



**CITY OF HUBER HEIGHTS
STATE OF OHIO**

City Council Work Session

September 20, 2022

6:00 P.M.

City Hall – Council Chambers – 6131 Taylorsville Road

1. **Call Meeting To Order/Roll Call**

2. **Approval of Minutes**
 - A. September 6, 2022

3. **Work Session Topics Of Discussion**
 - A. City Manager Report

 - B. Arts and Beautification Commission Update

 - C. Increase Not To Exceed Amount - Joe's Landscaping - Rose Music Center

 - D. Supplemental Appropriations

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

 - * Renewal - Property Acquisition - Governmental Facilities - \$945,000

* Renewal - Property Acquisition - Economic Development - \$4,262,000

F. Tax Rate Certification - Montgomery County

G. Tax Rate Certification - Miami County

H. Audit Contract - Renewal - Plattenburg & Associates

I. Text Amendments - Uses - Agricultural District

J. City Code - Supplement 11 - Adopting Ordinance

K. Ordinance To Appropriate Property - Well Field

L. Increase Not to Exceed Amount - Ohio CAT - Fire Division

4. **Adjournment**

AI-8655

Topics of Discussion B.

Council Work Session

Meeting Date: 09/20/2022

Arts and Beautification Commission Update

Submitted By: Anthony Rodgers

Department: City Council

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.:**

Agenda Item Description or Legislation Title

Arts and Beautification Commission Update

Purpose and Background

Representatives of the Arts and Beautification Commission will give an update presentation on the activities and work of the Arts and Beautification Commission.

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:

Attachments

No file(s) attached.

AI-8623

Topics of Discussion C.

Council Work Session

Meeting Date: 09/20/2022

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.:**

Agenda Item Description or Legislation Title

Increase Not To Exceed Amount - Joe's Landscaping - Rose Music Center

Purpose and Background

A resolution to increase the not to exceed amount for Joe's Landscaping for landscaping work at the Rose Music Center.

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:

Attachments

Resolution

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

AI-8647

Topics of Discussion D.

Council Work Session

Meeting Date: 09/20/2022

Supplemental Appropriations

Submitted By: Jim Bell

Department: Finance

Division: Accounting

Council Committee Review?: None

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

Audio-Visual Needs: None

Emergency Legislation?: No

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

Agenda Item Description or Legislation Title

Supplemental Appropriations

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.

Fiscal Impact

Source of Funds: Various Funds

Cost: \$18,810

Recurring Cost? (Yes/No): No

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

Financial Implications:

Attachments

Ordinance

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

General Fund	\$13,500.00
Miami County TIF	\$5,187.00
Miami County West TIF	\$123.00

AI-8618

Topics of Discussion E.

Council Work Session

Meeting Date: 09/20/2022

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.:**

Agenda Item Description or Legislation Title

Issuance of Notes - Renewal

* Renewal - Property Acquisition - City Administrative Offices - \$1,740,000

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.

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:

Attachments

FOC
Ordinance


**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. 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 16. 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 17. 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-8619

Topics of Discussion

Council Work Session

Meeting Date: 09/20/2022

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.:**

Agenda Item Description or Legislation Title

* Renewal - Property Acquisition - Governmental Facilities

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.

Fiscal Impact

Source of Funds: Notes

Cost: \$945,000

Recurring Cost? (Yes/No): No

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

Financial Implications:

Attachments

FOC
Ordinance


**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. 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 16. 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 17. 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-8644

Topics of Discussion F.

Council Work Session

Meeting Date: 09/20/2022

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.:**

Agenda Item Description or Legislation Title

Tax Rate Certification - Montgomery County

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.

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:

Attachments

Resolution

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-8645

Topics of Discussion G.

Council Work Session

Meeting Date: 09/20/2022

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.:**

Agenda Item Description or Legislation Title

Tax Rate Certification - Miami County

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.

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:

Attachments

Resolution

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-8652

Topics of Discussion H.

Council Work Session

Meeting Date: 09/20/2022

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.:**

Agenda Item Description or Legislation Title

Audit Contract - Renewal - Plattenburg & Associates

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.

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:

Attachments

Resolution

Exhibit A

Exhibit B

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
IPACorrespondence@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 Plattenburg & 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@plattenburg.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

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. 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.

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 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.

