



**CITY OF HUBER HEIGHTS  
STATE OF OHIO  
City Council Meeting  
Regular Session  
September 26, 2022  
6:00 P.M.**

**City Hall - Council Chambers - 6131 Taylorsville Road**

1. **Call The Meeting To Order - Mayor Jeff Gore**
2. **Invocation** - Pastor Randy Griffith Of The Free Methodist Church At 6875 Old Troy Pike, Huber Heights, Ohio
3. **Flag Ceremony - Wayne High School Junior ROTC Honor Guard**
4. **Pledge Of Allegiance**
5. **Roll Call**
6. **Approval Of Minutes**
  - A. City Council Meeting Minutes - September 12, 2022
7. **Special Presentations/Announcements**
8. **Citizens Comments**
9. **Citizens Registered to Speak on Agenda Items**

10. **City Manager Report**

11. **Pending Business**

- A. An Ordinance To Amend The Codified Ordinances Of The City Of Huber Heights, Ohio To Provide Amendments To Certain Sections Of The Traffic Code And To Certain Sections Of The General Offenses Code; To Provide For Codification; To Provide For Severability; And To Repeal Conflicting Ordinances.  
(second reading)
- B. An Ordinance Amending Section 922.27 Of The Codified Ordinances Of Huber Heights By Increasing The Monthly And/Or Annual Stormwater Sewer Rate Beginning November 1, 2022.  
(second reading)

12. **New Business**

**CITY COUNCIL**

**Anthony Rodgers, Clerk of Council**

- A. An Ordinance Approving The Editing And Inclusion Of Certain Ordinances And/Or Resolutions As Parts Of The Various Component Codes Of The City Code Of Huber Heights, Ohio; Providing For The Adoption And Publication Of New Matter In The Updated And Revised City Code As Supplement 11; And Repealing Ordinances And Resolutions In Conflict Therewith.  
(first reading)

**ADMINISTRATION**

**Bryan Chodkowski, Interim City Manager**

- B. An Ordinance Amending Ordinance No. 2021-O-2511 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2022 And Ending December 31, 2022.  
(first reading)
- C. An Ordinance Providing For The Issuance And Sale Of Notes In The Maximum Principal Amount Of \$1,740,000, In Anticipation Of The Issuance Of Bonds, For The Purpose Of Paying The Costs Of Acquiring Certain Real Property Which Will Be Used As A Site For City Administrative Offices And Providing For General Site Preparation Thereof And Improvements Thereto, Together With All Necessary Appurtenances Thereto, And Declaring An Emergency.  
(first reading)

- D. An Ordinance Providing For The Issuance And Sale Of Notes In The Maximum Principal Amount Of \$945,000, In Anticipation Of The Issuance Of Bonds, For The Purpose Of Paying The Costs Of Acquiring Certain Real Property Which Will Be Used As A Site For One Or More Governmental Facilities And Providing For General Site Preparation Thereof And Improvements Thereto, Together With All Necessary Appurtenances Thereto, And Declaring An Emergency.  
(first reading)
- E. An Ordinance Providing For The Issuance And Sale Of Notes In The Maximum Principal Amount Of \$4,262,000, In Anticipation Of The Issuance Of Bonds, For The Purpose Of Paying The Costs Of Acquiring Approximately 19.5 Acres Of Real Property Near The Intersection Of Brandt Pike And Fishburg Road And Providing For The Site Preparation Thereof, All In Support Of Economic Development And Job Creation Within The City, And Declaring An Emergency.  
(first reading)
- F. A Resolution Accepting The Amounts And Rates As Determined By The Budget Commission Of Montgomery County, Ohio, Authorizing The Necessary Tax Levies And Certifying Them To The Montgomery County Auditor.  
(first reading)
- G. A Resolution Accepting The Amounts And Rates As Determined By The Budget Commission Of Miami County, Ohio, Authorizing The Necessary Tax Levies And Certifying Them To The Miami County Auditor.  
(first reading)
- H. A Resolution Authorizing The Director Of Finance To Execute An Extension Agreement With The Auditor Of State And Plattenburg & Associates For The Audit Of The Combined Financial Statements Of The City Of Huber Heights For The Period January 1, 2022 Through December 31, 2026 And Authorizing The Director Of Finance To Enter Into Agreements For Other Professional Services As Needed With Plattenburg & Associates.  
(first reading)
- I. A Resolution To Increase The Not To Exceed Amount For The Repair And Rebuild Of A Firefighting Aerial Truck With Ohio CAT For Calendar Year 2022 And Waiving The Competitive Bidding Requirements.  
(first reading)
- J. A Resolution Authorizing The City Manager To Increase The 2022 Not To Exceed Amount With Joe's Landscaping For The Purpose Of Landscape Services For The Rose Music Center And For The City Of Huber Heights And Waiving The Competitive Bidding Requirements.  
(first reading)

13. **City Official Reports and Comments**

14. **Executive Session**

15.

**Adjournment**

**AI-8648**

**Minutes    A.**

**City Council Meeting**

**Meeting Date:** 09/26/2022

Approval of Minutes - 9/12/22

**Submitted By:** Anthony Rodgers

**Department:** City Council

**Council Committee Review?:** None

**Date(s) of Committee Review:** N/A

**Audio-Visual Needs:** None **Emergency Legislation?:** No

**Motion/Ordinance/** N/A

**Resolution No.:**

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**Agenda Item Description or Legislation Title**

City Council Meeting Minutes - September 12, 2022

**Purpose and Background**

Approval of the minutes from the September 12, 2022 City Council Meeting.

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**Fiscal Impact**

**Source of Funds:** N/A

**Cost:** N/A

**Recurring Cost? (Yes/No):** N/A

**Funds Available in Current Budget? (Yes/No):** N/A

**Financial Implications:**

There are no financial implications to this agenda item.

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**Attachments**

Minutes

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**1. Call The Meeting To Order - Mayor Jeff Gore**

The Huber Heights City Council met in a Regular Session on September 12, 2022.  
Mayor Jeff Gore called the meeting to order at 6:00 p.m.

**2. Invocation - Pastor Randy Griffith Of The Free Methodist Church At 6875 Old Troy Pike, Huber Heights, Ohio**

**3. Pledge Of Allegiance**

**4. Roll Call**

Present: Richard Shaw, Kathleen Baker, Mark Campbell, Nancy Byrge, Ed Lyons,  
Anita Kitchen, Don Webb, Jeff Gore

Absent: Glenn Otto

Mayor Gore said Mr. Otto gave notice and he requested that his absence be excused.

Mr. Shaw moved to excuse Mr. Otto's absence; Mr. Lyons seconded the motion. On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Lyons, Mrs. Kitchen, Mr. Webb, and Mr. Shaw voted yea; none voted nay. The motion passes 7-0.

**5. Approval Of Minutes**

A. City Council Meeting Minutes - August 8, 2022

B. City Council Meeting Minutes - August 22, 2022

**6. Special Presentations/Announcements**

There were no Special Presentations or Announcements.

**7. Citizens Comments**

Mr. David Gompers said in fourteen months there has not been an answer regarding a traffic light at Taylorsville Road and Rustic Woods. He talked about traffic patterns and directions. He said the residents at Parktowne and at Carriage Trails Parkway have a traffic light. He said he was sure State Route 201 and Carriage Trails Parkway will have a traffic light before Rustic Woods and Taylorsville Road. He said there are no traffic lights anywhere except on the state routes. He said recognition for township leaders was his second point. He said he gave information to Mr. Rodgers listing 15 people he knows. He said projects like the storage facility with a couple of employees are not putting much money in the City's coffers. He said Sheetz would have been better on Brandt Pike rather than on Old Troy Pike. He said since the high-price houses are on the north side and the City owns 51 acres up there, the City could ask for a Dorothy Lane Market. He said if the City can borrow money to buy 51 acres of land, the City can borrow money to help with the interior streets. He said the streets are terrible and the street program is a little outdated. He said it is a good thing the City has good department heads who have a good work ethic and are able to get by without a full-time leader. He said the leaders on his list would never have let that position go vacant for so long, no offense intended. Mr. Gompers said Council

will not see him again as he has other places to go. He said it has been enjoyable.

Mayor Gore said Council is aware of the things Mr. Gompers is interested in and he said things do not happen overnight. He said City Staff are overworked and he and Mr. Chodkowski are in communication every day. He said he firmly believes there should be a City Manager as well, it just was not in the cards this last time.

Mr. Vince King said he is a long-term volunteer with the Parks and Recreation Board. He said he was there to talk to Council about a recent discussion about the City's boards and commissions. He said he has several suggestions. He said he would like to see increased communication with City Council and the boards and commissions. He said he sees Councilmembers out and he talks to them, but as a body, he does not receive that communication. He said the board and commission members need to know what they are doing well and what Council would like to see next year. He said Council has been talking about empowering the boards for several years, but some areas have been pulled back. He said he would like to see City Council empower the boards and commissions and allow the members to be full-time contributors to things that govern how the members work, which includes the board and commission handbook and the City Charter. He said "thank you" goes a long way when it comes to volunteers who put in countless hours to put on a lot of the events and shows. He thanked City Staff and he said, without their hard work, a lot of the events would not happen. He asked Council not to forget to thank City Staff.

Mayor Gore said the City has a Parks and Recreation Manager and he asked if the Parks and Recreation Manager picks the bands and costs, or does the Parks and Recreation Board have recommendations and input? He said Council hires a City Manager and the City Manager promotes the person to be the Parks and Recreation Manager who should be directly involved with the board in making decisions. He said that is how the empowerment of Council works. He recommended that Council get a very clear picture of what the chain of command looks like so the board feels empowered. He said if there is not a clear policy on how this decision-making works, then that policy needs to be established quickly.

Mrs. Byrge said she would like the role of Staff Liaison spelled out. She said her understanding is the Staff Liaison is to keep the members of the board within the parameters and rules that have been spelled out and not to say you can do this and you cannot do that. She said Mr. King does a tremendous job, and Council probably has not said it enough. She said Council has empowered the boards and commissions, and if something is keeping the members from doing their jobs, she would like to have some examples of what that something is.

Mr. King said he is talking about empowerment from a City Council perspective. He said it has been talked about at City Council Meetings, but no one has sent him anything in writing to say this is what he should be doing. He said the Staff Liaison for the Parks and Recreation Board is Chris Lindeman. He said he works well with Mr. Lindeman, Mr. King, and others. He said he provided a priority list to Council, but he does not see Council talking about that list following those meetings. He said Mr. King has added those items to the Capital Improvement Plan, but Council has not re-prioritized it or anything. He said the priority list was started in 2018 or 2019. He said he sent it last year to Mr. Rodgers to send to Council, but he has not seen anything happen since then. He said things have gotten done, but he does not see Council taking action on the recommendations. He said there are other decisions made such as creating special committees, but no one comes to the main board or commission first to see if this is something that can be looked into. He further discussed his issues.

Mr. Shaw said in 2018 or 2019, Council had serious discussions on the reintroduction of a marriage between the City and the YMCA and what that would look like. He said Council, some members of the community, and some members of the Parks and Recreation Board said that relationship was not working out the way it was supposed to. He said the City Manager and City Staff put together a long list of things the City was going to hit and the YMCA was going to hit. He said it has been a few years since he has seen that topic addressed. He said the review needs to start there. He said during that rocky time period is when the Parks and Recreation Manager position was created. He said he agrees with Mr. King on empowerment and communication. He asked if the Parks and Recreation Board ever discussed the expansion of Thomas

Cloud Park.

Mr. King said it was not discussed, but that was probably because the board had not had the last two meetings.

Mr. Shaw said that is a pretty huge deal, and this Council never received feedback from the Parks and Recreation Board. He said if Council needs to hold special meetings with the Staff Liaisons, Chairs, and Vice Chairs, he is open to doing so. He said Council can be proactive rather than reactive. He said he would like a review of the relationship with the YMCA to see what the City, the residents, and the Parks and Recreation Board are getting out of that relationship. He asked if there are things available to the board and the community that the City may not know about.

Mr. King said there is a great marriage between the City and the YMCA. He said the YMCA Staff does a great job with the Kroger Aquatic Center, shelter reservations, and all those things. He said Mr. Lindeman and the YMCA Staff have stepped up and are offering classes at no cost. He said the board has Mr. King and Mr. Lindeman and there are two different focuses. He said the marriage was perfect and everyone was working together.

Mr. Shaw said Mr. Lindeman, Mr. King and the City were working on a fundamental way to enhance the shelter and park rental availability and become more digitized. He asked where that project stands?

Mr. King said they tried a system for reserving the Huber Heights Community Center, but the YMCA's system does not allow communication that way, but that is a conversation they will have to have. He said technology for the parks has been on his priority list.

Mr. Campbell thanked Mr. King. He said he remembers when the priority list was created and it was so large it had to be prioritized into A and B lists. He said Council is built to address those recommendations. He said the Parks and Recreation Board is built to come up with recommendations. He said what he and Mr. Shaw need to do a better job of is not waiting four years to revisit some of the things talked about. He committed to being available and to doing a better job responding to the board's recommendations. He said the list of 60 items was necessary, and the list has shrunk because Council has empowered, funded, and caused a lot of those corrections to be made. He said most all of the assets the taxpayers own are public, such as parks and those types of things. He said Mr. Chodkowski is working on a plan and working with contractors to assess the City's assets, and he will empower the organization to better care for the assets. He asked if the Parks and Recreation Board could work with City Staff to incorporate it into some of the recommendations.

Mr. King said he believes so now that he knows where Council wants the board to go.

Mr. Campbell said one of the items Council wrestled with for the 60 item list was funding. He said the Rose Music Center is a revenue source and as the list went down, the revenue went up. He said Council has the ability to cause and fund change to occur. He asked Mr. King to continue coming to Council and giving presentations.

Mr. King said there is a schedule now, and the first update will be in November, 2022. He said when possible, he would either present or email his review.

Mr. Campbell asked Mr. King to give the presentation in person and to provide the list so Council can have dialogue back and forth with him. He said that process was successful in causing change and whittling the list down. He apologized if he had not been involved enough. He said he is glad to hear the relationship with the YMCA is good. He asked for any suggestions to enhance how the City can better administer things.

Mr. King said more staff is needed for the parks.

Mr. Campbell said the City has been fortunate to have a revenue stream like the Rose Music Center that brings in in excess of \$1 million per year. He encouraged Mr. Chodkowski to take Mr. King up on the recommendation for more staff for the parks.



Mr. King said he is looking into tapping into some of the youth resources.

Mr. Campbell asked Mr. King if the parks have improved during his tenure?

Mr. King said the parks had improved tremendously because there has been a change in the focus. He said he would like to see more feedback from Council.

Mr. Campbell said the best way to most accurately communicate is at the dais with Mr. King at the podium so everyone knows what each other is doing and thinking.

Mrs. Byrge said when school is in, a lot of kids are required to complete community service projects. She said maybe that topic could be put on the agenda for discussion when Council meets with the Huber Heights City Schools Board.

Mrs. Kitchen said she would like to see the list of 60 items because that was prior to her coming onto Council. She said she would like to see the money coming in from the opioid settlement go to parks and recreation to be creative in serving at-risk youth. She said Mr. King would be great at spearheading this effort.

Mr. King said he would like for the City to tap into the Serve Ohio grants to use for activities. He said he did not know if that is something he can do as a volunteer or if he has to work with City Staff, but he will start having those conversations this week.

Mr. Webb said Mr. King is at every event along with many of his peers. He said it does not go unnoticed by anyone on Council. He said Council is only a Council when it is at the dais as a body. He said the gap that he sees is there really is not good communication between the boards and commissions and this body when it is sitting. He said that communication needs to be from the boards and commissions to Council and from Council to the boards and commissions. He said communication is empowerment. He said communication will definitely be the way Council says thank you to the boards and commissions.

Mayor Gore said until the asset management plan is done and the values are noted and City Staff has the ability to create a plan to put a budget to the priority list through capital improvements, Council is just shooting arrows in the dark. He said the last big budget number outside of projects that he remembers is the \$300,000 appropriated for parks and recreation back in 2018 for ADA-compliant park equipment.

Mr. Chodkowski said the City Engineer is interviewing firms on Wednesday and Thursday of this week to identify the best firm to develop an asset management program.

Mayor Gore said Council discussed a volunteer coordinator position a few meetings ago. He said Council cannot take its foot off the gas on that matter. He said extra staff was also discussed that could come on board and help with each one of the boards and commissions.

Ms. Baker asked that when Mr. King comes back, he tells Council how much the board had budgeted and how much money was spent on each event. She said the City needs to look into a scheduling system for the different park shelters and one that also recommends another shelter if one is not available. She asked when Mr. King comes back, he also tells Council how many people attended events and how much the event cost, so there is a ratio of how successful each event was. She said she heard the Young Marines, the 8th graders at St. Peter School, and the Girl Scouts have to do volunteer hours. She said she would get that information to Mr King.

## **8. Citizens Registered to Speak on Agenda Items**

There were no citizens registered to speak on agenda items.

## **9. City Manager Report**

Interim City Manager Bryan Chodkowski said the final night of the Summer Movie Series is this Friday, September 16, 2022 from 7:00 p.m. to 11:00 p.m. at the Eichelberger Amphitheater. He said the Ohio Department of Transportation (ODOT) has begun doing base repairs between the southern City limit and Fishburg Road. He said this work is in anticipation of the actual resurfacing, and the project should be completed within the next three weeks. He said City Staff is receiving bids on Friday, September 16, 2022 for the demolition of Dogtown and for the installation of RTA bus shelters. He said this weekend begins his profession's annual conference, and he will be in Columbus, Ohio and out of the office from Saturday morning through Wednesday afternoon. He said in his absence, Human Resources Director Katie Knisley will be serving as the Acting Interim City Manager.

Mr. Lyons said Mr. Chodkowski emailed him on September 6, 2022, concerning the roads in Ward 1 regarding the Quail Ridge development, Chambersburg Road asphalt, and 4821 Chambersburg Road. He said Mr. Chodkowski said it was discussed in the staff meeting that morning, but he did not follow up with Mr. Chodkowski. He asked if there was any action taken by City Staff, or an assessment to see if what was reported to him was accurate?

Mr. Chodkowski said he simply asked that the Public Works Manager review those concerns and follow up appropriately, and he can get a status report at the staff meeting tomorrow to determine whether or not this work is scheduled in the near future or the outcome of Mr. Gray's review.

Mr. Lyons said the gentleman that brought this matter to his attention is very unhappy and he has been asking him to be patient. He said before the gentleman shows up at a City Council Meeting, he would like to get that status update.

**10. Pending Business**

- A. An Ordinance To Approve A Rezoning From Agricultural (A) To Planned Industrial (PI) And A Lot Split For The Property Located At 9416 Taylorsville Road And Further Identified As Parcel Number P70 03902 0018 On The Montgomery County Auditor's Map And To Not Accept The Recommendation Of The Planning Commission (Case RZ 22-17).  
(third reading)

Mr. Chodkowski said in follow-up to the Council Work Session, the discussion and recommendation at that time was that Council postpone action on this item to January 9, 2023 City Council Meeting, to enable City Staff to prepare an appropriate zoning amendment to address this issue in a more permanent capacity.

Mayor Gore said the Council Work Session recommendation was to adopt a motion this evening to postpone action on Item 10-A to a fourth reading at the January 9, 2023 City Council Meeting. He said this item would also be on the agenda at the next Council Work Session and Aaron Sorrell would have information about this particular item at that time.

Ms. Baker moved to postpone action on Item 10-A to a fourth reading at the January 9, 2023 City Council Meeting; Mrs. Kitchen seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Lyons, Mrs. Kitchen, Mr. Webb, Mr. Shaw, and Ms. Baker voted yea; none voted nay. The motion passes 7-0.

**11. New Business**

**CITY COUNCIL**

**Anthony Rodgers, Clerk of Council**

- A. A Motion To Appoint Paul Schaeffer To The Board Of Zoning Appeals For A Term Ending January 31, 2024.

Clerk of Council Anthony Rodgers said the background check on Mr. Schaeffer was completed. He said it was the recommendation at the Council Work Session to make this appointment.

Mrs. Byrge moved to adopt; Mr. Lyons seconded the motion. On a call of the vote, Mrs. Byrge, Mr. Lyons, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, and Mr. Campbell voted yea; none voted nay. The motion passes 7-0.

- B. An Ordinance To Amend The Codified Ordinances Of The City Of Huber Heights, Ohio To Provide Amendments To Certain Sections Of The Traffic Code And To Certain Sections Of The General Offenses Code; To Provide For Codification; To Provide For Severability; And To Repeal Conflicting Ordinances.  
(first reading)

Mr. Rodgers said this item is a routine item, and each year the City takes items that have been passed or adopted in the Ohio Revised Code that have an impact on the Huber Heights Codified Ordinances and brings those provisions into the City Code through codification. He said this item has been reviewed by the Law Director and Municode.

Mayor Gore said this item will be passed to a second reading.

#### **ADMINISTRATION**

##### **Bryan Chodkowski, Interim City Manager**

- C. A Resolution Authorizing The City Manager To Enter Into A Contract For Wastewater Collection And Treatment Services With The City Of Fairborn.  
(first reading)

Mr. Chodkowski said this item is in follow-up to extensive briefings provided to Council. He said the City of Fairborn is planning to take action on this item during its meeting on September 19, 2022. He said it was a recommendation at the Council Work Session that this item be adopted.

Mr. Campbell moved to adopt; Mrs. Byrge seconded the motion. On a call of the vote, Mr. Lyons, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, and Mrs. Byrge voted yea; none voted nay. The motion passes 7-0.

- D. A Resolution To Increase The Not To Exceed Amount For The Purchase Of Firefighting Protective Equipment And Clothing With Phoenix Safety Outfitters For Calendar Year 2022 And Waiving The Competitive Bidding Requirements.  
(first reading)

Mr. Chodkowski said this resolution is before Council for attention to ensure new personnel in the Fire Division are properly outfitted when hired. He said it was the recommendation at the Council Work Session that this item be adopted.

Mr. Shaw moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, and Mr. Lyons voted yea; none voted nay. The motion passes 7-0.

- E. A Resolution Authorizing The City Manager To Solicit, Advertise And Receive Bids From Qualified Firms For The Construction Of The Mardi Gras Drive Area Water Main Replacement Project.  
(first reading)

Mr. Chodkowski said this item is associated with an Issue 2 grant, and this matter is for the solicitation, advertisement and receipt of bids only for the Mardi Gras Drive Area Water Main Replacement Project. He said it was the recommendation at the Council Work Session that this item be adopted.

Mr. Webb moved to adopt; Mr. Campbell seconded the motion. On a call of the vote, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Lyons, and Mrs. Kitchen voted yea; none voted nay. The motion passes 7-0.

- F. A Resolution Authorizing The City Manager To Solicit Requests For Proposals (RFP) From Qualified Engineering Consulting Firms To Provide Engineering Design For The 2023 Water Main Replacement Project.  
(first reading)

Mr. Chodkowski said this item has been brought forward to make sure all the appropriate engineering designs are in place to expedite the 2023 Water Main Replacement Projects. He said it was recommended at the Council Work Session that this item be adopted.

Mr. Campbell moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Lyons, Mrs. Kitchen, and Mr. Webb voted yea; none voted nay. The motion passes 7-0.

- G. An Ordinance Amending Section 922.27 Of The Codified Ordinances Of Huber Heights By Increasing The Monthly And/Or Annual Stormwater Sewer Rate Beginning November 1, 2022.  
(first reading)

Mr. Chodkowski said this item is to address the inflationary escalation of the stormwater fees over time. He said it was recommended at the Council Work Session that this item be passed to a second reading.

Mayor Gore said this item will be passed to a second reading.

- H. A Resolution Authorizing The City Manager To Award A Contract For Services Related To Providing Repair And Replacement Of Roadway Guardrail.  
(first reading)

Mr. Chodkowski said this legislation is brought forth at the request of Public Works Manager to address numerous damaged guardrails throughout the City. He said it was the recommendation at the Council Work Session that this item be adopted.

Mr. Webb moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Lyons, Mrs. Kitchen, Mr. Webb, and Mr. Shaw voted yea; none voted nay. The motion passes 7-0.

**12. City Official Reports and Comments**

There were no City Official Reports and Comments.

**13. Executive Session**

There was no need for an Executive Session.

**14. Adjournment**

Mayor Gore adjourned the Regular Session City Council Meeting at 7:08 p.m.

