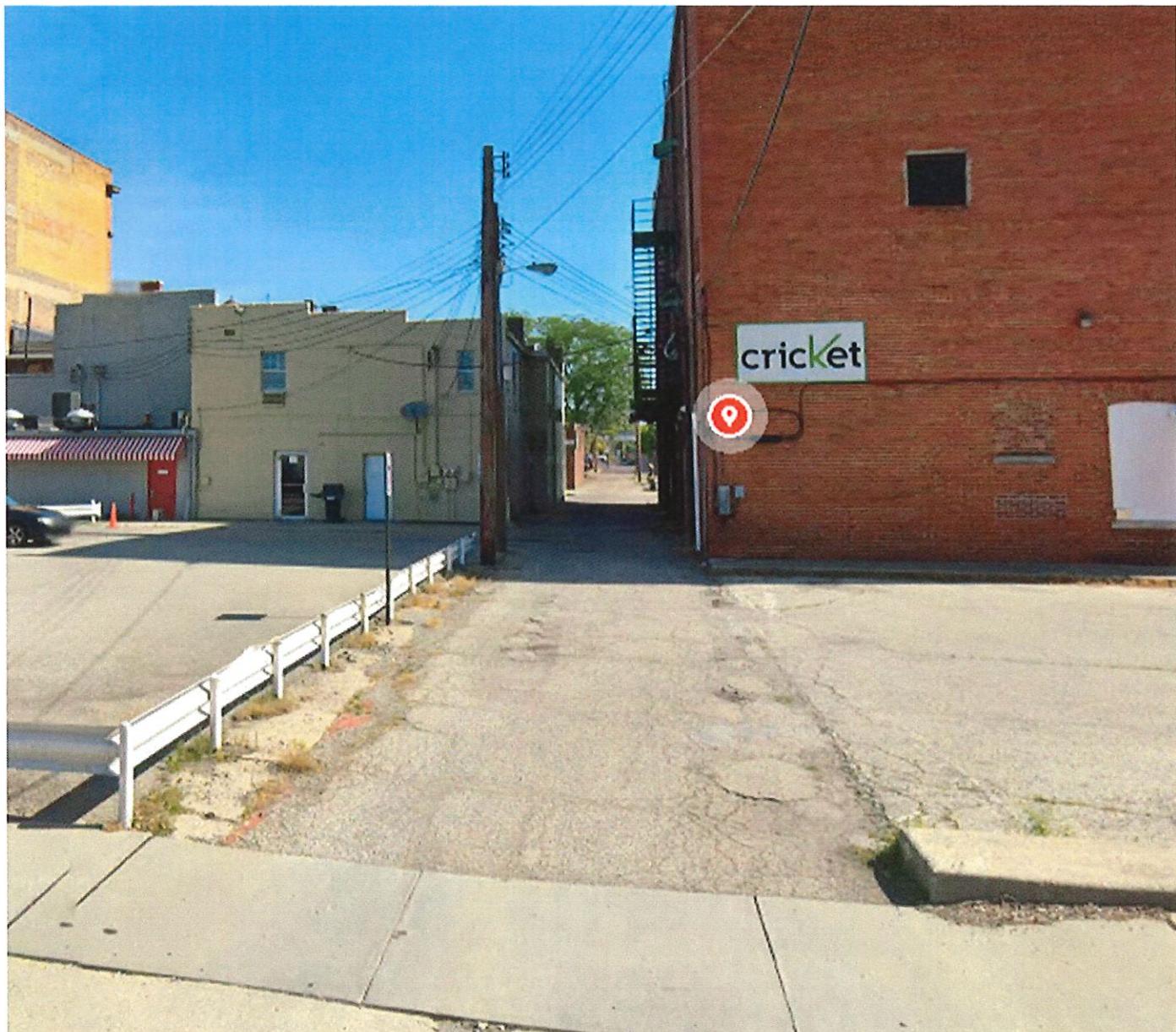
**DEPARTMENT/DIVISION**

*Amy Schindl*  
COLLECTOR'S SIGNATURE

REFERENCE NO. \_\_\_\_\_

'REMARKS:





# **LEGISLATION**

# **ITEM 19**

**ORDINANCE NO. O2021-130**

**AN ORDINANCE APPROVING A REQUEST TO REZONE ONE PARCEL LOCATED AT THE SOUTHWEST CORNER OF MANCHESTER ROAD AND DIXIE HIGHWAY FROM R-2 (LOW DENSITY RESIDENTIAL) TO PD (PLANNED DEVELOPMENT) AND APPROVING A PRELIMINARY DEVELOPMENT PLAN.**

**WHEREAS**, the parcel located at the southwest corner of Manchester Road and Dixie Highway (parcel ID 07053260230) (the "Property") contains approximately 1.78 acres and is currently vacant and zoned R-2 (Low Density Residential); and,

**WHEREAS**, the applicant, Amarjit Takhar, on behalf of the owner Don Shepard with Healing Word Church, petitioned Planning Commission for the requested rezone of the Property to PD (Planned Development) in order to utilize the parcel as a gas station with five pumps; and

**WHEREAS**, the City Planning Commission conducted a public hearing on October 13, 2021, after giving proper notice of the time and place of the hearing; and

**WHEREAS**, the City Planning Commission has recommended that the request to rezone the subject Property be approved, together with the proposed preliminary development plan; and

**WHEREAS**, City Council held a public hearing on December 7, 2021, notice of such public hearing having been given in accordance with Section 1226.02 of the City of Middletown Development Code prior to such hearing; and

**WHEREAS**, City Council hereby adopts the recommendation of the City Planning Commission and determines that the requested zone change substantially complies with the review criteria contained in the City Development Code for rezoning property, and that the preliminary development plan submitted by the applicant is appropriate and also satisfies the review criteria of the City's Development Code.