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 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

9/2/22

Date

City of Huber Heights

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>2022 - 2026</u>	<u>3440</u>	\$ <u> </u>	\$ <u>189,200.00</u>	\$ <u>0.00</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.	CPA Licensure Laws 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.	CPE requirements 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.	Peer Review (Opt. 1) 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.	Peer Review (Opt. 2) 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.	Ohio Ethics Laws 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.	Rules and Laws Regarding Conflicts of Interest 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.	Unresolved Findings for Recovery 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.	Independence - Nonaudit Services Provided (Opt. 1) <ul style="list-style-type: none"> > 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; > 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>; > Our firm and all assigned key professional staff are, and will remain, in compliance with GAO rules relating to auditor independence; and > 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. 	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A
7.b.	Independence - Nonaudit Services NOT Provided (Opt. 2) <ul style="list-style-type: none"> > 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>; > 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 > 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. 	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> N/A
8.	Independence - Entity's Components <ul style="list-style-type: none"> > 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. 	<input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A

<p>9.a.</p>	<p><u>Independence - Entity's Components - Nonaudit Services Provided (Opt. 1)</u></p> <ul style="list-style-type: none"> ➤ 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; ➤ 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>; ➤ Our firm and all assigned key professional staff are, and will remain, in compliance with GAO rules relating to auditor independence; and ➤ 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. 	<p><input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A</p>
<p>9.b.</p>	<p><u>Independence - Entity's Components - Nonaudit Services NOT Provided (Opt. 2)</u></p> <ul style="list-style-type: none"> ➤ 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>; ➤ Our firm has not provided nonaudit services affecting the audit periods that involved performing management functions or making management decisions for City of Huber Heights _____'s components; and ➤ If selected, our firm will not provide 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. 	<p><input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A</p>
<p>10.</p>	<p><u>Personal and External Impairments</u></p> <ul style="list-style-type: none"> ➤ 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; ➤ If appropriate, our proposal has included a statement explaining why such relationships do not constitute an independence issue relative to performing the proposed audit. ➤ 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. ➤ 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. 	<p><input checked="" type="checkbox"/> Affirmed</p>
<p>11.</p>	<p><u>Inappropriate Public Office Contact</u></p> <p>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.</p>	<p><input checked="" type="checkbox"/> Affirmed</p>
<p>12.</p>	<p><u>Subcontractors</u></p> <p>If subcontractors are engaged, our firm will ensure the subcontractor(s) have met all applicable elements listed in the affirmations above.</p>	<p><input type="checkbox"/> Affirmed <input checked="" type="checkbox"/> N/A</p>
<p>13.</p>	<p><u>Irrevocable Offer</u></p> <p>Our firm's proposal is a firm and irrevocable offer for 90 days.</p>	<p><input checked="" type="checkbox"/> Affirmed</p>

AI-8654

Topics of Discussion I.

Council Work Session

Meeting Date: 09/20/2022

Text Amendments - Uses - Agricultural District

Submitted By: Anthony Rodgers

Department: City Council

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.:**

Agenda Item Description or Legislation Title

Text Amendments - Uses - Agricultural District

Purpose and Background

This agenda item is for discussion of text amendments for uses in an Agricultural (A) District based on issues that arose during discussion of Case RZ 22-17. Aaron Sorell has provided a memorandum of potential options for text amendments for consideration (see attached).

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:

Attachments

Memorandum - Options



COMMUNITY PLANNING INSIGHTS

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August 30, 2022

Bryan RH Chodkowski, ICMA-CM
Interim City Manager
City of Huber Heights
6131 Taylorsville Rd.
Huber Heights, OH 45424

RE: Skilwies Options

Dear Mr. Chodkowski,

This letter outlines the background and options available to the city regarding the possible next steps in the Skilwies case. If the City Council desires Mr. Skilwies to continue to operate his business at this location, there are five options:

- 1) Rezone the property to I-1 or Planned Industrial;
- 2) Amend the zoning code to allow the Board of Zoning Appeals to consider Use Variances;
- 3) Expand the definition of a Home Occupation;
- 4) Expand the allowable Special Uses within the Agricultural District;
- 5) A combination of the above options.

If the Council only wishes to address the case at hand, the rezoning option is the most expeditious path and can be scope-limiting. However, if the Council desires to take a broader consideration of expanding business uses within the agricultural districts, I recommend expanding the definition of a home occupation or expanding the allowable special uses to include bed and breakfast establishments and vehicle repair (indoors only).

Background

Mr. Skilwies has been operating a truck and heavy equipment repair business at this location for many years. Based on complaints received in August 2021, staff initiated enforcement action because non-farm related truck and heavy equipment repair is not permitted in the agricultural district. In August 2021, the applicant requested a use variance for the diesel truck and equipment repair operations. The BZA unanimously denied the application at their October 6, 2021 meeting.

The applicant was provided with the lot split and rezoning application shortly after the BZA decision as an alternative path to allow the continued operation of the repair facility. On or about March 28, 2022, staff filed minor misdemeanor charges for the continued operation of the repair facility, and the applicant subsequently applied for a lot split and rezoning.

Current Zoning Code Options

The current zoning code provides limited options to allow Mr. Skilwies to continue his business without rezoning to I-1, I-2 or PI (Planned Industrial). The BZA cannot grant a use variance because Section

1127.03 (C) states in part "... No variance may be granted which permits the establishment of any use which is not otherwise permitted in the district". Thus, the BZA was forced to deny the application.