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

**AI-8649**

**Pending Business A.**

**City Council Meeting**

**City Council**

**Meeting Date:** 09/26/2022

Adopting Ordinance - City Code - Traffic Code/General Offenses Code Amendments

**Submitted By:** Anthony Rodgers

**Department:** City Council

**Council Committee Review?:** Council Work  
Session

**Date(s) of Committee Review:** 09/06/2022

**Audio-Visual Needs:** None

**Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

An Ordinance To Amend The Codified Ordinances Of The City Of Huber Heights, Ohio To Provide Amendments To Certain Sections Of The Traffic Code And To Certain Sections Of The General Offenses Code; To Provide For Codification; To Provide For Severability; And To Repeal Conflicting Ordinances.  
(second reading)

**Purpose and Background**

This is an ordinance to adopt amendments to the General Offenses Code and the Traffic Code of the City Code for the period of August 2, 2021 to July 14, 2022. These amendments are based on a legal review of the Ohio Revised Code by Municode.

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**Fiscal Impact**

**Source of Funds:** N/A

**Cost:** N/A

**Recurring Cost? (Yes/No):** N/A

**Funds Available in Current Budget? (Yes/No):** N/A

**Financial Implications:**

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**Attachments**

Ordinance

Exhibit A

Exhibit B

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

ORDINANCE NO. 2022-O-

TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF HUBER HEIGHTS, OHIO TO PROVIDE AMENDMENTS TO CERTAIN SECTIONS OF THE TRAFFIC CODE AND TO CERTAIN SECTIONS OF THE GENERAL OFFENSES CODE; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; AND TO REPEAL CONFLICTING ORDINANCES.

WHEREAS, the City has contracted with Municipal Code Corporation (“Municode”) to publish and periodically update the City’s Codified Ordinances (“City Code”) to conform with current State law as required by the Ohio Constitution; and

WHEREAS, Municode has completed its updating and revision of the Codified Ordinances of the City of Huber Heights and provided a listing of certain proposed changes to the Codified Ordinances in order to bring City law into conformity with State law.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. That the Codified Ordinances of Huber Heights, Ohio are hereby amended by adding the provisions in Sections 303.082, 331.01, 331.02, 331.05, 331.06, 331.07, 331.08, 331.10, 331.09, 331.13, 331.16, 331.17, 331.18, 331.19, 331.20, 331.23, 331.24, 331.25, 331.26, 331.27, 331.28, 331.29, 331.30, 331.31, 331.33, 331.37, 331.40, 333.03, 337.10, 333.031, 333.04, 333.05, 335.02, 371.01, 371.03, 371.07; and adding new Sections 303.083 and 337.25 to the Traffic Code for the period from August 2, 2021 to July 14, 2022 as provided in the attached Exhibit A which is incorporated herein by this reference.

Section 2. That the Codified Ordinances of Huber Heights, Ohio are hereby amended by adding the provisions in Sections 517.01 and 517.06 to the General Offenses Code for the period from August 2, 2021 to July 14, 2022 as provided in the attached Exhibit B which is incorporated herein by this reference.

Section 3. The addition, amendment, or removal of Huber Heights City Code Sections when passed in such form as to indicate the intention of the governing authority of the City of Huber Heights, Ohio to make the same a part of the City Code shall be deemed to be incorporated in the City Code, so that reference to the City Code includes the additions, amendments, and removals.

Section 4. Municode as the publisher of the City Code is authorized as follows:

- (a) To exclude and omit any provisions of this Ordinance that are inapplicable to the City Code within the City Code and any supplement.
- (b) When preparing a supplement to the City Code, to make formal, non-substantive changes in this ordinance and parts of this Ordinance included in the supplement, insofar as it is necessary to do so to embody them into a unified code in the manner consistent with other municipal codes published by Municode.

Section 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances. The governing authority of the City of Huber Heights, Ohio hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable

Section 6. All Ordinances and parts of Ordinances in conflict herewith are expressly

repealed.

Section 7. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 8. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## EXHIBIT A

The following sections and subsections of the Traffic Code of the City Code of Huber Heights, Ohio are new or have been amended with new matter in the City Code of Huber Heights, Ohio, and are hereby approved, adopted and enacted:

303.082 Private tow-away zones.

(a) The owner of a private property may establish a private tow-away zone, but may do so only if all of the following conditions are satisfied:

(1) The owner of the private property posts on the property a sign, that is at least 18 inches by 24 inches in size, that is visible from all entrances to the property, and that includes all of the following information:

A. A statement that the property is a tow-away zone;

B. A description of persons authorized to park on the property. If the property is a residential property, the owner of the private property may include on the sign a statement that only tenants and guests may park in the private tow-away zone, subject to the terms of the property owner. If the property is a commercial property, the owner of the private property may include on the sign a statement that only customers may park in the private tow-away zone. In all cases, if it is not apparent which persons may park in the private tow-away zone, the owner of the private property shall include on the sign the address of the property on which the private tow-away zone is located, or the name of the business that is located on the property designated as a private tow-away zone.

C. If the private tow-away zone is not enforceable at all times, the times during which the parking restrictions are enforced;

D. The telephone number and the address of the place from which a towed vehicle may be recovered at any time during the day or night;

E. A statement that the failure to recover a towed vehicle may result in the loss of title to the vehicle as provided in Ohio R.C. 4505.101(B).

In order to comply with the requirements of subsection (a)(1) of this section, the owner of a private property may modify an existing sign by affixing to the existing sign stickers or an addendum in lieu of replacing the sign.

(2) A towing service ensures that a vehicle towed under this section is taken to a location from which it may be recovered that complies with all of the following:

A. It is located within 25 linear miles of the location of the private tow-away zone, unless it is not practicable to take the vehicle to a place of storage within 25 linear miles.

B. It is well-lighted.

C. It is on or within a reasonable distance of a regularly scheduled route of one or more modes of public transportation, if any public transportation is available in the municipal corporation or township in which the private tow-away zone is located.

(b) (1) If a vehicle is parked on private property that is established as a private tow-away zone in accordance with subsection (a) of this section, without the

consent of the owner of the private property or in violation of any posted parking condition or regulation, the owner of the private property may cause the removal of the vehicle by a towing service. The towing service shall remove the vehicle in accordance with this section. The vehicle owner and the operator of the vehicle are considered to have consented to the removal and storage of the vehicle, to the payment of the applicable fees established by the Public Service Commission in rules adopted under Ohio R.C. 4921.25, and to the right of a towing service to obtain title to the vehicle if it remains unclaimed as provided in Ohio R.C. 4505.101. The owner or lienholder of a vehicle that has been removed under this section, subject to subsection (c) of this section, may recover the vehicle in accordance with subsection (g) of this section.

(2) If a municipal corporation requires tow trucks and tow truck operators to be licensed, no owner of a private property located within the municipal corporation shall cause the removal and storage of any vehicle pursuant to subsection (b) of this section by an unlicensed tow truck or unlicensed tow truck operator.

(3) No towing service shall remove a vehicle from a private tow-away zone except pursuant to a written contract for the removal of vehicles entered into with the owner of the private property on which the private tow-away zone is located.

(c) If the owner or operator of a vehicle that is being removed under authority of subsection (b) of this section, arrives after the vehicle has been prepared for removal, but prior to the actual removal from the property, the towing service shall give the vehicle owner or operator oral or written notification at the time of such arrival that the vehicle owner or operator may pay a fee of not more than one-half of the fee for the removal of the vehicle established by the Public Service Commission in rules adopted under Ohio R.C. 4921.25, in order to obtain release of the vehicle. That fee may be paid by use of a major credit card unless the towing service uses a mobile credit card processor and mobile service is not available at the time of the transaction. Upon payment of that fee, the towing service shall give the vehicle owner or operator a receipt showing both the full amount normally assessed and the actual amount received and shall release the vehicle to the owner or operator. Upon its release the owner or operator immediately shall move the vehicle so that the vehicle is not parked on the private property established as a private tow-away zone without the consent of the owner of the private property or in violation of any posted parking condition or regulation.

(d) (1) Prior to towing a vehicle under subsection (b) of this section, a towing service shall make all reasonable efforts to take as many photographs as necessary to evidence that the vehicle is clearly parked on private property in violation of a private tow-away zone established under subsection (a) of this section. The towing service shall record the time and date of the photographs taken under this section. The towing service shall retain the photographs and the record of the time and date, in electronic or printed form, for at least 30 days after the date on which the vehicle is recovered by the owner or lienholder or at least two years after the date on which the vehicle was towed, whichever is earlier.

(2) A towing service shall deliver a vehicle towed under subsection (b) of this

section to the location from which it may be recovered not more than two hours after the time it was removed from the private tow-away zone, unless the towing service is unable to deliver the motor vehicle within two hours due to an uncontrollable force, natural disaster, or other event that is not within the power of the towing service.

(e) (1) If an owner of a private property that is established as a private tow-away zone in accordance with subsection (a) of this section causes the removal of a vehicle from that property by a towing service under subsection (b) of this section, the towing service, within two hours of removing the vehicle, shall provide notice to the Police Department concerning all of the following:

- A. The vehicle's license number, make, model and color;
- B. The location from which the vehicle was removed;
- C. The date and time the vehicle was removed;
- D. The telephone number of the person from whom the vehicle may be recovered;
- E. The address of the place from which the vehicle may be recovered.

(2) The Chief of Police shall maintain a record of any vehicle removed from private property in the Chief's jurisdiction that is established as a private tow-away zone of which the Chief has received notice under this section. The record shall include all information submitted by the towing service. The Chief shall provide any information in the record that pertains to a particular vehicle to a person who, either in person or pursuant to a telephone call, identifies self as the owner, operator or lienholder of the vehicle, and requests information pertaining to the vehicle.

(f) (1) When a vehicle is removed from private property in accordance with this section, within three days of the removal, the towing service or storage facility from which the vehicle may be recovered shall cause a search to be made of the either of the following to ascertain the identity of the owner and any lienholder of the vehicle:

(A) The records of the Bureau of Motor Vehicles; ~~to ascertain the identity of the owner and any lienholder of the motor vehicle.~~

(B) The records of any vendor or vendors, approved by the registrar of motor vehicles, that are capable of providing real-time access to owner and lienholder information. ~~The Registrar of Motor Vehicles~~

The towing service or storage facility may search the national motor vehicle title information system in order to determine the state in which the vehicle is titled. The entity that provides the record of the owner and any lienholder under this division shall ensure that such information is provided in a timely manner.

(2) Subject to subsection (f)(4)(5) of this section, the towing service or storage facility shall send notice to the vehicle owner and any known lienholder as follows:

- A. Within five business days after the ~~Registrar of Motor Vehicles~~ applicable entity provides the identity of the owner and any lienholder of the motor vehicle, if the vehicle remains unclaimed, to the owner's and lienholder's last known address by certified or express mail with return receipt requested, by certified mail with electronic tracking, or by a commercial carrier service utilizing any form of delivery

requiring a signed receipt;

B. If the vehicle remains unclaimed 30 days after the first notice is sent, in the manner required under subsection ~~(f)(1)A.~~ (f)(2)(A). of this section;

C. If the vehicle remains unclaimed 45 days after the first notice is sent, in the manner required under subsection (f)(1)A. of this section.

~~(2)~~ (3) Sixty days after any notice sent pursuant to subsection ~~(f)(1)~~ (f)(2) of this section is received, as evidenced by a receipt signed by any person, or the towing service or storage facility has been notified that delivery was not possible, the towing service or storage facility, if authorized under Ohio R.C. 4505.101(B), may initiate the process for obtaining a certificate of title to the motor vehicle as provided in that section.

~~(3)~~ (4) A towing service or storage facility that does not receive a signed receipt of notice, or a notification that delivery was not possible, shall not obtain, and shall not attempt to obtain, a certificate of title to the motor vehicle under Ohio R.C. 4505.101(B).

~~(4)~~ (5) With respect to a vehicle concerning which a towing service or storage facility is not eligible to obtain title under Ohio R.C. 4505.101, the towing service or storage facility need only comply with the initial notice required under subsection ~~(f)(1)A.~~ (f)(2)(A) of this section.

(g) (1) The owner or lienholder of a vehicle that is removed under subsection (b) of this section may reclaim it upon both of the following:

A. Presentation of proof of ownership, which may be evidenced by a certificate of title to the vehicle, a certificate of registration for the motor vehicle or a lease agreement;

B. Payment of the following fees:

1. All applicable fees established by the Public Utilities Commission in rules adopted under Ohio R.C. 4921.25, except that the lienholder of a vehicle may retrieve the vehicle without paying any storage fee for the period of time that the vehicle was in the possession of the towing service or storage facility prior to the date the lienholder received the notice sent under subsection ~~(f)(1)A.~~ (f)(2)(A) of this section;

2. If notice has been sent to the owner and lienholder as described in subsection (f) of this section, a processing fee of \$25.00.

(2) A towing service or storage facility in possession of a vehicle that is removed under authority of subsection (b) of this section shall show the vehicle owner, operator or lienholder who contests the removal of the vehicle all photographs taken under subsection (d) of this section. Upon request, the towing service or storage facility shall provide a copy of all photographs in the medium in which the photographs are stored, whether paper, electronic, or otherwise.

(3) When the owner of a vehicle towed under this section retrieves the vehicle, the towing service or storage facility in possession of the vehicle shall give the owner written notice that if the owner disputes that the motor vehicle was lawfully towed, the owner may be able to file a civil action under Ohio R.C. 4513.611.

(4) Upon presentation of proof of ownership, which may be evidenced by a

certificate of title to the vehicle, a certificate of registration for the motor vehicle or a lease agreement, the owner of a vehicle that is removed under authority of subsection (b) of this section may retrieve any personal items from the vehicle without retrieving the vehicle and without paying any fee. The owner of the vehicle shall not retrieve any personal items from a vehicle if it would endanger the safety of the owner, unless the owner agrees to sign a waiver of liability. For purposes of subsection (g)(4) of this section, "personal items" do not include any items that are attached to the vehicle.

(h) No person shall remove, or cause the removal of any vehicle from private property that is established as a private tow-away zone under this section, or store such a vehicle other than in accordance with this section, or otherwise fail to comply with any applicable requirement of this section.

(i) This section does not affect or limit the operation of Ohio R.C. 4513.60 or Ohio R.C. 4513.61 to 4613.65 as they relate to property other than private property that is established as a private tow-away zone under subsection (a) of this section.

(j) Whoever violates subsection (h) of this section is guilty of a minor misdemeanor.

(k) As used in this section, "owner of a private property" or "owner of the private property" includes, with respect to a private property, any of the following:

- (1) Any person who holds title to the property;
- (2) Any person who is a lessee or sublessee with respect to a lease or sublease agreement for the property;
- (3) A person who is authorized to manage the property;
- (4) A duly authorized agent of any person listed in subsections (k)(1) to (3) of this section. (ORC 4513.601)

331.01 Driving upon right side of roadway; exceptions.

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction, or when making a left turn under the rules governing such movements;
- (2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
- (3) When driving upon a roadway divided into three or more marked lanes for traffic under the rules applicable thereon;
- (4) When driving upon a roadway designated and posted with signs for one-way traffic;
- (5) When otherwise directed by a police officer or traffic control device.

(b) (1) Upon all roadways any vehicle proceeding at less than the prevailing and lawful speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, and far enough to the right to allow passing by faster vehicles if such passing is safe and reasonable,

except under any of the following circumstances:

- A. When overtaking and passing another vehicle proceeding in the same direction;
- B. When preparing for a left turn;
- C. When the driver must necessarily drive in a lane other than the right-hand lane to continue on the driver's intended route.

(2) Nothing in subsection (b)(1) of this section requires a driver of a slower vehicle to compromise the driver's safety to allow overtaking by a faster vehicle.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use the lanes, or except as permitted under subsection (a)(2) hereof.

This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.25)

### 331.02 Passing to right when proceeding in opposite directions.

(a) Operators of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each operator shall give to the other one-half of the main traveled portion of the roadway or as nearly one-half as is reasonably possible.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.26)

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~.

### 331.05 Overtaking, passing to left of center.

(a) No vehicle shall be driven to the left of the center of the roadway in overtaking and passing traffic proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made, without interfering with the safe operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for traffic approaching from the opposite direction before coming within 200 feet of any approaching vehicle.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.29)

### 331.06 Additional restrictions on driving upon left side of roadway.

(a) No vehicle shall be driven upon the left side of the roadway under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the highway, where the operator's view is obstructed within such a distance as to create a hazard in the event traffic might approach from the opposite direction;

(2) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel;

(3) When approaching within 100 feet of or traversing any intersection or railroad grade crossing.

(b) This section does not apply to vehicles upon a one-way roadway, upon a roadway where traffic is lawfully directed to be driven to the left side or under the conditions described in Section 331.01(a)(2).

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the

additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~.  
(ORC 4511.30)

### 331.07 Hazardous or no passing zones.

(a) Hazardous zones, commonly called "no passing zones," shall consist of an auxiliary yellow line marked on the roadway pavement and placed parallel to the normal center line or marked lane line. When the auxiliary yellow line appears on the left side in the driver's lane of travel and to the right of the normal center line or marked lane line, no driver shall drive across the auxiliary yellow line to overtake and pass another vehicle proceeding in the same direction. When auxiliary yellow lines appear on both sides of the normal center line or marked lane line, drivers proceeding in either direction shall not drive across such auxiliary yellow lines to overtake and pass another vehicle proceeding in the same direction. No driver shall, at any other time, drive across the yellow auxiliary line when it appears in the driver's lane of travel, except to make a lawfully permitted left-hand turn under the rules governing such movement. No passing signs may also be erected facing traffic to indicate the beginning and end of each no passing zone.

When appropriate signs or markings indicating hazardous or no passing zones are in place and clearly visible, every operator of a vehicle shall obey the directions of the signs or markings, notwithstanding the distance set out in Section 331.06.

(b) Subsection (a) of this section does not apply when all of the following apply:

(1) The slower vehicle is proceeding at less than half the speed of the speed limit applicable to that location.

(2) The faster vehicle is capable of overtaking and passing the slower vehicle without exceeding the speed limit.

(3) There is sufficient clear sight distance to the left of the center or center line of the roadway to meet the overtaking and passing provisions of Section 331.05, considering the speed of the slower vehicle.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.31)

### 331.08 Driving in marked lanes or continuous lines of traffic.

(a) Whenever any roadway has been divided into two or more clearly marked lanes for traffic or wherever traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:



(1) A vehicle shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or when preparing for a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is posted with signs to give notice of such allocation.

(3) Official signs may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, or restricting the use of a particular lane to only buses during certain hours or during all hours, and drivers of vehicles shall obey the directions of such signs.

(4) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.33)

### 331.10 Turning at intersections.

(a) The driver of a vehicle intending to turn at an intersection shall be governed by the following rules:

(1) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) At any intersection where traffic is restricted to one direction on one or more of

the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane of the roadway being entered lawfully available to the traffic moving in that lane.

(4) Markers, buttons or signs may be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such markers, buttons or signs are so placed, no operator of a vehicle shall turn such vehicle at an intersection other than as directed and required by such markers, buttons or signs.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.36)

### 331.09 Following too closely.

(a) The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway.

The driver of any truck, or motor vehicle drawing another vehicle, when traveling upon a roadway outside a business or residence district shall maintain a sufficient space, whenever conditions permit, between such vehicle and another vehicle ahead so an overtaking motor vehicle may enter and occupy such space without danger. This paragraph does not prevent overtaking and passing nor does it apply to any lane specially designated for use by trucks.

Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, shall maintain a sufficient space between such vehicles so an overtaking vehicle may enter and occupy such space without danger. This paragraph shall not apply to funeral processions.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.34)

### 331.13 Starting and backing vehicles.

(a) No person shall start a vehicle which is stopped, standing or parked until such movement can be made with reasonable safety.

Before backing, operators of vehicles shall give ample warning, and while backing they shall exercise vigilance not to injure person or property on the street or highway.

No person shall back a motor vehicle on a freeway, except: in a rest area; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.38)

### 331.16 Right-of-way at intersections.

(a) When two vehicles approach or enter an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(b) The right-of-way rule declared in subsection (a) hereof, is modified at through highways and otherwise as stated in this Traffic Code and Ohio R.C. Ch. 4511.

(c) Subject to compliance with any traffic control device, when two vehicles approach or enter a junction of two or more alleys from different directions at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a

contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.41)

### 331.17 Right-of-way when turning left.

(a) The operator of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction, whenever the approaching vehicle is within the intersection or so close to the intersection, alley, private road or driveway as to constitute an immediate hazard.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.42)

### 331.18 Operation of vehicle at yield signs.

(a) The driver of a vehicle approaching a yield sign shall slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways. Whenever a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, the collision shall be prima-facie evidence of the driver's failure to yield the right-of-way.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the

additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.43(B))

### 331.19 Operation of vehicle at stop signs.

(a) Except when directed to proceed by a law enforcement officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.43(A))

### 331.20 Emergency or public safety vehicles at stop signals or signs.

(a) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed cautiously past such red or stop sign or signal with due regard for the safety of all persons using the street or highway.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.03)

331.23 Driving onto roadway from place other than roadway: stopping at sidewalk.

(a) Subject to compliance with any traffic control device, the driver of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.431)

331.24 Right-of-way of funeral procession.

(a) As used in this section "funeral procession" means two or more vehicles accompanying the cremated remains or the body of a deceased person in the daytime when each of the vehicles has its headlights lighted and is displaying a purple and white or an orange and white pennant attached to each vehicle in such a manner as to be clearly visible to traffic approaching from any direction.

(b) Excepting public safety vehicles proceeding in accordance with Section 331.21 or when directed otherwise by a police officer, pedestrians and the operators of all vehicles shall yield the right-of-way to each vehicle that is a part of a funeral procession. Whenever the lead vehicle in a funeral procession lawfully enters an intersection, the remainder of the vehicles in the procession may continue to follow the lead vehicle through the intersection notwithstanding any traffic control devices or right-of-way provisions of this Traffic Code, provided that the operator of each vehicle exercises due care to avoid colliding with any other vehicle or pedestrian.

(c) No person shall operate any vehicle as a part of a funeral procession without having the headlights of the vehicle lighted and without displaying a purple and white or an orange and white pennant in such a manner as to be clearly visible to traffic approaching from any direction.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever

violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.451)

331.25 Driver's view and control to be unobstructed by load or persons.

(a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.70(A), (B), (D))

331.26 Driving upon street posted as closed for repair.

(a) No person shall drive upon, along or across a street or highway, or any part of a street or highway that has been closed in the process of its construction, reconstruction or repair, and posted with appropriate signs by the authority having jurisdiction to close such street or highway.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.71)

### 331.27 Following and parking near emergency or safety vehicles.

(a) The driver of any vehicle, other than an emergency vehicle or public safety vehicle on official business, shall not follow any emergency vehicle or public safety vehicle traveling in response to an alarm closer than 500 feet, or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm, unless directed to do so by a police officer or a firefighter.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.72)

### 331.28 Driving over fire hose.

(a) No vehicle shall, without the consent of the Fire Chief or fire official in command, be driven over any unprotected fire hose that is laid down on any street or private driveway to be used at any fire or alarm of fire.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.73)

### 331.29 Driving through safety zone.

(a) No vehicle shall at any time be driven through or within a safety zone.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a



contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.60)

### 331.30 One-way streets and rotary traffic islands.

(a) Upon a roadway designated and posted with signs for one-way traffic a vehicle shall be driven only in the direction designated. A vehicle passing around a rotary traffic island shall be driven only to the right of the rotary traffic island.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.32)

### 331.31 Driving upon divided roadways.

(a) Whenever any street has been divided into two roadways by an intervening space, or by a physical barrier, or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, and no vehicle shall be driven over, across or within any such dividing space, barrier or median section, except through an opening, crossover or intersection established by public authority. This section does not prohibit the occupancy of such dividing space, barrier or median section for the purpose of an emergency stop or in compliance with an order of a police officer.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.35)

### 331.33 Obstructing intersection, crosswalk or grade crossing.

(a) No driver shall enter an intersection or marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the

intersection, crosswalk or grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians or railroad trains, notwithstanding any traffic control signal indication to proceed.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.712)

### 331.37 Driving upon sidewalks, street lawns or curbs.

(a) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway. (ORC 4511.711)

(b) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.711)

### 331.40 Stopping at grade crossing.

(a) (1) Except as provided in subsection (a)(2) hereof, the operator of any bus, any school vehicle, or any vehicle transporting material required to be placarded under 49 CFR Parts 100-185, before crossing at grade any track of a railroad, shall stop the vehicle, and, while so stopped, shall listen through an open door or open window and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, and shall proceed only upon exercising due care after stopping, looking and listening as required by this section. Upon proceeding, the operator of such a vehicle shall cross only in a gear that will ensure there will be no necessity for changing gears while traversing the crossing

and shall not shift gears while crossing the tracks.