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

**Section 1**

The zoning classification for the parcel ID 07053260230, which is presently R-2 (Low Density Residential), is hereby changed to PD (Planned Development). Staff is directed to revise the zoning map for the City to reflect this change.

**Section 2**

City Council hereby approves the preliminary development plan submitted by the applicant and attached as Exhibit "A" to utilize this Property for a gas station with

five pumps, subject to all applicable laws and regulations and the following additional conditions: (i) landscaping plan be submitted with the Final Development Plan that shows adequate screening provided for surrounding residential properties; (ii) that the construction plans comply with the Engineering Manual of Design (Grading, Storm Water, Utilities, Erosion Control, Traffic, etc.); and (iii) traffic study completed and submitted with application for Final Development Plan. The applicant must furthermore request and receive final development plan approval in accordance with the City Development Code prior to developing the Property.

### **Section 3**

All plats, plans, applications, and other data submitted by the applicant are hereby incorporated into this approval.

### **Section 4**

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

---

Nicole Condrey, Mayor

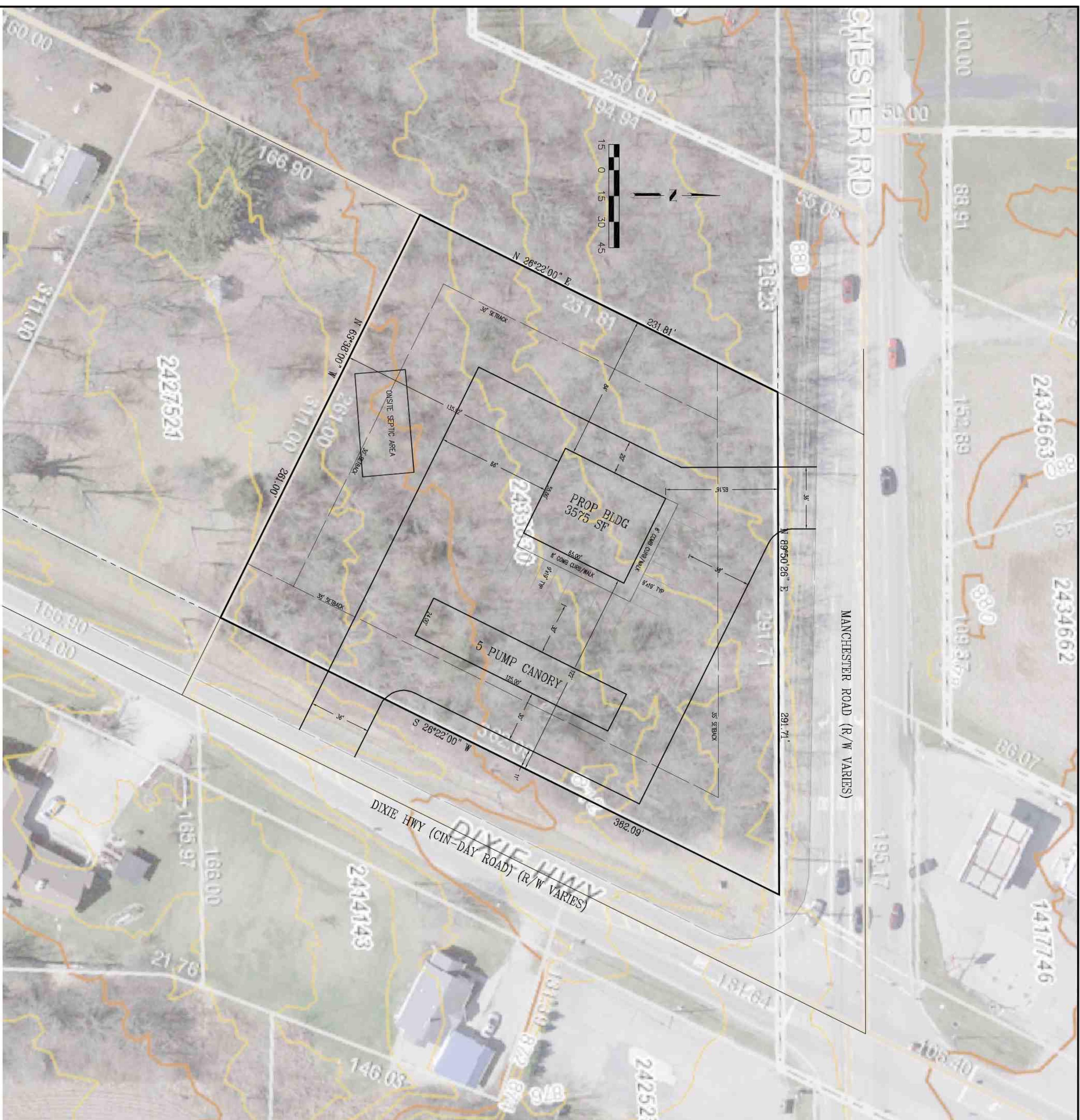
1<sup>st</sup> Reading:\_\_\_\_\_

2<sup>nd</sup> Reading:\_\_\_\_\_

Adopted:\_\_\_\_\_

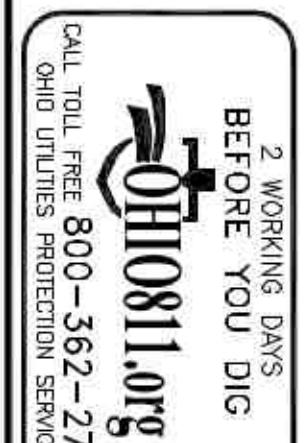
Effective:\_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of City Council