The option for the Planning Commission to grant a Special Use Permit for vehicle repairs is similarly unavailable. Section 1135.10(a) and 1135.10(j) limit granting a special use permit to only those uses established under the specific zoning district. In the agricultural district, special uses are limited to private and public recreational uses, kindergartens, nurseries and daycare facilities, residential care facilities, places of worship, and private and public utilities. Seeking rezoning was the only course of action available to Mr. Skilweis under the current zoning code framework to keep the business operating at the current location.

Rezoning Options

The I-1 (Light Industrial and Mixed Use) district permits, as a Special Use, "Garages for storage, repair and servicing of motor vehicles, including but not limited to body repair; painting and engine rebuilding." If the area were to be rezoned to I-1, Mr. Skilweis must still seek special use approval from the BZA. Additionally, the land is open to all principally permitted uses within the I-1 district with very limited discretion or oversight by the city. This is the least desirable approach because it carries the greatest risk of negative impacts to surrounding properties.

The PI (Planned Industrial) district can accommodate the current use, and allows the city to restrict the range of potential future uses, hours of operation, and impose additional conditions to reduce the impacts of the use on the adjacent property owners. However, once the rezoning occurs, the land will remain zoned PI until the Council amends the zoning map, regardless of whether Mr. Skilweis sells the property or discontinues the use. Approving the PI rezoning is the shortest timeline to address the immediate issue at hand. If Council approves a rezoning and basic development plan, Mr. Skilweis could have his zoning certificate in 60 – 90 days, depending on when applications are received, and conditions contained in the rezoning / basic development plan ordinance.

Rezoning Process and Timeline:

- Council approves rezoning ordinance and basic development plan
- Required referendum period (non-emergency legislation) – 30 days
- Planning Commission review and approval of Detailed Development Plan – 30 days upon receipt of application

Zoning Text Amendment Options

If the City Council desires to accommodate this use, as well as addressing a broader range of issues, amending the zoning text is an option the Council should consider. The zoning text amendments can either provide a use variance option through the BZA, expand the definition of home occupations, or expand the special uses allowed in the agricultural district. I recommend expanding the definition of home occupations or the allowable special uses in the agricultural district as an incremental step to address this particular case. All text amendments will take 90 to 120 days to complete.

Text Amendments Timeline:

- Council adopts a motion that directs planning staff to prepare a text amendment application to the Planning Commission – 15 to 30 days
- Planning staff drafts text amendment language and application for Planning Commission consideration - 30 days

- Planning Commission holds a public hearing on text amendments – 20 to 30 days
- Planning Commission transmits recommendation to City Council – 10 days
- City Council holds a public hearing on text amendments – 30 days

Use variance

Creating two types of variances (area and use) could provide the BZA with additional tools to address unforeseen development challenges. The use variance can be beneficial in redeveloping single-purpose constructed buildings where rezoning is not desired. For example, granting a use variance to convert a vacant church in a residential neighborhood to an office, or limited commercial use, rather than rezoning the property to B-1 or B-2. Rezoning the property would open up the church to the district's entire range of allowable uses. Additionally, the variance is not subject to a referendum action.

The standards for granting a use variance are an intentionally high bar because it should be used in limited circumstances and not as an end-run around a zoning change. In this case, a use variance may have been a helpful tool for the BZA when considering the application's merits.

Expand the definition of a Home Occupation

The home occupation definition is very limiting, especially considering the number of professions that have broadened work-at-home opportunities and advances in technology that make working from a home office easier. Additionally, traditional concerns about impacts from a home occupation such as delivery vehicles have primarily vanished with the increased popularity of Etsy, Amazon and other retailers who ship directly to consumers. Fed Ex, UPS and Amazon delivery vehicles are a ubiquitous sight in all residential areas.

Regarding this case, home occupations within Huber Heights are prohibited within accessory buildings and do not include vehicle services. If Council desires to expand home occupations, I suggest the following zoning text change, which addresses this case:

Home Occupations

Home occupations may be permitted with standards when compliant with the following regulations and any other applicable sections of this resolution:

- 1) Such use shall be conducted entirely within the dwelling unit or an accessory building. In all cases, all activities related to home occupation must take place within the enclosed building.
- 2) Home occupations shall not change the character of the residential use and shall not adversely affect the uses permitted in the residential district of which they are a part.
- 3) The nature of home occupation as an accessory use relative to its location and conduct of activity is such that the average neighbor, under normal circumstances, would not be aware of its existence.
- 4) Any home occupation activities on the property shall be conducted only by persons residing in the dwelling unit and one additional person who does not reside at the home where the occupation takes place. No building or structure shall be used to operate a business, store equipment, or supplies used for a business, or serve as a location where more than four employees meet or park prior to going to work off-site but where such employees do not work anywhere on the property.
- 5) The maximum floor area the use may cover shall not exceed 25 percent of the total floor area of the dwelling unit.