(2) This section does not apply at grade crossings when the Ohio Public Utilities Commission has authorized and approved an exempt crossing as provided in this subsection.

A. Any local authority may file an application with the Commission requesting the approval of an exempt crossing. Upon receipt of such a request, the Commission shall authorize a limited period for the filing of comments by any party regarding the application and then shall conduct a public hearing in the community seeking the exempt crossing designation. The Commission shall provide appropriate prior public notice of the comment period and the public hearing. By registered mail, the Commission shall notify each railroad operating over the crossing of the comment period.

B. After considering any comments or other information received, the Commission may approve or reject the application. By order, the Commission may establish conditions for the exempt crossing designation, including compliance with division (b) of 49 C.F.R. Part 392.10, when applicable. An exempt crossing designation becomes effective only when appropriate signs giving notice of the exempt designation are erected at the crossing as ordered by the Commission and any other conditions ordered by the Commission are satisfied.

C. By order, the Commission may rescind any exempt crossing designation made under this section if the Commission finds that a condition at the exempt crossing has changed to such an extent that the continuation of the exempt crossing designation compromises public safety. The Commission may conduct a public hearing to investigate and determine whether to rescind the exempt crossing designation. If the Commission rescinds the designation, it shall order the removal of any exempt crossing signs and may make any other necessary order.

(3) As used in this section:

A. "School vehicle" means any vehicle used for the transportation of pupils to and from a school or school-related function if the vehicle is owned or operated by, or operated under contract with, a public or nonpublic school.

B. "Bus" means any vehicle originally designed by its manufacturer to transport 16 or more passengers, including the driver, or carries 16 or more passengers, including the driver.

C. "Exempt crossing" means a highway rail grade crossing authorized and approved by the Public Utilities Commission under subsection (a)(2) hereof at which vehicles may cross without making the stop otherwise required by this section.

(4) Except as otherwise provided in this subsection (a)(4), whoever violates subsection (a) hereof is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of subsection (a) hereof or Ohio R.C. 4511.76, 4511.761, 4511.762, 4511.764, 4511.77 or 4511.79, or a municipal ordinance that is substantially similar to any of those sections, whoever violates subsection (a) hereof is guilty of a misdemeanor of the fourth degree. (ORC 4511.63)

(b) (1) When authorized stop signs are erected at railroad grade crossings, the

operator of any vehicle shall stop within 50 but not less than 15 feet from the nearest rail of the railroad tracks and shall exercise due care before proceeding across such grade crossing.

(2) Except as otherwise provided in this subsection, whoever violates this subsection (b)(1) hereof is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.61)

### 333.03 Maximum speed limits; assured clear distance ahead.

(a) No person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface and width of the street or highway and any other conditions, and no person shall drive any motor vehicle in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

(b) It is prima-facie lawful, in the absence of a lower limit declared or established pursuant to Ohio R.C. 4511.21 by the Ohio Director of Transportation or Council, for the operator of a motor vehicle to operate the same at a speed not exceeding the following:

(1) A. Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when 20 miles per hour school speed limit signs are erected; except, that on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by subsection (b)(4) hereof and on freeways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by subsection (b)(7) hereof. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic control devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.

B. As used in this section, "school" means all of the following:

(i) Any ~~any~~ school chartered under Ohio R.C. 3301.16; ~~and any~~

(ii) Any nonchartered school that during the preceding year filed with the Department of Education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for nonchartered,

nontax-supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone.

(iii) Any preschool education program operated by an educational service center that is located on a street or highway with a speed limit of forty-five miles per hour or more, when the educational service center in writing requests that the county engineer of the county in which the program is located create a school zone at the location of that program. Upon receipt of such a written request, the county engineer shall create a school zone at that location by erecting the appropriate signs.

C. As used in this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway. Upon request from the Municipality for streets and highways under its jurisdiction, the Ohio Director of Transportation may extend the traditional school zone boundaries. The distances in subsections (b)(1)C.1. to 3. hereof shall not exceed 300 feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the Director approves as most appropriate:

1. The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of 300 feet on each approach direction;
2. The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of 300 feet on each approach direction;
3. The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of 300 feet on each approach direction of highway;

Nothing in this section shall be construed to invalidate the Director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in subsections (b)(1)A. and C. hereof.

D. As used in this subsection, "crosswalk" has the meaning given that term in Section 301.09. The Director may, upon request by resolution of Council, and upon submission by the Municipality of such engineering, traffic and other information as the Director considers necessary, designate a school zone on any portion of a State route lying within the Municipality that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of the crosswalk is no more than 1,320 feet. Such a school zone shall include the distance encompassed by the crosswalk and extending 300 feet on each approach direction of the State route;

(2) Twenty-five miles per hour in all other portions of the Municipality, except on State routes outside business districts, through highways outside business districts and alleys;

(3) Thirty-five miles per hour on all State routes or through highways within the Municipality outside business districts, except as provided in subsections (b)(4) and

- (5) hereof;
- (4) Fifty miles per hour on controlled-access highways and expressways within the Municipality, except as provided in divisions (b)(8), (9), (10), (11), and (12) of this section;
- (5) Fifty miles per hour on State routes within the Municipality outside urban districts unless a lower prima-facie speed is established as further provided in this section;
- (6) Fifteen miles per hour on all alleys within the Municipality;
- (7) Fifty-five miles per hour on freeways with paved shoulders inside the Municipality other than freeways as provided in subsection (b)(10) and (8);
- (8) Sixty miles per hour for on rural expressways with traffic control signals and on all portions of rural divided highways, except as provided in divisions (b)(9) and (10) of this section;
- (9) Sixty-five miles per hour on rural expressways without traffic control signals;
- (10) Seventy miles per hour on all rural freeways;
- (11) Fifty-five miles per hour on all portions of freeways or expressways in congested areas as determined by the Director and that are located within a municipal corporation or within an interstate freeway outerbelt, except as provided in division (b)(12) of this section;
- (12) Sixty-five miles per hour on all portions of freeways or expressways without traffic control signals in urban areas.
- (c) It is prima-facie unlawful for any person to exceed any of the speed limitations in subsection (b)(1)A. to (b)(6) hereof, or any declared or established pursuant to this section by the Director or local authorities and it is unlawful for any person to exceed any of the speed limitations in subsection (d) hereof. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.
- (d) No person shall operate a motor vehicle upon a street or highway as follows:
  - (1) At a speed exceeding 55 miles per hour, except upon a highway, expressway or freeway as provided in subsection (b)(8), (9), (10) and (12) hereof;
  - (2) At a speed exceeding 60 miles per hour upon a highway as provided in subsection (b)(8) hereof;
  - (3) At a speed exceeding 65 miles per hour upon an expressway as provided in subsection (b)(9) hereof, except upon a freeway as provided in subsection (b)(10) hereof;
  - (4) At a speed exceeding 70 miles per hour upon a freeway as provided in subsection (b)(10) hereof;
  - (5) At a speed exceeding the posted speed limit upon a highway, expressway or freeway for which the Director has determined and declared a speed limit pursuant to Ohio R.C. 4511.21(I)(2) or (L)(2).
- (e) In every charge of violation of this section the affidavit and warrant shall specify the time, place and speed at which the defendant is alleged to have driven, and in charges made in reliance upon subsection (c) hereof also the speed which

subsections (b)(1)A. to (b)(6) hereof, or a limit declared or established pursuant to this section declares is prima-facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit the person to bring the vehicle to a stop within the assured clear distance ahead the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

(f) When a speed in excess of both a prima-facie limitation and a limitation in subsection (d) hereof is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both subsections (b)(1)A. to (b)(6) hereof, or of a limit declared or established pursuant to this section by the Director or local authorities, and of the limitation in subsection (d) hereof. If the court finds a violation of subsection (b)(1)A. to (b)(6) hereof, or a limit declared or established pursuant to this section has occurred, it shall enter a judgment of conviction under such subsection and dismiss the charge under subsection (d) hereof. If it finds no violation of subsections (b)(1)A. to (b)(6) hereof or a limit declared or established pursuant to this section, it shall then consider whether the evidence supports a conviction under subsection (d) hereof.

(g) Points shall be assessed for violation of a limitation under subsection (d) hereof in accordance with Ohio R.C. 4510.036.

(h) Whenever, in accordance with Ohio R.C. 4511.21 or this section, the speed limitations as established herein have been altered, either higher or lower, and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. It is prima-facie unlawful for any person to exceed the speed limits posted upon such signs.

(i) As used in this section:

(1) "Interstate system" has the same meaning as in 23 U.S.C. 101.

(2) "Commercial bus" means a motor vehicle designed for carrying more than nine passengers and used for the transportation of persons for compensation.

(3) "Noncommercial bus" includes but is not limited to a school bus, or a motor vehicle operated solely for the transportation of persons associated with a charitable or nonprofit organization.

(4) "Outerbelt" means a portion of a freeway that is part of the interstate system and is located in the outer vicinity of a major municipal corporation or group of municipal corporations, as designated by the Director.

(5) "Rural" means an area outside urbanized areas, and outside of a business or urban district, and areas that extend within urbanized areas where the roadway characteristics remain mostly unchanged from those outside the urbanized areas.

(6) "Urbanized area" has the same meaning as in 23 U.S.C. 101.

(7) "Divided" means a roadway having two or more travel lanes for vehicles moving in opposite directions and that is separated by a median of more than four feet, excluding turn lanes.

(j) (1) A violation of any provision of this section is one of the following:

A. Except as otherwise provided in subsections (j)(1)B., (1)C., (2) and (3) of this

section, a minor misdemeanor;

B. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of any provision of this section or of any provision of Ohio R.C. 4511.21 or a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the fourth degree;

C. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of any provision of this section or of any provision of Ohio R.C. 4511.21 or a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the third degree.

(2) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of Ohio R.C. 4511.21 or of any provision of a municipal ordinance that is substantially similar to Ohio R.C. 4511.21 and operated a motor vehicle faster than 35 miles an hour in a business district of a municipal corporation, faster than 50 miles an hour in other portions of a municipal corporation, or faster than 35 miles an hour in a school zone during recess or while children are going to or leaving school during the school's opening or closing hours, a misdemeanor of the fourth degree.

(3) Notwithstanding subsection (j)(1) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with Ohio R.C. 4511.98, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the usual amount imposed for the violation. No court shall impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this subsection and if the court determines that the offender is an indigent person and unable to pay the fine.

(4) If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.21)

333.031 Approaching a stationary public safety, emergency or road service vehicle.

(a) The driver of a motor vehicle, upon approaching a stationary public safety vehicle, emergency vehicle, road service vehicle, waste collection vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with Ohio R.C. 4923.04 and 4923.06 or a highway maintenance vehicle that is displaying the appropriate visual signals by means of flashing, oscillating or rotating lights, as prescribed in Section 337.16, shall do either of the following:

(1) If the driver of the motor vehicle is traveling on a street or highway that consists of at least two lanes that carry traffic in the same direction of travel as that of the driver's motor vehicle, the driver shall proceed with due caution and, if possible with due regard to the road, weather, and traffic conditions, shall change lanes into a lane that is not adjacent to that of the stationary public safety vehicle,



emergency vehicle, road service vehicle, waste collection vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with Ohio R.C. 4923.04 and 4923.06 or a highway maintenance vehicle.

(2) If the driver is not traveling on a street or highway of a type described in subsection (a)(1) of this section, or if the driver is traveling on a highway of that type but it is not possible to change lanes or if to do so would be unsafe, the driver shall proceed with due caution, reduce the speed of the motor vehicle, and maintain a safe speed for the road, weather and traffic conditions.

(b) This section does not relieve the driver of a public safety vehicle, emergency vehicle, road service vehicle, waste collection vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with Ohio R.C. 4923.04 and 4923.06, or a highway maintenance vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(c) No person shall fail to drive a motor vehicle in compliance with subsection (a)(1) or (2) of this section when so required by subsection (a) of this section.

(d) (1) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(2) Notwithstanding Section 303.99(b), upon a finding that a person operated a motor vehicle in violation of subsection (c) of this section, the court, in addition to all other penalties provided by law, shall impose a fine of two times the usual amount imposed for the violation.

(3) If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~.

(e) The offense established under this section is a strict liability offense and Ohio R.C. 2901.20 does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense. (ORC 4511.213)

333.04 Stopping vehicle; slow speed; posted minimum speeds.

(a) No person shall stop or operate a vehicle at such an unreasonably slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law.

(b) Whenever, in accordance with Ohio R.C. 4511.22(B), the minimum speed limit of a controlled-access highway, expressway or freeway has been declared and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. No person shall operate a motor vehicle below the speed limits posted upon such signs except when necessary for safe operation or in compliance with law.

(c) In a case involving a violation of this section, the trier of fact, in determining whether the vehicle was being operated at an unreasonably slow speed, shall consider the capabilities of the vehicle and its operator.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.22)

### 333.05 Speed limitations over bridges.

(a) No person shall operate a vehicle over any bridge or other elevated structure constituting a part of a street at a speed which is greater than the maximum speed that can be maintained with safety to such bridge or structure, when such structure is posted with authorized signs stating such maximum speed. Such signs shall be erected and maintained at a distance of at least 100 feet before each end of such structure.

(b) Upon the trial of any person charged with a violation of this section, proof of the determination of the maximum speed and the existence of such signs shall constitute prima-facie evidence of the maximum speed which can be maintained with safety to such bridge or structure

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.23)

### 335.02 Permitting operation without valid license; one license permitted.

(a) No person shall permit the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular travel or parking knowing the operator does not have a valid driver's license issued to the operator by the Registrar of Motor Vehicles under Ohio R.C. Chapter 4507 or a valid commercial driver's license issued under Ohio R.C. Chapter 4506.

(b) No person shall receive a driver's license, or a motorcycle operator's endorsement of a driver's or commercial driver's license, temporary instruction permit, or identification card unless and until he surrenders to the Registrar or deputy registrar all valid licenses, temporary instruction permits, and identification cards issued to him by another jurisdiction recognized by the State of Ohio. No person shall be permitted to have more than one valid license at any time. (ORC 4507.02)

(c) (1) Except as otherwise provided in this subsection, whoever violates subsection (a) hereof is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding Ohio R.C. 2929.28(A)(2)(a), the offender may be fined up to \$1,000.00 and, notwithstanding Ohio R.C. 2929.27(A)(3), the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under Ohio R.C. 2705.02(A) that may be filed in the underlying case. If, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of Ohio R.C. 4507.02 or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(2) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the first degree. (ORC 4507.02, 4507.99)

### 371.01 Right-of-way in crosswalk.

(a) When traffic control signals are not in place, not in operation or are not clearly assigning the right-of-way, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield or if required by Section 313.09, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

(c) Subsection (a) hereof does not apply under the conditions stated in Section 371.03(b).

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(e) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or

traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.46)

### 371.03 Crossing roadway outside crosswalk; diagonal crossings at intersections.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all traffic upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements.

(e) This section does not relieve the operator of a vehicle from exercising due care to avoid colliding with any pedestrian upon any roadway.

(f) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 ~~Ohio R.C. 4511.991~~. (ORC 4511.48)

### 371.07 Right-of-way on sidewalk.

(a) The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the

fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.083 Ohio R.C. 4511.991. (ORC 4511.441)

SECTION 303.083 Enhanced penalty for committing moving violation while distracted if distraction is contributing factor to commission of violation.

(a) As used in this section and each section referenced in division (b) of this section, all of the following apply:

(1) "Distracted" means doing either of the following while operating a vehicle:

a. Using a handheld electronic wireless communications device, as defined in Ohio R.C. 4511.204, except when utilizing any of the following:

i. The device's speakerphone function;

ii. A wireless technology standard for exchanging data over short distances;

iii. A "voice-operated or hands-free" device that allows the person to use the electronic wireless communications device without the use of either hand except to activate, deactivate, or initiate a feature or function;

iv. Any device that is physically or electronically integrated into the motor vehicle.

b. Engaging in any activity that is not necessary to the operation of a vehicle and impairs, or reasonably would be expected to impair, the ability of the operator to drive the vehicle safely.

(2) "Distracted" does not include operating a motor vehicle while wearing an earphone or earplug over or in both ears at the same time. A person who so wears earphones or earplugs may be charged with a violation of Ohio R.C. 4511.84.

(3) "Distracted" does not include conducting any activity while operating a utility service vehicle or a vehicle for or on behalf of a utility, provided that the driver of the vehicle is acting in response to an emergency, power outage, or a circumstance affecting the health or safety of individuals.

As used in division (a)(3) of this section:

(1) "Utility" means an entity specified in division (A), (C), (D), (E), or (G) of Ohio R.C. 4905.03.

(2) "Utility service vehicle" means a vehicle owned or operated by a utility.

(b) If an offender violates Ohio R.C. 4511.03, 4511.051, 4511.12, 4511.121, 4511.132, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.44, 4511.441, 4511.451, 4511.46, 4511.47, 4511.54, 4511.55, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, or 4511.73 or a substantially equivalent municipal ordinance while distracted and the distracting activity is a contributing

factor to the commission of the violation, the offender is subject to the applicable penalty for the violation and, notwithstanding Ohio R.C. 2929.28, is subject to an additional fine of not more than one hundred dollars as follows:

(1) Subject to Traffic Rule 13, if a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the aforementioned sections of the Revised Code that indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the offender may enter a written plea of guilty and waive the offender's right to contest the ticket, citation, or summons in a trial provided that the offender pays the total amount of the fine established for the violation and pays the additional fine of one hundred dollars.

In lieu of payment of the additional fine of one hundred dollars, the offender instead may elect to attend a distracted driving safety course, the duration and contents of which shall be established by the director of public safety. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation, but shall not be required to pay the additional fine of one hundred dollars, so long as the offender submits to the court both the offender's payment in full and such written evidence.

(2) If the offender appears in person to contest the ticket, citation, or summons in a trial and the offender pleads guilty to or is convicted of the violation, the court, in addition to all other penalties provided by law, may impose the applicable penalty for the violation and may impose the additional fine of not more than one hundred dollars.

If the court imposes upon the offender the applicable penalty for the violation and an additional fine of not more than one hundred dollars, the court shall inform the offender that, in lieu of payment of the additional fine of not more than one hundred dollars, the offender instead may elect to attend the distracted driving safety course described in division (B)(1) of this section. If the offender elects the course option and attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation, but shall not be required to pay the additional fine of not more than one hundred dollars, so long as the offender submits to the court the offender's payment and such written evidence.

(ORC 4511.991)

#### SECTION 337.25 **SMV's**, Farm machinery, animal-drawn vehicles.

(a) Definitions.

(1) As used in this section:

a. *Boat trailer* means any vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and

at a speed of twenty-five miles per hour or less.

b. Slow-moving vehicle and SMV mean a boat trailer, unit of farm machinery, road construction machinery, or other machinery designed by the manufacturer to operate at a speed of twenty-five miles per hour or less. "Slow-moving vehicle" and "SMV" do not include a bicycle, motorized bicycle, electric bicycle, or animal-drawn vehicle.

(b) Requirements for SMV's.

(1) Except as otherwise provided, no person shall operate an SMV on a street or highway as follows:

a. At a speed exceeding twenty-five miles per hour;

b. Without displaying the triangular SMV emblem mounted in accordance with division (b)(2) of this section.

(2) The SMV emblem shall be mounted so as to be visible from a distance of not less than five hundred feet to the rear. In accordance with Ohio R.C. ch. 119, the director of public safety shall adopt standards and specifications for the design and position of mounting the SMV emblem. The standards and specifications for the SMV emblem shall correlate with and, so far as possible, conform with those approved by the American society of agricultural engineers.

(3) A person may operate an SMV on a street or highway without displaying the triangular SMV emblem when any of the following apply:

a. The SMV is being used in actual construction and maintenance work in an area guarded by a flagperson, or where flares are used.

b. The SMV is operating or traveling within the limits of a construction area designated by the director of transportation, a city engineer, or the county engineer of the several counties, when such construction area is marked in accordance with requirements of the director and the manual of uniform traffic control devices, as set forth in Ohio R.C. 4511.09.

(4) No person shall display an SMV emblem on any of the following:

a. Any vehicle not required to use the SMV emblem by this subsection or subsections (c) or (d) of this section;

b. An SMV being transported upon any other vehicle;

c. Any stationary object on the highway.

(5) No person shall sell, lease, rent, or operate an SMV, except a unit designed to be completely mounted on a primary power unit that is manufactured or assembled on or after April 1, 1966, unless it is equipped with an SMV emblem mounting device.

(6) Whoever violates this subsection is guilty of a minor misdemeanor.

(c) Farm machinery.

(1) No person shall sell, lease, rent, or operate on a street or highway any unit of farm machinery that is designed by its manufacturer to operate at a speed greater

than twenty-five miles per hour unless the unit displays both of the following:

a. The SMV emblem mounted in accordance with division (b)(2) of this section.

b. A speed identification symbol that does both of the following:

i. Meets the specifications contained in the American society of agricultural engineers standard ANSI/ASAE S584 JAN2005, agricultural equipment: speed identification symbol (SIS);

ii. Indicates the maximum speed in miles per hour at which the unit of farm machinery is designed by its manufacturer to operate.

(2) No person operating a tractor on a street or highway that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour and that is towing, pulling, or otherwise drawing a unit of farm machinery while operating at a speed greater than twenty-five miles per hour shall fail to display both of the following on the unit of farm machinery:

a. The SMV emblem;

b. The speed identification symbol that matches the speed identification symbol required to be displayed on the agricultural tractor.

(3) No person shall operate an agricultural tractor that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour unless the person possesses documentation published or provided by the manufacturer indicating the maximum speed in miles per hour at which the manufacturer designed the agricultural tractor to operate.

(4) Whoever violates this subsection is guilty of a minor misdemeanor.

(d) *Animal-drawn vehicles.*

(1) Except as otherwise provided in division (d)(4) of this section, no person shall operate an animal-drawn vehicle on a street or highway unless it is equipped with and displays, at the times specified in Ohio R.C. 4513.03, both of the following:

a. At least one lamp displaying a white light visible from a distance of not less than one thousand feet to the front of the animal-drawn vehicle;

b. Two lamps displaying red light visible from a distance of not less than one thousand feet to the rear of the animal-drawn vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than one thousand feet to the rear and two red reflectors visible from all distances of six hundred feet to one hundred feet to the rear when illuminated by the lawful lower beams of headlamps.

(2) Except as otherwise provided in division (d) (4) of this section, no person shall operate an animal-drawn vehicle on a street or highway unless it is equipped with and displays, at all times, all of the following:

a. One yellow flashing lamp displaying yellow light that is visible from a distance of not less than one thousand feet and that is mounted in either of the following positions:

i. On the top most portion of the rear of the animal-drawn vehicle;

II. On the top of the animal-drawn vehicle.

b. At least one of the following:



- (i) An SMV emblem mounted in accordance with division (b)(2) of this section;
- (ii) Micro-prism reflective tape that is visible from a distance of not less than five hundred feet to the rear when illuminated by the lawful lower beams of headlamps;
- (iii) Both an SMV emblem and micro-prism reflective tape, as specified in this division.

Lamps and micro-prism reflective tape required by this division shall meet standards and specifications adopted by the director of public safety under this section.

(3) The director of public safety, in accordance with Ohio R.C. ch. 119, shall adopt rules establishing standards and specifications for the position and mounting of the lamps and micro-prism reflective tape required by this section. The rules shall only permit the micro-prism reflective tape to be red, amber, white, or silver in color.

(4) a. Divisions (1) and (2) of this section do not apply to the operator of animal-drawn agricultural equipment who is not transporting any livestock or a person other than the operator.

b. No operator described in division (D)(1) of this section shall operate animal-drawn agricultural equipment unless it is equipped with and displays, at all times, the SMV emblem mounted in accordance with division (b)(2) of this section.

c. As used in this division (d)4, "animal-drawn agricultural equipment" means equipment drawn by the muscular power of an animal that is used solely for agricultural purposes. "Animal-drawn agricultural equipment" includes any of the following:

- (i) A plow;
- (ii) A manure spreader.
- (iii) A thresher.

(5) Whoever violates this division is guilty of a minor misdemeanor.