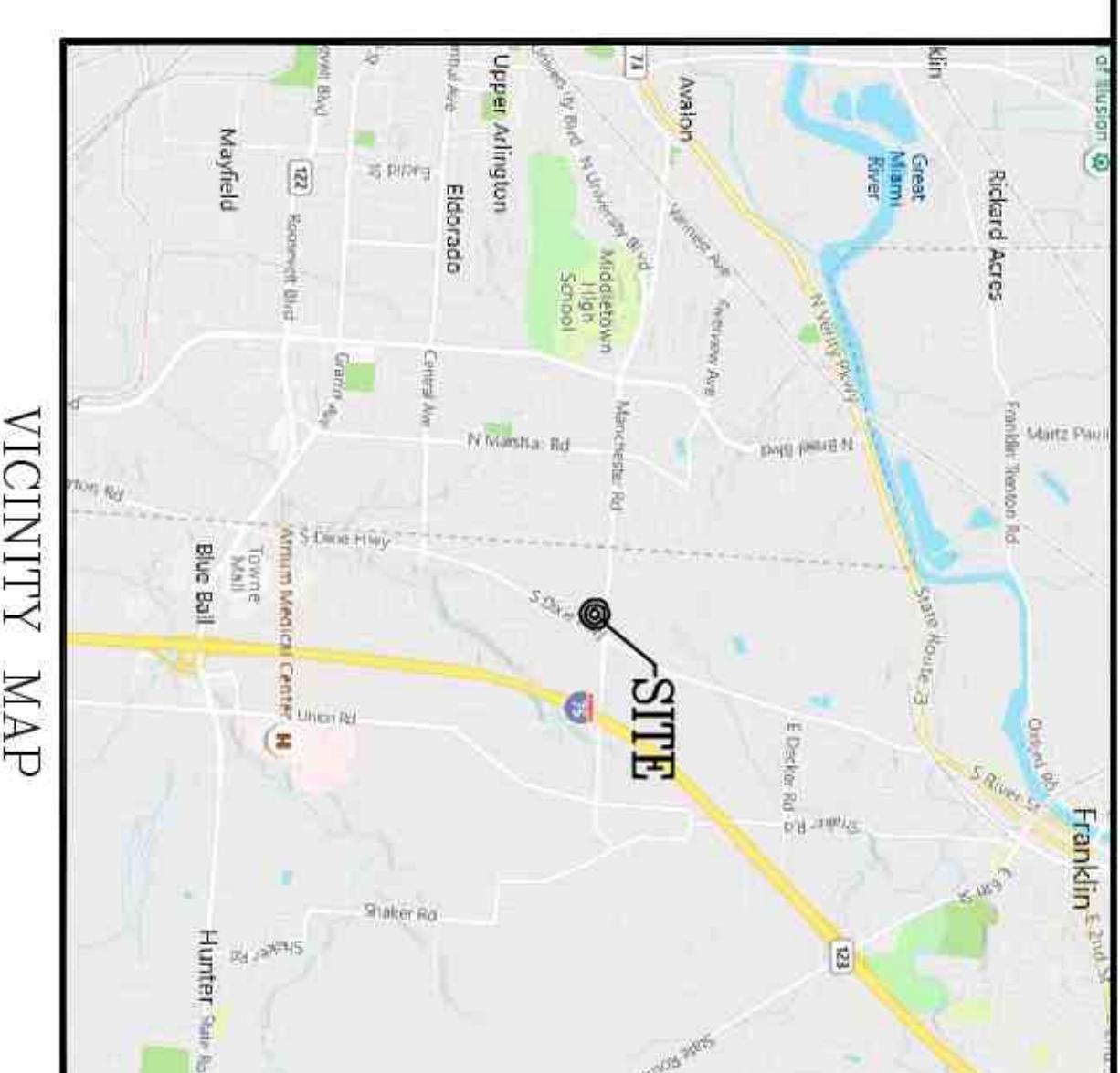
# Exhibit A

The location of the under ground utilities shown on these plans have been obtained by diligent field checks and searches of available records. It is believed that they are essentially correct. But Apex Engineering & Surveying, Inc. does not guarantee their accuracy or completeness.



PRELIMINARY PD  
GAS STATION/CONVENIENCE STORE  
SW CORNER OF CIN-DAY RD AND MANCHESTER RD  
CITY OF MIDDLETON  
WARREN COUNTY, OHIO

**ENGINEER**  
APEX ENGINEERING & SURVEYING, INC.  
1068 N. UNIVERSITY BLVD  
MIDDLETOWN, OHIO 45042  
(513) 424-5202





November 22, 2021

**TO:** City Council  
**ATTN:** Jim Palenick, City Manager  
**FROM:** Ashley Combs, Development Services Director  
**SUBJECT:** Planned Development Map Amendment Request  
Gas Station – Intersection of Manchester/Dixie

**REQUEST:**

A request by applicant Amarjit Takhar, on behalf of the owner Don Shepard with Healing Word Church, for Preliminary Development Plan approval for a gas station to be constructed on the property located at the Southwest corner of Manchester Road and Dixie Highway, Parcel ID: 07053260230. If approved, as a part of the Planned Development process, the property would be rezoned to “PD Planned Development District” to acknowledge there is a development plan associated with the property. The Planning Commission’s recommendation of approval is being forwarded to City Council for final review and decision.