- 6) One, non-illuminated sign with a maximum square footage of four square feet is permitted, without a permit, if it is mounted flat against the wall of the principal building.
- 7) Home occupations which provide a service shall not have more than two customers (including those arriving and waiting for service) at any one time.
- 8) The storage of all equipment, machinery, supplies, materials, files, and the like, shall be stored completely within the residence or accessory buildings.
- 9) Any need for parking generated by the conduct of such home occupation shall be accommodated on off-street parking spaces or areas that are paved for the purpose of parking.
- 10) No traffic shall be generated by such home occupation in greater volume than is normally expected for the residential neighborhood.
- 11) An auto or vehicle repair business, shop, or use shall only be allowed on lots greater than two (2) acres, and when all work is completed within an enclosed garage, and where there is no storage of vehicles being serviced outside of such garage.
- 12) The following are examples of permitted types of home occupations:
 - (i) Clerical and other similar business services;
 - (ii) Instruction in music, dance or other types of teaching with a maximum number of two students at a time;
 - (iii) The office of a professional accountant, attorney, broker, consultant, insurance agent, realtor, architect, engineer, sales representative, and similar office-oriented occupations;
 - (iv) Artists, sculptors, photographers, and other providers of home crafts;
 - (v) Barber shop/beauty salon with a maximum of one chair;
 - (vi) A licensed massage therapist who provides massage therapy for a maximum of one client at any given time; or
 - (vii) Any similar use as determined by the Zoning Inspector.

Expand Special Uses

As described above, there is a limited list of allowable special uses in the agricultural district. Expanding this list and creating appropriate standards could provide relief in this case and widen the potential use of lands without impacting adjacent property owners. The potential downside is all lands zoned agricultural are subject to those expanded uses. However, unlike rezoning or variance, the special use permit expires if the use is discontinued for more than one year.

I recommend expanding the allowable special uses to include bed and breakfast establishments, automotive / vehicle repair (indoors only), home occupations in accessory buildings. To limit impacts on adjacent properties, development standards must be developed specifically for each use. These standards address minimum lot size, setbacks from neighboring properties, hours and location of operations, screening and buffering. Proposed Special Use development standards are illustrated below:

Automotive / Vehicle Repair

The following standards shall apply to any automotive or vehicle repair use:

- 1) Activities shall be limited to the servicing of motor vehicles with minor repair work, including engine and transmission repair. All activities shall be performed in an enclosed building.
- 2) Bodywork and painting shall be prohibited.

- 3) The storage of non-operational vehicles for longer than one week shall be prohibited. All vehicles shall be required to have a valid license plate.
- 4) Parking, storage, or salvaging of junk vehicles, as defined by the ORC, shall be prohibited
- 5) The building shall be set back a minimum of 25 feet from any adjacent residential lot and 200 feet from any adjacent residential structure. The parking for the storage of vehicles, whether operational or non-operational, shall be set back a minimum of 35 feet from any adjacent residential lot.
- 6) Parking areas within 100 feet of an adjacent residential lot shall be screened along said lot line by a 6-foot solid fence, or dense evergreen vegetation with a height of at least 8' feet within two years of planting.

Bed and Breakfast Establishments

The following standards shall apply to any bed and breakfast establishment:

- 1) Bed and breakfast establishments shall only be permitted within a single-family, detached dwelling, unless otherwise approved by the BZA.
- 2) The owner of the premises shall reside full-time in the dwelling, or in a dwelling on an adjoining lot.
- 3) No more than five bedrooms in any dwelling may be used for bed and breakfast lodging and at least one bathroom shall be dedicated to guest use.
- 4) One off-street parking space shall be provided for each bedroom used for guest lodging in addition to those normally required for the single-family dwelling.
- 5) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of the bed and breakfast establishment that will indicate from the exterior that the building is being utilized in part for any purpose other than a dwelling unit.
- 6) Meals provided for cost in a bed and breakfast establishment shall only be served to the guests who are lodging at the bed and breakfast establishment.
- 7) Guests shall be permitted to reside at the facility for not longer than three continuous weeks.

If you have any questions or concerns, please contact me at (937) 219-6384. I can prepare the required legislation once the City Council has indicated its preferred direction.

Sincerely,



Aaron K. Sorrell, AICP
Interim Planning Director

AI-8653

Topics of Discussion J.

Council Work Session

Meeting Date: 09/20/2022

City Code - Supplement 11 - Adopting Ordinance

Submitted By: Anthony Rodgers

Department: City Council

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.:**

Agenda Item Description or Legislation Title

City Code - Supplement 11 - Adopting Ordinance

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.

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:

Attachments

Ordinance

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