(e) *Strict liability.* The offenses established under this section are strict liability offenses, and Ohio R.C. 2901.20 does not apply. The designation of these offenses as strict liability offenses shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense. (ORC 4513.11, ORC 4513.112, ORC 4513.113, ORC 4513.114, ORC 4513.115)

The following section and subsections of the Municipal Code have been repealed in the Municipal Code, and are hereby deleted and removed from the Municipal Code:

### 337.10 Lights on slow-moving vehicles; emblem required.

(a) All vehicles other than bicycles, including animal-drawn vehicles and vehicles referred to in Section 337.01(c), not specifically required to be equipped with lights or other lighting devices by Section 337.02 to 337.09, shall at all times specified in Section 337.02, be equipped with at least one light displaying a white light visible from a distance of not less than 1,000 feet to the front of the vehicle, and also shall be equipped with two lights displaying red light visible from a distance of not less than 1,000 feet to the rear of the vehicle, or as an alternative, one light displaying

a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible from all distances of 600 feet to 100 feet to the rear when illuminated by the lawful lower beams of headlights.

Lights and reflectors required or authorized by this section shall meet standards adopted by the Ohio Director of Public Safety.

(b) All boat trailers, farm machinery and other machinery, including all road construction machinery, upon a street or highway, except when being used in actual construction and maintenance work in an area guarded by a flagperson, or where flares are used, or when operating or traveling within the limits of a construction area designated by the Ohio Director of Transportation, or the Municipal or County Engineer, when such construction area is marked in accordance with requirements of the Director and the Manual of Uniform Traffic Control Devices, as set forth in Ohio R.C. 4511.09, which is designed for operation at a speed of 25 miles per hour or less shall be operated at a speed not exceeding 25 miles per hour, and shall display a triangular slow-moving vehicle emblem (SMV). The emblem shall be mounted so as to be visible from a distance of not less than 500 feet to the rear. The Ohio Director of Public Safety shall adopt standards and specifications for the design and position of mounting the SMV emblem. The standards and specifications for SMV emblems referred to in this section shall correlate with and, so far as possible, conform with those approved by the American Society of Agricultural Engineers.

A unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour may be operated on a street or highway at a speed greater than 25 miles per hour provided it is operated in accordance with this section.

As used in this subsection (b), "machinery" does not include any vehicle designed to be drawn by an animal.

(c) The use of the SMV emblem shall be restricted to animal-drawn vehicles, and to the slow-moving vehicles specified in subsection (b) hereof operating or traveling within the limits of the highway. Its use on slow-moving vehicles being transported upon other types of vehicles or on any other type of vehicle or stationary object on the highway is prohibited.

(d) (1) No person shall sell, lease, rent or operate any boat trailer, farm machinery or other machinery defined as a slow-moving vehicle in subsection (b) hereof, except those units designed to be completely mounted on a primary power unit, which is manufactured or assembled on or after April 1, 1966, unless the vehicle is equipped with a slow-moving vehicle emblem mounting device as specified in subsection (b) hereof.

(2) No person shall sell, lease, rent, or operate on a street or highway any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour unless the unit displays a slow-moving vehicle emblem as specified in subsection (b) of this section and a speed identification symbol that meets the specifications contained in the American Society of Agricultural Engineers Standard ANSI/SAE S584 JAN2005, agricultural equipment; speed identification

symbol (SIS).

(e) Any boat trailer, farm machinery, or other machinery defined as a slow-moving vehicle in subsection (b) of this section, in addition to the use of the slow-moving vehicle emblem, and any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour, in addition to the display of a speed identification symbol may be equipped with a red flashing light that shall be visible from a distance of not less than 1,000 feet to the rear at all times specified in Section 337.02. When a double-faced light is used, it shall display amber light to the front and red light to the rear.

In addition to the lights described in this subsection, farm machinery and motor vehicles escorting farm machinery may display a flashing, oscillating or rotating amber light, as permitted by Section 337.16, and also may display simultaneously flashing turn signals or warning lights, as permitted by that section.

(f) Every animal-drawn vehicle upon a street or highway shall at all times be equipped in one of the following ways:

- (1) With a slow-moving vehicle emblem complying with subsection (b) hereof;
- (2) With alternate reflective material complying with rules adopted under this subsection (f);
- (3) With both a slow-moving vehicle emblem and alternate reflective material as specified in this subsection (f).

The Ohio Director of Public Safety, subject to Ohio R.C. Chapter 119, shall adopt rules establishing standards and specifications for the position of mounting of the alternate reflective material authorized by this subsection (f). The rules shall permit, as a minimum, the alternate reflective material to be black, gray or silver in color. The alternate reflective material shall be mounted on the animal-drawn vehicle so as to be visible at all times specified in Section 337.02, from a distance of not less than 500 feet to the rear when illuminated by the lawful lower beams of headlamps.

(g) Every unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour shall display a slow-moving vehicle emblem and a speed identification symbol that meets the specifications contained in the American Society of Agricultural Engineers Standard ANSI/ASAE S584 JAN2005, agricultural equipment; speed identification symbol (SIS) when the unit is operated upon a street or highway, irrespective of the speed at which the unit is operated on the street or highway. The speed identification symbol shall indicate the maximum speed in miles per hour at which the unit of farm machinery is designed by its manufacturer to operate. The display of the speed identification symbol shall be in accordance with the standard prescribed in this subsection.

If an agricultural tractor that is designed by its manufacturer to operate at a speed greater than 25 miles per hour is being operated on a street or highway at a speed greater than 25 miles per hour and is towing, pulling or otherwise drawing a unit of farm machinery, the unit of farm machinery shall display a slow-moving vehicle emblem and a speed identification symbol that is the same as the speed identification symbol that is displayed on the agricultural tractor.

(h) When an agricultural tractor that is designed by its manufacturer to operate at a speed greater than 25 miles per hour is being operated on a street or highway at a speed greater than 25 miles per hour, the operator shall possess some documentation published or provided by the manufacturer indicating the maximum speed in miles per hour at which the manufacturer designed the agricultural tractor to operate.

(i) As used in this section, "boat trailer" means any vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.

(j) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.11)

## EXHIBIT B

The following sections and subsections of the General Offenses Code of the City Code of Huber Heights, Ohio are new or have been amended with new matter in the City Code of Huber Heights, Ohio, and are hereby approved, adopted and enacted:

## 517.01 Definitions.

As used in this chapter:

Bookmaking means the business of receiving or paying off bets.

Bet means the hazarding of anything of value upon the result of an event, undertaking or contingency, but does not include a bona fide business risk.

Scheme of chance means a slot machine unless authorized under Ohio R.C. Chapter 3772, lottery unless authorized under Ohio R.C. Chapter 3770, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. "Scheme of chance" includes the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize. Valuable consideration is deemed to be paid for a chance to win a prize in the following instances:

- (1) Less than 50 percent of the goods or services sold by a scheme of chance operator in exchange for game entries are used or redeemed by participants at any one location;
- (2) Less than 50 percent of participants who purchase goods or services at any one location do not accept, use or redeem the goods or services sold or purportedly sold;
- (3) More than 50 percent of prizes at any one location are revealed to participants through an electronic device simulating a game of chance or a "casino game" as defined in Ohio R.C. 3772.01;
- (4) The good or service sold by a scheme of chance operator in exchange for a game entry cannot be used or redeemed in the manner advertised;
- (5) A participant pays more than fair market value for goods or services offered by a scheme of chance operator in order to receive one or more game entries;
- (6) A participant may use the electronic device to purchase additional game entries;
- (7) A participant may purchase additional game entries by using points or credits won as prizes while using the electronic device;
- (8) A scheme of chance operator pays out in prize money more than 20 percent of the gross revenue received at one location; or
- (9) A participant makes a purchase or exchange in order to obtain any good or service that may be used to facilitate play on the electronic device.

As used in this subsection, "electronic device" means a mechanical, video, digital or electronic machine or device that is capable of displaying information on a screen or other mechanism and that is owned, leased or otherwise possessed by any person conducting a scheme of chance, or by that person's partners, affiliates, subsidiaries or contractors. **"Electronic device" does not include an electronic bingo system.**

Game of chance means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

Game of chance conducted for profit means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

Gambling device means any of the following:

- (1) A book, totalizer or other equipment for recording bets;
- (2) A ticket, token or other device representing a chance, share or interest in a scheme of chance or evidencing a bet;
- (3) A deck of cards, dice, gaming table, roulette wheel, slot machine, or other apparatus designed for use in connection with a game of chance;
- (4) Any equipment, device, apparatus or paraphernalia specially designed for gambling purposes;
- (5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter.

Gambling offense means the following:

- (1) A violation of Ohio R.C. 2915.02 to 2915.092, 2915.10 or 2915.11;
- (2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in subsection (1) hereof or a violation of Ohio R.C. 2915.06 as it existed prior to July 1, 1996;
- (3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States, of which gambling is an element;
- (4) A conspiracy or attempt to commit, or complicity in committing an offense under subsection (1), (2) or (3) hereof.

[Charitable organization.] Except as otherwise provided in this chapter, "charitable organization" means either of the following:

- (1) An organization that is ~~and has received from the Internal Revenue Service a determination letter that currently is in effect stating that the organization is,~~ exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;
- (2) A volunteer rescue service organization, volunteer firefighter's organization, veteran's organization, fraternal organization, or sporting organization that is exempt from federal, income taxation under subsection 501(c)(4), (c)(7), (c)(8), (c)(10) or (c)(19) of the Internal Revenue Code.

To qualify as a charitable organization, an organization shall have been in continuous existence as such in this State for a period of two years immediately preceding either the making of an application for a bingo license under Ohio R.C. 2915.08 or the conducting of any game of chance as provided in Ohio R.C. 2915.02(D).

Religious organization means any church, body of communicants or group that is not organized or operated for profit, that gathers in common membership for regular worship and religious observances.

Veteran's organization means any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit is incorporated as a nonprofit corporation and either has received a letter from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national

veteran's association. As used in this subsection, "national veteran's association" means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States congress or has a national dues-paying membership of at least 5,000 persons.

Volunteer firefighter's organization means any organization of volunteer firefighters, as defined in Ohio R.C. 146.01, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company and that is recognized or ratified by a county, municipal corporation, or township.

Fraternal organization means any society, order, state headquarters, or association within this State, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge or chapter of a national or state organization, that exists exclusively for the common business of sodality of its members.

Volunteer rescue service organization means any organization of volunteers organized to function as an emergency medical service organization as defined in Ohio R.C. 4765.01.

Charitable bingo game means any bingo game described in the definition of "bingo", subsections (1) or (2), of this section that is conducted by a charitable organization that has obtained a license pursuant to Ohio R.C. 2915.08 and the proceeds of which are used for a charitable purpose.

Bingo means either of the following:

(1) A game with all of the following characteristics:

A. The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into 25 spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space.

B. The participants cover the space on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator.

C. A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically from a receptacle that contains 75 objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the 75 possible combinations of a letter and a number that can appear on the bingo cards or sheets.

D. The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in subsection (1)C. hereof, that a predetermined and preannounced pattern of spaces has been covered on a bingo card or sheet being used by a participant.

(2) Instant bingo, ~~punch boards~~ electronic instant bingo, and raffles.

Conduct means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance, a scheme of chance, or a sweepstakes.

Bingo game operator means any person, except security personnel, who performs work or labor at the site of bingo, including, but not limited to, collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on

bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, selling or redeeming electronic instant bingo tickets, credits, or vouchers, accessing an electronic instant bingo system other than as a participant, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages. **"Bingo game operator" does not include a person who is installing, maintaining, updating, or repairing an electronic instant bingo system.**

Participant means any person who plays bingo.

Bingo session means a period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in the definition of "bingo", subsection (1), of this section, instant bingo, and ~~seal cards~~ electronic instant bingo;

(2) A period for the conduct of instant bingo and ~~seal cards~~ electronic instant bingo for not more than two hours before and not more than two hours after the period described in subsection (1) of this definition.

Gross receipts means all money or assets, including admission fees, that a person receives from bingo without the deduction of any amounts for prizes paid out or for the expenses of conducting bingo. "Gross receipts" does not include any money directly taken in from the sale of food or beverages by a charitable organization conducting bingo, or by a bona fide auxiliary unit or society of a charitable organization conducting bingo, provided all of the following apply:

(1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to conducting bingo.

(2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage.

(3) The food and beverages are sold at customary and reasonable prices.

Security personnel includes any person who either is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or a police officer of a municipal corporation or has successfully completed a peace officer's training course pursuant to Ohio R.C. 109.71 to 109.79 and who is hired to provide security for the premises on which bingo is conducted.

Charitable purpose means that the net profit of bingo, other than instant bingo or electronic instant bingo, is used by, or is given, donated, or otherwise transferred to, any of the following:

(1) Any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A veteran's organization that is a post, chapter, or organization of veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least 75 percent of the members of which are veterans and substantially all of the other members of which are individuals who are spouses, widows, or widowers of



veterans, or such individuals, provided that no part of the net earnings of such post, chapter, or organization inures to the benefit of any private shareholder or individual, and further provided that the net profit is used by the post, chapter, or organization for the charitable purposes set forth in Ohio R.C. 5739.02(B)(12), is used for awarding scholarships to or for attendance at an institution mentioned in Ohio R.C. 5739.02(B)(12), is donated to a governmental agency, or is used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups, or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief;

(3) A fraternal organization that has been in continuous existence in this State for 15 years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals if contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code;

(4) A volunteer firefighter's organization that uses the net profit for the purposes set forth in the definition of "volunteer firefighter's organization" of this section. Internal Revenue Code means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter amended.

Youth athletic organization means any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 21 years of age or younger by means of sponsoring, organizing, operating or contributing to the support of an athletic team, club, league or association.

Youth athletic park organization means any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates and maintains playing fields that satisfy both of the following:

A. The playing fields are used ~~at least 100 days per year~~ for athletic activities by one or more organizations not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 18 years of age or younger by means of sponsoring, organizing, operating or contributing to the support of an athletic team, club, league or association;

B. The playing fields are not used for any profit-making activity at any time during the year,

(2) It uses the proceeds of bingo it conducts exclusively for the operation, maintenance and improvement of its playing fields of the type described in paragraph (1) hereof.

Bingo supplies means bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; raffle tickets; punch boards; seal cards; instant bingo ticket dispensers; electronic instant bingo systems; and devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets. Items that are "bingo supplies" are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter. For purposes of this chapter, "bingo supplies" are not to be considered equipment used to conduct a bingo game.

Instant bingo means a form of bingo that shall use folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as

prize winners, and may also include games in which some winners are determined by the random selection of one or more bingo numbers by the use of a seal card or bingo blower. "Instant bingo" also includes a punch board game. In all "instant bingo" the prize amount and structure shall be predetermined. "Instant bingo" does not include electronic instant bingo or any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations.

Seal card means a form of instant bingo that uses instant bingo tickets in conjunction with a board or placard that contains one or more seals that, when removed or opened, reveal predesignated winning numbers, letters, or symbols.

Raffle means a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle. "Raffle" does not include the drawing of a ticket stub or other detachable section of a ticket purchased to attend a professional sporting event if both of the following apply:

- (1) The ticket stub or other detachable section is used to select the winner of a free prize given away at the professional sporting event; and
- (2) The cost of the ticket is the same as the cost of a ticket to the professional sporting event on days when no free prize is given away.

Punch board means a form of instant bingo that uses a board containing a number of holes or receptacles of uniform size in which are placed, mechanically and randomly, serially numbered slips of paper that may be punched or drawn from the hole or receptacle ~~when used in conjunction with instant bingo.~~ A player may punch or draw the numbered slips of paper from the holes or receptacles and obtain the prize established for the game if the number drawn corresponds to a winning number or, if the punch board includes the use of a seal card, a potential winning number.

Gross profit means gross receipts minus the amount actually expended for the payment of prize awards.

Net profit means gross profit minus expenses.

Expenses means the reasonable amount of gross profit actually expended for all of the following:

- (1) The purchase or lease of bingo supplies;
- (2) The annual license fee required under Ohio R.C. 2915.08;
- (3) Bank fees and service charges for a bingo session or game account described in Ohio R.C. 2915.10;
- (4) Audits and accounting services;
- (5) Safes;
- (6) Cash registers;
- (7) Hiring security personnel;
- (8) Advertising bingo;
- (9) Renting premises in which to conduct a bingo session;
- (10) Tables and chairs;
- (11) Expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen

and any grounds attached to the post home, club house, lounge, tavern, or canteen;

(12) Payment of real property taxes and assessments that are levied on a premises on which bingo is conducted;

(13) Any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the Attorney General under Ohio R.C.

2915.08(F)(1)~~(B)(1)~~.

Person has the same meaning as in Ohio R.C. 1.59 and includes any firm or any other legal entity, however organized.

Revoke means to void permanently all rights and privileges of the holder of a license issued under Ohio R.C. 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

Suspend means to interrupt temporarily all rights and privileges of the holder of a license issued under Ohio R.C. 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

Distributor means any person who purchases or obtains bingo supplies and who does either of the following:

(1) Sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this State;

(2) Modifies, converts, adds to, or removes parts from the bingo supplies to further their promotion or sale for use in this State.

Manufacturer means any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale.

Gross annual revenues means the annual gross receipts derived from the conduct of bingo described in the definition of "bingo", subsection (1), of this section plus the annual net profit derived from the conduct of bingo described in the definition of "bingo", subsection (2) of this section.

Instant bingo ticket dispenser means a mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed and that has the following characteristics:

(1) It is activated upon the insertion of United States currency.

(2) It performs no gaming functions.

(3) It does not contain a video display monitor or generate noise.

(4) It is not capable of displaying any numbers, letters, symbols, or characters in winning or losing combinations.

(5) It does not simulate or display rolling or spinning reels.

(6) It is incapable of determining whether a dispensed bingo ticket or card is a winning or nonwinning ticket or card and requires a winning ticket or card to be paid by a bingo game operator.

(7) It may provide accounting and security features to aid in accounting for the instant bingo tickets or cards it dispenses.

(8) It is not part of an electronic network and is not interactive.

[Electronic bingo aid.]

(1) "Electronic bingo aid" means an electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:

A. It provides a means for a participant to input numbers and letters announced by

a bingo caller.

B. It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device.

C. It identifies a winning bingo pattern.

(2) "Electronic bingo aid" does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.

~~Deal of instant bingo tickets~~ means a single game of instant bingo tickets, or a single game of electronic instant bingo tickets, all with the same serial number.

[Slot machine.]

(1) "Slot machine" means either of the following:

A. Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain;

B. Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.

(2) "Slot machine" does not include a skill-based amusement machine ~~or~~ an instant bingo ticket dispenser, or an electronic instant bingo system.

Net profit from the proceeds of the sale of instant bingo or electronic instant bingo" means gross profit minus the ordinary, necessary, and reasonable expense expended for the purchase of ~~instant~~ bingo supplies for the purpose of conducting instant bingo or electronic instant bingo, and, in the case of instant bingo or electronic instant bingo conducted by a veteran's, fraternal or sporting organization, minus the payment by that organization of real property taxes, and assessments levied on a premises on which instant bingo or electronic instant bingo is conducted.

Charitable instant bingo organization means an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and is a charitable organization as defined in this section. A "charitable instant bingo organization" does not include a charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, a fraternal organization, or a sporting organization in regards to bingo conducted or assisted by a veteran's organization, a fraternal organization, or a sporting organization pursuant to Ohio R.C. 2915.13.

Game flare means the board or placard, or electronic representation of a board or placard, that accompanies each deal of instant bingo or electronic instant bingo tickets and that ~~has printed on or affixed to it~~ includes the following information for the game:

(1) The name of the game;

(2) The manufacturer's name or distinctive logo;

(3) The form number;

(4) The ticket count;

(5) The prize structure, including the number of winning ~~instant bingo~~ tickets by denomination and the respective winning symbol or number combinations for the winning ~~instant bingo~~ tickets;

(6) The cost per play;

(7) The serial number of the game.

[Skill-based amusement machine.]

(1) "Skill-based amusement machine" means mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

- A. The wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed \$10.00;
- B. Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than \$10.00;
- C. Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than \$10.00 times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and
- D. Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

A card for the purchase of gasoline is a redeemable voucher for purposes of subsection (1) of this definition even if the skill-based amusement machine for the play of which the card is awarded is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine.

(2) A device shall not be considered a skill-based amusement machine and shall be considered a slot machine if it pays cash or one or more of the following apply:

- A. The ability of a player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of players playing the game.
- B. Any reward of redeemable vouchers is not based solely on the player achieving the object of the game or the player's score;
- C. The outcome of the game, or the value of the redeemable voucher or merchandise prize awarded for winning the game, can be controlled by a source other than any player playing the game.
- D. The success of any player is or may be determined by a chance event that cannot be altered by player actions.
- E. The ability of any player to succeed at the game is determined by game features not visible or known to the player.
- F. The ability of the player to succeed at the game is impacted by the exercise of a skill that no reasonable player could exercise.

(3) All of the following apply to any machine that is operated as described in subsection (1) of this definition:

- A. As used in this definition, "game" and "play" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single game, play, contest, competition or tournament may be awarded redeemable vouchers or merchandise prizes based on the results of play.
- B. Advance play for a single game, play, contest, competition or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single noncontest, competition or tournament play.
- C. To the extent that the machine is used in a contest, competition or tournament,

that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of redeemable vouchers or merchandise prizes that are stated prior to the start of the contest, competition or tournament.

(4) For purposes of subsection (1) of this definition, the mere presence of a device, such as a pin-setting, ball-releasing, or scoring mechanism, that does not contribute to or affect the outcome of the play of the game does not make the device a skill-based amusement machine.

Merchandise prize means any item of value, but shall not include any of the following:

- (1) Cash, gift cards, or any equivalent thereof;
- (2) Plays on games of chance, state lottery tickets, or bingo, ~~or instant bingo~~;
- (3) Firearms, tobacco, or alcoholic beverages; or
- (4) A redeemable voucher that is redeemable for any of the items listed in subsection (1), (2) or (3) of this definition.

Redeemable voucher means any ticket, token, coupon, receipt, or other noncash representation of value.

Pool not conducted for profit means a scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants.

Sporting organization means a hunting, fishing or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including but not limited to, the league of Ohio sportsmen, and that has been in continuous existence in this State for a period of three years.

Community action agency has the same meaning as in Ohio R.C. 122.66.

[Sweepstakes terminal device.]

(1) "Sweepstakes terminal device" means a mechanical, video, digital or electronic machine or device that is owned, leased or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism. A device is a sweepstakes terminal device if any of the following apply:

- A. The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.
- B. The device utilizes software such that the simulated game influences or determines the winning of or value of the prize.
- C. The device selects prizes from a predetermined finite pool of entries.
- D. The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.
- E. The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.
- F. The device utilizes software to create a game result.
- G. The device reveals the prize incrementally, even though the device does not influence the awarding of the prize or the value of any prize awarded.
- H. The device determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) As used in this subsection and in Section 517.02:

- A. "Enter" means the act by which a person becomes eligible to receive any prize offered in a sweepstakes.
- B. "Entry" means one event from the initial activation of the sweepstakes terminal device until all of the sweepstakes prize results from that activation are revealed.
- C. "Prize" means any gift, award, gratuity, good, service, credit, reward or any other thing of value that may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.
- D. "Sweepstakes terminal device facility" means any location in this Municipality where a sweepstakes terminal device is provided to a sweepstakes participant, except as provided in Ohio R.C. 2915.02(G).

Sweepstakes means any game, contest, advertising scheme or plan, or other promotion where consideration is not required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance. "Sweepstakes" does not include bingo as authorized under this chapter, pari-mutuel wagering as authorized by Ohio R.C. Chapter 3769, lotteries conducted by the State Lottery Commission as authorized by Ohio R.C. Chapter 3770, and casino gaming as authorized by Ohio R.C. Chapter 3772.

**"Electronic instant bingo" means a form of bingo that consists of an electronic or digital representation of instant bingo in which a participant wins a prize if the participant's electronic instant bingo ticket contains a combination of numbers or symbols that was designated in advance as a winning combination, and to which all of the following apply:**

- (a) Each deal has a predetermined, finite number of winning and losing tickets and a predetermined prize amount and deal structure, provided that there may be multiple winning combinations in each deal and multiple winning tickets.
- (b) Each electronic instant bingo ticket within a deal has a unique serial number that is not regenerated.
- (c) Each electronic instant bingo ticket within a deal is sold for the same price.
- (d) After a participant purchases an electronic instant bingo ticket, the combination of numbers or symbols on the ticket is revealed to the participant.
- (e) The reveal of numbers or symbols on the ticket may incorporate an entertainment or bonus theme, provided that the reveal does not include spinning reels that resemble a slot machine.
- (f) The reveal theme, if any, does not require additional consideration or award any prize other than any predetermined prize associated with the electronic instant bingo ticket.