**BACKGROUND:**

Originally this request was heard by the Planning Commission at their regular meeting held on June 9, 2021. The Planning Commission voted unanimously to approve the request with the following conditions: landscaping plan submitted that shows adequate screening provided for surrounding properties and that the Engineering Department comments were met (traffic study, etc.). The Planning Commission’s recommendation of approval was forwarded to the City Council for consideration at their regular meeting on July 20, 2021.

At their regular meeting held on August 3, 2021, City Council denied the Planned Development and Map Amendment request by majority vote.

**STAFF ANALYSIS:**

The applicant proposes to construct a gas station with five pumps at the southwest corner of Manchester Road and Dixie Highway. Currently there is a Speedway gas station across from the property that is located outside the City limits within Franklin Township. Per the Warren County Auditor, the property is a total of 1.78 acres and currently vacant.

The subject property is currently zoned R-2 Low-Density Residential District. Low-Density Residential District The purpose of the R-2 Low-Density Residential District is to provide for low density, single-family residential uses in a more urban setting than the R-1 District and which are served completely by public infrastructure adequate for the applicable density of development. Please see attached zoning map and property photos.

Per the Middletown Development Code, the purpose of the PD Planned Development District is to provide an opportunity for creative and flexible land development where a base zoning district will not accommodate the proposed development but where such development will further the purpose of this code and the goals and policies of the master plan. The PD District is designed to allow for deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this code.

The minimum site area for a planned development submittal application is five acres unless the proposed project is a unique situation. This project is located at a gateway entrance into the City of Middletown. It is important that the project be reviewed through the PD process to ensure the project meets City design standards and buffering.

Per Middletown Development Code Table 1204-3 Principally Permitted Uses, gas stations, known as fuel stations in the Middletown Development Code, are permitted in the B-1 Neighborhood Business District, B-2 Community Business District, B-3 General Business District, and BC-I Business Center Interchange Zoning District. Fuel stations are conditional uses in the UC-S Urban Core Support District.

**R-2 Zoning District Setbacks:**

Front Yard – 40 feet

Side Yard – 8 feet

Rear Yard – 50 feet

**Proposed Gas Station Setbacks:**

*Main Building:*

Front Yard (Dixie Highway): 122 feet

Front Yard (Manchester Road): 65.16 feet

Rear Yard: 84 feet

Side Yard: 135.92 feet

**Gas Pump Setback:** 30 feet from Dixie Highway

DISTRICT/USE	MINIMUM LOT AREA [1] (SQUARE FEET)	MINIMUM LOT WIDTH (FEET) LOT/CORNER	MINIMUM LOT DEPTH (FEET)	MINIMUM SETBACKS			MAX. BUILDING HEIGHT (FEET)
				FRONT YARD (FEET)	SIDE YARD EACH SIDE (FEET)	REAR YARD (FEET)	
<b>DETACHED RESIDENTIAL DISTRICTS</b>							
R-1	30,000	125/175	225	50	10	50	35
R-2	18,000	110/135	160	40	8	50	35

**Table 1218-1: Number of Off-Street Parking Spaces Required:**

Fuel stations require one parking space per 300 square feet of indoor floor area plus one parking space per fuel pump or service bay (service bay may not be counted as a parking space).

*Per the site plan submitted:*

Proposed Main Building: 3,575 Square Feet = 12 parking spaces required

Five Gas Pumps = 5 parking spaces required

Parking Spaces Proposed = 15 Parking Spaces / 5 Parking Spaces next to pumps

The parking spaces proposed meet the Development Code space requirement.

**Chapter 1204: Zoning Districts and Use Regulations: 1204.09: Use-Specific Standards**  
Automotive Service Stations and Parts Sales and Retail Fuel Sales

1. Gasoline pumps shall be set back a minimum of 20 feet from all lot lines and 50 feet from all adjacent residential lot lines.
2. Canopies shall be set back a minimum of 10 feet from all lot lines and 25 feet from all adjacent residential lot lines.
3. All hydraulic hoists, oil pits, and all lubricants, greasing, vehicle washing, and repair equipment shall be enclosed entirely within a building. No outdoor disassembly or repair of motor vehicles shall be permitted.
4. The minimum lot width for uses on an arterial street, as established on the Middletown Street Master Plan, shall be 120 feet. In the case of a corner lot, the minimum lot width shall be 185 feet measured along the arterial street.
5. A solid wood fence or masonry wall at least six feet high shall be provided on any side of the site adjacent to a residential lot.

**MIDDLETOWN MASTER PLAN:**

The subject property is included in the University/Northern Breiel Opportunity Area. The Master Plan identifies that any uses in the gateway area at Dixie/Manchester should support higher density residential development. High quality building materials and architectural design is essential to create a gateway and sense of place for the surrounding neighborhood. The proposed gas station is located near the mixed-use activity center designation. Please see attached excerpt from Master Plan.

**PUBLIC NOTICE REQUIREMENT:**

Per the Middletown Development Code, Table 1226-1: Notice Requirements, public notice was published a minimum of 30 days prior to the public hearing of Planning Commission. Notice was also provided to all property owners within 200 feet of the subject property and no comments have been received at this time.