**(2) "Electronic instant bingo" shall not include any of the following:**

- (a) Any game, entertainment, or bonus theme that replicates or simulates any of the following:
  - (i) The gambling games of keno, blackjack, roulette, poker, craps, other casino-style table games;
  - (ii) Horse racing;
  - (iii) Gambling games offered in this state on slot machines or video lottery terminals. As used in this division, "video lottery terminal" has the same meaning as in section 3770.21 of the Revised Code.
- (b) Any device operated by dropping one or more coins or tokens into a slot and pulling a handle or pushing a button or touchpoint on a touchscreen to activate one

to three or more rotating reels marked into horizontal segments by varying symbols, where the predetermined prize amount depends on how and how many of the symbols line up when the rotating reels come to a rest;

(c) Any device that includes a coin or token slot, tray, or hopper and the ability to dispense coins, cash, tokens, or anything of value other than a credit ticket voucher.

**"Electronic instant bingo system" means both of the following:**

(1) A mechanical, electronic, digital, or video device and associated software to which all of the following apply:

(a) It is used by not more than one player at a time to play electronic instant bingo on a single screen that is physically connected to the device;

(b) It is located on the premises of the principal place of business of a veteran's or fraternal organization that holds a type II or type III bingo license to conduct electronic instant bingo at that location issued under section 2915.08 of the Revised Code.

(2) Any associated equipment or software used to manage, monitor, or document any aspect of electronic instant bingo. (ORC 2915.01)

517.06 Methods of conducting a bingo game; prohibitions.

(a) No charitable organization that conducts bingo shall fail to do any of the following:

(1) Own all of the equipment used to conduct bingo or lease that equipment from a charitable organization that is licensed to conduct bingo, or from the landlord of a premises where bingo is conducted, for a rental rate that is not more than is customary and reasonable for that equipment;

(2) Use, or give, donate, or otherwise transfer, all of the net profit derived from bingo, ~~other than instant bingo,~~ described in ORC 2915.01(O)(1) for a charitable purpose listed in its license application and described in Section 517.01, definition of "charitable purpose", or distribute all of the net profit from the proceeds of the sale of instant bingo or electronic instant bingo as stated in its license application and in accordance with Ohio R.C. 2915.101, as applicable.

(b) No charitable organization that conducts a bingo game described in Section 517.01, definition of "bingo, subsection (1), shall fail to do any of the following:

(1) Conduct the bingo game on premises that are owned by the charitable organization, on premises that are owned by another charitable organization and leased from that charitable organization for a rental rate not in excess of the lesser of \$600.00 per bingo session or 45 percent of the gross receipts of the bingo session, on premises that are leased from a person other than a charitable organization for a rental rate that is not more than is customary and reasonable for premises that are similar in location, size, and quality but not in excess of \$450.00 per bingo session, or on premises that are owned by a person other than a charitable organization, that are leased from that person by another charitable organization, and that are subleased from that other charitable organization by the charitable organization for a rental rate not in excess of \$450.00 per bingo session. No charitable organization is required to pay property taxes or assessments on premises that the charitable organization leases from another person to conduct bingo sessions. If the charitable organization leases from a person other than a charitable organization the premises on which it conducts bingo sessions, the lessor



of the premises shall provide the premises to the organization and shall not provide the organization with bingo game operators, security personnel, concessions or concession operators, bingo supplies, or any other type of service. A charitable organization shall not lease or sublease premises that it owns or leases to more than three other charitable organizations per calendar week for conducting bingo sessions on the premises. A person that is not a charitable organization shall not lease premises that it owns, leases, or otherwise is empowered to lease to more than three charitable organizations per calendar week for conducting bingo sessions on the premises. In no case shall more than nine bingo sessions be conducted on any premises in any calendar week.

(2) Display its license conspicuously at the premises where the bingo session is conducted;

(3) Conduct the bingo session in accordance with the definition of bingo set forth in Section 517.01, definition of "bingo", subsection (1).

(c) No charitable organization that conducts a bingo game described in Section 517.01, definition of "bingo", subsection (1), shall do any of the following:

(1) Pay any compensation to a bingo game operator for operating a bingo session that is conducted by the charitable organization or for preparing, selling, or serving food or beverages at the site of the bingo session, permit any auxiliary unit or society of the charitable organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at a bingo session conducted by the charitable organization, or permit any auxiliary unit or society of the charitable organization to prepare, sell, or serve food or beverages at a bingo session conducted by the charitable organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(2) Pay consulting fees to any person for any services performed in relation to the bingo session;

(3) Pay concession fees to any person who provides refreshments to the participants in the bingo session;

(4) Except as otherwise provided in subsection (c)(4) of this section, conduct more than three bingo sessions in any seven-day period. A volunteer firefighter's organization or a volunteer rescue service organization that conducts not more than five bingo sessions in a calendar year may conduct more than three bingo sessions in a seven-day period after notifying the Attorney General when it will conduct the sessions;

(5) Pay out more than \$6,000.00 in prizes for bingo games described in Section 517.01, definition of "bingo", subsection (1), during any bingo session that is conducted by the charitable organization. "Prizes" does not include awards from the conduct of instant bingo;

(6) Conduct a bingo session at any time during the eight-hour period between two a.m. and ten a.m., at any time during, or within ten hours of, a bingo game conducted for amusement only pursuant to Ohio R.C. 2915.12, at any premises not specified on its license, or on any day of the week or during any time period not specified on its license. Subsection (c)(6) of this section does not prohibit the sale of instant bingo tickets beginning at nine a.m. for a bingo session that begins at ten a.m. If circumstances make it impractical for the charitable organization to conduct a bingo session at the premises, or on the day of the week or at the time, specified

on its license or if a charitable organization wants to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license, the charitable organization may apply in writing to the Attorney General for an amended license, pursuant to Ohio R.C. 2915.08(F). A charitable organization may apply twice in each calendar year for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license. If the amended license is granted, the organization may conduct bingo sessions at the premises, on the day of the week, and at the time specified on its amended license;

(7) Permit any person whom the charitable organization knows, or should have known, is under the age of 18 to work as a bingo game operator;

(8) Permit any person whom the charitable organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator;

(9) Permit the lessor of the premises on which the bingo session is conducted, if the lessor is not a charitable organization, to provide the charitable organization with bingo game operators, security personnel, concessions, bingo supplies, or any other type of service;

(10) Purchase or lease bingo supplies from any person except a distributor issued a license under Ohio R.C. 2915.081;

(11) A. Use or permit the use of electronic bingo aids except under the following circumstances:

1. For any single participant, not more than 90 bingo faces can be played using an electronic bingo aid or aids.

2. The charitable organization shall provide a participant using an electronic bingo aid with corresponding paper bingo cards or sheets.

3. The total price of bingo faces played with an electronic bingo aid shall be equal to the total price of the same number of bingo faces played with a paper bingo card or sheet sold at the same bingo session but without an electronic bingo aid.

4. An electronic bingo aid cannot be part of an electronic network other than a network that includes only bingo aids and devices that are located on the premises at which the bingo is being conducted or be interactive with any device not located on the premises at which the bingo is being conducted.

5. An electronic bingo aid cannot be used to participate in bingo that is conducted at a location other than the location at which the bingo session is conducted and at which the electronic bingo aid is used.

6. An electronic bingo aid cannot be used to provide for the input of numbers and letters announced by a bingo caller other than the bingo caller who physically calls the numbers and letters at the location at which the bingo session is conducted and at which the electronic bingo aid is used.

B. The Attorney General may adopt rules in accordance with Ohio R.C. Chapter 119 that govern the use of electronic bingo aids. The rules may include a requirement that an electronic bingo aid be capable of being audited by the Attorney General to verify the number of bingo cards or sheets played during each bingo session.

(12) Permit any person the charitable organization knows, or should have known, to be under 18 years of age to play bingo described in Section 517.01, definition of "bingo", subsection (1).

(d) (1) Except as otherwise provided in subsection (d)(3) hereof, no charitable

organization shall provide to a bingo game operator, and no bingo game operator shall receive or accept, any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo during a bingo session.

(2) Except as otherwise provided in subsection (d)(3) hereof, no charitable organization shall provide to a bingo game operator any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting instant bingo, electronic instant bingo, or both other than at a bingo session at the site of instant bingo, electronic instant bingo, or both other than at a bingo session.

(3) Nothing in subsection (d) hereof prohibits an employee of a fraternal organization, veteran's organization, or sporting organization from selling instant bingo tickets or cards to the organization's members or invited guests, as long as no portion of the employee's compensation is paid from any receipts of bingo.

(e) Notwithstanding subsection (b)(1) of this section, a charitable organization that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to another charitable organization or other charitable organizations for the conducting of bingo sessions so that more than two bingo sessions are conducted per calendar week on the premises, and a person that is not a charitable organization and that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to charitable organizations for the conducting of more than two bingo sessions per calendar week on the premises, may continue to lease the premises to those charitable organizations, provided that no more than four sessions are conducted per calendar week, that the lessor organization or person has notified the Attorney General in writing of the organizations that will conduct the sessions and the days of the week and the times of the day on which the sessions will be conducted, that the initial lease entered into with each organization that will conduct the sessions was filed with the Attorney General prior to December 6, 1977, and that each organization that will conduct the sessions was issued a license to conduct bingo games by the Attorney General prior to December 6, 1977.

(f) This section does not prohibit a bingo licensed charitable organization or a game operator from giving any person an instant bingo ticket as a prize.

(g) Except as otherwise provided in this subsection, whoever violates subsection (a)(1) or (2), (b)(1), (2), or (3), (c)(1) to (11) or (d) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of a violation of subsection (a)(1) or (2), (b)(1), (2) or (3), (c)(1) to (11), or (d) of this section, a violation of subsection (a)(1) or (2), (b)(1), (2) or (3) or (c)(1) to (11) or (d) of this section is a misdemeanor of the first degree. Whoever violates subsection (c)(12) of this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (c)(12) of this section, a violation of subsection (c)(12) is a felony and shall be prosecuted under appropriate State law. (ORC 2915.09)

**AI-8650**

**City Council Meeting**

**Pending Business     B.**  
**City Manager**

**Meeting Date:** 09/26/2022

Stormwater Fees

**Submitted By:** Hanane Eisentraut

**Department:** Engineering

**Division:** Engineering

**Council Committee Review?:** Council Work  
Session

**Date(s) of Committee Review:** 09/06/2022

**Audio-Visual Needs:** None

**Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

An Ordinance Amending Section 922.27 Of The Codified Ordinances Of Huber Heights By Increasing The Monthly And/Or Annual Stormwater Sewer Rate Beginning November 1, 2022.  
(second reading)

**Purpose and Background**

This legislation is to increase the stormwater fee for residential and commercial properties within the City from \$2.00 to \$3.50 per Equivalent Residential Unit (ERU).

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**Fiscal Impact**

**Source of Funds:** N/A

**Cost:** N/A

**Recurring Cost? (Yes/No):** N/A

**Funds Available in Current Budget? (Yes/No):** N/A

**Financial Implications:**

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**Attachments**

Ordinance

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

ORDINANCE NO. 2022-0-

AMENDING SECTION 922.27 OF THE CODIFIED ORDINANCES OF HUBER HEIGHTS  
BY INCREASING THE MONTHLY AND/OR ANNUAL STORMWATER SEWER RATE  
BEGINNING NOVEMBER 1, 2022.

WHEREAS, Section 922.27 of the Codified Ordinances of the City of Huber Heights sets forth  
the stormwater sewer rate at \$2.00 per Equivalent Residential Unit (ERU); and

WHEREAS this rate has been in effect since 2002; and

WHEREAS, City Council has determined it is necessary to increase the stormwater sewer rate  
across the board to \$3.50 per ERU beginning November 1, 2022.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. Section 922.27 of the Codified Ordinances of the City of Huber Heights is hereby  
amended to read as follows:

922.27 - Monthly charge per equivalent residential unit.

Effective November 1, 2022, the monthly charge per ERU shall be \$3.50.

Section 2. It is hereby found and determined that all formal actions of this Council  
concerning and relating to the passage of this Ordinance were adopted 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 and in compliance with all legal  
requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance shall go into effect upon its passage as provided by law and the  
Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**AI-8667**

**New Business    A.  
City Council**

**City Council Meeting**

**Meeting Date:** 09/26/2022

City Code - Supplement 11 - Adopting Ordinance

**Submitted By:** Anthony Rodgers

**Department:** City Council

**Council Committee Review?:** Council      **Date(s) of Committee Review:** 09/20/2022  
Work  
Session

**Audio-Visual Needs:** None      **Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

An Ordinance Approving The Editing And Inclusion Of Certain Ordinances And/Or Resolutions As Parts Of The Various Component Codes Of The City Code Of Huber Heights, Ohio; Providing For The Adoption And Publication Of New Matter In The Updated And Revised City Code As Supplement 11; And Repealing Ordinances And Resolutions In Conflict Therewith.  
(first reading)

**Purpose and Background**

This ordinance is to adopt Supplement 11 to the City Code for the period of April 1, 2022 to June 30, 2022. Appropriate legal notice of this ordinance has been advertised as required by the Huber Heights City Charter.

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**Fiscal Impact**

**Source of Funds:** N/A

**Cost:** N/A

**Recurring Cost? (Yes/No):** N/A

**Funds Available in Current Budget? (Yes/No):** N/A

**Financial Implications:**

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**Attachments**

Ordinance

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

ORDINANCE NO. 2022-O-

APPROVING THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AND/OR RESOLUTIONS AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CITY CODE OF HUBER HEIGHTS, OHIO; PROVIDING FOR THE ADOPTION AND PUBLICATION OF NEW MATTER IN THE UPDATED AND REVISED CITY CODE AS SUPPLEMENT 11; AND REPEALING ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH.

WHEREAS, Municipal Code Corporation has completed its updating and revision of the City Code of Huber Heights, Ohio within Supplement 11; and

WHEREAS, certain provisions within the City Code of Huber Heights, Ohio were changed to conform with current State law as required by the Ohio Constitution; and

WHEREAS, various resolutions and/or ordinances of a general and permanent nature have been passed by the City Council which should be included in the City Code of Huber Heights, Ohio.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The resolutions and/or ordinances of the City of Huber Heights, Ohio, of a general and permanent nature, as edited, revised, codified and re-codified, rearranged and consolidated into component codes, titles, chapters and sections within Supplement 11 to the City Code of Huber Heights, Ohio for the period of April 1, 2022 to June 30, 2022, a copy of which is available for copying and inspection in the Office of the Clerk of Council, and incorporated herein by this reference, are hereby approved and adopted.

Section 2. The provisions within the City of Huber Heights Code that mirror provisions as contained in the Ohio Revised Code as set forth within Supplement 11 to the City Code of Huber Heights, Ohio for the period of April 1, 2022 to June 30, 2022, a copy of which is available for copying and inspection in the Office of the Clerk of Council, and incorporated herein by this reference, are hereby approved and adopted to conform with current State law.

Section 3. All ordinances and resolutions or parts thereof that are in conflict or inconsistent with any provision of the new matter adopted in Section 1 or 2 of this ordinance are hereby repealed as of the effective date of this ordinance except as follows:

(a) The enactment of such sections shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full force notwithstanding its repeal for the purposes of revision and recodification.

(b) The repeal provided above shall not affect any legislation enacted subsequent to June 30, 2022.

Section 4. Pursuant to Section 5.08(B) of the Huber Heights City Charter, the Clerk of Council shall cause a notice of this proposed adopting Ordinance to be published one time in a newspaper of general circulation in the City at least seven days prior to adoption and no further publication shall be necessary. Such publication shall constitute sufficient notice of all new material contained therein.

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 adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 6. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**AI-8669**

**City Council Meeting**

**Meeting Date:** 09/26/2022

Supplemental Appropriations

**Submitted By:** Jim Bell

**Department:** Finance

**Division:** Accounting

**Council Committee Review?:** Council Work Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None

**Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

**New Business B.  
City Manager**

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**Agenda Item Description or Legislation Title**

An Ordinance Amending Ordinance No. 2021-O-2511 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2022 And Ending December 31, 2022.  
(first reading)

**Purpose and Background**

The supplemental appropriations are for the following purposes:

- \$7,000 for maintenance and upgrades to the A/V system in Council Chambers.
- \$6,500 for HR wellness program for staff.
- \$5,310 for County Auditor collection fees in TIF funds that exceeded budget estimates.
- \$39,000 for rebuilding motor on Fire ladder truck.

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**Fiscal Impact**

**Source of Funds:** Various Funds

**Cost:** \$57,810

**Recurring Cost? (Yes/No):** No

**Funds Available in Current Budget? (Yes/No):** Yes

**Financial Implications:**

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**Attachments**

Ordinance

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

ORDINANCE NO. 2022-O-

AMENDING ORDINANCE NO. 2021-O-2511 BY MAKING SUPPLEMENTAL APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2022 AND ENDING DECEMBER 31, 2022.

WHEREAS, supplemental appropriations for expenses of the City of Huber Heights must be made for appropriations of funds for various 2022 operating and project funding.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. Ordinance No. 2021-O-2511 is hereby amended as shown in Exhibit A of this Ordinance.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**

AMENDING ORDINANCE NO. 2021-O-2511 BY MAKING APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2022 AND ENDING DECEMBER 31, 2022.

- 1) Section 1 of Ordinance No. 2021-O-2511 is hereby amended to reflect an increase in the appropriations of the 101 General Fund, as follows:

a. Subsection i) Council, Operations and Capital of \$7,000.00

b. Subsection 0) Human Resources, Operations and Capital of \$6,500.00
- 2) Section 19 of Ordinance No. 2021-O-2511 is hereby amended to reflect an increase in the appropriations of the 243 Miami County TIF Fund, as follows:

a. Subsection a) Finance, Operations and Capital of \$5,187.00
- 3) Section 21 of Ordinance No. 2021-O-2511 is hereby amended to reflect an increase in the appropriations of the 245 Miami County West TIF Fund, as follows:

a. Subsection a) Finance, Operations and Capital of \$123.00
- 4) Section 34 of Ordinance No. 2021-O-2511 is hereby amended to reflect an increase in the appropriations of the 431 Fire Capital/Equipment Fund, as follows:

a. Subsection a) Fire, Operations and Capital of \$39,000.00

General Fund	\$13,500.00
Miami County TIF Fund	\$5,187.00
Miami County West TIF Fund	\$123.00
Fire Capital/Equipment Fund	\$39,000.00

AI-8661

New Business C.  
City Manager

**City Council Meeting**

**Meeting Date:** 09/26/2022

Issuance of Notes - Renewal - Property Acquisition - City Administrative Offices - \$1,740,000

**Submitted By:** Jim Bell

**Department:** Finance

**Division:** Accounting

**Council Committee Review?:** Council  
Work  
Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None

**Emergency Legislation?:** Yes

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

An Ordinance Providing For The Issuance And Sale Of Notes In The Maximum Principal Amount Of \$1,740,000, In Anticipation Of The Issuance Of Bonds, For The Purpose Of Paying The Costs Of Acquiring Certain Real Property Which Will Be Used As A Site For City Administrative Offices And Providing For General Site Preparation Thereof And Improvements Thereto, Together With All Necessary Appurtenances Thereto, And Declaring An Emergency.  
(first reading)

**Purpose and Background**

The attached ordinance will allow the City to issue one-year notes in the amount of \$1,740,000 for the renewal of the notes issued in 2020 for the cost of the property acquisition which will be used as a site for City administrative offices. The estimated tax-exempt rate for this note is 3.00%. City Staff is requesting this ordinance be passed as emergency legislation, so the notes can be sold with two additional notes and the proceeds received prior to the maturity of the notes issued in 2021.

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**Fiscal Impact**

**Source of Funds:** Notes

**Cost:** \$1,740,000

**Recurring Cost? (Yes/No):** No

**Funds Available in Current Budget? (Yes/No):** Yes

**Financial Implications:**

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**Attachments**

FOC  
Ordinance

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**SUPPLEMENTAL  
FISCAL OFFICER'S CERTIFICATE**

To the City Council of the City of Huber Heights, Ohio:

As fiscal officer of the City of Huber Heights, Ohio, and supplementing the fiscal officer's certificate of October 20, 2020, I certify in connection with your proposed issuance of notes in the maximum principal amount of \$1,740,000 (the "*Notes*"), to be issued in anticipation of the issuance of bonds (the "*Bonds*") for the purpose of paying the costs of acquiring certain real property which will be used as a site for City administrative offices, and providing for general site preparation thereof and improvements thereto, together with all necessary appurtenances thereto (the "*Improvement*"), that:

1. The estimated life or period of usefulness of the Improvement is at least five (5) years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is thirty (30) years. If notes in anticipation of the Bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes, the period in excess of those five years shall be deducted from that maximum maturity of the Bonds.
3. The maximum maturity of the Notes is November 18, 2040.

Dated: August 22, 2022

  
\_\_\_\_\_  
Director of Finance  
City of Huber Heights, Ohio

CITY OF HUBER HEIGHTS  
STATE OF OHIO

ORDINANCE NO. 2022-O-

PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF \$1,740,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF ACQUIRING CERTAIN REAL PROPERTY WHICH WILL BE USED AS A SITE FOR CITY ADMINISTRATIVE OFFICES AND PROVIDING FOR GENERAL SITE PREPARATION THEREOF AND IMPROVEMENTS THERETO, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2021-O-2491 passed September 27, 2021, notes in anticipation of bonds in the principal amount of \$1,740,000, dated November 16, 2021 (the “*Outstanding Notes*”), were issued for the purpose stated in Section 1, to mature on November 15, 2022; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, this City Council has requested that the Director of Finance, as fiscal officer of this City, certify the estimated life or period of usefulness of the Improvement described in Section 1, the estimated maximum maturity of the Bonds described in Section 1 and the maximum maturity of the Notes described in Section 3 to be issued in anticipation of the Bonds; and

WHEREAS, the Director of Finance has certified to this City Council that the estimated life or period of usefulness of the Improvement described in Section 1 is at least five (5) years, the estimated maximum maturity of the Bonds described in Section 1 is thirty (30) years, and that the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is November 18, 2040.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. It is necessary to issue bonds of this City in the maximum principal amount of \$1,740,000 (the “*Bonds*”) for the purpose of paying the costs of acquiring certain real property which will be used as a site for City administrative offices and providing for general site preparation thereof and improvements thereto, together with all necessary appurtenances thereto (the “*Improvement*”).

Section 2. The Bonds shall be dated approximately November 1, 2023, shall bear interest at the now estimated rate of 5.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty (20) annual principal installments on December 1 of each year and in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable shall be substantially equal. The first principal payment on the Bonds is estimated to be December 1, 2024.

Section 3. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$1,740,000 (the “*Notes*”) shall be issued in anticipation of the issuance of the Bonds for the purpose described in Section 1 and to retire, together with other funds available to the City, the Outstanding Notes and to pay any financing costs. The principal amount of Notes to be issued (not to exceed the stated maximum amount) shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this Ordinance (the “*Certificate of Award*”) as the amount which, along with other available funds of the City, is necessary to provide for the retirement of the Outstanding Notes and to pay any financing costs. The Notes shall be dated the date of issuance and shall mature not more than one year following the date of issuance, *provided* that the Director of Finance shall establish the maturity date in the Certificate of Award. The Notes shall bear interest at a rate or rates not to exceed 5.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award in accordance with Section 6 of this Ordinance.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose or at the Office of the Director of Finance if agreed to by the Director of Finance and the original purchaser (the "*Paying Agent*").

The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Note Registrar Agreement between the City and the Paying Agent, in substantially the form as is now on file with the Clerk of Council. The Note Registrar Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Note Registrar Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Note Registrar Agreement, except to the extent paid or reimbursed by the original purchaser in accordance with the Certificate of Award, from the proceeds of the Notes to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 5. The Notes shall be signed by the City Manager and Director of Finance, in the name of the City and in their official capacities; *provided* that one of those signatures may be a facsimile. The Notes shall be issued in minimum denominations of \$100,000 (and may be issued in denominations in such amounts in excess thereof as requested by the original purchaser and approved by the Director of Finance) and with numbers as requested by the original purchaser and approved by the Director of Finance. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this Section and this Ordinance:

"*Book entry form*" or "*book entry system*" means a form or system under which (a) the ownership of beneficial interests in the Notes and the principal of and interest on the Notes may be transferred only through a book entry, and (b) a single physical Note certificate in fully registered form is issued by the City and payable only to a Depository or its nominee as registered owner, with the certificate deposited with and "immobilized" in the custody of the Depository or its designated agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"*Depository*" means any securities depository that is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of and interest on the Notes, and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"*Participant*" means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (a) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (b) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (c) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the

Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (d) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 6. The Notes shall be sold at not less than par plus accrued interest (if any) at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance, the Certificate of Award and the Note Purchase Agreement. The Director of Finance shall sign the Certificate of Award referred to in Section 3 fixing the interest rate or rates which the Notes shall bear and evidencing that sale to the original purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price.

The Note Purchase Agreement between the City and the original purchaser and now on file with the Clerk of Council is approved, and the City Manager and the Director of Finance are authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the City and are approved by the City Manager and the Director of Finance. Any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and are approved by the City Manager and the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase Agreement by the City Manager and the Director of Finance.

The City Manager, the Director of Finance, the City Attorney, the Clerk of Council and other City officials, as appropriate, and any person serving in an interim or acting capacity for any such official, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The actions of the City Manager, the Director of Finance, the City Attorney, the Clerk of Council or other City official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Notes are hereby ratified and confirmed. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.

Section 7. The proceeds from the sale of the Notes received by the City (or withheld by the original purchaser or deposited with the Paying Agent, in each case on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. The Certificate of Award and the Note Purchase Agreement may authorize the original purchaser to (a) withhold certain proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the Notes to the Paying Agent, in each case to provide for the payment of certain financing costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance with this Section 7, the Paying Agent shall be authorized to create a fund in accordance with the Note Registrar Agreement for that purpose. Any portion of those proceeds received by the City (after payment of those financing costs) representing premium or accrued interest shall be paid into the Bond Retirement Fund.



Section 8. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

Section 9. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due.

In each year to the extent receipts from the municipal income tax are available for the payment of the debt charges on the Notes or the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of such receipts so available and appropriated in compliance with the following covenant. To the extent necessary, the debt charges on the Notes or the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and the laws of the State of Ohio and the Charter of the City; and the City hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7) of the Ohio Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges.

Nothing in the preceding paragraph in any way diminishes the irrevocable pledge of the full faith and credit and general property taxing power of the City to the prompt payment of the debt charges on the Notes or the Bonds.

Section 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the “Code”) or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties with respect to the Notes, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments with respect to the Notes, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the

proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes. The Director of Finance or any other officer of the City having responsibility for issuance of the Notes is specifically authorized to designate the Notes as “qualified tax-exempt obligations” if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this Section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure the exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Notes.

Section 11. The Clerk of Council is directed to promptly deliver a certified copy of this Ordinance to the County Auditors of Miami and Montgomery Counties, Ohio.

Section 12. The Director of Finance is authorized to request a rating for the Notes from Moody’s Investors Service, Inc. or S&P Global Ratings, or both, as the Director of Finance determines is in the best interest of the City. The expenditure of the amounts necessary to secure any such ratings as well as to pay the other financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is hereby authorized and approved and the amounts necessary to pay those costs are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 13. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the Office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 14. The services of Bradley Payne, LLC, as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Notes. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 15. The services of KeyBanc Capital Markets Inc., as arranger, to the extent determined to be financially advantageous to the City by the Director of Finance in the Certificate of Award, are hereby retained. The services of the arranger shall be in the nature of

financial advice and recommendations in connection with the issuance and sale of the Notes. In rendering those arranger services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those arranger services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those arranger services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the Transformative Economic Development Fund.

Section 16. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 17. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

Section 18. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the inhabitants of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely acquire the Improvement; therefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CERTIFICATE**

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2022-O-\_\_\_\_\_ passed by the City Council of the City of Huber Heights, on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Clerk of Council

AI-8662

New Business D.  
City Manager

**City Council Meeting**

**Meeting Date:** 09/26/2022

Issuance of Notes - Renewal - Property Acquisition - Governmental Facilities - \$945,000

**Submitted By:** Jim Bell

**Department:** Finance

**Division:** Accounting

**Council Committee Review?:** Council  
Work  
Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None

**Emergency Legislation?:** Yes

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

An Ordinance Providing For The Issuance And Sale Of Notes In The Maximum Principal Amount Of \$945,000, In Anticipation Of The Issuance Of Bonds, For The Purpose Of Paying The Costs Of Acquiring Certain Real Property Which Will Be Used As A Site For One Or More Governmental Facilities And Providing For General Site Preparation Thereof And Improvements Thereto, Together With All Necessary Appurtenances Thereto, And Declaring An Emergency.  
(first reading)

**Purpose and Background**

The attached ordinance will allow the City to issue one-year notes in the amount of \$945,000 for the renewal of the notes issued in 2021 for the cost of the property acquisition which will be used for governmental facilities. The principal of these new notes reflects a reduction of the maturing 2021 notes as the Dayton Library purchase of their portion of the property has been applied. The estimated tax-exempt rate for this note is 3.00%. City Staff is requesting this ordinance be passed as emergency legislation, so the notes can be sold, with two additional notes, and the proceeds received prior to the maturity of the notes issued in 2021.

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**Fiscal Impact**

**Source of Funds:** Notes  
**Cost:** \$945,000  
**Recurring Cost? (Yes/No):** No  
**Funds Available in Current Budget? (Yes/No):** Yes  
**Financial Implications:**

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**Attachments**

FOC  
Ordinance

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**SUPPLEMENTAL  
FISCAL OFFICER'S CERTIFICATE**

To the City Council of the City of Huber Heights, Ohio:

As fiscal officer of the City of Huber Heights, Ohio, and supplementing the fiscal officer's certificate of October 20, 2020, I certify in connection with your proposed issuance of notes in the maximum principal amount of \$945,000 (the "*Notes*"), to be issued in anticipation of the issuance of bonds (the "*Bonds*") for the purpose of paying the costs of acquiring certain real property which will be used as a site for one or more governmental facilities, and providing for general site preparation thereof and improvements thereto, together with all necessary appurtenances thereto (the "*Improvement*"), that:

1. The estimated life or period of usefulness of the Improvement is at least five (5) years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is thirty (30) years. If notes in anticipation of the Bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes, the period in excess of those five years shall be deducted from that maximum maturity of the Bonds.
3. The maximum maturity of the Notes is November 18, 2040.

Dated: August 22, 2022

  
\_\_\_\_\_  
Director of Finance  
City of Huber Heights, Ohio

CITY OF HUBER HEIGHTS  
STATE OF OHIO

ORDINANCE NO. 2022-O-

PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF \$945,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF ACQUIRING CERTAIN REAL PROPERTY WHICH WILL BE USED AS A SITE FOR ONE OR MORE GOVERNMENTAL FACILITIES AND PROVIDING FOR GENERAL SITE PREPARATION THEREOF AND IMPROVEMENTS THERETO, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2021-O-2492 passed September 27, 2021, notes in anticipation of bonds in the principal amount of \$1,803,000, dated November 16, 2021 (the “*Outstanding Notes*”), were issued for the purpose stated in Section 1, to mature on November 15, 2022; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, this City Council has requested that the Director of Finance, as fiscal officer of this City, certify the estimated life or period of usefulness of the Improvement described in Section 1, the estimated maximum maturity of the Bonds described in Section 1 and the maximum maturity of the Notes described in Section 3 to be issued in anticipation of the Bonds; and

WHEREAS, the Director of Finance has certified to this City Council that the estimated life or period of usefulness of the Improvement described in Section 1 is at least five (5) years, the estimated maximum maturity of the Bonds described in Section 1 is thirty (30) years, and that the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is November 18, 2040.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. It is necessary to issue bonds of this City in the maximum principal amount of \$945,000 (the “*Bonds*”) for the purpose of paying the costs of acquiring certain real property which will be used as a site for one or more governmental facilities and providing for general site preparation thereof and improvements thereto, together with all necessary appurtenances thereto (the “*Improvement*”).

Section 2. The Bonds shall be dated approximately November 1, 2023, shall bear interest at the now estimated rate of 5.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty (20) annual principal installments on December 1 of each year and in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable shall be substantially equal. The first principal payment on the Bonds is estimated to be December 1, 2024.

Section 3. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$945,000 (the “*Notes*”) shall be issued in anticipation of the issuance of the Bonds for the purpose described in Section 1 and to retire, together with other funds available to the City, the Outstanding Notes and to pay any financing costs. The principal amount of Notes to be issued (not to exceed the stated maximum amount) shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this Ordinance (the “*Certificate of Award*”) as the amount which, along with other available funds of the City, is necessary to provide for the retirement of the Outstanding Notes and to pay any financing costs. The Notes shall be dated the date of issuance and shall mature not more than one year following the date of issuance, *provided* that the Director of Finance shall establish the maturity date in the Certificate of Award. The Notes shall bear interest at a rate or rates not to exceed 5.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award in accordance with Section 6 of this Ordinance.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose or at the Office of the Director of Finance if agreed to by the Director of Finance and the original purchaser (the "*Paying Agent*").

The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Note Registrar Agreement between the City and the Paying Agent, in substantially the form as is now on file with the Clerk of Council. The Note Registrar Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Note Registrar Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Note Registrar Agreement, except to the extent paid or reimbursed by the original purchaser in accordance with the Certificate of Award, from the proceeds of the Notes to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 5. The Notes shall be signed by the City Manager and Director of Finance, in the name of the City and in their official capacities; *provided* that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Finance, *provided* that no Note shall be issued in a minimum denomination less than \$100,000 if such Notes are consolidated with any other note issue of the City pursuant to Section 133.30(B) of the Ohio Revised Code and the aggregate principal amount of such consolidated issue equals or exceeds \$1,000,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this Section and this Ordinance:

"*Book entry form*" or "*book entry system*" means a form or system under which (a) the ownership of beneficial interests in the Notes and the principal of and interest on the Notes may be transferred only through a book entry, and (b) a single physical Note certificate in fully registered form is issued by the City and payable only to a Depository or its nominee as registered owner, with the certificate deposited with and "immobilized" in the custody of the Depository or its designated agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"*Depository*" means any securities depository that is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of and interest on the Notes, and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"*Participant*" means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (a) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (b) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (c) ownership of beneficial interests in

book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (d) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 6. The Notes shall be sold at not less than par plus accrued interest (if any) at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance, the Certificate of Award and the Note Purchase Agreement. The Director of Finance shall sign the Certificate of Award referred to in Section 3 fixing the interest rate or rates which the Notes shall bear and evidencing that sale to the original purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price.

The Note Purchase Agreement between the City and the original purchaser and now on file with the Clerk of Council is approved, and the City Manager and the Director of Finance are authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the City and are approved by the City Manager and the Director of Finance. Any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and are approved by the City Manager and the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase Agreement by the City Manager and the Director of Finance.

The City Manager, the Director of Finance, the City Attorney, the Clerk of Council and other City officials, as appropriate, and any person serving in an interim or acting capacity for any such official, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The actions of the City Manager, the Director of Finance, the City Attorney, the Clerk of Council or other City official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Notes are hereby ratified and confirmed. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.

Section 7. The proceeds from the sale of the Notes received by the City (or withheld by the original purchaser or deposited with the Paying Agent, in each case on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. The Certificate of Award and the Note Purchase Agreement may authorize the original purchaser to (a) withhold certain proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the Notes to the Paying Agent, in each case to provide for the payment of certain financing costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance with this Section 7, the Paying Agent shall be authorized to create a fund in accordance with the Note Registrar Agreement for that purpose. Any portion of those proceeds received by the City (after payment of those financing costs) representing premium or accrued interest shall be paid into the Bond Retirement Fund.



Section 8. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

Section 9. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due.

In each year to the extent receipts from the municipal income tax are available for the payment of the debt charges on the Notes or the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of such receipts so available and appropriated in compliance with the following covenant. To the extent necessary, the debt charges on the Notes or the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and the laws of the State of Ohio and the Charter of the City; and the City hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7) of the Ohio Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges.

Nothing in the preceding paragraph in any way diminishes the irrevocable pledge of the full faith and credit and general property taxing power of the City to the prompt payment of the debt charges on the Notes or the Bonds.

Section 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the “Code”) or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties with respect to the Notes, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments with respect to the Notes, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the

proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes. The Director of Finance or any other officer of the City having responsibility for issuance of the Notes is specifically authorized to designate the Notes as “qualified tax-exempt obligations” if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this Section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure the exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Notes.

Section 11. The Clerk of Council is directed to promptly deliver a certified copy of this Ordinance to the County Auditors of Miami and Montgomery Counties, Ohio.

Section 12. The Director of Finance is authorized to request a rating for the Notes from Moody’s Investors Service, Inc. or S&P Global Ratings, or both, as the Director of Finance determines is in the best interest of the City. The expenditure of the amounts necessary to secure any such ratings as well as to pay the other financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is hereby authorized and approved and the amounts necessary to pay those costs are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 13. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the Office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 14. The services of Bradley Payne, LLC, as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Notes. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 15. The services of KeyBanc Capital Markets Inc., as arranger, to the extent determined to be financially advantageous to the City by the Director of Finance in the Certificate of Award, are hereby retained. The services of the arranger shall be in the nature of

financial advice and recommendations in connection with the issuance and sale of the Notes. In rendering those arranger services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those arranger services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those arranger services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the Transformative Economic Development Fund.

Section 16. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 17. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

Section 18. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the inhabitants of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely acquire the Improvement; therefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CERTIFICATE**

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2022-O-\_\_\_\_\_ passed by the City Council of the City of Huber Heights, on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Clerk of Council

**AI-8663**

**New Business E.  
City Manager**

**City Council Meeting**

**Meeting Date:** 09/26/2022

Issuance of Notes - Renewal - Property Acquisition - Economic Development - \$4,262,000

**Submitted By:** Jim Bell

**Department:** Finance

**Division:** Accounting

**Council Committee Review?:** Council  
Work  
Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None

**Emergency Legislation?:** Yes

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

An Ordinance Providing For The Issuance And Sale Of Notes In The Maximum Principal Amount Of \$4,262,000, In Anticipation Of The Issuance Of Bonds, For The Purpose Of Paying The Costs Of Acquiring Approximately 19.5 Acres Of Real Property Near The Intersection Of Brandt Pike And Fishburg Road And Providing For The Site Preparation Thereof, All In Support Of Economic Development And Job Creation Within The City, And Declaring An Emergency.  
(first reading)

**Purpose and Background**

The attached ordinance will allow the City to issue one-year notes in the amount of \$4,262,000 for the renewal of the notes issued in 2021 for the cost of the acquisition of properties which will be used for various economic development needs. The estimated taxable rate for this note is 3.75%. City Staff is requesting this ordinance be passed as emergency legislation, so the notes can be sold with two additional notes and proceeds received prior to the maturity of the notes issued in 2021.

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**Fiscal Impact**

**Source of Funds:** Notes

**Cost:** \$4,262,000

**Recurring Cost? (Yes/No):** No

**Funds Available in Current Budget? (Yes/No):** Yes

**Financial Implications:**

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**Attachments**

Ordinance

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

ORDINANCE NO. 2022-O-

PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF \$4,262,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF ACQUIRING APPROXIMATELY 19.5 ACRES OF REAL PROPERTY NEAR THE INTERSECTION OF BRANDT PIKE AND FISHBURG ROAD AND PROVIDING FOR THE SITE PREPARATION THEREOF, ALL IN SUPPORT OF ECONOMIC DEVELOPMENT AND JOB CREATION WITHIN THE CITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Huber Heights, Ohio (the “City”) is authorized by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII, Ohio Constitution, and Chapter 165, Ohio Revised Code (the “Act”), among other things, to issue bonds or notes to acquire, construct, equip, furnish, or improve a “project” as defined in Section 165.01, Ohio Revised Code, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State of Ohio; and

WHEREAS, to facilitate the creation of jobs and employment opportunities and improving the economic welfare of the people of the City and of the State of Ohio, the City has determined to issue the Notes (described below) to acquire approximately 19.5 acres of real property near the intersection of Brandt Pike and Fishburg Road and provide for the site preparation thereof (the “Project”); and

WHEREAS, pursuant to Ordinance No. 2021-O-2493 passed September 27, 2021, notes in anticipation of bonds in the principal amount of \$4,262,000, dated November 16, 2021 (the “Outstanding Notes”), were issued for the purpose described in Section 2, to mature on November 15, 2022; and

WHEREAS, this City Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 4 and other funds available to the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. This City Council hereby determines that the Project is a “project” as defined in the Act and is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution; that the utilization of the Project is in furtherance of the purposes of the Act and will benefit the people of the City and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; and that the amount necessary to finance the Project will require the issuance, sale and delivery of the Notes (as defined below), which Notes shall be issued in anticipation of the Bonds (as defined below), and which Notes shall be payable and secured as provided herein.

Section 2. It is necessary to issue bonds of this City in the maximum principal amount of \$4,262,000 (the “Bonds”) for the purpose of paying the costs of acquiring approximately 19.5 acres of real property near the intersection of Brandt Pike and Fishburg Road and providing for the site preparation thereof, all in support of economic development and job creation within the City.

Section 3. The Bonds shall be dated approximately November 1, 2023, shall bear interest at the now estimated rate of 5.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty (20) annual principal installments on December 1 of each year and in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable shall be substantially equal. The first principal payment on the Bonds is estimated to be December 1, 2024.

Section 4. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$4,262,000 (the “Notes”) shall be issued in anticipation of the issuance of the Bonds for the purpose described in Section 2 and to retire, together with other funds available to the City, the Outstanding Notes and to pay any financing costs. The principal amount of

Notes to be issued (not to exceed the stated maximum amount) shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 7 of this Ordinance (the “*Certificate of Award*”) as the amount which, along with other available funds of the City, is necessary to provide for the retirement of the Outstanding Notes and to pay any financing costs. The Notes shall be dated the date of issuance and shall mature not more than one year following the date of issuance, *provided* that the Director of Finance shall establish the maturity date in the Certificate of Award. The Notes shall bear interest at a rate or rates not to exceed 5.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award in accordance with Section 7 of this Ordinance. The Notes shall be issued pursuant to the Act, the Charter of the City, this Ordinance and the Certificate of Award.

Section 5. The debt charges on the Notes shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City’s paying agent, at the office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose or at the Office of the Director of Finance if agreed to by the Director of Finance and the original purchaser (the “*Paying Agent*”).

The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Note Registrar Agreement between the City and the Paying Agent, in substantially the form as is now on file with the Clerk of Council. The Note Registrar Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Note Registrar Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Note Registrar Agreement, except to the extent paid or reimbursed by the original purchaser in accordance with the Certificate of Award, from the proceeds of the Notes to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 6. The Notes shall be signed by the City Manager and Director of Finance, in the name of the City and in their official capacities, *provided* that one of those signatures may be a facsimile. The Notes shall be issued in minimum denominations of \$100,000 (and may be issued in denominations in such amounts in excess thereof as requested by the original purchaser and approved by the Director of Finance) and with numbers as requested by the original purchaser and approved by the Director of Finance. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this Section and this Ordinance:

“*Book entry form*” or “*book entry system*” means a form or system under which (a) the ownership of beneficial interests in the Notes and the principal of and interest on the Notes may be transferred only through a book entry, and (b) a single physical Note certificate in fully registered form is issued by the City and payable only to a Depository or its nominee as registered owner, with the certificate deposited with and “immobilized” in the custody of the Depository or its designated agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“*Depository*” means any securities depository that is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of and interest on the Notes, and to effect

transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

*“Participant”* means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (a) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (b) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (c) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (d) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 7. The Notes shall be sold at not less than par plus accrued interest (if any) at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance, the Certificate of Award and the Note Purchase Agreement. The Director of Finance shall sign the Certificate of Award referred to in Section 4 fixing the interest rate or rates which the Notes shall bear and evidencing that sale to the original purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price.

The Note Purchase Agreement between the City and the original purchaser and now on file with the Clerk of Council is approved, and the City Manager and the Director of Finance are authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the City and are approved by the City Manager and the Director of Finance. Any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and are approved by the City Manager and the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase Agreement by the City Manager and the Director of Finance.

The City Manager, the Director of Finance, the City Attorney, the Clerk of Council and other City officials, as appropriate, and any person serving in an interim or acting capacity for any such official, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The actions of the City Manager, the Director of Finance, the City Attorney, the Clerk of Council or other City official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Notes are hereby ratified and confirmed.

Section 8. The proceeds from the sale of the Notes received by the City (or withheld by the original purchaser or deposited with the Paying Agent, in each case on behalf of the City) shall

be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. The Certificate of Award and the Note Purchase Agreement may authorize the original purchaser to (a) withhold certain proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the Notes to the Paying Agent, in each case to provide for the payment of certain financing costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance with this Section 7, the Paying Agent shall be authorized to create a fund in accordance with the Note Registrar Agreement for that purpose. Any portion of those proceeds received by the City (after payment of those financing costs) representing premium or accrued interest shall be paid into the Bond Fund (as described below).

Section 9. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

Section 10. The Notes are special obligations of the City, the principal of and interest on which are payable solely from the proceeds of the Bonds and by a pledge of and lien on the Nontax Revenues established by and as provided in this Ordinance which are on deposit in the Bond Fund, all as described below. The City covenants that to the extent the Notes will not be paid fully from Nontax Revenues, it will do all things necessary for the issuance of the Bonds or renewal bond anticipation notes in an appropriate amount to provide for the payment of the principal of and interest on the Notes on the maturity date of the Notes.

There was heretofore created by the City a separate account within the Bond Retirement Fund named the Economic Development Bond Retirement Account (the “*Bond Fund*”) into which Nontax Revenues shall be deposited in accordance with the following provisions.

The City hereby covenants and agrees that on or before any date on which principal or interest is payable on the Notes it shall deposit into the Bond Fund from Nontax Revenues selected by the City or proceeds from the Bonds or renewal bond anticipation notes as determined by the City, an amount equal to the amount of principal and/or interest due on the Notes on that date, less, in the discretion of the City, any interest earnings or other moneys accumulated in the Bond Fund which have not theretofore been used as a credit against a prior payment obligation. Moneys in the Bond Fund shall be used solely and exclusively to pay principal and interest on City obligations payable from the Nontax Revenues.

The City hereby covenants and agrees that so long as the Notes are outstanding, it will appropriate and maintain sufficient Nontax Revenues each year to make each payment due under this Section 10 and to pay principal and interest when due; *provided, however*, the amount of such appropriation may be reduced by the amount of any Bonds or renewal bond anticipation notes issued for the purpose of refunding the Notes and payments due hereunder and under the Notes are payable solely from the proceeds of the Bonds and the Nontax Revenues, which Nontax Revenues are hereby selected by the City pursuant to Section 165.12 of the Ohio Revised Code as moneys that are not raised by taxation. The Notes are not secured by an obligation or pledge of any moneys raised by taxation. The Notes do not and shall not represent or constitute a debt or pledge of the faith or credit or taxing power of the City, and the registered owners of the Notes have no right to have taxes levied by the City for the payment of principal of and interest on the Notes.

Nothing herein shall be construed as requiring the City to use or apply to the payment of principal of and interest on the Notes any funds or revenues from any source other than proceeds of the Bonds and Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Notes.

For purpose of this Ordinance, “*Nontax Revenues*” shall mean all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, including, but not limited to the following: (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures which are deposited in the City’s General Fund; (d) fees deposited in the City’s General Fund from properly imposed licenses and permits; (e) investment earnings on the City’s General Fund and which are credited to the City’s General Fund; (f) investment earnings of other funds of the



City that are credited to the City's General Fund; (g) proceeds from the sale of assets which are deposited in the City's General Fund; (h) rental income which is deposited in the City's General Fund; (i) gifts and donations; and (j) proceeds from the sale of any portion of the Project.

Section 11. The Director of Finance is authorized and directed to provide the notification required by Section 165.03(D) of the Ohio Revised Code to the Director of the Ohio Department of Development.

Section 12. The Director of Finance is authorized to request a rating for the Notes from Moody's Investors Service, Inc. or S&P Global Ratings, or both, as the Director of Finance determines is in the best interest of the City. The expenditure of the amounts necessary to secure any such ratings as well as to pay the other financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is hereby authorized and approved and the amounts necessary to pay those costs are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 13. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the Office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 14. The services of Bradley Payne, LLC, as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Notes. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 15. The services of KeyBanc Capital Markets Inc., as arranger, to the extent determined to be financially advantageous to the City by the Director of Finance in the Certificate of Award, are hereby retained. The services of the arranger shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the notes. In rendering those arranger services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those arranger services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those arranger services. The Director of Finance is authorized and directed, to the extent they are not paid or reimbursed pursuant to the Certificate of Award, the Purchase Agreement (if any) and the Registrar Agreement (if any), to make appropriate

certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the Transformative Economic Development Fund.