**PLANNING COMMISSION RECOMMENDATION:**

The Planning Commission recommended approval, by majority vote, to the City Council for the Preliminary Development Plan with the following conditions: landscaping plan submitted that shows adequate screening provided for surrounding properties and that the Engineering Department comments met (traffic study, etc.).

**REVIEW CRITERIA FOR THE PD PRELIMINARY DEVELOPMENT PLAN  
AND ZONING MAP AMENDMENT:**

The following criteria shall serve as conditions that should generally be satisfied before the approval of the PD preliminary development plan and zoning map amendment:

- A. The proposed development is consistent with the master plan, other adopted City plans, and the stated purposes of this code and Section 1204.07(b)(15);
- B. The proposed development is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- C. The proposed development will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved as well under other zoning districts;
- D. The proposed development will promote the public health, safety, and general welfare;

- E. The proposed development is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated; and
- F. The preliminary development plan has been transmitted to all other agencies and departments charged with responsibility of review.

**PD: Planned Development District**

- I. The purpose of the PD Planned Development District is to provide an opportunity for creative and flexible land development where a base zoning district will not accommodate the proposed development but where such development will further the purpose of this code and the goals and policies of the master plan.
- II. The PD District is designed to allow for deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this code.

**OTHER DEPARTMENT COMMENTS:**

**City Engineering Department:**

- 1. They will need to go through Warren County for the access onto Manchester. The Engineering Department will need a Traffic Impact Study for the access onto Dixie.
- 2. There is no Sanitary Sewer for that lot.

**ATTACHMENTS:**

Preliminary Development Plan Application, Property Photos, Location Map, Proposed Building Elevation Examples, and Site Plan.

**CITY COUNCIL REVIEW AND DECISION:**

- 1. Following receipt of the recommendation from the Planning Commission, City Council shall set a time for a public hearing on the proposed amendment.
- 2. Notification of the public hearing shall be provided.
- 3. City Council shall review a text or zoning map amendment application during a public hearing. In reviewing the application, City Council shall at a minimum, consider the staff report from the Development Code Administrator, recommendation from Planning Commission, and the review criteria.
- 4. City Council shall adopt, adopt with some modification, or deny the recommendation of the Planning Commission. City Council shall not alter or make a decision that varies from the Planning Commission without a majority vote of City Council.
- 5. The effective date of any amendment shall be 30 days following final action by City Council unless subject to a referendum in accordance with the Ohio Revised Code.