Section 16. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 17. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

Section 18. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the inhabitants of the City, and for the further reason that this Ordinance is required to be immediately effective in order to permit the City to issue the Notes under Chapter 165 of the Ohio Revised Code in order to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the City and the State of Ohio and to enable the City to timely acquire the Project; therefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### **CERTIFICATE**

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2022-O-\_\_\_\_\_ passed by the City Council of the City of Huber Heights, on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Clerk of Council

**AI-8664**

**New Business     F.  
City Manager**

**City Council Meeting**

**Meeting Date:** 09/26/2022

Tax Rate Certification - Montgomery County

**Submitted By:** Jim Bell

**Department:** Finance                      **Division:** Accounting

**Council Committee Review?:** Council Work Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None                      **Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

A Resolution Accepting The Amounts And Rates As Determined By The Budget Commission Of Montgomery County, Ohio, Authorizing The Necessary Tax Levies And Certifying Them To The Montgomery County Auditor.  
(first reading)

**Purpose and Background**

Annually, each County Budget Commission meets and submits to the City for approval the millage for property taxes. This resolution is the last necessary step of the Montgomery County tax budget process set forth in state law. The resolution formally accepts the property tax rates and the dollar amounts calculated by the Montgomery County Budget Commission. Passage is necessary to "officially" put the levies in place.

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**Fiscal Impact**

**Source of Funds:** Various Funds

**Cost:** N/A

**Recurring Cost? (Yes/No):** N/A

**Funds Available in Current Budget? (Yes/No):** N/A

**Financial Implications:**

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**Attachments**

Resolution

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

RESOLUTION NO. 2022-R-

ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION OF MONTGOMERY COUNTY, OHIO, AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE MONTGOMERY COUNTY AUDITOR.

WHEREAS, the City Council of the City of Huber Heights in accordance with the provisions of law, has previously adopted Tax Rates for the next succeeding fiscal year commencing January 1, 2023; and

WHEREAS, the Budget Commission of Montgomery County, Ohio, has certified its action thereon to this Council, together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this Council, and what part thereof is without, and what part is within, the ten mill tax limitation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The amounts and rates, as determined by the Budget Commission in its certification, be and the same are hereby accepted.

Section 2. There be and is hereby levied on the tax duplicate of said City the rate of each tax necessary to be levied within and without the ten mill limitation as set forth on the following Schedules A and B:

SCHEDULE A				
SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED BY BUDGET COMMISSION AND COUNTY AUDITOR'S ESTIMATED TAX RATES				
FUND	Amount Approved By Budget Commission Inside 10 M. Limitation	Amount to Be Derived From Levies Outside 10 M. Limitation	County Auditor's Estimated of Tax Rate To Be Levied	
			Inside 10 M. Limit	Outside 10 M. Limit
City of Huber Heights 2022/2023	Column I	Column II	III	IV
General Fund	1,052,951		1.50	
Police Fund		1,124,917		5.50
Fire Fund		952,826		4.29
TOTAL	1,052,951	2,077,743	1.50	9.79

**SCHEDULE B**

**LEVIES OUTSIDE 10 MILL LIMITATION  
EXCLUSIVE OF DEBT LEVIES**

FUND	Maximum Rate Authorized To Be Levied	County Auditor's Estimate Of Yield Of Levy (Carry To Sch A Column II)
GENERAL FUND:		
SPECIAL LEVIES:		
Police Fund authorized by voters 06/08/82 not to exceed CONT. years	2.37	454,655
Police Fund authorized by voters 06/07/83 not to exceed CONT. years	0.63	121,146
Police Fund authorized by voters 05/07/85 not to exceed CONT. years	1.50	357,278
Police Fund authorized by voters 11/03/81 not to exceed CONT. years	1.00	191,838
Fire Fund authorized by voters 11/03/81 not to exceed CONT. years	0.79	151,552
Fire Fund authorized by voters 11/03/81 not to exceed CONT. years	0.37	88,594
Fire Fund authorized by voters 06/07/83 not to exceed CONT. years	0.29	55,765
Fire Fund authorized by voters 05/08/84 not to exceed CONT. years	0.42	80,571
Fire Fund authorized by voters 11/06/84 not to exceed CONT. years	0.17	40,428
Fire Fund authorized by voters 05/07/85 not to exceed CONT years	2.25	535,916

Section 3. The Clerk of City Council be and is hereby directed to certify a copy of this Resolution to the Montgomery County Auditor.

Section 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**AI-8665**

**City Council Meeting**

**New Business    G.  
City Manager**

**Meeting Date:** 09/26/2022

Tax Rate Certification - Miami County

**Submitted By:** Jim Bell

**Department:** Finance      **Division:** Accounting

**Council Committee Review?:** Council Work Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None      **Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

A Resolution Accepting The Amounts And Rates As Determined By The Budget Commission Of Miami County, Ohio, Authorizing The Necessary Tax Levies And Certifying Them To The Miami County Auditor.  
(first reading)

**Purpose and Background**

Annually, each County Budget Commission meets and submits to the City for approval the millage for property taxes. This resolution is the last necessary step of the Miami County tax budget process set forth in state law. The resolution formally accepts the property tax rates and the dollar amounts calculated by the Miami County Budget Commission. Passage is necessary to "officially" put the levies in place.

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**Fiscal Impact**

**Source of Funds:** Various Funds

**Cost:** N/A

**Recurring Cost? (Yes/No):** N/A

**Funds Available in Current Budget? (Yes/No):** N/A

**Financial Implications:**

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**Attachments**

Resolution

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

RESOLUTION NO. 2022-R-

ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION OF MIAMI COUNTY, OHIO, AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE MIAMI COUNTY AUDITOR.

WHEREAS, the City Council of the City of Huber Heights in accordance with the provisions of law, has previously adopted Tax Rates for the next succeeding fiscal year commencing January 1, 2023; and

WHEREAS, the Budget Commission of Miami County, Ohio, has certified its action thereon to this Council, together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this Council, and what part thereof is without, and what part is within, the ten mill tax limitation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The amounts and rates, as determined by the Budget Commission in its certification, be and the same are hereby accepted.

Section 2. There be and is hereby levied on the tax duplicate of said City the rate of each tax necessary to be levied within and without the ten mill limitation as set forth on the following Schedules A and B:

SCHEDULE A				
SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED BY BUDGET COMMISSION AND COUNTY AUDITOR'S ESTIMATED TAX RATES				
FUND	Amount Approved By Budget Commission Inside 10 M. Limitation	Amount to Be Derived From Levies Outside 10 M. Limitation	County Auditor's Estimated of Rate To Be Levied	
			Inside 10 M. Limit	Outside 10 M. Limit
City of Huber Heights 2022	Column I	Column II	III	IV
General Fund	23,564.68		1.10	
TOTAL	23,564.68		1.10	

SCHEDULE B		
LEVIES OUTSIDE 10 MILL LIMITATION EXCLUSIVE OF DEBT LEVIES		
FUND	Maximum Rate Authorized To Be Levied	County Auditor's Estimate Of Yield Of Levy (Carry To Sch A Column II)
GENERAL FUND:	(N/A)	
SPECIAL LEVIES:	(N/A)	

Section 3. The Clerk of City Council be and is hereby directed to certify a copy of this Resolution to the Miami County Auditor.

Section 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**AI-8666**

**City Council Meeting**

**New Business H.  
City Manager**

**Meeting Date:** 09/26/2022

Audit Contract - Renewal - Plattenburg & Associates

**Submitted By:** Jim Bell

**Department:** Finance **Division:** Accounting

**Council Committee Review?:** Council Work Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None **Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

A Resolution Authorizing The Director Of Finance To Execute An Extension Agreement With The Auditor Of State And Plattenburg & Associates For The Audit Of The Combined Financial Statements Of The City Of Huber Heights For The Period January 1, 2022 Through December 31, 2026 And Authorizing The Director Of Finance To Enter Into Agreements For Other Professional Services As Needed With Plattenburg & Associates.  
(first reading)

**Purpose and Background**

The City of Huber Heights is required to have an audit of the affairs and accounts of the City by a certified public accountant or firm of such accountant annually, subject to the requirements of Ohio law. The Ohio Auditor of State performs and manages the annual audit of each political subdivision. The Ohio Auditor of State on behalf of the City, authorized an extension to the current contract with Plattenburg & Associates which covered fiscal periods January 1, 2017 through December 31, 2021. This resolution authorizes the Director of Finance to execute an Extension Agreement (Exhibit A) between the City, the Ohio Auditor of State, and Plattenburg & Associates providing for Plattenburg & Associates to conduct an audit of the Combined Financial Statements of the City of Huber Heights for the fiscal periods January 1, 2022 through December 31, 2026 in annual amounts not to exceed those set forth in Plattenburg & Associates' Schedule of Professional Fees and Expenses Cost Proposal (Exhibit B). The resolution also authorizes the Director of Finance to enter into agreements for other professional services as needed with Plattenburg & Associates within the annual not to exceed amount approved by City Council.

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**Fiscal Impact**

**Source of Funds:** Various Funds  
**Cost:** \$45,168  
**Recurring Cost? (Yes/No):** Yes  
**Funds Available in Current Budget? (Yes/No):** Yes  
**Financial Implications:**

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**Attachments**

Resolution  
Exhibit A



CITY OF HUBER HEIGHTS  
STATE OF OHIO

RESOLUTION NO. 2022-R-

AUTHORIZING THE DIRECTOR OF FINANCE TO EXECUTE AN EXTENSION AGREEMENT WITH THE AUDITOR OF STATE AND PLATTENBURG & ASSOCIATES FOR THE AUDIT OF THE COMBINED FINANCIAL STATEMENTS OF THE CITY OF HUBER HEIGHTS FOR THE PERIOD JANUARY 1, 2022 THROUGH DECEMBER 31, 2026 AND AUTHORIZING THE DIRECTOR OF FINANCE TO ENTER INTO AGREEMENTS FOR OTHER PROFESSIONAL SERVICES AS NEEDED WITH PLATTENBURG & ASSOCIATES.

WHEREAS, Section 4.11 of the City Charter of the City of Huber Heights requires that Council shall provide for an audit of the affairs and accounts of the City by a certified public accountant or firm of such accountant at least once every two (2) years, subject to the requirements of Ohio law;

WHEREAS, Section 117.11 of the Ohio Revised Code requires that the Auditor of State commence an audit of each political subdivision; and

WHEREAS, the Auditor of State, on behalf of the City, approved an extension of the current contract with Plattenburg & Associates that was for fiscal periods January 1, 2017 through December 31, 2021; and

WHEREAS, the City Charter requires that City Council approve all work performed by a single vendor in excess of \$25,000.00 in any given year; and

WHEREAS, Plattenburg & Associates has previously performed other audits and professional services for the City of Huber Heights in addition to the annual state audit services and the City desires the ability to continue to use Plattenburg & Associates to perform other professional services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Council of the City of Huber Heights authorizes the Director of Finance to execute an Extension Agreement substantially in the form as shown on Exhibit A, between the City, the Auditor of State, and Plattenburg & Associates providing for Plattenburg & Associates to conduct an audit of the Combined Financial Statements of the City of Huber Heights for the fiscal periods January 1, 2022 through December 31, 2026 pursuant to the Extension Agreement at annual amounts not to exceed those set forth in Plattenburg & Associates' Schedule of Professional Fees and Expenses Cost Proposal incorporated herein as Exhibit B.

Section 2. The City Council of the City of Huber Heights authorizes the Director of Finance to enter into agreements for other professional services as needed with Plattenburg & Associates.

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 adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# OHIO AUDITOR OF STATE

## KEITH FABER

88 East Broad Street  
Columbus, Ohio 43215  
IPA Correspondence@ohioauditor.gov  
(800) 282-0370

### EXTENSION AGREEMENT

This Agreement between Auditor of State Keith Faber (Auditor), City of Huber Heights, Montgomery County (Public Office), and Plattensburg & Associates an independent public accountant (IPA), extends an existing agreement between these parties as identified in SECTION I below and incorporated herein by reference. These parties agree to abide by all terms and conditions of the original agreement, except as specifically identified in Section II below, and that no remuneration will be granted in relation to work performed under this modification/extension prior to the execution of this Agreement by all parties.

#### SECTION I – ORIGINAL CONTRACT INFORMATION

Public Office Name on RFP	<u>City of Huber Heights</u>		
Original Contract Period	<u>January 1, 2017 through December 31, 2021</u>		
Date RFP was issued	<u>November 1, 2017</u>	Date MOA Executed	<u>November 27, 2017</u>
Public Office Contact	<u>James Bell</u>	E-mail	<u>jbell@hhoh.org</u>
IPA Contact	<u>David Minich</u>	E-mail	<u>dminich@plattensburg.com</u>

#### SECTION II – EXTENSION INFORMATION

Extension Period: January 1, 2022 to December 31, 2026

Check one:      Annual Audit ☒      or      Biennial Audit ☐

**The RFP and related contract are hereby amended for the audit periods noted above as follows:**

#### Work Papers, Work Product, and Records Retention

The IPA will maintain all engagement documentation in segregated files. The IPA agrees to provide the Auditor of State unconditional access to examine and review engagement documentation created or obtained by the IPA involving its performance under the contract. The IPA agrees to provide copies of any engagement documentation determined necessary by the Auditor of State. The Auditor of State is bound by ORC 4701.19, which provides that an IPA's engagement documentation remains the property of the IPA, even in the possession of the Auditor of State's office, and are not public records available for public disclosure. In the case of support for a finding for recovery, the Auditor of State may request the IPA to sign a limited waiver of this statutory provision. The IPA also will maintain and provide access to timesheets and expense reports that support the IPA's invoices under the contract. All such engagement documentation, timesheets, and expense reports shall be retained by the IPA for a period of five (5) years from the date of completion of the contract.

#### Review of Reports and Work Papers - Access to / Retention Thereof

Upon completion of the engagement, the IPA will issue the reports thereon and provide an electronic portable document format (pdf) file to the Auditor of State at the following address:

[ipareport@ohioauditor.gov](mailto:ipareport@ohioauditor.gov)

In addition, the IPA shall approve the list of recipients from the client's eServices account and any default recipients based on the entity type. The Client Recipient List must be approved by the IPA via the IPA Portal prior to submitting the report to [ipareport@ohioauditor.gov](mailto:ipareport@ohioauditor.gov). Please note, the report is not considered "submitted" until all required information is received by the Auditor of State at the e-mail address above.

**Efficient • Effective • Transparent**

## SECTION II – EXTENSION INFORMATION (continued)

The Auditor of State's Center for Audit Excellence (CFAE) will perform desk reviews of all released reports. At the conclusion of each review, notification of the results of the review will be sent to the IPA and the Auditor of State's Regional Office for appropriate authorization regarding release of IPA remaining fees. The Auditor of State reserves the right to delay the release of fees and require corrective action if the engagement is not performed in accordance with the required professional standards and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, when applicable.

In addition to such desk report review, some engagements will be judgmentally selected to undergo work paper reviews. The IPA will receive notice of such reviews.

Should the reviews of reports or work papers indicate performance under this agreement is not in accordance with applicable professional standards or Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, the Auditor of State, in his sole judgment, may require performance of additional work, including possible report revisions, by the IPA in accordance with the fee provisions incorporated within the contract as originally endorsed by the parties thereto.

Costs associated with the Auditor of State contract administration and quality review processes will be borne by the City of Huber Heights. The Auditor of State's billing statements are available through the office's eServices portal located at <https://eservices.ohioauditor.gov>.

Authorized client contacts must activate their eServices login to access and/or update information regarding their customer account, including entity contact information, billing and payments, and an eCheck option for online payments. Authorized users are encouraged to keep eServices contact information updated.

Auditor of State billing statements are prepared monthly, and are sent to clients who have an outstanding balance through a paperless electronic billing system. Audit Services are charged monthly. The City of Huber Heights will receive an email notification at the beginning of the month that a statement is available for review. The City of Huber Heights should access their billing statement upon receipt through eServices, and payment is due by the date identified on the statement.

All engagement documentation and reports will be made available to the Auditor of State's office **unconditionally**, and must be retained, at the IPA firm's expense, for a minimum of five (5) years from the date of approval of the final reports, unless the firm is notified in writing by the Auditor of State or City of Huber Heights of the need to extend the retention period.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review work papers, and make copies as determined necessary by the Auditor of State, relating to matters of continuing accounting significance as appropriate in accordance with AU-C 210 and AU-C 510.

Furthermore, should it be necessary for AOS to send a notice of proposed finding regarding a potential finding for recovery, AOS will require the IPA to execute a limited waiver, to be prepared by AOS. It is the AOS' policy to allow the individual subject to the proposed FFR to review the engagement documentation (i.e. work papers) on which the proposed finding is based. Since Ohio Rev. Code § 4701.19 provides that an IPA's engagement documentation remains the property of the IPA, even in the possession of the AOS, it is necessary for the IPA to execute the limited waiver for the sole purpose of permitting AOS to show supporting documents (i.e. work papers) to those subject to proposed findings for recovery.

### **Federal Awards**

The IPA firm anticipates 0 major programs to be included in the Single Audit testing for each year of the contract.

## **SECTION II – EXTENSION INFORMATION (continued)**

### **Contract Modifications**

Modifications should only be requested for issues which were not known at the time of the original proposal, including but not limited to, changes in accounting or professional standards, changes in reporting entity, significant changes in funding, due date changes, etc. IPAs must utilize the Contract Modification application via the IPA Portal, after any necessary discussions with the Auditor of State representative, and obtain the Public Office's approval per the Auditor of State's contract modification policy. The Auditor of State will review, and if determined appropriate, approve the signed contract modification, which will set forth the terms of the contract between the Auditor of State, the Public Office and the firm. **Such agreement must be executed by the Auditor of State prior to the performance of any additional work. No remuneration will be granted in relation to work performed prior to execution of such agreement.** Any additions or reductions to the work agreed to between the Public Office and the firm shall be at an hourly rate that will not exceed the average hourly rate for the corresponding fiscal period set forth in the schedule of fees and expenses included in the original dollar cost bid, except in limited circumstances approved by the Auditor of State where the total cost for the audit period does not exceed the original proposed amount.

The IPA agrees to work closely with the Auditor of State's office and the Public Office to resolve issues as they arise prior to performance of additional procedures perceived to be beyond the scope of a prudent proposal submitted in response to this Request for Proposals.

**Note:** If the contract requires MBE/EDGE participation (Section I.E), any change in hours must be evaluated to determine the impact on the 15% cost requirement. Any change in cost would impact the dollar amount required to be set aside for the MBE/EDGE firm. If the modification causes the hours to exceed 800, a MBE/EDGE firm must be added to the engagement for the affected period.

### **Hinkle Annual Financial Data Reporting System (Hinkle System)**

As required by Ohio Revised Code 117.38, local public offices must file their annual financial reports with the Auditor of State (AOS). As described in Auditor of State Bulletin 2015-007, all entities required to file with the AOS must file electronically via the Hinkle Annual Financial Data Reporting System (Hinkle System).

As required by the Bulletin, any independent public accounting (IPA) firms contracted to perform audits for the AOS will audit the financial statements uploaded and submitted to the AOS via the Hinkle System. At the commencement of the audit, the IPA will verify with the entity that the financial statements submitted via the Hinkle System are the final, unaudited financial statements for the audit period. If the financial statements required modification, the entity must contact the AOS at [HinkleSystem@ohioauditor.gov](mailto:HinkleSystem@ohioauditor.gov) in order to re-file.

When financial statements filed via the Hinkle System are audited by the IPA firm, the Hinkle System will include an audit adjustment application which requires the IPA firm to key in audit adjustments for cities, counties, schools, community schools, townships, libraries and villages to Hinkle System data as part of the audit finalization procedures. The adjustments should be entered prior to submitting the final report package to [ipareport@ohioauditor.gov](mailto:ipareport@ohioauditor.gov).

### **Manner of Payment**

The Auditor of State requires that electronic invoices be submitted for Auditor of State approval via the IPA Portal billing process prior to presenting the invoice to the Public Office for payment. No payments should be processed by the Public Office without Auditor of State approval.

Progress payments should be made on the basis of work completed during the billing period incurred in accordance with the firm's cost proposal. Interim billings shall cover a period of not less than a calendar month. Billings for work completed must be submitted to the Auditor of State timely.

For the final billing, invoices will be processed as above; however, they must provide total actual hours for the engagement. In addition, invoices must be submitted no later than 90 days after the release of the report by the Auditor of State's Clerk of the Bureau. Invoices may NOT be permitted to be submitted and accepted for processing after the 90 days have expired.



## **SECTION II – EXTENSION INFORMATION (continued)**

All invoices must certify that all amounts set forth therein are properly due and payable for work performed by the IPA and/or by the specified qualified subcontractors, if applicable.

Subject to approval of the billing, the amount paid to the IPA for each billing shall be the total amount billed. However, under no circumstances shall the total amount paid prior to final acceptance of the engagement work for the fiscal period in question exceed eighty (80) percent of the total fee for the current engagement fiscal period, as specified in the contract. Upon approval of the final reports by the Auditor of State, the IPA may submit an invoice for the remainder due for the current engagement fiscal period. No payment shall be construed as acceptance of the engagement work or of any reports by the Auditor of State.

The Auditor of State may inspect the records and work papers of the IPA and of any subcontractor to determine the validity of billings. Adequate records shall be maintained by the IPA to support all billings.

### **Date Final Report is Due**

It is anticipated this process will be completed and the final report delivered by 6/30 for each engagement period of the contract. The final report package should be e-mailed to [ipareport@ohioauditor.gov](mailto:ipareport@ohioauditor.gov) no later than this date.

### **Affirmations**

The IPA shall mark “Affirmed” or “N/A,” as applicable, for each of the affirmations noted in the attached Mandatory Elements Form.

**Cost:** Refer to the attached Schedule of Professional Fees and Expenses for details related to the costs associated with this Extension.

### **Indemnification**

The IPA shall indemnify, defend, and hold harmless the Auditor of State, and its personnel, officers, and employees from and against any claims, liabilities, expenses or suits relating to this Agreement or the services provided by the IPA under this Agreement as to any suit, action, or claim asserted or prosecuted by third parties solely for death, bodily injury, or physical damage to real or tangible personal property to the extent directly and proximately caused by the negligent acts or intentional misconduct of the IPA or its subcontractor while engaged in the performance of the Services; and, at its own expense in any such instances, the IPA shall pay all attorneys’ fees, damages, court costs, and other expenses arising out of any such litigation or claim; and, at its own expense, the IPA shall satisfy and cause to be discharged any judgments as may be obtained against the Auditor of State or any of its personnel, officers, or employees pursuant to any such litigation or claim, provided, however, if there is also fault on the part of any entity or individual indemnified hereunder or any entity or individual acting on the Auditor of State’s behalf, the foregoing indemnification shall be on a comparative fault basis.

The IPA shall indemnify, defend and hold harmless the Auditor of State and its personnel from all Claims attributable to the claims or suits asserted or prosecuted by third parties for infringement by a Deliverable of any patent existing at the time of delivery and known to the IPA or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) modification of such Deliverable other than by the IPA or its subcontractors or use thereof in a manner not contemplated by the Agreement, (ii) the failure of the indemnified party to use any corrections or modifications made available by the IPA, (iii) information, materials, instructions, specifications, requirements or designs provided by or on behalf of the indemnified party, or (iv) the use of such Deliverable in combination with any platform, product, network or data not provided by the IPA. If the Auditor of State or the Client’s use of any such Deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the IPA, at its option and expense, shall have the right to (x) procure for Auditor of State and Client the continued use of such Deliverable, (y) replace such Deliverable with a non-infringing Deliverable, or (z) modify such Deliverable so it becomes non infringing; provided that, if (y) or (z) is the option chosen by the IPA, the replacement or modified Deliverable is capable of performing substantially the same function. In the event the IPA cannot reasonably procure, replace or modify such Deliverable in accordance with the immediately preceding sentence, the IPA may require the



## **SECTION II – EXTENSION INFORMATION (continued)**

Auditor of State and Client to cease use of such Deliverable and refund the professional fees paid to the IPA with respect to the Services giving rise to such Deliverable.