**FINANCIAL IMPACT:**

None

**EMERGENCY/NON-EMERGENCY:**

Non-Emergency



VICINITY MAP

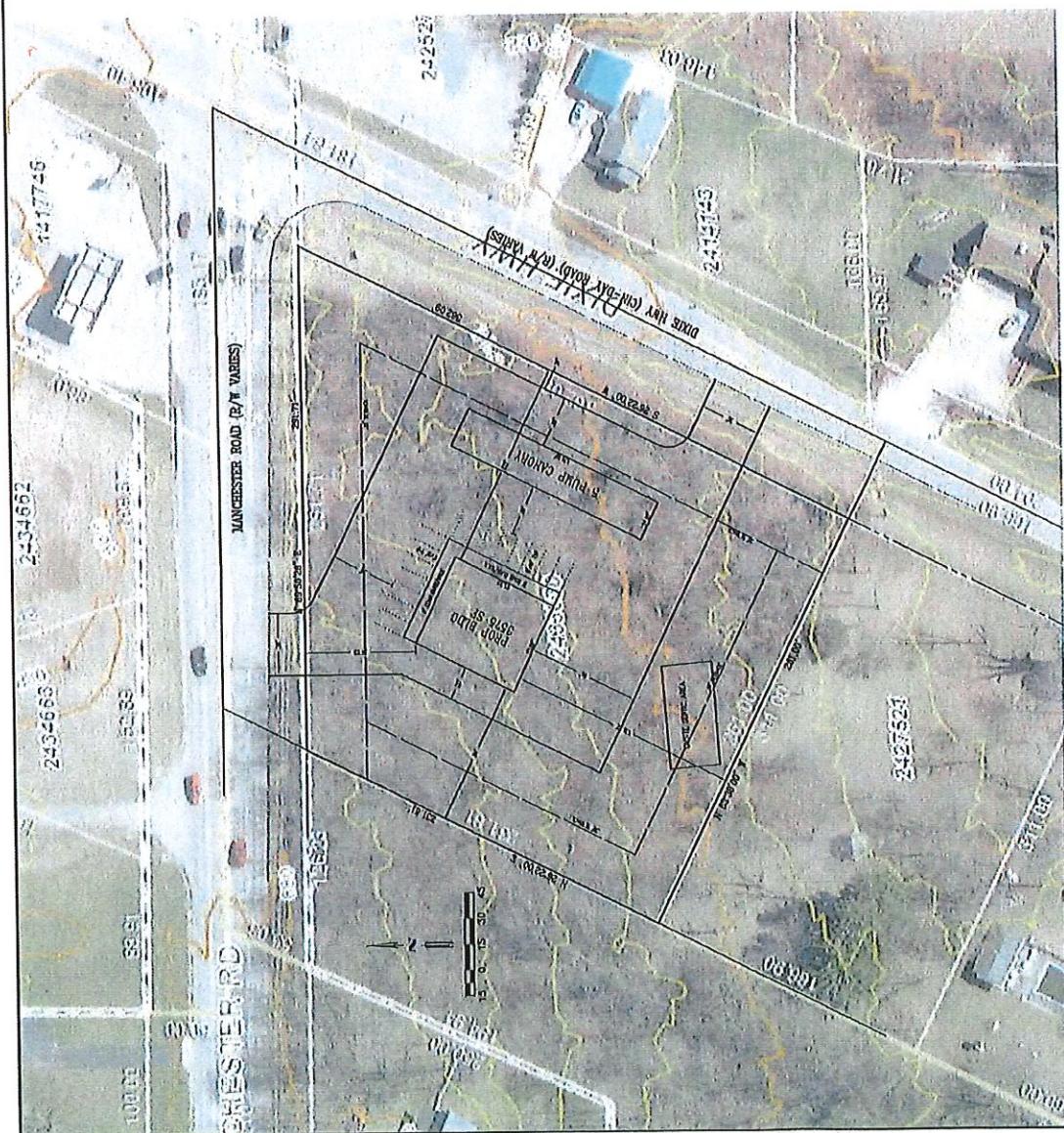


ENGINEER  
APEX Consulting Engineers, Inc.  
1000 Franklin, Suite 100  
Columbus, Ohio 43228  
(614) 876-4444

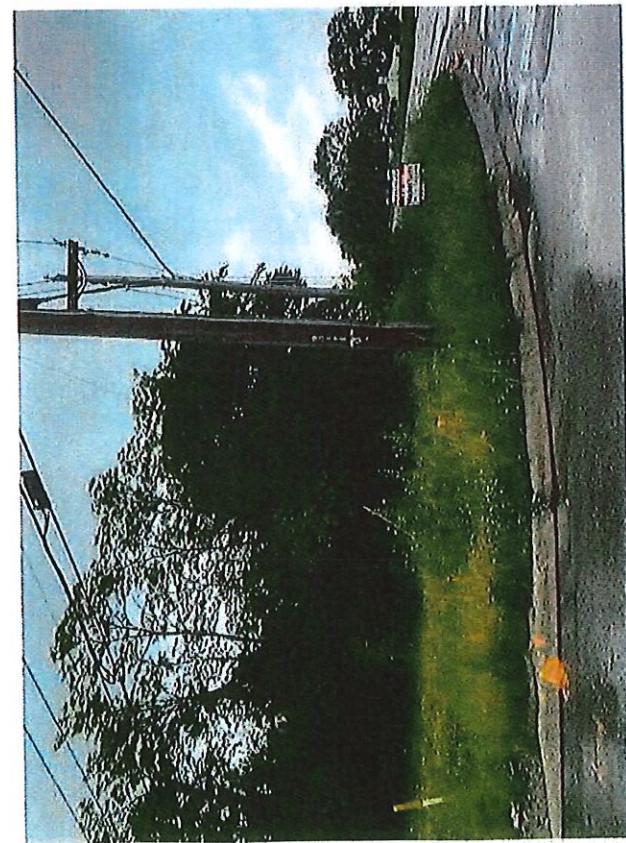
PRELIMINARY PD, CONVENIENCE STORE  
SW CORNER OF CON-DAY RD AND MANCHESTER RD  
CITY OF MIDDLETOWN  
WARREN COUNTY, OHIO



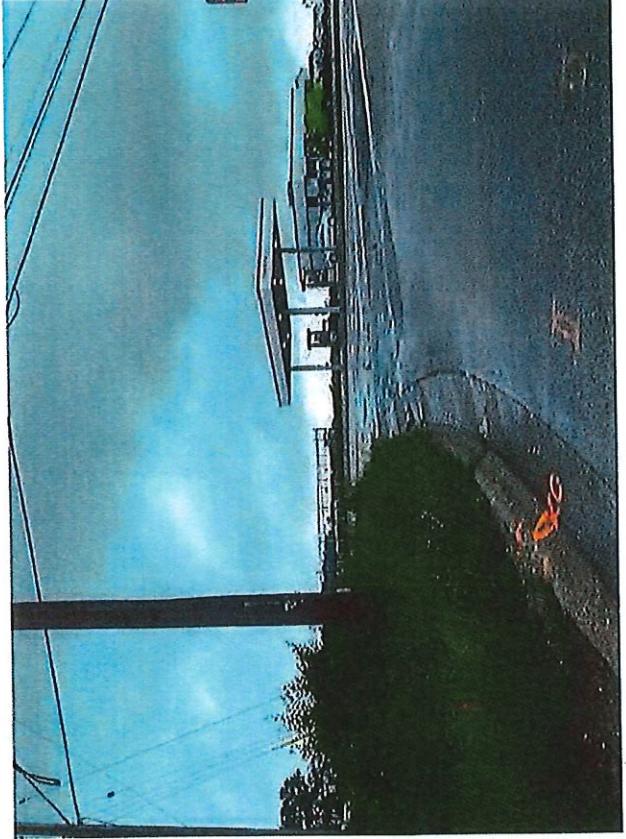
The location of the underground utilities shown on these  
plans have been established by direct field check and other  
means of identification. These locations are believed to be  
correct, but APEX Consulting Engineers, Inc. and its employees  
do not guarantee their accuracy or completeness.