The foregoing provisions of this Section constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of the IPA, relating to a claim that any of the IPA's Deliverables infringes any patent, copyright or other intellectual property right of a third party.

As a condition to the foregoing indemnity obligations, the IPA shall be given written notice of the assertion of such claims or suits for which indemnification is sought (an "Indemnity Claim") promptly after such matters are brought to the attention of the Auditor of State and shall cooperate in all reasonable and customary respects with the IPA in connection with any such Indemnity Claim, suit or claim covered by the indemnity obligation. The IPA shall be entitled to defend, settle, and control the handling of any such Indemnity Claim, in its sole discretion, with counsel of its own choosing. The IPA, however, shall not settle any such Indemnity Claim without the prior written consent of the Auditor of State (which shall not be unreasonably withheld) except such consent is not required if (1) the sole relief provided is the payment of monetary damages by the IPA or, to the extent that any non-monetary relief is provided, such non-monetary relief is applicable only to the IPA, (2) there is no admission of any fault or wrongdoing on the part of the Auditor of State, and (3) the compromise or settlement contains a full and unconditional release (other than a condition of receipt of payment from the IPA) of the Auditor of State from liability in respect of such Indemnity Claim. Subject to the assent of the Attorney General of Ohio, the Auditor of State shall be permitted to participate in (but not control) the defense and settlement of any such Indemnity Claim that impacts the interest of the state of Ohio and to employ separate counsel in connection with such Indemnity Claim. The fees and expenses of such separate counsel shall be at the Auditor of State's expense. Nothing contained herein, however, is intended to confer to any third party any right or benefits hereunder; nor is the foregoing indemnification obligation intended to alter or extend the IPA firm's liability for failure to comply with the terms of the Agreement or for professional negligence or misconduct.

The IPA shall be solely responsible to Auditor of State and the Client for the performance of the services provided by the IPA under this Agreement. The Client agrees that it will not bring any claims or suits arising from or relating to the IPA's performance of the services under this Agreement against the Auditor of State.

### SECTION III – RECITALS/APPROVAL

Due to the need for a contract extension, as stated in SECTION II above, the parties with intent to be legally bound agree as follows:

1. IPA shall, in the performance of its engagements related to the Public Office for the fiscal period(s) set forth in the original Contract, previous Modification Agreements, and in this Agreement, perform all engagement work as set forth in the original Memorandum of Agreement, previous Modifications Agreements and in this Agreement;
2. The performance of the engagement work provided for in this Agreement, and all related payments provided for herein, shall in all respects be subject to the terms and conditions set forth in the original Contract;
3. Should this extension result in the total hours of the contract to exceed the threshold established for use of a MBE/EDGE subcontractor, the IPA shall follow all minority participation and other relevant requirements of the original contract. If applicable, the required MBE/EDGE subcontractor with respect to this Agreement will be:

Subcontractor: \_\_\_\_\_

Address: \_\_\_\_\_

4. Should this extension involve the use of other subcontractors, the IPA shall follow all relevant requirements of the original contract. If applicable, the other subcontractor with respect to this Agreement will be:

Subcontractor: \_\_\_\_\_

Address: \_\_\_\_\_

In the event of any conflict or inconsistency between the provisions of this Agreement and the parties' prior contract, the provisions of this Agreement shall control in all respects.

IN WITNESS WHEREOF, Auditor, Public Office and IPA have executed this agreement.

**David C. Minich,**  
**CPA**

Digitally signed by David C.  
Minich, CPA  
Date: 2022.08.30 09:09:35 -04'00'

Plattensburg & Associates

Date

  
Legislative Authority or Designee for

City of Huber Heights

  
Date

**Ami M. Mayne**

Digitally signed by Ami M. Mayne  
Date: 2022.09.12 08:50:23 -04'00'

Auditor of State

Date

## EXHIBIT B

## City of Huber Heights

## Montgomery County

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES  
TO SUPPORT THE TOTAL ALL-INCLUSIVE FIXED FEE  
FOR AUDIT SERVICES – 1/1/2022 through 12/31/2026 EXTENSION

		<u>Hours</u>	<u>Average Hourly Rate</u>	<u>Total Fixed fee</u>	<u>Amount attributed to MBE/EDGE (if applicable)</u>
Partners		<u>70</u>			
Managers		<u>120</u>			
Supervisory staff		<u>230</u>			
Staff		<u>268</u>			
Other (specify):		<u></u>			
Total for period ending	2022	<u>688</u>	\$ <u>51.00</u>	\$ <u>35,088.00</u>	\$ <u></u>
		<u>Hours</u>	<u>Average Hourly Rate</u>	<u>Total Fixed fee</u>	<u>Amount attributed to MBE/EDGE (if applicable)</u>
Fiscal period ending	2023	<u>688</u>	\$ <u>53.00</u>	\$ <u>36,464.00</u>	\$ <u></u>
Fiscal period ending	2024	<u>688</u>	\$ <u>55.00</u>	\$ <u>37,840.00</u>	\$ <u></u>
Fiscal period ending	2025	<u>688</u>	\$ <u>57.00</u>	\$ <u>39,216.00</u>	\$ <u></u>
Fiscal period ending	2026	<u>688</u>	\$ <u>59.00</u>	\$ <u>40,592.00</u>	\$ <u></u>
Total for fiscal periods		<u>3440</u>	\$ <u></u>	\$ <u>189,200.00</u>	\$ <u>0.00</u>
	<u>2022 - 2026</u>				

# MANDATORY ELEMENTS

## Required Affirmations

PUBLIC OFFICE: City of Huber Heights COUNTY: Montgomery  
 CONTRACT NUMBER: Extension CONTRACT PERIOD: 1/1/2022 through 12/31/2026

To be considered, the proposal must address every one of the elements. When these are not fully addressed, proposals will be considered non-responsive to the RFP and will not be evaluated further. Please ensure these affirmations are the first element of your firm's proposal and indicate your firm's agreement with the affirmation by checking the respective box for each affirmation.

1.	<b><u>CPA Licensure Laws</u></b> Our firm is licensed by the Ohio Accountancy Board to do business in Ohio and will remain in compliance with Ohio CPA licensure laws and rules.	<input checked="" type="checkbox"/> Affirmed
2.	<b><u>CPE requirements</u></b> Our firm and all assigned key professional staff are, and will remain, in compliance with governmental qualification standards, including governmental continuing education requirements.	<input checked="" type="checkbox"/> Affirmed
3.a.	<b><u>Peer Review (Opt. 1)</u></b> Our firm has undergone an external quality control peer review, conducted in accordance with generally accepted government auditing standards, within the last three years and received a pass rating. The current report is on file with the Auditor of State's Office.	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> N/A
3.b.	<b><u>Peer Review (Opt. 2)</u></b> In accordance with GAGAS 3.97, our firm is not yet required to have an external quality control peer review, conducted in accordance with generally accepted government auditing standards. When required, our firm will have the appropriate peer review conducted and provide a copy of the report to the Auditor of State's Office.	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A
4.	<b><u>Ohio Ethics Laws</u></b> Our firm and all assigned key professional staff are, and will remain, in compliance with the requirements of Ohio's Ethics Law, as applicable and found at § 2921.42 and in Chapter 102 of the Ohio Revised Code.	<input checked="" type="checkbox"/> Affirmed
5.	<b><u>Rules and Laws Regarding Conflicts of Interest</u></b> Our firm and all assigned key professional staff are, and will remain, in compliance with laws and rules regarding conflicts of interest.	<input checked="" type="checkbox"/> Affirmed
6.	<b><u>Unresolved Findings for Recovery</u></b> Our firm is not subject to any unresolved finding for recovery issued by the Auditor of State under Ohio Rev. Code § 9.24, or our firm has taken appropriate remedial steps required under R.C. § 9.24. Our firm agrees that if this statement is deemed to be false, the contract shall be declared "void ab initio" between the parties, and <u>City of Huber Heights</u> will not be obligated to pay for goods or services rendered under the contract. Any funds paid under the contract shall be remitted by our firm to <u>City of Huber Heights</u> or an action for recovery of such payments may result.	<input checked="" type="checkbox"/> Affirmed
7.a.	<b><u>Independence - Nonaudit Services Provided (Opt. 1)</u></b> <ul style="list-style-type: none"> <li>&gt; Our firm has listed and described in our proposal any and all nonaudit services that have been provided to <u>City of Huber Heights</u> over the previous five (5) years from the date of our proposal or are expected to be provided during the contract term;</li> <li>&gt; Our firm and all assigned key professional staff are independent of <u>City of Huber Heights</u> as defined by U.S. Government Accountability Office's <i>Government Auditing Standards</i>;</li> <li>&gt; Our firm and all assigned key professional staff are, and will remain, in compliance with GAO rules relating to auditor independence; and</li> <li>&gt; In providing such nonaudit services, our firm did not perform management functions, make management decisions for <u>City of Huber Heights</u> nor led reasonable third parties, with knowledge of the relevant facts and circumstances, to conclude our firm would be auditing our own work.</li> </ul>	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A
7.b.	<b><u>Independence - Nonaudit Services NOT Provided (Opt. 2)</u></b> <ul style="list-style-type: none"> <li>&gt; Our firm and all assigned key professional staff are independent of <u>City of Huber Heights</u> as defined by U.S. Government Accountability Office's <i>Government Auditing Standards</i>;</li> <li>&gt; Our firm has not provided nonaudit services affecting the audit periods that involved performing management functions or making management decisions for <u>City of Huber Heights</u>; and</li> <li>&gt; If selected, our firm will not provide nonaudit services to <u>City of Huber Heights</u> during the term of the contract that would require our firm to perform management functions or make management decisions for the entity, or would lead reasonable third parties, with knowledge of the relevant facts and circumstances, to conclude that our firm would be auditing our own work.</li> </ul>	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> N/A
8.	<b><u>Independence - Entity's Components</u></b> <ul style="list-style-type: none"> <li>&gt; Our firm and all assigned key professional staff are independent of the entity's components listed in Section III (G); of the Request for Proposal.</li> </ul>	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A

9.a.	<b><u>Independence - Entity's Components - Nonaudit Services Provided (Opt. 1)</u></b> <ul style="list-style-type: none"> <li>➤ Our firm has listed and described in our proposal any and all nonaudit services that have been provided to City of Huber Heights 's components listed in Section III(G) of the Request for Proposal over the previous five (5) years from the date of our proposal, or are expected to be provided during the contract term;</li> <li>➤ Our firm and all assigned key professional staff are independent of City of Huber Heights 's components as defined by U.S. Government Accountability Office's <i>Government Auditing Standards</i>;</li> <li>➤ Our firm and all assigned key professional staff are, and will remain, in compliance with GAO rules relating to auditor independence; and</li> <li>➤ In providing such nonaudit services, our firm did not perform management functions, make management decisions for City of Huber Heights 's components nor led reasonable third parties, with knowledge of the relevant facts and circumstances, to conclude our firm would be auditing our own work.</li> </ul>	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A
9.b.	<b><u>Independence - Entity's Components - Nonaudit Services NOT Provided (Opt. 2)</u></b> <ul style="list-style-type: none"> <li>➤ Our firm and all assigned key professional staff are independent of City of Huber Heights 's components as defined by U.S. Government Accountability Office's <i>Government Auditing Standards</i>;</li> <li>➤ Our firm <b>has not provided</b> nonaudit services affecting the audit periods that involved performing management functions or making management decisions for City of Huber Heights 's components; and</li> <li>➤ If selected, our firm <b>will not provide</b> nonaudit services to City of Huber Heights 's components during the term of the contract that would require our firm to perform management functions or make management decisions for City of Huber Heights 's components, or would lead reasonable third parties, with knowledge of the relevant facts and circumstances, to conclude that our firm would be auditing our own work.</li> </ul>	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A
10.	<b><u>Personal and External Impairments</u></b> <ul style="list-style-type: none"> <li>➤ Our firm and all assigned key professional staff have no personal or external impairments to independence due to relationships with City of Huber Heights , and have listed and described in our proposal all our firm's professional relationships that could affect our impartiality or the appearance of impartiality involving the City of Huber Heights or any of its agencies/agencies or components /agencies, components or oversight unit, as applicable for the past five (5) years from the date of the proposal;</li> <li>➤ If appropriate, our proposal has included a statement explaining why such relationships do not constitute an independence issue relative to performing the proposed audit.</li> <li>➤ Our firm shall give City of Huber Heights and the Auditor of State written notice of any professional relationships entered into during the period of this agreement, relative to parties connected to this proposed engagement that could affect our impartiality or the appearance of impartiality.</li> <li>➤ Prior to entering into any new agreement to provide any nonaudit service to City of Huber Heights during the term of the contract, our firm will notify the Auditor of State through completion of the IPA Nonaudit Service GAO Independence Notification/Evaluation (Exhibit E of the RFP). By filing this form, our firm asserts the non-audit service does not impair our firm's independence.</li> </ul>	<input checked="" type="checkbox"/> Affirmed
11.	<b><u>Inappropriate Public Office Contact</u></b> Our firm and all assigned key professional staff have not made, and will not make, any contact with personnel of the City of Huber Heights regarding this request for proposal other than allowed by Section I. C. of the RFP.	<input checked="" type="checkbox"/> Affirmed
12.	<b><u>Subcontractors</u></b> If subcontractors are engaged, our firm will ensure the subcontractor(s) have met all applicable elements listed in the affirmations above.	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A
13.	<b><u>Irrevocable Offer</u></b> Our firm's proposal is a firm and irrevocable offer for 90 days.	<input checked="" type="checkbox"/> Affirmed

**AI-8668**

**New Business I.  
City Manager**

**City Council Meeting**

**Meeting Date:** 09/26/2022

Increase Not To Exceed Amount - Ohio CAT - Fire Division

**Submitted By:** Keith Knisley

**Department:** Fire

**Council Committee Review?:** Council Work Session **Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None **Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

A Resolution To Increase The Not To Exceed Amount For The Repair And Rebuild Of A Firefighting Aerial Truck With Ohio CAT For Calendar Year 2022 And Waiving The Competitive Bidding Requirements.  
(first reading)

**Purpose and Background**

The Huber Heights Fire Division is requesting that the spending limit for 2022 be increased from \$25,000 to \$55,000 for Ohio CAT for the repair and rebuild of a Fire Division vehicle motor. The current aerial vehicle equipped with a Caterpillar motor went to Ohio CAT for diagnosis and repair the week of September 12, 2022. During the tear down process, it was discovered that the motor would require a rebuild.

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**Fiscal Impact**

**Source of Funds:** TBD  
**Cost:** \$30,000  
**Recurring Cost? (Yes/No):** No  
**Funds Available in Current Budget? (Yes/No):** No  
**Financial Implications:**

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**Attachments**

Estimate  
Resolution

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Estimate No: 1485153 - 1

**CITY OF HUBER HEIGHTS**  
7020 BRANDT PIKE  
HUBER HEIGHTS, OH

CUSTOMER NO.	ESTIMATE NO.	DATE	CONTACT
2457090	1485153	9/16/2022	
PHONE NO.	FAX NO.	EMAIL	
MODEL	MAKE		SERIAL NO.
C13	AA		KCB06208
UNIT NO.		WO NO.	P.O. NO.

**SEGMENT: 01**      TROUBLESHOOT (SJR) ENGINE (035 1000)  
NOTES:

**Parts**

Part Number	Description	Qty	Unit Price	Ext Price
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**Labor**

Item Number	Description	Qty	Unit Price	Ext Price
SHP-10-**-BT	LABOR SHOP	1	1,512.50	1,512.50

**Labor Summary**

**Parts:**      0.00    **Labor:** 1,512.50    **Misc:**      0.00    **Segment 01 Total:**                      1,512.50

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**SEGMENT: 02**      RECONDITION AFTER FAILURE (SJR) ENGINE (007 1000)  
NOTES:

**Parts**

Part Number	Description	Qty	Unit Price	Ext Price
10R9922	KIT ENG OVER	1	15,600.92	15,600.92
10R9922	CORE	1	6,899.06	0.00
10R2128	CORE AS OIL	1	1,077.56	1,077.56
10R2128	CORE	1	440.16	0.00
3411429	SEAL-PIP	2	8.85	17.70
2319030	MANIFOLD-EXH	2	375.97	751.94
2293567	MANIFOLD-EXH	1	641.42	641.42
4589582	PRIMER, YELLOW	2	12.81	25.62
5900196	PAINT-YELLOW	4	12.81	51.24
3196059	KIT-DIAPHRAG	1	186.87	186.87
3805856	SEAL AS	2	176.40	352.80
3798579	SHIELD AS	2	80.62	161.24
2498681	HARNESS AS.-	1	311.05	311.05
2537503	HARNESS AS	1	267.08	267.08
2464346	HARNESS AS	1	758.28	758.28

**Labor**

Item Number	Description	Qty	Unit Price	Ext Price
SHP-10-**-BT	LABOR SHOP	1	12,100.00	12,100.00

**Labor Summary****Misc**

Item Number	Description	Qty	Unit Price	Ext Price
1	ADDITIONAL PARTS NOT QUOTED	1	2,500.00	2,500.00

**Parts:** 20,203.72    **Labor:** 12,100.00    **Misc:** 2,500.00    **Segment 02 Total:** 34,803.72

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**SEGMENT: 03**    REPLACE HOSES & LINES (510 7554)  
NOTES:  
-QUOTE TO REPLACE ALL WATER LINES, MAY REQUIRE  
MORE LABOR AND OR PARTS

**Parts**

Part Number	Description	Qty	Unit Price	Ext Price
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**Labor Summary**



**Misc**

Item Number	Description	Qty	Unit Price	Ext Price
1	REPLACE WATER LINES AND LABOR	1	3,000.00	3,000.00

**Parts:** 0.00 **Labor:** 0.00 **Misc:** 3,000.00 **Segment 03 Total:** 3,000.00

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<b>Total Segments:</b>				39,316.22
<b>SUB TOTAL (BEFORE TAXES)</b>				39,316.22
<b>PART DISCOUNT</b>				0.00

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PO#: \_\_\_\_\_ Authorized Name: \_\_\_\_\_ (signature)

Date: \_\_\_\_\_ (print)

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***Thank you for this opportunity to serve your company***

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**CONTACT INFORMATION:**

Prepared by: Nick Anderson Phone: 937-570-5080 Email: nanderson@ohiocat.com Fax: 937-335-6447

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- This estimate will expire 30 days from the estimate date.
  - Price excludes Freight Charges, Operating Supplies/EPA Fees and Overtime.
  - Terms: Net 30.
  - Sales Taxes where applicable are not included with the above prices.
- 

**Terms and Conditions**

BY SIGNATURE ABOVE, I certify that I am the owner or owner's agent, and authorize Ohio Cat, its employees, subcontractors or consultants to perform the inspection, maintenance or repairs described above to include the provision and use of necessary materials required to accomplish the described work scope. I further authorize Ohio Cat to operate the equipment, or any part therein described for the purpose of testing and/or inspection. I understand that payment for all work performed is due in full upon completion.

CITY OF HUBER HEIGHTS

1485153 - 1

Upon acceptance, this quote becomes a legal agreement between you (either an individual or the entity you are authorized to represent) and Ohio Cat. Further, signing certifies the information provided is true and correct, and that the signer is authorized to charge this purchase as noted. Ohio Cat reserves the right to reject a partial or modified quote. You may cancel an accepted quote until the work is started. Once started, work may be stopped at anytime. Partially completed work will be billed based on Time and Materials at Ohio Cat's prevailing rate. Additional handling and storage fees may apply to work partially completed or work temporarily put on hold.

**EQUIPMENT HAVING INSTALLED FIRE SUPPRESSANT SYSTEMS:** During course of repair work it may become necessary to deactivate or disturb mechanical and/or electrical components of the fire suppression system. Reactivation of the fire suppressant system is the responsibility of the customer and should be undertaken before machine operations. Ohio Cat accepts no responsibility for the reactivation, testing or operation of the fire suppressant system.

**STANDARD WARRANTY:** Parts for this repair are warranted as indicated by the manufacturer from the date of invoice. In addition, Ohio CAT's standard labor warranty of 90 days will apply. Full warranty statements, including limitations and exclusions, are available from any Ohio Cat facility. Ask your service representative about additional or enhanced warranty availability.

**THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE. REMEDIES FOR THESE WARRANTIES ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES AS SPECIFIED HEREIN. IN NO EVENT WILL EITHER CATRPIllAR OR OHIO CAT BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

**CORE CHARGES:** Core charges will be returned to customer upon acceptance of the core by Caterpillar.

**OVERTIME:** Overtime can be added at customers request charged at Ohio Cat's prevailing overtime rate.

**PARTS POLICY:** This quote does not include any un-salvageable parts. Parts will be set aside for customer approval before replacement.

**TURNAROUND TIME:** Ohio Cat will not be responsible for circumstances outside of its control. If delays are experienced, the customer will be contacted. In no event will Ohio Cat or subsidiaries be liable for any direct or indirect damages (including, without limitation, lost profits, lost savings or other incidental or consequential damages) arising out of the use or inability to use the machine, even if Ohio Cat or subsidiaries has been advised of the possibility of such loss.

CITY OF HUBER HEIGHTS  
STATE OF OHIO

RESOLUTION NO. 2022-R-

TO INCREASE THE NOT TO EXCEED AMOUNT FOR THE REPAIR AND REBUILD OF FIREFIGHTING AERIAL TRUCK WITH OHIO CAT FOR CALENDAR YEAR 2022 AND WAIVING THE COMPETITIVE BIDDING REQUIREMENTS.

WHEREAS, it is necessary to maintain and repair Fire Division apparatus for the Fire Division throughout a calendar year in a timely manner; and

WHEREAS, the motor for the aerial truck is currently in need of major repair. Expenditures with Ohio CAT will exceed the authorized spending limit of \$25,000.00 by an additional \$30,000.00.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to increase the not to exceed amount for Ohio CAT by \$30,000.00 to a new total of \$55,000.00 for the repair of fire apparatus vehicles to cover all additional expenses throughout Calendar Year 2022 as needed. These repairs are currently needed as the aerial truck is inoperable in the current condition.

Section 2. The competitive bidding requirements are hereby waived consistent with appropriate provisions of the Huber Heights City Charter in Administrative Code Section 171.12(a)(2).

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**AI-8660**

**New Business J.  
City Manager**

**City Council Meeting**

**Meeting Date:** 09/26/2022

Increase Not To Exceed Amount - Joe's Landscaping - Rose Music Center

**Submitted By:** Josh King

**Department:** Planning

**Division:** Parks and Recreation

**Council Committee Review?:** Council  
Work  
Session

**Date(s) of Committee Review:** 09/20/2022

**Audio-Visual Needs:** None

**Emergency Legislation?:** No

**Motion/Ordinance/  
Resolution No.:**

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**Agenda Item Description or Legislation Title**

A Resolution Authorizing The City Manager To Increase The 2022 Not To Exceed Amount With Joe's Landscaping For The Purpose Of Landscape Services For The Rose Music Center And For The City Of Huber Heights And Waiving The Competitive Bidding Requirements.  
(first reading)

**Purpose and Background**

A resolution to increase the not to exceed amount for Joe's Landscaping for landscaping work at the Rose Music Center.

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**Fiscal Impact**

**Source of Funds:** N/A

**Cost:** N/A

**Recurring Cost? (Yes/No):** N/A

**Funds Available in Current Budget? (Yes/No):** N/A

**Financial Implications:**

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**Attachments**

Resolution

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CITY OF HUBER HEIGHTS  
STATE OF OHIO

RESOLUTION NO. 2022-

AUTHORIZING THE CITY MANAGER TO INCREASE THE 2022 NOT TO EXCEED AMOUNT WITH JOE’S LANDSCAPING FOR THE PURPOSE OF LANDSCAPE SERVICES FOR THE ROSE MUSIC CENTER AND FOR THE CITY OF HUBER HEIGHTS AND WAIVING THE COMPETITIVE BIDDING REQUIREMENTS.

WHEREAS, the landscaping at the Rose Music Center needs renovated; and

WHEREAS, the City Charter requires that City Council approve all work performed by a single vendor in excess of \$25,000.00 in any given year.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City of Huber Heights is authorized to contract with Joe’s Landscaping in 2022 at a cost not to exceed \$100,000.00.

Section 2. Consistent with provisions of the City Charter of Huber Heights and the Huber Heights Codified Ordinances, Section 171.12(a)(4), the competitive bidding requirements are hereby waived.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted 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 and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022;  
\_\_\_\_\_ Yeas; \_\_\_\_\_ Nays.

Effective Date:

AUTHENTICATION:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date