## Development Plan Case Gas Station

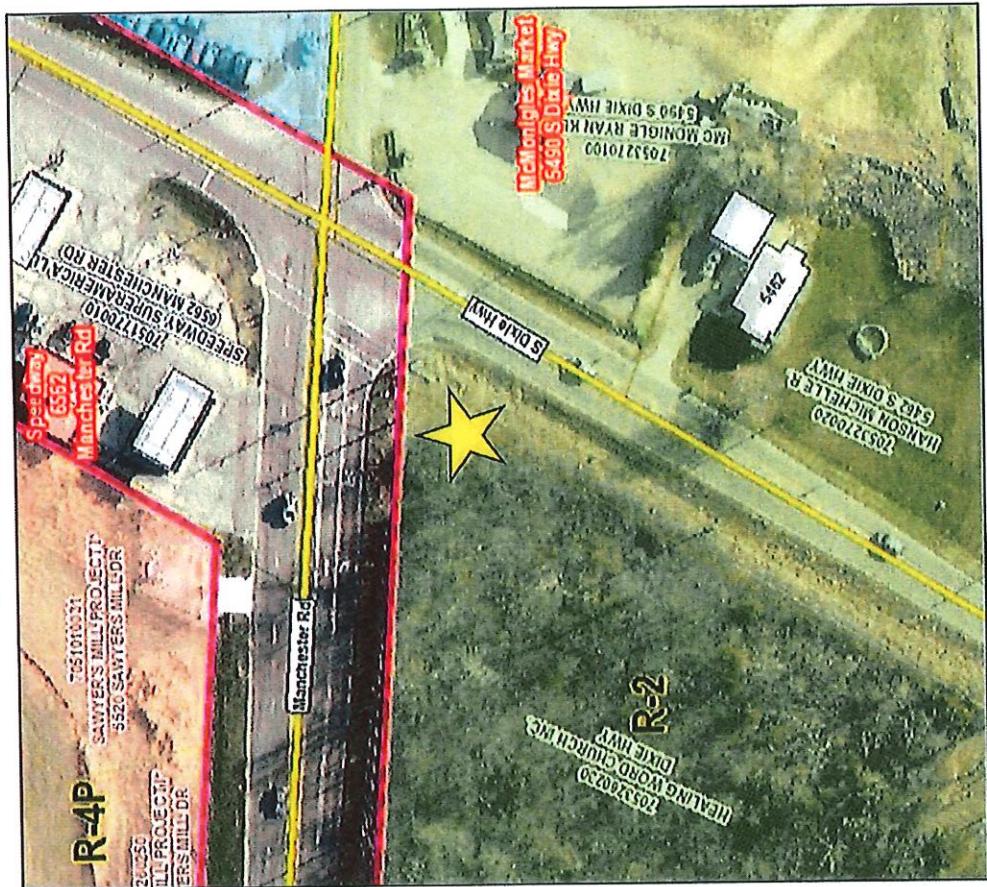


Subject Property Photo

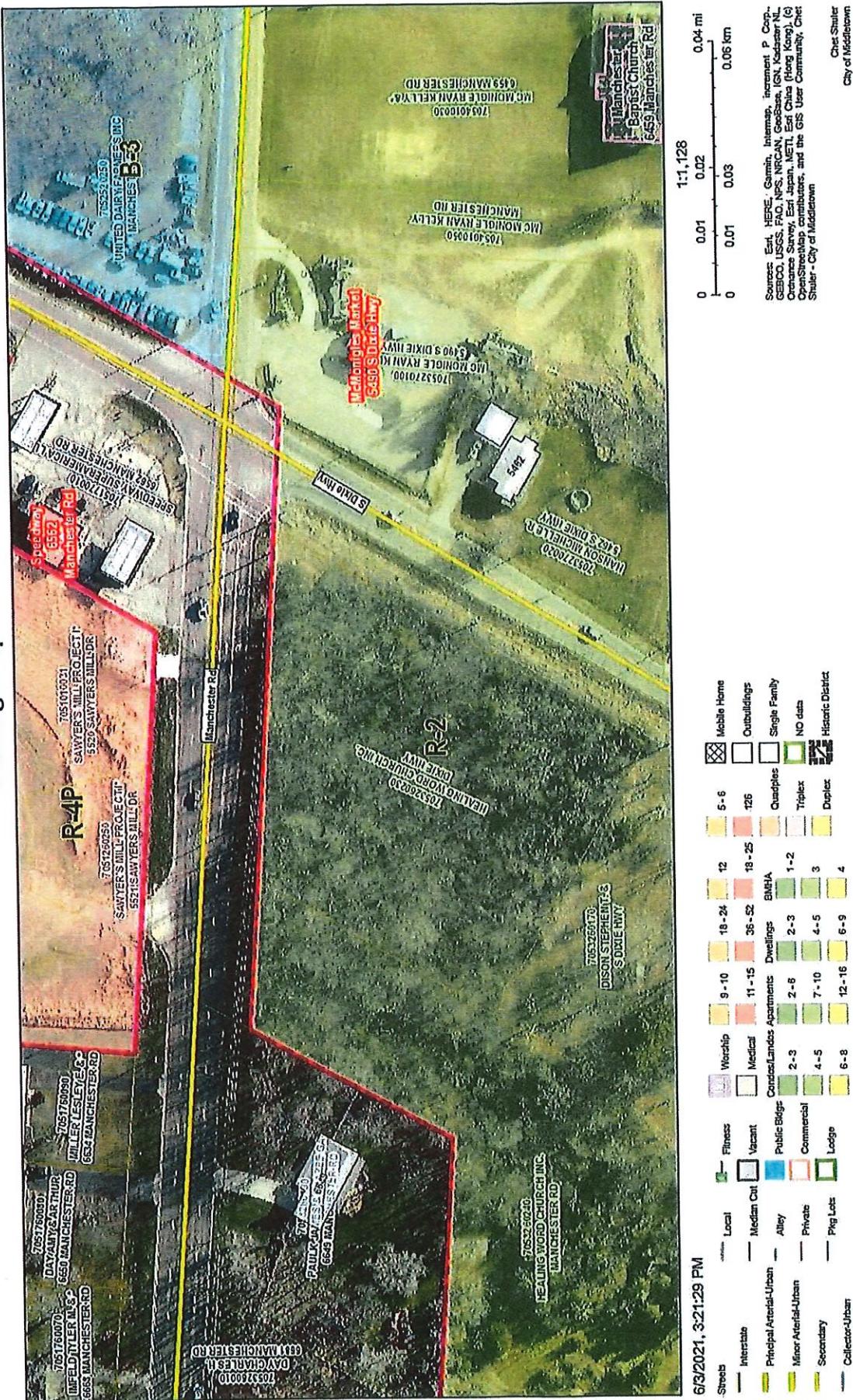


Speedway Across From Property

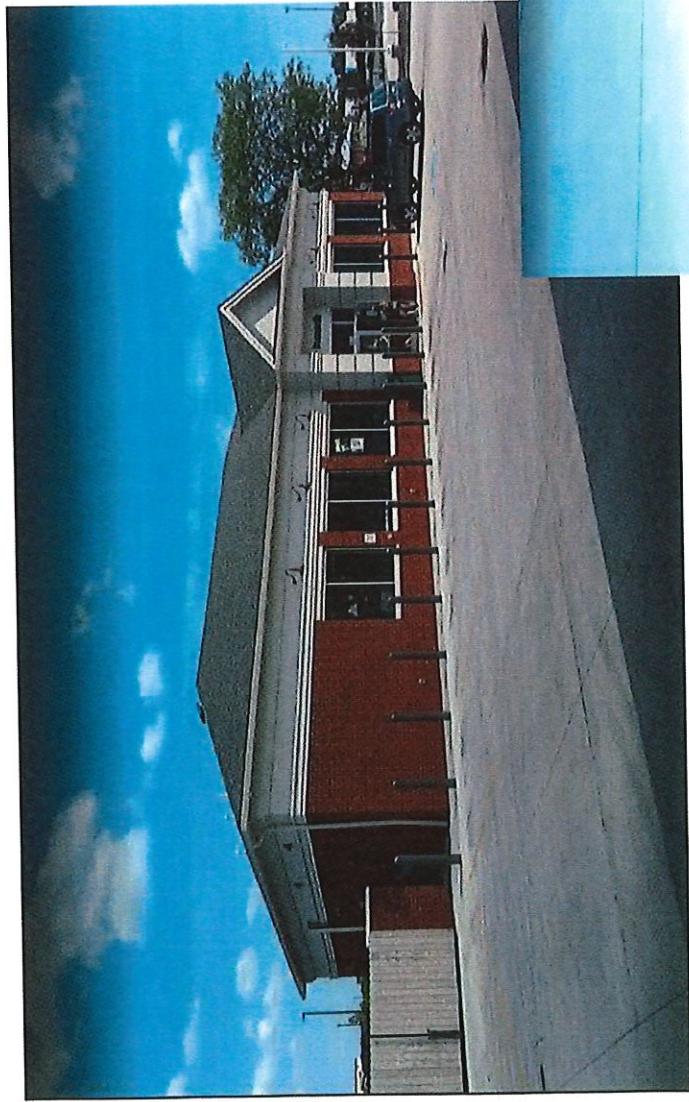
## ZONING MAP



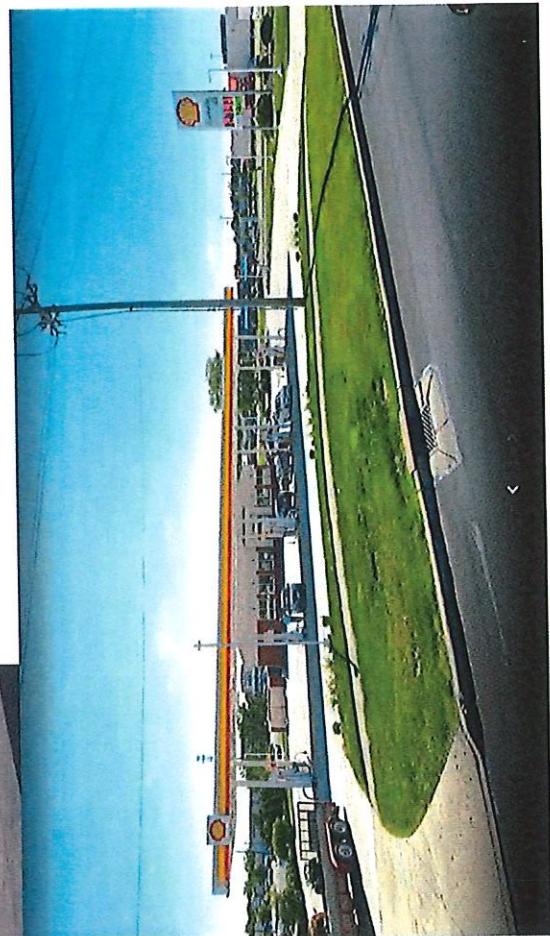
## Zoning Map



## STAFF ANALYSIS:



The architectural standards would be met with the proposed elevations.



Signage would be reviewed at a later date – the photo is only an example of an existing gas station.

# NEW BUSINESS